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**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: Economic Development Agency & Department of Mental Health

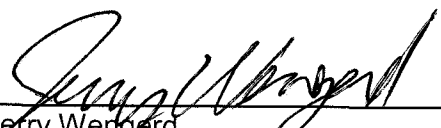
SUBMITTAL DATE:
February 18, 2010

SUBJECT: New Skilled Nursing Facility Agreements - Indio and Moreno Valley

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the Skilled Nursing Facility Agreements for Indio and Moreno Valley; and
2. Authorize the Assistant County Executive Officer/EDA, or his designee, to execute other documents including but not limited to future ministerial amendments and to administer all actions necessary to complete the Indio and Moreno Valley Skilled Nursing Facility transaction.

BACKGROUND: (Commences on Page 2)



 Jerry Wengert
 Director, Department of Mental Health

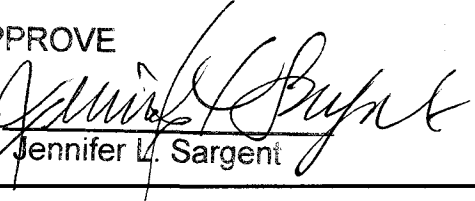

 Robert Field
 Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ -0-	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ -0-	Budget Adjustment:	No <input checked="" type="checkbox"/>
	Annual Net County Cost:	(\$7,665,000)	For Fiscal Year:	10/11

SOURCE OF FUNDS: Realignment 100%	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION:

Reviewed by

 Christopher Hans

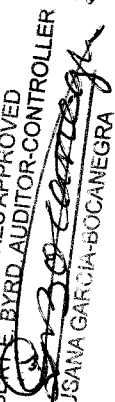

APPROVE
 BY 
 Jennifer L. Sargent

County Executive Office Signature

Policy
 Policy
 Consent
 Consent
 Dept't Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.: _____ District: 4 & 5 Agenda Number: **3.43**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FISCAL PROCEDURES APPROVED
 ROBERT E. BYRD, AUDITOR-CONTROLLER
 BY 
 SUSANA GARCIA-BOCANEGRA
 3/24/10
 DATE
 Departmental Concurrence
 FORM APPROVED COUNTY COUNSEL
 BY 
 CYNTHIA M. GUNZEL
 3/23/10

BACKGROUND:

The Department of Mental Health formerly operated the Mental Health Rehabilitation Center in Indio also known as the Oasis Treatment Center for psychiatric patients, which had a capacity of approximately 35 beds. Unfortunately, due to budget constraints, the Rehabilitation Center was closed in April of 2008. The Mental Health consumers who previously occupied the facility were transferred to other facilities in outlying areas and adjacent counties in order to continue to receive care. Subsequently, the demand for overall mental health services in locked facilities in the county continues to increase, and it is projected that the current facilities owned and operated by various locked mental health facility Operators will be insufficient to meet demand. The Department currently provides services to approximately 40,000 unique individuals per year and this number continues to increase. Therefore, the Director of the Department of Mental Health has followed through on a previous verbal directive given by the Board of Supervisors to continue such mental health services by engaging the Economic Development Agency to plan and coordinate the development of two locked facilities located in Indio and Moreno Valley.

The Economic Development Agency issued a Request for Proposal (RFP) in November of 2008 for the development of Skilled Nursing Facilities in Indio and Moreno Valley. The RFP process closed on January 15, 2009, and responses were received. Optiflex Properties and Development, LLC, of Montebello, California was selected and awarded the two projects. The developer is planning a 204 bed Skilled Nursing Facility in the city of Indio on 3.82 acres just west of the John F. Kennedy Hospital and a 308 bed Skilled Nursing Facility on approximately 4 acres just east of Nason Street east of the Riverside County Regional Medical Center in Moreno Valley. These facilities are privately owned and operated, there is no lease agreement between the County and Developer, and the County does not own the realty or the improvements. In exchange for the Developer's obligations to plan, construct, and operate these Skilled Nursing Facilities the County will refer psychiatric patients to the Developer's Operator for Special Treatment Program (STP) services to these Serious and Persistent Mental Illness (SPMI) consumers. In return, the Developer will be compensated from State/Federal Medi-Cal funds based on the per diem rate set forth by the State and Federal government for Special Treatment Program services. The Skilled Nursing Facilities will be comprised of approximately 49% psychiatric patients and 51% medical nursing home patients.

Currently, the Riverside County Department of Mental Health is paying the state mandated per diem rate of \$165 per patient/day to provide STP services. The Skilled Nursing Facilities Agreement reduces this obligation to \$25 per patient/day resulting in significant savings to the County. The Developer will be compensated by State/Federal Medi-Cal based upon established Medi-Cal rates.

