

NO FEE DOCUMENT

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

County of Santa Barbara  
105 East Anapamu Street, Room 105  
Santa Barbara, CA 93101  
Attn: Grants Administration Division Chief

NO FEE DOCUMENT PURSUANT TO  
GOVERNMENT CODE SECTION 27383

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**IN LIEU REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This In Lieu Regulatory Agreement and Declaration of Restrictive Covenants (this “Agreement”) is made as of this \_\_\_ day of November, 2011 by and between the County of Santa Barbara, a political subdivision of the State of California (the “Lender”), McClelland Santa Maria, L.P., a California limited partnership, (the “Owner”).

**RECITALS**

A. The Owner owns a parcel of real property located at 190 E. Inger Street in the City of Santa Maria in the County of Santa Barbara, California, as more particularly described in Exhibit A (the “Property”) upon which the Owner is constructing forty-seven (47) units of multi-family rental housing (the “Development”).

B. Owner has received from Lender a loan of In-Lieu Funds in the amount of Four Hundred Fifty Thousand Dollars (\$450,000) to provide financing for the development (the “In-Lieu Fund Loan”). Owner has also received a loan from Lender of HOME Funds in the amount of Five Hundred Seventy Two Thousand One Hundred Seventy Six Dollars (\$572,176) to provide financing for the Development (the “Loan”).

C. As further consideration for this 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 Development. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and the Lender hereby agree as follows:

**1. DEFINITIONS**

The following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

1.1 **“ANNUAL INCOME”** means the Section 8 Program definition of Annual (gross) Income as more particularly defined at 24 CFR 5.609.

1.2 **“IN LIEU ASSISTED UNIT”** means any of the eleven (11) Units in the Development with restricted occupancy and rents pursuant to this Agreement which has been designated as an In Lieu Assisted Unit. A Unit shall not be considered an In Lieu Assisted Unit until the Unit has been constructed and made available for occupancy.

1.3 **“AREA MEDIAN INCOME”** means the median income for the Santa Barbara/Santa Maria/Goleta Primary Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by the United States Department of Housing and Urban Development (“HUD”) pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

1.4 **“DEED OF TRUST”** means that certain deed of trust, placed on the Property as security for the In Lieu Loan with the Owner as trustor and the Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.5 **“DEVELOPMENT”** means the forty-seven (47) units of housing with appurtenant parking and site improvements on the Property to be constructed by the Owner on the Property according to the terms of the Loan Agreement.

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

1.7 **“IN LIEU LOAN”** means the Loan of In Lieu funds made by the Lender to the Owner for the Development pursuant to the Loan Agreement and the In Lieu Note.

1.8 **“LOAN AGREEMENT”** is the Loan Agreement executed by and between the Owner and the Lender, setting forth the terms and conditions governing both the In Lieu Loan as well as a separate loan of HOME Funds.

1.9 **“LOAN DOCUMENTS”** are collectively the Loan Agreement, the In Lieu Note evidencing the In Lieu Loan, the Deed of Trust securing the In Lieu Note, and this Agreement as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.10 **“IN LIEU NOTE”** means the promissory note executed by the Owner in favor of the Lender evidencing the In Lieu Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note.

1.11 **“OWNER”** means McClelland Santa Maria, L.P., a California Limited Partnership.

1.12 **“PROPERTY”** means the real property described in Exhibit A attached hereto and incorporated herein, including the improvements constructed thereon pursuant to the Loan Agreement.

1.13 **“QUALIFYING HOUSEHOLD”** means a household that qualifies as a Very Low-Income Household.

1.14 **“QUALIFYING RENT”** means the total charges for monthly rent, utilities, and related services which do not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income derived from data provided for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD annually with adjustments for household size.

1.15 **“TENANT”** means a household occupying a Unit.

1.16 **“TERM”** means the fifty five (55) year term of this Agreement during which the In Lieu Assisted Units must meet the affordability requirements imposed under this Agreement, commencing upon the execution of this In Lieu Regulatory Agreement.

1.17 **“UNIT”** means a housing unit in the Development.

1.18 **“VERY LOW-INCOME HOUSEHOLD”** means a household whose annual income does not exceed fifty percent (50%) of the Area Median Income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

## **2. TERM AND COMPLIANCE**

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

2.2 **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect until Fifty Five (55) years following the date of the issuance of a certificate of occupancy for the Development. 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.

## **3. DEVELOPMENT OCCUPANCY AND RENTS**

3.1 **OCCUPANCY OF DEVELOPMENT.** A total of eleven (11) Units in the Development shall be designated as In Lieu Assisted Units. The In Lieu Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households.

3.2 **IN LIEU ASSISTED UNITS.** The Owner shall limit for the full term of this Agreement the rental of eleven (11) In Lieu Assisted Units to Very Low-Income Households at rents that do not exceed the maximum rental charges for each In Lieu Assisted Unit as set forth in this Agreement.

The eleven In Lieu Assisted Units shall meet the following standards:

- A. The eleven In Lieu Assisted Units shall be designated as "floating" units, so that the units that are designated as Assisted under this Agreement may change over time as long as the total number of In Lieu Assisted units in the Project remains constant;
- B. Generally reflect the average number of bedrooms per dwelling unit in the Project;
- C. Be similarly constructed and of comparable quality to the other Units in the Project; and
- D. Be dispersed through the Project.

3.3 **MAXIMUM RENTAL CHARGES.**

A. For a household occupying an In Lieu Assisted Unit, the total charges for monthly rent, utilities, and related services shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income as determined by HUD annually with adjustments for household size and allowances for utilities and services. Allowances for utilities and services shall be updated periodically in accordance with the Utility Allowance Schedule published annually by the Housing Authority of the County of Santa Barbara for the Lompoc Housing Market Area.

B. Maximum rents for each In Lieu Assisted Unit shall be set by the Lender at the time of initial occupancy of the Development. Annual rent increases shall be calculated based on the change in Area Median Income published annually by HUD. At least sixty (60) calendar days prior to increasing rents on any In Lieu Assisted Unit on the Project, Borrower shall submit to the Lender for review and approval a written request for such increase. Qualifying Households shall be given at least sixty (60) days written notice prior to any rent increase. If the proposed new rental rate does not exceed the Qualifying Rent for such year, Lender shall approve such request.

3.4 **INCOME CERTIFICATION.** The income levels and other qualifications of applicants for In Lieu Assisted Units shall be certified by Owner within sixty (60) business days of the household's expected occupancy of an In Lieu Assisted Unit and recertified annually thereafter by the Owner. If the household size of a household occupying an In Lieu Assisted Unit changes, the Owner may request additional information and documentation to determine eligibility.

A. Initial Income Verification. Before the household occupies an In Lieu Assisted Unit, the Owner shall verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or both of the following steps as a part of the verification process:

- (1) Third Party Verification: A third party (e.g., employer, Social Security Administration, or public assistance agency, etc.) is contacted to provide information to verify income. Written requests and responses are generally preferred; however, conversations with a third party are acceptable if thoroughly documented in writing.
- (2) Review of Documents: The household provides documents verifying their income (e.g., pay stubs, tax returns, etc.). These documents must then be retained in the project files.

B. Annual Income Recertification. At the time of lease renewal or pursuant to an annual schedule adopted by the Owner, and no later than the anniversary of the original income evaluation and annually thereafter, Owner shall recertify the household income of each household occupying an In Lieu Assisted Unit using the method as described in Section 3.4 A above.

3.5 **INCREASES IN TENANT INCOMES.** In the event that recertification of a household occupying an In Lieu Assisted Unit, or changes to the composition of a household occupying an In Lieu Assisted Unit indicates that the household's income exceeds the maximum designated income for a Very Low-Income Household, the Owner may increase rents on such Unit as permitted by HUD to no more than 30% of 1/12 of the household's income, and the household may be permitted to continue to occupy the Unit. In such event, Owner shall rent the next available comparable Unit to a Qualified Household at no more than the rent set forth in Section 3. Upon such rental, the Unit occupied by the non-qualified household shall no longer be classified as an In Lieu Assisted Unit and the newly rented unit to a Qualified Household shall be deemed an In Lieu Assisted Unit.

#### **4. LEASING THE DEVELOPMENT.**

4.1 **TENANT LEASES.** The Owner shall execute a written lease with tenants of In Lieu Assisted units for a term of at least one year, unless the Owner and the tenant mutually agree to a shorter period. A lease may not be for a period less than thirty (30) days. The tenant lease and any changes thereto must be approved by Lender.

A. The Owner shall include in leases for all In Lieu Assisted Units provisions which provide that the household is subject to annual certification of income and that the tenancy of the household shall be immediately terminated should one or more of the household's members misrepresent any material fact regarding the household's qualification as a Very Low-Income Household. The Owner shall include in all leases for In Lieu Assisted Units provisions which prohibit the household from subleasing the In Lieu Assisted Unit.

B. In addition to executing a lease for an In Lieu Assisted Unit, the Owner shall require that each household leasing an In Lieu Assisted Unit execute a declaration of intent to occupy which shall require the household to occupy the In Lieu Assisted Unit as the household's primary residence.

