

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

703



FROM: Economic Development Agency / Facilities Management

SUBMITTAL DATE:
August 4, 2011

SUBJECT: First Amendment to Lease, CVRM NMTC Project Holdings, a California nonprofit corporation, County of Riverside, California

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached First Amendment to Lease and authorize the Chairman of the Board to execute the same on behalf of the County;
2. Approve the attached Recognition and Consent to Leasehold Deed of Trust, Sublease Agreement, and Consent to Sublease, and authorize the Chairman of the Board to execute the same on behalf of the County; and

(Continued)

Robert Field

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
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA:

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

C.E.O. RECOMMENDATION: APPROVE

BY: *Jennifer L. Sargent*
Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: ANITA C. WILLIS
DATE: 8-11
Departmental Concurrence

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

Prev. Agn. Ref.:

District: 4

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.40
Form 11 (Rev 06/2003)

RECOMMENDED MOTION: (Continued)

3. Authorize the Assistant CEO/EDA or his designee to certify acceptance of any documents successively in favor of the County, to execute any other documents, and to administer all actions necessary to complete this transaction.

BACKGROUND:

The Board of Supervisors approved a ground lease with the Coachella Valley Rescue Mission (Rescue Mission) on January 25, 2011. The purpose of the ground lease is to allow the Coachella Valley Rescue Mission to construct a new rescue mission on the 3.15 +/- site located at 47-470 Van Buren Blvd., in the City of Indio, which will provide for up to 150 beds and consist of approximately 43,000 square feet.

The ground lease provides for approval of an assignment by delegated authority of the County in the event the Rescue Mission is required to form a separate entity to procure new market tax credit financing on the property for the planning and construction of the project. This Assignment and Assumption Agreement has been executed by the Assistant CEO/EDA and the Rescue Mission. The Agreement assigns the ground lease, and all obligations thereof, from the Coachella Valley Rescue Mission to the CVRM NMTC Project Holdings, a California non-profit corporation, as required to procure the new market tax credit financing.

In addition, the lender requires that modifications to the ground lease be implemented by amendment to the lease, and that certain other documents be executed in connection with the financing. These documents include a Recognition and Consent to Leasehold Deed of Trust, a Sublease Agreement, and Consent to Sublease Agreement.

The modifications to the ground lease based on the First Amendment to Ground Lease are as follows:

- | | |
|--------------------|---|
| Ground Lease Term: | Modifies term from 25 years plus four 10 year options, to 55 years, plus one ten year option |
| Rent: | Rent remains at \$1.00 per year during the term, provided the property continues to be used as a Rescue Mission. In the event the use changes to a commercial use the rent for the property shall be adjusted to a market rent. |

FINANCIAL DATA:

This is a revenue ground lease amendment and there are no costs to the County.

Attachments:

- First Amendment to Lease
- Recognition and Consent to Leasehold Deed of Trust
- Sublease Agreement
- Consent to Sublease Agreement

1 “The Property shall not be used for any other purpose without first obtaining the
2 written consent of County, which consent shall be at the absolute discretion of County
3 as determined by its Board of Supervisors. Failure to comply with the terms of this
4 section shall be considered a material default of the lease. Failure to cure such default
5 may result in early termination as set forth in Section 14 herein and/or modification of
6 the rent stated in Section 4 herein, as set forth in Paragraph 4(b) of this Lease.

7 Notwithstanding the foregoing, in the event that any Encumbrancer transfers this
8 Lease as contemplated in Section 23(a)(i) and/or (ii), then such Encumbrancer or other
9 transferee who succeeds Lessee’s interest under this Lease shall have the right, in
10 their sole and absolute discretion and without the prior written consent of County, to
11 utilize the Property, the Facilities, and any other improvements thereon or therein for
12 general commercial purposes consistent with applicable zoning and municipal
13 requirements, including without limitation flexible industrial/retail uses (“**Expanded**
14 **Uses**”). The Expanded Uses shall not constitute an event of default under the Lease,
15 material or otherwise, and such Expanded Uses shall specifically and expressly modify
16 the permitted uses and purposes set forth in Section 2(a) of the Lease. In the event
17 that Encumbrancer or other transferee who succeeds Lessee’s interest under this
18 Lease exercises the right to undertake the Expanded Uses as provided for herein, then
19 Section 4 of the Lease shall be specifically and expressly modified to provide for a fair
20 market rental rate as determined in accordance with the procedures set forth in the
21 Section 4(b).”

22 3. Amendment to Section 3(a). Lessor and Lessee hereby amend
23 Section 3(a) of the Lease in its entirety as follows:

24 “The initial term of the Lease shall be for a period of fifty-five (55) years,
25 commencing on the Effective Date, or the date the Property is conveyed by Lessee to
26 County, whichever is later.”

27 4. Amendment of Section 3(c). Lessor and Lessee hereby amend
28 Section 3(c) of the Lease in its entirety as follows:

1 "County hereby grants Lessee one (1) option to renew this lease and extend the
2 term hereof for a period of ten (10) years. Lessee shall notify the County not less than
3 ninety days prior to the expiration of the initial term of its intent to accept the renewal
4 and extend the term for an additional 10 year period. Rent during the extended 10 year
5 term shall be the sum of one dollar (\$1.00) per year; provided that in the event that
6 Encumbrancer or any other transferee who succeeds Lessee's interest under this
7 Lease shall have exercised its right to undertake the Expanded Uses, then rent for any
8 extension period shall be determined in accordance with the procedures set forth in the
9 first paragraph of Section 2(b) of this Lease, and shall thereafter be governed by the
10 provisions of Section 4 of the Lease as amended pursuant to the second paragraph of
11 Section 2(b)."

12 5. Amendment to Section 4. Lessor and Lessee hereby delete Section 4 of
13 the Lease in its entirety and substitute the following language:

14 "(a) In consideration for the services to be provided to County residents by
15 the Coachella Valley Rescue Mission, Lessee shall pay the sum of \$1.00 per year to
16 County as rent for the Leased Premises, payable, in advance, on the first day of each
17 lease year during the term of this Lease. The anniversary dates shall be deemed to fall
18 on the first day of the first full month of each lease year following commencement of
19 the Lease Term. In the event Lessee holds over after expiration of the Lease Term
20 above, the monthly rent shall automatically increase to \$.50 per square foot payable
21 monthly, except if Lessee utilizes the premises for any of the Expanded Use(s) as
22 defined in Section 2 (b).

23 (b) In the event Lessee or any Encumbrancer or other transferee who
24 succeeds to Lessee's interest under this Lease utilizes or exercises the right to
25 undertake any of the Expanded Uses as defined in this Section 2(b) during the Term
26 and as defined in Section 3(a) of the Ground Lease and as modified by this First
27 Amendment to Ground Lease, the annual rent as set forth in Section 4 of the Ground
28 Lease shall be adjusted to the Fair Market Rent and payable monthly to Lessor on the

1 first day of each and every month during the lease term. The adjustment to Fair Market
2 Rent shall be effective on the date the Lessee commenced utilization of the premises
3 as an Expanded Use(s), and the monthly rent shall be prorated for that month
4 accordingly. Thereafter, the monthly rent payable to Lessor during the Term and
5 Option shall be increased two (2%) percent annually.

6 In the event Lessee or any Encumbrancer utilizes the property for any of the
7 Expanded Uses as defined in this Section 2 (b) during the Option Term and as defined
8 in Section 3(c) of the Ground Lease and as amended in this First Amendment to
9 Ground Lease, the annual rent as set forth in Section 4 of the Ground Lease shall be
10 adjusted to the Fair Market Rent and payable monthly to Lessor on the first day of each
11 and every month during the Option Term. The adjustment to Fair Market Rent shall be
12 effective on the date the Lessee commenced utilization of the premises as an
13 Expanded Use(s), and the monthly rent shall be prorated for that month accordingly.
14 Thereafter the monthly rent payable to Lessor during the Option Term shall be
15 increased two (2%) annually.

16 The burden of notification to Lessor in writing that the Lessee is utilizing the
17 premises for any of the Expanded Uses shall be on the Lessee. In the event Lessee
18 fails to notify Lessor of Lessee's utilization of an Expanded Use or Uses, Lessor shall
19 notify Lessee in writing that Lessee is utilizing the premises for an Expanded Use or
20 Uses (herein defined as the "Notice.").

21 Upon receiving notification from Lessee or upon Lessor's Notice to Lessee,
22 Lessor shall send in writing to Lessee Lessor's opinion of the Fair Market Rent and
23 monthly rent to be paid by Lessee due to Lessee's utilization of the Expanded Use or
24 Uses.

25 Fair Market Rent shall be defined as the monthly rental rate in lease
26 transactions with comparable space in comparable buildings in the city of Indio leasing
27 market vicinity. In its Notice to Lessee, Lessor shall set forth Lessor's opinion of the
28 Monthly Rent to be payable including Lessor's opinion of the Fair Market Rent. If

1 within thirty (30) days of receipt of Lessor's Notice Lessee does not serve Lessor
2 written notice of Lessee's opinion of the Monthly Rent to be paid such Monthly Rent
3 shall be (without any further objection) the Monthly Rent as set forth in Lessor's Notice.
4 If the Lessee objects thereto, within thirty (30) days of receipt of Lessor's Notice and
5 opinion of rent, Lessee shall give Lessor written notice of Lessee's opinion of the
6 Monthly Rent to be payable, including Lessee's opinion of Fair Market Rent. If Lessor
7 objects to Lessee's opinion of the Fair Market Rent, within thirty (30) days after
8 Lessor's receipt thereof, Lessor shall appoint an appraiser or broker (collectively, an
9 "Appraiser") to determine the Fair Market Rent and serve notice thereof on Lessee
10 ("Notice of Appointment of "Appraiser"). If appraiser(s) are used, any such appraiser
11 shall have at least five (5) years experience in the appraisal of office real estate in the
12 area of the Building and shall be members of professional organizations such as MAI
13 or equivalent. If broker(s) are used, the broker(s) shall have at least five (5) years of
14 experience in the sale and leasing of office, industrial and retail real estate in the area
15 in which the Building is located. If Lessee does not appoint an Appraiser within (30)
16 thirty days, the rent to be paid shall be (without further objection) the Monthly Rent as
17 set forth by Lessor. Lessee may within thirty (30) days of receipt of Lessor's Notice of
18 Appointment of Appraiser appoint its own Appraiser to determine The Fair Market
19 Rent. If Lessee gives Lessor timely Notice to Appointment of Appraiser, Lessee and
20 Lessor shall each instruct their respective Appraisers to meet promptly with the other
21 Appraiser and select a third Appraiser. If Lessee timely appoints an Appraiser, the final
22 and binding determination of Fair Market Rent shall be the arithmetic average of the
23 two closest of the three appraisals. If Lessee elects not to appoint an Appraiser,
24 Lessor's Appraiser shall determine the Fair Market Rent as herein provided and the
25 determination of such appraiser shall be final and binding on all parties. Each party
26 shall pay the cost of its own Appraiser and one-half (1/2) of the cost of the third
27 Appraiser making the determination."

