

Recording requested by and return to:

TOWN OF MORAGA
Office of the Town Clerk
2100 Donald Drive
Moraga, California 94556
Attention: Town Clerk

This transaction is exempt from California documentary transfer tax pursuant to Section 11929 of the California Revenue and Taxation Code. This document is recorded for the benefit of the Town of Moraga and the recording is fee-exempt under Section 6103 of the California Government Code.

FACILITY LEASE

BY AND BETWEEN THE

TOWN OF MORAGA

AND

**ABAG FINANCE AUTHORITY
FOR NONPROFIT CORPORATIONS**

DATED AS OF FEBRUARY 1, 2010

**Town of Moraga
2010 Certificates of Participation
(Town Hall Improvement Project)**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
SECTION 1.01. Definitions.	1
ARTICLE II LEASE OF LEASED FACILITIES; TERM.....	4
SECTION 2.01. Lease of Leased Facilities.	4
SECTION 2.02. Term; Occupancy.	4
ARTICLE III BASE RENTAL PAYMENTS; USE OF PROCEEDS	4
SECTION 3.01. Base Rental Payments.	4
SECTION 3.02. Additional Payments.	5
SECTION 3.03. Fair Rental Value.	5
SECTION 3.04. Assignment.	6
SECTION 3.05. Payment Provisions.	6
SECTION 3.06. Appropriations Covenant; Base Rental Payments and Additional Payments to Constitute a Current Expense of the Town; No Pledge.....	6
SECTION 3.07. Rental Abatement.....	7
SECTION 3.08. Use of Proceeds.	7
ARTICLE IV ACQUISITION AND CONSTRUCTION OF THE PROJECT; MAINTENANCE; ALTERATIONS AND ADDITIONS.....	7
SECTION 4.01. Appointment; Acquisition and Construction of the Project.	7
SECTION 4.02. Maintenance and Utilities.....	8
SECTION 4.03. Changes to the Leased Facilities; Right of Substitution of Leased Facilities or Release of Portions Thereof.	8
SECTION 4.04. Installation of Town’s Equipment.	9
ARTICLE V INSURANCE; INDEMNIFICATION	10
SECTION 5.01. Fire and Extended Coverage and Earthquake Insurance.	10
SECTION 5.02. Liability Insurance.	11
SECTION 5.03. Rental Interruption or Use and Occupancy Insurance.....	12
SECTION 5.04. Worker’s Compensation.	12
SECTION 5.05. Title Insurance.	12
SECTION 5.06. Insurance Proceeds; Form of Policies.....	13

SECTION 5.07	Indemnification.....	13
ARTICLE VI DEFAULTS AND REMEDIES		14
SECTION 6.01.	Defaults and Remedies.....	14
SECTION 6.02.	Waiver.	17
ARTICLE VII EMINENT DOMAIN; PREPAYMENT		17
SECTION 7.01.	Eminent Domain.	17
SECTION 7.02.	Prepayment.....	17
SECTION 7.03.	Option to Purchase; Sale of Personal Property.....	19
ARTICLE VIII COVENANTS.....		20
SECTION 8.01.	Right of Entry.	20
SECTION 8.02.	Liens.....	20
SECTION 8.03.	Quiet Enjoyment.	20
SECTION 8.04.	Authority Not Liable.	20
SECTION 8.05.	Assignment and Subleasing.	21
SECTION 8.06.	Title to Leased Facilities.....	21
SECTION 8.07.	Tax Covenants.	21
SECTION 8.08.	Purpose of Lease.	22
ARTICLE IX DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE LEASED FACILITIES.....		22
SECTION 9.01.	Disclaimer of Warranties.....	22
SECTION 9.02.	Vendor's Warranties.....	22
SECTION 9.03.	Use of the Leased Facilities.	22
ARTICLE X MISCELLANEOUS.....		23
SECTION 10.01.	Law Governing.....	23
SECTION 10.02.	Notices.....	23
SECTION 10.03.	Validity and Severability.....	23
SECTION 10.04.	Net-Net-Net Lease.	24
SECTION 10.05.	Taxes.....	24
SECTION 10.06.	Section Headings.....	24
SECTION 10.07.	Amendment or Termination.....	24
SECTION 10.08.	Execution.	25

Exhibit A Legal Description of Site

Exhibit B Base Rental Payment Schedule

FACILITY LEASE

This Facility Lease (this “**Facility Lease**” or this “**Lease**”), dated as of February 1, 2010, by and between the TOWN OF MORAGA, a municipal corporation duly organized and existing under the Constitution and laws of the State of California (the “**Town**”), as lessee, and ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the “**Authority**”), as lessor, is made with reference to the following recitals:

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California, with the power to assist local agencies in financing projects and programs that involve the leasing of property for certain public improvements whenever a local agency determines that there are significant public benefits from so doing;

WHEREAS, the Town owns the Site (as hereinafter defined) and intends to lease the Site to the Authority pursuant to that certain Site Lease, dated as of February 1, 2010, by and between the Town, as lessor, and the Authority, as lessee (the “**Site Lease**”), and the Authority intends to lease the Leased Facilities (as hereinafter defined) back to the Town under this Facility Lease; and

WHEREAS, under this Facility Lease, the Town will be obligated to make Base Rental Payments to U.S. Bank, National Association, a national banking association (the “**Trustee**”), as irrevocable assignee and transferee of the Authority pursuant to a trust agreement by and among the Town, the Authority and the Trustee, for the quiet use and enjoyment of the Leased Facilities, which Base Rental Payments will be applied to pay principal and interest with respect to the Town of Moraga 2010 Certificates of Participation (Town Hall Improvement Project) (the “**Certificates**”); and

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, for mutual consideration the receipt and sufficiency of which are hereby acknowledged:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified, which meanings shall be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Trust Agreement.

The term “**Additional Payments**” means all amounts payable to the Authority or the Trustee or any other person from the Town as Additional Payments pursuant to Section 3.02 hereof.

The term “**Architects**” means the architects, engineers or designers of the Project or any component thereof, and any successor or successors to any thereof.

The term “**Authority**” means (i) the ABAG Finance Authority for Nonprofit Corporations, acting as lessor hereunder; (ii) any surviving, resulting or transferee entity; and (iii) except where the context requires otherwise, any assignee of the Authority.

The term “**Base Rental Payments**” means all amounts payable to the Authority from the Town as Base Rental Payments pursuant to Section 3.01 hereof.

The term “**Base Rental Payment Schedule**” means the schedule of Base Rental Payments payable by the Town to the Authority pursuant to Section 3.01 hereof and as set forth in Exhibit B attached hereto.

The term “**Certificates**” means the certificates of participation titled “Town of Moraga 2010 Certificates of Participation (Town Hall Improvement Project)” executed and delivered by the Trustee pursuant to the Trust Agreement, together with any Additional Certificates (as said term is defined in the Trust Agreement) executed and delivered by the Trustee pursuant to the Trust Agreement and any Supplemental Trust Agreement entered into among the Authority, the Town and the Trustee in accordance with and as provided by the Trust Agreement.

The term “**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

The term “**Contractors**” means the construction contractor or contractors for the Project, and any successor or successors to any thereof.

The term “**Event of Default**” has the meaning specified in Section 6.01.

The terms “**Lease**” or “**Facility Lease**” mean this Lease, as originally executed and recorded in full or as referred to in a recorded Memorandum of Lease, or as it may from time to time be supplemented, modified or amended pursuant to the provisions hereof and of the Trust Agreement.

The term “**Leased Facilities**” means the Site and that portion of the Project located on the Site.

The term “**Outstanding**” as applied to Certificates has the meaning ascribed to such term in the Trust Agreement.

