

MANAGEMENT AGREEMENT FOR REAL PROPERTY

This **MANAGEMENT AGREEMENT FOR REAL PROPERTY** (this “Agreement”) is made this ____ day of _____ 2021 by and between **SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT**, a fire protection district created pursuant to the Fire Protection District Law of 1987 (Part 2.7 of Division 12 of the California Health and Safety Code) governed *ex officio* by the San Bernardino County Board of Supervisors (with its successors and assigns, the “District”), and **FJ MANAGEMENT, LLC**, a California limited liability company, as manager of the property as provided in this Agreement (in such capacity, the “Manager”).

RECITALS

WHEREAS, the Inland Valley Development Agency, a joint exercise of powers agency established pursuant to the provisions of the Joint Exercise of Powers Act, comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California and that certain Amended Joint Exercise of Powers Agreement (Inland Valley Development Agency), dated as of February 12, 1990, by and among the City of San Bernardino, the City of Colton, the City of Loma Linda and the County of San Bernardino, as amended (with its successors and assigns, the “Agency”) owns the real property located at 1111 East Mill Street, Building 2, San Bernardino, California 92408, which consists of an approximately 4.86 acre parcel of land and an approximately 79,834 square foot building, located at the southwest corner of Mill Street and Tippecanoe Avenue (the “Property”);

WHEREAS, the Agency and the District have entered into that certain Lease Agreement, dated as of _____, 2021 (the “Lease Agreement”), pursuant to which the Agency has agreed to cause the development, construction, improvement, equipping and furnishing of the Property and to lease the Property, as improved, and certain furniture, fixtures and equipment to the District (the “Premises”);

WHEREAS, the Agency has assigned the Lease Agreement to SBD Corporate Center II, LLC (the “Lessor”), pursuant to the Assignment and Assumption Agreement, dated as of _____, 2021, between the Agency and the Lessor;

WHEREAS, the District wishes to retain the services of the Manager as property manager of the Premises with responsibilities for managing, operating, maintaining and servicing the Premises for and on behalf of the District as described herein; and

WHEREAS, the Manager is willing to perform such services with regard to the management, operation, maintenance and servicing of the Premises for and on behalf of the District as described herein.

NOW THEREFORE, in consideration of the foregoing and of the full and faithful performance by the Manager of all the terms, conditions and obligations imposed upon the Manager hereunder, the parties hereto agree as follows:

1. Appointment of Manager: The District hereby appoints the Manager as property manager of the Premises with the responsibilities and upon the terms and conditions

set forth herein, and the Manager by its execution hereof does hereby accept such appointment.

2. Management Services of Manager. The Manager and the District hereby agree that the District is hiring the Manager to perform supervisory duties with respect to the operation, maintenance and servicing of the Premises and to engage qualified third party vendors to perform such operations, maintenance and servicing of the Premises as set forth in the following sections and in Exhibit A hereto.

- 2.1 Orientation. The Manager hereby acknowledges receipt of certain books and records with respect to the operation of the Premises, personal property on the Premises belonging to the District, all service contracts relating to the maintenance and operation of the Premises and the Lease Agreement. The Manager acknowledges that it is or will become fully familiar with all matters relating to the operation of the Premises, including the layout, construction, location, character and operation of lighting, heating, plumbing and ventilation systems, security systems, and all other mechanical equipment.

- 2.2 Management of the Premises. The Manager shall devote commercially reasonable, good faith and diligent efforts consonant with professional management to serve the District as manager of the Premises, and shall perform its duties hereunder in a diligent, careful and vigilant manner so as to manage, operate, maintain and service the Premises. The services of the Manager hereunder are to be of a scope and quality not less than those generally performed by a professional manager of other similar properties. The Manager shall make available to the District the full benefit of the judgment, experience and advice of the members of the Manager's organization and staff and will perform such services as may be reasonably required by the District in operating, maintaining and servicing the Premises. The Manager shall act in a fiduciary capacity with respect to the management of the Premises including proper protection of and accounting for District's assets. The District acknowledges that the Manager will not be devoting all of its time and resources to the Premises and agrees that the Manager has the right to perform other work, subject to its obligations under this Agreement.

- 2.3 Use and Maintenance of the Premises. The Manager agrees not to permit knowingly the use of the Premises for any purpose which does not conform to the requirements of the Lease Agreement or which might void or increase the cost of any policy of insurance held by the District or which might render any loss insured thereunder uncollectible, or which would be in violation of any governmental restriction. The Manager shall be expected to perform such other acts and deeds as are reasonable, necessary and proper in the discharge of its duties under this Agreement.

2.4 Scope of Services to be Provided to District. Without limiting the duties and obligations of the Manager under any other provisions of this Agreement, the Manager shall, to the extent funds of the District are made available to the Manager for payment, as Additional Rent or otherwise, contract with third party service providers on behalf of the District for the performance of the services set forth in this Section 2.4.

A. Obligations Under Lease Agreement. Duly and punctually perform and comply with all of the obligations, terms and conditions required to be performed or complied with by the District under the Lease Agreement relating to the operation, maintenance and servicing of the Premises, including without limitation the timely payment of all sums required to be paid in connection with such operation, maintenance and servicing of the Premises, all to the end that the District's interest in the Premises and its interests as lessee under the Lease Agreement shall be preserved and no default chargeable to the District shall occur under the Lease Agreement.

