

CONSULTING AND DEVELOPMENT SERVICES AGREEMENT

THIS CONSULTING AND DEVELOPMENT SERVICES AGREEMENT (the "Agreement") is made and entered into as of October ____ 2020 (the "Effective Date"), by and between the County of San Bernardino, a political subdivision of the state of California ("Owner") and LaBarge Industries, LLC, a Delaware limited liability company, or a single purpose affiliate thereof (the "Consultant" or "Developer"). The Owner and Consultant may be referred to within this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.
- B. The Department of Housing and Community Development ("HCD") issued a Notice of Funding Availability ("NOFA") for the Homekey Program on July 16, 2020. The NOFA incorporates by reference the MHP, as well as the MHP Final Guidelines ("MHP Guidelines"), dated June 19, 2019, both as amended and in effect from time to time. In addition, the NOFA states that Homekey grant funds are derived primarily from Coronavirus Relief Fund ("CRF") money received from the U.S. Department of the Treasury. The CRF was established by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No. 116-136).
- C. The Owner, with the assistance of the Consultant, submitted an application for Homekey funds under the NOFA, and was awarded Homekey Funds from the Department which shall be disbursed pursuant to the terms of STD 213, Standard Agreement, by and among the Department, the County and the Borrower, which shall govern the expenditure of Two Million Seven Hundred Forty Thousand Dollars (\$2,700,000.00) ("Homekey Funds").
- D. Owner, acting through its Real Estate Services Department, will use the Homekey Funds to acquire from the Salvation Army approximately 6.82 acres of land improved with six residential buildings totaling 15,797 square feet [Assessor's Parcel Numbers (APNs) 1191-141-36, 37, 38, 40 and 42] located at 2626 & 2634 East Pacific Street in the City of San Bernardino (the "Property" or the "Pacific Village Campus"), all as more fully described in Exhibit A attached hereto and incorporated herein by this reference.
- E. The proposed project is for the County to provide twenty-eight (28) doors as an interim to permanent affordable housing conversion project. The Property is currently improved with 6 permanent buildings: i) a single family home with 3 bedrooms; ii) an apartment with 3 bedrooms and an apartment with 2 bedrooms; iii) an administration building; iv) a dining building; v) a church; vi) and three (3) modular buildings with infrastructure including water, electric, and sewer. The Owner intends to rehabilitate existing single-family home depicted in the Site Map and labeled as "House"), rehabilitate the two (2) existing apartments depicted on the Site Map and identified as "Bld. A", and to locate and rehabilitate as necessary 20 modular units from Glen Helen Park to the rear parking area of the Pacific Village Campus as depicted on the Site Map, and develop the necessary infrastructure to support the residential use (together, the "Project").

The Project will result in the creation of 28 "doors" on the Pacific Village Campus for the Target Population and the ultimate use of the Property is to convert to the Project to permanent housing for lower.

F. The Owner has need for consulting and development services to be performed in connection with the Project, and the Consultant has indicated it is willing and qualified to provide such services in connection with this Agreement.

G. The Owner will own the Project and is solely responsible for obtaining the financing necessary for the Residential Improvements.

H. The Owner and the Consultant desire to execute and enter into this Agreement for the purpose of setting forth their agreement with regard services to be provided by the Consultant to the Owner.

I. Pursuant to the California Environmental Quality Act ("CEQA") the approval of this Consulting Development Services Agreement is exempt from CEQA under Section 15301 in that the Project and rehabilitation contemplated to be completed will result in the minor alteration to existing structures and is thus a Class 1 exemption for minor alteration and use of existing facilities.

J. In consideration of the mutual covenants and agreements contained in this Agreement, the compensation to be paid to the Consultant under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

ARTICLE 1 **DEFINITIONS.**

Section 1.1 Defined Terms.

In addition to any other terms that are defined in this Agreement, each of the following terms, when used in this Agreement with an initial capital letter, shall have the following meaning:

(a) "Agreement" has the meaning set forth in the opening paragraph.

(b) "Approved Development Budget" means the budget of all estimated expenses which will be incurred by or on behalf of the Owner in connection with the Development Activities, as prepared by the Consultant and the Owner. The parties agree and acknowledge that further updates to the attached Approved Development Budget will be necessary. The Consultant and Owner will collaborate on preparing updates thereto. Updates to the Approved Development Budget must be approved by the Owner pursuant to Section 5.4 below, and any amendments to the Approved Development Budget will be appended to Exhibit C to this Agreement and by this reference be incorporated into this Agreement.

(c) "Assignment Agreement" means the Assignment of collateral documents pursuant to which the Consultant assigns to the Owner its rights and obligations with respect to certain agreements, plans and specifications, and approvals pursuant to Section 7.2, below.

(d) "Assignment Contract" means the Assignment and Assumption Agreement, in form to be provided by the County, allowing for the assignment of this Agreement to a wholly controlled special purpose entity affiliate of the Consultant, to be formed to perform the services hereunder.

(e) "City" means the City of San Bernardino, a California charter city.

(f) "Closing" means that date on which the grant deed transferring the Property to the County has been recorded in the Official Records of the County of San Bernardino.

(g) "Collateral" means and includes all right, title, interest, claims and demands of the Consultant in and to the Collateral Documents, including contract rights and general intangibles, now existing or hereafter arising; and all amendments, substitutions for, and proceeds thereof, including, without limitation, insurance and similar payments.

(h) "Collateral Documents" means the Consultant's right, title and interest to all Project agreements, including but not limited to development reports, all contracts, architect's agreements, engineer's agreements, management agreements, and all other contracts and agreements which concern the Residential Improvement, all Land Use Approvals (including but not limited to all permits and licenses), plans, specifications, drawings, franchises, utility agreements and similar materials not yet obtained, and any other documents and information related to the Project, reports, plans and specifications, and general documents associated with the Project. For purposes of clarifying the foregoing, "Collateral Documents" shall expressly exclude any documents that, pursuant to applicable law, the Consultant does not have the right to pledge and assign as contemplated by this Agreement.

(i) "Completion" means the completion of construction of the Residential Improvements evidenced by issuance of a certificate of occupancy for the 28 "doors" by the applicable governmental authority.

(j) "Completion Date" means the date upon which the Completion has occurred, which is expected to occur within six (6) months after the closing on the Property, but in no event later than May 31, 2021.

(k) "County Funds" means a total of Six Million Five Hundred Forty-Three Thousand Five Hundred Dollars of funds to fund the development and operation of the Residential Improvements, consisting of Two Million Seven-Hundred Ninety-Three Thousand Five-Hundred Dollars (\$2,793,500) sourced from the County's Permanent Local Housing Assistance (PLHA) Funds managed by HCD to fund the development of the Residential Improvements "County Development Funds") and an additional Three Million Seven Hundred

Fifty Thousand (\$3,750,000) of PLHA funds to fund a Capitalized Operating Subsidy Reserve "COSR" to provide an operating subsidy for the Residential Improvements (the "County COSR Funds").

(l) "DACA" means a Disbursement Account Control Agreement that the Parties will enter into

(m) "Demolition Activities" means the work to demolish the structures located on or around the area labeled "Playground" on the attached Site Map, and the demolition of the modular buildings and related structures located on or around the area labeled "Modular Buildings" on the attached Site Map. For the avoidance of doubt, the Demolition Activities shall be limited to those areas in the preceding sentence and shall specifically exclude all other buildings or structures on the Property (including but not limited to the areas labeled on the Site Map as "Outdoor Pavilion", the "Chapel & Meeting", "Bld. C", "Bld. B", "Bld. A" and the "House").

(n) "Development Activities" means the development, design, construction, and management of financing of the Project, including without limitation the Predevelopment Activities and Demolition Activities.

(o) "Development Costs" means the total of all costs and expenses of Owner with respect to the Development Activities and set forth in the Approved Development Budget.

(p) "Development Funds" means the Homekey Funds and the County Development Funds.

(q) "Development Management Fee" means the fee to be paid by the Owner to the Consultant pursuant to Section 9.1 of this Agreement.

(r) "Development Schedule" means the schedule of Development Services to be carried out by or on behalf of the Owner in connection with the Development Activities, consisting of the development of the Residential Improvements, as prepared by the Consultant and the Owner. Updates to the Development Schedule must be approved by the Owner pursuant to Section 4.2(c) below, and any amendments to the Development Schedule will be appended to Exhibit D to this Agreement by this reference be incorporated into this Agreement.

(s) "Development Services" means the services to be provided by the Consultant under this Agreement, including performance of all Development Activities.