C. The lease for each In Lieu Assisted Unit shall not contain any the prohibited provisions identified at 24 CFR §92.253(b) including the following:

1. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
2. *Treatment of property.* Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
3. *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
4. *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
5. *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
6. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;
7. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

D. Owner shall not terminate the tenancy or refuse to renew the lease of a tenant of an In Lieu Assisted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. To terminate or refuse to renew the tenancy, the owner shall serve written notice upon the tenant specifying the grounds for the action at lease thirty (30) days prior to termination of tenancy.

4.2 **TENANT SELECTION.** Before leasing the Development, the Owner must provide Lender for its review and approval the Owner's written tenant selection plan.

4.3 **SECTION 8 CERTIFICATE HOLDERS.** The Owner will 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 is 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 Development which have the effect of precluding occupancy of units by such prospective tenants.

**4.4 CONDOMINIUM CONVERSION.** The Owner shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Property during the term of this Agreement.

**4.5 NONDISCRIMINATION.** The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that the Owner is an Equal Housing Opportunity Provider.

**4.6 MARKETING PLAN.** Prior to occupancy, Owner shall submit to the Lender for approval its plan for marketing the Units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. Upon receipt of the marketing plan, the Lender shall promptly review the Marketing Plan and shall approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved, Lender shall specify its reasons for disapproval. The Owner shall submit a revised Marketing Plan within thirty (30) days of Lender's notice of disapproval. If the Lender does not approve the revised Marketing Plan, the Owner shall be in default under the terms of the Loan Agreement.

## **5. PROPERTY MANAGEMENT**

**5.1 MANAGEMENT RESPONSIBILITIES.** The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, 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 Development. The Owner shall submit to the Lender for its 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 Development to the Lender for its review, and shall amend such policies in any way necessary to insure that such policies comply with the provisions of this Agreement, the requirements of the existing housing program under Section 8 of the United States Housing Act, or its successors, and the requirements of all lenders providing financing for the Development.

**5.3 INSPECTION AND RECORDS.** The Owner shall maintain records which clearly document the Owner's performance of its obligations to operate the Property under the terms of this Agreement. The Owner shall submit any records to the Lender within ten (10) business days of the Lender's request. The Owner shall permit the Lender to enter and inspect the Development for compliance with obligations under this Agreement upon twenty-four (24) hours advance

notice of such visit by the Lender to the Owner or the Owner's management agent and to tenants of any Units.

**5.4 COMPLIANCE MONITORING.** The Owner shall operate the Property in full compliance with this Agreement. The Owner shall permit the Lender to conduct annual compliance monitoring, including performing on-site records review and property inspections, as required by regulation or reasonably requested by County.

**5.5 ANNUAL REPORT.** The Owner shall submit to the Lender 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 be submitted annually no later than March 1<sup>st</sup>, and shall include, at a minimum, (i) a statement of the fiscal condition, including audited financial statements for the preceding year, (ii) occupancy of the project, (iii) a statement of the physical condition, (iv) general management performance, (v) for each Unit, the Rent, income, and household size of the household occupying the Unit. The report shall also state the date the tenancy commenced for each rental Unit and such other information as the Agency 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 United States Department of Housing and Urban Development, or 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 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 Revenue and Taxation Code Section 214(g) without the Lender's prior written consent.

## **6. GENERAL PROVISIONS**

**6.1 SUBORDINATION.** This Agreement shall be subordinated in priority only as provided in the Loan Agreement or to liens and encumbrances otherwise approved in writing by the Lender in its sole and absolute discretion.

**6.2 DEFAULT AND REMEDIES** In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Lender shall provide written notice to the Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Lender determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. If the Owner fails to perform a timely cure of the specified breach, the Lender may proceed with any or all of the following remedies upon the Owner's failure to cure:



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 Development, 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 Development as are necessary and provide for payment thereof; or

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

**6.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officers, directors, employees and agents of the Lender shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

**6.4 INSURANCE AND INDEMNITY.** Borrower shall comply with the insurance and indemnification provisions set forth in Exhibit B and incorporated herein by this reference.

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

**6.6 AGREEMENT CONTROLS.** In the event that any provisions of this Agreement and any Loan Document conflict, the terms of this Agreement shall control.

**6.7 TIME.** Time is of the essence in this Agreement.

**6.8 CONSENTS AND APPROVALS.** Any consent or approval of the Lender required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Lender.

**6.9 NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between the Owner and the Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the Owner and the Lender as follows:

**Lender:**

County of Santa Barbara  
Housing and Community Development  
105 E. Anapamu Street, Rm. 105  
Santa Barbara, CA 93101  
Attn: Grants Administration Division Chief

With copy to

Office of the County Counsel  
County of Santa Barbara  
105 E Anapamu Street, Room 201  
Santa Barbara, CA 93101

**Owner:**

McClelland Santa Maria, L.P.  
c/o Surf Development Company  
815 West Ocean Avenue  
Attn: Executive Director

**6.10 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 heirs, administrators, executors, successors-in-interest, transferee, and assigns of the Owner, and the Lender, and shall run with the land for the full term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the In Lieu Loan or In Lieu Note, any reconveyance of the Deed of Trust, or any conveyance or transfer of the Property or portion thereof.

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

**6.12 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 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 its obligations under this Agreement. Consent by the Lender to any act or omission by the Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

**6.13 AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both the Owner and the Lender.

**6.14 SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

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

**APPROVED AS TO FORM:**

DENNIS A. MARSHALL  
COUNTY COUNSEL

By: \_\_\_\_\_  
Mary L. McMaster  
Deputy County Counsel

**LENDER:**

County of Santa Barbara  
a political subdivision of the State of California

By: \_\_\_\_\_  
Joni Gray  
Chair of the Board of Supervisors  
(Signature must be notarized)

**APPROVED AS TO FORM  
RISK MANAGEMENT**

By: \_\_\_\_\_  
Ray Aromatorio  
Risk Manager

**OWNER:**

**McClelland Santa Maria, L.P.**, a  
California Limited Partnership

By: Surf Development Company, a California  
non-profit public benefit corporation,  
Managing General Partner

**APPROVED AS TO**

**ACCOUNTING FORM:**  
ROBERT W. GEIS  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Juan Izquierdo  
Division Chief

By: \_\_\_\_\_  
Name: Joyce Howerton  
Title: Vice-President  
(Signature must be notarized)

AND

By: Roope, LLC  
Administrative General Partner

By: \_\_\_\_\_  
Name: Caleb Roope,  
Title: Manager  
(Signature must be notarized)

State of California  
County of Santa Barbara

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT A

Legal Description of the Property

EXHIBIT B

INSURANCE REQUIREMENTS

## EXHIBIT B

### STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

#### INDEMNIFICATION

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

#### INSURANCE

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The automobile liability policy

shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

*"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."*

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Property Insurance: Throughout the term of this Agreement, CONTRACTOR, at its own cost and expense, shall insure against loss of or damage to all improvements on the PROPERTY, equipment and fixtures thereon resulting from fire, lightning, vandalism, malicious mischief, those risks ordinarily defined as "all risk coverage" and in addition thereto for loss or damage resulting from flood surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water or spray from any of the foregoing, all whether driven by wind or not and including, but not limited to, water which backs up through sewers or drains or water below the ground which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors. CONTRACTOR'S obligation to obtain flood, wave, tidal wave and earthquake casualty coverage shall be conditioned upon such coverage being readily available at commercially reasonable rates for commercially reasonable amounts of coverage. Such insurance shall be in amount equal to 100% of the full replacement cost improvements on the PROPERTY, other related equipment and fixtures and shall be placed and maintained with one insurance company or companies which is or are acceptable to COUNTY. Such insurance shall be modified periodically to ensure that, at all times, the limits of said policies are large enough to provide coverage for one hundred percent (100%) of the replacement costs of all equipment and improvements on the PROPERTY. COUNTY may require that CONTRACTOR submit to it at the commencement of each third calendar year during the term hereof, an appraisal of the replacement value of the improvements on the Site so that COUNTY can determine whether the insurance coverage is sufficient. Certificates of insurance evidencing such insurance coverage as modified shall be promptly filed with COUNTY. All such insurance policies, along with their endorsements, shall name COUNTY as a loss payee.
4. Builder's Risk Insurance: During the course of construction, the CONTRACTOR shall secure insurance that will include protection against direct physical loss or damage, including fire and theft, in an amount sufficient to cover replacement value of all improvements.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.