The term “**Permitted Encumbrances**” means (1) items __-__, inclusive, at page __, and Items __ and __, at page __ of that certain preliminary report of title, dated _____, 2010, issued by First American Title Company; Order No. _____; (2) that certain lease dated _____ by and between the Town and _____; (3) that certain lease dated _____ by and between the Town and _____; (4) the Site Lease; (5) this Facilities Lease, as it may be amended from time to time in accordance with its terms; and (6) the Trust Agreement, as it may be amended from time to time in accordance with its terms.

The term “**Permitted Investments**” has the meaning ascribed to such term in the Trust Agreement.

The term “**Project**” means (1) improvements to real property commonly known as 329 Rheem Boulevard owned by and located within the Town, and (2) the acquisition and improvement of certain real property commonly known as 331 Rheem Boulevard located within the Town.

The term “**Reserve Fund**” means the Reserve Fund established pursuant to Section 4.03 of the Trust Agreement.

The term “**Site**” means the real property at what is commonly known as 329 Rheem Boulevard within the Town and described in Exhibit A to the Site Lease and in Exhibit A to this Facility Lease.

The term “**Site Lease**” means the Site Lease between the Town and the Authority, pursuant to which the Town is leasing the Site to the Authority.

The term “**Standard & Poor’s Authority**” means Standard & Poor’s Authority, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term Standard & Poor’s Authority shall be deemed to refer to any other nationally recognized securities rating agency selected by the Town.

The term “**State**” means the State of California.

The term “**Supplemental Trust Agreement**” means any supplement or amendment to the Trust Agreement hereafter duly authorized and entered into between the Authority and the Trustee in accordance with the provisions of the Trust Agreement.

The term “**Tax Certificate**” has the meaning ascribed to such term in the Trust Agreement.

The term “**Town**” means the Town of Moraga, a municipal corporation duly organized and existing under and by virtue of the Constitution and the laws of the State of California.

The term “**Trust Agreement**” means that certain trust agreement, dated as of February 1, 2010, by and among the Town, the Authority and the Trustee, pursuant to which the Trustee will execute and deliver the Certificates, as originally executed or as it may from time to time be supplemented, modified or amended by a Supplemental Trust Agreement entered into pursuant to the provisions of the Trust Agreement.

The term “**Trustee**” means U.S. Bank, National Association, a national banking association appointed as trustee pursuant to the Trust Agreement, and any successor appointed under the Trust Agreement.

The term “**Written Request of the Authority**” means an instrument in writing signed by or on behalf of the Authority by any authorized officer of the corporation or such officer’s written designee for that purpose.

The term “**Written Request of the Town**” means an instrument in writing signed by the Town Manager of the Town or any person designated in writing by the Town Manager for that purpose.

ARTICLE II

LEASE OF LEASED FACILITIES; TERM

SECTION 2.01. Lease of Leased Facilities. The Authority hereby leases to the Town and the Town hereby leases from the Authority the Leased Facilities, subject to the Permitted Encumbrances. The Town hereby agrees and covenants during the term of this Lease that, except as hereinafter provided, it will use the Leased Facilities for public purposes of the Town so as to afford the public the benefits contemplated by this Lease.

SECTION 2.02. Term; Occupancy. The term of this Lease will commence on the date of recordation of this Lease in the office of the County Recorder of the County of Contra Costa, State of California, or on February 1, 2010, whichever is earlier, and will end on October 1, 20__ unless such term is extended or sooner terminated as hereinafter provided. If on October 1, 20__ the Certificates will not be fully paid, or if the rental payable hereunder shall have been abated at any time and for any reason, then the term of this Lease will be extended until ten (10) days after all Certificates are fully paid, except that the term of this Lease will in no event be extended beyond October 1, 20__. If prior to October 1, 20__, the Certificates are fully paid, or provision therefor made, the term of this Lease shall end ten (10) days thereafter or ten (10) days after written notice by the Town to the Authority, whichever is earlier. The Town shall provide the Trustee with a revised Base Rental Payment schedule in accordance with Section 3.01 hereof, if the term of this Lease is extended.

ARTICLE III

BASE RENTAL PAYMENTS; USE OF PROCEEDS

SECTION 3.01. Base Rental Payments. Subject to a credit for the balance on deposit at any time in the Interest Fund, the Town agrees to pay to the Authority, as Base Rental Payments for the use and occupancy of the Leased Facilities (subject to the provisions of Sections 3.05, 3.07 and 7.01 of this Lease), semiannual rental payments, all in accordance with the Base Rental Payment Schedule attached hereto as Exhibit B and made a part hereof, payable on March 15 and September 15. The Town acknowledges that the Base Rental Payments represent the reasonably estimated and anticipated market rental value of the Leased Facilities, as improved by the Project, as the same is expected to increase over the term of this Lease. Base Rental Payments shall be calculated on an annual basis, for the twelve-month periods commencing on October 2 and ending on October 1, except that the rental payment due and payable on and September 15, 2010, shall be for the period commencing with February 1, 2010. Each annual

payment of Base Rental shall be for the use of the Leased Facilities for the twelve-month period commencing on October 2 of the period in which such installments are payable.

If the term of this Lease shall have been extended pursuant to Section 2.02 hereof, Base Rental Payment installments shall continue to be due on March 15 and September 15 in each year, and payable as hereinabove described, continuing to and including the date of termination of this Lease, in an amount equal to the amount of Base Rental payable for the twelve-month period commencing October 2, 20__.

SECTION 3.02. Additional Payments. The Town shall also pay such amounts (the “**Additional Payments**”) as may be required for the payment of all costs and expenses incurred for the execution, performance or enforcement of this Lease and the Trust Agreement, its interest in the Leased Facilities and the lease of the Leased Facilities to the Town, including but not limited to payment of all fees, costs and expenses and all administrative costs related to the Leased Facilities, including, without limiting the generality of the foregoing, salaries and wages of employees, all expenses, compensation and indemnification of the Trustee pursuant to the Trust Agreement, fees of auditors, accountants, attorneys or architects, and all other necessary administrative costs or charges required to be paid by the Town in order to maintain its existence or to comply with the terms of this Facility Lease or of the Trust Agreement, but not including in Additional Payments amounts required to pay the principal of and interest with respect to the Certificates.

SECTION 3.03. Fair Rental Value. Such payments of Base Rental Payments and Additional Payments for each rental period during the term of this Lease, as adjusted to reflect any initial deposit of the Town referred to in Section 3.01 above, shall constitute the total rental for said rental period and shall be paid by the Town in each rental payment period for and in consideration of the right of use and occupancy of, and continued quiet use and enjoyment of, the Leased Facilities and the Leased Facilities during each such period for which said rental is to be paid. The parties hereto have agreed and determined that such total rental payable for each twelve-month period beginning October 1 represents no more than the reasonably estimated fair rental value of the Leased Facilities for each such period, as the same may reasonably be expected to increase over the term of this Lease. In making such determination, consideration has been given to costs of acquisition, design, construction and financing of the Leased Facilities, other obligations of the parties under this Lease, the uses and purposes which may be served by the Leased Facilities and the benefits therefrom which will accrue to the Town and the general public, and the general expectation of increases in the market value and fair rental value of improved real property of the nature of the Leased Facilities.

SECTION 3.04. Assignment. The Authority, for good and valuable consideration in hand received, does hereby irrevocably assign and transfer to the Trustee, for the benefit of the Certificate Holders from time to time of the Certificates, all of its rights, but not its obligations, in the Site Lease and the Facility Lease, including, but not limited to, its rights to receive Base Rental Payments and Additional Payments from the Town under the Facility Lease, and the right to exercise such rights and remedies as are conferred on the Authority by the Site Lease and the Facility Lease as may be necessary to enforce payment of such Base Rental Payment and Additional Payments when due or otherwise to protect the interests of the Authority upon an Event of Default thereunder by the Town.