B. Repairs and Maintenance. Make or cause to be made all repairs and perform or cause to be performed all maintenance on the building, appurtenances and grounds of the Premises, in a timely and trade-professional manner, including, without limitation, all maintenance set forth in Exhibit A hereto, all capital improvements and replacements, as required to be made by the District under the Lease Agreement, including but not limited to flooring, painting, decorating, plumbing, electrical, carpentry, exterior hardscape, grounds care and such other maintenance and repair work as may be directed by the District. All such capital improvements, repairs, and replacements shall be to industry standards and of equal quality and workmanship to the original work and all capital improvements and substantial repairs shall require the request of the District prior to the commencement of such work.

(1) Subject to the District's prior written approval, Manager shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. In such event, the Manager shall obtain, prior to commencement of any work, appropriate written evidence of such contractor's liability and workers' compensation insurance.

(2) The Manager will work with the Lessor to make, or cause to be made, repairs in accordance with the warranties provided by the Lessor or any contractor or subcontractor, including as provided in Section 10 of the Lease Agreement, and agrees to keep in good repair, replace and maintain the Premises during the entire

term of this Agreement and shall apply amounts on deposit with the Manager or otherwise charge the District pursuant to Section 6 hereof for such repair, replacement and maintenance costs in accordance with the terms of this Agreement. The Manager agrees to obligate any general or subcontractor hired by the Manager to warranties and guarantees of workmanship imposed by State law or State agency at the time of contracting. The Manager shall use its best efforts to make the benefits of any warranty and guarantee of any contract or subcontract for the construction and installation of the Premises available to the District (by assignment or otherwise). The Manager agrees to obtain industry standard warranties for work, repairs and equipment as may be commercially available and reasonable (in consultation with the District). The Manager agrees to assign to the District all such warranties and guaranties relating to the Premises upon termination of this Agreement. The Manager shall also obtain the manufacturer's written warranty for the heating, ventilation and air conditioning system and any contractor's written warranty for the same as customary for comparable systems, and shall review with the District the terms of any extended warranties as may be available over time. During the Lease Term, the Manager agrees, on behalf of the District, to pursue any and all claims against the manufacturer, contractor, any subcontractor or supplier for any defective component or item relating to the Premises, and shall diligently enforce the terms of all warranties provided for the Premises by the manufacturer, contractor, any subcontractor or supplier. All amounts received by the Manager or the District from the enforcement of any warranty or insurance policy shall be deposited by the Manager or the District, held in trust, and applied to the repair or replacement of the defective item or component.

(3) In the event that any portion of the Premises shall require additional or extraordinary services and work, the District shall deliver notice to the Manager specifying in detail the required additional or extraordinary services or work.

(4) In the event the Manager fails to perform, or cause to be performed, any of its obligations hereunder, after the application of any applicable notice or cure period, the District may replace the Manager and terminate this Agreement, and the District shall either appoint another management company to assume the ongoing obligations of the Manager hereunder, or may undertake such obligations itself. Upon the termination of this Agreement, the Manager shall be released of all future obligations relating to the management, operation and maintenance of the Premises accruing from and after the date of such termination; provided that the Manager shall not be released from claims for damages caused by

the negligence or misconduct of the Manager or otherwise subject to indemnity by the Manager under Section 7 herein.

(5) In the event that any damaged or defective portion of the Premises results in an emergency, upon the Manager's failure, neglect or refusal to seek and diligently pursue any permits required to commence the repair or replacement of any such damaged or defective portion of the Premises within 24 hours after notice has been delivered by the District, or fail, neglect or refuse to pursue said repair or replacement work with reasonable diligence to completion, the District at its sole election and cost may repair or replace such damaged or defective portion of the Premises. The term "commence" means that the Manager shall show reasonably satisfactory progress in procuring any required permits (to the extent required) or entering into contracts in pursuance of doing the work. An "emergency" as used herein is defined as any life threatening situation or in the event the Premises is rendered unusable because of a utility disruption, including, without limitation, the HVAC system, water, electricity and sewer lines or more than one elevator in the Premises is inoperable. The Manager's duties performed under this paragraph (5) shall be deemed extraordinary services as described in Section 4.2 hereof.

(6) In the event that any component of the Premises is protected by warranties or guarantees, and such warranties and guarantees are in the name of the Manager, the Manager shall assign to the District the benefit of such protection thereunder to the extent the Manager is entitled to make such assignment by the terms and conditions of such warranties or guarantees. Upon termination of this Agreement, the Manager shall provide all warranties and guarantees held by the Manager to the District and, as may be necessary for such purpose, shall assign to District all such warranties and guarantees relating to the Premises at such time as this Agreement is terminated.

- C. Equipment and Supplies. Make all arrangements for the furnishing to the Premises of the equipment and supplies as necessary for the management, operation, maintenance and servicing of the Premises as required of the District under the Lease Agreement.
- D. Insurance. Investigate and promptly furnish to the District full written reports of all accidents, claims, potential claims, damage or destruction relating to the Premises of which the Manager has actual knowledge, including the estimated cost of repair thereof, and shall prepare any and all reports required by the District or any insurance company in connection therewith and shall cooperate fully with the District's insurers. The Manager shall have no right to settle,

compromise or otherwise dispose of any claims, demands or liabilities of the District, whether or not covered by insurance, without the prior written consent of the District.

