

**SLEEPY HOLLOW FIRE PROTECTION DISTRICT
NOTICE OF SPECIAL MEETING**

Date: November 17, 2018

Time: 10:00 a.m.

Place: Sleepy Hollow Homes Association Clubhouse
1317 Butterfield Road, San Anselmo

AGENDA

1. **Call to Order/Roll Call.** *The Meeting will be open to the public except with respect to those matters which the Board determines may fall under certain exception(s) under the Ralph M. Brown Act [California Government Code §§54950 et seq.]. The Meeting is wheelchair accessible. If accommodation for other disabilities is required, call (415) 256-8300.*
2. **Public Comment Period.** *This portion of the Meeting is reserved for persons desiring to address the Board on any matter not listed on this Agenda. All statements that require a response will be referred for reply in writing or will be placed on the Board's agenda for consideration at a later meeting. Speakers are limited to three (3) minutes each unless authorized by the Chair.*

CONSENT CALENDAR ITEMS

All items calendared as Consent are considered ministerial or non-substantive and subject to a single motion approval. With the concurrence of the Chair or its designee, a Director may request discussion of an item on the Consent Calendar.

3. **Approval of Prior Meeting Minutes.** *The draft Minutes are available at www.shfpd.org.*
 - August 8, 2018 Special Meeting.
 - October 27, 2018 Special Meeting

ACTION OR POSSIBLE ACTION ITEMS

4. **Motion to Adopt Resolution No. 2018-3 Approving Findings of Board of Directors and Authorizing the District to Enter into Proposed Lease Agreement with the Sleepy Hollow Charitable Foundation (SHCF) with the Consent of the Sleepy Hollow Homes Association (SHHA) for District Public Facilities at 1317 Butterfield Road and authorizing and directing the Chair to take appropriate actions to carry out the purpose and intent of the Motion.** *The Findings, the proposed Lease, and the Resolution are available at www.shfpd.org.*
5. **Board requests** for future agenda items, questions and comments to staff, and Directors' announcements, if any
6. **Adjournment** to next Regular Meeting: December 20, 2018 (anticipated)

* * *

Affidavit of Posting

I hereby certify that I posted the above Notice of Regular Meeting of Board of Directors of the Sleepy Hollow Fire Protection District in a conspicuous place freely accessible to the public at the following location(s) on November 10, 2018:

Sleepy Hollow Community Center
1317 Butterfield Road
San Anselmo

“Sleepy Hollow” Entrance Sign
opposite 644 Butterfield Road
San Anselmo

Intersection of The Alameda
and Oak Crest Road
adjacent to 230 The Alameda
San Anselmo

Thomas J. Finn, Secretary

**FINDINGS OF THE
SLEEPY HOLLOW FIRE PROTECTION DISTRICT
APPROVING
PUBLIC FACILITIES LEASE**

I. INTRODUCTION

The following Findings are hereby adopted by the Board of Directors (the “**Board**”) of the Sleepy Hollow Fire Protection District (the “**District**”) pursuant to Sections 13800 *et seq.* of the California Health and Safety Code (the “**Code**”) including, without limitation, Section 13861. These Findings are adopted, and incorporated by reference, in District Resolution 2018-3 dated November 17, 2018, attached hereto, approving the lease by the District of certain public facilities (the “**Lease**”) at the planned Sleepy Hollow Community Center (the “**Project**”). The Lease is between the District and the Sleepy Hollow Charitable Foundation (“**SHCF**”), with the consent of the Sleepy Hollow Homes Association (“**SHHA**”).

The District has determined and finds that, pursuant to the implementation of the District’s *Strategic Plan 2017* (the “**Strategic Plan**”), centralized office, storage, training, and meeting space and emergency power, water, and shelter facilities are needed and are reasonably necessary to support District initiatives in response to local climatic, geographic, and topographic conditions and other considerations. These findings are based primarily on the *Staff Report to Sleepy Hollow Fire Protection District Board of Directors -- Potential Real Estate Lease with Sleepy Hollow Homes Association/Sleepy Hollow Charitable Foundation* dated October 7, 2018 (the “**Staff Report**”). The Staff Report provides a comprehensive evaluation of the Lease, including certain essential terms of the Lease, the need for the Lease, the financial and budget impacts of the Lease, and alternatives to the Lease. The Strategic Plan and the Staff Report are each incorporated by reference in these Findings.

The Findings contain the following sections: Section II is the Description of the Record. Section III is a profile of the District. The Lease is described in Section IV. Section V explains the need for the Lease and Section VI describes the public process by which the Lease has been considered. Section VII enumerates the Findings. Section VIII contains the Conclusion.

II. DESCRIPTION OF THE RECORD

The minutes of public meetings of the Board at which the Lease and/or alternatives to the Lease were considered, a copy of all letters and electronic messages received during the public review period, the administrative record, and background documentation of the Lease are located

at the residence of the Director/Secretary at 1040 Butterfield Road, San Anselmo, California. The Director/Secretary is the custodian of record.

The Findings are based on substantial evidence contained in the record before the Board. For ease and clarity of reading, specific citations to information in the record upon which each Finding is based may have been omitted. In all instances, however, these Findings are based on the information contained in the Staff Report, as supplemented with information provided by the District and by interested parties, and reasonable inferences drawn from such information, identified below. Much of this information was cited in the Staff Report; all of this information has been and will continue to be available for public review at the Secretary's residence or elsewhere by arrangement.

The record before this Board includes, without limitation, the following items associated with the Board's consideration and approval of the Lease: All meeting agendas, minutes, and reports to the Board and all related attachments, references, and material kept in the ordinary course of business; all staff and public reports and memoranda kept in the ordinary course of business providing substantial evidence to support these Findings; and all public notices and notices of public meetings at which the Lease was considered and approved.

III. PROFILE OF THE DISTRICT

The District is an autonomous Special District of the State of California responsible for fire protection and emergency services in the unincorporated community of Sleepy Hollow in Marin County. The District was created in 1949 by resolution of the Marin Board of Supervisors at the behest of early residents and subsequently authorized and empowered by the State of California. The District's goal is to provide the highest level of fire protection and emergency services available in a cost-effective manner.

The District is governed by a non-partisan, publicly-elected Board of Directors comprised of three layperson residents who are registered voters. The current Directors have resided in the District for 37, 24, and 45 years and have served on the Board for 10, 19, and 1 year(s), respectively.

The Directors' terms are for four years to ensure high accountability to voters and are staggered to ensure continuity. Board membership has been remarkably stable for the past 40+ years, with Directors serving an average of 12 consecutive years prior to leaving office. Such longevity reflects the Directors' commitment to the District's long-term health and survival. It also provides perspective and institutional memory, both of which are instrumental to meeting the District's challenges in the best interests of the residents.

Since its founding in 1949, the District has relied on its Directors' use of their private residences and resources to conduct the District's business and to house its books, records, equipment, and supplies. The District maintains no office or facilities within the District or elsewhere, employs no direct staff, and pays no such direct staff salaries or benefits. The Directors personally absorb the out-

of-pocket costs associated with performing their official duties, providing constituent services, and managing District programs.

Directors receive compensation for their attendance at Board meetings, which take place quarterly and at other times as needed. Directors also receive compensation for each “day-of-service”, which typically entails the representation of the District at a public meeting or hearing conducted by another public agency. Directors receive no compensation for managing the District’s everyday affairs or for carrying out District programs.

Notwithstanding its traditional low profile, the District does not go about the public’s business undetected. All public meetings of the District are held at the centrally located Community Center, which the District rents from the SHHA as needed. The public is welcome at all meetings except with respect to matters which the Board determines may fall under certain exceptions under the Brown Act. From 1949 until 2013, public meetings were held at the Directors’ private residences on a voluntary basis and publicly noticed. Public participation at Board meetings has been integral to the District’s success.

None of the current Directors is a member of the SHHA or SHCF and therefore the Directors are untainted by any actual or potential conflict of interest in connection with the Lease.

A. Location

The District is located in the northern portion of the Ross Valley in central Marin County. The placement of commercial development in the Ross Valley has been limited to the Valley floor with residential communities extending out and up into the steep canyons and hills which surround the Valley on three sides. Travel into and out of the Valley is accomplished through two-lane roads, which are the main arteries of commuter traffic to Bay Area commercial centers.

The District covers an area of 3.38 square miles (approximately 1,610 acres) with a resident population of approximately 2,100. The District encompasses approximately 870 residences, a substantial number of outbuildings (including barns, stables, greenhouses, studios, and Accessory Dwelling Units), one public school, one private school (with residential and equestrian facilities), one community clubhouse and pool, and extensive publicly-accessible dedicated open space, all surrounded by a lengthy wildland-urban interface (“WUI”). The District is essentially a “county island” moated by incorporated municipalities, with jagged borders and cut off from the rest of the unincorporated areas within Marin.

For public safety purposes, the District is unfavorably situated. It is effectively enclosed in a narrow, WUI-encircled box canyon that limits ingress and egress to a single route (Butterfield Road). To its east, the District abuts the dedicated Terra Linda/Sleepy Hollow Divide Open Space (1,168 acres) and to its north and west, the District abuts the Loma Alta Open Space Preserve (484 acres). In addition, open space easements straddle the boundary between the District and the Town of Fairfax. Within the District, the 540-acre San Domenico School campus, which lies at the end of Butterfield Road, is entirely forested wildland with the exception of approximately 10 acres on which are the School’s classroom, residential, athletic, equestrian, and performance facilities are clustered. The

District's relative isolation combined with its limited accessibility exacerbates its public safety challenges.

1. Physical Features

The physical features in and around the District are a source of enjoyment for District residents. The hills and valleys give a natural beauty to the area with forested hills and golden yellow meadows leading up to them. These geographic features form the backdrop for the residential and school sites and dictate the locations of roadways and building locations. These features also create barriers, which negatively affect accessibility and influence fire behavior during major conflagrations. Many structures (new and old) are constructed of highly combustible material, which offer little resistance to fire and could contribute to the spread of fire. For practical and cost reasons, new structures are built of wood (Type V) construction. The potential for conflagration exists with the density of the various specific areas of the District. The concentrated residential occupancies cause concern when considering the "exposure" elements of buildings to the grass and brush areas of the District.

2. Seismic Zone

The District lies within the recognized Seismic Zone #4, which is the most dangerous zone. While the area has experienced several significant seismic events, there has been a minimum of damage. The District sits between two active earthquake faults (San Andreas and Hayward) and numerous potentially active faults. The potential for great damage exists, and must be considered as a real threat to be planned for.

3. Roads and Streets

The District is served by a single main access road from a single direction. Several District areas have limited roadways and escape routes. The District's numerous narrow, winding dead-end roads, including private access roads, result in access problems and extended travel times. The accessibility for fire department apparatus is of concern due to the lack of turnouts and tight roadway widths which increase response time.

4. Topography

The District, and the Ross Valley Fire Department's ("RVFD") service area, is a conglomeration of oak plains, hills, valleys, and ridges. The flatter lands are found in the center portion of the District and approximately one-half of the residential development is in this area. The other half of the residential development consists of hillsides with slopes ranging from approximately 15-30% to 30+%. These hazardous conditions present an exceptional and continuing fire danger to the residents of the District due to the difficulty of the terrain and topography of the area, much of it consisting of box sub-canyons with steep, brush-covered slopes; narrow winding streets used by residents of the District and the RVFD for ingress and egress, steep hills which hinder RVFD response time; older and inadequate water systems in certain areas of the District; and the location of buildings and structures with relation to these dangerous areas.

The water supply for domestic and fire-flow systems within the District are directly affected by the topographical layout. The supply of water comes from lakes, which are managed by a public utilities district responsible for maintaining an adequate supply. The water distribution system within the District is old in some areas served by mains, which are inadequate in size to provide water for fire protection. The valley floor is served by mains which contain an exceptionally large volume of water for fire protection. The District has a base elevation of approximately 35 feet and extends to areas in excess of 900 feet above sea level.

5. Vegetation

The District has within its borders and along its boundaries significant areas of grass, brush, and heavily forested lands. In addition, the natural vegetation of the area has been altered by the addition of ornamental trees and shrubs, which are not native and add fuel around the houses and buildings of the community. The south-facing exposure is primarily annual grasses, highly flammable brush, with occasional clumps of bay and oak trees in the more sheltered pockets. The north-facing slopes are heavily wooded from lower elevations to ridgetops with oak and bay trees and minor shrubs of the general chaparral class. Expansion of the residential community into areas of heavier vegetation has resulted in homes existing in close proximity to dense natural foliage. Often, such dwellings are completely surrounded by highly combustible vegetation compounding the fire problem from a conflagration point of view. Of particular recent notice is the increase in dead-down fuel and ladder accumulation directly associated with Sudden Oak Death Syndrome.

The desire of the community to preserve natural vegetation has resulted in the encroachment of brush and grass on fire roads, trails, breaks, and streets within the District, thus rendering such separations ineffective against the spread of fires and safe egress. Natural growth, which is highly flammable during the drier months of the year, encroaches upon many properties, thus posing a potential fire threat to many structures and creating a substantial hindrance to the control of such fires.

The Board recognizes the fact that Marin County, and the District in particular, has been plagued many times during the past 150 years by brush and forest fires which not only threaten destruction, but on a number of occasions devastated large portions of local communities. The local conditions increase the magnitude, exposure, accessibility problems and fire hazards presented to residents and to the RVFD. Fire following an earthquake has the potential of causing greater loss of life and damage than the earthquake itself.

During times of intense rainfall, flooding and landslides have occurred which have destroyed structures and threatened lives. Within the past decade, these events have caused the local government to declare disasters and seek State and Federal assistance. Several other variables may tend to intensify an incident, such as the extent of damage to the water system; the extent of roadway damage and/or amount of debris blocking the roadways; climatic conditions (hot, dry weather with high winds); time

of day will influence the amount of traffic on roadways and could intensify the risk to life during normal business hours; and the availability of timely mutual aid or military assistance.

B. Fire Protection Services

The District receives fire protection services from the RVFD, a consolidated fire protection agency owned by a Joint Powers Authority comprised of the District and the nearby Towns of San Anselmo, Fairfax, and Ross. The RVFD operates four stations with 33 fire personnel having diverse responsibilities including wildland, urban, and paramedical.