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1 6. Amendment to Section 6. Lessor and Lessee hereby amend Section 6
2 (a) of the Lease in its entirety as follows:

3 “(a) Lessee, at its expense, shall construct, or cause to be constructed, upon
4 the Property, the Project as herein defined, including landscaping, roadways,
5 walkways, and utility improvements. Subject to the provisions of Paragraph 15 herein,
6 construction of the Project shall commence as soon as practicable after Lessee has
7 raised or obtained the necessary capital and/or loans (tax credit and/or construction)
8 required to finance the Project, and after such time as Lessee has obtained the
9 required approvals from all applicable governmental and regulatory agencies,
10 including, but not limited to compliance with the provisions of the California
11 Environmental Quality Act (“CEQA”), and all other the governmental Permits. Lessee
12 shall diligently pursue the completion of the construction of the Project; provided,
13 however, that Lessee shall complete approximately 35,000 square feet of the Facilities
14 in the project no later than four (4) years from the Effective Date of this Lease. In the
15 event Lessee does not complete all of the foregoing on or before four (4) years from
16 the Effective Date of this lease, this Lease shall automatically terminate. No less than
17 ten (10) days before beginning construction of the Project, Lessee shall give County
18 written notice thereof so that County can post a Notice of Non-Responsibility.”

19 7. Amendment to Section 27. Lessor and Lessee hereby agree to amend
20 Section 27(d) in its entirety as follows:

21 “(d) The Option granted under this Lease is personal to Lessee as a provider
22 of the services set forth in Section 2(a) of this Lease, and may not be separated from
23 or transferred independently from this Lease. The Option may not be exercised by
24 Lessee, Encumbrancer or other transferee who is in default of the terms of use set
25 forth in Section 2(a) of this lease or has exercised the right to utilize the Leased
26 premises for Expanded Uses pursuant to the second paragraph of Section 2(b) of this
27 Lease.”

1 8. Execution by County. This First Amendment shall not be binding or
2 consummated until its approval and execution by County's Board of Supervisors.

3 9. Ratification. Except as modified herein, the Lease is unmodified and in
4 full force and effect, and the parties hereby ratify the terms thereof.

5 10. Counterparts. This Amendment may be executed and delivered in
6 counterparts, each of which shall be deemed as an original and all of which shall
7 constitute one and the same amendment.

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1 **IN WITNESS WHEREOF**, the parties hereto have set their hands on the day
2 and date first above written. This Amendment shall not be binding or consummated
3 until approval and execution by the County Board of Supervisors.

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5
6 **LESSOR:**
7 County of Riverside

8
9 By: _____
10 Bob Buster, Chairman
11 Board of Supervisor

12 **ATTEST:**
13 Kecia Harper-Ihem
14 Clerk of the Board

15 By: _____
16 Deputy

17 **APPROVED AS TO FORM:**
18 Pamela J. Walls, County Counsel

19 By: 
20 Anita C. Willis, Deputy

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LESSEE:
CVRM NMTC PROJECT HOLDINGS, a
California nonprofit corporation

By: _____
Floyd Rhoades
Its: Chair

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STATE OF CALIFORNIA.
COUNTY OF RIVERSIDE

On August _____, 2011, before me, _____, Notary Public, personally appeared FLOYD RHOADES, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

My Commission Expires _____, 20__

STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

On August ____, 2011, before me, _____, Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person whose name(s) is subscribed to the within
instrument and acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument, the entity upon behalf of which
the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

My Commission Expires _____, 20__

CONSENT TO SUBLEASE

The County of Riverside, a political subdivision of the State of California (Ground Lessor) hereby consents to the foregoing Sublease between CVRM NMTC PROJECT HOLDING, a California nonprofit corporation, as Sublessor (referred to as Sublandlord in the Sublease), and Coachella Valley Rescue Mission, a California nonprofit corporation, as Sublessee (referred to as Subtenant in the Sublease), without however waiving the restrictions contained in the Master Ground Lease, between the County of Riverside, as Ground Lessor, and CVRM NMTC PROJECT HOLDING, a California nonprofit corporation, as Lessee, dated January 25, 2011, as amended in the First Amendment to Ground Lease dated as of August 16, 2011, described as 3.15 acre site, located in the County of Riverside, with respect to any future assignments thereunder, and without releasing the Sublessor under said Sublease from any obligations that are not performed by Coachella Valley Rescue Mission, a California nonprofit corporation, and otherwise accepts the Sublessee, Coachella Valley Rescue Mission, a California nonprofit corporation, under said Sublease.

COUNTY OF RIVERSIDE

A political subdivision of the State of California

By: _____
Bob Buster, Chairman, Board of Supervisors

Date: _____

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:
Pamela J. Walls, County Counsel

By: 
Anita C. Willis, Deputy

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (this "**Sublease**") is made and entered into as of this _____ day of August, 2011 ("**Effective Date**"), by and between CVRM NMTC PROJECT HOLDINGS, a California nonprofit corporation ("**Sublandlord**"), and COACHELLA VALLEY RESCUE MISSION, a California nonprofit corporation ("**Subtenant**"). The COUNTY OF RIVERSIDE ("**Ground Lessor**") is a signatory hereto for the express purpose of consenting to this Sublease pursuant to Section 22 of the Ground Lease (as defined below). Sublandlord and Subtenant hereby agree as follows:

1. **PREMISES.** Sublandlord entered into that certain Assignment of Ground Lease, dated July 27, 2011, pursuant to which Sublandlord acquired a ground leasehold interest, as tenant, in that Ground Lease, dated January 25, 2011, as amended by the First Amendment to Ground Lease dated August 16, 2011, attached hereto as Exhibit A and incorporated herein by this reference ("**Ground Lease**"), which Ground Lease creates a leasehold interest in that certain improved, encumbered real property located at 47-470 Van Buren Street, Indio, CA 92201 and legally described on Exhibit B attached hereto and incorporated herein by this reference ("**Ground Leasehold**"). Subtenant desires to sublease from Sublandlord the Ground Leasehold, together with all improvements now in existence and to be constructed thereon by Sublandlord in accordance with the architectural site plan attached hereto as Exhibit C (the "**Improvements**"), and all personal property located on and used in connection with the Ground Leasehold and the Improvements (collectively, the "**Sublandlord's Property**," and together with the Ground Leasehold and the Improvements, the "**Premises**"), on the terms and conditions set forth herein.

2. TERM.

2.1 The term (the "**Term**") of this Sublease shall commence as of the Effective Date ("**Commencement Date**") and shall expire on the last day of the [forty third (43rd) year] following the Effective Date, which is July __, [2054] (the "**Expiration Date**").

2.2 **Delivery of Premises.** Sublandlord shall deliver possession of the Improvements to Subtenant on the Substantial Completion Date. As used herein, "**Substantial Completion Date**" shall mean the date that Sublandlord receives permanent certificates of occupancy with respect to the Improvements and a certificate of substantial completion from the architect and the general contractor.

2.3 **Sublease Year.** For the purpose of this Sublease, the term "**Sublease Year**" shall mean and refer to that period of twelve (12) full consecutive calendar months beginning with the first full calendar month of the Term and each subsequent period of twelve (12) consecutive calendar months during the Term. If the Term commences on a day other than the first day of a calendar month, then the initial fractional month of the Term plus the next succeeding twelve (12) full calendar months shall constitute the first Sublease Year of the Term.

3. RENT.

3.1 **Base Rent.** Subtenant shall pay to Sublandlord at the address stated herein, or to such other person or at such other place as Sublandlord may designate in writing, the rent set forth in Schedule 1 to this Sublease ("**Base Rent**"). Subtenant shall commence to pay Base Rent on the Commencement Date and shall continue to pay Base Rent in annual installments on or before the first day of every December thereafter during the Term. Base Rent for any period of less than one year shall be prorated on a daily basis based on a three hundred sixty (360) day year. During the Term, all other charges, costs and expenses due by Subtenant under this Sublease excluding Base Rent, even though not necessarily payable to Sublandlord, shall constitute additional rent hereunder (the "**Additional Rent**"),

and upon the failure of Subtenant to pay any of such costs, charges or expenses, Sublandlord shall have the same rights and remedies as otherwise provided in this Sublease for the failure of Subtenant to make any such payment. Base Rent and Additional Rent are herein referred to as "**Rent**" and shall be paid (except as otherwise provided for herein) without notice or demand.

3.2 Setoffs. Except as otherwise expressly provided herein, this Sublease shall not terminate, nor shall Subtenant have any right to terminate this Sublease, nor shall Subtenant be entitled to any abatement or reduction of any Rent, nor shall the obligations of Subtenant hereunder be affected, by reason of any default on the part of Sublandlord under this Sublease, or under any other agreement to which Sublandlord and Subtenant may be parties. This Sublease is what is commonly called a "net sublease," it being understood that Sublandlord shall receive the payments of Rents set forth herein free and clear of any and all expenses for which Subtenant is responsible hereunder.

3.3 Default Rate of Interest. Base Rent not paid within ten (10) calendar days from the date when due shall bear interest from the date due until paid at the annual rate of one percent (1%) in excess of the Prime Rate. As used herein, "**Prime Rate**" shall mean the rate of interest announced publicly by JPMorgan Chase Bank, N.A., or its successor from time to time as its prime rate or other designation in replacement of the prime rate so announced. Subtenant shall pay as Additional Rent an amount equal to any late fees, default interest or other penalties incurred by Sublandlord in connection with any loan as a result of failure by Subtenant to pay Base Rent when due.

3.4 Default by Sublandlord under Ground Lease. In the event that Sublandlord defaults in the payment of the minimum rent, additional charges, or any other amounts required to be paid by Sublandlord under the Ground Lease, Subtenant shall have the right, but not the obligation, to cure the same by paying to Ground Lessor such amounts as may be required to cure such default. Any payments so made by Ground Lessor shall be credited toward the amount due from Subtenant to Sublandlord hereunder.

4. CONDITION OF THE PREMISES. Sublandlord makes no representations or warranties as to the condition of the Premises.

5. USE.

5.1 Use. Subtenant may use and occupy the Premises for all activities and purposes that have been, are now, or may hereafter customarily be associated with the operation, administration, and nonprofit mission of Subtenant, subject to those certain prohibited uses as set forth on **Exhibit D-1, Exhibit D-2, and Exhibit D-3** attached hereto and incorporated herein by this reference ("**Prohibited Uses**") and the conditions set forth in this **Section 5**. Notwithstanding anything in this Sublease to the contrary, Subtenant shall not be permitted to use the Premises in any manner that constitutes a Prohibited Use ("**Use Restrictions**"). Subtenant's agreement to abide by the Use Restrictions constitutes a material part of the consideration provided by Subtenant under this Sublease, and Sublandlord has entered into this Sublease in reliance upon Subtenant's agreement to abide by the Use Restrictions throughout the term of this Sublease. Accordingly, Subtenant's use of the Premises in any manner that violates the Use Restrictions shall constitute a material default or event of default giving rise to an immediate right of sublease termination subject only to the minimum notice requirements of applicable law, if any.