In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY'S risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

**EXHIBIT H**  
**INSURANCE REQUIREMENTS**

## EXHIBIT H

### STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

#### INDEMNIFICATION

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

#### INSURANCE

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The automobile liability policy

shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

*"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."*

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Property Insurance: Throughout the term of this Agreement, CONTRACTOR, at its own cost and expense, shall insure against loss of or damage to all improvements on the PROPERTY, equipment and fixtures thereon resulting from fire, lightning, vandalism, malicious mischief, those risks ordinarily defined as "all risk coverage" and in addition thereto for loss or damage resulting from flood surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water or spray from any of the foregoing, all whether driven by wind or not and including, but not limited to, water which backs up through sewers or drains or water below the ground which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors. CONTRACTOR'S obligation to obtain flood, wave, tidal wave and earthquake casualty coverage shall be conditioned upon such coverage being readily available at commercially reasonable rates for commercially reasonable amounts of coverage. Such insurance shall be in amount equal to 100% of the full replacement cost improvements on the PROPERTY, other related equipment and fixtures and shall be placed and maintained with one insurance company or companies which is or are acceptable to COUNTY. Such insurance shall be modified periodically to ensure that, at all times, the limits of said policies are large enough to provide coverage for one hundred percent (100%) of the replacement costs of all equipment and improvements on the PROPERTY. COUNTY may require that CONTRACTOR submit to it at the commencement of each third calendar year during the term hereof, an appraisal of the replacement value of the improvements on the Site so that COUNTY can determine whether the insurance coverage is sufficient. Certificates of insurance evidencing such insurance coverage as modified shall be promptly filed with COUNTY. All such insurance policies, along with their endorsements, shall name COUNTY as a loss payee.
4. Builder's Risk Insurance: During the course of construction, the CONTRACTOR shall secure insurance that will include protection against direct physical loss or damage, including fire and theft, in an amount sufficient to cover replacement value of all improvements.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY'S risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

**EXHIBIT I**

**MANAGEMENT PLAN**

EXHIBIT I

**RANCHO HERMOSA**

**PROPERTY MANAGEMENT AGREEMENT**

**I. PARTIES**

1. This Agreement made this 16<sup>th</sup> day of September, 2010 at Santa Maria, California, by and between McClelland Santa Maria, L.P., a California Limited Partnership, hereinafter referred to as "Owner", and the HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA, a California public body, corporate and politic, hereinafter referred to as "Agent".

The parties hereto agree as follows:

**II. PROFESSIONAL MANAGEMENT STANDARDS**

1. Job Description

The owner appoints the Agent as the exclusive agent to manage, operate, maintain, lease and rent the "property" described hereinafter and the Agent accepts the appointment subject to the terms and conditions set forth in this Agreement.

2. Property Description

The property to be managed is described as follows:

Name:	Rancho Hermosa
Address:	199 East Inger Drive
City & State	Santa Maria, California 93455
County:	Santa Barbara
Number of units:	47
Type of facility:	Rental Housing for low-income households

3. Professional Management Standards

Agent agrees to exert its best efforts, to furnish the services of its organization, and to exercise the highest degree of professional competence in managing the property so as to provide Owner with sufficient revenue to pay current debts and expenses of the property and to comply with regulatory agreements affecting the property consistent with proper management. The Agent shall carry out management of the property in accordance with the Management Plan. A copy of the Agent's Management Plan is attached (Exhibit A).

4. Initial Professional Analysis

Agent shall do the following at the outset of its stewardship:

Inform itself with respect to the neighborhood, layout, construction, location, character, plan, and operation of the property and any mechanical or physical systems operating within the property.

5. Continuing Standards

Agent agrees, notwithstanding the authority granted herein, to confer fully and freely with Owner in the performance of its duties, and to continue to remain informed regarding the property.

III. LEASING OF PROPERTY

1. Obligation to Lease

Agent agrees to use its best efforts, utilizing the full range of services and facilities of its organization, to obtain qualified tenants for presently vacant space within the property, or space which may become vacant during the term of this Agreement.

2. Advertisements

Agent agrees to promote leasing and renting by full use of available advertising devices such as newspapers and the display of signs on the property, the cost of which shall be a property expense.

3. Leasing Standards

All renting shall be accomplished by lease on terms and conditions provided by Owner and governmental agencies, as applicable.



The Agent shall follow a tenant selection policy based on the tenant's credit history, tenants occupancy history and tenants qualification under any governmental regulation. If a tenant is rejected because of information obtained from a credit report, the source of the report will be revealed to the tenant in accordance with the Fair Credit Reporting Act.

The Agent will also use its best efforts to maintain eligibility under any governmental programs providing financial assistance to the property.

4. Nondiscrimination

In the performance of its obligations under this Agreement, the Agent will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, religion, sex, age, marital status, national origin, or physical or mental handicap.

5. Action Authorized With Respect to Leases

Agent is authorized to execute all leases, rental agreements, renewals, and cancellations. Agent may also serve notice on any tenant to quit a property when the Agent deems such notice necessary and is authorized to institute such actions or other proceedings as may be deemed advisable in Agent's or Owner's name in order to evict tenants, recover rent, charges, or other sums payable to Owner. Agent may discontinue any such action or proceeding, or compromise or settle any such action or proceeding.

6. Tenant's Problems

Agent shall maintain businesslike relations with tenants. Problems of a serious nature shall, after thorough investigation, be reported to the Owner with appropriate recommendations.

IV. OPERATION AND MAINTENANCE

1. Employees

Agent will employ and supervise current employees and compensation will be based on the current contract. All other employees performing services for the property will be employees of the Agent.

## 2. Maintenance, Repairs and Rehabilitation

- a. Agent shall cause the property, and its appurtenances and grounds, to be maintained according to standards acceptable to Owner, or a governmental agency, if applicable, including but not limited to interior and exterior cleaning, painting, decorating, plumbing, heating and ventilating systems, elevators, carpentry, and such other normal maintenance and repair work as may be necessary. Agent is authorized by Owner to conduct rehabilitation necessary to have the property meet building codes and maintain the appearance to complement the surrounding community.
- b. In fulfillment of its duties under (a) of this section, Agent may purchase from a third party company such supplies, equipment, and services as necessary for the operation and maintenance of the property; provided, however, that no single disbursement for this purpose shall be made which is not in the annual budget approved by the Owner or which would cause Agent to exceed a budget line item by more than \$2,000.00 unless specifically authorized by Owner or authorized representative except that emergency repairs, involving manifest danger to life or property, or immediately necessary for the preservation and safety of the property, or for the safety of its tenants, or required to avoid the suspension of any necessary service to the property, may be made by Agent irrespective of the cost limitation imposed by this section.
- c. If major repairs are required, the Agent will solicit bids from third party companies to complete such repairs. From comparable bids, the most reasonable and qualified bid will be selected.

## 3. Services and Utilities

Agent shall implement and maintain the contracts considered in its name or in the name of Owner for all services and utilities necessary for the efficient operation and maintenance of the property, including but not limited to water, electricity, gas, fuel, telephone, vermin extermination and rubbish hauling.

4. Compliance with Governmental Regulations

Agent shall take such action as may be necessary to comply promptly with any and all orders or requirements affecting the property placed thereon by federal, state, county, or municipal authority having jurisdiction therefore, subject to the same limitation contained here in regarding maximum amounts which may be disbursed without Owner's written consent. Agent, however, shall not take any action under this section so long as Owner is contesting, or has, after prompt notification of the facts by Agent, affirmed its intention to contest any such order or requirement. Agent shall promptly notify Owner in writing of all such orders and notices of requirements.

5. Insurance Coverage

When specifically directed by Owner in writing, agent will cause insurance coverage, in the types and amounts so specified by Owner, or as required by law, lender, or unit(s) of government, to be placed and kept in effect at all times with insurance companies satisfactory to Owner. Typically, coverage will include, but not be limited to, worker's compensation insurance, public liability insurance, fire and extended coverage insurance, and burglary and theft insurance. All of the various types of insurance coverage required for the benefit of Owner shall be placed with the company or companies whose bids have been accepted by Agent, in such amounts, and with such beneficial interests appearing therein and shall be acceptable to Owner; provided, however, that the Agent shall be named as a coinsured in all policies related to public liability insurance. Proof of all such insurance shall be delivered to Owner in a form acceptable to Owner. Agent shall promptly investigate and make a full written report as to all accidents or claims for damage relating to the ownership, operation, and maintenance of the property including any damage or destruction to the property, the estimated cost of repair, and shall cooperate and make any and all reports required by any insurance company in connection herewith.

V. COLLECTION AND DISBURSEMENT OF REVENUES

1. Operating Account

Agent will designate and maintain an Operating Account which will be in the Agent's name and designated of record in an account name identifying the property. The account shall be opened in a bank whose deposits shall be insured by the Federal Deposit Insurance Corporation.

2. Collection of Rent

Agent shall use its best efforts to collect all rents and revenues from the property.

3. Deposit of Collections

Agent shall promptly deposit all monies collected from the property in the Operating Account. Agent shall have the authority to draw on this account for any payments which Agent must make to discharge any liabilities or obligations incurred pursuant to this Agreement, and for the payment of Agent's fee, all of which payments shall be subject to the limitations of this Agreement.

4. Tenant Security Deposit Account (When Applicable)

Upon receipt, all tenant security deposit funds collected shall be deposited in a separate account at a federally insured financial institution and shall be handled according to any State or local laws governing tenant security deposits. All tenant security deposit funds collected shall be recorded in a bookkeeping account that is separate from the Property's bookkeeping accounts. Funds in the Tenant Security Deposit Account shall only be used for authorized purposes as intended. They shall be held by the Agent in trust for the respective tenants until so used. Any amount in the Tenant Security Deposit Account which is retained by the Agent as a result of lease violations shall be transferred to the Operating Account and treated as income of the property.

5. Replacement Reserve Account

Reserves will be funded and requested withdrawals will be handled in accordance with the current regulatory agreement.

6. Bonding

The Agent directly and those employees of Agent who handle or are responsible for the handling of Owner's monies shall, be bonded by a fidelity bond acceptable both to Agent and Owner, indemnifying Owner as obligee against loss, theft, embezzlement, or other fraudulent acts on the part of Agent or Agent's employees.