The District holds a 12.8% interest in the RVFD Joint Powers Authority and annually must pay an amount equal to 12.8% of the RVFD's annual operating expenses. In Fiscal Year 2018-19, that 12.8% interest equates to approximately \$1,100,000.00. The District's annual cost increases in the same ratio with the RVFD budget. This cost-sharing is funded from the District's share of the base property tax levied on properties within the District, which per Proposition 13 is a 1% base rate. The District's share of that 1% base property tax is a fixed 17%, or \$0.17 per property tax dollar collected.

Unlike many Marin cities and towns, the District levies no additional "safety tax" or service charges to fund its operations. San Domenico School, a tax-exempt school within the boundaries of the District, voluntarily makes annual payments to the District for services provided by the District.

C. Paramedic Services

The District receives paramedic services from the Ross Valley Paramedic Authority (the "RVPA"), a separate Joint Powers Authority operated by the District, the County of Marin, and seven municipalities in the Ross Valley. The RVPA's fire department-based paramedic service is funded primarily by a special tax that has been re-approved District voters every four years since 1982. The current maximum tax is \$75.00 per taxable living unit or per 1,500 square feet of structure on a developed parcel in non-residential use. The tax is subject to a \$4.00 annual increase and re-approval by District voters in 2022.

D. Operating History

The District's current condition and finances are perhaps best understood through its unique 70-year operating history.

The District is charged with protecting a vulnerable outlying community, but in doing so is dependent on a single source of revenue and a single service provider, both coming from outside the District. The District's paramount challenge is to ensure that neither the revenue stream nor the services that the revenues fund are disrupted. As a result, fiscal prudence dictated that activities other than maintaining basic fire protection services were traditionally assigned lower priority and pursued only infrequently and cautiously. Thanks to an historic and well-timed agreement with the two adjacent Towns in 2010, the District has recently adopted a more proactive and comprehensive approach to improving the District's fire safety and preparedness for the benefit of District residents.

1. Early Years (1949-1956)

At its inception in 1949, the District received fire protection services primarily from the Marin County Fire Department (“MCFD”), which was created eight years earlier in 1941. The MCFD station nearest to the District was, and remains, in Woodacre, an unincorporated community located in the San Geronimo Valley in west Marin County. As the post-war Sleepy Hollow community grew, the lengthy response time from Woodacre, exacerbated by restrictive mutual aid (i.e., the nearest fire station is dispatched to an incident regardless of city/county lines) then available from the adjacent Towns’ fire departments, was no longer acceptable. Concerns about the 7.6 mile distance that the MCFD travelled to respond to emergencies within the District – which required passing through the Towns of Fairfax and San Anselmo -- led the District to seek first-response fire protection services from a fire department in closer proximity.

2. Town of San Anselmo Contracts (1956-1982)

In 1956, the District signed the first in a series of agreements for first-response fire protection services with the Town of San Anselmo, which operated the San Anselmo Fire Department (“SAFD”) and shares a boundary with the District. During this first contract period, the District paid the Town a share of all SAFD expenses in proportion to the assessed value of the properties within the District. The District was merely a contract customer of the Town, without any role or representation in directing the SAFD’s operation.

This initial era of good relations between the parties began to fray in 1970. The Town demanded a new, second contract that called for the District to pay substantially higher fees, citing the construction of San Domenico School in the District as justification. When the District resisted, the Town threatened to terminate service to the District, knowing that the District had no viable option for obtaining such services elsewhere. Lacking negotiating leverage, the District had no choice but to capitulate, and signed the contract with San Anselmo under protest due to the significant fee increase imposed.

In 1975, the Town again pressed the District for substantially higher fees in a proposed third contract, demanding payment based upon assessed value plus 5%, as well as a share of the Town’s capital costs for Station 20, which the Town had opened in 1961 approximately one-half mile from the District. The Town again threatened to terminate services if the District did not agree.

Faced with an unacceptable risk, the District placed on the local ballot a resolution to collect a special tax to fund the construction, if necessary, of an in-District, District-owned fire station staffed by MCFD personnel. A plot of land was identified and plans were drawn up. District voters approved the special tax but it was never collected, as the District determined that the prudent course was to submit to the Town’s demands rather than risk an interruption in fire protection services. (This was the event that led the District to establish its initial financial reserve as a hedge against possible future inability or unwillingness of San Anselmo to renew the District’s contract. Ever since, the District’s reserves have been regularly reviewed to ensure that those reserves are sufficient to allow the District to continue to provide its own fire protection services, if necessary.)

The period from 1976 to 1980 was an all-time low in relations between the District and San Anselmo, marked by constant disputes over charges that the Town unilaterally imposed on the District. The Town's repeated financial demands drove the District to the brink of insolvency. With no alternative but to comply, the District faced an existential crisis.

The passage of Proposition 13 in 1978 established a reliable income stream for the District but the District's income was dramatically reduced from 24% of assessed value to 17%. In response, District voters in 1979 passed another special tax to replenish the District's depleted reserves but, once again, the tax was never implemented. Faced with the expensive prospect of the District setting up its own fire service, and reeling from its own Proposition 13 cuts, the Town offered a new contract based on a novel formula: 23% of the SAFD's labor costs. The District reluctantly agreed but the relationship remained strained given the lack of transparency in the Town's labor cost calculations.

3. Non-Voting Membership in RVFD (1982-2010)

In 1982, the Towns of San Anselmo and Fairfax formed the RVFD using a Joint Powers Authority as the vehicle. The new RVFD succeeded the SAFD as the District's fire service provider. However, the Towns retained ownership of their respective fire stations. Each Town received two voting seats on the RVFD's Board of Directors. The District was allotted a single, non-voting seat as the RVFD's sole legacy contract customer.

Insecure financially and still at the mercy of the Towns for fire services, the District sought to reduce its vulnerability by preserving any excess cash so as to enable the District to establish its own fire service, if necessary. Through a fortuitous combination of fiscal discipline, interest earnings on reserves, and a period of unprecedented appreciation in District property values, the District began to slowly accumulate reserves. Those reserves were designated in the District's annual budgets for possible land and construction costs, fire equipment purchases, and fire department start-up expenses.

Over the ensuing years, the District's subservient status within the RVFD remained unchanged. The Towns rejected out-of-hand a 2002 proposal by the District to become a full voting member of the RVFD. In 2004, the Towns put off any discussion of District voting membership pending resolution of the State budget crisis and Fairfax's dire financial situation. At the same time, San Anselmo sought to increase the District's service fees to 25% of RVFD labor costs in exchange for promising not to close Station 20 upon which the District relies. In 2007, the Towns agreed to consider the possibility of upgrading the District to full voting membership but proposed harsh preconditions, including the sharing of the District's accumulated reserves and mandatory District contributions to the maintenance of the Town-owned fire stations and to the RVFD's unfunded pension obligations.

4. Full Voting Membership in RVFD (2010-present)

The Towns' intransigence eventually led the District to solicit from the MCFD a formal proposal to staff and operate a new District-owned fire station in Sleepy Hollow. Upon learning of the District's proposal and that the District had built up sufficient reserves to fund its own fire service, the Towns quickly agreed to consider District voting membership in the RVFD. Painstaking, multi-year negotiations commenced, culminating in 2010 in the District's accession to full RVFD membership,

including two Board seats with voting rights and a 16.7% share of the RVFD's pre-existing assets and liabilities. The District's status within the RVFD was thus secured and the need for a District-owned fire service was averted. Decades of service vulnerability and financial uncertainty came to an end.

Two years later, in July 2012, the Town of Ross likewise joined the RVFD, thereby diluting the District's RVFD stake to 12.8%, but with one crucial exception. As a condition to joining, Ross demanded and received immunity from responsibility for any pre-existing RVFD unfunded pension and Other Post-Employment Benefits ("OPEB") liabilities. In exchange, Ross retained exclusive responsibility for all pre-existing and future liabilities accrued during its operation of the former Ross Fire Department. As a consequence, the District still bears a 16.7% share of the RVFD's pension and OPEB liabilities but owns a 12.8% share of the RVFD for all other purposes.

Today the RVFD JPA is a successful "inter-species" arrangement between and among one special district and three municipalities. The four fire stations from which the RVFD currently operates remain owned by the Towns and by not the RVFD or the District.

E. Current Financial Conditions and Outlook

Self-imposed austerity, an increase in assessed property values, and strategic patience has today placed the District in an enviable financial position. A condensed view of the District's audited financial activities for the fiscal year ended June 30, 2017 shows that:

- The District's liquidity position remains healthy. The District's net position increased by \$288,000 during 2017.
- Comparing actual activity with amounts budgeted yielded a net positive variance of approximately \$44,000.
- The District typically maintains on hand not less than \$100,000 in cash as working capital to cover recurring ordinary expenses.
- The District's financial reserves remain healthy and stable. Assigned and Unassigned reserve fund balances held in the Marin County Investment Pool increased to over \$4 million.
- The District maintains a stable financial position without an increase in the property tax rate.
- No new or significant impacts that would adversely affect the District's finances in the foreseeable future are identified.

In FY2018-19, the District's financial performance to date has been stronger still. As in recent years, the District's cash position has steadily increased and its financial reserves continue to grow. Target levels are discussed during each Regular Meeting of the Board based on a quarterly Financial and Operations Report and again during the annual budget process.

The District's net income is sufficient to cover both its recurring expenses and the monthly rent under the Lease without the need for additional taxes, fees, or budget reductions. Under the Lease, the rental payments are flat, simplifying the District's budgeting. By excluding rent increases for fluctuations in the cost of living, market conditions, interest rates, or the Landlord's expenses, the District's cost exposure is fixed. As a result, the District's rental expense will likely remain below-market over the entire 15-year term, thus mitigating any overpayment risk.

At the same time, District revenues have for the past decade been increasing by 4-5% annually, thanks to increases in property tax revenues resulting from reassessments following sales of residences in the District. Also at the same time, RVFD expenses have increased by a lesser amount, typically 3-4% annually, due to the Towns' self-imposed financial constraints. The net positive difference between District's annual revenues and its RVFD cost-sharing payment provides a financial cushion that enables affordability of the Lease from net income without having to consider utilizing any District reserves. The Board believes that District property tax revenues will continue to outpace its RVFD expense for the foreseeable future.

F. Progress in Implementation of the 2017 Strategic Plan

After decades of frugality and caution, and freed from the need to periodically negotiate for its fire protection services, the District immediately pivoted to a more activist approach. By conducting an extensive public input process, the District developed its first formal Strategic Plan in 2010. The Strategic Plan established certain objectives to increase the level of safety, reduce the level of exposure to citizens, and protect buildings, landscaping, and undeveloped spaces. Accumulated financial resources were re-purposed for implementing the Strategic Plan's objectives.

The Strategic Plan was updated with more public input in 2017 and reflects the District's current priorities. By way of example, the District has lately devoted resources to the following broad range of activities:

- Commissioned and made available to all residents a detailed 108-page comprehensive assessment of the specific risks and hazards associated with wildfire in the District entitled *Sleepy Hollow Wildfire Hazard Mitigation Assessment*. The *Assessment* recommends multiple mitigation projects over the coming five years.
- Updated the District's Strategic Plan based on the recommendations and analyses in the *Assessment* and completed nearly all priority projects approved for implementation.
- Maintained national certification as a *FireWise® Community* through strategic activities and projects.
- Drafted and adopted District-specific Fire Codes based upon the latest California Fire Code, International Wildland-Urban Interface Code, State Building Standards Code, and

- California Health and Safety Code. Investigated possible adoption of a District-specific Hazardous Vegetation ordinance.
- Sponsored and/or spearheaded with community partners simultaneous vegetation management projects, including:
 - Contracting for comprehensive inspections by MCFD personnel of all 866+ parcels within the District;
 - Conducting four annual Chipper Days, including onsite pickup, with record-setting volumes of vegetation cleared;
 - Creating shaded fuel breaks on surrounding ridgetops utilizing herds of goats of and sheep in partnership with the Marin County Open Space District, San Domenico School, Triple C Ranch, Rocking H Ranch, and other public agencies;
 - Funding major equipment purchases for the MCFD's Tam Fire Crew and hiring the Tam Fire Crew to create defensible space and fuel breaks in the District;
 - Advocating and subsidizing fire road maintenance within the District, including restoration of some previously abandoned roads that now permit better firefighter access; and
 - Conceiving a first-of-its-kind fire-safe landscaping demonstration project located on Fox Lane.
 - Conducted ongoing public education activities for District residents, including:
 - Organizing and hosting an annual Safety Fair in collaboration with partner agencies;
 - Publishing and distributing to all residents *Living with Fire in Sleepy Hollow*, a District-specific guidebook to community fire safety;
 - Offering "Living With Fire" classroom training to all District residents;
 - Providing the all-hazard safety information contained in the *Sleepy Hollow Directory* that was distributed to all residents;
 - Publishing regular articles on fire safety in *Sleepy Hollow Homes Association Bulletin* and on the District website; and
 - Maintaining an up-to-date, informative District website to facilitate public awareness and communications.
 - Organized and conducted zone-based evacuation drills for residents and first responders with extensive multi-agency coordination and participation.

- Supported and promoted the Alert Marin reverse 911 system to notify residents in the event of an emergency in or near the District.
- Investigated potential improvements to wireless communications vital to community safety.
- Explored a potential installation of an outdoor public early warning system in cooperation with other Ross Valley agencies.
- Funded and maintained the sandbag station during the winter months.
- Initiated the block-by-block Neighborhood Preparedness Coordinator project.
- Applied for and received multiple fire prevention grants from the State and other sources.
- Continued to participate in the maintenance of Station 20 as called for in the District's *Strategic Planning Goals* presentation dated January 13, 2012.
- Explored establishing a District office with meeting space, space for organizing and equipping the Neighborhood Preparedness Project, and space for a community emergency shelter to better serve all residents.

The Strategic Plan is built on the *Assessment*, both of which the Board will periodically update and amend with input from residents and experts to reflect changes in the District's risk profile . Nothing in the Lease will prevent the District from continuing and expanding the scope of its activities. If anything, the Lease will enable the District and residents to realize the full potential of their collaborative relationship to optimize preparedness.