5.1.1 Subleases. In accordance with and subject to **Section 12** below, each sublease, if any, or license relating to use of the Premises, shall be subject to the Use Restrictions and shall provide that any use of the Premises in any manner that violates the Use Restrictions shall constitute a material default or event of default giving rise to an immediate right of termination of the sublease subject to the minimum notice requirements of applicable law, if any. No sublease shall be effective

unless the identity of the sublessee and the term of such sublease have received the prior written consent of the Sublandlord's Lender (as such term is defined below in Section 7.1).

5.2 Additional Terms and Conditions. Prior to execution of any sublease or license relating to use of the Premises, Subtenant shall add a provision to such sublease or license relating to use of the Premises that states that such sublease shall be at all times subordinate to, and subject to compliance with, this Sublease and any mortgage(s) encumbering the Premises, including compliance with this Section 5. Notwithstanding any subleasing or licensing of the Premises or any portion thereof by Subtenant as provided for herein, Subtenant shall remain at all times primarily liable for compliance with this Sublease.

5.3 Compliance with Law. During the Term, Subtenant, at its expense, shall comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Subtenant's use of the Premises or pertaining to Subtenant's operations on the Premises, including, without limitation, any rules or regulations promulgated pursuant to the Americans With Disabilities Act. Subtenant may contest any asserted or alleged violation of such laws, rules, and regulations, as Subtenant deems appropriate.

6. MAINTENANCE, REPAIRS, AND ALTERATIONS.

6.1 Subtenant's Obligations. Subtenant, at Subtenant's expense, shall keep all portions of the Premises in good order and repair, including, without limitation, maintenance, repair and replacement of all structural elements of the Improvements, the parking and landscaping areas on the Premises, and all plumbing, HVAC, electrical and lighting facilities and equipment within the Improvements. Subtenant's repair and maintenance obligations shall be performed in compliance with all applicable laws and regulations and in accordance with reasonable standards imposed by Sublandlord or Sublandlord's Lender (as such term is defined below in Section 7.1). Sublandlord shall not be required to furnish any services or facilities or to make any repairs or perform maintenance or replacement in, about or to the Premises or any improvements hereafter erected thereon. Subtenant assumes the full and sole responsibility for the condition, operation, repair, and management of the Premises.

6.2 Surrender. Upon the expiration or termination of this Sublease, Subtenant shall surrender the Premises to Sublandlord in good condition, except for ordinary wear and tear.

6.3 Alterations and Additions. Subtenant may make such alterations, improvements and additions to the Premises as Subtenant deems necessary or desirable, provided that Subtenant has obtained the prior written consent of Sublandlord, which consent shall not be unreasonably withheld, and the prior written consent of the Sublandlord's Lender (as such term is defined below in Section 7.1). Any such work must be completed in a good and workmanlike manner, with comparable materials and equipment, and in conformity with all applicable laws and regulations and any requirements imposed on Sublandlord by Sublandlord's Lender. Any alterations or improvements performed by Subtenant shall become the property of Sublandlord upon the expiration or sooner termination of this Sublease.

6.4 Liens. Subtenant shall not permit any mechanics' or materialmen's liens to be levied against the Premises for any labor or material furnished to Subtenant or to its agents or contractors; provided, however, that Subtenant shall not be required to pay or otherwise satisfy any claims or discharge such liens so long as Subtenant, in good faith and at its own expense, contests the same or the validity thereof by appropriate proceedings and posts a bond or takes other steps acceptable to Sublandlord and Sublandlord's Lender that stay enforcement of such lien.

6.5 Ownership and Removal of Improvements, Fixtures, Equipment and Furnishings.

6.5.1 Subtenant's Property. All personal property, furnishings, machinery, trade fixtures, trade equipment, and non-structural improvements, which Subtenant installs in the Premises and which do not relate to any building or utility systems for the operation of the Premises (as opposed to the conduct of Subtenant's business at the Premises) ("**Subtenant's Property**") shall remain the property of Subtenant. Upon the termination or expiration of the Term, Subtenant may remove Subtenant's Property from the Premises no later than such expiration or termination date of this Sublease provided that Subtenant repairs any damage caused by such removal. The Improvements and Sublandlord's Property shall remain the property of Sublandlord throughout the Term.

6.5.2 Sublandlord's Property. Sublandlord shall deliver the Premises fully furnished with all necessary and applicable furniture, fixtures, and equipment as contemplated under this Sublease at its sole cost and expense ("**Sublandlord's Property**"). Sublandlord and Subtenant hereby acknowledge and agree that Subtenant shall be entitled to use Sublandlord's Property subject to the terms and conditions of this Sublease, but shall not be entitled to own or acquire it at any time during the Term or following the expiration or sooner termination of the Sublease.

6.5.3 Sublease Termination or Expiration. Any of Subtenant's Property not removed from the Premises on the date this Sublease terminates or expires shall be deemed abandoned. Sublandlord may, at Subtenant's sole cost and expense, possess and dispose of such property as determined in Sublandlord's discretion.

7. INSURANCE; INDEMNITY.

7.1 Subtenant's Insurance. During the Term of this Sublease, Subtenant shall obtain and keep in full force and effect, the following insurance set forth on Schedule 2 attached hereto and incorporated herein by this reference, and such other insurance and amounts as may be reasonably required by Ground Lessor or LCD New Markets Fund X, LLC, a Delaware limited liability company, and its successors and/or assigns (the "**Sublandlord's Lender**"), which may be provided under blanket insurance policies covering other properties as well as the Premises and shall be maintained with an insurance company acceptable to Sublandlord and Sublandlord's Lender. All required insurance as set forth on Schedule 2 herein shall name Ground Lessor, Sublandlord, Sublandlord's Lender, and all other parties as set forth on Schedule 2 as additional insureds. Upon Sublandlord's request, Subtenant will provide Sublandlord with a certificate(s) evidencing that Subtenant's insurance is in compliance with this Section 7 and Schedule 2.

7.2 Sublandlord's Insurance. Sublandlord shall maintain such insurance regarding the Premises that it, Ground Lessor, and Sublandlord's Lender deem necessary or appropriate, including, without limitation "all risk" casualty insurance in an amount not less than the full replacement cost of the Premises. Subtenant shall reimburse Sublandlord for the cost of said insurance as Additional Rent pursuant to Section 3 of this Sublease.

7.3 Indemnification by Subtenant. Subtenant shall defend, indemnify, and hold Sublandlord and Sublandlord's agents, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) arising in connection with the use, possession, occupancy or condition of the Premises and any acts or omissions of Subtenant. This indemnity shall survive termination of this Sublease only as to claims arising out of events that occur prior to termination of this Sublease.

7.4 Waiver of Worker's Compensation Immunity. The indemnification obligations contained in this Sublease shall not be limited by any worker's compensation, benefit or disability laws, and each indemnitor hereby waives any immunity that said indemnitor may have under the Industrial Insurance Act, and any similar or successor worker's compensation, benefit or disability laws. This waiver is for the exclusive benefit of the party to be indemnified hereunder and is not intended, and shall not be construed, to be for the benefit of any employee of any indemnitor hereunder.

7.5 Waiver of Subrogation. Neither Sublandlord nor Subtenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance or was required to be covered by insurance pursuant to this Sublease. Sublandlord and Subtenant shall require their respective insurance companies to include a standard waiver of subrogation provision in their respective policies.

8. ENVIRONMENTAL LIABILITY.

8.1 Environmental Law. The term "**Environmental Law**" means any federal, state, local law, statute, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

8.2 Hazardous Substance. The term "**Hazardous Substance**" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by-products; asbestos; and polychlorinated biphenyl.

8.3 Environmental Covenant. Subtenant shall not use the Premises to generate, manufacture, store, treat or dispose of any Hazardous Substance. Notwithstanding the foregoing, Subtenant may (i) store, maintain and use on the Premises janitorial and maintenance supplies, paint and other Hazardous Substances of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Premises; and (ii) store, maintain and use on the Premises (and, in the case of a retail business, hold in inventory and sell in the ordinary course of such Subtenant's business) Hazardous Substances of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, in the case of a retail business, sold) by subtenants in similar lines of business on properties similar to the Premises. All storage, maintenance and use permitted by this paragraph must be in compliance with all applicable laws and in accordance with prudent and safe practices.

8.4 Hazardous Substance Indemnities. Subtenant shall protect, indemnify, and hold harmless Sublandlord, Sublandlord's Lender, and Sublandlord's and Sublandlord's Lender's employees, agents, members, managers, parents, and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to undertaking any activity related to any Hazardous Substance ("**Claims**") directly arising out of or attributable to Subtenant's or Subtenant's agents, contractors, or employees use, manufacture, storage, resublease, or disposal of a Hazardous Substance on the Premises excluding any handling or disposal of any Hazardous Substance on the Premises as of the Commencement Date. This indemnity shall survive the termination of this Sublease.

9. DAMAGE OR DESTRUCTION.

9.1 Material Damage. If the Premises is damaged or destroyed by fire or any casualty which cannot, despite diligent, good faith efforts be repaired or restored within one hundred eighty (180) days following the date on which such damage occurs, then Sublandlord may elect to terminate this Sublease effective as of the date of such damage or destruction. Within sixty (60) days after the date of such damage, the parties shall determine how long the repair and restoration will take. After that determination has been made, Sublandlord shall have a period of thirty (30) days to terminate this Sublease by giving written notice to Subtenant. Any termination of this Sublease pursuant to this Section 9.1 shall require the prior written consent of the Sublandlord's Lender.

9.2 Uninsured Damage. If damage or destruction is caused by a peril not required to be insured against hereunder and for which insurance proceeds are not available, Sublandlord may terminate this Sublease by thirty (30) days written notice to Subtenant of its election so to do and this Sublease shall be deemed to have terminated as of such date unless Subtenant agrees in writing to pay for such repairs or restoration. Any termination of this Sublease pursuant to this Section 9.2 shall require the prior written consent of the Sublandlord's Lender.

9.3 Repair after Damage. If Sublandlord does not give notice of Sublandlord's election to terminate as provided above, then Subtenant shall, subject to the provisions of this Section, commence and diligently pursue to completion the repair of such damage so that the Premises is restored to the same or similar condition prior to such casualty regardless of the sufficiency of insurance proceeds. In such event, but subject in all respects to the casualty provisions contained in the loan documents between Sublandlord and Sublandlord's Lender, Sublandlord shall make available to Subtenant the proceeds of Sublandlord's casualty insurance and Subtenant shall pay all deductibles in connection therewith.

10. IMPOSITIONS.

10.1 Definition of "Impositions." For purposes of this Sublease, the term "**Impositions**" shall include real estate taxes, personal property taxes, betterment assessments, and all other impositions, ordinary and extraordinary, general and special, of every kind and nature whatsoever, as well as any payments in lieu of taxes, which may be levied, assessed, charged or imposed during the Term of this Sublease (prorated for any partial year) upon the Premises, or any part thereof, or upon any improvements at any time situated thereon. Notwithstanding the foregoing, Impositions shall not include: (a) any inheritance, estate, succession, transfer, gift, franchise, business and occupation, or capital stock tax; (b) any income taxes arising out of or related to ownership and operation of income-producing real estate; or (c) any excise taxes imposed upon Sublandlord based upon gross or net rentals or other income received by it.