SECTION 3.05. Payment Provisions. Each installment of rental payable hereunder shall be paid in lawful money of the United States of America to the Trustee at the Corporate Trust Office of the Trustee. Any such installment of rental accruing hereunder which shall not be paid when due and payable under the terms of this Lease shall bear interest at the rate of twelve percent (12%) per annum, based on a 360-day year, or such lesser rate of interest as may be permitted by law, from the date when the same is due hereunder until the same shall be paid. Such interest shall be deemed “**Revenues**” for purposes of the Trust Agreement. Notwithstanding any dispute between the Authority and the Town, the Town shall make all rental payments when due without deduction or offset of any kind and shall not withhold any rental payments pending the final resolution of such dispute. In the event of a determination that the Town was not liable for said rental payments or any portion thereof, said payments or excess of payments, as the case may be, shall be credited against subsequent rental payments due hereunder or refunded at the time of such determination. Amounts required to be deposited by the Town with the Trustee pursuant to this Section on any date shall be reduced to the extent of amounts on deposit in the Revenue Fund and available therefor.

Rental is subject to abatement as provided in Section 3.07 hereof.

Nothing contained in this Lease shall prevent the Town from applying legally available funds from time to time for any purpose now or hereafter authorized by law, including the making of repairs to, or the restoration of, the Leased Facilities in the event of damage to or the destruction of the Leased Facilities.

SECTION 3.06. Appropriations Covenant; Base Rental Payments and Additional Payments to Constitute a Current Expense of the Town; No Pledge. The Town covenants to take such action as may be necessary to include all such Base Rental Payments and Additional Payments due hereunder in its annual budgets, and to make necessary annual appropriations for all such Base Rental Payments and Additional Payments. The Town will deliver to the Trustee copies of the portion of each annual Town budget relating to the payment of Base Rental Payments and Additional Payments hereunder within thirty (30) days after the adoption thereof, which shall be no later than October 1 in each year. The covenants on the part of the Town herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Town to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Town to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the Town.

The Authority and the Town understand and intend that the obligation of the Town to pay Base Rental Payments and Additional Payments hereunder shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation or incurring of indebtedness by the Town, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the Town. Except as provided in Section 3.07 hereof, Base Rental Payments and Additional Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or on deposit in the Reserve Fund or otherwise legally available for the purpose of paying Base Rental Payments and Additional Payments or other payments due hereunder as consideration for use of the Leased Facilities. This Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder in the event that the term of the Lease is continued. The Town has not pledged the full faith and credit of the Town, the State of California or any agency or department thereof to the payment of the Base Rental Payments and Additional Payments or any other payments due hereunder.

SECTION 3.07. Rental Abatement. The Base Rental Payments shall also be abated proportionately, during any period in which by reason of any damage or destruction (other than by condemnation which is hereinafter provided for) there is substantial interference with the use and occupancy of the Leased Facilities by the Town, in the proportion in which the initial cost of that portion of the Leased Facilities rendered unusable bears to the initial cost of the whole of the Leased Facilities. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease shall continue in full force and effect, and the Town waives any right to terminate this Lease by virtue of any such damage or destruction.

SECTION 3.08. Use of Proceeds. The parties hereto agree that the proceeds of the sale of the Certificates will be used solely to finance the Project and as set forth in the applicable Tax Certificate(s).

ARTICLE IV

ACQUISITION AND CONSTRUCTION OF THE PROJECT; MAINTENANCE; ALTERATIONS AND ADDITIONS

SECTION 4.01. Appointment; Acquisition and Construction of the Project.

The Authority hereby irrevocably appoints the Town, and the Town hereby accepts appointment, as sole agent for the Authority to implement the Project, and the Town, as agent for the Authority, agrees to proceed with all due diligence to cause the preparation of plans, specifications and construction bid documents for the Project and to obtain any and all required state approval, environmental clearance, and construction permits applicable to the Project or any component thereof. The Town agrees to proceed with all due diligence as agent for the Authority, to obtain competitive bids for the acquisition and construction of the Project.

The Authority and the Town agree that the Project will be constructed in accordance with the plans and specifications prepared by the Architects and approved by the Town. The Authority and the Town further agree that the acquisition and construction of the Project will be substantially completed in accordance with said plans and specifications within the time limits set forth in the applicable construction contract(s) and the purchase agreement related to the Town's acquisition of 331 Rheem Boulevard.

As the irrevocably appointed agent for the Authority, the Town may issue change orders altering the construction contract plans and specifications during the course of construction, if such changes do not materially reduce or diminish the capacity, adaptability or usefulness of the Project. The Town shall pay any increased cost resulting from such change orders.

SECTION 4.02. Maintenance and Utilities. During such time as the Town is in possession of the Leased Facilities, all maintenance and repair, both ordinary and extraordinary, of the Leased Facilities shall be the responsibility of the Town, which shall at all times maintain or otherwise arrange for the maintenance of the Leased Facilities in first class condition, and the Town shall pay for or otherwise arrange for the payment of all utility services supplied to the Leased Facilities, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Leased Facilities resulting from ordinary wear and tear or want of care on the part of the Town or any assignee or sublessee thereof under a Permitted Encumbrance, or any other cause and shall pay for or otherwise arrange for the payment of all insurance policies required to be maintained with respect to the Leased Facilities. In exchange for the rental herein provided, the Authority agrees to provide only the Leased Facilities and only to the extent of the Authority's interest therein.

SECTION 4.03. Changes to the Leased Facilities; Right of Substitution of Leased Facilities or Release of Portions Thereof. (a) Subject to Section 8.02 hereof, the Town shall, at its own expense, have the right to revise the Leased Facilities or to make additions, deletions, modifications and improvements to the Leased Facilities, including without limitation portions of the Site and portions of the Leased Facilities. All such additions, deletions, modifications and improvements shall thereafter comprise part of (or be deleted from) the Leased Facilities and be subject to (or released from) the provisions of this Lease. Such additions, deletions, modifications and improvements shall not in any way damage the Leased Facilities or cause it to be used for purposes other than those authorized under the provisions of state and federal law; provided that the Leased Facilities, upon completion of any additions, deletions, modifications and improvements made pursuant to this Section, shall have a fair market rental value not less than the Base Rental Payments and the Additional Payments.

(b) Without limiting the generality of the foregoing provisions of paragraph (a) of this Section 4.03, the Town may elect to substitute other real property or improvements (subject only to Permitted Encumbrances) or release a portion of the real property or improvements (subject only to Permitted Encumbrances) constituting the Leased Facilities, provided that the Town gives prior written notification thereof to [Standard & Poor's Authority], provides the Trustee with a written supplement to this Lease (and the Site Lease, if applicable), and obtains and provides to the Trustee each of the following:

(i) A certificate from an independent and qualified MAI real estate appraiser selected by the Town setting forth his or her findings that the Leased Facilities, as constituted following such substitution or release, (1) have an annual fair rental value during the remainder of the term of this Lease which is equal to or greater than the total annual Base Rental Payments and Additional Payments (assuming that the annual Additional Payments due in the future will equal the average annual Additional Payments prior to such substitution or release) required to be paid hereunder during any year of the remainder of the term of this Lease and (2) has a useful life at least equal to the remaining term of this Lease;

(ii) Certificates of insurance applicable to the Leased Facilities (at and after the substitution or release) which comply with the requirements of Sections 5.01, 5.02, 5.03 and 5.05 hereof; and

(iii) An opinion of bond counsel to the effect that such substitution or release will not adversely affect the exclusion from gross income for federal income tax purposes and the exemption from State personal income taxation of interest paid with respect to the Certificates, and that this Lease and the Site Lease, as amended, are valid and binding obligations of the Town.