Current Annual Cost to Provide Psychiatric Services: (150 patients)	\$9,033,750
Costs per New Skilled Nursing Agreements: (150 patients)	\$1,368,750
Annual Savings to County: (and each year thereafter)	(\$7,665,000)

(Continued)

BACKGROUND:

Summary of Skilled Nursing Facility Agreements and Facilities Features:

INDIO

Agreement:

Term: Ten (10) Years, commencing upon certification of occupancy

Options: Two, ten (10) year options to renew

Facility/Beds: Developer to plan, construct and deliver a Skilled Nursing Facility consisting of 204 beds including 49% psychiatric and 51% medical beds

County's Obligation: County to pay \$25 per patient/day per psychiatric patient

County's Guarantee: County to guarantee referral of psychiatric patients to occupy 50 beds.

Completion Date: First quarter 2011

Building Features:

Location: 81-550 JFK Court, Indio
Assessors Parcel Number 616-160-039, on cul-de-sac

Patient Beds: 204 beds total, consisting of 49% psychiatric and 51% medical patients

Square Footage: 92,054 square feet

Parking: 80 spaces required, 104 spaces to be provided

Construction: Type VA, 2 level building

Leed Rating: Some Leed Components

(Continued)

BACKGROUND:

Summary of Skilled Nursing Facility Agreements and Facilities Features:

MORENO VALLEY

Agreement:

Term: Ten (10) Years, commencing upon certification of occupancy

Options: Two, ten (10) year options to renew

Facility/Beds: Developer to plan, construct and deliver a Skilled Nursing Facility consisting of 308 beds including 49% psychiatric and 51% medical beds

County's Obligation: County to pay \$25 per patient/day per psychiatric patient

County's Guarantee: County to guarantee referral of psychiatric patients to occupy 100 beds

Completion Date: End of second quarter or beginning of third quarter 2011

Building Features:

Location: East of Nason Street, North of Cactus Avenue, East of RCRMC
Assessors Parcel Numbers 486-290-001 and 486-290-002

Patient Beds: 308 beds total, consisting of 49% psychiatric and 51% medical patients

Square Footage: 128,749 square feet

Parking: 100 spaces

Construction: Type VA - 2 level building

Leed Rating: Some Leed Components

This Form 11 has been reviewed and approved by County Counsel as to legal form.

1 **SKILLED NURSING FACILITY AGREEMENT - MORENO VALLEY**

2
3 This Skilled Nursing Facility Agreement ("Agreement"), entered into on
4 _____, by and between the County of Riverside, on behalf of the Department of
5 Mental Health, a political subdivision of the State of California ("County"), and Optiflex
6 Properties and Development, LLC, a Delaware Limited Liability Company, ("Optiflex"). County
7 and Optiflex are hereinafter collectively referred to as the "Parties" or individually as a "Party."

8 **RECITALS**

9 A. The County of Riverside desires to provide referrals of psychiatric patients for
10 the occupancy of Special Treatment Programs ("STP") in Skilled Nursing Facilities ("SNF"),
11 one of which is located on real property known as Assessor's Parcel Numbers 486-290-001
12 and 486-290-002 in the City of Moreno Valley, County of Riverside.

13 B. The County of Riverside desires to contract with a Skilled Nursing Facility
14 Developer/Operator that would provide facilities which are safe and free from hazards, and in
15 full compliance with all applicable laws.

16 C. Optiflex Properties and Development, LLC, a Delaware Limited Liability Company
17 has formed a joint venture with a property owner to develop a Skilled Nursing Facility east of
18 Nason Street north of Cactus Avenue in the City of Moreno Valley.

19 D. The Skilled Nursing Facility will provide facilities for three hundred eight (308)
20 patients. Up to forty nine (49) percent of the beds in the SNF or a maximum of one-hundred
21 fifty (150) beds will be located in the STP ("STP Psychiatric Beds").

22 E. Optiflex Properties and Development, LLC, will contract with a company for the
23 operations of the Skilled Nursing Facility.

24 F. Parties enter into this agreement for a great public benefit.
25

1 hold rates then in effect at the time. County will also reimburse Optiflex at the Medi-Cal
2 standard rate for any of the one hundred (100) patients who are indigent. The County will
3 submit to the Operator a referral letter for all indigent (non-funded) patients that are referred
4 for admittance, as shown in Exhibit "A", attached hereto and by this reference incorporated
5 herein. In addition, County will pay twenty-five dollars (\$25) per day for every psychiatric
6 patient placed in an STP bed for Medicare/Medi-Cal and indigent patients. This fee will not be
7 due on vacant or bed holds. The County's sole responsibilities are to provide referrals of
8 psychiatric patients and reimburse Optiflex for any of the one hundred (100) vacant beds or
9 indigent patients in those beds. If County does not need all one hundred (100) beds, County
10 has the right to make these excess beds available to other counties to meet its guarantee
11 obligations. Optiflex will be responsible for finding other Counties/Entities or sources to fill the
12 remaining fifty (50) STP Psychiatric Beds ("101-150 STPPB"). Optiflex will be solely
13 responsible for all of the remaining SNF beds that are not a part of the STP Psychiatric Beds.