7. Disbursements

Disbursements will be handled in accordance with current operating procedures and will be handled by Agent.

8. Controls on Disbursements

Agent shall maintain proper internal controls appropriate to organize and maintain a system of controls designed to insure the authenticity of bills paid, and the fairness of the price charged. In furtherance of this goal, Agent shall authorize all purchasing and hiring of services only by supervisory personnel.

VI. FINANCIAL RECORDS AND REPORTS

Reporting will be handled in accordance with current operating procedures and will be handled by Agent.

Agent shall provide necessary information and generate the required financial reports.

VII. COMPENSATIONS

1. Fee

For on-going management services rendered pursuant to this Agreement, Owner shall pay Agent a fee of 7.63% of rental revenue per month. The fee is due on the first day of each month and delinquent if not paid by the 15<sup>th</sup>. A late charge of 1.5% will apply to any delinquent balance.

VIII. AGENT'S AND OWNER'S OBLIGATIONS

1. Agent's Indemnification

Notwithstanding any provision of this Agreement or any obligation of Agent hereunder, it is understood and agreed:

- (a) That Owner has assumed and will maintain their responsibility and obligation throughout the term of this Agreement for the finances and the financial stability of the Property, and
- (b) That Agent shall have no obligation, responsibility or liability to fund authorized Property costs, expenses or accounts other than those funds generated by the Property itself or provided to the Property or to Agent by Owner, and
- (c) That Owner shall be solely responsible for bearing that portion of the costs of the Property which exceed the amount of income generated by the Property.

In accordance with the foregoing, Owner agrees that Agent shall have the right at all times to secure payment of its compensation, as provided for under this Agreement, from the General Operating Account immediately when such compensation is due and without regard to other Property obligations or expenses provided the agent has satisfactorily discharged all duties and responsibilities under this Agreement. Moreover,

except for losses, costs, expenses, liabilities, and obligations arising by reason of Agent's negligence or breach of its obligations under this Agreement, Owner hereby indemnifies Agent and agrees to hold it harmless from any loss, with respect to Property costs, expenses, accounts, liabilities, and obligations during the term of this Agreement and further agrees to guarantee to Agent the payment of its compensation under this Agreement during the term of this Agreement to the extent that the Project's General Operating Account for this purpose is insufficiently funded. Failure of Owner at any time to abide by and to fulfill the foregoing shall be a breach of this Agreement entitling Agent to obtain from Owner upon demand, full payment of all compensation owed to Agent through the date of such breach and entitling Agent, at its option, to terminate this Agreement forthwith.

2. Owner's Indemnification

Agent shall indemnify, defend, and hold Owner free and harmless from and against all claims, costs, damages, causes of action, and liabilities of whatsoever type and kind arising from or relating to Agent's breach of its obligations under this Agreement.

IX. TERM AND TERMINATION

1. Basic period

Subject to termination pursuant to subparagraph IX (2) below, the term of this Agreement shall commence when construction is completed and certificate(s) of occupancy are obtained and continue until the property is acquired by the Agent or its affiliate.

2. Termination

This Agreement may be terminated with or without cause with a thirty (30) day written notice of its election to terminate. For purposes of this Agreement, the term "cause" shall mean (i) material breaches of a party's obligations under this Agreement which are not cured within fourteen (14) days after delivery of written notice that such breach has occurred, (ii) substantial and repeated material violations of a party's obligations under this Agreement, and (iii) gross negligence or intentional misconduct.

3. Consequences of Termination

Upon termination of this Agreement, it is agreed:

- (a) That all of the records in the possession of Agent pertaining to the operation of the premises, together with any other property of Owner in Agent's possession, shall be immediately delivered to Owner.
- (b) That Agent's right to compensation shall immediately cease, except for any amounts payable hereunder before the date of the termination.

X. MISCELLANEOUS

1. Notices

All notices required under this or any article of this Agreement shall be in writing and:

- (1) Delivered by certified mail, postage prepaid, return receipt requested;
- (2) Express delivery with a delivery receipt; or
- (3) By personal delivery with a delivery receipt.

Notice shall be deemed communicated on the date shown on the delivery receipt as:

- (1) The date of delivery;
- (2) The date delivery was refused; or
- (3) The date the notice was returned as undeliverable.

The place to which notices shall be addressed to each party appears after the signatures below, provided, however, that each party may change his address by notice in accordance with this section.

2. Status of Parties

The parties hereto do not intend to create an employer-employee relationship. The Agent is an independent contractor.

3. Timely Performance

Owner and Agent shall each perform all of their respective obligations under this Agreement in a proper, prompt, and timely manner. Each shall furnish the other with such information and assistance as the other may from time to time reasonable request in order to perform its responsibilities under this Agreement. Owner and Agent each shall take all such actions as the other may from time to time reasonably request and otherwise cooperate with the other so as to avoid or minimize any delay or impairment of either party's performance of its obligations under this Agreement.

4. General Provisions

This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the state wherever this Agreement has been executed. This Agreement embodies the entire Agreement and understanding between the parties and supersedes all prior agreements and understandings relating to the subject matter hereof.

This Agreement may not be modified amended, or terminated, nor may any term or provision hereof be waived or discharged, except in writing signed by the party against whom such amendment, modification, termination, waiver, or discharge is sought to be enforced. All of the terms of this Agreement, whether so expressed or not, shall be binding upon the respective successors and permitted assigns of the parties hereto and shall insure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns. If any of the provisions of this Agreement shall to any extent be invalid or unenforceable, the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any references in this Agreement to any one gender, masculine, feminine, or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the context otherwise requires.

If any legal action is brought to enforce this Agreement, the prevailing party shall be entitled to its attorney's fees and costs of its suit.



XI. EXECUTION

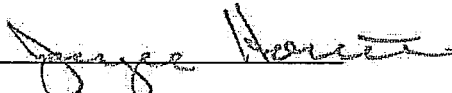
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed by their duly authorized officers as of the day and year first above written.

**OWNER:**

McClelland Santa Maria, L.P.  
A California Limited Partnership,  
By: Surf Development Company  
Managing General Partner

**AGENT:**

Housing Authority of the  
County of Santa Barbara,  
a public body corporate  
and politic

By:   
Its: Vice-President

By:   
Its: Executive Director

## EXHIBIT A

### MANAGEMENT PLAN

PROJECT: Rancho Hermosa, 199 Inger Drive, Santa Maria, CA 93455  
OWNER: McClelland Santa Maria, L.P.  
MANAGING AGENT: Housing Authority of the County of Santa Barbara (Agent)

Management of Rancho Hermosa will be guided by consistent policies and procedures that serve to ensure the project's physical and fiscal integrity and soundness.

#### ON-SITE AND INDIRECT MANAGEMENT

Indirect management will be provided out of Agent offices in Santa Maria, California. These managerial services are more specifically detailed in this Management Plan.

Agent will also provide direct, on-site management by employing a management staff member who will reside on the property.

Management staff, including their duties and responsibilities, are identified and discussed in greater detail under the various sections of this plan. Management positions and project expense relationships are presented as part of the Project's Operating Budget.

The Santa Maria Area Housing Manager and Area Maintenance Manager are responsible for making and carrying out the daily decisions necessary to provide the project with the management services identified in this plan.

Typical activities are as follows:

#### INITIAL RENT-UP AND CONTINUED OCCUPANCY

- Marketing
- Publications, as required
- Tenant Screening and Selection
- Tenant Eligibility Certification and Recertification
- Tenant Orientation
- Rental Agreements
- Move-In and Move-Out Inspections

## RENT COLLECTION

Rent Roll and Service Charge Collection Management  
Rent Delinquencies  
Security Deposit Collection and Refunds  
Eviction

## MAINTENANCE

Routine repairs and replacements  
Non-Routine repairs and replacements  
Extraordinary Maintenance  
Property Betterments and Additions  
Preventative Maintenance

## TENANT RELATIONS AND SERVICES

Tenant Services  
Tenant Grievances and Problems  
Housing Rules and Policies

More detailed descriptions of the above listed typical activities are as follows:

### **RENT-UP AND OCCUPANCY**

Appropriate Agent staff will:

- 1) Determine and certify eligibility of all new residents, including screening, selection and orientation of residents and establishment of a waiting list in accordance with Agent's Affirmative Fair Housing Marketing Plan and appropriate eligibility criteria as established by Agent in compliance with local, State and Federal regulations. Tenant selection and assignment will be made based on the relevant sections in Agent's Public Housing Statement of Policies.
- 2) Annually re-determine and certify eligibility and rent payments for all tenants, based on the relevant sections in Agent's Public Housing Statement of Policies.
- 3) Conduct all move-in and move-out inspections.

### RENT COLLECTION

- 1) Agent will collect all rents and service charges. Residents may pay rent by mail or direct payment at Agent-designated locations. All rents will be due and payable on the first day of each month. Residents will have five days to make rent payments after which time the Santa Maria Area Housing Manager will initiate appropriate delinquency procedures. As necessary, residents will be contacted in person regarding payment of delinquent accounts. A \$10.00 late charge will be assessed for delinquent rents and a \$25.00 charge or current bank charge (whichever is higher) for returned checks.
- 2) Agent will collect and disburse resident security deposits in accordance with current procedures.