- E. Personnel. At the written request of the District, the Manager shall employ personnel to perform routine repairs and maintenance to the Premises required hereunder as an alternative to the Manager's retention of independent third party vendors or service providers. The District shall be responsible for all compensation, insurance, payroll taxes and other similar costs with respect to any such employees of the Manager performing routine repairs and maintenance. Among other things, the District shall be responsible for (i) all employment expenses, including but not limited to insurance, salaries, wages, payroll taxes, cost of employee benefits plans and temporary help expense, of employees of the Manager; (ii) bookkeeping fees incurred in connection with maintenance of the Premises, records, and the preparation of unaudited monthly financial statements for the District; and (iii) compensation (including fringe benefits) payable to maintenance employees or any other personnel employed by the Manager, and all local, state and federal taxes and assessments (including, but not limited to, Social Security taxes, unemployment insurance and workman's compensation insurance) incident to the employment of such personnel, building supplies and equipment, postage, copy charges, and other related office expenses.
- F. Other Services. Perform all other services which are normally performed in connection with the operation of similar properties. Should the District authorize the establishment of any additional services to the District or the Premises generally performed by property managers managing similar properties, the Manager shall provide said services in addition to the above and (to the extent the District is required to pay additional expenses hereunder) a separate charge for such "Additional Services" shall be made to the District. All such Additional Services shall be provided by the Manager directly to the District, and all such separate charges shall be retained for the account of the District. All costs and expenses incurred in connection with furnishing such Additional Services shall be paid by the Manager on behalf of the District and any net profit shall accrue to and any net loss be for the account of the District.
- G. Extraordinary Services. If the District requests in writing that the Manager undertake to perform services or work other than such services and work as are to be performed by the Manager pursuant to this Agreement, then the District and Manager shall agree on the compensation to be provided to the Manager by the District for the

performance of such services prior to the Manager's performance of the same, which compensation shall not exceed competitive market rates for the services to be provided (and the Manager shall deliver estimates of the cost of such performance and otherwise reasonably cooperate with the District in attempting to reach agreement on such compensation).

- H. Compliance with Laws. Take such action as may be necessary to comply with any and all orders or requirements affecting the Premises by a federal, state, county or municipal authority having jurisdiction thereover, provided that the Manager shall not take any such action as long as the District has notified the Manager that it is contesting or intends to contest, and promptly institutes proceedings contesting any such order or requirement, except that, if failure to comply promptly with any such order or requirement would or might expose the District, the Manager, or any of the Manager's employees or agents to criminal liability, the Manager shall cause the same to be complied with without first obtaining the District's approval. In the event of any extraordinary orders, requirements, or jurisdiction affecting the Premises being asserted by a federal, state, county or municipal authority, the Manager shall promptly, and in no event later than three (3) Business Days from the time of their receipt, forward to the District copies of all such orders and notices of requirements. The Manager shall also cooperate with the District and the Agency in connection with any investigations, inspections, studies, or reports reasonably required by the District or by applicable law. The Manager shall comply with all laws related to the employment by the Manager of its employees.
- I. Notice. Deliver to the District all notices from the Lessor (including the Agency) given pursuant to the Work Letter or the Lease Agreement or pertaining thereto and all notices from any governmental or official entity, in each case in the form and manner specified for notices under the Lease Agreement.
- J. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any third party against the District which arise out of any matters relating to the Premises or this Agreement or the Manager's duties hereunder, the Manager shall give the District all pertinent information and reasonable assistance (at no cost or expense to the Manager) in the defense or other disposition thereof. The Manager shall not be authorized to accept service of process on behalf of the District.

3. Approval of Contracts:

- 3.1 Service Contracts. The Manager is authorized to make and enter into for the account of the District all such contracts and equipment leases as are required in the ordinary course of business for the operation, maintenance, and service of the Premises and to pay the same when due; provided, however, the Manager shall be required to obtain the prior written consent of the District before entering into any contract or equipment lease in which the total amount payable exceeds Twenty Thousand Dollars (\$20,000.00), unless such contract or lease is made under circumstances which shall be reasonably considered to constitute an emergency (in which event it shall be subject to the limitation on emergency expenditures set forth in Section 3.2 below.)
- 3.2 Emergency Purchases and Repairs. The Manager shall not make any purchase or order any work costing more than the limit on the amount authorized for non-emergency purchases and repairs without the District's prior written consent, except in circumstances deemed by the Manager to be an emergency requiring immediate action for the protection of the Premises or the District or other persons and to avoid the suspension of necessary services (provided that the Manager may not spend in excess of Ten Thousand Dollars (\$10,000.00) in such emergency situation without the District's prior consent, and the Manager shall notify the District by telephone and in writing (which may be by e-mail) as soon as practicable following the occurrence of any such emergency situation to describe the expenditure of funds required thereby). The Manager shall immediately notify the District of the necessity for, the nature of, and the cost of such emergency repairs or compliance. If the District shall require, the Manager shall submit a list of contractors and subcontractors who are performing work, repairs, alterations or services on the Premises under the Manager's direction. All repairs, alterations, and replacements shall be of equal quality and workmanship to the original work.
- 3.3 Payments. Any payments made by the Manager in the performance of its duties and obligation under Sections 3.1 and 3.2 of this Agreement shall be made out of such funds as the Manager may from time to time hold for the account of the District or as may be provided by the District. The Manager shall not be required to make advances from its own funds. The District shall maintain an amount sufficient to enable the Manager to perform its duties hereunder, and the Manager shall notify the District in advance of any foreseeable deficiency of the funds in such accounts.