In connection with a substitution or release, all interests of the Authority, and its assignee, in the portion of the Site and/or the Leased Facilities released shall terminate, and the Authority and its assignee shall execute and recorder with the County Record of Contra Costa County all documents deemed necessary by the Town to evidence such termination of interest. Upon receipt of the items described in subparagraphs (a) and (b) above, the Trustee also shall execute a Supplemental Trust Agreement and shall not impose on the Town any further conditions or prerequisites to the requested substitution or release. The Town shall cause the supplemental to the Lease and the Site Lease or memoranda thereof to be recorded in the real property records of Contra Costa County.

All costs and expenses incurred in connection with such substitution or release shall be borne by the Town. No substitution or release under this Section 4.03 shall be, by itself, the basis for any reduction in or abatement of the Base Rental Payments due from the Town hereunder.

SECTION 4.04. Installation of Town's Equipment. The Town and any sublessee under any Permitted Encumbrance may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Facilities. All such items shall remain the sole property of such party, in which neither the Authority, the Trustee nor any Certificate holder shall have any interest, and may be modified or removed by such party at any time provided that such party shall repair and restore any and all damage to the Leased Facilities resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent the Town from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Leased Facilities.

ARTICLE V

INSURANCE; INDEMNIFICATION

SECTION 5.01. Fire and Extended Coverage and Earthquake Insurance. The Town shall procure and maintain or cause to be procured and maintained, throughout the term of this Lease, insurance against loss or damage to any structures constituting any part of the Leased Facilities by fire and lightning, with extended coverage insurance, vandalism and malicious mischief insurance, sprinkler system leakage insurance, and earthquake insurance; provided that, with respect to earthquake insurance, the obligation of the Town to procure and maintain earthquake insurance shall apply only if such insurance is reasonably available at reasonable cost in the commercial market from reputable insurance companies. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of all structures constituting any part of the Leased Facilities, excluding the cost of excavations, of grading and filling, and of the land (except that such earthquake insurance may be subject to a deductible clause of not to exceed ten percent (10%) of said replacement cost for any one loss and except that such other insurance may be subject to deductible clauses for any one loss of not to exceed two hundred fifty thousand dollars (\$250,000)), or, in the alternative, shall be in an amount and in a form sufficient (together with moneys in the Reserve Fund and available for the purpose), in the event of total or partial loss, to enable all Certificates then Outstanding to be prepaid. Such insurance shall be provided by an insurer rated A or better by Standard & Poor's Authority and shall name the Authority and the Trustee as additional insureds as to their respective interests in the Leased Premises.

In the event of any damage to or destruction of any part of the Leased Facilities, caused by the perils covered by such insurance, the Town, as agent for the Authority, and except as hereinafter provided, shall cause the proceeds of such insurance to be used for the repair, reconstruction or replacement of the damaged or destroyed portion of the Leased Facilities, and the Town shall hold said proceeds separate and apart from all other funds, in a special fund to be designated the "Insurance and Condemnation Fund," to the end that such proceeds shall be applied to the repair, reconstruction or replacement of the Leased Facilities to at least the same good order, repair and condition as it was in prior to the damage or destruction, insofar as the same may be accomplished by the use of said proceeds. Upon each expenditure by the Town of amounts in the Insurance and Condemnation Fund, the Town shall provide the Trustee with a certificate of the Town, as agent for the Authority, to the effect that the Town has expended moneys or incurred liabilities in an amount equal to the amount therein requested to be paid over to it for the purpose of repair, reconstruction or replacement, and specifying the items for which such moneys were expended, or such liabilities were incurred, and containing the additional information required to be included in a Written Requisition of the Authority prepared pursuant to Section 4.04 of the Trust Agreement. Any balance of said proceeds not required for such repair, reconstruction or replacement shall be treated by the Trustee as Base Rental Payments and applied in the manner provided by Section 4.04 of the Trust Agreement. Alternatively, the Town, at its option, but only if the proceeds of such insurance and any amounts transferred from

the Reserve Fund, together with any other moneys then available for the purpose are at least sufficient to prepay an aggregate principal amount of Outstanding Certificates, equal to the amount of Outstanding Certificates attributable to the portion of the Leased Facilities so destroyed or damaged (determined by reference to the proportion which the acquisition, design and construction cost of such portion of the Leased Facilities bears to the acquisition, design and construction cost of the Leased Facilities), may elect not to repair, reconstruct or replace the damaged or destroyed portion of the Leased Facilities and thereupon shall cause said proceeds to be used for the prepayment of Outstanding Certificates pursuant to the provisions of the Trust Agreement.

The Authority and the Town shall promptly apply for Federal disaster aid or State disaster aid in the event that the Leased Facilities are damaged or destroyed as a result of an earthquake (or other declared disaster for which such aid is available) occurring at any time. Any proceeds received as a result of such disaster aid shall be used to repair, reconstruct, restore or replace the damaged or destroyed portions of the Leased Facilities, or, at the option of the Town, to fund the prepayment of Outstanding Certificates to the extent that such use of such disaster aid is permitted.

As an alternative to providing the insurance required by the first paragraph of this Section, or any portion thereof, the Town may provide a self-insurance method or plan of protection if and to the extent such self-insurance method or plan of protection shall afford reasonable coverage for the risks required to be insured against, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State other than the Town. Before such other method or plan may be provided by the Town, and annually thereafter so long as such method or plan is being provided to satisfy the requirements of this Lease, there shall be filed with the Trustee a certificate of an actuary, insurance consultant or other qualified person, stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable coverage for the risks required to be insured against. There shall also be filed a certificate of the Town setting forth the details of such substitute method or plan. In the event of loss covered by any such self-insurance method, the liability of the Town hereunder shall be limited to the amounts in the self-insurance reserve fund or funds created under such method.

SECTION 5.02. Liability Insurance. Except as hereinafter provided, the Town shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Lease, a standard comprehensive general liability insurance policy or policies in protection of the Authority, the Trustee and their respective members, directors, officers, agents and employees, indemnifying said persons against all direct or contingent loss or liability for damages for personal injury, death or property damage occasioned by reason of the operation of the Leased Facilities, with minimum liability limits of one million dollars (\$1,000,000) for personal injury or death of each person and three million dollars (\$3,000,000) for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of three hundred thousand dollars (\$300,000), subject to a deductible clause of not to exceed five thousand dollars (\$5,000), for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of three million dollars (\$3,000,000) covering all such risks. Such liability

insurance may be maintained as part of or in conjunction with any other liability insurance carried by the Town.

As an alternative to providing the insurance required by the first paragraph of this Section, or any portion thereof, the Town may provide a self-insurance method or plan of protection if and to the extent such self-insurance method or plan of protection shall afford reasonable protection to the Authority, the Trustee and their respective members, directors, officers, agents and employees, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State other than the Town. Before such other method or plan may be provided by the Town, and annually thereafter so long as such method or plan is being provided to satisfy the requirements of this Lease, there shall be filed with the Trustee a certificate of an actuary, independent insurance consultant or other qualified person, stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable protection to the Authority, the Trustee and their respective members, directors, officers, agents and employees against loss and damage from the hazards and risks covered thereby. The Town shall file with the Trustee a certificate of the Town setting forth the details of such substitute method or plan.