### MAINTENANCE

Maintenance employees will perform all property maintenance. Maintenance personnel will schedule time on a weekly basis to perform maintenance as required. The Santa Maria Area Maintenance Manager is responsible for the following maintenance-related activities.:

- 1) Recommending personnel administration actions relating to Maintenance employees.
- 2) Supervision and training of Maintenance employees.
- 3) Monitoring of service order requests for efficient and timely processing.

Availability and response to emergency maintenance requests are routine duties of maintenance employees. However, in those instances where extraordinary repairs are required or when maintenance employees are unavailable, Agent will execute "stand-by" contracts with licensed contractors for completion of such repairs. Agent will follow its procurement policies and procedures in contracting for such work.

### TENANT RELATIONS AND SERVICES

Agent will maintain good-faith communication with the tenants so that problems may be avoided or solved on the basis of mutual self-interest. Grievances will be heard in accordance with Agent's established grievance procedures for its public housing program. Agent will counsel tenants and make referrals to available community social service agencies in cases of financial hardship or under similar circumstances to avoid involuntary termination of tenancies.

### **AFFIRMATIVE FAIR MARKETING HOUSING PLAN**

As a Public Agency, Agent is acutely aware of the need to affirmatively Fair Market the project's units. Agent will make outreach efforts through various community organizations and newspapers. Statistical reports will be reviewed on a regular basis to target outreach to specific groups where representation is weakest.

An Outreach Program will be maintained to ensure that public notices and other information about the availability and nature of the housing will reach qualified individuals with handicaps, and organizations serving such individuals. The outreach will include, but not be limited to:

- The advertisement of the availability of accessible units in local newspapers;
- Regular notices to organizations serving handicapped individuals;
- Public posting of information about the availability of accessible units;
- Individual counseling to assist applicants being placed in suitable, accessible units; and,
- All advertisements, brochures, etc., will feature Equal Opportunity and Fair Housing logos and information.

### **GENERAL ADMINISTRATION AND MANAGEMENT**

Agent has various standard operating procedures and policies in place that it follows in the normal course of all its business operations. Where relevant and appropriate, these procedures and policies will be followed in the general administration and management of project operations.



NO FEE DOCUMENT

ATTACHMENT B

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

County of Santa Barbara  
105 East Anapamu Street, Room 105  
Santa Barbara, CA 93101  
Attn: Grants Administration Division Chief

NO FEE DOCUMENT PURSUANT TO  
GOVERNMENT CODE SECTION 27383

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**HOME REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This HOME Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is made as of this \_\_\_ day of November, 2011 by and between the County of Santa Barbara, a political subdivision of the State of California (the "Lender"), and McClelland Santa Maria, L.P., a California limited partnership, (the "Owner").

**RECITALS**

A. The Owner owns a parcel of real property located at 190 E. Inger Street in the City of Santa Maria County of Santa Barbara, California, as more particularly described in Exhibit A (the "Property") upon which the Owner is constructing forty-seven (47) units of multi-family rental housing (the "Development").

B. The Lender has received HOME Investment Partnerships Program funds ("HOME Funds") from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for low-income persons and families.

C. Owner has received a loan from Lender of HOME Funds in the amount of Five Hundred Seventy Two Thousand One Hundred Seventy Six Dollars (\$572,176) to provide financing for the Development (the "HOME Loan"). Owner has also received from Lender a loan of In-Lieu Funds in the amount of Four Hundred Fifty Thousand Dollars (\$450,000) to provide financing for the development (the "In-Lieu Fund Loan").

D. As further consideration for this 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 Development. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and the Lender hereby agree as follows:

## **1. DEFINITIONS**

The following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

1.1 **“ANNUAL INCOME”** means the Section 8 Program definition of Annual (gross) Income as more particularly defined at 24 CFR 5.609.

1.2 **“HOME ASSISTED UNIT”** means any of the eleven (11) Units in the Development with restricted occupancy and rents pursuant to this Agreement which has been designated as an HOME Assisted Unit. A Unit shall not be considered an HOME Assisted Unit until the Unit has been constructed and made available for occupancy.

1.3 **“AREA MEDIAN INCOME”** means the median income for the Santa Barbara/Santa Maria/Goleta Primary Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by the United States Department of Housing and Urban Development (“HUD”) pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

1.4 **“DEED OF TRUST”** means that certain deed of trust, placed on the Property as security for the HOME Loan with the Owner as trustor and the Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.5 **“DEVELOPMENT”** means the forty-seven (47) units of housing with appurtenant parking and site improvements on the Property to be constructed by the Owner on the Property according to the terms of the Loan Agreement.

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

1.7 **“HOME LOAN”** means the Loan of HOME made by the Lender to the Owner for the Development pursuant to the Loan Agreement and the HOME Note.

1.8 **“LOAN AGREEMENT”** is the Loan Agreement executed by and between the Owner and the Lender, setting forth the terms and conditions governing both the HOME Loan and a separate loan of local In-Lieu Funds.

1.9 **“LOAN DOCUMENTS”** are collectively the Loan Agreement, the HOME Note evidencing the HOME Loan, the Deed of Trust securing the HOME Note, and this Agreement as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.



1.10 **“HOME NOTE”** means the promissory note executed by the Owner in favor of the Lender evidencing the HOME Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note.

1.11 **“OWNER”** means McClelland Santa Maria, L.P., a California Limited Partnership.

1.12 **“PROPERTY”** means the real property described in Exhibit A attached hereto and incorporated herein, including the improvements constructed thereon pursuant to the Loan Agreement.

1.13 **“QUALIFYING HOUSEHOLD”** means a household that qualifies as a Very Low-Income Household.

1.14 **“QUALIFYING RENT”** means the total charges for monthly rent, utilities, and related services which do not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income derived from data provided for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD annually with adjustments for household size.

1.15 **“TENANT”** means a household occupying a Unit.

1.16 **“TERM”** means the fifty-five (55) year term of this Agreement during which the HOME Assisted Units must meet the affordability requirements imposed under the HOME Program, commencing when the project is closed in the Federal Integrated Disbursement Information System.

1.17 **“UNIT”** means a housing unit in the Development.

1.18 **“VERY LOW-INCOME HOUSEHOLD”** means a household whose annual income does not exceed fifty percent (50%) of the Area Median Income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

## **2. TERM AND COMPLIANCE**

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

2.2 **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect until fifty-five (55) years following the date the project is closed out in the federal Integrated Disbursement and Information System. Lender shall notify Owner in writing at the start of the Term. 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 PROGRAM REQUIREMENTS.** The Owner shall comply with all requirements imposed on projects assisted under the HOME program in effect on the date the HOME Loan is funded.

### **3. DEVELOPMENT OCCUPANCY AND RENTS**

**3.1 OCCUPANCY OF DEVELOPMENT.** A total of eleven (11) Units in the Development shall be designated as HOME Assisted Units. The HOME Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households.

**3.2 HOME ASSISTED UNITS.** The Owner shall limit for the full term of this Agreement the rental of eleven (11) HOME Assisted Units to Very Low-Income Households at rents that do not exceed the maximum rental charges for each HOME Assisted Unit as set forth in this Agreement.

The eleven HOME Assisted Units shall meet the following standards:

- A. The eleven HOME Assisted Units shall be designated as “floating” units, so that the units that are designated as HOME Assisted under this Agreement may change over time as long as the total number of HOME Assisted units in the Project remains constant;
- B. Generally reflect the average number of bedrooms per dwelling unit in the Project;
- C. Be similarly constructed and of comparable quality to all other units in the Project;
- D. Be dispersed throughout the Project;
- E. Provide tenants access and enjoyment of all common areas and facilities of the Project on the same basis as tenants of other Units; and
- F. A Unit in the Project cannot be a HOME Assisted Unit at the same time that it is an In Lieu Assisted Units.

### **3.3 MAXIMUM RENTAL CHARGES.**

A. For a household occupying an HOME Assisted Unit, the total charges for monthly rent, utilities, and related services shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income as determined by HUD annually with adjustments for household size and allowances for utilities and services. Allowances for utilities and services shall be updated periodically in accordance with the Utility Allowance Schedule published annually by the Housing Authority of the County of Santa Barbara for the Lompoc Housing Market Area.

B. Maximum rents for each HOME Assisted Unit shall be set by the Lender at the time of initial occupancy of the Development. Annual rent increases shall be calculated based on the change in Area Median Income published annually by HUD. At least sixty (60) calendar days prior to increasing rents on any HOME Assisted Unit on the Project, Borrower shall submit to the Lender for review and approval a written request for such increase. Qualifying Households shall be given at least sixty (60) days written notice prior to any rent increase. If the proposed new rental rate does not exceed the Qualifying Rent for such year, Lender shall approve such request.

3.4 **INCOME CERTIFICATION.** The income levels and other qualifications of applicants for HOME Assisted Units shall be certified by Owner within sixty (60) business days of the household's expected occupancy of an HOME Assisted Unit and recertified annually thereafter by the Owner. If the household size of a household occupying an HOME Assisted Unit changes, the Owner may request additional information and documentation to determine eligibility.