G. Financial Reserves

The District's financial reserves are sufficient to fund operations in the event of unanticipated financial stress. They are an integral part of the District's long-term planning process. The Board believes that the District can pay the rent required under the Lease on an annual basis from net revenues alone, and foresees no need invade the reserves during the 15-year term of the Lease to cover any recurring Lease-related expenses. However, some confusion over the relationship of the reserves to the Lease has been observed.

1. Flexibility re: Deployment of Reserves

Essentially, the District's reserves amount to the non-obligated balance that is available at the end of each budget year. In a technical sense, reserves are defined as the difference between the District's liquid assets and short-term liabilities, less any assets restricted by either legal requirements or District action. The reserves (referred to as "fund balances" per GASB 54) are classified for accounting purposes as assigned or unassigned. "Assigned" reserves are designated for an intended purpose but

are not committed or restricted to a specific need. “Unassigned” reserves can be assigned for any use deemed appropriate by the Board.

The appropriate amount of reserves is determined primarily by the degree of risk associated with the District’s revenues and revenue sources and by the likelihood of major contingencies and the amount of funds required to respond to them. The District’s distinct exposure to natural disasters, vulnerability to actions taken by the State, and potential cash-flow needs require that funds be set aside for such contingencies. It is not necessary for the District to reserve 100% for every contingency considered. It is unlikely that all contingencies would arise at once requiring the need to exhaust the entire reserve.

The Board annually adjusts the reserves to reflect the current circumstances in the District. This includes community objectives, risks, and opportunities. For example, before and after 2010, the District built up sufficient reserves to fund its own fire service if the Towns refused to grant full RVFD voting membership for the District. (After the Towns agreed to do so, the District nonetheless continued to designate reserves for fire service start-up costs for an additional five years as a precaution in the event the RVFD members’ relationships deteriorated as in past decades.) The District audit for FY2014-15 shows the following Assigned fund balances:

Fire house acquisition	\$1,300,000
Fire equipment acquisition	\$ 600,000
Operation start-up expenses	<u>\$ 400,000</u>
	\$2,300,000

While the original purpose for those Assigned reserves may have ended with the District’s elevation to full RVFD membership, the need for maintaining a prudent level of reserves has not. The end of the RVFD membership “trial period” in 2016 prompted the Board to re-designated the reserves to reflect the changes in the District’s potential needs:

- An *Underfunded Pension Liability Fund* to meet underfunded pension and other post-employment benefit liabilities of the RVFD Joint Powers Authority (“JPA”);
- A *FireWise® Community Program Fund* to maintain *FireWise®* membership through strategic activities and projects.
- A *Program Fund* to implement recommendations contained in the *Assessment*; and
- An *Operational Reserve Fund* to ensure that the District has sufficient working capital on hand to meet the District’s ordinary expenses for up to one full year.

The District is not required to create or maintain a reserve account equal to any particular potential need or liability, be it legacy benefits obligations (which the District is paying down as a member of the RVFD), Lease obligations, or any other need. In the unlikely event that reserves need to be utilized in connection with the Lease, the Board finds that it can simply re-designate reserves to address the District’s potential financial needs.

2. Exposure of Reserves to Mass Casualty Events

Another misconception is that the District's reserves could be at risk in the event of fiscal challenges associated a mass casualty such as the fires that incinerated parts of Santa Rosa in 2017. It has been suggested that unreimbursed firefighting costs and/or a subsequent decrease in property values and revenues could cause the District to deplete and perhaps exhaust its reserves. This suggestion fails to consider the following:

First, the services the District receives from the RVFD are not limited to the share of the RVFD's resources paid by the District (12.8%) or any other amount. The 2012 *Amended and Restated Joint Powers Agreement* requires that the RVFD's four fire stations be kept routinely open, fully-staffed and equipped for 24-hour continuous operation. The Fire Chief has sole discretion as to the most effective manner of handling and responding to calls for service, including positioning equipment and staffing between and among fire stations to meet competing demands. The District is not required to contribute more funding if it should consume disproportionate RVFD resources due to a particular event.

Second, the RVFD is part of the statewide mutual-aid system. The RVFD responds to all requests for assistance within its jurisdiction, in neighboring areas of Marin, and State or nationwide on an automatic or mutual-aid basis. Likewise, firefighters from across the State will assist the RVFD and the District during major fire events, and the State and Federal governments will reimburse most of the costs.

Third, California local governments rely on a variety of revenues to pay for the services and facilities they provide. The amount and composition of revenues differ between and among cities, counties, and special districts largely because of differences in responsibilities. Compared to municipalities, the District has limited responsibilities and liabilities as a single-purpose entity. Unlike Santa Rosa, the District's resources are not subject to competing demands. The District is primarily funded by property taxes distributed by the State. It does not charge or rely upon fees from consumers of the District's services. A special tax may be levied to pay for specific District expenses, including increased firefighting costs, if necessary. Two-thirds of District voters must agree to enact, increase, or extend a special tax. The District's voters have approved every special tax proposed by the District (whether or not collected). For the past 36 years, including on November 6, 2018, District voters authorized renewal of the paramedic tax, once again at the highest approval rate among the RVPA's eight constituent jurisdictions.

Fourth, the State Legislative Analyst's Office recently estimated that cities, counties, and special districts will experience lower property tax revenue totaling \$23.7 million in 201718 and 201819 as a result of the Northern California fires. The State has announced that it will backfill those losses from the State's General Fund. In addition, the State Legislature has discretion in providing local assistance in the event of a disaster, including (1) what types of assistance to provide, e.g., tax backfills, long-term loans, or reduced cost shares; (2) the duration of the assistance to provide, given that it may take a number of years for communities to fully recover;

and (3) the amount of assistance to provide, such as whether to provide full backfills for all affected communities or some lesser amount.

Fifth and finally, if unanticipated events should result in the District becoming unable to pay its debts as they become due, State and Federal laws exist to safeguard the District's finances as it develops recovery plans. If necessary, California Government Code Section 53760 permits the District to avail itself of Chapter 9 of the federal Bankruptcy Code, which is specifically designed for local government entities to adjust or reduce their obligations when their resources are inadequate to cover their obligations. It can be utilized to extend the timeline for repayment, allow for the refinance of debt, or permit reduction of principal or interest on existing debts. An automatic stay would go into effect to halt any actions to collect on debts of the District. The District would not be liquidated and would retain its authority to govern its affairs including managing its day-to-day operations, collecting revenues, making expenditures, and deploying its reserves.

3. Continuing Adequacy of Reserves

The District's FY 2018-19 reserves currently exceed \$4.5 million, the healthiest in the District's history. The reserves remain allocated to three Assigned funds and one Unassigned fund that is unrestricted: Operations (\$1 million), *FireWise*® Projects (\$1 million), Unfunded Liabilities (\$1 million), and Unrestricted (\$1.475 million at the start of FY2018-19). (The Unfunded Liabilities Fund is a placeholder.) The Board has determined that the District has no anticipated need for additional reserves or for re-designation or adjustment of any of the current fund balances in connection with the Lease or otherwise.

IV. DESCRIPTION OF THE LEASE

Having revamped a complicated multi-agreement structure to an uncomplicated Lease, the parties negotiated, on an arm's-length basis, a number of potential lease transaction structures over the past two years. All proposals included certain essential terms which appear in every conventional commercial lease. The Lease is based in large part on the model Office Lease Form of the Building Owners and Managers Association of San Francisco, which has been regularly revised to reflect the changing needs of the commercial real estate market.

A. Salient Deal Points of the Lease (capitalized terms are defined in the Lease)

- **Approval and Buildout.** The Project, including the Building, will be built by the SHCF at its sole cost and expense as depicted in the Plans. Construction will be paid for by SHCF entirely with private financing, not with public funds, and therefore is not subject to California's prevailing wage laws. In sustaining the Marin County Planning Commission's approval of the Project, the Marin County Board of Supervisors denied an opponent's assertion that the Project does not comply with CEQA. The Board of Supervisors unanimously found that the Project is categorically exempt from CEQA and that that an exception to the Categorical Exemption for the Project does not apply (Board of Supervisors Resolution No. 2014-100, Finding No. VII dated October 28, 2014).

- **Lease Purpose and Commencement.** The Lease is solely for a public purpose. The Lease does not become effective unless and until SHCF receives from the County of Marin a Certificate of Occupancy for, and delivers to the District possession of, all rentable areas in the Building in compliance with all conditions precedent specified in the Lease.

- **Initial Term and Extension Option.** The Initial Term is for a period of 15 years. The District is entitled to extend the Term of the Lease for an additional period of 15 years, commencing immediately after the expiration of the Initial Term. The extension option is on the same material terms and conditions except that rent shall be equal to the fair market rent for the exclusive use of the Premises and shared use of the Building.

- **Rent.** The rent is fixed at \$8,250 per month with no escalations during the Initial Term. No pass-through of operating expenses, maintenance, insurance costs, real estate taxes, or other expenses associated with the use and operation of the Building by may be charged to the District.

- **Premises and Rentable Area.** The District is entitled to use of the entire 7,326 square foot Building as follows:
 - Shared use of the entire first and second floors of the Building for emergency planning and shelter purposes in the event of a declared emergency, practice session, or other uses consistent with the operation of the District;

- Shared use of the 565 square foot first floor meeting room for all public or Closed Session meetings of the District;
 - Shared use of the 1,180 square foot first floor gathering room for District events;
 - Exclusive use of the approximately 703 square foot office space and storage spaces depicted on page P-10 of the Plans; and
 - Posting of District signage and required legal notices in an area of the Building facing Butterfield Road readily visible from the outside 24 hours per day.
- **Permitted Uses.** Office, educational, training, public assembly, emergency, and other uses consistent with District operations as authorized by California law including current and emergency wildfire planning, training, regular and special public meetings, preparation, communications, response, evacuation services, and the storage, maintenance, repair, and use of certain District equipment. The District shall at all times have full and exclusive use of the office and storage spaces. The District's use of the emergency spaces shall be on a preferential, non-exclusive basis with priority over other users except in the event of an emergency, in which event the District shall have exclusive use and use by others shall be suspended so long as the emergency declaration remains in effect and for a reasonable time thereafter.
 - **Nondisturbance.** The District may remain in possession of the premises if the SHCF's lender takes back the property in foreclosure so long as the District is not then in default under the Lease. In such event, the District will acknowledge the lender's rights, accept the lender as the landlord, and pay rent to the lender rather than to SHCF.

B. Rental Rate

Under the Lease, the District has the right to use all 7,326 square feet of the Building as needed. It is therefore not appropriate to divide the rent amount solely by the 703 square feet of District office space to calculate value.

In mid-2014, following a Community Meeting hosted by the District to obtain public input into the Project as then-proposed, the District published a “Summary Analysis of Emergency Center Financial Value” for public review. The Analysis was based on the original transaction structure and was prepared with the assistance of local real estate professionals. It considered the nature and amount of participation in the Project, the anticipated leasehold value to the District then and in the future, the public safety benefits to the community, and an analysis of possible alternative sites. Based on the experts’ estimate of the combined present value of (1) the Office and Storage Space Uses, (2) the Meeting and Training Space Uses, (3) the Emergency Water and Power Facilities, (4) the Intangible Value of the Leasehold Interest, and (5) the Emergency Uses, the Board concluded that had a total public safety value to the District’s residents well in excess of \$4 million, which is more than double the proposed total rental amount.

Current rental rates asked or paid for residences in or near the so-called “flats” of the District are comparable to the rent called for under the Lease but all offer less space and none of the public safety functionality of the proposed Community Center. Four examples illustrate the current advertised rates:

- [*house number withheld at owners’ request*] Butterfield Road
3,400 square feet
\$9,500 per month

- 139 Deer Hollow Road
2,000 square feet
\$7,600 per month

- 110 Van Winkle Drive
3,047 square feet
\$7,000 per month

- 301 Hidden Valley Lane
1,921 square feet

\$6,000 per month

Assuming that the above rental amounts are subject to annual increases (e.g., 3% is typical), the District believes that the fixed rent payable by it under the Lease over the 15-year Initial Term (\$1,485,000) is a bargain based on both present value analysis and current market conditions. Divided by the 7,326 square feet which the District has rights to under the Lease rather than merely the 703 square foot office space, amortized over 15 years, and without any escalations to absorb, the per square foot cost to the District is cost-effective from the outset and increasingly so over time.

C. Comparisons to Other Sites

The Analysis also considered whether the District might be able to realize the same levels of financial and public safety value at a lower cost by locating at an alternative site. Assuming suitable alternative sites are available, the Analysis states that the answer would be “yes”. However, no such sites existed then or now.

1. In-District Alternative Sites

In order for the District to obtain the cost-effective functionality that the Lease envisions but at a site other than the Community Center, the following considerations must be addressed:

- The location must be a flat lot, one-half acre or larger, centrally-located on or near Butterfield Road for maximum visibility, with suitable access, parking, and utilities, in a building containing offices, meeting/training space, emergency back-up capabilities, and shelter resources. No such parcels exist within the District.
- If the District were to seek to acquire a suitable improved property and demolish any existing residence and other structures so as to allow construction of a building containing offices, meeting/training space, back-up capabilities, and shelter resources, then the land acquisition costs alone would likely be prohibitive. For example, 140 Fawn Drive, a mostly flat, 1.5 acre parcel, sold in July 2012 for \$1,650,000. The existing residence was demolished and a new home was constructed. Homes on flat lots in central Sleepy Hollow typically sell for well in excess of \$1.5 million. In the unlikely event that the District was able to acquire such a property, the combined acquisition, demolition, and construction costs would consume a substantial portion of the District’s resources, leaving few resources to address other current and future District needs.
- Even assuming that a suitable site and a willing seller exist, and the prototypical property could be acquired at a non-prohibitive cost, the adjacent neighbors and others would be very unlikely to tolerate a relatively large-scale, non-residential

use next-door, not to mention a lengthy construction phase needed to build it.

- Even assuming that the neighbors would tolerate a non-residential use, such a facility would unnecessarily duplicate the existing Community Center facilities.

2. Out-of-District Sites

The Board believes that renting out-of-District facilities, which might include RVFD Station 20, should be disfavored for two fundamental reasons. First, unless comparable out-of-District facilities are materially superior to in-District facilities in terms of cost, terms, timely availability, suitability, etc., the District should prefer an in-District location as a convenience to the citizens who pay for the District's services and facilities. Second, renting facilities outside of the District – in this case at Station 20 – would amount to sending District funds in the form of rental payments out of the District from which the funds were obtained. The Board believes that rental payments should remain in the District absent a compelling “best value” analysis to the contrary.