(t) "Expiration Date" means the Completion of the Development Activities, but in any event no later than 1 year after the Effective Date, unless automatically extended by the *force majeure* provisions of Section 14.13 or by mutual agreement of the Parties.

(u) "HCD" has the meaning set forth in Recital AB, above.

(v) "Homekey Funds" means the Two-Million Seven-Hundred Thousand Dollars (\$2,700,000) awarded from the Project Homekey Grant Program for the acquisition of the Property.

(w) "Land Use Approvals" means all discretionary permits and approvals (other than a building permit) including environmental approvals, necessary for the construction of the Residential Improvements.

(x) "Pacific Village Campus" has the meaning set forth in Recital A above.

(y) "Predevelopment Activities" means the architectural work and site planning, engineering, legal, costs estimating, and securing land use approvals and environmental clearances for the Project listed in the Approved Development Budget attached as Exhibit C to this Agreement and by this reference incorporated into this Agreement.

(z) "Project" has the meaning set forth in Recital A.

(aa) "Property" has the meaning set forth in Recital B.

(bb) "Residential Improvements" means generally the residential improvements to be constructed on behalf of the Owner as part of the Development Activities. The scope and scale of the Residential Improvements will be further refined as set forth in Section 5.4, below.

(cc) "Site Map" means the site map attached hereto as Exhibit B, incorporated herein by this reference.

(dd) "Target Population" means the members of the target population identified in Health and Safety Code Section 50675.1.1 (a) who are at-risk of serious illness from COVID-19 and at-risk of or experiencing homelessness, as defined in Section 578.3 of Title 24, CFR. Persons and families at-risk of or experiencing homelessness are considered a vulnerable population impacted by COVID-19 by having a lower life expectancy, higher risk of infectious and chronic disease, and suffering from mental illness, substance use, and overall poor health. The target population will include strategies to address to disproportionate racial impacts of COVID-19 and other systematic inequities on accessibility within county communities.

(ee) "Vacant Parcels" means those portions of the property depicted in the Site Map [APN 40, 42] that are not subject to improvement under this Agreement.

Section 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A: Legal Description of the Property
Exhibit B: Site Map
Exhibit C: Approved Development Budget

- Exhibit D: Approved Development Schedule
Exhibit E: Labor Compliance Provisions
Exhibit F: Form of DACA

ARTICLE 2
ENGAGEMENT OF CONSULTANT.

Section 2.1 Engagement of Consultant.

(a) The Owner engages the Consultant to perform the services specified in this Agreement, subject to and in accordance with the terms and provisions of this Agreement.

(b) The purposes of this Agreement, as more specifically set forth herein, are to: (1) govern the use of the Development Funds; (2) provide for the orderly completion of the Development Activities and the disbursement of the Development Funds; (3) set the parameters for the determination of the Residential Improvements; (4) determine the feasibility and identify the sources of financing for the construction of the Residential Improvements; and (5) subject to the terms of Section 5.4, govern the construction of the Residential Improvements.

Section 2.2 Acceptance by Consultant.

The Consultant accepts its engagement by the Owner and agrees to perform the services specified in this Agreement for the benefit of and on behalf of the Owner, subject to and in accordance with the terms and provisions of this Agreement.

ARTICLE 3
NATURE OF ENGAGEMENT.

Section 3.1 Status of Consultant.

In the performance of its duties and obligations under this Agreement, the Consultant is, and shall at all times during the term of this Agreement be, an independent contractor, and not an employee of the Owner. The Consultant shall act solely as the agent of the Owner in the performance of the Consultant's duties and obligations under this Agreement. The Consultant shall not have the authority to enter into any contracts or agreements on behalf of the Owner without the expressed written approval of the Owner.

Section 3.2 No Partnership or Joint Venture.

Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership or joint venture between the Owner, or any departments or agencies of the Owner, and the Consultant.

ARTICLE 4
TERM OF AGREEMENT.

Section 4.1 Term.

The term of this Agreement shall commence on the Effective Date and shall continue, unless sooner terminated as provided in this Agreement, until the first to occur of the Completion Date, the Expiration Date or such other date as may be specified in writing by the Owner and the Consultant, provided that the Consultant shall complete all services provided under this Agreement not later than the Expiration Date, to the extent the Owner receives sufficient funding and provides Consultant with sufficient funds to complete the Development Services.

Section 4.2 Performance.

(a) The Consultant acknowledges that completion of the Development Services under this Agreement by the Expiration Date is a material condition to this Agreement. In the event that such Development Services are not so completed by the Expiration Date, the Consultant shall continue to provide services to so complete the work under this Agreement, but shall do so for no additional compensation unless the failure to complete Development Services is caused by the Owner's failure to provide sufficient funding to complete the Development Services required under this Agreement, or due to events or circumstances beyond the control of Consultant as described in Section 14.13 of this Agreement, in which case the Parties shall negotiate in good faith for additional compensation and the parties agree to an amendment of Section 9.1 hereof, approved by the County Board of Supervisors.

(b) The Owner and Consultant will meet to coordinate dates for the completion of Development Services to be carried out by or on behalf of the Owner in connection with the Development Activities, including among others dates for commencement and completion of the Residential Improvements. Within the time set forth in the Development Schedule, the Consultant, in consultation with the Owner, shall develop a proposed update to the Development Schedule for the development and completion of the Residential Improvements. Updates to the Development Schedule must be approved by the Owner pursuant to Section 4.2(c) below, and any amendments to the Development Schedule will be appended to Exhibit D to this Agreement by this reference be incorporated into this Agreement. Notwithstanding anything to the contrary herein or in the Development Schedule, the Consultant hereby agrees that the Consultant must meet the following "Occupancy Deadlines": (1) within forty-five (45) days of the Closing, the Consultant shall deliver and make available for occupancy the 8 doors located at the House and in Bld. A; and (2) within ninety (90) days of the Closing, the Consultant shall deliver and make available for temporary occupancy the remaining twenty (20) doors associated with the modular units. The parties further agree and acknowledge that the Development Schedule shall include a time frame for the installation of utilities to allow for the permanent hook up of the Modular Units consistent with the Completion Date.

(c) The Owner shall review the proposed amendment to the Development Schedule and shall either approve or disapprove the proposed amendment to the Development Schedule in writing within five (5) business days of receipt, which approval shall not be unreasonably withheld. If disapproved, the Owner shall give specific reasons in writing for disapproval and the required revisions to the previously submitted proposal. If the proposed amendment to the Development Schedule is disapproved, Consultant shall resubmit, a revised

proposal within five (5) business days of notification of disapproval. The Owner shall either approve or disapprove the submitted revised proposed amendment to the Development Schedule within five (5) business days of the date such revised proposal is received by the Owner which approval shall not be unreasonably withheld. Updates to the Development Schedule may be amended and modified without need for Board of Supervisor approval.

(d) Once the proposed amendment is approved, the amended and restated Development Schedule shall constitute the approved Development Schedule.

ARTICLE 5

DEVELOPMENT SERVICES.

Section 5.1 Description of Services.

(a) The Development Activities to be performed by the Consultant are set forth in the Approved Development Budget attached hereto as Exhibit C, incorporated in this Agreement by this reference.

(b) The Owner warrants and represents that the Owner has secured or requested an allocation of the Development Funds to pay for the Development Activities, and as of the Effective Date the Consultant is authorized to proceed to complete the Development Activities pursuant to the terms of the Development Schedule.

(c) The Owner, relying on the assistance and experience of Consultant and Quality Management Group applied for and received an allocation of Homekey Funds. In addition to the Homekey Funds and the County Funds, the Owner may make available additional funding to pay for the construction costs of the Residential Improvements, and may elect to expand the Development Services that the Consultant shall perform under this Agreement as necessary to comply with the requirements associated with the Homekey Funds. If and to the extent the Development Services are expanded, the parties shall negotiate in good faith for additional compensation and subject to an amendment of Section 9.1 hereof.

Section 5.2 Nature of Consultant's Services and Responsibilities.

The Consultant's responsibilities under this Agreement in part consist of advising and consulting with Owner in connection with certain matters pertaining to the Project. While the Consultant is not itself preparing any design or engineering plans or specifications or performing any of the construction or furnishing any of the materials required for the Project, the Consultant shall work with the Owner in an effort to cause the Project to be completed in accordance with the plans and specifications approved by Owner within the time and at a price agreed to by the Owner and the Consultant. The Owner acknowledges that the Consultant is assisting the Owner in negotiations with and supervision of professional design and engineering firms, contractors, lenders, investor, regulators and others solely in connection with the Consultant's responsibilities under this Agreement and that the Consultant is not providing legal assistance or advice to the Owner in connection with such negotiations.