A. Initial Income Verification. Before the household occupies an HOME Assisted Unit, the Owner shall verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or both of the following steps as a part of the verification process:

- (1) Third Party Verification: A third party (e.g., employer, Social Security Administration, or public assistance agency, etc.) is contacted to provide information to verify income. Written requests and responses are generally preferred; however, conversations with a third party are acceptable if thoroughly documented in writing.
- (2) Review of Documents: The household provides documents verifying their income (e.g., pay stubs, tax returns, etc.). These documents must then be retained in the project files.

B. Annual Income Recertification. At the time of lease renewal or pursuant to an annual schedule adopted by the Owner, and no later than the anniversary of the original income evaluation and annually thereafter, Owner shall recertify the household income of each household occupying an HOME Assisted Unit using the method as described in Section 3.4 A above,.

3.5 **INCREASES IN TENANT INCOMES.** In the event that recertification of a household occupying an HOME Assisted Unit, or changes to the composition of a household occupying an HOME Assisted Unit indicates that the household's income exceeds the maximum designated income for a Very Low-Income Household, the Owner may increase rents on such Unit as permitted by HUD to no more than 30% of 1/12 of the household's income, and the household may be permitted to continue to occupy the Unit. In such event, Owner shall rent the next available comparable Unit to a Qualified Household at no more than the rent set forth in Section 3. Upon such rental, the Unit occupied by the non-qualified household shall no longer be classified as an HOME Assisted Unit and the newly rented unit to a Qualified Household shall be deemed an HOME Assisted Unit.

#### 4. LEASING THE DEVELOPMENT.

4.1 **TENANT LEASES.** The Owner shall execute a written lease with tenants of HOME Assisted units for a term of at least one year, unless the Owner and the tenant mutually agree to a shorter period. A lease may not be for a period less than thirty (30) days. The tenant lease and any changes thereto must be approved by Lender.

A. The Owner shall include in leases for all HOME Assisted Units provisions which provide that the household is subject to annual certification of income and that the tenancy of the household shall be immediately terminated should one or more of the household's members misrepresent any material fact regarding the household's qualification as a Very Low-Income

Household. The Owner shall include in all leases for HOME Assisted Units provisions which prohibit the household from subleasing the HOME Assisted Unit.

B. In addition to executing a lease for an HOME Assisted Unit, the Owner shall require that each household leasing an HOME Assisted Unit execute a declaration of intent to occupy which shall require the household to occupy the HOME Assisted Unit as the household's primary residence.

C. The lease for each HOME Assisted Unit shall not contain any the prohibited provisions identified at 24 CFR §92.253(b) including the following:

1. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
2. *Treatment of property.* Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
3. *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
4. *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
5. *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
6. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;
7. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

D. Owner shall not terminate the tenancy or refuse to renew the lease of a tenant of an HOME Assisted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. To terminate or refuse to renew the tenancy, the Owner shall serve written notice upon the tenant specifying the grounds for the action at lease thirty (30) days prior to termination of tenancy.

**4.2 TENANT SELECTION.** Before leasing the Development, the Owner must provide Lender for its review and approval the Owner's written tenant selection plan.

4.3 **SECTION 8 CERTIFICATE HOLDERS.** The Owner will 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 is 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 Development which have the effect of precluding occupancy of units by such prospective tenants.

4.4 **CONDOMINIUM CONVERSION.** The Owner shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Property during the term of this Agreement.

4.5 **NONDISCRIMINATION.** The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that the Owner is an Equal Housing Opportunity Provider.

4.6 **MARKETING PLAN.** Prior to occupancy, Owner shall submit to the Lender for approval its plan for marketing the Units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. Upon receipt of the marketing plan, the Lender shall promptly review the Marketing Plan and shall approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved, Lender shall specify its reasons for disapproval. The Owner shall submit a revised Marketing Plan within thirty (30) days of Lender's notice of disapproval. If the Lender does not approve the revised Marketing Plan, the Owner shall be in default under the terms of the Loan Agreement.

## **5. PROPERTY MANAGEMENT**

5.1 **MANAGEMENT RESPONSIBILITIES.** The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, 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 Development. The Owner shall submit to the Lender for its 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 Development to the Lender for its review, and shall amend such policies in any way necessary to insure that such policies comply with the provisions of this Agreement, the requirements of the existing housing program under Section 8

of the United States Housing Act, or its successors, and the requirements of all lenders providing financing for the Development.

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

**5.4 COMPLIANCE MONITORING.** The Owner shall operate the Property in full compliance with this Agreement and the HOME Program Regulations at 24 CFR Part 92 in effect on the date the HOME Loan is funded, and shall remain in compliance therewith throughout the term of this Agreement. The Owner shall permit the Lender to conduct annual compliance monitoring, including performing on-site records review and property inspections, as required by regulation or reasonably requested by County.

**5.5 ANNUAL REPORT.** The Owner shall submit to the Lender 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 be submitted annually no later than March 1<sup>st</sup>, and shall include, at a minimum, (i) a statement of the fiscal condition, including audited financial statements for the preceding year, (ii) occupancy of the project, (iii) a statement of the physical condition, (iv) general management performance, (v) for each Unit, the Rent, income, and household size of the household occupying the Unit. The report shall also state the date the tenancy commenced for each rental Unit and such other information as the Agency 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 United States Department of Housing and Urban Development, or 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 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 Revenue and Taxation Code Section 214(g) without the Lender's prior written consent.

## **6. GENERAL PROVISIONS**

6.1 **SUBORDINATION.** This Agreement shall be subordinated in priority only as provided in the Loan Agreement or to liens and encumbrances otherwise approved in writing by the Lender in its sole and absolute discretion.

6.2 **DEFAULT AND REMEDIES** In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Lender shall provide written notice to the Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Lender determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. If the Owner fails to perform a timely cure of the specified breach, the Lender may proceed with any or all of the following remedies upon the Owner's failure to cure:

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 Development, 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 Development as are necessary and provide for payment thereof; or

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

6.3 **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officers, directors, employees and agents of the Lender shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

6.4 **INSURANCE AND INDEMNITY.** Borrower shall comply with the insurance and indemnification provisions set forth in Exhibit B and incorporated herein by this reference.

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

6.6 **AGREEMENT CONTROLS.** In the event that any provisions of this Agreement and any Loan Document conflict, the terms of this Agreement shall control.

6.7 **TIME.** Time is of the essence in this Agreement.

6.8 **CONSENTS AND APPROVALS.** Any consent or approval of the Lender required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Lender.

**6.9 NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between the Owner and the Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the Owner and the Lender as follows:

**Lender:** County of Santa Barbara  
Housing and Community Development  
105 E. Anapamu Street, Rm. 105  
Santa Barbara, CA 93101  
Attn: Grants Administration Division Chief

With copy to Office of the County Counsel  
County of Santa Barbara  
105 E Anapamu Street, Room 201  
Santa Barbara, CA 93101

**Owner:** McClelland Santa Maria, L.P.  
c/o Surf Development Company  
815 West Ocean Avenue  
Attn: Executive Director

**6.10 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 heirs, administrators, executors, successors-in-interest, transferee, and assigns of the Owner, and the Lender, and shall run with the land for the full term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the HOME Loan or HOME Note, any reconveyance of the Deed of Trust, or any conveyance or transfer of the Property or portion thereof.

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

**6.12 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 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 its obligations under this Agreement. Consent by the Lender to any act or omission by the Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

**6.13 AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both the Owner and the Lender.



6.14 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

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

**APPROVED AS TO FORM:**

DENNIS A. MARSHALL  
COUNTY COUNSEL

By: \_\_\_\_\_  
Mary L. McMaster  
Deputy County Counsel

**LENDER:**

County of Santa Barbara  
a political subdivision of the State of California

By: \_\_\_\_\_  
Joni Gray  
Chair of the Board of Supervisors  
(Signature must be notarized)

**APPROVED AS TO FORM  
RISK MANAGEMENT**

By: \_\_\_\_\_  
Ray Aromatorio  
Risk Manager

**OWNER:**

**McClelland Santa Maria, L.P.**, a  
California limited partnership

By: Surf Development Company, a California  
non-profit public benefit corporation,  
Managing General Partner

**APPROVED AS TO**

**ACCOUNTING FORM:**  
ROBERT W. GEIS  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Juan Izquierdo  
Division Chief

By: \_\_\_\_\_  
Name: Joyce Howerton  
Title: Vice-President  
(Signature must be notarized)

AND

By: Roope, LLC  
Administrative General Partner

By: \_\_\_\_\_  
Name: Caleb Roope  
Title: Manager  
(Signature must be notarized)

State of California  
County of Santa Barbara

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT A

Legal Description of the Property

EXHIBIT B

INSURANCE REQUIREMENTS

## EXHIBIT B

### STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

#### INDEMNIFICATION

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

#### INSURANCE

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The automobile liability policy

shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

*"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."*

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Property Insurance: Throughout the term of this Agreement, CONTRACTOR, at its own cost and expense, shall insure against loss of or damage to all improvements on the PROPERTY, equipment and fixtures thereon resulting from fire, lightning, vandalism, malicious mischief, those risks ordinarily defined as "all risk coverage" and in addition thereto for loss or damage resulting from flood surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water or spray from any of the foregoing, all whether driven by wind or not and including, but not limited to, water which backs up through sewers or drains or water below the ground which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors. CONTRACTOR'S obligation to obtain flood, wave, tidal wave and earthquake casualty coverage shall be conditioned upon such coverage being readily available at commercially reasonable rates for commercially reasonable amounts of coverage. Such insurance shall be in amount equal to 100% of the full replacement cost improvements on the PROPERTY, other related equipment and fixtures and shall be placed and maintained with one insurance company or companies which is or are acceptable to COUNTY. Such insurance shall be modified periodically to ensure that, at all times, the limits of said policies are large enough to provide coverage for one hundred percent (100%) of the replacement costs of all equipment and improvements on the PROPERTY. COUNTY may require that CONTRACTOR submit to it at the commencement of each third calendar year during the term hereof, an appraisal of the replacement value of the improvements on the Site so that COUNTY can determine whether the insurance coverage is sufficient. Certificates of insurance evidencing such insurance coverage as modified shall be promptly filed with COUNTY. All such insurance policies, along with their endorsements, shall name COUNTY as a loss payee.
4. Builder's Risk Insurance: During the course of construction, the CONTRACTOR shall secure insurance that will include protection against direct physical loss or damage, including fire and theft, in an amount sufficient to cover replacement value of all improvements.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY'S risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.