14 **4. Obligations by Optiflex.**

15 a. The responsibility of constructing, operating, including but not limited to
16 the operations carried out by the services of an Operator as described below, and maintaining
17 of the SNF is and will be the sole responsibility of Optiflex. The SNF shall provide skilled
18 nursing services in this facility provides psychiatric patients]

19 b. Optiflex shall contract separately with a Skilled Nursing Facility Operator
20 ("Operator") for the Special Treatment Program at the SNF ("STP/SNF") to provide skilled
21 nursing services ("Services") for patients in the STP/SNF during the term and any extensions
22 of this Agreement. Optiflex shall warrant that the Services of Operator shall be the highest
23 degree of nursing care in accordance with nursing best business practices in the nursing
24 industry. Optiflex shall ensure that Operator is in full compliance with all Medi-Cal regulations
25 and requirements, including, but not limited to, regulations provided within www.medi-

1 cal.ca.gov, California Code of Regulations, Title 22, Division 3, Sections 51516.1, 51341.1,
2 and 51490.1, and California Alcohol and Drug Program Letters 98-18, 98-30, 98-42, 98-49, 98-
3 50, 98-58, 99-17, and 99-27. Optiflex shall ensure that the Operator provides the Services
4 and operates in compliance with all applicable law including but not limited to laws, rules,
5 regulations and codes of the State of California including the California Department of Public
6 Health, and all Federal and local laws, rules, ordinances and codes.

7 c. Optiflex shall contract with an Operator that represents and maintains
8 that it is skilled in the professional calling necessary to perform all services, duties and
9 obligations required by this Agreement to fully and adequately provide the services for the
10 SNF. Optiflex shall require that Operator perform the services and duties in conformance to
11 and consistent with the standards generally recognized as being employed by professionals in
12 the same discipline in the State of California. Optiflex shall ensure, represent and warrant to
13 the County that the Operator has all licenses, permits, qualifications and approvals of
14 whatever nature are legally required to practice its profession and/or provide the services and
15 that Operator shall keep all such licenses and approvals in effect during the term of this
16 Agreement.

17 d. Optiflex shall be responsible for billing, or obligate its contracted
18 Operator to bill, Medi-Cal retroactive to the date of admission for psychiatric patients who have
19 been referred by the Riverside County Department of Mental admitted with a Medi-cal pending
20 status. In the event that County has submitted payment for an indigent patient who later
21 qualified for Medi-cal, reimbursement is due to the County within 30 days of Optiflex or its
22 Operator receiving payment from Medi-Cal.

23 e. Optiflex shall impose indemnification and insurance obligations in favor
24 of the County exactly as provided in Paragraphs 10 and 11 on Operator.

25

1 f. Optiflex shall be responsible for maintaining the grounds of the SNF,
2 including among other things, outside and inside fixtures, walls, landscaping, and general
3 housekeeping.

4 **5. County's Right of First Refusal for Vacant Beds.** At any time during the
5 term of this Agreement any of the 150 STPPB become vacant, County shall have the first right
6 of refusal to refer patients for occupancy of those beds. Operator shall send written notice of
7 the number of vacant beds available to County. County shall provide written notice within five
8 (5) working days of receipt of the notice to indicate whether County will refer patients to fill the
9 vacancies. If vacancies for any of the 101-150 STPPB are filled by County referrals, County is
10 not responsible for reimbursing Optiflex whether the patient is indigent or not. At no time will
11 the County's obligations for the 1-100 STPPB attach to the 101-150 STPPB. In the event
12 County does not respond within the five day period, the first right of refusal shall lapse and
13 Operator may fill said beds through other means.

14 **6. Termination by County.** In addition, the County has the right to terminate this
15 Agreement in any of the following:

- 16 a. In the event Optiflex does not complete the SNF.
- 17 b. Without cause upon 30 days written notice at the discretion of the
18 County of Riverside, Director of Mental Health, or designee, served upon Optiflex stating the
19 extent and effective date of termination.
- 20 c. In the event that Optiflex and/or its Operator has been accused and/or
21 found to be in violation of any County, State, or Federal laws or regulations.
- 22 d. Notwithstanding any advanced notice provisions herein, if in the opinion
23 of the County of Riverside, Director of Mental Health, or designee, Optiflex and/or its Operator
24 has failed or is failing to provide for the health and safety of the patients served under this
25 Agreement, the County may terminate this Agreement immediately by written notice.

1 e. In the event that Optiflex fails to perform any of the terms, conditions, or
2 obligations under this Agreement.