Section 5.3 Services Not Exclusive.

During the Term of this Agreement, the Consultant may render services similar or identical to those required of the Consultant under this Agreement to other owners and developers of real property, and may itself engage in the acquisition, development, management and operation of, or any other activities with respect to other real property or projects, without any notice to the Owner being required unless services to any other entity other than Owner will adversely impact the Consultant's ability to perform the Development Activities that Consultant has agreed to render under this Agreement.

Section 5.4 Development Budget.

(a) The Approved Development Budget for the Development Activities (Exhibit C to this Agreement and by this reference be incorporated into this Agreement) shall govern the Consultants performance of the Development Activities. The Owner shall make available to Consultant the Development Funds to pay Development Costs associated with the Development Activities as set forth in the Approved Development Budget.

(b) Consultant shall submit any material revision to the Approved Development Budget to the Owner for its review and approval prior to undertaking any work not covered by the Approved Development Budget. Any proposed revisions to the Approved Development Budget shall be considered and approved or disapproved by the Owner in writing within five (5) business days of receipt, which approval shall not be unreasonably withheld. If disapproved, the Owner shall give specific reasons in writing for disapproval and the required revisions to the previously submitted proposed revision. If the proposed revision to the Approved Development Budget is disapproved, Consultant shall resubmit a revised proposed revision to the Approved Development Budget within five (5) business days of notification of disapproval. The Owner shall either approve or disapprove the submitted revised proposed revision to the Approved Development Budget within five (5) business days of the date of receipt by the Owner which approval shall not be unreasonably withheld. Notwithstanding anything to the contrary herein, the Consultant may transfer or reallocate funds among line items in the Approved Development Budget by providing written notice to the Owner so long as the Consultant has not fully depleted the contingency that is approved under the Approved Development Budget.

Section 5.5 Conceptual Site Map.

(a) The Owner's consultant prepared an initial Site Map attached hereto as Exhibit B which depicts and establishes the location of the Residential Improvements and the location of other buildings and structures on the Property.

Section 5.6 Environmental Review.

(a) Owner is responsible for conducting any required environmental review for the Project and had adopted a Notice of Exemption pursuant to Section 15301 of the CEQA Regulations in that the Project and rehabilitation contemplated to be completed will result in the minor alteration to existing structures. Consultant acknowledges that any required approvals by any other local, state or federal agency may require additional environmental review, and that any

approval by the Owner shall not bind any other local, state or federal agency to approve the Project or to impose mitigation measures which are consistent with the terms of this Agreement or with the terms of any mitigation measures required by the Owner pursuant to the Owner's environmental review.

(b) If the County approves the Project following completion of an environmental review process and such approval is conditioned upon implementation of specified environmental mitigation measures, Consultant shall be responsible for implementing such mitigation measures as part of Development Services at the sole cost and expense of the Owner; provided, however, this Agreement shall be terminated upon the occurrence of any of the following:

(1) City disapproval of the Project following completion of the environmental review process; or,

(2) A determination by Consultant and the Owner that implementation by the Consultant of any required environmental mitigation measures would cause the Project to become economically infeasible.

Section 5.7 Design Development Documents.

(a) Consultant shall cause preparation by the selected licensed architect of design development documents ("Design Development Documents") for the Residential Improvements. Within the time set forth in the Development Schedule, Consultant shall submit such Design Development Documents to the Owner for review. During the preparation of the Design Development Documents, Consultant shall communicate and consult informally, and shall hold regular progress meetings, as frequently as necessary to ensure that the formal submittal of any plan or related document to the Owner can receive prompt consideration. The Design Development Documents shall be consistent with and in substantial conformity with the Site Map prepared pursuant to Section 5.5, above. The Design Development Documents shall consist of drawings, outline specifications and other documents to fix and describe the size, quality, and character of the Residential Improvements. Specifically, the Design Development Documents shall indicate estimated structural dimensions, and delineation of site features and elevations, materials and colors, landscaping and other features. Key details shall be provided in preliminary form, prior to formal submission.

(b) The Owner shall review the Design Development Documents and either approve or disapprove the Design Development Documents within thirty (30) days after receipt which approval shall not be unreasonably withheld. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes the Owner requests be made in order to obtain approval. Consultant shall thereafter submit revised Design Development Documents within five (5) business days of notification of disapproval. The Owner shall either approve or disapprove the submitted revised Design Development Documents within five (5) business days of the date such revised Design Development Documents are received by the Owner, and shall approve the revised Design Development Documents if the requested changes have been made.

Section 5.8 Land Use Approvals.

(a) The Consultant shall apply for and will exercise diligent good faith efforts to finalize and obtain all necessary Land Use Approvals as are necessary to construct the various components of the Residential Improvements. Consultant acknowledges that execution of this Agreement by the Owner does not constitute approval by the County or the City of any required permits, applications, or allocations, and in no way limits the discretion of the County or the City in the permit, allocation and approval process.

(b) The Owner reserves the right to prepare and submit a tentative parcel map or other subdivision map related to the Project in the future. Consultant agrees that it shall cooperate in the mapping process as necessary to assist the Owner in such efforts, at the expense of the Owner, which shall be outside of the scope of the Development Activities.

Section 5.9 Right of Entry.

(a) During the Term, Consultant and Consultant's designated agents, employees, contractors, subcontractors, licensees and representatives (collectively, "Consultant's Agents") shall have the right to enter onto any portion of the Property then owned by the Owner, to conduct all investigations, studies, inspections and testing as it reasonably determines are necessary and to perform the Development Activities (including without limitation, the demolition portion of the scope of Predevelopment Activities) and provided that in terms of such activities: (a) the Owner is given at least 24 hours' notice, in writing, where feasible, or such shorter oral notice as it reasonably consents to, including a description of the activities being conducted; (b) all activities will be conducted in compliance with all applicable laws, codes, and regulations; (c) all results of such activities, including copies of any reports, are provided to the Owner at no cost; and (d) any physical damage or alteration of the physical condition of the Property that results from any activity under this Section shall be promptly repaired by Consultant, subject to the indemnity provisions of Section 14.2 ("Permit to Enter"). Consultant understands and agrees that any such permit to enter shall only provide access to those portions of the Property then owned by the Owner and Consultant shall not enter any portion of the property not owned by the Owner. Prior to exercising its rights pursuant to this Section, Consultant shall have first complied with the obligations to acquire the insurance coverages specified in Section 11.1(i) of this Agreement.

(b) During the Term and after the Owner delivers a written notice to proceed with the construction of the Residential Improvements, Consultant and Consultant's Agents shall have the right to enter onto any portion of the Property then owned by the Owner, to perform the Development Activities (including the development of the Residential Improvements) and provided that all activities will be conducted in compliance with all applicable laws, codes, and regulations and the terms of this Agreement. Consultant understands and agrees that any such Permit to Enter shall only provide access to those portions of the Property then owned by the Owner and Consultant shall not enter any portion of the Property not owned by the Owner. Prior to exercising its rights pursuant to this Section, Consultant shall have first complied with the obligations to acquire the insurance coverages specified in Section 11.1(i) of this Agreement.

Section 5.10 Demolition.

By the date set forth in the Development Schedule, the Consultant shall complete the Demolition Activities. The Consultant's obligation to demolish the existing playground is subject to the issuance of a demolition permit and Consultant agrees and acknowledges that no demolition work will commence until a demolition permit has been issued by the City.

ARTICLE 6
PERFORMANCE OF DEVELOPMENT SERVICES

Section 6.1 Development Contracts.

(a) Prior to the commencement of any Development Services to be performed by a third-party consultant, Consultant shall provide the Owner a copy of each contract for the performance of the work (the "Development Contract") for review. The Consultant is not barred from presenting a Development Contract for an affiliated entity of the Consultant for consideration and approval by the Owner. Consultant agrees and acknowledges that, prior to execution of any development contracts, all development contracts must be bid pursuant to applicable state or local laws, evidence of which must be provided to the County.

(b) The Owner shall have five (5) business days to review the Development Contract and give its written approval which approval shall not be unreasonably conditioned, withheld or delayed.

(c) If any Development Contract results in the production of a report pertaining to any portion of the Project or the Property (a "Development Report"), Consultant shall cause the consultant preparing the Development Report to execute a Reliance Letter substantially in the form provided to Consultant by the Owner, providing that the Owner may rely on the content of the Development Report. Upon completion, Consultant shall provide each Development Report to the Owner. The Development Contract and Development Reports are collectively referred to as the Collateral Documents.