10.2 Payment of Impositions. Subtenant shall pay the Impositions for the Premises directly to the authority charged with the collection thereof not less than five (5) calendar days prior to the last date on which the same may be paid without interest or penalty. Subtenant shall have the right to contest, at its sole expense, the validity or amount of the Impositions and Sublandlord agrees to provide (at no cost to Sublandlord) whatever assistance Subtenant may reasonably require, in which event Subtenant may (i) make such payment under protest or (ii) if postponement of such payment will not jeopardize or adversely affect Sublandlord's title to the Premises or subject Sublandlord or Subtenant to the risk of any criminal liability or civil penalty, Subtenant may postpone the same, provided that Subtenant shall establish a reserve in the amount of any Imposition being contested, and shall maintain such reserve for the duration of any such contest period in an account designated by Sublandlord (the "**Imposition Reserve**"). In the event Subtenant is not successful in contesting some or all of any

Imposition, then the Imposition Reserve shall be used to satisfy Subtenant's obligations pursuant to such Imposition, including any interest and/or penalties arising from Subtenant's contest of the same. Upon satisfaction in full of Subtenant's obligations with respect to such Imposition, any funds remaining in the Imposition Reserve shall be resubleased to Subtenant. As may be necessary or desirable, each of Subtenant or Sublandlord, as applicable, upon the request of the other, shall use its best reasonable efforts to assist in any such proceeding to contest the validity or amount of any Impositions. Either party paying Impositions shall be entitled to recover, receive and retain for its own benefit all abatements and refunds of such Impositions unless previously reimbursed by the other party with respect thereto. Nothing contained in this Section 10.2, however, shall be construed to allow any such contested Impositions to remain unpaid for a length of time that shall permit the Premises, or any part thereof, to be sold by any governmental authorities for the non-payment of such Impositions. Subtenant shall promptly furnish Sublandlord with copies of all notices, appeals, pleadings, motions and orders in any proceedings commenced with respect to such contested Impositions. Subtenant agrees to hold Sublandlord harmless from all costs and expenses incurred on account of Subtenant's participation in such proceedings or as a result of Subtenant's failure to pay any Impositions or other related charges with respect to the Premises. Sublandlord shall promptly furnish to Subtenant a copy of any notice of any Impositions received by Sublandlord. If Subtenant fails to make any payment referred to in this Section 10.2 when due pursuant to the terms hereof, Sublandlord shall have the right after five (5) calendar days' notice to Subtenant to make any such payment on behalf of Subtenant and charge Subtenant therefor, together with interest from the date advanced until paid or set-off at the annual rate of one percent (1%) in excess of the Prime Rate.

11. UTILITIES. Subtenant shall pay for all utilities, including without limitation water, gas and electricity, used by Subtenant during the Term directly to the utility servicer.

12. ASSIGNMENT AND SUBLETTING. Subtenant may not further assign this Sublease or sublet or license the whole or any portion of the Premises except with the consent of Sublandlord (which shall not be unreasonably withheld, conditioned or delayed) and except with the consent of the holder of any and all existing and future mortgages and/or deeds of trust on the Premises. No further sublease, assignment, or license shall be effective without the prior written consent of the Sublandlord's Lender and Ground Lessor, as applicable.

13. DEFAULTS; REMEDIES.

13.1 Subtenant's Defaults. The occurrence of any one or more of the following events shall constitute a default and breach of this Sublease by Subtenant:

(a) The failure by Subtenant to make any payment of Rent or any other payment required to be made by Subtenant hereunder, as and when due, where such failure shall continue for a period of five (5) days after the due date; or

(b) The failure by Subtenant to observe or perform any of the covenants, conditions, or provisions of this Sublease or the Ground Lease to be observed or performed by Subtenant, other than the payment of Rent and any other sums due hereunder, where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublandlord to Subtenant; provided, however, that if the nature of Subtenant's default is such that more than thirty (30) days are reasonably required for its cure, then Subtenant shall not be deemed to be in default if: (i) Subtenant commences such cure within such thirty (30) day period, (ii) Sublandlord determines that such cure will be completed in a timeframe selected by Sublandlord in its sole discretion, and (iii) Subtenant thereafter diligently pursues such cure to completion.

13.2 Remedies in Default. In the event of any such uncured default, Sublandlord may, in accordance with procedures required by law, pursue one of the following remedies:

(a) Sublandlord may terminate Subtenant's right to possession of the Premises by any lawful means, in which case this Sublease shall terminate and Subtenant shall surrender possession of the Premises to Sublandlord within thirty (30) days after written notice from Sublandlord to Subtenant. In such event, Sublandlord shall be entitled to recover from Subtenant all damages incurred by Sublandlord by reason of Subtenant's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, and the Base Rent as it becomes due hereunder. Sublandlord may accelerate all Rent due hereunder at its option. If Sublandlord relets the Premises, then any free rent or other concessions given to the new subtenant shall be prorated evenly throughout the entire term of the new sublease;

(b) Sublandlord may maintain Subtenant's right to possession, in which case this Sublease shall continue in effect whether or not Subtenant shall have abandoned the Premises. In such event, Sublandlord shall be entitled to enforce all of Sublandlord's rights and remedies under this Sublease including the right to recover the Base Rent as it becomes due hereunder; or

(c) Sublandlord may pursue any other remedies provided to it at law or in equity.

Unless otherwise specifically provided in this Sublease, no remedy herein shall be exclusive of any other remedy or remedies, and each such remedy shall be cumulative and in addition to every other remedy; and every power and remedy given by this Sublease may be exercised from time to time and as often as may be deemed expedient by either party. No delay or omission by Sublandlord to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver of any such event of default or an acquiescence therein.

14. CONDEMNATION.

14.1 Condemnation of Premises. If any portion of the Premises is taken under the power of eminent domain, or sold by Ground Lessor under the threat of the exercise of said power (the act of which is herein referred to as "**condemnation**"), this Sublease shall terminate as to the part so taken as of the date the condemning authority takes possession of the condemned portion of the Premises (the "**Condemnation Date**"). If the entire Premises is condemned, then this Sublease shall automatically terminate as of the Condemnation Date. The party who receives the condemnor's notice of intention to take (the "**Condemnation Notice**") shall immediately give a copy of such notice to the other party.

14.2 Restoration. If this Sublease is not terminated as to the whole Premises: (a) it shall remain in full force and effect as to the portion of the Premises remaining, provided the Base Rent and all other charges payable hereunder shall be reduced in the same proportion that the area of the Premises taken bears to the total area of the Premises prior to taking, and (b) the parties shall use the condemnation award to restore the Premises and the improvements thereon as soon as reasonably possible to a complete unit of the same quality, character and utility for Subtenant's purposes existing prior to the condemnation.

14.3 Award. In the event of any condemnation, the entire condemnation award will be paid to Sublandlord. Subtenant will have no right or claim to any part of such award; however, Subtenant will have the right to assert a claim against the condemning authority in a separate action, so long as Sublandlord's award is not otherwise reduced, for Subtenant's moving and relocation expenses.

15. **SIGNAGE.** Subject to the terms of any recorded covenants, conditions or restrictions affecting the Premises as of the date of this Sublease, Subtenant, at its cost and in substantial compliance with all applicable laws, shall have the right to install, place, move and remove signs, awnings, or other advertising materials in or about the Premises (including on or within the Improvements) to the maximum extent permitted by law upon written consent from Sublandlord, which consent may not be unreasonably withheld.

16. **LENDER PROVISIONS.**

16.1 **Subordination.** This Sublease shall be subordinate to all ground or underlying subleases, mortgages and deeds of trust, if any, which may hereafter affect the Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof, including, without limitation, the Ground Lease and the security interests of Sublandlord's Lender as set forth below. In the event of a termination or foreclosure, Subtenant shall, at the option of successor(s) in interest to Sublandlord, become a subtenant of and attorn to the successor(s) in interest to Sublandlord upon the same terms and conditions as are contained in this Sublease, and shall execute any instrument reasonably required by Sublandlord's successor(s) for that purpose. Subtenant shall also, upon written request of Sublandlord, execute and deliver all instruments as may be required from time to time to subordinate the rights of Subtenant under this Sublease to any ground or underlying sublease or to the lien of any mortgage or deed of trust (provided that such instruments include the nondisturbance and attornment provisions set forth above), or, if requested by Sublandlord, to subordinate, in whole or in part, any ground or underlying sublease or the lien of any mortgage or deed of trust to this Sublease. Consistent with the foregoing, this Sublease is subordinate to that certain Leasehold Deed of Trust, Security Agreement and Fixture Filing, by and between Sublandlord and Sublandlord's Lender, dated July 1, 2011, including all renewals, amendments, restatements, modifications, consolidations, replacements and extensions thereto.

16.2 **No Subordination of Fee/Ground Leasehold.** At no time shall Sublandlord's leasehold interest in the Premises, Ground Lessor's fee interest in the Premises or leasehold interest in the Ground Lease, or Sublandlord's leasehold interest in this Sublease be subordinated in any manner to the interest of any holder of a leasehold mortgage or any person claiming by or through Subtenant.

17. **GENERAL PROVISIONS.**

17.1 **Estoppel Certificate.** Sublandlord and Subtenant shall each, in any Sublease Year and upon not less than ten (10) business days prior written notice, execute, acknowledge and deliver to any prospective purchaser or mortgagee, assignee or subtenant or to the other party on such party's behalf a statement in writing: (a) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease, as so modified, is in full force and effect); (b) stating the date to which the Base Rent and other charges are paid and the amount of any security deposit held by Sublandlord, if any; and (c) acknowledging that there are not, to the actual knowledge of the party executing such certificate, any uncured defaults on the part of Sublandlord (or Subtenant as applicable) hereunder, or specifying such defaults, if any, which are claimed. Any such statement may be conclusively relied upon by the addressee thereof. Such certificates shall not affect, prejudice or waive any rights or remedies of the parties against each other.

17.2 **Authority.** Each of Sublandlord and Subtenant hereby represents and warrants that this Sublease has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

17.3 Severability. The invalidity of any provision of this Sublease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

17.4 Time of Essence. Time is of the essence to the parties executing this Sublease.

17.5 Headings. Article and section headings are not a part hereof and shall not be used to interpret the meaning of this Sublease.

17.6 Incorporation of Prior Agreements; Amendments. This Sublease contains all agreements of the parties as of the date hereof with respect to any matter mentioned herein. No prior agreement, correspondence or understanding pertaining to any such matter shall be effective to interpret or modify the terms hereof. This Sublease may be modified only in writing, signed by the parties in interest, at the time of the modification. No modification or amendment to this Sublease shall be effective without the prior written consent of the Sublandlord's Lender.

17.7 Waivers. No waiver by Sublandlord or Subtenant of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Subtenant or Sublandlord of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary obtaining such party's consent to or approval of any subsequent act. No waiver shall be effective unless it is in writing, executed on behalf of Sublandlord or Subtenant by the person to whom notices are to be addressed. No waiver of any material term of this Sublease shall be effective without the prior written consent of the Sublandlord's Lender.