3 f. Anytime during the term of this Agreement or extensions, County
4 reserves the right to direct Optiflex to terminate the contract between Optiflex and the
5 Operator, for any reason, with sixty (60) days advanced written notice. In so directed, Optiflex
6 shall terminate the contract with the Operator accordingly. In the event of termination of this
7 Agreement between County and Optiflex as set forth herein, the Agreement with Operator
8 shall automatically terminate on the same date and time. Any agreements between Optiflex
9 and Operator shall have this language incorporated into their contract.

10 **7. Compliance.** Optiflex warrants that the SNF and improvements on and in the
11 SNF shall comply with all applicable law, including State and Federal Laws, covenants or
12 restrictions of record, building codes, regulations and ordinances, including all State of
13 California Department of Public Health and OSHPOD laws, regulations, in effect on the
14 Commencement Date and during the term of this Agreement. If the SNF does not comply
15 with this warranty, Optiflex shall promptly after receipt of written notice from County or any
16 governmental agency having jurisdiction over such matters setting forth the nature and extent
17 of such non-compliance; rectify the same at Optiflex's sole cost and expense.

18 **8. Exculpation.** To the fullest extent permitted by law, Optiflex, singularly and
19 collectively to Optiflex and the partners, venturers, trustees, and ancillary trustees of Optiflex
20 and the Operator with whom Optiflex contract with to operate the SNF, its respective officers,
21 directors, shareholders, members, parents, subsidiaries, and any other affiliated entities,
22 personal representatives, executors, heirs, assigns, licensees, invites, beneficiaries, agents,
23 servants, employees, and independent contractors of these persons or entities ("Optiflex
24 Parties"), on its behalf and on behalf of County, its Agencies, Districts, Special Districts and
25 Departments, their respective Directors, Officers, Board of Supervisors, elected and appointed

1 officials, employees, agents and representatives ("County Parties"), waives all claims (in law,
2 equity, or otherwise) against County Parties, arising out of, knowingly and voluntarily assumes
3 the risk of, and agrees that County Parties shall not be liable to Optiflex Parties for any of the
4 following: 1) injury to or death of any person; or 2) loss of, injury or damage to, or destruction
5 of any tangible or intangible property, including the resulting loss of use, economic losses,
6 and consequential or resulting damage of any kind from any cause. County Parties shall not
7 be liable under this section regardless of whether the liability results from any active or passive
8 act, error, or negligence of any of County Parties; or is based on claims in which liability
9 without fault or strict liability is imposed or sought to be imposed on any of County Parties.

10 a. Survival of Exculpation. The paragraphs of this Paragraph 8 shall
11 survive the expiration or earlier termination of this Agreement until all claims within the scope
12 of this Paragraph 8 are fully, finally, and absolutely barred by the applicable statutes of
13 limitations.

14 b. Optiflex's Acknowledgment of Fairness. Optiflex acknowledges that
15 this Paragraph 8 was negotiated with County, that the consideration for it is fair and adequate,
16 and that Optiflex had a fair opportunity to negotiate, accept, reject, modify, or alter it.

17 **9. Waiver of Civil Code Section 1542.** With respect to the exculpation provided
18 in Paragraph 8, Optiflex waives the benefits of Civil Code Section 1542, which provides:

19 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
21 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST
22 HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

23 _____Optiflex Initials _____County Initials

24 **10. Indemnification.** Optiflex shall indemnify and hold harmless the County of
25 Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors,

1 officers, Board of Supervisors, elected and appointed officials, employees, agents and
2 representatives from any liability, claim, damage or action whatsoever, based or asserted
3 upon any negligent act or omission of Optiflex, its officers, employees, subcontractors, agents
4 or representatives arising out of or in any way relating to this Agreement, including but not
5 limited to property damage, bodily injury, or death. Optiflex shall defend, at its sole cost and
6 expense, including but not limited to attorney fees, cost of investigation, defense and
7 settlements or awards, the County of Riverside, its Agencies, Districts, Special Districts and
8 Departments, their respective directors, officers, Board of Supervisors, elected and appointed
9 officials, employees, agents and representatives in any such action or claim. With respect to
10 any action or claim subject to indemnification herein by Optiflex, Optiflex shall, at its sole cost,
11 have the right to use counsel of its own choice and shall have the right to adjust, settle, or
12 compromise any such action or claim without the prior consent of County; provided, however,
13 that any such adjustment, settlement or compromise in no manner whatsoever limits or
14 circumscribes Optiflex's indemnification of County. Optiflex's obligations hereunder shall be
15 satisfied when Optiflex has provided to County the appropriate form of dismissal (or similar
16 document) relieving the County from any liability for the action or claim involved. The specified
17 insurance limits required in this Agreement shall in no way limit or circumscribe Optiflex's
18 obligations to indemnify and hold harmless the County.