4. Compensation:

- 4.1 Management Services. The District and the Manager acknowledge and agree that the Premises is being financed from the proceeds of a series of tax-exempt bonds (the "Bonds"), and as such, this Agreement is intended to constitute a "management contract" within the requirements of Revenue Procedure 2017-13 ("Rev. Proc. 2017-13") of the Internal Revenue Service,

such that this Agreement meets the safe harbor requirements in Rev. Proc. 2017-13, and does not constitute private business use. Any provisions herein that do not meet the requirements of Rev. Proc. 2017-13 shall be null and void. In order to comply with such requirements, the District and the Manager agree that the District shall pay the Manager, as compensation for the management services rendered hereunder, an amount (the "Management Fee") equal to the fixed annual fee set forth in Exhibit B attached hereto (payable 1/12th monthly), payable in advance on the first day of each and every month, commencing on the Management Agreement Commencement Date. The Management Fee is intended to compensate the Manager solely for its management services under this Agreement, including (i) its general and overhead expenses, (ii) all wages, salaries, and compensation of personnel employed by the Manager to perform the Manager's supervisory services in connection with its management role under this Agreement, and (iii) all expenses incurred by the Manager which are not reimbursable hereunder. The Management Fee shall be separate and apart from any amounts incurred, whether by the District or the Manager, in connection with the operation, maintenance and servicing of the Premises including, without limitation, any costs of third party vendors or service providers retained pursuant to the terms of this Agreement, and any goods, services, utilities or taxes related to the Premises.

- 4.2 Additional Services. The Manager shall be separately compensated at the rate of \$200 per hour plus reimbursement for travel expenses, with a minimum of two hours, for any extraordinary services that are other than the usual and customary services performed in its capacity as the managing agent for the Premises, including but not limited to, the following: (a) after hours property manager service (extraordinary services that require the time of a Manager to handle property emergencies after regular business hours) (b) time spent in connection with audits with respect to the management and operations of the Premises; and (c) court appearances in its capacity as Manager in a matter in which the Premises has an interest. In addition, if any capital expenditures are made to the Premises, the Manager shall be entitled to a fee of five percent (5%) of the total cost of such capital expenditures.

5. Accounting, Records, Reports:

- 5.1 Records. The Manager shall maintain a comprehensive system of office records, books and accounts, which shall belong to the District. The District, U.S. Bank National Association, as trustee for the Bonds (the "Trustee") and others designated by the District shall have at all times access to such records, accounts and books and to all vouchers, tiles, and other material pertaining to the Premises and this Agreement, all of which the Manager agrees to keep safe, available and separate from any records not having to do with the Premises.

5.2 Quarterly Reports. On or before the twenty-fifth (25th) day of the month following each calendar quarter during the term of this Agreement, the Manager shall deliver to the District all receipts and a disbursement statement showing the results of operations of the Premises for such calendar quarter and of the year-to-date. The Manager shall also provide any other statements for the Premises required by the Lease Agreement or reasonably requested by the District, provided that the Manager shall be advised of the need for such other statements and what such statements must contain at least thirty (30) days prior to the date such statements are due. The statements shall include but not be limited to:

- A. Operating and Maintenance Expense Schedule; and
- B. Narrative of any unusual actions taken or emergencies responded to, for the previous period

After disbursement of all funds specific in this Agreement or the Lease Agreement, any balance remaining with the Manager at the time each quarterly report is forwarded to the District during the term of this Agreement shall be disbursed or transferred to the District or to such other person as directed from time to time by the District.

6. Expenses and Operating Costs:

6.1 Expense of District. All obligations or expenses incurred hereunder shall be for the account of, on behalf of, and at the expense of the District, except as otherwise specifically provided in this Agreement, provided, however, that the District shall not be obligated for any expenses unrelated to the Premises, including, without limitation, for office equipment or office supplies of the Manager, for any overhead expense of the Manager incurred in its general offices, or for any salaries, wages, or benefits of members of the Manager's organization and staff allocable to time spent on matters other than the Premises.

6.2 Estimated Operating Costs, Actual Operating Costs. Commencing on the date that the District notifies the Manager that the District has taken occupancy of the Premises (the "Management Agreement Commencement Date") and continuing throughout the term of this Agreement, the District shall pay the costs to operate and maintain the Premises (the "Operating Costs") in monthly installments based upon the Manager's estimates as further provided in this subsection 6.2 (the "Estimated Operating Costs"). The Manager and the District hereby agree that the Estimated Operating Costs for the first Lease Year shall be as projected on Exhibit C hereto; provided, however, the District and the Manager may modify Exhibit C hereto based on changes in market rates on or prior to the Management Agreement Commencement Date. Thereafter, during each successive Lease Year the Manager shall provide an updated Exhibit C containing the

Estimated Operating Costs for the next Lease Year, as described in subparagraph E hereof. The Estimated Operating Costs shall be payable monthly by the District in 12 equal monthly installments, in advance, on the first day of each and every month, commencing on the Management Agreement Commencement Date and continuing thereafter for an initial term of five (5) years as provided herein, as such term may be renewed in accordance with Section 8 hereof. If the Management Agreement Commencement Date occurs on a date other than the first day of a month, the District agrees to pay the Manager on the Management Agreement Commencement Date an amount for Estimated Operating Costs equal to the initial monthly installment for Estimated Operating Costs prorated based on the number of days actually remaining in the month in which the Management Agreement Commencement Date occurs. If any date on which a payment for Estimated Operating Costs is originally due under this Agreement is not a Business Day, such payment shall be due on the next succeeding Business Day.