SECTION 5.03. Rental Interruption or Use and Occupancy Insurance. The Town shall procure or cause to be procured and maintain or cause to be maintained throughout the term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the rental income from or the use of the Leased Facilities as the result of any of the hazards covered by the insurance required by Section 5.01 hereof, in an amount sufficient to pay the part of the total rent hereunder attributable to the portion of the Leased Facilities rendered unusable (determined by reference to the proportion which the acquisition, design and construction cost of such portion bears to the acquisition, design and construction cost of the Leased Facilities) for a period of at least two years, except that such insurance may be subject to a deductible clause of not to exceed one thousand dollars (\$1,000). Any proceeds of such insurance and any amounts transferred from the Reserve Fund shall be used by the Trustee to reimburse to the Town any rental theretofore paid by the Town under this Lease attributable to such structure for a period of time during which the payment of rental under this Lease is abated, and any proceeds of such insurance not so used shall be applied as provided in Section 3.01 (to the extent required for the payment of Base Rental Payments) and in Section 3.02 (to the extent required for the payment of Additional Payments).

SECTION 5.04. Worker's Compensation. The Town shall also maintain worker's compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the Worker's Compensation Insurance and Safety Act now in force in the State, or any act hereafter enacted as an amendment or supplement thereto. As an alternative, such insurance may be maintained as part of or in conjunction with any other insurance carried by the Town. Such insurance may be maintained by the Town in the form of self-insurance.

SECTION 5.05. Title Insurance. The Town shall obtain, upon the execution and delivery of this Lease, title insurance on the Leased Facilities, in the form of a CLTA title policy, including both leaseholder's and owner's coverage, in an amount equal to the aggregate principal

amount of the Certificates, issued by a company of recognized standing duly authorized to issue the same, subject only to Permitted Encumbrances, naming the Trustee as an additional insured thereunder.

SECTION 5.06. Insurance Proceeds; Form of Policies. All policies of insurance required by Sections 5.01 and 5.03 shall (i) be provided by an insurer rated A or better by Standard & Poor's Authority and (ii) provide that all proceeds thereunder shall be payable to the Trustee pursuant to a lender's loss payable endorsement substantially in accordance with the form approved by the Insurance Services Office and the California Bankers Association. The Trustee shall collect, adjust and receive all moneys which may become due and payable under any such policies, may compromise any and all claims thereunder and shall apply the proceeds of such insurance as provided in Sections 5.01 and 5.03 hereof. All policies of insurance required by this Lease shall provide that the Trustee shall be given thirty (30) days' prior notice of each expiration thereof or any intended cancellation thereof or reduction of the coverage provided thereby. The Trustee shall not be responsible for the sufficiency of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee. The Town shall pay when due the premiums for all insurance policies required by this Lease.

The Town will deliver to the Trustee in the month of January in each year, a written certificate of an officer of the Town stating that such policies satisfy the requirements of this Lease, setting forth the insurance policies then in force pursuant to this Section, the names of the insurers which have issued the policies, the amounts thereof and the property and risks covered thereby, and, if any self-insurance program is being provided, the annual report of an actuary, independent insurance consultant or other qualified person containing the information required for such self-insurance program and described in Sections 5.01, 5.02 and 5.04 hereof. Delivery to the Trustee of the certificate under the provisions of this Section shall not confer responsibility upon the Trustee as to the sufficiency of coverage or amounts of such policies. If requested in writing by the Trustee, the Town shall also deliver to the Trustee certificates or duplicate originals or certified copies of each insurance policy described in such schedule.

SECTION 5.07 Indemnification.

The Town shall, to the full extent then permitted by law, indemnify, protect, hold harmless, save and keep harmless the Authority and its directors, officers and employees and the Trustee and its directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of the Site Lease or this Facility Lease, the acquisition, construction, installation and use of the Project and each portion thereof or any accident in connection with the operation, use, condition or possession of the Project or any portion thereof resulting in damage to property or injury to or death to any person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the Town or the Authority; any claim for patent, trademark or copyright infringement; and any claim arising out of strict liability in tort. The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations hereunder or the termination hereof for any reason. The Town agrees not to withhold or abate any portion of the payments

required pursuant hereto by reason of any defects, malfunctions, breakdowns or infirmities of the Project. The Town and the Authority mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following either's learning thereof.

ARTICLE VI

DEFAULTS AND REMEDIES

SECTION 6.01. Defaults and Remedies. (a) If the Town shall fail to pay any rental payable hereunder on the March 15 or September 15 on which the same becomes due and payable, time being expressly declared to be of the essence of this Lease, or the Town shall fail to keep, observe or perform any other term, covenant or condition contained herein to be kept or performed by the Town for a period of thirty (30) days after notice of the same has been given to the Town by the Trustee, as assignee of the Authority, or for such additional time as is reasonably required, in the discretion of the Trustee, to correct the same, or upon the happening of any of the events specified in subsection (b) of this Section (any such case above being an "Event of Default"), the Town shall be deemed to be in default hereunder and it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Lease. Upon any such default, the Trustee, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(1) To terminate this Lease in the manner hereinafter provided on account of default by the Town, notwithstanding any re-entry or re-letting of the Leased Facilities as hereinafter provided for in subparagraph (2) hereof, and to re-enter the Leased Facilities and remove all persons in possession thereof and all personal property whatsoever situated upon the Leased Facilities and place such personal property in storage in any warehouse or other suitable place located within the County of Contra Costa, California. In the event of such termination, the Town agrees to surrender immediately possession of the Leased Facilities, without let or hindrance, and to pay the Trustee all damages recoverable at law that the Trustee may incur by reason of default by the Town, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Leased Facilities and removal and storage of such property by the Trustee or its duly authorized agents in accordance with the provisions herein contained. Neither notice to pay rent or to deliver up possession of the Leased Facilities given pursuant to law nor any entry or re-entry by the Trustee nor any proceeding in unlawful detainer, or otherwise, brought by the Trustee for the purpose of effecting such re-entry or obtaining possession of the Leased Facilities nor the appointment of a receiver upon initiative of the Trustee to protect the Trustee's interest under this Lease shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the Town shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the Trustee shall have given written notice to the Town of the election on the part of the Trustee to terminate this Lease. The Town covenants and agrees that no surrender of the Leased Facilities or of the remainder of the term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Trustee by such written notice.

(2) Without terminating this Lease, (i) to collect each installment of rent as it becomes due and enforce any other terms or provision hereof to be kept or performed by the

Town, regardless of whether or not the Town has abandoned the Leased Facilities, or (ii) to exercise any and all rights of re-entry upon the Leased Facilities. In the event the Trustee does not elect to terminate this Lease in the manner provided for in subparagraph (1) hereof, the Town shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the Town and, if the Leased Facilities are not re-let, to pay the full amount of the rent to the end of the term of this Lease or, in the event that the Leased Facilities are re-let, to pay any deficiency in rent that results therefrom; and further agrees to pay said rent and/or rent deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of rent hereunder (without acceleration), notwithstanding the fact that the Trustee may have received in previous years or may receive thereafter in subsequent years rental in excess of the rental herein specified, and notwithstanding any entry or re-entry by the Trustee or suit in unlawful detainer, or otherwise, brought by the Trustee for the purpose of effecting such entry or re-entry or obtaining possession of the Leased Facilities. Should the Trustee elect to enter or re-enter as herein provided, the Town hereby irrevocably appoints the Trustee as the agent and attorney-in-fact of the Town to re-let the Leased Facilities, or any part thereof, from time to time, either in the Trustee's name or otherwise, upon such terms and conditions and for such use and period as the Trustee may deem advisable, and to remove all persons in possession thereof and all personal property whatsoever situated upon the Leased Facilities and to place such personal property in storage in any warehouse or other suitable place located in the County of Contra Costa, California, for the account of and at the expense of the Town, and the Town hereby exempts and agrees to save harmless the Trustee from any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon and re-letting of the Leased Facilities and removal and storage of such property by the Trustee or its duly authorized agents in accordance with the provisions herein contained. The Town agrees that the terms of this Lease constitute full and sufficient notice of the right of the Trustee to re-let the Leased Facilities and to do all other acts to maintain or preserve the Leased Facilities as the Trustee deems necessary or desirable in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Trustee in effecting such re-letting shall constitute a surrender or termination of this Lease irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the Town the right to terminate this Lease shall vest in the Trustee to be effected in the sole and exclusive manner provided for in sub-paragraph (1) hereof. The Town further waives the right to any rental obtained by the Trustee in excess of the rental herein specified and hereby conveys and releases such excess to the Trustee as compensation to the Trustee for its services in re-letting the Leased Facilities or any part thereof. The Town further agrees to pay the Trustee the cost of any alterations or additions to the Leased Facilities necessary to place the Leased Facilities in condition for re-letting immediately upon notice to the Town of the completion and installation of such additions or alterations.