Station 20 houses RVFD personnel, their sleeping and dining quarters, multiple fire apparatus, equipment, and office facilities on a fully functioning 24x7 basis, 365 days per year. The Board believes that Station 20 cannot accommodate the District's needs now or in the future without displacing RVFD personnel and/or equipment, and thereby potentially compromising RVFD effectiveness and, in turn, District safety.

If Station 20 were to be used for District purposes, a substantial rebuild of the Station would be required by some combination of the Town and the District, for which no funding or legal structure is presently available. Moreover, a future rebuild of Station 20 will be complicated due to the number of agencies having permitting authority, each with its own requirements. The parcel on which Station 20 sits is located in the highly-restrictive Stream Conservation Area; a similar creek-spanning replacement structure will never be allowed. Instead, based on discussions with the Town Manager, it is more likely that sometime in the future the Town will seek to remodel rather than rebuild Station 20.

The Board believes that District resources should not be utilized to relieve Town of its responsibility for Station 20. The District finds that the Community Center site provides the “best fit” in environmental terms, community involvement, and high-quality, sustainable, purpose-built development. It is centrally located, requires no change in its historical use, and would involve reconstruction of an existing facility. No comparable site currently exists within the District, and it is not within the District's control to create feasible alternative sites.

D. Consideration of Total Anticipated Costs

The Board strives to anticipate reasonably foreseeable risks, to assess their potential impacts on the District, and to be prepared with a plan to react to adverse events. In considering the Lease's total anticipated costs, the Board considered the potential risks to the District of a possible SHHA bank loan balloon payment that becomes due in 10 years.

The risks and obligations imposed by a loan are borne by the lender and the borrower. The District is not a contracting party to the bank loan, and the bank is not a contracting party to the Lease. To the Board's present knowledge, SHHA's loan agreement did not, and does not, recite or impose obligations upon the District in order to protect the interests of the bank. A balloon payment would therefore be an exclusive obligation of the borrower, SHHA.

The relationship between the District and SHCF is expressly and exclusively that of Landlord and Tenant. Risks associated with SHHA's bank loan are beyond the control of the District and the Lease. The Board believes that the District's projected financial resources make it unlikely that in the foreseeable future the District will find itself without sufficient cash on hand to continue its ordinary business activities irrespective of any SHHA balloon payment that may become due.

V. THE NEED FOR THE LEASE

Nine of California's 20 most destructive fires have occurred in the past four years. This month marks the first anniversary of the harrowing North Bay conflagrations. Last week's Camp Fire in Butte County consumed 18,000 acres and 1,000+ homes within eight hours of ignition, 90,000 acres and 6,700 structures within 24 hours, and within 36 hours became the largest fire in State history. Multiple fatalities and the urgent evacuation of all 27,000 residents of the Town of Paradise -- many on foot after being forced to abandon their vehicles -- resulted. The destructive force of such fires, coupled with the District's unique vulnerabilities, places every resident and property at risk.

With California in the grip of an ominous new paradigm of super-fires, and the high probability of earthquakes, the situation demands nothing less than the mobilization of the District and all of its residents. All sides in the debate over the Lease acknowledge the District's need for office, storage, meeting, and training spaces from which to conduct expanded fire prevention and preparedness programs. Future updates to the Strategic Plan based on new priorities will result in program changes and additions. These programs are simply too intensive and extensive to be developed and implemented from the Directors' residences alone. The *status quo* is not acceptable.

The latest public input reflects an emerging consensus that the District's successes in enlisting residents in its recent activities have yielded tremendous early results. Among the Lessons Learned that expanded District programs will emphasize are:

- **The danger of a false sense of security.** Residents may become complacent about fire risks if the fire protection infrastructure works well right now. Conveying the nature of the threat, both present and future, is critical.
- **Community understanding of “resilience talk.”** For instance, weather forecasts address risk in a different way from maps, which can confuse people. Stand ready to translate using everyday language.
- **Effective communication.** When conveying critical information to residents, it is critical to know what is important to them and how they prefer to receive information.
- **Sharing information across boundaries.** Learning how other communities are approaching resilience provides peer support and ideas for solving similar problems.
- **Community changes can be painful, but keep the focus on the goal.** A sustained District-wide effort to harden community defenses will cause growing pains for residents. Recognize concerns while coming back to the benefits of a safer, more secure future.

The Board believes that its current lack of operating and emergency facilities constitutes the main challenge to long-term District preparedness and recovery capabilities. As residents brace for ever more frightening threats, a conspicuous District office located in a prominent position at the center of the community will be a constant reminder of the importance of the continuous and urgent need for individual and community readiness. The District's goal is to make each resident part of that process and not merely anxious spectators.

The District office at the Community Center will be a sign of the District's commitment and a transformational investment in the community's long-term safety. For reasons of logistics and fairness, Board members cannot be expected to continue to utilize their private residences for such purposes.

Having access to dedicated facilities at the Community Center will enable the District to pursue initiatives not readily undertaken by the Directors from their private residences such as:

- Enabling the District to explore the challenges and opportunities of establishing a digital infrastructure to convey selected District services in a secure, efficient, and cost-effective connected environment.
- Enabling the District to move ahead on recommended improvements for fuel load reduction and fire roads and to continue to apply for grants to support such efforts.
- Enabling the District to be proactive in promoting compliance and fine-tuning of the District's new Fire Code and WUI Code.

- Enabling the District to engage in targeted citizen preparedness campaigns such as Neighborhood Preparedness Coordinators, GetReady, CERT, and other programs.
- Enabling the District to advocate for residents to take advantage of possible lower homeowners' insurance premiums.
- Enabling the District to fund innovative ideas from District residents and others, and to increase transparency and community engagement in the District's budget process.
- Enabling greater community buy-in to boost overall resilience through infrastructure improvements, planning, community participation, and outreach.
- Enabling the District to navigate future challenges/challenging projects to better meet the needs of its citizens.

VI. THE PUBLIC PROCESS

The Lease is the product of an extensive and disciplined public process unprecedented in the history of the District. Likewise, the Project was created through six years of extensive input from residents, first responders, and public officials. Dozens of public meetings, hundreds of pieces of correspondence, multiple Public Records Act requests, and thousands of hours of drafting and discussion informed the District's consideration of the Lease and the Project.

The public has spoken on the Lease specifically, and spoken very loudly. Approximately 100 residents attended the District's Special Meeting on October 27, 2018 at which the Staff Report was received and reviewed. Approximately 30 persons provided oral comments at the Meeting, of which all but two expressed support for the Lease. In addition, more than 100 e-mail messages from residents were received by the District in connection with the Meeting and the Lease, three of which expressed opposition to the Lease and one posed a question. During the Meeting, a resident asked for a show of hands in support of the Lease; all but a handful were raised.

The public has weighed in and been listened to throughout the process. At the Meeting, all questions were answered in detail about every aspect of the Lease. In fact, public comment has led the District and the SHHA/SHCF to amend the Project and the transaction structure in certain key respects, and public feedback has accompanied each such change. The District has been assiduous in refusing to reach a decision on the Lease until all public input has been received and recorded.

VII. ENUMERATED FINDINGS

After consideration of the foregoing, the District hereby finds and determines that:

1. Over 2,000 people permanently reside in the District and approximately 1,000 students, faculty, and staff are present on the school campuses in the District most days during the academic year.
2. It is necessary and essential that the District provide and promote a broad range of prevention, preparedness, and recovery activities to the residents and others present in the District.
3. Because of the District's unique vulnerabilities, additional and expanded activities must be developed to supplement the District's current efforts so as to address possible future risks that could emerge in response to changes in local conditions in the immediate vicinity of the District.
4. District facilitation of such activities pursuant the District's Strategic Plans will serve to enhance the District's level of preparedness and recovery in the event of fire, earthquake, and similar risks.
5. For the past approximately six years, the District has been considering a slate of options to facilitate such enhanced activities, and has taken action to implement several measures in furtherance of these goals based on the District's Strategic Plans.
6. The District conducted a duly and properly noticed public meeting on October 28, 2018 at which the District received and reviewed the Staff Report evaluating the merits of the District potentially entering into the Lease to support implementation of the District's Strategic Plans.
7. The Lease will support and strengthen the District's ability to facilitate and coordinate full implementation of the District's Strategic Plans and promote day-to-day coordination, organizing, and prevention activities needed to protect against catastrophic damage within the District from a fire, earthquake, or natural disaster, and therefore the Lease would serve the health, safety, and welfare of the residents and others within the District.
8. The Lease would not introduce any new environmental impact or change the conclusions of the County of Marin with respect to CEQA's bearing, if any, on the Lease.
9. Pursuant to the District's powers afforded by the State constitution and State law, to protect the health, safety, and welfare of the public, the Lease can and should be executed and adopted by the District at the appropriate time.

VIII. CONCLUSION

The Board believes that together the residents and the District have the power to change the prevailing risk narrative. Considering how far the District has come and all that the District has recently accomplished, it has earned the residents' support for the Lease.

It is a hopeful moment for the community. The Project has been years in the making. The Lease is ready to be executed by the District.

Date: November 17, 2018

Respectfully submitted,

Thomas J. Finn, Director/Secretary

SLEEPY HOLLOW FIRE PROTECTION DISTRICT

RESOLUTION NO. 2018-3

**RESOLUTION APPROVING FINDINGS OF FACT OF BOARD OF DIRECTORS
AND AUTHORIZING A LEASE AGREEMENT
WITH THE SLEEPY HOLLOW CHARITABLE FOUNDATION
WITH THE CONSENT OF THE SLEEPY HOLLOW HOMES ASSOCIATION
FOR DISTRICT PUBLIC FACILITIES**

WHEREAS, California Health and Safety Code section 13861 authorizes the Board of Directors of the District to enter into leases for District facilities; and

WHEREAS, Findings, which are attached to this Resolution as Exhibit A, have been prepared pursuant to California Health and Safety Code section 13861 that set forth the District’s need for and provisions of a proposed lease between the District and the Sleepy Hollow Charitable Foundation (“SHCF”) with the consent of the Sleepy Hollow Association (“SHHA”) in certain detail (the “Lease”); and

WHEREAS, the Findings have been made available to the general public for inspection on the District’s web site and at the residence of the District’s custodian of records more than 72 hours prior to the public meeting at which the Findings and the Lease were considered by the District; and

WHEREAS, the Board of Directors has considered the evidence and testimony presented at such public meeting.

NOW, THEREFORE, the Board of Directors of the Sleepy Hollow Fire Protection District hereby resolves as follows:

SECTION 1. The foregoing Recitals are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. The Board of Directors finds and determines that the Findings prepared pursuant to California Health and Safety Code section 13861 and the proposed lease of the property pursuant to the Lease will assist in the full implementation of the District’s Strategic Plans and therefore the Lease will serve the health, safety, and welfare of the residents and others within the District..

SECTION 3. Subject to the SHCF and SHHA providing to the District reasonable evidence of their respective property interests in the subject property, the Board of Directors hereby approves the Lease substantially in the form as attached hereto as Exhibit B and incorporated herein by this

reference. The dated date, lease payment date or dates, place or places of payment, terms of prepayment, and other terms of the Lease shall be as provided in the Lease, as finally executed; provided, however, that the aggregate amount of the rental payments payable under the Lease shall not exceed \$1,485,000, and the term of the Lease Agreement shall not exceed 15 years (provided that such term may be extended as provided therein).

SECTION 4. The approval of the Lease through this Resolution does not commit the District to any action that may have a significant effect on the environment. As a result, such action does not constitute a “project” subject to the requirements of the California Environmental Quality Act.

SECTION 5. The President of the District Board of Directors is hereby authorized to make final changes to the Lease that are consistent with this Resolution, and the President is hereby authorized to execute the Lease and any other documents reasonably necessary to effectuate the provisions of the Lease, to take all actions, on behalf of District, to enter into any amendments or modifications (including without limitation, the exhibits) to the Lease that the President determines, in consultation with the District’s Special Counsel, are in the best interests of the District, do not materially increase the obligations or liabilities of the District, and are necessary or advisable to complete the transaction and effectuate the purposes and intent of this Resolution and are in compliance with all applicable laws, all subject to final review and approval by the District’s Special Counsel.

PASSED AND ADOPTED at a Special Meeting of the Board of Directors held this 17th day of November 2018 by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Richard C. Shortall, Jr., Director/President

ATTEST

Thomas J. Finn, Director/Secretary

LEASE by and among
SLEEPY HOLLOW CHARITABLE FOUNDATION,
as Landlord,
and
SLEEPY HOLLOW FIRE PROTECTION DISTRICT
as Tenant
and
SLEEPY HOLLOW HOMES ASSOCIATION
As Consenting Party

Dated as of _____, 2018

**LEASE
1317 BUTTERFIELD ROAD
SAN ANSELMO, CALIFORNIA**

Basic Lease Terms

DATE: _____, 2018

TENANT: Sleepy Hollow Fire Protection District (“SHFPD”)

LANDLORD: Sleepy Hollow Charitable Foundation (“SHCF”)

PREMISES: An approximately 37,755 square foot property and approximately 7,326 square foot community building (“Building”) (together, the “Project”), and disaster planning and recovery center, as depicted in the plans dated March 28, 2014 and received by the Marin County Community Development Agency in final form on May 16, 2014, as modified in accordance with the Conditions of Approval set forth in Marin County Board of Supervisors Resolution No. 2014-100 dated October 28, 2014 and as further modified and approved by Marin County in September 2017 (the “Plans”).

RENTABLE AREA:

Shared use of the approximately 37,755 square foot property and shared use of the entire 7,326 square foot first and second floors of the Building for emergency planning and shelter purposes as depicted on pages P-17 and P-18 of the Plans in the event of a declared emergency, practice session or other uses consistent with the operation of a fire protection district, (collectively, the “Emergency Space”); shared use the 565 square foot first floor meeting room for all public or closed-session meetings of SHFPD (as coordinated with SHCF); shared use of the 1,180 square foot first floor gathering room for SHFPD events (as coordinated with SHCF), and exclusive use of the approximately 703 square foot office space and storage spaces depicted on page P-10 of the Plans (the “Office Space”). SHFPD shall also have the right to post all required legal notices in an area of the Building facing Butterfield Road readily visible from the outside 24 hours per day. SHFPD will lease the Emergency Space from SHCF, and SHCF will lease the Emergency Space to SHFPD. (“Building”).