- A. In the event that in any Lease Year (as defined in the Lease Agreement) amounts received and/or to be received from the District hereunder for the payment of the Operating Costs of the Premises are determined by the Manager to be or will be insufficient to pay such Operating Costs, the Manager may submit a written statement to the District requesting that the amounts payable by the District hereunder for the Operating Costs of the Premises be increased to an amount sufficient to pay such Operating Costs. Such written statement from the Manager shall identify the line-item(s) of Estimated Operating Costs which have increased from the amounts set forth in the most recent statement of Estimated Operating Costs, provide any supporting documentation reasonably evidencing such increase in Operating Costs and provide a revised statement of Estimated Operating Costs for the then-current Lease Year.
- B. No later than ninety (90) days after the conclusion of the first Lease Year and each subsequent Lease Year during the term of this Agreement, the Manager shall furnish to the District a statement of the actual Operating Costs (the "Actual Operating Costs") for the Premises for the first Lease Year and each subsequent Lease Year, by category of cost in no less detail than the form of Exhibit C hereto, subject to review and objection as provided in Section 6.2 D below. The statement shall be prepared, signed, and certified to be correct by a duly authorized representative of the Manager. If the Actual Operating Costs are in excess of the Estimated Operating Costs paid by the District during the first Lease Year or any subsequent Lease Year, the District shall within sixty (60) days after the receipt of such statement pay to the Manager the difference between the Estimated Operating Costs paid by the District and the Actual Operating Costs. If the Actual Operating Costs are less than

the Estimated Operating Costs paid by the District during the first Lease Year or any subsequent Lease Year, the Manager shall credit any such excess to the District's obligation to pay Estimated Operating Costs during the following Lease Year and, with respect to the final Lease Year during the term of this Agreement, shall promptly pay all excess amounts to the District. Any failure by the Manager in delivering any statement of the Actual Operating Costs for a Lease Year will not constitute a waiver of its rights to collect Estimated Operating Costs for any subsequent Lease Year nor will it relieve the District of its obligations to pay Estimated Operating Costs as set forth in this Section. Notwithstanding the preceding sentence, in the event the Manager fails to deliver a statement of Actual Operating Costs within one hundred twenty (120) days after the conclusion of the first Lease Year or each subsequent Lease Year during the term of this Agreement, the District, in its sole and absolute discretion, may elect to withhold payment to the Manager of the Management Fee due to the Manager pursuant to Section 4.1 of this Agreement until such time as the District has received the delinquent statement of Actual Operating Costs. Upon receipt of the delinquent statement of Actual Operating Costs, the Manager shall be entitled to receive any Management Fee withheld by the District pursuant to this paragraph. Upon the written request of the District, the Manager shall provide to the District supporting documentation reasonably evidencing such Operating Costs.

- C. The Manager shall keep at its offices full, accurate and separate books of account covering the Actual Operating Costs for the Premises, and the statement to the District shall accurately reflect the total Actual Operating Costs. The books of account shall be made available by the Manager at its offices for a period of at least 24 months after the expiration of each Lease Year during the term of this Agreement. Upon the written request of the District, the Manager shall provide to the District a copy of the books of account covering the Actual Operating Costs for the most recently completed Lease Year, within 120 days of receipt of such written request. The District shall have the right upon reasonable prior written notice to the Manager, and for a period of 24 months after the termination of this Agreement, to inspect the books of account. Within 24 months after the end of each Lease Year, the District shall also have the right upon reasonable prior written notice to the Manager and its sole cost and expense (except as provided further herein) to complete or cause to be completed an audit of the Manager's Actual Operating Costs for any such Lease Year by third-party accountants or consultants experienced in the operations of similar office buildings, selected by the District; *provided, however*, that the Manager shall only be responsible for the reasonable cost of such audit if the Actual Operating Costs certified

by the Manager during a Lease Year are more than 10% greater than the audited Actual Operating Costs. Such audit cost shall include normal and customary charges for third-party accountants and consultants performing such audit and the Manager's liability for such charges shall not exceed \$5,000 per audit. In the event the Actual Operating Costs paid by the District during any Lease Year exceed the audited Actual Operating Costs for such Lease Year, the Manager shall credit all excess amounts paid by the District for such Lease Year to the account of the District to offset the District's obligation to pay Estimated Operating Costs during the following Lease Year and, with respect to the final Lease Year during the term of this Agreement, shall promptly pay all excess amounts to the District. In the event the Actual Operating Costs paid by the District during any Lease Year are less than the audited Actual Operating Costs for such Lease Year, the District shall pay the Manager the amount of such discrepancy within sixty (60) days after the date of completion of the audit or inspection. At the termination of this Agreement, or from time to time during the term of this Agreement as directed by the District, such books of account shall be disbursed or transferred to the District or to such other person as directed from time to time by the District.

- D. If the District objects to any statement of Actual Operating Costs submitted to the District by the Manager, the District shall within sixty (60) days of the receipt of the statement provide a written statement to the Manager identifying the District's objections to the statement; provided, however, that such time limit shall not limit the District's right to audit the Manager's books of account pursuant to the terms and conditions set forth above, except for those matters resolved pursuant to mediation under this Agreement. Both parties shall attempt to resolve the conflict by good faith negotiation. However, if the Manager and the District are not able to negotiate a resolution of the conflict within sixty (60) days after the District has given the Manager written objection to the statement despite their good faith attempts to do so, then the dispute shall be submitted to mediation in compliance with Section 10 hereof.
- E. No later than sixty (60) days prior to the end of the first Lease Year and each subsequent Lease Year thereafter during the term of this Agreement, the Manager shall furnish to the District a statement of the Estimated Operating Costs, including an updated Exhibit C hereto, for the Premises for the next Lease Year and the monthly payments required to be made by the District during such Lease Year. If the District objects to any statement of Estimated Operating Costs submitted to the District by the Manager, the District shall within thirty (30) days of the receipt of the statement provide a written statement to the Manager identifying the District's specific