The Town hereby waives any and all claims for damages caused or which may be caused by the Trustee in re-entering and taking possession of the Leased Facilities as herein provided and all claims for damages that may result from the destruction of the Leased Facilities and all claims for damages to or loss of any property belonging to the Town, or any other person, that may be in or upon the Leased Facilities.

(b) If (1) the Town's interest in this Lease or any part thereof be assigned or transferred, either voluntarily or by operation of law or otherwise, without the written consent of the Trustee, as hereinafter provided for, or (2) the Town or any assignee shall file any petition or institute any proceeding under any act or acts, state or federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby the Town asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of the Town's debts or obligations, or offers to the Town's creditors to effect a composition or extension of time to pay the Town's debts or asks, seeks or prays for reorganization or to effect a plan of reorganization, or for a readjustment of the Town's debts, or for any other similar relief, or if any such petition or any such proceedings of the same or similar kind or character be filed or be instituted or taken against the Town, or if a receiver of the business or of the property or assets of the Town shall be appointed by any court, except a receiver appointed at the instance or request of the Trustee, or if the Town shall make a general or any assignment for the benefit of the Town's creditors, or if (3) the Town shall abandon or vacate the Leased Facilities, then the Town shall be deemed to be in default hereunder.

(c) The Trustee shall in no event be in default in the performance of any of its obligations hereunder or imposed by any statute or rule of law unless and until the Trustee shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the Town to the Trustee properly specifying wherein the Trustee has failed to perform any such obligation. In the event of default by the Trustee, the Town shall be entitled to pursue any remedy provided by law.

(d) In addition to the other remedies set forth in this Section, upon the occurrence of an event of default as described in this Section, the Trustee shall be entitled to proceed to protect and enforce the rights vested in the Trustee by this Lease or by law. The provisions of this Lease and the duties of the Town and of its trustees, officers or employees shall be enforceable by the Trustee by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the Trustee shall have the right to bring the following actions:

(1) Accounting. By action or suit in equity to require the Town and its trustees, officers and employees and its assigns to account as the trustee of an express trust.

(2) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Trustee.

(3) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce the Trustee's rights against the Town (and its Town Council, officers and employees) and to compel the Town to perform and carry out its duties and obligations under the law and its covenants and agreements with the Town as provided herein.

Each and all of the remedies given to the Trustee hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the Trustee to other or further exercise thereof or the exercise of any or all other rights, powers or privileges. The term "re-let" or "re-letting" as

used in this Section shall include, but not be limited to, re-letting by means of the operation by the Trustee of the Leased Facilities. If any statute or rule of law validly shall limit the remedies given to the Trustee hereunder, the Trustee nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

In the event the Trustee shall prevail in any action brought to enforce any of the terms and provisions of this Lease, the Town agrees to pay a reasonable amount as and for attorney's fees incurred by the Trustee in attempting to enforce any of the remedies available to the Trustee hereunder, whether or not a lawsuit has been filed and whether or not any lawsuit culminates in a judgment.

SECTION 6.02. Waiver. Failure of the Trustee to take advantage of any default on the part of the Town shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the Trustee to insist upon performance by the Town of any term, covenant or condition hereof, or to exercise any rights given the Trustee on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Lease.

ARTICLE VII

EMINENT DOMAIN; PREPAYMENT

SECTION 7.01. Eminent Domain. If the whole of the Leased Facilities or so much thereof as to render the remainder unusable for the purposes for which it was used by the Town shall be taken under the power or threat of eminent domain, the term of this Lease shall cease as of the day that possession shall be so taken. If less than the whole of the Leased Facilities shall be taken under the power or threat of eminent domain and the remainder is usable for the purposes for which it was used by the Town at the time of such taking, then this Lease shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the rental due hereunder in an amount equivalent to the amount by which the annual payments of principal of and interest with respect to the Certificates then Outstanding will be reduced by the application of the award in eminent domain to the prepayment of Outstanding Certificates. So long as any of the Certificates shall be Outstanding, any award made in eminent domain proceedings for taking the Leased Facilities or any portion thereof shall be paid to the Trustee and applied to the prepayment of the Base Rental Payments as provided in Section 7.02 hereof. Any such award made after all of the Base Rental Payments and Additional Payments have been fully paid, or provision therefor made, shall be paid to the Town.

SECTION 7.02. Prepayment. (a) The Town shall prepay on any date from insurance and eminent domain proceeds, to the extent provided in Sections 5.01, 5.03, 5.05 and 7.01 hereof (provided, however, that in the event of partial damage to or destruction of the Leased Facilities caused by perils covered by insurance, if in the judgment of the Town the insurance proceeds are sufficient to repair, reconstruct or replace the damaged or destroyed portion of the Leased Facilities, such proceeds shall be held by the Trustee and used to repair,

reconstruct or replace the damaged or destroyed portion of the Leased Facilities, pursuant to the procedure set forth in Section 5.01 for proceeds of insurance), all or any part (in an integral multiple of \$5,000) of Base Rental Payments then unpaid so that the aggregate annual amounts of Base Rental Payments which shall be payable after such prepayment date shall be as nearly proportional as practicable to the aggregate annual amounts of Base Rental Payments unpaid prior to the prepayment date, at a prepayment amount equal to the principal of and interest with respect to the Certificates to the date of prepayment, plus any applicable premium.

(b) The Town may prepay, from any source of available funds, all or any portion of Base Rental Payments by depositing with the Trustee moneys or securities as provided in Article IX of the Trust Agreement sufficient to make such Base Rental Payments when due; provided that the Town furnishes the Trustee with an opinion of counsel that such deposit will not cause interest with respect to the Certificates to be includable in gross income for federal income tax purposes. The Town agrees that if following such prepayment the Leased Facilities are damaged or destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of, abatement of such prepaid Base Rental Payments and shall not be entitled to any reimbursement of such Base Rental Payments.

(c) Before making any prepayment pursuant to this article, the Town shall, within five (5) days following the event creating such right or obligation to prepay, give written notice to the Authority, and the Trustee describing such event and specifying the date on which the prepayment will be made, which date shall be not less than sixty (60) days from the date such notice is given.

(d) When (1) there shall have been deposited with the Trustee at or prior to the due dates of the Base Rental Payments or date when the Town may exercise its option to purchase the Leased Facilities or any portion or item thereof, in trust for the benefit of the Owners of the Certificates and irrevocably appropriated and set aside to the payment of the Base Rental Payments or option price, sufficient moneys and Permitted Investments described in subsection (1) of the definition thereof in the Trust Agreement, not prepayable prior to maturity, the principal of and interest with respect to which when due will provide money sufficient to pay all principal of and interest with respect to the Certificates to the due date of the Certificates or date when the Town may exercise its option to purchase the Leased Facilities, as the case may be; and (2) an agreement shall have been entered into with the Trustee for the payment of its fees and expenses so long as any of the Certificates shall remain unpaid; then and in that event the right, title and interest of the Authority herein and the obligations of the Town hereunder shall thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of the Authority and the obligation of the Town to have such moneys and such Permitted Investments applied to the payment or prepayment of the Base Rental Payments or option price) and the Authority's interest in and title to the Leased Facilities or applicable portion or item thereof shall be transferred and conveyed to the Town. In such event, the Authority shall cause an accounting for such period or periods as may be requested by the Town to be prepared and filed with the Authority and evidence such discharge and satisfaction, and the Authority shall pay over to the Town as an overpayment of Base Rental Payments all such moneys or Permitted Investments held by it pursuant hereto other than such moneys and such Permitted Investments as are required for the payment or prepayment of the Base Rental Payments or the option price and the fees and expenses of the Trustee, which moneys and Permitted Investments

shall continue to be held by the Trustee in trust for the payment of Base Rental Payments or the option price and the fees and expenses of the Trustee, and shall be applied by the Authority to the payment of the Base Rental Payments or the option price and the fees and expenses of the Trustee.