(d) Consultant shall provide the Owner with reproducible copies of all Collateral Documents produced pursuant to this Agreement. Consultant shall not use the Collateral Documents produced pursuant to this Agreement for any purpose other than the Project or the Property.

Section 6.2 Construction Contract.

(a) No later than the date set forth in the Schedule of Performance, the Consultant shall submit to the Owner for its approval the proposed construction contract for the Residential Improvements. The Owner's review and approval shall consider whether: (1) the guaranteed maximum construction cost or stipulated sum set forth in the construction contract is consistent with the Approved Development Budget; (2) the construction contract is with a contractor approved by the Owner; (3) the construction contract contains provisions consistent

with Sections 6.5 through 6.8 of this Agreement; and (4) the construction contracts require a retention of ten percent (10%) of hard costs until completion of the Residential Improvements; or as approved by the Owner at its sole discretion. The Consultant is not barred from presenting a construction contract of an affiliated entity of Consultant for consideration and approval by the Owner, provided that the requirements of this Section 6.2(a) are met. Consultant agrees and acknowledges that, prior to execution of any construction contract, all construction contracts must be bid pursuant to applicable state or local laws, evidence of which must be provided to the County.

(b) The Owner's approval of the construction contract for the Residential Improvements shall in no way be deemed to constitute approval of or concurrence with any other term or condition of the construction contract, except as such term or condition may be required by this Agreement.

(c) Upon receipt by the Owner of the proposed construction contract, the Owner shall promptly review and either approve it within ten (10) days or, if the construction contract is not approved by the Owner, the Owner shall set forth in writing and notify the Consultant of the Owner's reasons for withholding such approval. The Consultant shall thereafter submit a revised construction contract for Owner's approval, which approval shall be granted or denied in ten (10) days in accordance with the criteria and procedures set forth above. Any construction contract executed by the Consultant for Residential Improvements shall be in a form approved by the Owner.

Section 6.3 Progress Reports.

During the performance of the Development Services, Consultant shall:

(a) Provide the Owner with written progress reports regarding the status of the performance of the Development Activities at least monthly for the Term, and from time to time as reasonably requested by the Owner;

(b) Provide the Owner with copies of all reports, studies, analyses, plans, correspondence and similar documents prepared or commissioned by Consultant with respect to this Agreement and the Project, promptly upon their completion.

Section 6.4 Consultant Supervision of Development Services.

(a) Consultant is solely responsible for all aspects of Consultant's conduct in connection with the performance of the Development Activities and Development Services, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, and consultants. Any review or inspection undertaken by the Owner with reference to the Development Services is solely for the purpose of determining whether Consultant is properly discharging its obligations to the Owner, and should not be relied upon by Consultant or by any third parties as a warranty or representation by the Owner as to the quality of such work.

(b) Consultant shall not construct any improvements on the Property without the prior written consent of the Owner. Consultant shall pay or otherwise discharge promptly all claims and liens for labor done and materials and services furnished in connection with the Property or the construction of any Residential Improvements in accordance with the terms of Section 6.7.

Section 6.5 Nondiscrimination.

Consultant shall not discriminate or segregate in the performance of the Development Services on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation, age, marital status, family status, physical or mental disability, or any other arbitrary basis. Consultant shall otherwise comply with all applicable local, state, and federal laws concerning discrimination.

Section 6.6 Local Hiring.

Consultant shall, to the maximum extent feasible, provide for the hiring of employees who reside in the "vicinity" of the Project and shall contract with "small businesses" that are owned and operated by persons residing in the vicinity of the Project. For the purposes of this Section, "vicinity" means the County of San Bernardino, and "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act.

Section 6.7 Mechanics Liens, Stop Notices.

(a) Consultant shall not allow any liens to be placed upon any portion of the Property in connection with the performance of the Development Services. If any claim of lien is filed against any portion of the Property or a stop notice is served on the Owner or any other third party in connection with the Development Activities, and provided that the filing of such lien or serving of such stop notice is not due to the failure of the Owner to provide funding to Consultant on a timely basis, or other intervening cause that is not within Consultant's control as described in Section 14.13 of this Agreement, then Consultant shall, within sixty (60) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the Owner a surety bond in sufficient form and amount, or provide the Owner with other assurance satisfactory to the Owner that the claim of lien or stop notice will be paid or discharged, provided that the Owner provides written notice of such claim of lien or stop notice to Consultant promptly upon receipt by the Owner.

(b) If Consultant fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the Owner may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Consultant's expense. Alternately, the Owner may require Consultant to immediately deposit with the Owner the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The Owner may use such deposit to satisfy any claim or lien that is adversely determined against Consultant.

Section 6.8 Compliance with Laws.

(a) Consultant shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter in performing the Development Services.

(b) To extent applicable, in performing the Development Services required under this Agreement, including the Demolition Activities required under Section 5.10, the Consultant shall and shall cause its respective contractors and subcontractors to be in compliance with the prevailing wage requirements of the federal Davis-Bacon Act (40 U.S.C. 3141-3148) and the attached labor compliance provisions in the attached Exhibit E incorporated herein by this reference. Consultant shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Owner) the Owner against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Consultant, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the construction of the Development or any other work undertaken or in connection with the Property.

(c) The Consultant shall and shall cause its respective contractors and subcontractors to pay prevailing wages in performing the Development Services as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., 1810-1815, and implementing regulations of the DIR. To the extent applicable, the Consultant shall and shall cause its respective contractors and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of the Owner provide to the Owner such records and other documentation reasonably requested by the Owner. Copies of the currently applicable per diem prevailing wages are available from the Owner. Consultant shall post the applicable prevailing rates of per diem wages at the Property site. Consultant shall cause its respective contractors and subcontractors to be registered as set forth in Labor Code Section 1725.5. In addition, the Consultant shall cause its respective contractors and subcontractors to do all the following:

(1) All calls for bids, bidding materials and the construction contract documents for the Development Activities must specify that (i) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the any of the Development Activities unless registered with the DIR pursuant to Labor Code Section 1725.5; and (ii) the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations ("DIR").

(2) The Consultant is required to provide the Owner all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>).

(3) The Consultant shall cause its respective contractors to post job site notices, as prescribed by applicable DIR regulations.

(4) The Consultant shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(d) The general contractor and all subcontractors shall be required to pay their laborers and mechanics employed to perform Development Services under this Agreement, a wage not less than minimum wage classification, as specified in the applicable Federal law when the Contract amount for the prime contract exceeds \$2,000. When applicable, the Consultant is responsible for ensuring the general contractor and all subcontractor compliance with Davis-Bacon and related requirements. Federal Labor Standards Provisions (HUD 4010) apply to the Residential Improvements. A weekly certified payroll submitted through LCP Tracker (as defined in Exhibit E) is required during the term of construction. Payment of disbursement components may be delayed when certified payrolls are not properly submitted.

(e) Consultant shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Owner), to the extent permitted by applicable law, the Owner, and its board members, officers, employees, agents and volunteers, when applicable, against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Consultant, its consultants and contractors) to pay prevailing wages as determined pursuant the federal Davis-Bacon Act (40 U.S.C. 3141-3148) and Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the performance of the Development Services. The requirements in this Section survive the expiration of the Term.

Section 6.9 Financial Accounting and Post-Completion Audits.

No later than ninety (90) days following Completion of Construction of the Project the Consultant shall provide to Owner a financial accounting of all sources and uses of funds. No later than one hundred fifty (150) days following Completion of Construction of the Residential Improvements, the Consultant shall submit to the Owner a copy of the cost certification report prepared by the Consultant's accountant showing the sources and uses of all funds utilized for the Residential Improvements.

ARTICLE 7

OWNER'S OBLIGATIONS

Section 7.1 Costs and Expenses.

(a) The Owner agrees to acquire the Property using the Homekey Funds and the County Development Funds to make available the financing for the approved Development Activities in an amount not to exceed Two-Million Seven-Hundred and Ninety-Three Thousand Five-Hundred Dollars (\$2,793,500.00). Consultant shall use the Development Funds solely to conduct Development Activities consistent with the Approved Development Budget.

(b) Except as expressly set forth in this Agreement to the contrary, and subject to the Owner securing the funds necessary for the construction of the Residential Improvements in accordance with Section 5.4 and issuing a notice to proceed, all costs and expenses of the Project set forth according to the Approved Development Budget shall be the responsibility of the Owner.

(c) To the extent the Consultant advances costs on behalf of the Owner for any activities contemplated under this Agreement, the Consultant shall be promptly reimbursed for such costs with no mark-up, pursuant to the procedures set forth in Section 7.4.