17.8 Holding Over. If Subtenant remains in possession of the Premises or any part thereof after the expiration of the Term, with or without the consent of Sublandlord, such occupancy shall be a tenancy from month-to-month at a rental in the amount of one hundred twenty-five percent (125%) of the Base Rent payable in the last month of the Term, plus all other charges payable hereunder, and upon the terms hereof applicable to month-to-month tenancies.

17.9 Cumulative Remedies. Except where otherwise expressly provided in this Sublease, no remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

17.10 Binding Effect; Choice of Law. The Sublease shall be binding upon and benefit the parties, their personal representatives, successors and assigns. This Sublease shall be governed by, and construed and enforced in accordance with, the laws of the state where the Premises is located, except to the extent preempted by federal laws.

17.11 Sublandlord's Access. Sublandlord and Sublandlord's agents shall have the right to enter the Premises upon reasonable notice, except in an emergency, for the purpose of inspecting the same or showing the same to prospective purchasers or lenders.

17.12 Attorneys' Fees. If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the substantially prevailing party in any such action, proceeding, trial or appeal, shall be entitled to its reasonable attorneys' fees and costs to be paid by the non-prevailing party as fixed by the court.

17.13 Force Majeure. In the event that either party shall be delayed or hindered in or prevented from the performance of any non-monetary covenant, agreement, work, service, or other act required under this Sublease to be performed by such party, and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood,

earthquake, or other casualty or acts of God, the performance of such covenant, agreement, work, service, or other act shall be excused for the period of delay and the time period for performance shall be extended by the same number of days in the period of delay.

17.14 Quiet Enjoyment. Without limiting any rights Subtenant may have by statute or common law, Sublandlord covenants and agrees that, so long as Subtenant is not in default under this Sublease, Subtenant shall lawfully and quietly hold, occupy and enjoy the Premises during the Term without disturbance by Sublandlord or by any person having title paramount to Sublandlord's title or by any person claiming through or under Sublandlord.

17.15 Warranty by Sublandlord. Sublandlord represents and warrants to Subtenant that the Ground Lease has not been amended or modified, that Sublandlord is not now, and as of the Commencement Date will not be, in default or breach of any of the provisions of the Ground Lease, and that Sublandlord has no knowledge of any claim by Ground Lessor that Sublandlord is in default or breach of any of the provisions of the Ground Lease.

17.16 Incorporation of Ground Lease. In addition to the terms and conditions of this Sublease, and except as otherwise provided herein with respect to the Commencement Date, termination date, Subtenant's use of the Premises, and as otherwise expressly herein provided, this Sublease is made upon and shall be subject to all of the terms and conditions set forth in the Ground Lease, including all addenda and amendments thereto as of the date hereof, which terms and conditions are incorporated herein by this reference, as if Sublandlord were the Landlord and Subtenant were the Tenant under the Ground Lease. In case of any default hereof by Subtenant, Sublandlord shall have all rights against Subtenant as would be available to Landlord against Tenant under the Ground Lease if such default were by Tenant thereunder. Subtenant acknowledges that Subtenant has read and understands the Ground Lease. Effective as of the date hereof, Subtenant agrees to perform, observe, and be bound by all of the promises, obligations, acknowledgments, terms, and conditions by, of, or applicable to Subtenant under the Ground Lease. Notwithstanding anything herein to the contrary, Subtenant does not by this Sublease promise or agree to perform any obligation undertaken or assumed by the Landlord under the Ground Lease. Sublandlord will, however, use Subtenant's best efforts to obtain performance by Landlord for Subtenant's benefit under the Ground Lease.

17.17 Conflicting Provisions. To the extent of any inconsistency between the terms and provisions contained in the Ground Lease and the terms and conditions set forth herein, the terms and conditions set forth in the Ground Lease shall govern and control to the extent necessary to resolve such conflict.

17.18 Approval of Ground Lessor. This Sublease is subject to the written approval of Ground Lessor and shall be of no force and effect unless such approval is obtained.

18. NOTICES. Whenever a provision is made under this Sublease for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and delivered personally or sent by commercial messenger or delivery service or sent by United States mail, certified, postage prepaid, addressed at the addresses set forth below or at such address as either party may advise the other from time to time.

To Sublandlord at: CVRM NMTC Project Holdings
47-470 Van Buren Street
Indio, CA 92201

To Subtenant at: Coachella Valley Rescue Mission
47-470 Van Buren Street
Indio, CA 92201

Copies of any notice sent pursuant to this Sublease shall be sent simultaneously to:

Kelley Donion Gill Huck & Goldfarb, PLLC
Attention: Shaun A. Gill
701 Fifth Ave., Suite 6800
Seattle, WA 98104

LCD NEW MARKETS FUND X, LLC
c/o Opportunity Fund Northern California
Attention: Jeff Wells
111 West Saint John St., Suite 800
San Jose, CA 95113

Husch Blackwell LLP
Attention: Steven F. McCandless
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105

Notices given hereunder shall be deemed to have been given on the date of personal delivery or facsimile transmission (or the first business day thereafter if delivered on a non-business day) or two (2) days after the date of mailing.

19. EXHIBITS. The following exhibits are attached to this Sublease and are incorporated herein by this reference:

Exhibit A – Ground Lease
Exhibit B – Legal Description of the Premises
Exhibit C – Architectural Site Plan
Exhibit D – Prohibited Uses
Schedule 1 – Rent Schedule
Schedule 2 – Insurance Requirements

[Signatures and Acknowledgments on Following Page]

Signature Page to Sublease Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be duly executed effective as of the day and year first above written.

SUBLANDLORD:

CVRM NMTC PROJECT HOLDINGS,
a California nonprofit corporation

By: _____
Name: Jim Parrish
Title: Secretary

SUBTENANT:

COACHELLA VALLEY RESCUE MISSION,
a California nonprofit corporation

By: _____
Name: Jim Parrish
Title: Secretary

[Notary Acknowledgments Follow]

NOTARY ACKNOWLEDGMENTS

SUBLANDLORD:

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2011, before me, _____, Notary Public, personally appeared JIM PARRISH, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

My Commission Expires _____, 20__

SUBTENANT:

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2011, before me, _____, Notary Public, personally appeared JIM PARRISH, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

My Commission Expires _____, 20__

EXHIBIT A
GROUND LEASE

(See attached.)

EXHIBIT B

LEGAL DESCRIPTION OF THE PREMISES

Parcel(s) 1 of Parcel Map No. 34740, in the City of Indio, County of Riverside, State of California, as shown by map on file in Book 231 Page(s) 55 through 57, inclusive, of Parcel Maps, Records of Riverside County, California.

EXHIBIT C

ARCHITECTURAL SITE PLAN

(See attached.)

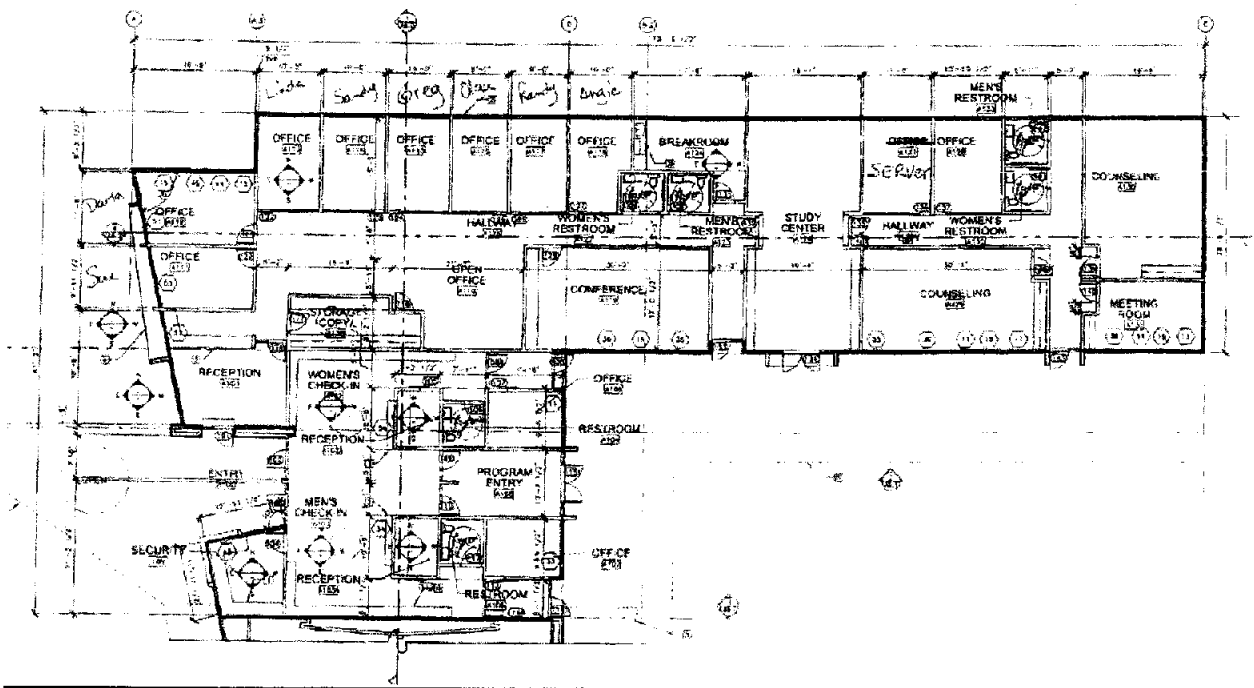
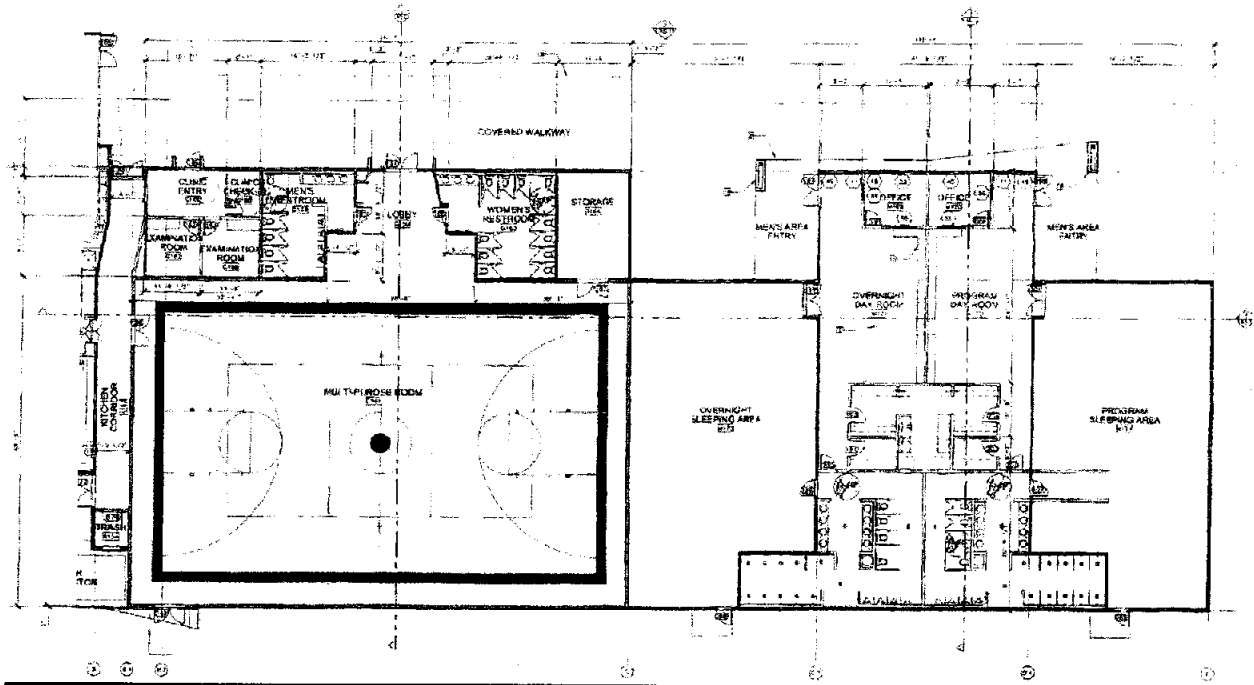