SECTION 7.03. Option to Purchase; Sale of Personal Property. The Town shall have the option to purchase the Authority's interest in any part of the Leased Facilities upon payment of an option price consisting of moneys or securities of the category specified in clauses (1) and (2) of the definition of the term Permitted Investments contained in Section 1.01 of the Trust Agreement (not callable by the issuer thereof prior to maturity) in an amount sufficient (together with the earnings and interest on such securities) to provide funds to pay the aggregate amount for the entire remaining term of this Lease of the part of the total rent hereunder attributable to such part of the Leased Facilities (determined by reference to the proportion which the acquisition, design and construction cost of such part of the Leased Facilities bears to the acquisition, design and construction cost of all of the Leased Facilities). Any such payment shall be made to the Trustee and shall be treated as rental payments and shall be applied by the Trustee to pay the principal of and interest with respect to the Certificates and to prepay Certificates if such Certificates are subject to prepayment pursuant to the terms of the Trust Agreement. Upon the making of such payment to the Trustee, (a) the Base Rental Payments thereafter payable under this Lease shall be reduced by the amount thereof attributable to such part of the Leased Facilities and theretofore paid pursuant to this Section, (b) Section 3.07 and this Section of this Lease shall not thereafter be applicable to such part of the Leased Facilities, (c) the insurance required by Sections 5.01, 5.02 and 5.03 of this Lease need not be maintained as to such part of the Leased Facilities, and (d) title to such part of the Leased Facilities shall vest in the Town and the term of this Lease shall end as to the portion of the Leased Facilities.

The Town, in its discretion, may as the irrevocable agent for the Authority, sell or exchange any personal property which may at any time constitute a part of the Leased Facilities, and to release said personal property from this Lease, if (a) in the opinion of the Town the property so sold or exchanged is no longer required or useful in connection with the operation of the Leased Facilities, (b) the consideration to be received from the property is of a value substantially equal to the value of the property to be released, and (c) if the value of any such property shall, in the opinion of the Town, exceed the amount of \$50,000, the Town shall have obtained a certificate of an independent engineer or other qualified independent professional consultant certifying the value thereof and further certifying that such property is no longer required or useful in connection with the operation of the Leased Facilities. In the event of any such sale, the full amount of the money or consideration received for the personal property so sold and released shall be paid to the Trustee. Any money so paid to the Trustee may, so long as the Town is not in default under any of the provisions of this Lease, be used upon the Written Request of the Town to purchase personal property, which property shall become a part of the Leased Facilities leased hereunder. The Trustee may require such opinions, certificates and other documents as it may deem necessary before permitting any sale or exchange of personal property subject to this Lease or before releasing for the purchase of new personal property money received by it for personal property so sold.

ARTICLE VIII

COVENANTS

SECTION 8.01. Right of Entry. The Authority and its assignees shall have the right (but not the duty) to enter upon and to examine and inspect the Leased Facilities during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the Authority's or the Town's rights or obligations under this Lease, and (c) for all other lawful purposes.

SECTION 8.02. Liens. In the event the Town shall at any time during the term of this Lease cause any changes, alterations, additions, improvements or other work to be done or performed or materials to be supplied, in or upon the Leased Facilities, the Town shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the Town in, upon or about the Leased Facilities and shall keep the Leased Facilities free of any and all mechanics' or materialmen's liens or other liens against the Leased Facilities or the Authority's interest therein. In the event any such lien attaches to or is filed against the Leased Facilities or the Authority's interest therein, the Town shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the Town desires to contest any such lien it may do so in good faith. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the Town shall forthwith pay and discharge said judgment. The Town agrees to and shall, to the maximum extent permitted by law, indemnify and hold the Authority and the Trustee and their respective members, directors, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees) as a result of any such lien or claim of lien against the Leased Facilities or the Authority's interest therein.

SECTION 8.03. Quiet Enjoyment. The parties hereto mutually covenant that the Town, by keeping and performing the covenants and agreements herein contained and if not in default hereunder, shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Leased Facilities without suit, trouble or hindrance from the Authority.

SECTION 8.04. Authority Not Liable. The Authority and its members, directors, officers, agents, employees and assignees shall not be liable to the Town or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Leased Facilities. The Town, to the extent permitted by law, shall indemnify and hold the Authority and its members, directors, officers, agents, employees and assignees, harmless from, and defend each of them against, any and all claims, liens and judgments arising from the construction or operation of the Leased Facilities, including, without limitation, death of or injury to any person or damage to property whatsoever occurring in, on or about the Leased Facilities regardless of responsibility for negligence, but excepting the active negligence of the person or entity seeking indemnity.

SECTION 8.05. Assignment and Subleasing. Subject to the Permitted Encumbrances, provided that the Permitted Encumbrances do not affect the tax-exempt status of the Certificates, neither this Lease nor any interest of the Town hereunder may be mortgaged, pledged, assigned, sublet or transferred by the Town by voluntary act or by operation of law or otherwise. The Permitted Encumbrances do not reduce the obligation of the Town to make the Base Rental Payments and Additional Payments required hereunder.

SECTION 8.06. Title to Leased Facilities. During the term of this Lease, the Town shall hold fee title to the Site, subject to the Permitted Encumbrances and except for any items added to the Leased Facilities by the Town pursuant to Section 4.04 hereof. This provision shall not operate to the benefit of any insurance company if there is a rental interruption covered by insurance pursuant to Section 5.03 hereof.

SECTION 8.07. Tax Covenants. Neither the Town nor the Authority will make or authorize, nor shall the Town suffer or permit to be made or authorized) any use of the Leased Facilities which will cause the Certificates and together with the obligations the Certificates represent, to be "private activity bonds" the interest component of which is not excludable from gross income for federal income tax purposes by reason of Section 141 of the Code. The Town and the Authority will not make any use of the proceeds of the Certificates or any other funds of the Town or the Authority which will cause such obligations to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code. The Town and the Authority will not make any use of the proceeds of the Certificates or any other funds of the Town or the Authority which will cause such obligations to be "federally guaranteed" and subject to inclusion in gross income for federal income tax purposes by reason of Section 149(b) of the Code. To that end, so long as any rental payments are unpaid, the Town and the Authority, with respect to such proceeds and such other funds, will comply with all applicable requirements of such Sections 148 and 149(b) and all applicable regulations of the United States Department of the Treasury issued thereunder to the extent that such requirements are, at the time, applicable and in effect; provided, however, that all related costs and expenses shall be the sole responsibility of the Town and not the Authority.

If at any time the Town is of the opinion that for purposes of this Section it is necessary to restrict or limit the yield on or change in any way the investment of any moneys held by the Trustee or the Town or the Authority under this Lease or the Trust Agreement, the Town shall so instruct the Trustee or the appropriate officials of the Town in writing, and the Trustee or the appropriate officials of the Town, as the case may be, shall take such actions as may be necessary in accordance with such instructions.