objections to the statement. If the District fails to object to the Estimated Operating Costs within such thirty (30) day period, the Manager shall send a follow up notice to the District requesting the District's written statement of specific objections. If the District fails to object to the Estimated Operating Costs within 5 (five) days thereafter, then the District shall conclusively be deemed to have waived its right to do so and the District shall pay Estimated Operating Costs based on such statement. Both parties shall attempt to resolve the conflict by good faith negotiation. If the Manager and the District are not able to negotiate a resolution to the conflict within fifteen (15) days after the District has given the Manager written objection to the statement despite their good faith attempts to do so, then this Agreement may be terminated in accordance with Section 8.2 hereof. Until such time as a final determination is rendered in such mediation, the Estimated Operating Costs for the next succeeding Lease Year shall be the same as the preceding Lease Year and the District agrees and covenants to pay such Estimated Operating Costs in the manner provided in this Section.

- 6.3 Emergency Budget Reserve. The District shall maintain, in an account held in trust by the Manager, an emergency budget reserve fund (the "Emergency Budget Reserve Fund") in the minimum amount of \$25,000.00 (the "Emergency Budget Reserve"), to be available to the Manager in the case of emergency or contingency expenditures in excess of the Actual Operating Costs. In the event that the Manager deems it necessary to use funds on deposit in the Emergency Budget Reserve Fund, the Manager shall provide prompt notice to the District, whereupon such use of funds shall be subject to the approval of the District. Upon any single disbursement from the Emergency Budget Reserve Fund in excess of \$5,000, the District shall replenish such amount within sixty (60) days, and at the end of each calendar quarter shall replenish the Emergency Budget Reserve Fund to the Emergency Budget Reserve.
- 6.4 Operating Costs. Operating Costs for each and every Lease Year during the term of this Agreement shall include, without limitation, all costs and expenses necessary or convenient for the maintenance and operation of the Premises. The District shall directly pay the costs associated with insuring the Premises in accordance with the requirements of the Lease Agreement, property taxes, assessments and fees, if any, which are levied upon the use or ownership of the Premises or any component thereof. The Manager covenants and agrees to require that the District shall be named as a third-party beneficiary with respect to any contract or agreement for the management, maintenance and operation of the Premises.
- 6.5 Utilities and Services. The District shall be responsible for, and provide timely payment of all bills and expenses related to, water, electricity, gas,

fuel, oil, sewage and trash, telephone, telecommunications services, and other necessary utility services in connection with the Premises.

7. Indemnities:

- 7.1 Indemnity by the Manager. To the extent permitted by law, the Manager agrees to defend, indemnify and save harmless the District, its agents, officers and employees from and against any and all claims, investigations and suits with respect to (i) any alleged or actual violation of state or federal labor or other laws pertaining to its employees, it being expressly agreed and understood that, as between the District and Manager, all persons employed in connection with the property management of the Premises are employees of the Manager, not the District; or (ii) the Manager's breach of this Agreement which has a material adverse effect on the Premises or the District. The Manager shall at all times keep its employees and cause its contractors to keep its employees insured for statutory workers' compensation and other employee benefits required by all applicable laws, and the Manager shall maintain employer's liability insurance for an amount not less than \$1,000,000 covering claims and suits by or on behalf of employees and others not otherwise covered by statutory workers' compensation insurance. Additionally, the Manager shall require all contractors and subcontractors to provide evidence of commercial liability insurance naming the Lessor, the Manager and the District as additional insureds.
- 7.2 Indemnity by the District. To the extent permitted by law, the District agrees to defend, indemnify and save harmless the Manager, its members, officers, employees and agents from all claims and suits in connection with the ownership and use of the Premises, provided that such claims and suits are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and such claims and suits arise, or are alleged to arise, in whole or in part out of any negligent act or omission of the District, its officers, employees or agents which, for the avoidance of doubt shall not include the Manager or its officers, employees or agents. The District agrees, upon request, to include the Manager as an additional insured in the District's public liability policy with respect to the Premises, but only while the Manager is acting as property manager for the District under this Agreement.
- 7.3 Attorneys' Fees and Costs. If any legal action is instituted to enforce or declare either party's rights hereunder, each party, including the prevailing party, must bear its own attorneys' fees and costs. This paragraph shall not apply to those attorneys' fees and costs directly arising from any third party legal action against the District.

The indemnifications provided pursuant to this Section 7 shall survive the termination of this Agreement.