BUILDOUT:

SHCF, at its own cost and expense, shall construct all portions of the Community Center and Emergency Space as depicted in the Plans. Any material modifications to the Plans (including portions of the Project other than the Emergency Space) shall require SHFPD’s review and approval, not to be unreasonably withheld, conditioned or delayed.

PERMITTED USE: Office, educational, training, public assembly, emergency, and other uses consistent with the operation of a fire protection district as authorized by California law, including without limitation, current and emergency community wildfire planning, training, regular and special public meetings, preparation, communications, response, evacuation services, and the storage, maintenance, repair, and use of certain SHFPD equipment. SHFPD shall at all times have full and exclusive use of the Office Space. SHFPD's use of the Emergency Space shall be on a preferential, non-exclusive basis with priority over other users (as coordinated in advance with SHCF) except in the event of an emergency, in which event SHFPD shall have exclusive use and use by others shall be suspended so long as the emergency declaration remains in effect and for a reasonable time thereafter. [Need to further define emergency declaration? Done by SHFPD or County of Marin?]

COMMENCEMENT DATE: Upon SHCF's receipt of a certificate of occupancy for and delivery of possession of the Emergency Space and the Project and compliance with all conditions precedent specified herein.

EARLY OCCUPANCY: SHFPD shall have the right to access the Emergency Space for the purpose of installation of its furniture, fixtures and equipment not less than thirty days prior to the Commencement Date or issuance of a temporary certificate of occupancy, if required for installation of such FF&E.

EXPIRATION DATE: Fifteen (15) years from the date that is the first day of the calendar month after the Commencement Date, or upon thirty days written notice by SHFPD if SHCF fail to receive a certificate of occupancy for and delivery of possession of the Emergency Space and the Project in compliance with all conditions precedent specified herein by January 1, 2020.

INITIAL TERM: Fifteen (15) years plus any partial month in the event the Commencement Date is any day other than the first of such calendar month.

BASE RENT: The Base Rent shall be Eight Thousand Two Hundred and Fifty Dollars (\$8,250), per month, with no escalations for the Initial Term.

ADDITIONAL RENT: No pass-through of operating expenses, maintenance, insurance costs, real estate taxes or other expenses associated with the use and operation of the Building by Landlord; provided, however, that Tenant shall be obligated to pay any personal property taxes, janitorial expenses associated with its Office Space, and maintenance of the interior portion of the Office Space, all in accordance with the terms of this Lease.

SECURITY DEPOSIT: Tenant shall deliver to Landlord, upon the complete execution of this Lease, the Security Deposit in the sum of Fifty Thousand Hundred Dollars (\$50,00.00).

NOTICES:

All notices to Tenant shall be addressed:

Prior to the Commencement Date:

Board of Directors
Sleepy Hollow Fire Protection District
c/o Thomas J. Finn, Director/Secretary
San Anselmo, California 94960-1148

with a copy to:

Nossaman LLP
Attention: Danielle S. Gensch, Esq.
50 California Street, 34th Floor
San Francisco, California 94111

Following the Commencement Date:

Board of Directors
Sleepy Hollow Fire Protection District
1317 Butterfield Road, Suite __
San Anselmo, California 94960

All notices to Landlord shall be addressed:

Board of Directors
Sleepy Hollow Charitable Foundation
1317 Butterfield Road
San Anselmo, California 94960

with a copy to:

Board of Directors
Sleepy Hollow Homes Association
1317 Butterfield Road
San Anselmo, California 94960

_____ Novato,

EXHIBITS:

Exhibit A - Rules and Regulations

- Exhibit B – Work letter (to be considered)
- Exhibit C – Floor Plan Depicting Premises
- Exhibit D – Site Plan
- Exhibit E – Form of Subordination, Nondisturbance, and
Attornment Agreement

These Basic Lease Terms are incorporated into and made a part of the Lease. In the event of any conflict between the Basic Lease Terms and the Lease, the Lease shall govern and control.

IN WITNESS WHEREOF, the parties hereto have executed these Basic Lease Terms as of the day and year appearing next to each signature below.

TENANT:

Sleepy Hollow Fire Protection District

By: _____
Name: _____
Title: _____

Date: _____

LANDLORD:

Sleepy Hollow Charitable Foundation

By: _____
Name: _____
Title: _____

Date: _____

CONSENTING PARTY

Sleepy Hollow Homes Association

By: _____
Name: _____
Title: _____

Date: _____

LEASE AGREEMENT

This Lease is made with reference to the following facts and objectives:

A. SHCF is a tax-exempt, non-profit charitable foundation formed under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which is organized for the welfare, benefit, and safety of residents or organizations having its principal place of business in the community of Sleepy Hollow in Marin County.

B. SHHA is a nonprofit mutual benefit association organized in the state of California and formed under Section 501©(4) of the Internal Revenue Code.. SHHA is the owner of the real property located at 1317 Butterfield Road, San Anselmo, California and has or will lease the property to SHCF for the express purpose that SHCF shall construct, own, operate and maintain the Building. SHHA approves and consents to the terms of this Lease Agreement.

C. Tenant is an autonomous Special District of the State of California responsible for fire protection and emergency services in the unincorporated area of Sleepy Hollow in Marin County, California.

D.. Tenant desires to lease the Premises from Landlord and Landlord desires to lease the Premises to Tenant on the terms and conditions set forth in this Lease.

In consideration of the foregoing and the mutual representations, warranties, covenants, and agreements contained in this Lease and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

Premises

1. Landlord leases to Tenant the Premises as designated in the Basic Lease Terms. Tenant shall have exclusive and/shared use of the Premises in accordance with the Basic Lease Terms, together with the right in common with invitees to the Building to use any portions of the Project that are designated by Landlord for the common use of such invitees, including sidewalks, unreserved parking areas, common corridors, restrooms, foyers, staircases and lobby areas (the “Common Areas”). SHHA consents to the Lease. In addition, and notwithstanding the foregoing, this Lease shall not be effective until the Tenant shall have received written evidence reasonably satisfactory to the Tenant and its Special Counsel that confirms Landlord’s real property interest in and to the Land and Building, as confirmed in writing by the Tenant.

Purpose

2. The Premises shall be used for general office, educational, training, public assembly, emergency, and other uses consistent with the operation of a fire protection district as authorized by California law, including the storage, maintenance, repair, and use of equipment owned or controlled by SHFPD and/or the joint powers authority of which SHFPD is a member. SHFPD shall at all times have full and exclusive use of the Office Space. SHFPD’s use of the Emergency Space shall be on a preferential, non-exclusive basis with priority over other users (as coordinated with SHHA) except in the event of a declared emergency, in which event SHFPD shall have exclusive use and use by others shall be suspended so long as the emergency declaration remains in effect and for a reasonable time thereafter.

Term

3. The Commencement Date and Expiration Date of the Lease term ("Term") are the dates set forth on the Basic Lease Terms. Notwithstanding the foregoing, if Tenant occupies the Premises for the conduct of its business prior to the Commencement Date set forth in the Basic Lease Terms, exclusive of the early occupancy set forth therein, this Lease shall be deemed to have commenced on the date of occupancy for the conduct of its business and Tenant shall be obligated to pay Base Rent for the period between the date of such occupancy and the Commencement Date a prorated portion of the Base Rent payable hereunder during the first year of the Term (after the initial one month abatement of Base Rent). If for any reason Landlord cannot deliver possession of the Premises to Tenant on the aforesaid Commencement Date, this Lease shall not be void or voidable nor shall Landlord be liable to Tenant for any such delay, but the commencement of the Term of this Lease, and Tenant's obligation to pay Base Rent, shall be postponed until such possession can be delivered and the Expiration Date of the Term shall be similarly extended. Tenant shall be permitted to enter into the Premises in accordance with the Basic Lease Terms. Tenant shall in no manner interfere with the repairs to the Premises to be provided by Landlord pursuant to subsection 9(b) below.

Rent

4(a) Tenant shall pay to Landlord monthly rent ("Base Rent") during the Term, without offset, deduction or demand, payable in advance on or before the first day of each and every calendar month the sum as set forth in the Basic Lease Terms. If the Term commences on other than the first day of a calendar month or ends on other than the last day of a calendar month, the first or last payment of Base Rent shall be prorated on a daily basis using the number of days in the applicable calendar month.

4(b) All charges and other amounts of any kind payable by Tenant to Landlord pursuant to this Lease shall be deemed "Additional Rent." Landlord shall have the same remedies for default in the payment of Additional Rent as for default in the payment of Base Rent. Base Rent and Additional Rent are collectively sometimes hereinafter referred to as "Rent." All Additional Rent shall be due and payable by Tenant on or before thirty (30) days after billing by Landlord.

4(c) All Rent payable by Tenant to Landlord hereunder, if not received by Landlord when due, shall bear interest from the date due until paid at the publicly announced prime rate or reference rate charged on such due date by the San Francisco Main Office of Bank of America, N. T. & S. A. (or any successor bank) for short term, unsecured loans to its most creditworthy borrowers, plus four percent (4%) per annum, but in no event shall such interest exceed the maximum rate permitted by law. Landlord's acceptance of any interest payments absent payment of past-due Rent shall not constitute a waiver of Tenant's default with respect to the overdue Rent amount or prevent Landlord from exercising any of the rights and remedies available to Landlord under this Lease or by law.

Rental Adjustment

5. Tenant shall not be responsible for any operating expenses or pass throughs associated with the Building or Premises except as expressly set forth herein.

Security Deposit:

6. Upon the complete execution of this Lease, Tenant shall pay the Security Deposit as set forth in the Basic Lease Terms to secure the full performance and observance of each and all of the provisions of this Lease. If Tenant defaults in any of its obligations under this Lease, then after expiration of applicable notice and cure periods, Landlord may use, apply or retain the whole or any part of the Security Deposit (i) to satisfy past due Rent,, (ii) to cure any uncured default of Tenant. or (iii) to compensate Landlord for any expense or damage caused by Tenant’s default. Tenant hereby expressly waives any rights or benefits contained in California Civil Code Section 1950.7 and expressly agrees that, in the event of Tenant’s default hereunder, Landlord shall not be obligated to return the Security Deposit to Tenant so long as any obligations of Tenant remain outstanding or so long as Landlord may be entitled to additional recoveries against Tenant. Within thirty (30) days of Landlord’s demand, Tenant shall promptly pay to Landlord a sum equivalent to the amount by which the Security Deposit was so depleted. It is understood that Landlord is not a trustee of the Security Deposit and that Landlord may commingle it with other funds. Said Security Deposit or so much thereof as remains after Tenant’s obligations and liabilities to Landlord hereunder have been satisfied shall be refunded to Tenant, without interest, within thirty (30) days after the termination or expiration of this Lease.

Uses Prohibited

7. The Premises shall be used only for the Permitted Use and for no other use whatsoever. Landlord acknowledges that the Permitted Use incorporates emergency planning and response operations and may disrupt the use and occupancy of the Building by Landlord’s invitees.

Compliance with Law

8. Tenant shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations (“Laws”) applicable to its use and occupancy of the Premises, subject to any exemptions due to its status as a California special district. Tenant, within ten (10) days after receipt, shall provide Landlord with copies of any notices it receives regarding violation or alleged violation of any Laws. Further, Tenant shall at all times and in all respects comply with all Laws relating to hygiene, environmental protection, or the presence, use, generation, storage, transportation or disposal of any toxic or hazardous substances (“Hazardous Material Laws”), as the same may be amended from time to time, including without limitation, obtaining any required permits or licenses, and Tenant shall handle, treat, manage and dispose of any and all toxic or hazardous substances used by it or its agents, employees or contractors in strict conformity with all Hazardous Materials Laws applicable to Tenant’s practices with such hazardous materials.

Alterations

9(a) Tenant shall not make or suffer to be made any alterations, additions or improvements to or of the Premises or any part thereof without the written consent of Landlord, which shall not be unreasonably withheld or delayed . As of Landlord’s approval of such alterations, Landlord shall inform Tenant whether Landlord will require removal of such alterations as of expiration or earlier termination of this Lease. Any alterations, additions, or improvements to or of the Office Space, including without limitation any partitions, movable or otherwise, and all carpeting, shall at once become a part of the realty and belong to Landlord. Notwithstanding the foregoing, furniture, equipment and trade fixtures shall remain the property of Tenant. If Landlord consents to the making of any alterations, additions or improvements to the Office Space by Tenant, the same shall be made by Tenant at Tenant’s sole cost and expense . Upon the expiration or sooner termination of the Term, Tenant, at Tenant’s sole cost and expense, shall remove any alterations, additions or improvements made by Tenant designated by Landlord as of its consent to be removed and Tenant, at its sole cost and expense, shall repair any damage to the Premises caused by such removal. Tenant’s obligation to remove any alterations, additions, improvements, fixtures and/or personal property and to repair any damage from such removal shall survive the termination of this Lease.

9(b) Construction of any alterations, additions, or improvements by Tenant shall be completed in accordance with drawings and specifications approved in advance in writing by Landlord, which approval shall not be unreasonably withheld or delayed, and shall be carried out in a good and workmanlike manner, and in compliance with applicable Laws and such additional requirements of Landlord as may be reasonably imposed.

Repair

10. Subject to Landlord's obligations to complete construction of the Premises and to perform repairs, Tenant accepts the Premises as being in good condition and repair and accepts delivery of the Premises on a strictly "as is, with all faults basis". Except as expressly set forth in this Lease, Landlord makes no representation or warranty whatsoever as to the condition of the Premises. Tenant, at Tenant's sole cost and expense, shall keep the areas of the Premises under its exclusive use and every part thereof in good condition and repair, except for ordinary wear and tear or damage thereto by fire, earthquake or act of God. Upon the expiration or sooner termination of the Term hereof, Tenant shall surrender the Premises to Landlord in substantially the same condition as when received, ordinary wear and tear and damage by fire, earthquake, act of God or the elements excepted, unless the damage is caused by Tenant's negligence or willful act.