In furtherance of the covenants of the Town set forth above, the Town will comply with the Tax Certificates and will cause the Trustee to comply with the Tax Certificates. The Trustee and the Authority may conclusively rely on any such written instructions, and the Town hereby agrees to hold harmless the Trustee and the Authority for any loss, claim, damage, liability or expense incurred by the Authority for any actions taken by or on behalf of the Authority in accordance with such instructions.

The Town and the Authority shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the interest with respect

to the Certificates will be excluded from gross income for federal income tax purposes and shall take no action that in and of itself would result in such interest not being excluded from gross income for federal income tax purposes.

SECTION 8.08. Purpose of Lease. The Town covenants that during the term of this Lease, except as hereinafter provided, (a) it will use, or cause the use of, the Leased Facilities for public purposes of the Town and for the purposes for which the Leased Facilities are customarily used, (b) it will not vacate or abandon the Leased Facilities or any part thereof, and (c) it will not make any use of the Leased Facilities which would jeopardize in any way the insurance coverage required to be maintained pursuant to Article V hereof or the exclusion from gross income for federal income tax purposes of interest with respect to the Certificates.

ARTICLE IX

DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE LEASED FACILITIES

SECTION 9.01. Disclaimer of Warranties. THE CORPORATION MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED FACILITIES, OR WARRANTY WITH RESPECT THERETO. THE TOWN ACKNOWLEDGES THAT THE CORPORATION IS NOT A MANUFACTURER OF THE LEASED FACILITIES OR A DEALER THEREIN, THAT THE TOWN LEASES THE LEASED FACILITIES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE TOWN. In no event shall the Authority and Trustee be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or the Town's use of any item or products or services provided for in this Lease.

SECTION 9.02. Vendor's Warranties. The Authority hereby irrevocably appoints the Town its agent and attorney-in-fact during the term of this Lease, so long as the Town shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Leased Facilities, which the Authority may have against the manufacturers, vendors and contractors of the Leased Facilities. The Town's sole remedy for the breach of such warranty, indemnification or representation shall be against the manufacturer or vendor or contractor of the Leased Facilities, and not against the Authority, nor shall such matter have any effect whatsoever on the rights and obligations of the Authority with respect to this Lease, including the right to receive full and timely payments hereunder. The Town expressly acknowledges that the Authority makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the manufacturer, vendor or contractor.

SECTION 9.03. Use of the Leased Facilities. The Town will not install, use, operate or maintain the Leased Facilities improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease. The Town shall provide all permits and licenses, if any, necessary for the installation and operation of the Leased Facilities. In addition,

the Town agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Leased Facilities) with all laws of the jurisdictions in which its operations may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Leased Facilities; provided, however, that the Town may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not adversely affect the estate of the Trustee, as assignee of the Authority, in and to the Leased Facilities or its interest or rights under this Lease.

ARTICLE X

MISCELLANEOUS

SECTION 10.01. Law Governing. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State as the same from time to time exist.

SECTION 10.02. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests, agreements or promises or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States first-class mail, postage prepaid:

If to the Town:	Town of Moraga 2100 Donald Drive Moraga, California 94556 Attention: Town Manager
If to the Authority:	ABAG Finance Authority for Nonprofit Corporations 101 Eighth Street Oakland, California 94607 Attention: Executive Director
If to the Trustee:	U.S. Bank National Association One California Street, Suite 2100 San Francisco, CA 94111 Attention: Corporate Trust Division

or to such other addresses as the respective parties may from time to time designate by notice in writing. A copy of any such notice or other document herein referred to shall also be delivered to the Trustee.

SECTION 10.03. Validity and Severability. If for any reason this Lease shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by the Authority or by the Town, or if for any reason it is held by such a court that any of the covenants and conditions of the Town hereunder, including the covenant to pay rentals hereunder, is unenforceable for the full term hereof, then and in such event this Lease is and shall be deemed to be a lease under which the rentals are to be paid by the Town annually in consideration of the right of the Town to possess, occupy and use the Leased Facilities, and all of the rental and other terms, provisions

and conditions of this Lease, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

SECTION 10.04. Net-Net-Net Lease. This Lease shall be deemed and construed to be a “net-net-net lease” and the Town hereby agrees that the rentals provided for herein shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever, except as provided herein.

SECTION 10.05. Taxes. The Town shall pay or cause to be paid all taxes and assessments of any type or nature affecting the Leased Facilities or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Town shall be obligated to pay only such installments as are required to be paid during the term of this Lease as and when the same become due.

The Town shall also pay directly such amounts, if any, in each year as shall be required by the Authority for the payment of all license and registration fees and all taxes (including, without limitation, income, excise, license, franchise, capital stock, recording, sales, use, value-added, property, occupational, excess profits and stamp taxes), levies, imposts, duties, charges, withholdings, assessments and governmental charges of any nature whatsoever, together with any additions to tax, penalties, fines or interest thereon, including, without limitation, penalties, fines or interest arising out of any delay or failure by the Town to pay any of the foregoing or failure to file or furnish to the Authority or the Trustee for filing in a timely manner any returns, hereinafter levied or imposed against the Authority or the Leased Facilities, the rentals and other payments required hereunder or any parts thereof or interests of the Town or the Authority or the Trustee therein by any governmental authority.

The Town may, at the Town’s expense and in its name, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority or the Trustee notify the Town that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Authority in the Leased Facilities will be materially endangered or the Leased Facilities, or any part thereof, will be subject to loss or forfeiture, in which event the Town shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority and the Trustee.

SECTION 10.06. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

SECTION 10.07. Amendment or Termination. The Authority and the Town may at any time agree to the amendment or termination of this Lease; provided, however, that the Authority and the Town agree and recognize that this Lease is entered into in accordance with the terms of the Trust Agreement, and accordingly, that any such amendment or termination shall only be made or effected in accordance with and subject to the terms of the Trust Agreement.

SECTION 10.08. Execution. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Lease. It is also agreed that separate counterparts of this Lease may separately be executed by the Authority and the Town, all with the same force and effect as though the same counterpart had been executed by both the Authority and the Town.

IN WITNESS WHEREOF, the Authority and the Town have caused this Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

**ABAG FINANCE AUTHORITY FOR
NONPROFIT CORPORATIONS, as Lessor**

By _____
Executive Director

TOWN OF MORAGA, as Lessee

By _____
Town Manager

EXHIBIT A

Legal Description of the Site

Real property in the City of Moraga, County of Contra Costa, State of California, described as follows:

PARCEL ONE:

PARCEL A AS SHOWN ON THE PARCEL MAP MS 601-94 FILED AUGUST 12, 1998 IN BOOK 174 OF PARCEL MAPS, PAGE 44, CONTRA COSTA COUNTY RECORDS.

PARCEL TWO:

NON-EXCLUSIVE EASEMENTS, AS SHOWN ON THE PARCEL MAP FILED AUGUST 12, 1998 IN BOOK 174 OF PARCEL MAPS, PAGE 44, CONTRA COSTA COUNTY RECORDS, FOR STORM DRAIN PURPOSES, OVER, UNDER AND UPON THOSE PORTIONS OF PARCEL B (174 PM 44) DESIGNATED AS "5' WIDE STORM DRAIN EASEMENT" ON SAID PARCEL MAP (174 PM 44).

APN: 255-020-017

A C K N O W L E D G E M E N T

State of California

County of _____

On _____ before me, _____,
personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____

Notary Seal

ACKNOWLEDGEMENT

State of California

County of _____

On _____ before me, _____,
personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____

Notary Seal

An extra section break has been inserted above this paragraph. Do not delete this section break if you plan to add text after the Table of Contents/Authorities. Deleting this break will cause Table of Contents/Authorities headers and footers to appear on any pages following the Table of Contents/Authorities.

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