19 a. In the event there is conflict between this clause and California Civil
20 Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such
21 interpretation shall not relieve the Optiflex from indemnifying the County to the fullest extent
22 allowed by law.

23 b. Optiflex's indemnification obligations shall also apply to any action or
24 claim regarding actual or alleged intellectual property infringement related to any material or
25 product provided to County pursuant to this Agreement. In the event of any such action or

1 claim, Optiflex shall provide immediate notice to County of the action or claim. Optiflex may
2 defend or settle the action or claim as Optiflex deems appropriate; however, Optiflex shall be
3 required to obtain for County the right to continue to use the material or product (or a similar
4 non-infringing material or product with the same function) on terms identical to those stated in
5 this Agreement.

6 c. All applicable indemnification provisions in this Agreement shall remain
7 in effect following the expiration or termination of this Agreement.

8 **11. Insurance.** Without limiting or diminishing the Optiflex's obligation to
9 indemnify or hold the County harmless, Optiflex shall procure and maintain or cause to be
10 procured and maintained, at no cost to the County, the following insurance coverage during
11 the term of this Agreement:

12 a. **Workers' Compensation.** If the Optiflex has employees as defined by
13 the State of California, the Optiflex shall maintain statutory Workers' Compensation Insurance
14 (Coverage A) as prescribed by the laws of the State of California. Policy shall include
15 Employers' Liability (Coverage B) including Occupational Disease with limits not less than
16 \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in
17 favor of the County of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate
18 Employer Endorsement.

19 b. **Commercial General Liability.** Commercial General Liability insurance
20 coverage, including but not limited to, premises liability, contractual liability, products and
21 completed operations liability, personal and advertising injury covering claims which may arise
22 from or out of Optiflex's performance of its obligations hereunder. Policy shall name all
23 Agencies, Districts, Special Districts, and Departments of the County of Riverside, their
24 respective directors, officers, Board of Supervisors, employees, elected or appointed officials,
25 agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than

1 \$1,000,000 per occurrence combined single limit. If such insurance contains a general
2 aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the
3 occurrence limit.

4 c. Vehicle Liability. If Optiflex's vehicles or mobile equipment are used in
5 the performance of the obligations under this Agreement, then Optiflex shall maintain liability
6 insurance for all owned, non-owned or hired vehicles so used in an amount not less than
7 \$1,000,000 per occurrence combined single limit. If such insurance contains a general
8 aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the
9 occurrence limit. Policy shall name all Agencies, Districts, Special Districts, and Departments
10 of the County of Riverside, their respective directors, officers, Board of Supervisors,
11 employees, elected or appointed officials, agents or representatives as Additional Insureds.

12 d. Professional Liability Insurance. Professional Liability Insurance
13 providing coverage for the Optiflex's performance of work included within this Agreement, with
14 a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
15 If Optiflex's Professional Liability Insurance is written on a claims made basis rather than an
16 occurrence basis, such insurance shall continue through the term of this Agreement and
17 Optiflex shall purchase at his sole expense either 1) an Extended Reporting Endorsement
18 (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive
19 date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through
20 Certificates of Insurance that Optiflex has Maintained continuous coverage with the same or
21 original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of five
22 (5) years beyond the termination of this Agreement.

23 e. General Insurance Provisions - All lines

24 i) Any insurance carrier providing insurance coverage hereunder
25 shall be admitted to the State of California and have an A M BEST rating of not less than A:

1 VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the
2 County's Risk Manager waives a requirement for a particular insurer such waiver is only valid
3 for that specific insurer and only for one policy term.

4 ii) The Optiflex's insurance carrier(s) must declare its insurance
5 deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed
6 \$500,000 per occurrence such deductibles and/or retentions shall have the prior written
7 consent of the County Risk Manager before the commencement of operations under this
8 Agreement. Upon notification of deductibles or self insured retention's unacceptable to the
9 County, and at the election of the Country's Risk Manager, Optiflex'S carriers shall either; 1)
10 reduce or eliminate such deductibles or self-insured retention's as respects this Agreement
11 with the County, or 2) procure a bond which guarantees payment of losses and related
12 investigations, claims administration, and defense costs and expenses.

13 iii) Optiflex shall cause Optiflex's insurance carrier(s) to furnish the
14 County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and
15 certified original copies of Endorsements effecting coverage as required herein, or 2) if
16 requested to do so orally or in writing by the County Risk Manager, provide original Certified
17 copies of policies including all Endorsements and all attachments thereto, showing such
18 insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall
19 contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be
20 given to the County of Riverside prior to any material modification, cancellation, expiration or
21 reduction in coverage of such insurance. In the event of a material modification, cancellation,
22 expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the
23 County of Riverside receives, prior to such effective date, another properly executed original
24 Certificate of Insurance and original copies of endorsements or certified original policies,
25 including all endorsements and attachments thereto evidencing coverage's set forth herein

1 and the insurance required herein is in full force and effect. *Optiflex shall not commence*
2 *operations until the County has been furnished original Certificate (s) of Insurance and*
3 *certified original copies of endorsements or policies of insurance including all endorsements*
4 *and any and all other attachments as required in this Section. An individual authorized by the*
5 *insurance carrier to do so on its behalf shall sign the original endorsements for each policy and*
6 *the Certificate of Insurance.*

7 iv) It is understood and agreed to by the parties hereto and the
8 insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and
9 shall be construed as primary insurance, and the County's insurance and/or deductibles
10 and/or self-insured retention's or self-insured programs shall not be construed as contributory.