NO FEE DOCUMENT

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

County of Santa Barbara  
105 East Anapamu Street, Room 105  
Santa Barbara, CA 93101  
Attn: Grants Administration Division Chief

NO FEE DOCUMENT PURSUANT TO  
GOVERNMENT CODE SECTION 27383

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**IN LIEU REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This In Lieu Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is made as of this \_\_\_ day of November, 2011 by and between the County of Santa Barbara, a political subdivision of the State of California (the "Lender"), McClelland Santa Maria, L.P., a California limited partnership, (the "Owner").

**RECITALS**

A. The Owner owns a parcel of real property located at 190 E. Inger Street in the City of Santa Maria in the County of Santa Barbara, California, as more particularly described in Exhibit A (the "Property") upon which the Owner is constructing forty-seven (47) units of multi-family rental housing (the "Development").

B. Owner has received from Lender a loan of In-Lieu Funds in the amount of Four Hundred Fifty Thousand Dollars (\$450,000) to provide financing for the development (the "In-Lieu Fund Loan"). Owner has also received a loan from Lender of HOME Funds in the amount of Five Hundred Seventy Two Thousand One Hundred Seventy Six Dollars (\$572,176) to provide financing for the Development (the "Loan").

C. As further consideration for this 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 Development. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and the Lender hereby agree as follows:

**1. DEFINITIONS**

The following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

1.1 **“ANNUAL INCOME”** means the Section 8 Program definition of Annual (gross) Income as more particularly defined at 24 CFR 5.609.

1.2 **“IN LIEU ASSISTED UNIT”** means any of the eleven (11) Units in the Development with restricted occupancy and rents pursuant to this Agreement which has been designated as an In Lieu Assisted Unit. A Unit shall not be considered an In Lieu Assisted Unit until the Unit has been constructed and made available for occupancy.

1.3 **“AREA MEDIAN INCOME”** means the median income for the Santa Barbara/Santa Maria/Goleta Primary Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by the United States Department of Housing and Urban Development (“HUD”) pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

1.4 **“DEED OF TRUST”** means that certain deed of trust, placed on the Property as security for the In Lieu Loan with the Owner as trustor and the Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.5 **“DEVELOPMENT”** means the forty-seven (47) units of housing with appurtenant parking and site improvements on the Property to be constructed by the Owner on the Property according to the terms of the Loan Agreement.

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

1.7 **“IN LIEU LOAN”** means the Loan of In Lieu funds made by the Lender to the Owner for the Development pursuant to the Loan Agreement and the In Lieu Note.

1.8 **“LOAN AGREEMENT”** is the Loan Agreement executed by and between the Owner and the Lender, setting forth the terms and conditions governing both the In Lieu Loan as well as a separate loan of HOME Funds.

1.9 **“LOAN DOCUMENTS”** are collectively the Loan Agreement, the In Lieu Note evidencing the In Lieu Loan, the Deed of Trust securing the In Lieu Note, and this Agreement as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.10 **“IN LIEU NOTE”** means the promissory note executed by the Owner in favor of the Lender evidencing the In Lieu Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note.

1.11 **“OWNER”** means McClelland Santa Maria, L.P., a California Limited Partnership.

1.12 **“PROPERTY”** means the real property described in Exhibit A attached hereto and incorporated herein, including the improvements constructed thereon pursuant to the Loan Agreement.

1.13 **“QUALIFYING HOUSEHOLD”** means a household that qualifies as a Very Low-Income Household.

1.14 **“QUALIFYING RENT”** means the total charges for monthly rent, utilities, and related services which do not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income derived from data provided for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD annually with adjustments for household size.

1.15 **“TENANT”** means a household occupying a Unit.

1.16 **“TERM”** means the fifty five (55) year term of this Agreement during which the In Lieu Assisted Units must meet the affordability requirements imposed under this Agreement, commencing upon the execution of this In Lieu Regulatory Agreement.

1.17 **“UNIT”** means a housing unit in the Development.

1.18 **“VERY LOW-INCOME HOUSEHOLD”** means a household whose annual income does not exceed fifty percent (50%) of the Area Median Income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

## **2. TERM AND COMPLIANCE**

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

2.2 **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect until Fifty Five (55) years following the date of the issuance of a certificate of occupancy for the Development. 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.

## **3. DEVELOPMENT OCCUPANCY AND RENTS**

3.1 **OCCUPANCY OF DEVELOPMENT.** A total of eleven (11) Units in the Development shall be designated as In Lieu Assisted Units. The In Lieu Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households.

**3.2 IN LIEU ASSISTED UNITS.** The Owner shall limit for the full term of this Agreement the rental of eleven (11) In Lieu Assisted Units to Very Low-Income Households at rents that do not exceed the maximum rental charges for each In Lieu Assisted Unit as set forth in this Agreement.

The eleven In Lieu Assisted Units shall meet the following standards:

- A. The eleven In Lieu Assisted Units shall be designated as "floating" units, so that the units that are designated as Assisted under this Agreement may change over time as long as the total number of In Lieu Assisted units in the Project remains constant;
- B. Generally reflect the average number of bedrooms per dwelling unit in the Project;
- C. Be similarly constructed and of comparable quality to the other Units in the Project; and
- D. Be dispersed through the Project.

**3.3 MAXIMUM RENTAL CHARGES.**

A. For a household occupying an In Lieu Assisted Unit, the total charges for monthly rent, utilities, and related services shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income as determined by HUD annually with adjustments for household size and allowances for utilities and services. Allowances for utilities and services shall be updated periodically in accordance with the Utility Allowance Schedule published annually by the Housing Authority of the County of Santa Barbara for the Lompoc Housing Market Area.

B. Maximum rents for each In Lieu Assisted Unit shall be set by the Lender at the time of initial occupancy of the Development. Annual rent increases shall be calculated based on the change in Area Median Income published annually by HUD. At least sixty (60) calendar days prior to increasing rents on any In Lieu Assisted Unit on the Project, Borrower shall submit to the Lender for review and approval a written request for such increase. Qualifying Households shall be given at least sixty (60) days written notice prior to any rent increase. If the proposed new rental rate does not exceed the Qualifying Rent for such year, Lender shall approve such request.

**3.4 INCOME CERTIFICATION.** The income levels and other qualifications of applicants for In Lieu Assisted Units shall be certified by Owner within sixty (60) business days of the household's expected occupancy of an In Lieu Assisted Unit and recertified annually thereafter by the Owner. If the household size of a household occupying an In Lieu Assisted Unit changes, the Owner may request additional information and documentation to determine eligibility.

A. Initial Income Verification. Before the household occupies an In Lieu Assisted Unit, the Owner shall verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or both of the following steps as a part of the verification process:

- (1) Third Party Verification: A third party (e.g., employer, Social Security Administration, or public assistance agency, etc.) is contacted to provide information to verify income. Written requests and responses are generally preferred; however, conversations with a third party are acceptable if thoroughly documented in writing.
- (2) Review of Documents: The household provides documents verifying their income (e.g., pay stubs, tax returns, etc.). These documents must then be retained in the project files.

B. Annual Income Recertification. At the time of lease renewal or pursuant to an annual schedule adopted by the Owner, and no later than the anniversary of the original income evaluation and annually thereafter, Owner shall recertify the household income of each household occupying an In Lieu Assisted Unit using the method as described in Section 3.4 A above.

3.5 **INCREASES IN TENANT INCOMES**. In the event that recertification of a household occupying an In Lieu Assisted Unit, or changes to the composition of a household occupying an In Lieu Assisted Unit indicates that the household's income exceeds the maximum designated income for a Very Low-Income Household, the Owner may increase rents on such Unit as permitted by HUD to no more than 30% of 1/12 of the household's income, and the household may be permitted to continue to occupy the Unit. In such event, Owner shall rent the next available comparable Unit to a Qualified Household at no more than the rent set forth in Section 3. Upon such rental, the Unit occupied by the non-qualified household shall no longer be classified as an In Lieu Assisted Unit and the newly rented unit to a Qualified Household shall be deemed an In Lieu Assisted Unit.