Section 7.2 Security.

Consultant grants to the Owner pursuant to the Assignment Agreement, a valid, first priority, continuing security interest in all presently existing and hereafter acquired or arising collateral in order to secure prompt full and complete performance by Consultant of each of its covenants and duties under this Agreement. The Owner will not have any obligation under any Collateral Documents assigned pursuant to the Assignment Agreement until it expressly agrees in writing to be bound by such contracts or agreements. Upon an event of Default that has not been cured pursuant to this Agreement or termination of this Agreement pursuant to Section 13.2 below, subject to the rights of third party consultants, the Owner may use any of the foregoing assigned Collateral Documents for any purpose for which Consultant could have used them for development of the Property, and Consultant shall cooperate with the Owner to implement the Assignment Agreement and immediately deposit with the Owner, for the Owner's use, all the Collateral Documents.

Section 7.3 Conditions Precedent to Disbursement.

(a) The Owner is not obligated to disburse any portion of the Development Funds into the disbursement account or take any other action hereunder unless the following conditions precedent are satisfied or waived as of the initial disbursement and remain satisfied or waived prior to each such disbursement of the Development Funds:

(1) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement, or under any other agreement between the Owner and Consultant.

(2) Consultant has furnished the Owner with evidence of the insurance coverage meeting the requirements of Section 11.1 below.

(3) The Owner has received copies of all of Consultant's organizational documents, as amended, and resolutions authorizing Consultant to execute this Agreement.

(4) All requirements set forth in Section 7.3(a) have been and continue to be satisfied.

(5) The Owner has received a copy of the General Contractor's Construction Contract as required pursuant to Section 6.2.

(6) All permits and approvals necessary for the Residential Improvements have been obtained by Consultant in cooperation with Owner.

(7) The Owner has received a written draw request from the Consultant, including certification that the condition set forth in Section 7.3(a)(1) continues to be satisfied, and setting forth the Development Activities being funded and proposed uses of funds consistent with the Approved Development Budget for the Development Activities, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

(8) The Parties will enter into a DACA, establishing the process by which Development Funds will be distributed to Consultant pursuant to this Agreement.

Section 7.4 Process for Disbursements.

(a) Prior to the first disbursement under this Agreement, the parties shall execute the DACA substantially in the form attached hereto as Exhibit F, which shall govern the disbursement of the funds under this Agreement.

Section 7.5 Cooperation.

In performing its functions under this Agreement, each Party shall act diligently and in good faith and shall cooperate fully in all matters relating to the Project. The Owner shall act as expeditiously as possible on all requests by the Consultant for approval and execution of any contract, agreement or other document pertaining to the Project. In exercising its rights of approval, each Party shall act reasonably and in good faith.

ARTICLE 8
BOOKS, RECORDS, REPORTS, FISCAL MATTERS.

Section 8.1 Books.

During the term, the Consultant shall assist Owner with the maintenance of books of account of all transactions with respect to the Project. Such books of account shall be maintained at the Consultant's office or at such other place as the Parties shall agree upon, and the Owner and the Owner's accountants and auditors shall have access to such books of accounts at all reasonable times. Such books of account shall be kept in accordance with generally accepted

accounting practices consistently applied, and otherwise in such manner as shall be reasonably required by the Owner and any applicable funding and regulatory entities. All original books kept pursuant to this Section 8.1 shall be transferred to the Owner within forty-five (45) days after the sooner to occur of the Completion Date or the Expiration Date of this Agreement.

Section 8.2 Records.

During the term, the Consultant shall maintain, in a secure and safe manner, complete and identifiable records on all matters pertaining to the Consultant's activities under this Agreement on behalf of the Owner with respect to the Project. All original records shall be transferred to the Owner within forty-five (45) days after the sooner to occur of the Completion Date or the Expiration Date of this Agreement.

Section 8.3 Property of Owner.

All such books of account and records shall be and remain the property of the Owner, and, upon the Expiration Date or earlier termination of this Agreement, shall be turned over to the Owner as provided in Article 8 of this Agreement. Such books and records shall thereafter be available to the Consultant at all reasonable times for inspection, audit, examination and transcription for a period of five (5) years from the Expiration Date or earlier date of termination of this Agreement, upon reasonable prior notice to the Owner and at the expense of the Consultant.

Section 8.4 Audit.

The Owner shall have the right, during normal business hours and after reasonable notice, to inspect and audit the Consultant's files, books, records, costs and expenses pertaining to the Project at the expense of the Owner

ARTICLE 9.
COMPENSATION.

Section 9.1 Development Management Fee.

(a) As compensation for the services to be rendered to the Owner by the Consultant pursuant to this Agreement, the Owner shall pay a Development Management Fee in the amount not to exceed Seven-Hundred and Thirty-Thousand Dollars (\$730,000.00) and by the terms specified in attached Exhibit B, which is incorporated into this Agreement by this reference.

(b) The Development Management Fee shall be paid pursuant to the following:

(1) 30% developer fee to be paid upon the completion of the rehabilitation of the House and Bld. A;

(2) 30% developer fee to be paid upon the completion of rough utility installation and temporary hook up of the 20 modular units;

(3) 30% developer fee to be paid upon the completion of permanent utility hookups of the 20 modular units;

(4) 10% developer fee paid upon submission completion of the Project.

ARTICLE 10 **REPRESENTATIONS AND WARRANTIES.**

Section 10.1 Of Owner.

The Owner represents and warrants to the Consultant that the Owner has the power and authority to enter into this Agreement and perform the Owner's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement.

Section 10.2 Of Consultant.

The Consultant represents and warrants to the Owner that the Consultant is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to transact business in the State of California, and has power and authority to enter into this Agreement and perform the Consultant's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement.

ARTICLE 11 **INSURANCE.**

Section 11.1 Consultant's Insurance Requirements.

Throughout the term of this Agreement, the Consultant shall carry and maintain in force the insurance described below, the premiums for which shall be the sole cost and expense of the Consultant:

(a) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal Injury, Broadform Property Damage, Premises operations and mobile equipment, and Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired vehicles, as applicable; provided, however, that if Consultant does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) The required insurance shall be provided under an occurrence form, and Consultant shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(e) Commercial General Liability and Comprehensive Automobile Liability insurance policies shall be endorsed to name as an additional insured the Owner, and its officers, agents, employees and members of the County Board of Supervisors.

(f) All policies shall contain: (1) the agreement of the insurer to give the Owner at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (2) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the Owner; (3) a provision that no act or omission of Consultant shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (4) a waiver by the insurer of all rights of subrogation against the Owner and its authorized parties in connection with any loss or damage thereby insured against; and (5) an agreement that such policies are applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Consultant and the Owner or between the Owner and any other insured or additional insured under the policy.

(g) Any design professionals working on the Project in direct contract with the Consultant shall maintain errors and omission coverage in a minimum amount of One Million Dollars (\$1,000,000).

(h) If in connection with the use of the Development Funds, death, serious personal injury, or substantial property damage occurs, Consultant shall immediately notify the Owner. Consultant shall promptly submit to the Owner a written report, in such form as may be required by the Owner, of all accidents which occur in connection with this Agreement. This report shall include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's consultant, if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of the Owner's equipment, tools or material were involved.

(i) Within five (5) business days of the Effective Date, the Consultant shall furnish a copy of the Declaration page for all applicable insurance policies and will provide complete certified copies of the policies and endorsements.

(j) The insurance required herein shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII."

(k) Any failure, actual or alleged, on the part of the Owner to monitor or enforce compliance with any of the insurance or indemnification requirements contained in this Agreement will not be deemed as a waiver of any rights on the part of the Owner.

ARTICLE 12

DEFAULT AND REMEDIES.

Section 12.1 Default by Consultant.

The Consultant shall be in default under this Agreement if the Consultant fails to perform any of the Consultant's duties and obligations under this Agreement, which failure to perform is not the direct result of a failure of Owner to perform its duties and obligations hereunder (including without limitation timely funding of draw requests) and does not cure or remedy such failure to perform within five (5) business days after receipt of written notice from the Owner with respect to such default; provided, however, that, if such failure to perform shall necessitate longer to cure than such five (5) business day period, then such cure period shall be extended for such period of time as is reasonably necessary, without a materially adverse effect to the Project, to cure such failure to perform if the Consultant commences such cure within five (5) business days after receipt of written notice from Owner and thereafter proceeds diligently and in good faith to cure.

Section 12.2 Remedies of Owner.