11 v) The County's Reserved Rights--Insurance. If, during the term of
12 this Agreement or any extension thereof, there is a material change in the scope of services;
13 or, there is a material change in the equipment to be used in the performance of the scope of
14 work (such as the use of aircraft or watercraft) the County reserves the right to adjust the types
15 of insurance required under this Agreement and the monetary limits of liability for the
16 insurance coverage's currently required herein, if, in the County Risk Manager's reasonable
17 judgment, the amount or type of insurance carried by the Optiflex has become inadequate.

18 vi) Optiflex shall pass down the insurance obligations contained
19 herein to all tiers that Optiflex contracts with or working under this Agreement.

20 vii) The insurance requirements contained in this Agreement may be
21 met with a program(s) of self-insurance acceptable to the County.

22 **12. Americans with Disabilities.** Optiflex warrants and represents the SNF
23 shall be accessible to and usable by individuals with disabilities in compliance with Title III of
24 the Americans with Disabilities Act of 1990 and California Title 24, as amended from time to
25

1 time and regulations issued pursuant thereto and in effect from time to time. Any cost incurred
2 to cause the SNF to comply with said Act shall be borne by Optiflex.

3 **13. Non-Discrimination.** Optiflex shall not be discriminate in the provision of
4 services, allocation of benefits, accommodation in facilities, or employment of personnel on the
5 basis of ethnic group identification, race, religious creed, color, national origin, ancestry,
6 physical handicap, medical condition, marital status or sex in the performance of this
7 Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with
8 the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq),
9 the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990
10 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

11 **14. Confidentiality.** The Optiflex shall not use for personal gain or make other
12 improper use of privileged or confidential information which is acquired in connection with this
13 Agreement. The term "privileged or confidential information" includes but is not limited to:
14 unpublished or sensitive technological or scientific information; medical, personnel, or security
15 records; County information or data which is not subject to public disclosure.

16 a. The Optiflex shall protect from unauthorized disclosure names and other
17 identifying information concerning persons receiving services pursuant to this Agreement,
18 except for general statistical information not identifying any person. The Optiflex shall not use
19 such information for any purpose other than carrying out the Optiflex's obligations under this
20 Agreement. The Optiflex shall promptly transmit to the County all third party requests for
21 disclosure of such information. The Optiflex shall not disclose, except as otherwise specifically
22 permitted by this Agreement or authorized in advance in writing by the County, any such
23 information to anyone other than the County. For purposes of this paragraph, identity shall
24 include, but not be limited to, name, identifying number, symbol, or other identifying particular
25 assigned to the individual, such as finger or voice print or a photograph.

1 b. The Optiflex is subject to and shall operate in compliance with all
2 relevant requirements contained in the Health Insurance Portability and Accountability Act of
3 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the related laws and
4 regulations promulgated subsequent thereto.

5 **15. Sick Building Syndrome.** Optiflex warrants and represents the SNF shall be
6 constructed, operated and maintained free of certain hazards, including, but not limited to:
7 spores, fungus, molds, bacteria, chemicals or fumes or other causes of any hazardous micro-
8 environments, sometimes known as "Sick Building Syndrome," emanating from or within the
9 SNF that may potentially cause discomfort, bodily injury, sickness or death. Should it be
10 determined that remediation is necessary based on a report by a trained investigator, Optiflex
11 will promptly contract with a qualified and experienced company to safely remove the micro-
12 environments using remediation guidelines recommended or required by the appropriate
13 governmental agency. Any cost incurred to cause the SNF to be free of such hazard shall be
14 borne by Optiflex.

15 **16. Hazardous Substance.** It is the intent of the Parties to construe the term
16 "Hazardous Substances" in its broadest sense. Hazardous Substances shall be defined as
17 any product, substance, or waste whose presence, use, manufacture, disposal, transportation,
18 or release, either by itself or in combination with other materials, is either: (a) potentially
19 injurious to the public health, safety or welfare, the environment or the Premises; (b) regulated
20 or monitored by any governmental authority; or (c) a basis for potential liability of County to
21 any governmental agency or third party under any applicable statute or common law theory.