EXHIBIT D-1

PROHIBITED USES

Subtenant's (and any subtenant's) trade or business may not consist of any of the following: (1) the rental to others of residential rental property (as defined in Section 168(e)(2)(A) of the Tax Code); (2) the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, or suntan facility, any race track or other facility used for gambling, any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or any check cashing store; (3) the development or holding of intangibles for sale or license; (4) farming (within the meaning of Section 2032A(e)(5)(A) or (B) of the Tax Code); (5) the operation of any a bank, credit union or other financial institution; (6) any type of sexually oriented business, adult entertainment or adult bookstore; including but not limited to any facility selling or displaying adult or pornographic books, literature, videotapes or materials in any medium, or any facility providing adult entertainment or other adult services (for purposes of this limitation, materials or activities shall be considered "adult" or "pornographic" if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); (7) escort services, dating services, or similar matchmaking or companion services; (8) without limitation of (2) above, bingo or similar games of chance, however, lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of a business; (9) the sale of any firearms, ammunition or weapons, or a shooting gallery of any type; (10) the sale of fireworks, except as an incidental part of another primary business; (11) pay day lending activities, pay day advances, pay check advances, or any similar type of lending activity; (12) pawn shops, pawn brokers, car title lenders (which, for purposes of this limitation, will not include auto loans made by a state or federally chartered bank or thrift), or any similar type of lending activity; (13) check cashing services, except as an incidental part of another primary business or incident to the banking activities of a state or federally chartered bank or thrift; (14) debt collection activities, debt consolidation services, credit repair or credit restoration activities, except as such activities are incidental to banking activities conducted by a state or Federally chartered bank or thrift; (15) bail bond services of any kind, or any activities of a bail bond agent; (16) the sale, distribution, marketing, or production of medical marijuana, medical cannabis or any constituent cannabinoids such as THC (this limitation applies broadly, regardless of whether the activity is conducted by collectives, collective caregivers, co-ops, growers, or any other entity or organization.); (17) the sale, distribution, or manufacture of any type of drug paraphernalia; (18) tattoo parlors or any establishment that performs tattooing; (19) a bar, restaurant or other establishment, the principal business of which is the sale of alcohol for consumption on-premises (for purposes of this limitation, an establishment shall be considered to have the sale of alcohol for consumption on-premises as a principal business if alcohol sales amount to fifty per cent (50%) or more of the establishment's gross receipts in any month); (20) businesses based predominantly on inbound or outbound telemarketing activities, except as such calls are an incidental part of another primary business; and (21) multi-level marketing activities, the sale of multi-level business opportunities or network marketing activities.

EXHIBIT D-2

PROHIBITED USES PURSUANT TO SECTION 2 OF THE GROUND LEASE:

2. Use.

(a) The Property is leased hereby for the exclusive purpose of constructing, maintaining and operating the Project, which shall consist of an approximately forty-three thousand (43,000) square foot building and ancillary improvements (collectively, "Facilities") for use by Lessee as a rescue mission consistent with the nonprofit mission of the Lessee (all herein defined as the "Project").

(b) The Property shall not be used for any other purpose without first obtaining the written consent of County, which consent shall be at the absolute discretion of County as determined by its Board of Supervisors. Failure to comply with the terms of this section shall be considered a material default of the lease. Failure to timely cure such default may result in early termination as set forth in section 14 herein and/or modification of the rent set forth in section 4 herein, to the current existing fair market rate rent as determined by an appraisal conducted by an MAI appraiser.

EXHIBIT D-3

1. Prohibited Uses pursuant to that certain Leasehold AHP Deed of Trust, Security Agreement and Fixture Filing, dated as of _____, 2011, by and among Coachella Valley Rescue Mission, First American Title Company, and City National Bank, and that certain Rider to Deed of Trust, dated as of _____, 2011, by Coachella Valley Rescue Mission, and recorded against the Premises; and

2. Prohibited Uses pursuant to that certain Joint Memorandum of Understanding, dated as of _____, 2011, by and between City National Bank and Coachella Valley Rescue Mission, and recorded against the Premises.

SCHEDULE 1

Rent Schedule

SCHEDULE 2

Insurance Requirements

Type	Amount	Certificate/Policy/Endorsement Requirements
Subtenant's Commercial General Liability	\$2,000,000 per occurrence, combined single limit	Name JPMorgan Chase Bank, N.A., Chase NMTC CVRM Investment Fund, LLC, Sublandord's Lender, Sublandlord, and Ground Lessor as Additional Insured with defense provided in addition to policy limits for indemnities and products, personal injury, completed operation coverage for 12 months (to be renewed annually) and cross liability if more than one Named Insured.
Subtenant's Commercial Excess/Umbrella Liability	\$2,000,000 (minimum for loans up to \$1mm) \$5,000,000 (minimum for loans \$1mm to \$10mm) \$10,000,000 (minimum for loans \$10mm and higher)	Name JPMorgan Chase Bank, N.A., Chase NMTC CVRM Investment Fund, LLC, Sublandord's Lender, Sublandlord, and Ground Lessor as Additional Insured, if allowed by the Umbrella Policy.
Subtenant's Auto Liability	\$2,000,000 per occurrence, combined single limit including bodily injury and property damage liability	Name JPMorgan Chase Bank, N.A., Chase NMTC CVRM Investment Fund, LLC, Sublandord's Lender, Sublandlord, and Ground Lessor as Additional Insured.
Subtenant's Worker's Comp. and Employer's Liability	Statutory limits and \$1,000,000 minimum per accident	"All States" Endorsement if applicable.
Subtenant's Windstorm, if project is located in a Windstorm Zone	100% Insurable Value Replacement Cost Basis	Name Lender as Mortgagee <u>and</u> Loss Payee, Sublandlord and Ground Lessor as a Loss Payee, and Subtenant as Insured.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Attention: Steven F. McCandless
Telephone: (314) 480-1714

For Recorder Use Only

**RECOGNITION AND
CONSENT TO LEASEHOLD DEED OF TRUST**

This Recognition and Consent to Leasehold Deed of Trust (this “**Agreement**”) is executed as of August [___], 2011, by and among **CVRM NMTC PROJECT HOLDINGS**, a California public benefit nonprofit corporation (“**Tenant**”), **LCD NEW MARKETS FUND X, LLC**, a Delaware limited liability company (“**Lender**”), and the **COUNTY OF RIVERSIDE** (“**Landlord**”).

Recitals

A. Reference is made to that certain Ground Lease dated January 25, 2011, between Landlord and Coachella Valley Rescue Mission, a California nonprofit corporation (“**CVRM**”), as subsequently assigned by CVRM to Tenant pursuant to that certain Assignment and Assumption of Ground Lease dated as of August [___], 2011, and as subsequently amended by that certain First Amendment to Ground Lease dated as of August [___], 2011 (collectively, the “**Lease**”), with respect to certain premises (the “**Premises**”) located in Riverside County, California, which Premises are more particularly described in described in Exhibit A attached hereto and made a part hereof.

B. Lender has agreed to make a construction loan (the “**Loan**”) to Tenant which Loan shall be secured, in part, by a Leasehold Deed of Trust, Security Agreement and Fixture Filing, including any amendments, revisions, modifications, renewals, extensions or replacements thereof (the “**Leasehold Deed of Trust**”, and, along with such other documents evidencing and governing the Loan, the “**Loan Documents**”) on the Tenant’s interest in the Premises demised under the Lease and all improvements situated or to be constructed thereon (the “**Leasehold**”), provided Landlord and Tenant enter into this Agreement for Lender’s benefit and protection.

Agreement

Now, therefore, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Consent.** Landlord hereby consents to the granting by Tenant of a lien on Tenant's interest under the Lease to Lender pursuant to the Leasehold Deed of Trust, and upon the recording of the Leasehold Deed of Trust, Landlord hereby recognizes Lender as an "Encumbrancer," as defined in the Lease, for all purposes under the Lease including, without limitation, the benefits provided under Sections 23 and 24 of the Lease.

2. **Estoppel.** As of the date of this Agreement, (a) the Lease is in full force and effect; (b) no default has occurred by either Landlord or Tenant; and (c) there is no condition which, but for the passage of time or the giving of notice or both, would result in a default by Landlord or Tenant under the terms of the Lease.

3. **Limitations on Landlord's Right to Terminate.** Until all obligations of Tenant to Lender (the "**Loan Obligations**") shall have been completely paid and performed, and the Leasehold Deed of Trust shall have been satisfied, Landlord shall not take any action to terminate the Lease or exercise any other remedy for default in the obligation of Tenant thereunder without first complying with the requirements of *Section 7*.

4. **No Modifications.** Until the Loan Obligations shall have been completely paid and performed, and the Leasehold Deed of Trust shall have been satisfied, Landlord acknowledges and agrees that Tenant must first obtain Lender's consent prior to Tenant modifying, amending, or changing the provisions of the Lease or terminating the Lease. In no event shall Landlord and Tenant modify, amend or otherwise change any provisions of the Lease affording protections to Encumbrancers thereunder without the prior express written consent of Lender and in no event shall Lender's consent be deemed to have been granted to any such modification, amendment or change absent Lender's express written consent.

5. **Removal of Collateral.** Landlord agrees that Lender shall have the rights conferred to it under the Loan Documents to remove from the Leasehold any of Tenant's personal property which is located at, constructed upon or affixed to the Leasehold (the "**Tenant's Property**"), whenever the Lender shall elect to enforce the security interests given by Tenant therein, either during the term of the Lease or within 30 days after the expiration or the early termination thereof, or for such additional period required by the entry of any order prohibiting the Lender's timely enforcement of such rights; provided, however, that such removal shall be conducted in a manner so as to minimize interference with any activities being conducted on the Premises by occupants of the Leasehold (other than Tenant) and Lender shall repair any damage caused to the Leasehold as a result of such removal activities. Furthermore, Landlord hereby disclaims any title to or rights in the Tenant's Property and subordinates to the

Lender's security interests therein any landlord's lien, encumbrance or other interest which the Landlord may now or hereafter have or acquire therein under the Lease or applicable law.