Liens

11. Tenant shall keep the Premises, the Building and the land on which the Building is located free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. Tenant shall in the event of the filing of any such lien, post any bond required to release the Premises therefrom. Should Tenant fail to remove any such lien within ten (10) business days after notice to do so from Landlord, Landlord may, in addition to any other remedies, record a bond pursuant to California Civil Code Section 3143 and all amounts incurred by Landlord in so doing shall become immediately due and payable by Tenant to Landlord as additional rent. Landlord shall have the right to post and keep posted on the Premises any notices of non-responsibility that may be provided by law or which Landlord may deem to be proper for the protection of Landlord, the Premises and the Building from such liens.

Assignment and Subletting

12(a) Tenant shall not mortgage, pledge, hypothecate or encumber this Lease or any interest therein without the written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall not assign this Lease or sublet or suffer any other person (the agents and servants of Tenant excepted) to occupy or use the Premises, or any part thereof, or sublet any right or privilege appurtenant thereto (collectively, "Assignment") without the prior written consent of Landlord first had and obtained, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, in the event Tenant is dissolved, reconstituted or merged into any other governmental or quasi-governmental agency with substantially similar powers and duties, Tenant shall give due notice of such to Landlord and request an assignment of this Lease to the successor entity and Landlord agrees to cooperate with such assignment. Any Assignment without Landlord's consent shall be void and shall constitute a default under this Lease. Landlord's consent to one Assignment shall not be deemed to be a consent to any subsequent Assignment.

12(b) If Tenant desires at any time to enter into an Assignment of this Lease that requires the consent of Landlord, Tenant shall first give written notice to Landlord of its desire to do so, which notice shall contain (1) the name of the proposed assignee, subtenant or occupant (collectively "Assignee"); (2) the nature of the proposed Assignee's business to be carried on in the Premises; (3) the terms and provisions of the proposed Assignment; (4) such available financial information regarding the proposed Assignee as Landlord may reasonably request; and (5) such operating histories and statements of prior experience as Landlord may reasonably request concerning the proposed Assignee. At any time within thirty (30) days after Landlord's receipt of the notice and any additional information requested by Landlord, Landlord may, by written notice to Tenant, elect to (a) consent to the Assignment, or (b) disapprove the Assignment. In no event shall a subtenant have a right to further sublet the Premises.

12(c) Intentionally omitted.

12(d) Intentionally omitted.

12(e) Tenant shall pay Landlord's reasonable costs incurred in connection with Tenant's request to an Assignment, regardless whether or not the Landlord consents to the proposed transfer, not to exceed \$1,000.

12(f) Tenant hereby covenants and agrees to pay to Landlord fifty percent (50%) of all rent and other consideration which it receives as a result of the Assignment which is in excess of the Base Rent and additional rent payable hereunder upon receipt thereof by Tenant. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to first subtract the leasing commissions, marketing expenses limited to subtenant improvements, reasonable legal fees, and design fees incurred in connection with any Assignment before determining excess rent. In addition to any other rights Landlord may have, Landlord shall have the right to contact any Assignee and require that all payments made pursuant to the Assignment shall be made directly to Landlord.

12(g) Intentionally omitted.

Indemnification

13(a). Neither Landlord nor its partners, officers, directors, shareholders or trustees (“Landlord Parties”) shall be liable to Tenant and Tenant hereby waives all claims against the Landlord Parties for any injury to or death of any persons or damage to or destruction of property in or about the Premises or the Building by or from any cause whatsoever, including, without limitation, theft, burglary, mysterious disappearance, gas, fire, oil, electricity or leakage of any character from the roof, walls, basement or other portion of the Premises or the Building, except to the extent caused by the negligence or willful misconduct of the Landlord Parties. Except to the extent caused by the negligence or willful misconduct of the Landlord Parties, Tenant agrees to indemnify and defend Landlord against and save Landlord harmless from any and all loss, cost, liability, damage and expense, including without limitation penalties, fines and reasonable attorneys’ fees and costs, incurred in connection with any case related directly to: (1) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed, or (2) the use or occupancy or manner of the use or occupancy of the Premises by Tenant or any other person or entity claiming through or under Tenant, including without limitation, the illegal use, generation, storage, transportation or disposal of any toxic or hazardous substances by Tenant or any other person or entity claiming through or under Tenant, or (3) any acts, omissions or negligence of Tenant or of Tenant's agents, contractors, employees, subtenants, licensees, invitees or visitors or any such person or entity, in, on or about the Premises or the Building, either prior to the commencement of, during, or after the expiration of the Term, including without limitation any acts, omissions or negligence in the making or performing of any alterations. In the event any action or proceeding is brought against Landlord for any claim against which Tenant is obligated to indemnify Landlord hereunder, Tenant upon notice from Landlord shall defend such action or proceeding at Tenant's sole expense by counsel approved by Landlord in its reasonable discretion. The provisions of this Section 13(a) shall survive the expiration or earlier termination of this Lease.

13(b). Except to the extent caused by the negligence or willful misconduct of Tenant and/or its officers, directors or trustees (“Tenant Parties”), Landlord agrees to indemnify and defend Tenant against and save Tenant harmless from any and all loss, cost, liability, damage and expense, including without limitation penalties, fines and reasonable attorneys’ fees and costs, incurred in connection with : (1) any default by Landlord in the observance or performance of any of the terms, covenants or conditions of this Lease on Landlord's part to be observed or performed, or (2) the condition of the Premises or Building as required to be maintained or operated by Landlord pursuant to this Lease, or (3) any acts, omissions or negligence of Landlord or of Landlord’s agents, contractors, employees, subtenants, licensees, invitees or visitors or any such person or entity, in, on or about the Premises or the Building, either prior to the commencement of, during, or after the expiration of the Term. In the event any action or proceeding is brought against Tenant for any claim against which Landlord is obligated to indemnify Tenant hereunder, Landlord upon notice from Tenant shall defend such action or proceeding at Landlord's sole expense by counsel approved by Tenant in its reasonable discretion. The provisions of this Section 13(b) shall survive the expiration or earlier termination of this Lease.

Insurance

14(a). Tenant agrees to keep in force during the Term hereof, at Tenant's expense, public liability and property damage insurance with combined single limits in the amount of not less than \$3,000,000. Said policy shall name Landlord as an additional insured, and shall insure Landlord's contingent liability as respects acts, or omissions of Tenant, shall be issued by an insurance company licensed to do business in California; and shall provide that said insurance shall not be cancelled or amended unless thirty (30) days prior written notice to Landlord is first given. Said policy or a certificate thereof shall be delivered to Landlord by Tenant prior to the commencement of the Term and each renewal of such insurance.

14(b). Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of California on the Building in amounts not less than the greater of eighty (80%) percent of the then full replacement cost (without depreciation) of the Building (above foundations and excluding Tenant additions) or an amount sufficient to prevent Landlord from becoming a coinsurer under the terms of the applicable policies, against fire and such other risks as may be included in standard forms of all risk coverage insurance reasonably available from time to time, including, at Landlord's option, earthquake insurance. Landlord agrees to maintain in force during the Term, Commercial General Liability Insurance covering the Building on an occurrence basis against all claims for personal injury, bodily injury, death, and property damage. Such insurance shall be for a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00). Neither Landlord's obligation to carry such insurance nor the carrying of such insurance shall be deemed to be an indemnity by Landlord with respect to any claim, liability, loss, cost or expense due, in whole or in part, to Tenant's negligent acts or omissions or willful misconduct. Without obligation to do so, Landlord may, in its sole discretion from time to time, carry insurance in amounts greater and/or for coverage additional to the coverage and amounts set forth above.

Utilities

15. Landlord shall furnish to the Premises water, gas, electricity, heat and janitorial service and shall provide for garbage collection for the Building. Tenant acknowledges that the Premises are not required to have air conditioning and Landlord acknowledges that Tenant may install cooling equipment in the Emergency Space and Office Space. [confirm] Landlord shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of rent by reason of, Landlord's failure to furnish any of the foregoing when such failure or delay is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, or is caused directly or indirectly by the limitation, curtailment, rationing or restrictions on use of water, electricity, gas or any other of energy serving the Premises or the Building, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord. Landlord shall not be liable under any circumstances for loss of business or injury to property, however occurring, through or in connection with or incidental to failure to furnish any of the foregoing. Tenant shall pay and provide for all services and utilities necessary for Tenant's operations in the Premises and not otherwise provided for herein. Notwithstanding the foregoing, Tenant with the written approval of Landlord, which approval may not be unreasonably withheld, may install or utilize its own cooling devices. In addition, Tenant shall be permitted to provide all appropriate utilities on an emergency basis to the Building and/or the Emergency Space. Landlord shall provide and maintain a security patrol or commercially reasonable security system for the Building. Notwithstanding the fact that Landlord is providing such service, Landlord shall not be responsible for the quality of any such system which may be provided hereunder or for damage or injury to Tenant, its employees, invitees or others or change to property due to the failure, action, or inaction of such patrol or system

Personal Property and Other Taxes

16. Tenant shall pay, before delinquency, any and all taxes levied or assessed and which become payable during the Term hereof upon Tenant's equipment, furniture, fixtures and other personal property located in the Premises, including carpeting installed by Tenant even though said carpeting has become a part of the leased Premises; and any and all taxes or increases therein levied or assessed on Landlord or Tenant by virtue of alterations, additions or improvements to the Premises made by Tenant or Landlord at Tenant's request. In the event said taxes are charged to or paid or payable by Landlord, Tenant forthwith upon demand therefore, shall reimburse Landlord for all of such taxes paid by Landlord. Notwithstanding the foregoing, Landlord agrees to cooperate with Tenant in processing any property tax exemption applications to the extent required by applicable Law.

Rules and Regulations

17. Tenant shall faithfully observe and comply with the rules and regulations, and all reasonable modifications of and additions thereto applicable to the Building from time to time put into effect by Landlord of which Tenant shall have notice. Landlord shall not be responsible to Tenant for the nonperformance by any other visitor or occupant of the Building of any of said rules and regulations. Landlord agrees to enforce such rules and regulations on a non-discriminatory basis.

Holding Over

18. Any holding over after the expiration of the Term of this Lease shall be deemed a tenancy at sufferance or, upon Landlord's written election, a month-to-month tenancy in either event with Base Rent at the rate of one hundred fifty percent (150%) of the rental in effect for the last month immediately preceding such expiration or termination, and upon each and every one of the terms, conditions and covenants of this Lease (with Tenant having the continuing obligation to pay any additional rent as provided herein). Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a consent to a hold over or result in an extension of this Lease. Tenant shall pay an entire month's Base Rent calculated in accordance herewith for any portion of a month it holds over and remains in possession of the Premises.

Subordination

19. This Lease shall be subject and subordinate at all times to all ground or underlying leases which may now exist or hereafter be executed affecting the Building and/or the land upon which the Building is situated and to the lien of any mortgages or deeds of trust in any amount or amounts whatsoever now or hereafter placed on or against said Building and/or land or on or against the Landlord's interest or estate therein or on or against any ground or underlying lease on the condition Tenant receives from such mortgagee or ground lessor a commercially reasonable form of subordination, non-disturbance and attornment. In furtherance of the foregoing, Tenant covenants and agrees to execute and deliver, within ten (10) business days after written notice, such further instruments evidencing such subordination of this Lease to such ground or underlying leases and to the lien of any such mortgages or deeds of trust as may be required by Landlord, which shall be in form and substance reasonably acceptable to Tenant. In the event of termination of any ground or underlying lease, or in the event of foreclosure or exercise of any power of sale under any mortgage or deed of trust superior to this Lease or to which this Lease is subject or subordinate, upon Tenant's attornment to the lessor under such ground or underlying lease or to the purchaser at any foreclosure sale or sale pursuant to the exercise of any power of sale under any mortgage or deed of trust, this Lease shall not terminate and Tenant shall automatically be and become the Tenant of said lessor under such ground or underlying lease or to said purchaser, whichever shall make demand therefore.

Entry by Landlord

20. Landlord reserves and shall at any and all reasonable times have the right to enter the Premises upon reasonable advance notice (except in the case of emergencies) to inspect the same, to supply any service to be provided by Landlord to Tenant hereunder, to post notices of non-responsibility, and to alter, improve or repair the Premises at the request of or with the consent of the Tenant and any portion of the Building without abatement of rent. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy of quiet enjoyment of the Premises, and other loss occasioned by such entry. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors, in, upon and about the Premises excluding Tenant's confidential files, vaults and safes, and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction of Tenant from the Premises or any portion thereof. In no event shall Landlord's entry under this Section 20 interfere with Tenant's use and operations in either the Premises or the Emergency Space,

Insolvency or Bankruptcy

21. Either (a) the appointment of a receiver to take Possession of all or substantially all of the assets of Tenant, (b) an assignment by Tenant for the benefit of creditors, or (c) any action taken or suffered by Tenant under any insolvency, bankruptcy or reorganization act shall constitute a breach of this Lease by Tenant. Upon the happening of any such event this Lease shall terminate sixty (60) days after written notice of termination from Landlord to Tenant. Except to the extent prohibited by applicable Law, in no event shall this Lease be assigned or assignable by reason of any voluntary or involuntary bankruptcy proceedings nor shall any rights or privileges hereunder be an asset of Tenant in any bankruptcy, insolvency or reorganization proceedings.

Either (a) the appointment of a receiver to take Possession of all or substantially all of the assets of Landlord, (b) an assignment by Landlord for the benefit of creditors, or (c) any action taken or suffered by Landlord under any insolvency, bankruptcy or reorganization act shall constitute a breach of this Lease by Landlord. Upon the happening of any such event the Tenant may terminate this Lease sixty (60) days after written notice of termination from Tenant to Landlord. Except to the extent prohibited by applicable Law, in no event shall this Lease be assigned or assignable by reason of any voluntary or involuntary bankruptcy proceedings nor shall any rights or privileges hereunder be an asset of Landlord in any bankruptcy, insolvency or reorganization proceedings.