22 a. Optiflex acknowledges that Optiflex's use or the Operator's use of the
23 premises may from time to time require the presence of Hazardous Substances at the
24 Premises. All such Hazardous Substances located in, at, or on the SNF shall be used, stored,
25 handled, treated, transported, and disposed of in compliance with all applicable laws.

1 b. If any claim is ever made against County relating to Hazardous
2 Substances present at or around the SNF, whether or not such substances are present as of
3 the Commencement Date, or any such Hazardous Substances are hereafter discovered at the
4 SNF, all costs of removal incurred by, all liability imposed upon, or damages suffered by
5 County because of the same shall be borne by Optiflex, and Optiflex hereby indemnifies and
6 agrees to be responsible for and defend and hold County harmless from and against all such
7 costs, losses, liabilities and damages, including, without limitation, all third-party claims
8 (including sums paid in settlement thereof, with or without legal proceedings) for personal
9 injury or property damage and other claims, actions, administrative proceedings, judgments,
10 compensatory and punitive damages, lost profits, penalties, fines, costs, losses, attorneys'
11 fees and expenses (through all levels of proceedings), consultants or experts fees and costs
12 incurred in enforcing this indemnity. The representation, warranty and indemnity of County
13 described in this Paragraph shall survive the termination or expiration of this Agreement.

14 **17. Administration.** The County Department of Mental Health Director (or
15 designee) shall administer this Agreement on behalf of County.

16 **18. Waiver.** Any waiver by County of any breach of any one or more of the terms
17 of this Agreement shall not be construed to be a waiver of any subsequent or other breach of
18 the same or of any other term thereof. Failure on the part of the County to require exact, full
19 and complete compliance with any terms of this Agreement shall not be construed as in any
20 manner changing the terms hereof, or estopping County from enforcement hereof.

21 **19. Binding on Successors.** The terms and conditions herein contained shall
22 apply to and bind the heirs, successors in interest, executors, administrators, representatives
23 and assigns of all the Parties hereto.

1 **20. Severability.** If any provision in this Agreement is held by a court of
2 competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will
3 nevertheless continue in full force without being impaired or invalidated in any way.

4 **21. Venue.** Any action at law or in equity brought by either of the Parties hereto for
5 the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a
6 court of competent jurisdiction in the County of Riverside, State of California, and the Parties
7 hereto waive all provisions of law providing for a change of venue in such proceedings to any
8 other county.

9 **22. Agent for Service of Process.** It is expressly understood and agreed that in
10 the event Optiflex is not a resident of the State of California or it is an association or
11 partnership without a member or partner resident of the State of California, or it is a foreign
12 corporation, then in any such event, Optiflex shall file with Assistant County Executive Officer
13 of the Economic Development Agency, upon its execution hereof, a designation of a natural
14 person residing in the State of California, giving his or her name, residence and business
15 addresses, as its agent for the purpose of service of process in any court action arising out of
16 or based upon this Agreement, and the delivery to such agent of a copy of any process in any
17 such action shall constitute valid service upon Optiflex. It is further expressly understood and
18 agreed that if for any reason service of such process upon such agent is not feasible, then in
19 such event, Optiflex may be personally served with such process out of this county by any
20 means permitted by law and that such service shall constitute valid service upon Optiflex. It is
21 further expressly understood and agreed that Optiflex is amenable to the process so served,
22 submits to the jurisdiction of the court so obtained and waives any and all objections and
23 protests thereto.

24 **23. No Joint Venture or Landlord/Tenant Relationship.** This Agreement does
25 not create a joint venture by and between the County and Optiflex nor does it create a

1 landlord/tenant relationship. The Parties acknowledge that the County shall not be deemed a
2 tenant of the SNF.

3 **24. Interpretation.** The Parties hereto have negotiated this Agreement at arm's
4 length and have been advised by their respective attorneys, or if not represented by an
5 attorney, represent that they had an opportunity to be so represented and no provision
6 contained herein shall be construed against County solely because it prepared this Agreement
7 in its executed form.

8 **25. Time of Essence.** Time is of the essence with respect to the performance of
9 all obligations to be performed or observed by the Parties under this Agreement.

10 **26. Consent.** Whenever Optiflex's or County's consent is required under any
11 provision of this Agreement, it shall not be unreasonably withheld, conditioned or delayed.

12 **27. Assignment.** Neither this Agreement or any part thereof nor performance
13 under the Agreement shall be assigned, delegated, or transferred by Optiflex without the prior
14 written consent of County.

15 **28. Notice.** Except as expressly provided elsewhere in this Agreement, all notices
16 and other communication required under this Agreement shall be in writing and delivered by:
17 (a) Certified Mail, postage prepaid, return receipt requested, in the United States mail; or (b)
18 via an overnight courier that provides written evidence of delivery and addressed to the Party
19 hereto to whom the same is directed at the addresses set forth below. Either Party hereto
20 may from time to time change its mailing address by written notice to the other Party.