6. **No Merger.** In the event the ownership of the fee and leasehold interests of the Leasehold become vested in the same person or entity, then as long as the Leasehold Deed of Trust shall remain outstanding, such occurrence shall not result in a merger of title. Rather, the Lease and the Leasehold Deed of Trust lien thereon shall remain in full force and effect.

7. **Additional Lender Protection Provisions.** The terms and conditions set forth below in this *Section 7* shall be binding upon Landlord as if fully set forth in the Lease, and to the extent of any inconsistency between the terms and provisions contained in the Lease and the terms and conditions set forth below in this *Section 7* (including but not limited to *Section 9* as referenced in *Section 7(e)(i)* below), the terms and conditions set forth below in this *Section 7* shall govern and control:

(a) **Notices to Lender; Lender's Right to Cure.**

(i) Landlord shall use its reasonable efforts to send to Lender, by either a nationally recognized overnight delivery service or by certified or registered mail, a true, correct and complete copy of any notice to Tenant of a default by Tenant under the Lease, at the same time as and whenever any such notice of default shall be given by Landlord to Tenant, addressed to Lender at the address specified in *Section 10*, or, if different, the address, if any, last furnished to Landlord by such Lender as provided in *Section 10*, provided that Landlord shall not incur any liability for failure or delay in providing Lender with a copy of any such notice and such failure or delay in providing notice to Lender shall not modify, limit or affect the validity of any notice provided by Landlord to Tenant, provided, further, that Landlord acknowledges and agrees that no notice by Landlord shall be deemed to have been given to Lender unless and until a copy thereof shall have been so given to and received by Lender. Tenant irrevocably directs that Landlord accept, and Landlord agrees to accept, performance and compliance by Lender of and with any term, covenant, agreement, provision, condition or limitation on Tenant's part to be kept, observed or performed under the Lease with the same force and effect as though kept, observed or performed by Tenant.

(ii) Notwithstanding anything provided to the contrary herein or in the Lease, the Lease shall not be terminated because of a default or breach thereunder on the part of Tenant until and unless:

(A) Notice of any such default or breach shall have been delivered to the Lender in accordance with the provisions of *Section 7(a)(i)*;

(B) With respect to a default or breach that is curable solely by the payment of money, Lender has not cured such default or breach within thirty (30) days following the later of the expiration of any of Tenant's notice and cure period set forth in the Lease and the date notice of such default is delivered to Lender in accordance with the provisions of *Section 7(a)(i)*;

(C) With respect to a default or breach that is not curable solely by the payment of money, Lender has not cured such default or breach within 30 days following the later of the expiration of any of Tenant's notice and cure periods set forth in the Lease and the date notice of such default is delivered to Lender in accordance with the provisions of *Section 7(a)(i)*, unless if such default or breach is curable but cannot be cured within such time period, (aa) Lender has notified Landlord in writing within such time period that it intends to cure such default or breach, (bb) Lender within such period has diligently commenced such actions reasonably necessary to cure such default or breach, and (cc) after such commencement, Lender diligently prosecutes such cure to completion.

Furthermore, notwithstanding anything to the contrary contained herein, if the Lender determines to foreclose or cause its designee to foreclose the Leasehold Deed of Trust or to acquire or cause its designee to acquire the Leasehold or to succeed or cause its designee to succeed to Tenant's possessory rights with respect to the Premises or to appoint a receiver before it effectuates the cure of any breach or default by Tenant hereunder, then Lender may, but shall not be obligated to, proceed to cure such defaults to the extent that Borrower is no longer in possession of the Premises, or if Borrower remains in possession of the Premises and Borrower is in default of the use provisions of Sections 2(a) and 2(b) of the Lease by commencing payment of the fair market rent for the Lease as set forth in Section 4(b) therein; *provided, however*, in the event Lender does not proceed to cure such defaults, Landlord's sole remedy shall be to terminate the Lease and obtain full possession of the Premises. Notwithstanding anything provided to the contrary in the Lease, the Lease shall not be terminated without the prior written consent of the Lender because of a default or breach thereunder on the part of Tenant which cannot be cured by payment of money or performance of demolition, design, construction, renovation, operating, and maintenance work, including any bankruptcy of the Tenant so long as Lender or its designee is taking such appropriate action to obtain possession of the Leasehold ("**Tenant Personal Defaults**").

(b) **Subordination and Non-Disturbance Agreement.** Landlord and Tenant agree that so long as any such Leasehold Deed of Trust shall remain a lien on the Leasehold, Landlord and Tenant will not, without the prior written consent of Lender, subordinate the Lease, or any New Lease entered into pursuant to *Section 7(g)*, to any deed of trust or mortgage on Landlord's reversionary fee interest in the Premises ("**Fee Deed of Trust**") unless such Fee Deed of Trust contains or is accompanied by a subordination and non-disturbance agreement, in form and substance reasonably acceptable to Lender, duly executed by the holder of such Fee Deed of Trust ("**Fee Mortgagee**") providing, among other things, that such Fee Mortgagee shall not disturb Lender's or Tenant's possession of such property following a foreclosure of such Fee Deed of Trust and otherwise protecting Tenant's and Lender's interests in the Lease and the Leasehold ("**SNDA**"). Lender and Tenant agree, upon receipt of such SNDA, to subordinate the Lease, or any New Lease entered into pursuant to *Section 7(g)*, and the Leasehold Deed of Trust to the lien of such Fee Deed of Trust.

(c) **Landlord's Consents.** Landlord hereby consents to, and agrees that the Leasehold Deed of Trust may contain provisions for any or all of the following:

(i) An assignment of Tenant's share of the net proceeds from available insurance coverage or from any award or other compensation resulting from a total or partial taking of the Leasehold by condemnation;

(ii) The entry by the Lender upon the Leasehold during business hours, without notice to Landlord or Tenant, to view the state of the Leasehold;

(iii) A default by Tenant under the Lease being deemed to constitute a default under the Leasehold Deed of Trust;

(iv) An assignment of Tenant's right, if any, to terminate, cancel, modify, change, supplement, alter, or amend the Lease, including, without limitation, Tenant's right under Section 365(h)(1) of the Bankruptcy Code, 11 U.S.C. §101 et seq. (the "**Bankruptcy Code**") to elect to treat the Lease as terminated, and an assignment of all of Tenant's other rights under the Bankruptcy Code;

(v) An assignment of any sublease to which the Leasehold Deed of Trust is subordinated; and

(vi) The following rights and remedies (among others) to be available to the Lender upon the default under any Leasehold Deed of Trust:

(A) The foreclosure of the Leasehold Deed of Trust pursuant to a power of sale, by judicial proceedings or other lawful means and the sale of the Leasehold to the purchaser at the foreclosure sale and a subsequent sale or sublease of the Leasehold by such purchaser if the purchaser is a Lender or its nominee or designee;

(B) The appointment of a receiver, irrespective of whether the Lender accelerates the maturity of all indebtedness secured by the Leasehold Deed of Trust;

(C) The right of the Lender or the receiver appointed under subparagraph (B) above to enter and take possession of the Leasehold, to manage and operate the same, to collect the subrentals, issues and profits therefrom and any other income generated by the Leasehold or the operation thereof and to cure any default under the Leasehold Deed of Trust or any default by Tenant under the Lease; or

(D) An assignment of Tenant's right, title and interest under the Lease in and to any deposit of cash, securities or other property which may be held to secure the performance of the Loan Obligations, including, without limitation, the covenants, conditions and agreements contained in the Leasehold Deed of Trust, in the premiums for or dividends upon any insurance provided for the benefit of any Lender or required by the terms of the Lease, as well as in all refunds or rebates of taxes or assessments upon or other charges against the Leasehold, whether paid or to be paid.

(d) **No Cancellation or Voluntary Surrender.** Without the written consent of Lender, Landlord agrees not to accept a cancellation or voluntary surrender of the Lease or to amend or modify the Lease at any time while the Leasehold Deed of Trust shall remain a lien on

the Leasehold; and any such attempted cancellation, surrender or modification of the Lease without the written consent of Lender shall be null and void and of no force or effect.

(e) **Permitted Transfers.**

(i) It is acknowledged that the Leasehold Deed of Trust may be assigned by Lender in accordance with its terms. Notwithstanding anything stated to the contrary in the Lease and subject to *Section 9*, the following transfers shall be permitted and shall not require the approval or consent of Landlord:

(A) A transfer of the Leasehold at foreclosure sale under the Leasehold Deed of Trust, whether pursuant to the power of sale contained therein or a judicial foreclosure decree, or by an assignment in lieu of foreclosure, or

(B) Any subsequent transfer by the Lender or its nominee or designee if the Lender, or such nominee or designee, is the purchaser at such foreclosure sale or under such assignment in lieu of foreclosure.

(ii) Any such transferee shall be liable to perform the obligations of Tenant under the Lease only so long as such transferee holds title to the Leasehold, provided that upon any conveyance of title, such transferee's transferee expressly assumes and agrees to perform all of the obligations under the Lease; provided further, that the liability of any Lender that obtains title to the Leasehold shall be limited to the Lender's interest in the Leasehold.

(iii) Following the transfer, if any, described in *Section 7(e)(i)* above, all Tenant Personal Defaults existing under the Lease prior to such transfer shall be deemed waived without further notice or action of any party, except as to Sections 2(a) and 2(b) of the Lease.

(f) **Waiver of Subrogation.** Any policy of hazard insurance insuring Landlord shall contain an endorsement waiving the insurer's right of subrogation as against the Lender and Tenant.

(g) **New Lease to Lender.** If the Lease is terminated because of Tenant's default thereunder (provided Lender is taking all actions required under *Section 7(a)* to cure such default) or for any other reason or is extinguished for any reason (including, without limitation, rejection of the Lease by a trustee in bankruptcy), then Lender may elect to demand a new lease of the Leasehold (the "**New Lease**") by written notice delivered to Landlord within 30 days after such termination. Upon any such election, the following provisions shall apply (provided Lender is taking all actions required under *Section 7(a)* to cure all existing defaults):

(i) The New Lease shall be for the remainder of the term of the Lease, effective on the date of termination, at the same rent, except as provided in Sections 2(a) and 4(b) of the Lease where the use is not in compliance with Section 2(a) of the Lease, and shall contain the same covenants, agreements, conditions, provisions, restrictions and limitations as are then contained in the Lease. Such New Lease shall be subject to all then-existing subleases.

(ii) The New Lease shall be executed by Landlord within 60 days after receipt by Landlord of written notice of the Lender's or such other acquiring person's election to enter into a New Lease.

(iii) Any New Lease and the Leasehold created thereby shall, subject to the same conditions contained in the Lease and in this Agreement, continue to maintain the same priority as the Lease with regard to any Leasehold Deed of Trust or any other lien, charge or encumbrance affecting the Premises. Concurrently with the execution and delivery of the New Lease, Landlord shall assign to the tenant named therein all of its right, title and interest in and to moneys, if any, then held by or payable to Landlord which Tenant would have been entitled to receive but for the termination of the Lease.