Default by Tenant

22. In the event of any breach or default of this Lease by Tenant which continues for more than five (5) days after delivery of written notice from Landlord to Tenant with respect to rent payments or other sums due hereunder, or for more than thirty (30) days after delivery of written notice from Landlord to Tenant with respect to the failure of Tenant to perform any other obligations hereunder, then Landlord, besides any other rights and remedies of Landlord at law or equity, shall have the right either to terminate Tenant's right to possession of the Premises and thereby terminate this Lease or to have this Lease continue in full force and effect with Tenant at all times having the right to possession of the Premises. Tenant's personal property, at Landlord's election, shall be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant. Upon such termination Landlord, in addition to any other rights and remedies (including rights and remedies under Subparagraphs (1), (2) and (4) of Subdivision (a) of Section 1951.2 of the California Civil Code of any amendment thereto), shall be entitled to recover from Tenant the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided. The worth at the time of award of the amount referred to in subparagraphs (1) and (2) of Subdivision (a) of Section 1951.2 of the California Civil Code shall be computed by allowing interest at the maximum rate allowed by law. The worth at the time of the award of the amount referred to in subparagraph (3) of Subdivision (a) of Section 1951.2 of the California Civil Code shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%.

Any proof by Tenant of the amount of rental loss that could be reasonably avoided shall be made in the following manner: Landlord and Tenant shall each select a licensed real estate broker in the business of renting property of the same type and use as the Premises and in the same geographic vicinity and such two real estate brokers shall select a third licensed real estate broker and the three licensed real estate brokers so selected shall determine the amount of rental loss that could be reasonably avoided for the balance of the Term of this Lease after the time of award. The decision of the majority of said licensed real estate brokers shall be final and binding upon the parties hereto.

Should Landlord, following any breach or default of this Lease by Tenant, elect to keep this Lease in full force and effect, with Tenant retaining the right to possession of the Premises (notwithstanding the fact the Tenant may have abandoned the Premises), then Landlord, besides the rights and remedies specified in Section 1951.4 of the California Civil Code and all other rights and remedies Landlord may have at law or equity, shall have right to enforce all of Landlord's rights and remedies under this Lease. Notwithstanding any such election to have this Lease remain in full force and effect, Landlord may at any time thereafter elect to terminate Tenant's right to possession of said Premises and thereby terminate this Lease for any previous breach or default which remains uncured, or for any subsequent breach or default.

Default by Landlord

23. In the event Landlord fails to complete its obligations required by this Lease, or if any of the covenants, representations or warranties are found to be false or materially misleading, then Tenant shall give Landlord written notice of such failure and shall give Landlord a reasonable time to cure such failure. If Landlord is unable or unwilling to cure the failure within a reasonable time, Tenant have the right, with thirty (30) days' advance written notice to Landlord, to terminate this Lease, which shall be effective thirty (30) days from the date of such written notice and which Lease shall be of no further force or effect. Additionally, Tenant shall have the right, but not the obligation, to cure any default of Landlord that is susceptible of being cured by Tenant, after such written notice and opportunity to cure has been provided to Landlord but without such notice in the event of an emergency as reasonably declared by Tenant. Any costs and expenses incurred by Tenant may be withheld by Tenant from Rent otherwise due and payable to Landlord.

Destruction or Damage

24(a) In the event the Premises or a portion of the Building is damaged by fire or other insured casualty, Landlord shall diligently repair the same to the extent possible with the insurance proceeds received by Landlord, subject to the provisions of this Section 24 hereinafter set forth, if such repairs can in Landlord's opinion be made within two hundred seventy (270) days after issuance of a building permit therefor under the laws and regulations of federal, state and local governmental authorities having jurisdiction thereof. In such event this Lease shall remain in full force and effect, except that if such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, contractors, employees, subtenants, licensees, invitees or visitors, an abatement of rent shall be allowed Tenant for such part of the Premises as shall be rendered unusable or inaccessible by Tenant in the conduct of its business during the time such part is so unusable or inaccessible. Notwithstanding the foregoing, if such damage shall occur during the final year of the Term of this Lease, Landlord shall not be obligated to repair such damage, but may instead elect to terminate this Lease upon written notice given to Tenant within thirty (30) days after the date of such fire or other casualty, in which event this Lease shall terminate as of the termination date specified in Landlord's notice (but in no event earlier than the date of the notice). In addition, if repairing such damage is estimated to be completed within two hundred and seventy (270) days after its commencement, Tenant shall have a right to terminate this Lease upon written notice to be given Landlord within thirty (30) days after the date of such fire or other casualty, in which event this Lease shall terminate as of the termination date specified in Tenant's notice (but in no event earlier than the date of the notice).

24(b) If such repairs cannot in Landlord's opinion be made within two hundred and seventy (270) days after issuance of a building permit therefor, Landlord may elect upon notice to Tenant given sixty (60) days after the date of such fire or other casualty to (i) repair or restore such damage, in which event this Lease shall continue in full force and effect, but the Rent shall be abated as provided hereinabove in this Section 24 or (ii) terminate this Lease in which event this Lease shall terminate as of the termination date specified in Landlord's notice.

24(c) If the Premises are to be repaired under this Section 24, Landlord shall repair at its cost any injury or damage to the Building itself and Tenant shall pay the cost of Tenant's trade fixtures, furnishings, equipment and other personal property.

Eminent Domain

25. If all or any part of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, and such taking will substantially impair Tenant's use of the Premises for more than ninety (90) days, either party hereto shall have the right, at its option, to terminate this Lease. If all or any material part of the Building of which the Premises are a part shall be taken or appropriated by any public or quasi-public authority under any power of eminent domain, Landlord may terminate this Lease. In either of such events, Landlord shall be entitled to and Tenant upon demand of Landlord shall assign to Landlord any rights of Tenant to any and all income, rent, award, or any interest therein whatsoever, exclusive of business goodwill and relocation expenses, which may be paid or made in connection with such public or quasi-public use or purpose, and Tenant shall have no claim against Landlord or the condemnor for the value of any unexpired Term of this Lease. If a part of the Premises shall be so taken or appropriated and neither party hereto shall elect to terminate this Lease, the rent thereafter to be paid shall be equitably reduced.

Sale by Landlord

26. In the event the original Landlord hereunder, or any successor owner of the building, shall sell or convey the Building, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease, accruing thereafter shall be binding upon the new owner and, upon such successor's assumption of such liabilities, Landlord shall be released therefrom. Tenant agrees to attorn to such new owner. If any security be given by Tenant to the faithful performance of all or any of the covenants of this Lease on the part of Tenant, Landlord may transfer and/or deliver the security, to the successor in interest of Landlord, and thereupon Landlord shall be discharged from any further liability in reference thereto. Except as set forth in this Section 26, this Lease shall not be affected by any such sale or conveyance.

Estoppel Certificates

27. At any time and from time to time, upon not more than ten (10) days prior request by Landlord, Tenant shall execute, acknowledge and deliver to Landlord a statement certifying the date of commencement of this Lease, stating that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and the date and nature of such modifications) and the dates to which the rent has been paid, and setting forth such other matters as may reasonably be requested by Landlord. Landlord and Tenant intend that any such statement delivered pursuant to this Section 27 may be relied upon by any mortgagee or the beneficiary of any deed of trust or by any purchaser or prospective purchaser of the Building. Tenant's failure to so deliver such statement shall constitute a default by tenant hereunder and shall be conclusive upon Tenant that: (a) the Lease is in full force and effect without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's or Tenant's performance (other than Tenant's failure to deliver the estoppel certificate); and (c) not more than one (1) month's rental has been paid in advance.

Right of Landlord to Perform

28. All covenants and agreements, to be kept or performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for thirty (30) days after notice thereof by Landlord, Landlord may, but shall not be obligated to, and without waiving any default of Tenant or releasing Tenant from any obligations of Tenant hereunder, make any such payment or perform any such other act on Tenant's part to be made or performed as in this Lease provided. All sums so paid by the Landlord and all necessary incidental costs, together with interest thereon at the rate of ten percent (10%) per annum from the date of such payment by the Landlord, shall be paid to Landlord forthwith on demand, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of nonpayment thereof by Tenant as in the case of default by Tenant in payment of rent.

Attorney Fees

29. If as a result of any breach or default on the part of either party under this Lease, the other party uses the services of any attorney in order to secure compliance with this Lease, the breaching or defaulting party shall reimburse the other party upon demand for any and all attorneys' fees and expenses incurred by the other, whether or not formal legal proceedings are instituted. Should either party bring action against the other party, by reason of or alleging the failure of the other party to comply with any or all of its obligations hereunder, whether for declaratory or other relief, then the party which prevails in such action shall be entitled to its reasonable attorneys' fees and expenses related to such action, in addition to all other recovery or relief. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. In addition, if either party to this Lease becomes a party to or is involved in any way in any action concerning this Lease or the Premises by reason in whole or in part of any act, neglect, fault or omission of any duty by the other party, its employees or contractors, the party subjected to said involvement shall be entitled to reimbursement for any and all reasonable attorneys' fees and costs.

Surrender of Premises

30. The voluntary or other surrender of this Lease by Tenant or mutual cancellation thereof shall not work as a merger and, at the option of Landlord, shall terminate all or any existing subleases or subtenancies, or at the option of Landlord, may operate as an assignment to Landlord of any or all such subleases or subtenancies.

Waiver

31. The waiver by Landlord or Tenant of performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

- Notices** 32. All notices and demands which may or are required to be given by either party to the other hereunder shall be in writing. All notices and demands by Landlord to Tenant shall be delivered personally or sent by United States certified or registered mail, postage prepaid, or by overnight express courier, addressed to Tenant at the address for Tenant and as set forth in the Basic Lease Terms or to such other place as Tenant may from time to time by like notice designate. All notices and demands by Tenant to Landlord shall be sent by United States certified or registered mail, postage prepaid, or by overnight express courier, addressed to Landlord at the address for Landlord set forth in the Basic Lease Terms or to such other place as Landlord may from time to time by like notice designate.
- Defined Terms and Marginal Headings** 33. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular words used in masculine gender include the feminine and neuter. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. The marginal headings and rules to the paragraphs of the Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.
- Time and Applicable Law** 34. Time is of the essence of this Lease and each and all of its provisions. This Lease shall in all respects be governed by the laws of the State of California.
- Successors** 35. Subject to the provisions of Section 13 hereof, the covenants and conditions herein contained shall be binding upon and inure to the benefits of the heirs, successors, executors, administrators and assigns of the parties hereto.
- Entire Agreement** 36. This Lease constitutes the entire agreement between Landlord and Tenant and no promises or representations, express or implied, either written or oral, not herein set forth shall be binding upon or inure to the benefit of Landlord or Tenant. This Lease shall not be modified by any oral agreement, either express or implied, and all modifications hereof shall be in writing and signed by both Landlord and Tenant.
- No Discrimination** 37. Tenant agrees for Tenant and Tenant's heirs, executors, administrators, successors and assigns and all persons claiming under or through Tenant, and this Lease is made and accepted upon the following conditions: that there shall be no discrimination or segregation of any person or group of persons on account of race, color, creed, sex, religion, marital status, ancestry or national origin (whether in the use, occupancy, subleasing, transferring, tenure or enjoyment of the Premises or otherwise) nor shall Tenant or any person claiming through or under Tenant establish or permit any such practice or practices of discrimination or segregation with reference to or arising out of the use or occupancy of the Premises by Tenant or any person claiming through or under Tenant.
- Brokers** 38. Landlord and Tenant each hereby represents to the other that it has dealt with no broker in connection with this Lease or the transactions contemplated herein. Each party hereby indemnifies the other party against and agrees to hold the other party harmless from any and all losses, costs, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees, resulting from a breach by the indemnifying party of the foregoing representations.

Signage

39. No signage shall be provided to Tenant by Landlord. Tenant shall have the right to install its proprietary signage upon the Premises with the written consent and reasonable approval of said signage by Landlord.

Late Charge

40. In the event Tenant fails to pay any rent or sums due hereunder within fifteen (15) days after the due date herein provided, the amount so due and unpaid shall bear a late charge equal to ten percent (10%) of the amount due.

Additional Provisions

41. The Exhibits described in the Basic Lease Terms are incorporated by reference in this lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year appearing next to each signature below.

TENANT:

Sleepy Hollow Fire Protection District

By: _____

Name: _____

Title: _____

Date: _____

LANDLORD:

Sleepy Hollow Charitable Foundation

By: _____

Name: _____

Title: _____

Date: _____

CONSENTING PARTY:

Sleepy Hollow Homes Association

By: _____

Name: _____

Title: _____

Date: _____

Board of Directors
SLEEPY HOLLOW FIRE PROTECTION DISTRICT
Minutes of Special Meeting
Saturday, October 27, 2018

District Directors Attendance:

Rich Shortall	Director / President
Sharon Adams	Director / Treasurer
Thomas Finn	Director / Secretary

1. **Call to Order:** 1002 hours by President **Rich Shortall**, presiding as Chair, at the Sleepy Hollow Homes Association Clubhouse, 1317 Butterfield Road, San Anselmo, California 94960. ***A quorum was reached.*** Eva Denegri Baker, a guest, took minutes of the proceedings.

2. **Public Comment Period No. 1:** Sleepy Hollow Fire Protection District Director and Secretary, Thomas Finn, told the audience that this portion of the meeting is reserved for persons desiring to address the Board on any matter not listed on this Agenda. All statements that require a response will be referred for reply in writing or will be placed on the Board's agenda for consideration at a later meeting.
 - a. **Connie Berto:** Mrs. Berto reminded the meeting that the polling place normally held at the Community Center has instead been moved to the Music Room at Hidden Valley School.
 - b. **Bruce Baum:** Mr. Baum asked that the Board consider holding a paper shredding day.
 - c. **Peter Jozwik:** In the course of his comments on the District's fire pumps program and preparedness, Mr. Jozwik expressed his support for the proposed Lease in advance of the Board's consideration of the proposed Lease. He was interrupted by the Chair and reminded that his comments should be deferred until the appropriate time later in the meeting.

3. **Consideration of Proposed Lease:** The Chair began by giving some history of the Sleepy Hollow Fire Protection District:

The Sleepy Hollow Fire Protection District ("SHFPD" or "the District") was formed in February 1949 by Resolution of the Marin County Board of Supervisors, and by subsequent approval by the State of California. Funding for the District comes from base property tax (1% rate per Proposition 13). The District's share is 17%. Unlike many other Marin cities and towns, there is no additional "safety tax" and no longer a State Responsibility Area (SRA) fee. If SHFPD were dissolved, the County would

keep the taxes and healthy reserves, currently valued just under \$4,500,000. The District is also a voting member of the Ross Valley Fire Department Joint Powers Authority, which includes the Towns of Ross, Fairfax, and San Anselmo. The District's share of that expense is fixed at 12.8%, which is a very good deal, and, in fact, is a substantial improvement over the previous contract for services agreement with the JPA.