8. Term of Agreement: This Agreement shall be in effect for an initial term of five (5) years, subject to earlier termination as provided hereinbelow, commencing on the Management Agreement Commencement Date (as defined in Section 6.2 hereof), and ending on the last day of the fifth Lease Year (as defined in the Lease Agreement). This Agreement shall be automatically renewed for successive five (5) year periods unless terminated by either party upon written notice sent to the other party not less than three (3) months before any expiration date subject however to the following conditions:
- 8.1 Without Cause. This Agreement may be terminated by either party as of the end of any calendar month, provided at least three (3) months' advance written notice thereof is given to the other party. The District and the Manager agree that although no cause will be required to exercise the three (3) months' termination of this Agreement, each of the parties shall make every effort to notify the other party of any failure by the other to perform a duty or responsibility outlined herein in advance of presenting or delivering a notice of termination. After notice of a failure to perform, the defaulting party shall have a thirty (30) day period to cure the default. The thirty (30) day period to cure may run concurrently with the three (3) months' notice of termination.
- 8.2 With Cause. Each of the parties shall notify the other party of any failure by the other to perform a duty or responsibility, or other cause, outlined herein in advance of presenting or delivering a notice of termination. After receiving notice of a failure to perform or other cause for termination hereunder, the defaulting party shall have a thirty (30) day period to cure the default, provided that if more than thirty (30) days are required to effect such cure, the party who has failed to perform shall have such additional time to cure as is reasonably necessary, so long as it commences to cure within such 30-day period and diligently prosecutes such cure to completion.
- 8.3 Bankruptcy. In the event a petition in bankruptcy is filed by or against either of the parties, unless in the event of a filing against a party such filing is dismissed within sixty (60) days of the filing, or such party either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Agreement immediately, provided prompt written notice of such termination is given to each of the parties.
- 8.4 Manager's Obligation after Termination. Upon the termination of this Agreement, or the termination of the Manager's services hereunder, as provided above, the Manager shall:
- A. Deliver to the District, or such other person or persons designated by the District, copies of all books and records of the Premises and all funds in the possession of the Manager belonging to the District

or received by the Manager pursuant to the terms of this Agreement or the Lease Agreement; and

- B. To the extent permitted under the service contract, assign, transfer or convey to such person or persons all service contracts and warranties and guarantees in connection therewith, relating to or used in the operation and maintenance of the Premises. Upon any voluntary termination or expiration pursuant to this Section, the obligations of the parties hereto (except those specified as surviving) shall cease as of the date specified in the notice of termination, except that the Manager shall comply with the applicable provisions hereof and shall be entitled to receive any and all compensation which may be due to the Manager hereunder at the time of such termination or expiration.

9. Notices: Unless otherwise specifically provided, all notices, demands and statements required hereunder shall be in writing and shall be (a) personally delivered; (b) sent by registered United States mail; (c) sent by overnight courier of national reputation; or (d) transmitted by facsimile or other telecommunication, in each case addressed to the party to whom notice is being given at its address as set forth below and, if transmitted by facsimile or other telecommunication, transmitted to that party at its facsimile number or email address as may hereafter be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section; provided that notices by facsimile or email shall be confirmed by the recipient by facsimile or email response to the sender. All such notices, requests, demands and other communications shall be deemed to have been given on (i) the date received if personally delivered; (ii) when deposited in the mail if delivered by mail; (iii) the date sent if sent by overnight courier; or (iv) the date of transmission if delivered by facsimile.

If intended for the District:

San Bernardino County Fire Protection District
157 W. 5th Street, 2nd Floor
San Bernardino, California 92415-0451
Attention: Deputy Chief of Administration

with a copy to:

County of San Bernardino
385 N. Arrowhead Avenue
San Bernardino, California 92415
Attention: Chief Executive Officer

if intended for the Manager:

FJ Management, LLC
215 North D Street, Suite 304

San Bernardino, California 92401
Attention: Mr. Frank Schnetz

FJ Management, LLC
4221 Wilshire Blvd. Suite 380
Los Angeles, California 90010
Attention: Jian Torkan

With a copy to:

Kutak Rock LLP
777 South Figueroa Street, Suite 4550
Los Angeles, California 90017
Attention: Sam S. Balisy

if intended for the Trustee:

U.S. Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Global Corporate Trust

or to such other addresses as shall from time to time have been designated by written notice by any party to any other party as herein provided. The District will provide a list of representatives who are authorized to give instruction on behalf of the District.

10. Mediation: Before filing any litigation or making any administrative claim, the parties agree to engage in nonbinding mediation for a minimum of thirty (30) days. The mediator shall be selected by mutual agreement or, if no agreement can be reached, by the Presiding Judge, San Bernardino Superior Court, upon petition by either party. The mediation shall be conducted at the discretion of the mediator or pursuant to rules adopted by the parties. The mediation shall be conducted in San Bernardino County, California. The cost of mediation shall be borne equally by the Manager and the District, and each shall pay one-half of any estimated fees required by the mediator in advance. Before the date of mediation, each side shall provide the mediator and the other party with a statement of its position and copies of all supporting documents. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they shall also be asked to participate in the mediation. No one who has ever had any business, financial, family or social relationship with any party to this Agreement shall serve as mediator unless the related party informs the other party of the relationship and the other party consents in writing to the use of that mediator.
11. Litigation: In the event that litigation shall be brought by either party to enforce the terms of this Agreement, each party, including the prevailing party, must bear its own attorneys' fees and costs, including any incurred on appeal or in enforcing

a judgment. This paragraph shall not apply to those attorneys' fees and costs directly arising from any third-party legal action against the District or the Manager.