(a) Upon the occurrence of a default by the Consultant that is not timely cured as provided in this Agreement, the Owner may pursue any one or more of the following remedies, separately or concurrently or in any combination, without further notice or demand whatsoever:

(1) The Owner may terminate this Agreement by giving the Consultant written notice of such termination, in which event this Agreement shall be terminated at the time designated by the Owner in the notice of termination to the Consultant.

(2) With or without terminating this Agreement, the Owner may bring an action against the Consultant to recover from the Consultant all damages, recoverable at law, suffered, incurred or sustained by the Owner as a result of, by reason of or in connection with such default and/or for such equitable relief as may be appropriate.

Section 12.3 Default by Owner.

(a) The Owner shall be in default under this Agreement if the Owner fails to perform any of the Owner's duties and obligations under this Agreement and does not cure or remedy such failure to perform within five (5) business days after receipt of written notice from the Consultant with respect to the default; provided, however, that, if such failure to perform

shall necessitate longer to cure than such five (5) business day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if the Owner commences such cure within five (5) business days after receipt of written notice from the Consultant and thereafter proceeds diligently and in good faith to cure.

(b) Notwithstanding anything to the contrary, other than the Development Funds nothing in this Agreement shall require the Owner to fund the construction of the Residential Improvements prior to the Owner receiving sufficient funds under Section 5.4 hereof.

Section 12.4 Remedies of Consultant.

(a) Upon the occurrence of default by Owner under this Agreement, the Consultant may pursue any one or more of the following remedies, separately or concurrently or in a combination, without further notice or demand whatsoever:

(1) The Consultant may terminate this Agreement by giving the Owner written notice of such termination, in which event this Agreement shall be terminated at the time designated by the Consultant in the notice of termination to the Owner. Any termination hereunder shall not excuse Owner from paying for costs incurred pursuant to the Approved Development Budget prior to such termination.

(2) The Consultant may seek specific performance by the Owner solely with regards to the Owner's obligation to pay for costs incurred for Development Services being performed and only to the extent and in the amounts in the Approved Development Budget.

Section 12.5 Costs and Fees.

In the event of the occurrence of a default under this Agreement, the prevailing party, in addition to its other rights and remedies under this Agreement, shall have the right to recover from the Party in default all reasonable costs and expenses incurred by the prevailing party in enforcing the prevailing party's rights and remedies under this Agreement, including reasonable attorneys' fees. The termination of this Agreement by either the Consultant or the Owner by reason of default by the other Party shall not relieve either Party of any of its duties and obligations under this Agreement prior to the effective date of such termination and shall not diminish continuing indemnification obligations set forth in this Agreement.

ARTICLE 13
EXPIRATION, TERMINATION.

Section 13.1 Termination of Agreement for Infeasibility.

(a) Upon the occurrence of an Infeasibility Condition, this Agreement may be terminated at any time during the Term in the Owner's or Consultant's discretion, subject to the requirements of Section 13.3 below. For purposes of this Agreement, "Infeasibility Condition" means a condition that is an impediment to Development Activities that is beyond the control of Consultant ("Infeasibility Conditions"). Only the following conditions are Infeasibility Conditions:

(1) Consultant does not receive the Land Use Approvals required for the Development Activities on the Property by the date set forth in the Development Schedule (as such date may be extended), despite Consultant's good faith efforts to obtain such approvals; and

(2) Owner does not receive commitments of grants or other funds necessary for the Project as shown in the Approved Development Plan by the date set forth in the Development Schedule (as such date may be extended), despite Consultant's good faith efforts to obtain such funding.

(b) Following termination under this Section, neither party will have any rights or obligations under this Agreement, except that the provisions of Sections 6.8 and 14.2 of this Agreement will survive such termination and remain in full force and effect.

Section 13.2 Terminating Events.

The engagement of the Consultant under this Agreement may be terminated upon the happening of any of the following events pursuant to the provisions described below:

(a) The giving of written notice from the Owner in the event: (1) any receiver, trustee or custodian shall be appointed for all or any substantial part of the Property or assets of the Consultant; (2) the Consultant shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or (3) an "order for relief or other judgment or decree by any court of competent jurisdiction is entered against the Consultant in any involuntary proceeding against the Consultant under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtors rights, or any such involuntary proceeding shall be commenced against the Consultant and shall continue for a period of thirty (30) days after commencement without dismissal.

(b) The giving of written notice from the Consultant in the event: (1) any receiver, trustee or custodian shall be appointed for all or any substantial part of the Property or assets of the Owner; (2) the Owner shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtors rights; or (3) an order for relief or other judgment or decree by any court of competent jurisdiction is entered against the Owner in any involuntary proceeding against the

Owner under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or any such involuntary proceeding shall be commenced against the Owner and shall continue for a period of thirty (30) days after commencement without dismissal.

Section 13.3 Consultant's Obligations.

(a) Upon the expiration or earlier termination of this Agreement, the Consultant shall promptly:

(1) Account for and deliver to the Owner all revenues and receipts pertaining to the Development Services in the possession of the Consultant, if any.

(2) Deliver to the Owner as received any monies due the Owner under this Agreement but received by the Consultant after such expiration or termination unless money is owed to a third-party contractor for the rendition of Development Services consistent with the Approved Development Budget.

(3) Upon request by the Owner, deliver to Owner or such other person as Owner shall designate all materials, supplies, equipment, keys, documents, all books of account, and all records maintained pursuant to this Agreement and pertaining to the Development Services.

(4) Furnish, at the Owner's request and at the Owner's expense, (unless such termination is as a result of a default by the Consultant, in which case such expenses shall be the obligation of the Consultant) all such information, take all such other action, and cooperate with the Owner as the Owner shall reasonably require in order to effectuate an orderly and systematic termination of the Consultant's services, duties, obligations and activities under this Agreement.

(5) Within ten (10) days after the expiration or termination of this Agreement, cause to be furnished to the Owner, at the Owner's expense (unless such termination is as a result of a default by the Consultant, in which case such expenses shall be the obligation of the Consultant) a report similar in form and content to the Consultant's monthly report covering the period from the last previous monthly report to the date of expiration or termination of this Agreement.

ARTICLE 14
GENERAL PROVISIONS.

Section 14.1 Notices.

Whenever any notice, demand or request is required or permitted under this Agreement, such notice, demand or request shall be in writing and shall be delivered: (a) personally, with a delivery receipt; (b) by certified mail, postage prepaid, return receipt requested; (c) by nationally recognized commercial courier for next business day delivery; or (d) by facsimile or other

electronic transmission with a delivery confirmation; to the addresses set forth below or to such other addresses as are specified by written notice given in accordance with this Section:

OWNER:

County of San Bernardino
Community Development and Housing Agency
385 North Arrowhead Ave., Third Floor
San Bernardino, CA 92415-0140
Attention: Director of Community Development and Housing Agency

with a copy to:

Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94610
Attention: Rafael Yaquian

CONSULTANT:

c/o LaBarge Industries, LLC
3105 E. Guasti Road, Suite 100
Ontario, CA 91761
Attention: Joshua LaBarge

All notices, demands or requests delivered shall be deemed given upon the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the item was returned as undeliverable, except that electronic transmissions shall not be deemed effective unless confirmation of delivery is received by the sender.

Section 14.2 Indemnification.

Consultant agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Owner) the Owner, and its board members, officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of the County indemnitees unless Consultant is not at fault whatsoever. The Consultant's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. Consultant shall ensure that all subcontracts entered into by the Consultant associated with performance of Development Activities under this Agreement shall include a duty by each subcontractor to indemnify the County consistent with the terms of this Section 14.2. The provisions of this Section shall survive the termination of this Agreement.

Section 14.3 Assignment: Binding Effect.

The rights of the Consultant under this Agreement are personal to the Consultant, except that Owner hereby approves the assignment of this Agreement by LaBarge Industries, LLC to an affiliated single purpose entity, provided that LaBarge Industries, LLC shall provide reasonable written notice of the proposed assignment form to the Owner prior to execution of any such assignment. Any assignment by LaBarge Industries, LLC, pursuant to this Section 14.3 shall release LaBarge Industries, LLC of all liability and obligations hereunder, provided that the assignee single purpose entity assumes all said liabilities and obligations hereunder.

Section 14.4 Authorized Representatives.

Any consent, approval, authorization or other action required or permitted to be given or taken under this Agreement by either Party shall be given or taken by one or more of the authorized representatives of each. For purposes of this Agreement: (i) the authorized representative of the Owner shall be the Community and Economic Development Deputy Executive Officer; and (ii) the authorized representative of the Consultant shall be the Chief Executive Officer of LaBarge Industries. The Owner may from time to time designate other or replacement authorized representatives to the Consultant. If the Consultant wishes to designate a replacement authorized representative to the Owner, the Consultant shall be required to obtain prior written consent of the Owner; and if the Owner does not consent to such designation, the Owner may terminate this Agreement. The written statements and representations of any authorized representative of a Party shall be binding upon the Party for whom such person is an authorized representative, and the other Party shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action under this Agreement.