#### **4. LEASING THE DEVELOPMENT.**

4.1 **TENANT LEASES**. The Owner shall execute a written lease with tenants of In Lieu Assisted units for a term of at least one year, unless the Owner and the tenant mutually agree to a shorter period. A lease may not be for a period less than thirty (30) days. The tenant lease and any changes thereto must be approved by Lender.

A. The Owner shall include in leases for all In Lieu Assisted Units provisions which provide that the household is subject to annual certification of income and that the tenancy of the household shall be immediately terminated should one or more of the household's members misrepresent any material fact regarding the household's qualification as a Very Low-Income Household. The Owner shall include in all leases for In Lieu Assisted Units provisions which prohibit the household from subleasing the In Lieu Assisted Unit.

B. In addition to executing a lease for an In Lieu Assisted Unit, the Owner shall require that each household leasing an In Lieu Assisted Unit execute a declaration of intent to occupy which shall require the household to occupy the In Lieu Assisted Unit as the household's primary residence.

C. The lease for each In Lieu Assisted Unit shall not contain any the prohibited provisions identified at 24 CFR §92.253(b) including the following:

1. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
2. *Treatment of property.* Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
3. *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
4. *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
5. *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
6. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;
7. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

D. Owner shall not terminate the tenancy or refuse to renew the lease of a tenant of an In Lieu Assisted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. To terminate or refuse to renew the tenancy, the owner shall serve written notice upon the tenant specifying the grounds for the action at lease thirty (30) days prior to termination of tenancy.

4.2 **TENANT SELECTION.** Before leasing the Development, the Owner must provide Lender for its review and approval the Owner's written tenant selection plan.

4.3 **SECTION 8 CERTIFICATE HOLDERS.** The Owner will 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 is 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 Development which have the effect of precluding occupancy of units by such prospective tenants.

**4.4 CONDOMINIUM CONVERSION.** The Owner shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Property during the term of this Agreement.

**4.5 NONDISCRIMINATION.** The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that the Owner is an Equal Housing Opportunity Provider.

**4.6 MARKETING PLAN.** Prior to occupancy, Owner shall submit to the Lender for approval its plan for marketing the Units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. Upon receipt of the marketing plan, the Lender shall promptly review the Marketing Plan and shall approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved, Lender shall specify its reasons for disapproval. The Owner shall submit a revised Marketing Plan within thirty (30) days of Lender's notice of disapproval. If the Lender does not approve the revised Marketing Plan, the Owner shall be in default under the terms of the Loan Agreement.

## **5. PROPERTY MANAGEMENT**

**5.1 MANAGEMENT RESPONSIBILITIES.** The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, 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 Development. The Owner shall submit to the Lender for its 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 Development to the Lender for its review, and shall amend such policies in any way necessary to insure that such policies comply with the provisions of this Agreement, the requirements of the existing housing program under Section 8 of the United States Housing Act, or its successors, and the requirements of all lenders providing financing for the Development.

**5.3 INSPECTION AND RECORDS.** The Owner shall maintain records which clearly document the Owner's performance of its obligations to operate the Property under the terms of this Agreement. The Owner shall submit any records to the Lender within ten (10) business days of the Lender's request. The Owner shall permit the Lender to enter and inspect the Development for compliance with obligations under this Agreement upon twenty-four (24) hours advance

notice of such visit by the Lender to the Owner or the Owner's management agent and to tenants of any Units.

**5.4 COMPLIANCE MONITORING.** The Owner shall operate the Property in full compliance with this Agreement. The Owner shall permit the Lender to conduct annual compliance monitoring, including performing on-site records review and property inspections, as required by regulation or reasonably requested by County.

**5.5 ANNUAL REPORT.** The Owner shall submit to the Lender 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 be submitted annually no later than March 1<sup>st</sup>, and shall include, at a minimum, (i) a statement of the fiscal condition, including audited financial statements for the preceding year, (ii) occupancy of the project, (iii) a statement of the physical condition, (iv) general management performance, (v) for each Unit, the Rent, income, and household size of the household occupying the Unit. The report shall also state the date the tenancy commenced for each rental Unit and such other information as the Agency 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 United States Department of Housing and Urban Development, or 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 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 Revenue and Taxation Code Section 214(g) without the Lender's prior written consent.

## **6. GENERAL PROVISIONS**

**6.1 SUBORDINATION.** This Agreement shall be subordinated in priority only as provided in the Loan Agreement or to liens and encumbrances otherwise approved in writing by the Lender in its sole and absolute discretion.

**6.2 DEFAULT AND REMEDIES** In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Lender shall provide written notice to the Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Lender determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. If the Owner fails to perform a timely cure of the specified breach, the Lender may proceed with any or all of the following remedies upon the Owner's failure to cure:



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 Development, 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 Development as are necessary and provide for payment thereof; or

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

**6.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officers, directors, employees and agents of the Lender shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

**6.4 INSURANCE AND INDEMNITY.** Borrower shall comply with the insurance and indemnification provisions set forth in Exhibit B and incorporated herein by this reference.

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

**6.6 AGREEMENT CONTROLS.** In the event that any provisions of this Agreement and any Loan Document conflict, the terms of this Agreement shall control.

**6.7 TIME.** Time is of the essence in this Agreement.

**6.8 CONSENTS AND APPROVALS.** Any consent or approval of the Lender required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Lender.

**6.9 NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between the Owner and the Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the Owner and the Lender as follows:

**Lender:**

County of Santa Barbara  
Housing and Community Development  
105 E. Anapamu Street, Rm. 105  
Santa Barbara, CA 93101  
Attn: Grants Administration Division Chief

With copy to

Office of the County Counsel  
County of Santa Barbara  
105 E Anapamu Street, Room 201  
Santa Barbara, CA 93101

**Owner:**

McClelland Santa Maria, L.P.  
c/o Surf Development Company  
815 West Ocean Avenue  
Attn: Executive Director

**6.10 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 heirs, administrators, executors, successors-in-interest, transferee, and assigns of the Owner, and the Lender, and shall run with the land for the full term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the In Lieu Loan or In Lieu Note, any reconveyance of the Deed of Trust, or any conveyance or transfer of the Property or portion thereof.

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

**6.12 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 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 its obligations under this Agreement. Consent by the Lender to any act or omission by the Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

**6.13 AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both the Owner and the Lender.

**6.14 SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

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

**APPROVED AS TO FORM:**

DENNIS A. MARSHALL  
COUNTY COUNSEL

By: \_\_\_\_\_  
Mary L. McMaster  
Deputy County Counsel

**LENDER:**

County of Santa Barbara  
a political subdivision of the State of California

By: \_\_\_\_\_  
Joni Gray  
Chair of the Board of Supervisors  
(Signature must be notarized)

**APPROVED AS TO FORM  
RISK MANAGEMENT**

By: \_\_\_\_\_  
Ray Aromatorio  
Risk Manager

**OWNER:**

**McClelland Santa Maria, L.P., a  
California Limited Partnership**

By: Surf Development Company, a California  
non-profit public benefit corporation,  
Managing General Partner

**APPROVED AS TO**

**ACCOUNTING FORM:**

ROBERT W. GEIS  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Juan Izquierdo  
Division Chief

By: \_\_\_\_\_  
Name: Joyce Howerton  
Title: Vice-President  
(Signature must be notarized)

AND

By: Roope, LLC  
Administrative General Partner

By: \_\_\_\_\_  
Name: Caleb Roope,  
Title: Manager  
(Signature must be notarized)

State of California  
County of Santa Barbara

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT A

Legal Description of the Property

EXHIBIT B

INSURANCE REQUIREMENTS

## EXHIBIT B

### STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

#### INDEMNIFICATION

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

#### INSURANCE

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The automobile liability policy

shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

*"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."*

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Property Insurance: Throughout the term of this Agreement, CONTRACTOR, at its own cost and expense, shall insure against loss of or damage to all improvements on the PROPERTY, equipment and fixtures thereon resulting from fire, lightning, vandalism, malicious mischief, those risks ordinarily defined as "all risk coverage" and in addition thereto for loss or damage resulting from flood surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water or spray from any of the foregoing, all whether driven by wind or not and including, but not limited to, water which backs up through sewers or drains or water below the ground which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors. CONTRACTOR'S obligation to obtain flood, wave, tidal wave and earthquake casualty coverage shall be conditioned upon such coverage being readily available at commercially reasonable rates for commercially reasonable amounts of coverage. Such insurance shall be in amount equal to 100% of the full replacement cost improvements on the PROPERTY, other related equipment and fixtures and shall be placed and maintained with one insurance company or companies which is or are acceptable to COUNTY. Such insurance shall be modified periodically to ensure that, at all times, the limits of said policies are large enough to provide coverage for one hundred percent (100%) of the replacement costs of all equipment and improvements on the PROPERTY. COUNTY may require that CONTRACTOR submit to it at the commencement of each third calendar year during the term hereof, an appraisal of the replacement value of the improvements on the Site so that COUNTY can determine whether the insurance coverage is sufficient. Certificates of insurance evidencing such insurance coverage as modified shall be promptly filed with COUNTY. All such insurance policies, along with their endorsements, shall name COUNTY as a loss payee.
4. Builder's Risk Insurance: During the course of construction, the CONTRACTOR shall secure insurance that will include protection against direct physical loss or damage, including fire and theft, in an amount sufficient to cover replacement value of all improvements.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.



In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY'S risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