(iv) If Tenant refuses to surrender possession of the Leasehold, Landlord shall, at the request of the Lender or such other acquiring person, institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove Tenant and all subtenants actually occupying the Leasehold or any part thereof who are not authorized to remain in possession hereunder. Any such action taken by Landlord at the request of the Lender or such other acquiring person shall be at the Lender's or such other acquiring person's sole expense.

8. **Bankruptcy Provisions.**

(a) So long as the Leasehold Deed of Trust shall remain outstanding, the right of election arising under Section 365(h)(1) of the Bankruptcy Code shall be exercised by the Lender and not by the Tenant. Any exercise or attempted exercise by the Tenant of such right of election in violation of the preceding sentence shall be void.

(b) However, if despite the foregoing provision the Lender is not permitted to exercise such right of election and the Landlord (or any trustee of the Landlord) shall reject the Lease pursuant to Section 365(h) of the Bankruptcy Code, (i) the Tenant shall without further act or deed be deemed to have elected under Section 365(h)(1)(A) of the Bankruptcy Code to remain in possession of the Leasehold for the balance of the term of the Lease; (ii) any exercise or attempted exercise by the Tenant of a right to treat the Lease as terminated under Section 365(h)(1)(A) of the Bankruptcy Code shall be void; (iii) the Leasehold Deed of Trust shall not be affected or impaired by such rejection of the Lease; and (iv) the Lease shall continue in full force and effect in accordance with its terms, except that the Tenant shall have the rights conferred under Section 365(h)(1)(B) of the Bankruptcy Code.

(c) For purposes of Section 365(h) of the Bankruptcy Code, the term "possession" shall mean the right to possession of the Leasehold granted to the Tenant under the Lease whether or not all or part of the Leasehold has been subleased.

(d) If the Tenant shall reject the Lease pursuant to Section 365(a) of the Bankruptcy Code, the Landlord shall serve on the Lender notice of such rejection, together with a statement of all sums at the time due under the Lease (without giving effect of any acceleration) and of all other defaults under the Lease then known to the Landlord. The Lender

shall have the right, but not the obligation, to serve on the Landlord within 30 days after service of the notice provided in the proceeding sentence, a notice that the Lender elects to (i) assume the Lease, and (ii) cure all defaults outstanding thereunder (x) concurrently with such assumption as to defaults in the payment of money, and (y) within 60 days after the date of such assumption as to other defaults, except for defaults of the type specified in Section 365(b)(2) of the Bankruptcy Code. If the Lender serves such notice of assumption, then, as between the Landlord and the Lender (i) the rejection of the Lease by the Tenant shall not constitute a termination of the Lease, (ii) the Lender may assume the obligations of the Tenant under the Lease without any instrument or assignment of transfer from the Tenant, (iii) the Lender's rights under the Lease shall be free and clear of all rights, claims and encumbrances of or in respect of the Tenant, and (iv) the Lender shall consummate the assumption of the Lease and the payment of the amounts payable by it to the Landlord pursuant to this Section at a closing to be held at the offices of the Landlord (or its attorneys) within 30 days after the Lender shall have served the notice of assumption hereinabove provided. Upon a subsequent assignment of the Lease by the Lender, the Lender shall be relieved of all obligations and liabilities arising from and after the date of such assignment.

9. **Covenant of Lender.** Lender agrees that it shall not exercise any of its remedies against Tenant under the Leasehold Deed of Trust for a given default unless: (a) Lender has given Landlord a copy of the notice of default, and (b) Landlord shall have the option, but not the obligation, to cure said default within the time frames afforded Tenant under the Leasehold Deed of Trust. Tenant irrevocably directs that Lender accept, and Lender agrees to accept, performance and compliance by Landlord of and with any term, covenant, agreement, provision, condition or limitation on Tenant's part to be kept, observed or performed by Tenant. In addition, Lender hereby agrees to use its reasonable efforts to give Landlord a copy of any written notice of default by Tenant under the Leasehold Deed of Trust, provided Lender shall incur no liability for failing to provide Landlord a copy of any such notice of default.

10. **Notices.** Any notices, requests, demands, or other communications required or permitted hereunder shall be in writing and shall be given via either a nationally recognized overnight delivery service or certified or registered mail, postage prepaid, return receipt requested, and addressed as follows

Landlord: County of Riverside
Economic Development Agency
Deputy Director
Real Estate Division
3403 Tenth Street, Suite 500
Riverside, CA 92501
Facsimile: (951) 955-4837

With a copy to: County Counsel
3860 Orange Street, Suite 500
Riverside, CA 92501
Attention: Anita C. Willis, Deputy
Facsimile: (951) 955-6363

Tenant: CVRM NMTC Project Holdings
P.O. Box 10660
Indio, CA 92202-2564
Attention: Darla Burkett
Facsimile: (760) 347-8073

With a copy to: Kelley, Donion, Gill, Huck & Goldfarb, PLLC
701 Fifth Avenue, Suite 6800
Seattle, WA 98104
Attention: Shaun Gill, Esq.
Facsimile: (206) 397-3062

Lender: LCD NEW MARKETS FUND X, LLC
c/o Opportunity Fund Northern California
111 West Saint John St., Suite 800
San Jose, CA 95113
Attention: Jeff Wells
Telephone: (408) 516-4690
Facsimile: (408) 297-4599

With a copy to: Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Attention: Steven F. McCandless
Telephone: (314) 480-1714
Facsimile: (314) 480-1505

And to: Chase NMTC CVRM Investment Fund, LLC
c/o LCD New Markets Fund, LLC
c/o Opportunity Fund Northern California
111 West Saint John St., Suite 800
San Jose, CA 95113
Attention: Jeff Wells
Telephone: (408) 516-4690
Facsimile: (408) 297-4599

And to: JPMorgan Chase Bank, N.A.
10 S. Dearborn, 19th Floor
Mail Code: IL1-0953
Chicago, Illinois 60603-5506
Attention: NMTC Asset Manager
Facsimile: (312) 233-2263

And to: JPMorgan Chase Bank, N.A.
New Markets Tax Credit Group
560 Mission Street
San Francisco, CA 94105
Attention: Elizabeth Tracey
Facsimile: 415-644-2257
Email: elizabeth.tracey@jpmchase.com

And to: Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: John Kelley, Esq.
Facsimile: (617) 523-6850

or to such other address as any party may designate by notice to the other parties. Any notice, request, demand, or other communication delivered or sent in the manner aforesaid shall be deemed given or made (as the case may be) (i) on the day on which it is actually delivered or (ii) on the 5th business day after the day on which it is deposited in the United States mail by certified mail (return receipt requested), or (iii) on the 1st business day after the day on which it is delivered to a reputable overnight delivery service, whichever first occurs.

11. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of each party's respective successors and assigns.

12. **Continued Effectiveness of this Agreement.** The terms of this Agreement, the rights of the Lender, and the obligations of the Landlord and the Tenant arising hereunder shall not be affected, modified or impaired in any manner or to any extent by (a) any renewal, replacement, amendment, extension, substitution, revision, consolidation, modification or termination of or any of the Loan Obligations; (b) the validity or enforceability of any document evidencing or securing the Loan Obligations; (c) the release, sale, exchange for surrender, in whole or in part, of any collateral security, now or hereafter existing, for any of the Loan Obligations; (d) any exercise or nonexercise of any right, power or remedy under or in respect of the Loan Obligations; or (e) any waiver, consent, release, indulgence, extension, renewal, modification, delay or other action, inaction or omission in respect of the Loan Obligations, all whether or not any Landlord all have had notice or knowledge of any of the foregoing and whether or not it shall have consented thereto.

13. **Forum.**

Each of the parties to this Agreement hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State specified in the governing law section of this Agreement and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Premises are located, over any Dispute. Each of the parties to this Agreement hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in

any state court or any United States federal court sitting in the state specified in the governing law section of this Agreement may be made by certified or registered mail, return receipt requested, directed to the party at its address for notice set forth in this Agreement, or at a subsequent address of which each of the parties received actual notice from the notice-giving party in accordance with the notice section of this Agreement, and service so made shall be complete five days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by Law or limit the right of Lender to bring proceedings against either party to this Agreement in any other court or jurisdiction.

14. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

15. **CHOICE OF LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL; LEGAL PROCEEDINGS IN CALIFORNIA.**

A. THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES, AND TO THE EXTENT RELEVANT IN APPLYING THE PROVISIONS OF SECTION 45D OF THE CODE, THE CODE AND THE TREASURY REGULATIONS THEREUNDER.

B. EACH PARTY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, *PROVIDED, HOWEVER*, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS *SECTION 15*.

C. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR

ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS *SECTION 15*.

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

1. WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN PARAGRAPH 2 BELOW, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. EXCEPT AS OTHERWISE PROVIDED IN THE TRANSACTION DOCUMENTS, VENUE FOR THE REFERENCE PROCEEDING WILL BE IN THE STATE OR FEDERAL COURT IN THE COUNTY OR DISTRICT WHERE VENUE IS OTHERWISE APPROPRIATE UNDER APPLICABLE LAW.

2. THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (C) APPOINTMENT OF A RECEIVER AND (D) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

3. UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE

COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

4. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN A PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

5. THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

6. THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

D. TO THE EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD AND TENANT SHALL NOT ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Signature pages attached.]

Executed as a sealed instrument under the laws of the state in which the Premises are located, as of the date first above written.

LANDLORD:

COUNTY OF RIVERSIDE

By: _____
Name: Bob Buster
Title: Chairman, Board of Supervisors

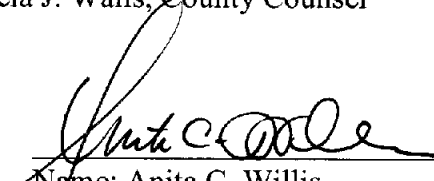
ATTEST:

Kecia Harper-Ihem, Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

Pamela J. Walls, County Counsel

By:  _____
Name: Anita C. Willis
Title: Deputy County Counsel

[COUNTERPART SIGNATURE PAGE TO RECONGITION AND CONSENT TO
LEASEHOLD DEED OF TRUST]

TENANT:

CVRM NMTC PROJECT HOLDINGS,
a California nonprofit corporation

By: _____
Name: Floyd Rhoades
Title: Chair

[COUNTERPART SIGNATURE PAGE TO RECONGITION AND CONSENT TO
LEASEHOLD DEED OF TRUST]

LENDER:

LCD NEW MARKETS FUND X, LLC,
a Delaware limited liability company

By: LCD New Markets Fund, LLC,
its managing member

By: Opportunity Fund Northern
California, formerly known as Lenders for
Community Development, its managing
member

By: _____
Name: Jeff Wells
Title: Vice President

ACKNOWLEDGMENT

State of California)
)ss.
County of _____)

On August __, 2011, before me, _____, Notary Public, personally appeared Floyd Rhoades, Chair, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

My Commission Expires _____, 20__

EXHIBIT A

LEGAL DESCRIPTION

Parcel(s) 1 of Parcel Map No. 34740, in the City of Indio, County of Riverside, State of California, as shown by map on file in Book 231 Page(s) 55 through 57, inclusive, of Parcel Maps, Records of Riverside County, California.