Section 14.5 Headings.

The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

Section 14.6 Exhibits.

Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

Section 14.7 Defined Term.

Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

Section 14.8 Pronouns.

Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

Section 14.9 Severability.

If any term, covenant, condition or provision of this Agreement, or the application to any person or circumstance, shall be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

Section 14.10 Waivers.

Any waiver by the Owner of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Owner to take action on any breach or default of Consultant or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Consultant 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 Owner to any act or omission by Consultant shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Owner's written consent to future waivers.

Section 14.11 Rights Cumulative.

All rights, remedies, powers and privileges conferred under this Agreement on the Parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

Section 14.12 Time of Essence.

Time is of the essence in this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement.

Section 14.13 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather or soils conditions which, in the opinion of the Consultant, will necessitate delays; inability to secure necessary labor, materials or tools; acts of the other party or failure to act of any public or governmental entity (other than the acts or failure to act of the County); or court order; or any other similar causes beyond the control or without the fault of the

Party claiming an extension of time to perform. In no event shall the Owner be required to agree to cumulative delays in excess of thirty (30) days .

Section 14.14 Applicable Law.

This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of California.

Section 14.15 Entire Agreement.

This Agreement contains the entire agreement of the Parties with respect to the engagement of the Consultant by the Owner, and all representations, warranties, inducements, promises or agreements, oral or otherwise, between the Parties not embodied in this Agreement shall be of no force or effect. This Agreement supersedes any prior agreement, whether oral or written, between the Parties regarding the subject matter of this Agreement.

Section 14.16 Modifications.

This Agreement shall not be modified or amended in any respect except by a written agreement executed by both Parties.

Section 14.17 Attorneys' Fees.

If any litigation or other action arises in connection with this Agreement, the prevailing party therein shall be awarded its costs and expenses, including reasonable attorneys' fees, incurred in connection with such litigation or action.

Section 14.18 County Approval.

Whenever this Agreement calls for Owner's approval, consent, or waiver, the written approval, consent, or waiver of the Chief Executive Officer of the County shall constitute the approval, consent, or waiver of the Owner, without further authorization required from the County Board of Supervisors. The Owner hereby authorizes the Chief Executive Officer to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Owner. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The Chief Executive Officer is also hereby authorized to approve, on behalf of the Owner, requests by Consultant for reasonable extensions of time deadlines set forth in this Agreement. The County shall not unreasonably delay in reviewing and approving or disapproving any proposal by Consultant made in connection with this Agreement, and hereby agrees to make best efforts to respond to submittals within ten (10) days of completed submissions from the Consultant.

Section 14.19 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

[Signature Pages Follow.]

IN WITNESS WHEREOF, Owner and Consultant have executed this Contract as of the date first above written.

OWNER:

COUNTY OF SAN BERNARDINO, a political subdivision
of the State of California

By: _____
Curt Hagman, Chairman
Board of Supervisors

Date: _____

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

LYNNA MONELL
Clerk of the Board of Supervisors

By: _____

APPROVED AS TO LEGAL FORM:

MICHELLE D. BLAKEMORE
County Counsel

By: _____
Robert Messinger,
Principal Assistant County Counsel

Date: _____

CONSULTANT:

LABARGE INDUSTRIES, LLC
a Delaware Limited-Liability Company

By: _____
Joshua P. LaBarge, Manager

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL A: (APN 1191-141-40; 1191-141-42)

That portion of Section 31, Township 1 North, Range 3 West, Muscupiabe Rancho, in the City of San Bernardino, County of San Bernardino, State of California, as shown by map on file in Book 7, Page 23 of Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at a point on the South line of said Rancho, 780 feet West of the Southeast corner thereof; thence North 660 feet; thence West 111 feet; thence South 660 feet; thence East 111 feet to the point of beginning.

EXCEPTING therefrom an undivided 1/2 interest in and to the well located on said property.

PARCEL B: (APN 1191-141-38)

The North 440 feet of that portion of Section 31, Township 1 North, Range 3 West, Rancho Muscupiabe, in the City of San Bernardino, County of San Bernardino, State of California, as shown by Map on file in Book 7, Page 23 of Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at a point on the South line of said Rancho, 891 feet West of the Southeast corner thereof; thence North 660 feet; thence West 99 feet; thence South 660 feet; thence East 99 feet to the point of beginning.

PARCEL C: (APN 1191-141-36; 1191-141-37)

Parcels 2 and 3 of Parcel Map 5102, in the City of San Bernardino, County of San Bernardino, State of California, as shown by map on file in Book 46, Page 98 of Parcel Maps, in the Office of the County Recorder of said County.

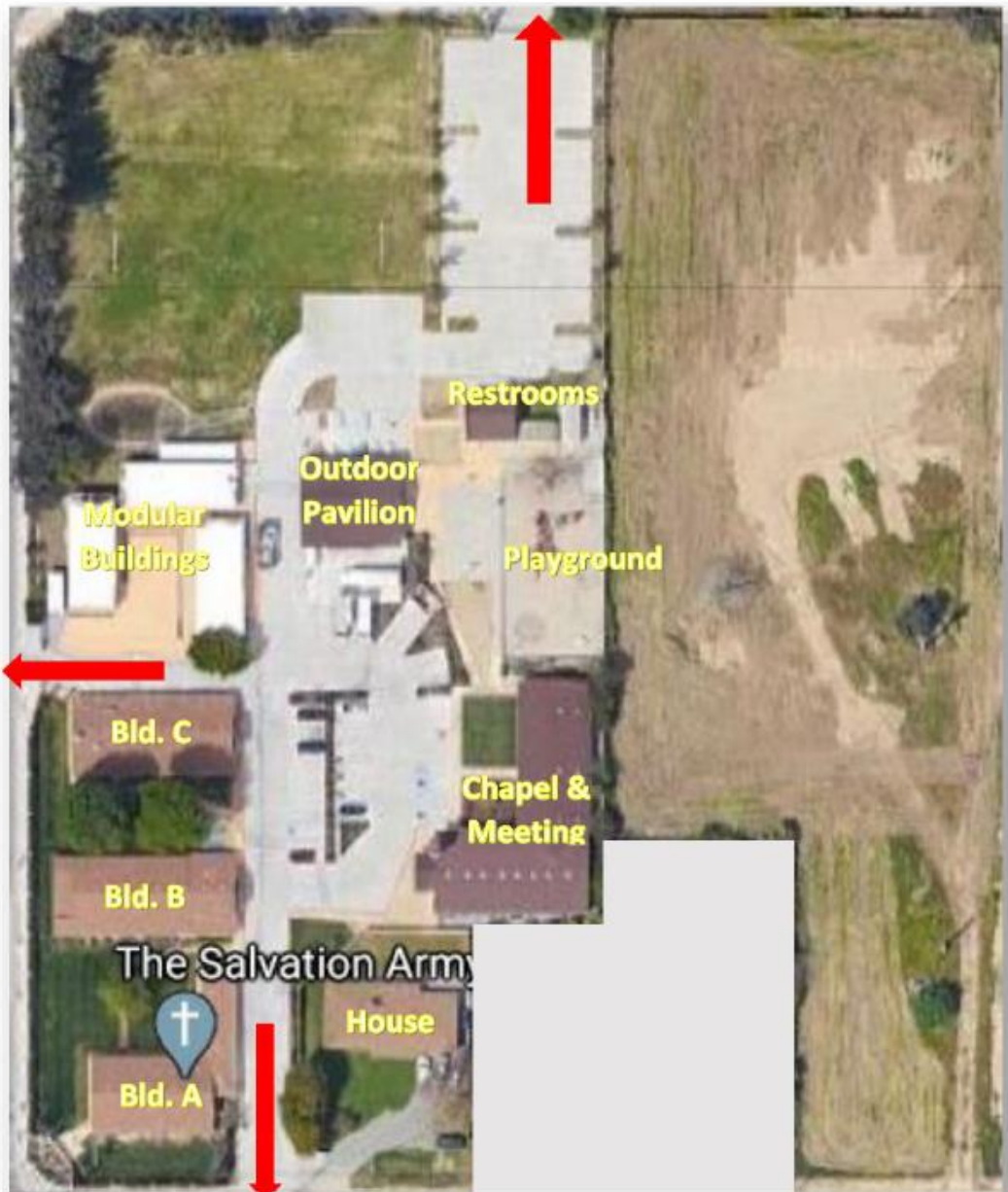
EXHIBIT B

SITE MAP- PARCEL

Site Map



Site Map: Building Identification



- House = Single Family Home with 3 doors
- Bld. A = 2 Apartments (3 bdrs and 2bdrs which equals a total of 5 doors)
- Bld. B = Administration Building
- Bld. C= Dining Building
- Chapel & Meeting = Chapel/church and Meeting buildings
- Modular Buildings = 3 Modular Classrooms to be demolished
- Vacant Parcels – Two parcels to East of Developed Campus

EXHIBIT C

APPROVED DEVELOPMENT BUDGET

Below is the Development Activities and the authorized uses for the Development Funds. Administrative, non-substantive changes to this Exhibit C may be made by the Owner, upon consultation with County Counsel, without further approval of the Board of Supervisors. The Approved Development Budget is subject to amendment as required under Section 5.4 of the Agreement.