21 **County's Notification Address:**
22 County of Riverside
23 Economic Development Agency
24 3403 10th Street, Suite 500
25 Riverside, California 92501

Optiflex Notification Address:
Optiflex Properties and Development, LLC
200 East Beverly Blvd., Suite 200
Montebello, California 90640

24 Copy to:

25 County of Riverside

1 Department of Mental Health
2 Long Term Care/Crisis Hospital Region
3 PO Box 7109
4 Riverside, California 92513
5 Attn: Regional Program Manager

6 **29. Authority.** If Optiflex is a corporation, general or limited partnership or
7 individual owner, each individual executing this Agreement on behalf of said corporation,
8 partnership, or individual represents and warrants that he or she is duly authorized to execute
9 and deliver this Agreement on behalf of said corporation, in accordance with bylaws of said
10 corporation, or as a partner or individual is authorized to execute this Agreement and that this
11 Agreement is binding upon said corporation and/or partnership or individual.

12 **30. Entire Agreement.** This Agreement is intended by the Parties hereto as a final
13 expression of their understanding with respect to the subject matter hereof and as a complete
14 and exclusive statement of the terms and conditions thereof and supersedes any and all prior
15 and contemporaneous agreements and understandings, oral or written, in connection
16 therewith. Any modifications to the terms of this Agreement must be in writing and signed by
17 the parties herein.

18 **31. Approval of Supervisors.** Anything to the contrary notwithstanding, this
19 Agreement shall not be binding or effective until its approval and execution by the Chairman of
20 the Riverside County Board of Supervisors.

21 ///

22 ///

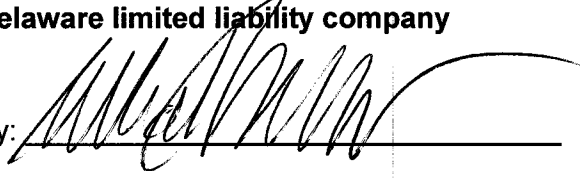
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IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

Dated: _____

Optiflex Properties and Development, LLC, a Delaware limited liability company

By:  _____

By: _____

Dated: _____

County of Riverside, a political subdivision of the State of California

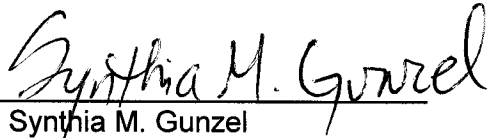
By: _____

Marion Ashley, Chairman
Board of Supervisors

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:
Pamela J. Walls
County Counsel

By:  _____
Synthia M. Gunzel
Deputy County Counsel

SG:jw
01/25/10
Proj no.
12.762

EXHIBIT A

INDIGENT (NON-FUNDED) PATIENT REFERRAL LETTER

Crisis/Hospital In-Patient Support Services
P.O. Box 7109
Riverside, CA 92513

Date

Facility Name
Address
City, State Zip

FAX: 999.999.9999

Dear Program Administrator/Facility Operator:

This letter is a request for your program to accept the placement of, LAST NAME, FIRST NAME. As an indigent (non-funded) patient, this client is being referred to your organization from the Riverside County Department of Mental Health Long Term Care Office. The following additional information is relevant to this patient's placement.

PLACEMENT DATE: mm/dd/yy
DOB: mm/dd/yy
SSN: 999-99-9999

This correspondence requests your organization's/facility's provision of the following specific service and provides authorization for:

****Reimbursement will be at Medi-Cal rate plus a predetermined patch of \$25 per/day.****

Pursuant to the terms and conditions of the Skilled Nursing Facility Agreement, please provide in a timely manner to the Department of Mental Health Long Term Care Office a monthly summary of all patients referred by the County admitted to the facility. In addition, a summary of itemized charges (Billing Invoice) on no less than a monthly basis shall be submitted to:

COUNTY OF RIVERSIDE
Department of Mental Health
Crisis/Hospital In-Patient Support Services
P.O. Box 7109
Riverside, CA 92513
Attn: Joseph Sebastian

DATE
Page 2

Riverside County Department of Mental Health will reimburse for approved charges allowing you to reimburse your vendors accordingly.

If the client is deemed eligible for Medi-Cal (retroactive to the date of application), the Facility Operator is responsible for billing Medi-Cal retroactive to the date of admission for psychiatric patients who have been referred by the Riverside County Department of Mental admitted with a Medi-cal pending status. We appreciate your cooperation and efforts for retroactive billing to Medi-Cal for this client and within 30 days of receiving payment from Medi-Cal please submit reimbursement to the County. Any issues arising in this specific arrangement by either party needs to be effected by a thirty (30) day notice by one party to the other.

Thank you for your services and placement provided for this client.

Respectfully,

Joe Sebastian
Crisis/Hospital Regional Manager

JS/pd