12. No Inconsistent Tax Position: In accordance with Rev. Proc. 2017-13, the Manager agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the District with respect to the Premises. For example, the Manager agrees that it will not claim any depreciation or amortization deduction, investment tax credit or deduction for any payment as rent with respect to the Premises.
13. No Circumstance Substantially Limiting Exercise of Rights: The District and the Manager each represent and covenant that (a) no more than 20 percent of the voting power of the governing body of the District is vested in the directors, officers, shareholders, partners, members, and employees of the Manager, in the aggregate, (b) the governing body of the District does not include the chief executive officer (or equivalent executive) of the Manager or the chairperson (or equivalent executive) of the Manager's governing body, and (c) the chief executive officer (or equivalent executive) of the Manager is not the chief executive officer (or equivalent executive) of the District or any of the District's related parties (as defined in Treas. Reg. 1.150-1(b)).
14. Assignment. Neither District nor Manager shall have any right to transfer, assign, pledge, or hypothecate any of their respective rights, duties or obligations under this Agreement without the prior written consent of the other party, which consent may be granted or withheld in such party's sole discretion, and any attempt to do any of the foregoing shall be null and void and of no force or effect.
15. Successors and Assigns. This Agreement shall be binding upon the parties hereto, their successors and permitted assigns. Any successor or assignee to the duties and obligations of Manager shall be as acceptable to District, in the exercise of its sole discretion, which acceptance must be evidenced in writing.
16. Amendment. This Agreement may not be amended or modified except by an agreement in writing signed by both of the parties hereto.
17. Applicable Law: This Agreement shall be construed in accordance with the laws of the State of California.
18. Entire Agreement: This Agreement embodies the entire understanding of the parties relating to the subject matter hereof and there are no further agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.
19. Authorization: Each person executing this Agreement on behalf of a party represents and warrants that it has the full power, authority and legal right to execute and deliver this Agreement on behalf of such party and that this Agreement constitutes the legal, valid and binding obligations of such party, enforceable against such party in accordance with its terms.

[Signature Page Follows]

IN WITNESS WHEREOF, the District and the Manager have duly executed this Management Agreement for Real Property as of the date first set forth above.

DISTRICT:

**SAN BERNARDINO COUNTY FIRE
PROTECTION DISTRICT**

By: _____

Printed Name: _____

Title: _____

MANAGER:

FJ MANAGEMENT, LLC

By: _____

Printed Name: _____

Title: _____

[Signature Page to Management Agreement for Real Property]

EXHIBIT A

MAINTENANCE SERVICES

This list reflects the various cleaning and maintenance requirements and schedule for the Premises.

Daily (Monday through Friday)

1. Carpets vacuumed.
2. Composition floors dust-mopped.
3. Desks, desk accessories and office furniture dusted. Papers and folders left on desks not to be moved.
4. Waste baskets, other trash receptacles emptied.
5. Chairs and waste baskets returned to proper position.
6. Fingerprints removed from glass doors and partitions.
7. Lavatories, toilets and toilet rooms cleaned and mopped. Toilet supplies replenished. Bulb and tube replacements, as required.
8. Graffiti expunged as needed within two working days after the Manager's knowledge of such graffiti or other notice to Manager.
9. Floors washed as needed.

Weekly

1. Low-reach areas, chair rungs, baseboards and insides of door jams dusted.
2. Window sills, ledges and wood paneling and molding dusted.

Monthly

1. Floors washed and waxed in uncarpeted office area.
2. High-reach areas, door frames and tops of partitions dusted.
3. Upholstered furniture vacuumed, plastic and leather furniture wiped.
4. Picture moldings and frames dusted. Wall vents and ceiling vents vacuumed.
5. Dumpster areas power washed and cleaned.

Quarterly

1. Light fixtures cleaned and dusted, but not less frequently than Quarterly.
2. Wood furniture polished.
3. Draperies or mini blinds cleaned as required, but not less frequently than Quarterly.
4. Perform routine inspections for mold.
5. Pest control inspection and preventative maintenance as needed.
6. HVAC system inspected by servicing technician and filters changed as needed.
7. Elevator maintenance and inspection.
8. Other scheduled services as may be performed quarterly for similar properties.

Semiannually

1. Windows washed as required inside and outside but not less frequently than twice annually.
2. Smoke and carbon monoxide detectors tested and replaced as needed.
3. Gutters inspected and cleaned.

Annually

1. Carpets cleaned.
2. Water heaters drained, sinks, boilers and water pipes inspected.
3. Roof and ceilings inspected for leaks, water damage, mold, and structural damage.

As Needed

The sidewalks, driveways, parking areas and all means of access and egress for the Premises should be maintained in good repair, clean and safe condition at all times.

All lawns, shrubbery and foliage on the grounds of the Premises should be maintained in good condition and neat in appearance. Grass and shrubbery must be replanted as needed to maintain the grounds in good appearance and condition.

EXHIBIT B

SCHEDULE OF ANNUAL FIXED MANAGEMENT FEES

The Management Fee shall be equal to \$0.065 per Rentable Square Foot of Building Area per month (based on 79,834 Rentable Square Feet of Building Area). The Management Fee shall be adjusted upward by three percent (3%) from the previous Lease Year at the commencement of each Lease Year.

EXHIBIT C

ESTIMATED OPERATING COSTS

| Cost Category ¹ | Annual Cost | Monthly Cost |
|----------------------------|---------------------|--------------------|
| Janitorial | 143,422.20 | 11,951.85 |
| A/C Maintenance | 4,780.74 | 398.40 |
| Rubbish | 7,649.18 | 637.43 |
| Sweeping | 6,214.96 | 517.91 |
| Pest Control | 1,912.30 | 159.36 |
| Pressure Washing | 8,605.33 | 717.11 |
| Supplies | 12,000.00 | 1,000.00 |
| Landscaping | 9,561.48 | 796.79 |
| Elevator Maintenance | 14,500.00 | 1,208.33 |
| Repair and Maintenance | 19,122.96 | 1,593.58 |
| Management Fee | <u>62,270.52</u> | <u>5,189.21</u> |
| Total Operating Costs | <u>\$290,039.67</u> | <u>\$24,169.97</u> |

¹ The Estimated Operating Costs assume that the Premises is exempt from all real property taxes and assessments.