PACIFIC VILLAGE PROJECT		
2626 Pacific Street San Bernardino CA.		
REHABILITATION / CONSTRUCTION BUDGET ESTIMATE		
Demolition		\$ 25,000.00
Offsite Improvements		\$ 35,000.00
Legal		\$ 40,000.00
Structures		\$ 150,000.00
Site Work		\$ 280,000.00
General Requirements		\$ 72,500.00
Contractor Overhead		\$ 105,000.00
Contractor Profit		\$ 200,000.00
Prevailing Wages		\$ 155,000.00
General Liability Insurance		\$ 70,000.00
Modular Unit Instalation Delivery		\$ 200,000.00
Fixed Utility		\$ 161,000.00
6 Month Temp Sewer Pump, Water, Generator		\$ 120,000.00
Cameras Secutiy		\$ 50,000.00
Site Design		\$ 25,000.00
Supervision		\$ 100,000.00
Construction Hard Cost Contingency		\$ 75,000.00
Soft Cost Contingency		\$ 75,000.00
Environmental Audit		\$ 15,000.00
Local Development Impact Fees		\$ 20,000.00
Permit Processing Fees		\$ 25,000.00
Furnishings		\$ 65,000.00
Developer Overhead/Profit		\$ 620,000.00
Consultant/Processing Agent		\$ 25,000.00
Project Administration		\$ 35,000.00
Construction Oversight by Developer		\$ 50,000.00
TOTAL PROJECT COST		\$ 2,793,500.00

EXHIBIT D

APPROVED DEVELOPMENT SCHEDULE

This Schedule of Performance ("Schedule") summarizes the schedule for various activities under the Consulting and Development Services Agreement (the "Agreement") to which this Exhibit D is attached. The description of items in this Schedule is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Schedule to other provisions of the Agreement and shall not be deemed to have any substantive effect.

Whenever this Schedule requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the Owner or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, Consultant shall consult with County staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

Notwithstanding anything to the contrary herein, administrative, non-substantive changes to this Exhibit D may be made by the authorized County representative, upon consultation with County Counsel, without further approval of the Board of Supervisors.

ID	Task Name	Duration	Start	Finish	Predecessors	W	T	F	S	S
1	COUNTY / CITY APPROVAL	10 days	Thu 9/17/20	Wed 9/30/20						
2	Due Diligence/Verify Utilities	8 days	Thu 9/17/20	Mon 9/28/20						
3	Verify Prevailing Wages	5 days	Thu 9/17/20	Wed 9/23/20						
4	Retain Engineer	10 days	Thu 9/17/20	Wed 9/30/20						
5	Retain Utility Consultant	10 days	Thu 9/17/20	Wed 9/30/20						
6	Check on Construction/Rehab Permits	10 days	Thu 9/17/20	Wed 9/30/20						
7	Verify Trailer Setup	10 days	Thu 9/17/20	Wed 9/30/20						
8	Approved Site Plan/Exhibits/Schedule	10 days	Thu 9/17/20	Wed 9/30/20						
9	COUNTY APPROVAL	7 days	Thu 9/17/20	Fri 9/25/20						
10	Administrative Approvals	29 days	Thu 9/17/20	Tue 10/27/20						
11	Identify Entity for Development	29 days	Thu 9/17/20	Tue 10/27/20						
12	Legal Review of Documentation	29 days	Thu 9/17/20	Tue 10/27/20						
13	Property Management Admin	29 days	Thu 9/17/20	Tue 10/27/20						
14	Select GC	1 day	Tue 9/29/20	Tue 9/29/20						
15	BIDDING PROCESS	15 days	Wed 9/30/20	Tue 10/20/20						
16	Submission Process	10 days	Wed 9/30/20	Tue 10/13/20						14
17	Selection Process	5 days	Wed 10/14/20	Tue 10/20/20						16
18	Final Schedule	4 days	Wed 10/21/20	Mon 10/26/20						17
19	Budget Approval	4 days	Wed 10/21/20	Mon 10/26/20						
20	BOS Approval	1 day	Tue 10/27/20	Tue 10/27/20						
21	Close of Escrow	10 days	Wed 10/28/20	Tue 11/10/20						20
22										
23	CONSTRUCTION/REHAB (3 Units)	25 days	Wed 11/11/20	Tue 12/15/20						
24	Cleaning / Turn	10 days	Wed 11/11/20	Tue 11/24/20						21

Project: 20.09.16 SCHEDULE
Date: Thu 9/17/20

- Task
- Split
- Milestone
- Summary
- Project Summary
- Inactive Task
- Inactive Milestone
- Inactive Summary
- Manual Task
- Duration-only
- Manual Summary Rollup
- Manual Summary
- Start-only
- Finish-only
- External Tasks
- External Milestone
- Deadline
- Progress
- Manual Progress

ID	Task Name	Duration	Start	Finish	Predecessors	W	T	F	S	S
25	Lease Up	15 days	Wed 11/25/20	Tue 12/15/20	24					
26	CONSTRUCTION/REHAB (SFR)	41 days?	Wed 11/11/20	Wed 1/6/21						
27	Abatement	10 days	Wed 11/11/20	Tue 11/24/20	21					
28	Paint	30 days	Wed 11/25/20	Tue 1/5/21						
29	Kitchen/Bath	30 days	Thu 11/26/20	Wed 1/6/21	28					
30	Code Updates	30 days	Thu 11/26/20	Wed 1/6/21						
31	Appliances	30 days	Thu 11/26/20	Wed 1/6/21						
32	Exterior Fencing	30 days	Thu 11/26/20	Wed 1/6/21						
33	Exterior Landscape	30 days	Thu 11/26/20	Wed 1/6/21						
34	Flooring	30 days	Thu 11/26/20	Wed 1/6/21						
35	Lease Up	15 days	Thu 12/17/20	Wed 1/6/21	34					
36										
37	SITE IMPROVEMENTS/UTILITIES-STUB OUT	45 days?	Wed 11/11/20	Tue 1/12/21						
38	Sewer	45 days	Wed 11/11/20	Tue 1/12/21						
39	Electrical	45 days	Wed 11/11/20	Tue 1/12/21						
40	Water	45 days	Wed 11/11/20	Tue 1/12/21						
41	Telecommunications	45 days	Wed 11/11/20	Tue 1/12/21						
42										
43	CONSTRUCTION-TRAILER SITE	22 days	Wed 1/13/21	Thu 2/11/21						
44	All Utility Connections	10 days	Wed 1/13/21	Tue 1/26/21	41					
45	Trailer Delivery	5 days	Wed 1/27/21	Tue 2/2/21	44					
46	Set up/Utility Connections	7 days	Wed 2/3/21	Thu 2/11/21	45					
47	Lease Up	12 days	Wed 1/27/21	Thu 2/11/21	44					

Project: 20.09.16 SCHEDULE
Date: Thu 9/17/20

Legend:

- Task: Solid blue bar
- Split: Dotted line with diamond
- Milestone: Solid blue bar with diamond
- Summary: Solid blue bar with arrow
- Project Summary: Solid blue bar with arrow
- Inactive Task: Dotted line
- Inactive Milestone: Dotted line with diamond
- External Tasks: Solid grey bar
- External Milestone: Solid grey bar with diamond
- Deadline: Solid blue bar with arrow
- Progress: Solid blue bar with arrow
- Manual Progress: Solid blue bar with arrow

Page 2

EXHIBIT E

LABOR COMPLIANCE PROVISIONS

[See Attached.]

EXHIBIT F

FORM OF DACA

[See Attached.]