The Chair then gave an overview of the activities of the Sleepy Hollow Fire Protection District, as summarized here:

- Through FIRESafe MARIN, the Chair has learned that Sleepy Hollow is viewed as the leading model for fire preparedness in Marin County. “No one in this County has done as much to prepare themselves for wildfire,” he said.
- The District provides community fire protection as a full member of the Ross Valley Fire Department (RVFD), whose Board of Directors includes two District representatives.
- As a member of the Ross Valley Paramedic Authority (RVPA), the District provides state-of-the-art Advanced Life Support emergency medical and ambulance services, including licensed paramedics onboard each Ross Valley Fire Department engine that responds into Sleepy Hollow. A District director represents the community on the RVPA Board.
- We created a detailed 108 page Assessment of the risks and hazards associated with wildfire in Sleepy Hollow – available on website.
- We updated our Strategic Plan based on the recommendations and analysis in that report and have completed almost all of our initiatives and projects.
- We were one of the first *FIREWISE USA* communities in Marin and maintain annual certification as a *FIREWISE Site* through strategic activities and projects.
- We have adopted the latest Fire Codes and will be holding meetings to discuss possible adoption of a new Hazardous Vegetation ordinance.
- We sponsor and/or spearhead with community partners simultaneous vegetation management projects, including:
 - Contracting with the Marin County Fire Department for comprehensive inspections by MCFD personnel of all 850 parcels within the District;
 - Four annual Chipper Days, including onsite pickup, with record-setting volumes of vegetation cleared; and,
 - Creation of shaded fuel breaks on our surrounding ridgetops using herds of

goats of and sheep in partnership with Marin County Open Space, San Domenico School, Triple C Ranch, Rocking H Ranch, and other public agencies. We expect this program will be expanded next year.

- We have funded major equipment purchases for the Tam Fire Crew and have hired them to create defensible space and fuel breaks.
- Fire road maintenance within the District, including restoration of some previously abandoned roads that now permit better firefighter access.
- A first-of-its-kind fire-safe landscaping demonstration project located on Fox Lane.
- We conduct ongoing public education activities for District residents, including:
 - Publication and distribution of the “Living With Fire in Sleepy Hollow” educational booklet, which I have been told sits on the desks of multiple Marin County fire chiefs;
 - Organization and hosting of our annual Safety Fair in collaboration with partner agencies;
 - Offering “Living With Fire” classroom training to all District residents;
 - Providing all hazard safety information contained in the Sleepy Hollow Directory that was distributed to all residents;
 - Publishing regular articles on fire safety in Sleepy Hollow Homes Association Newsletter and on our website; and,
 - Maintaining our up-to-date, informative website (www.shfpd.org) to facilitate public awareness and communications.
- We organize and conduct evacuation drills for Residents and First Responders:
 - An annual evacuation drill, complete with RVFD, RVPA, MCFD, Marin County Sheriff, CHP, Red Cross, and PG&E participation;
 - Providing updated evacuation information to all residents via our “Living With Fire” publication and classroom training;
 - Supporting and promoting the Alert Marin program and improved wireless communications vital to community safety; and,
 - At our direction, on December 4, 2018, a representative from the LRAD Corporation will be in Sleepy Hollow to measure the geography and acoustics for a potential installation of an outdoor public warning system, in cooperation with other Ross Valley agencies.
- We fund and maintain the sandbagging station during the winter.
- We have initiated the block-by-block Neighborhood Preparedness Coordinator project. The Chair anticipates that this will become our most important and successful preparedness initiative.

- We have successfully applied for and received multiple fire prevention grants from the State and other sources.
- We continue to explore establishing a District office with meeting space, space for organizing and equipping the Neighborhood Preparedness Project, and space for a community emergency shelter to better serve all residents.

The Chair closed his comments by stating that nothing in the proposal to be discussed today will prevent the District from continuing and expanding the scope of these activities. “If anything, it will enable us to take our preparedness to a new level,” said the Chair.

3. Real Estate Negotiator’s Report:

The designated staff negotiator, Christopher J. Warner, gave a report regarding the potential real estate lease between the District and the Sleepy Hollow Homes Association (SHHA) and Sleepy Hollow Charitable Foundation (SHCF) for real property located at 1317 Butterfield Road and other possible commercial transactions. The report was made available at www.shfpd.org. Mr. Warner began by saying what an honor it was for him to be a member of this community and that he had served as a member of the Board until June 2017 when he transitioned to staff support on the issue of this lease. He wanted to commend members of the charitable organization and the Board for the multiple discussions had on this subject, which were key parts of his evaluation.

He had two objectives:

- a. How the Board would find rentable office and facilities space to accomplish their objectives and how this lease would serve the objectives of the Strategic Plan.
- b. How the space could be leased at a reasonable price.
 - i. Recommends that the lease be for 15 years at a fixed non-escalating rate, with the opportunity to renew after that. Being a “fixed rate” would be a significant benefit to the lessee.
 - ii. Key aspect of rentable space is that it also be usable as a facility during emergency situations.

4. Public Comment Period No. 2:

Secretary Finn gave the ground rules for their input, including that speakers are limited to three (3) minutes each unless authorized by the Chair. He would function as the timekeeper. He stressed that the agenda today is only regarding the proposed lease. No actions can be taken today on any other issues, for example, the design of the proposed building, future traffic flow, etc. He asked that any

materials that anyone wishes the Board to consider be presented to the Board in advance and that any materials not previously received by the Board would not be addressed at the meeting. What follows is a list of the comments by public audience members made during this period of the meeting:

- a. **Dan Stein:** Urges Board to move forward on this lease. Read a list of fellow supporters who could not be at this meeting but who voiced their approval via the District website:
 - i. Phiroze Wadia
 - ii. Goolcher Wadia
 - iii. Evelyn Messinger
 - iv. Peg McAllister
 - v. Tom McAllister
 - vi. J.M. Ranallo
 - vii. Jill Buresh-Nail
 - viii. Carolyn Goodman
 - ix. Holly and Eric Briese
- b. **Steve Hale:** Asked how this will be funded and what involvement the fire department down the road would have. Director Finn answered that his questions would be answered at the end of the public comment period.
- c. **Koren Grubb:** In support of lease. Feels it would increase community safety by having the District office at community center location.
- d. **Jan Blackford:** Current President of Sleepy Hollow Homes Association. In support of lease. This would be a well-planned space for use as office space, meeting space, education space, etc. She added that all residents of the SHFPD are members of the Sleepy Hollow Homeowners Association, and welcome to join. She sees the Fire District's presence at the community center as a model for other communities.
- e. **Erin Hill:** In support of lease. Resident of Fox Lane and has worked closely with Rich Shortall and Todd Lando on the Fox Lane Pilot program.
- f. **John Grubb:** In support of lease. Speaks on behalf of the charitable organization. Says that the new community/disaster recovery center concept has pulled together many groups who are in support, namely, the Marin County Planning Commission, the Board of Supervisors, Fire Chiefs, Ross Valley Fire District, Marin County Fire Department, Marin County Sheriff's Office, Red Cross, OES, and others, including many people who have contributed financially to the project. The new space will have stockpiled medicine, food, cots, generators, and other emergency supplies. By consolidating all the fire district's activities into one central and visible location, the community will grow in confidence and be better able to recover from future disasters. Mr. Grubb asked for a show of hands in support of the lease.
- g. **Luke Argilla:** In support of lease. Thanked Christopher Warner for the report and the logic behind the proposal. Stressed that all the work that went into this proposal came from much volunteer time ("a long, sober journey of five or

- six years”). Board has invested hundreds of hour of due diligence and careful consideration. He added, that this facility will be a safe, visible, and hopefully permanent presence of the Fire Board in the community. The Board “ought to be showered with gratitude.”
- h. **Kate Sullivan:** In support of lease. She added that she recently worked with the fire district to install a hydrant in her front yard.
 - i. **Carl Coughlin:** In support of lease. He has never experienced a greater sense of community as in the Hallow. Expressed gratitude to the District for work on the fire breaks. Thinks that a 15 year fixed lease is “incredible” and will be beneficial, “only enhancing relationships between the fire district and others.”
 - j. **Merle Ongaro:** In support of lease. Being that her husband had been on home dialysis, which requires power, she feels it would be very beneficial for the community center to have an available power supply during emergencies.
 - k. **Chris Staskus:** Lives on Deer Hollow and in support of lease.
 - l. **Tim Nardell:** In support of lease. Makes perfect sense to bring the District to the center of the community. Expressed appreciation to those members who have worked so hard and have made good decisions regarding this lease.
 - m. **Kevin Coughlin:** In support of lease. Used to be a SHHA board member. Wanted to say thank you.
 - n. **Pat Grubb:** In support of lease. Said that the fire department is here to put the fire out, but that “the fire district helps to make sure there are no fires.”
 - o. **Dave Grubb:** In support of lease. Formerly in construction business. Nothing is more important than safety, and this community center will help keep Sleepy Hollow safe.
 - p. **Ann Wagner:** In support of lease. Fawn Drive resident.
 - q. **Tammy Parr:** In support of lease. Important to her to see a plaquard and “to have visibility and to know there are people behind the building.”
 - r. **Christian Franklin:** In support of lease.
 - s. **Lauren Westfall:** In support of lease. She understands how vulnerable this community is due to her “nightmare” experience with a garage fire (“no cell service, and people running around”). This issue makes her emotional. She feels community needs this facility.
 - t. **George Wagner:** In support of lease. Having experience in commercial real estate, thinks construction costs for project will run above projected; urges the community to provide financial support to this project.
 - u. **Emily Baker:** In support of lease. New resident to the Hallow and grateful to be here.
 - v. **Derek:** Just moved to Sleepy Hollow last night. In support of lease.
 - w. **Pym Brouwer:** In support of lease.
 - x. **Eric Mac Ausland:** Not in support of lease. Unsure still what specifically the building will be used for in addition to fire protection, and feels they are unprotected from it possibly being misused.
 - y. **Alex:** In support of lease. The scare of fire is real. Could not get fire insurance when first moved in to area. Home is tucked back a ways away from Sir Francis Drake Blvd.

- z. **Bradley Johnson:** In support of lease. Read full report and strongly supports.
- aa. **Garril Page:** Not in support of lease. The scope of this project is not fiscally responsible. Other alternatives exist that are not in the report (“not true that this building is the only one”). Does not understand why the plans couldn’t be downsized fiscally in order to be supportable. Director Finn added that a letter from Ms. Page’s attorney will be included in the official record of the meeting.
- bb. **Katie Rice:** In support of lease. As County Supervisor and Sleepy Hollow resident, feels that Sleepy Hollow is a model community. She has much trust in the board members and in their due diligence and fiscal responsibility.
- cc. **Franklin Black:** In support of lease.
- dd. **John Parente:** Not in support of lease. Resides across the street from the club house. Applauds the work done by the board but feels the price per square foot for the lease is outrageous. Feels the clubhouse could be “redone” and “kept single story” in a more fiscally responsible way, thus a better use of taxpayers’ money.
- ee. **Bruce Baum:** Not in support of lease. Not against the project but “troubled by 1.5 million dollar cost.” Represents group called, “Money to Burn,” and would like to address several concerns:
 - i. **District Reserves** – per their accountant who has reviewed the financials, the report contains “false numbers on reserves.”
 - ii. **Communications** – community cannot rely on cell phone service as the Hollow continues to have no coverage. Also Marin Emergency Radio Authority (MERA) communications still do not work in some spots (“dead spots”). Believes that Sleepy Hollow must move to next generation of communications – First Net. The First Net system would be a “prudent use of fire funds.”
 - iii. **Alternate Facilities** – Consider leasing office space from the Town of San Anselmo. RVFD Station 20 on Butterfield Road needs upgrading “in accordance with federal laws.”
- ff. **Kevin Siegel:** Attorney representing “Money 2 Burn” addressed audience to speak to “unaddressed legal issues,” as referenced in an anonymous letter left as a handout in multiple copies at the start of this meeting. Referenced California Government Code Section 1090, which prohibits conflicts of interest. He explained there is a conflict in the District using public funds for a private project (the clubhouse being “private”). He also cited the project’s implications with the California Environmental Quality Act. Finally, he spoke to problems with paying “prevailing wages,” which will become more expensive. Director Finn responded by saying that the anonymous letter was not received by the Board in advance of this meeting; thus, the Board cannot address the arguments contained therein.
- gg. **Max Straube:** In support of lease.
- hh. **Bob Lasser:** Neighbor of clubhouse and in support of lease, but thinks the lease is too costly. Questions whether project could be reduced to smaller scale. Concerned about size of building and scope of project.

- ii. **Chris Cincebeaux:** In support of lease. However, expressed an understanding for the “valid concerns” of the clubhouse’s neighbors, i.e., the size and scope of the building. He believes that solutions for these concerns can be found “with out of the box thinking.”
- jj. **Alex Guana:** In support of lease. His wife is on the homeowner’s association board. Says he is “begging” them to put their tax dollars to work by going ahead with this project.
- kk. **Kathy Surkejian:** In support of lease. Public school teacher who sits on homeowner’s association board. Thinks of it more as a community center than a clubhouse.
- ll. **James Ayres:** In support of lease, but not necessarily the scope. Wants to reconsider the size, keeping it a community center, and not a “party center.”
- mm. **Darlene Hemley:** In support of lease. Lost her home to a fire on Butterfield Road. Applauds board for their dedication to this project.
- nn. **Diana Shortall:** In support of lease.
- oo. **Katie Vanderhall:** In support of lease.

Director Finn said that the public discussion has now concluded. He thanked the audience for their “very thoughtful comments” and reminded them that the Board has given careful consideration to everyone’s thoughts and concerns over the past six years, including holding dozens of meetings, and exchanging hundreds of emails. He said that the Board will now begin its discussion. When concluded, this meeting shall be adjourned, and another follow up meeting will be scheduled for soon after.

5. Board requests for future agenda items, questions, and comments to staff, and Director’s announcements:

At 11:35 a.m. the Chair, President Rich Shortall, addressed questions raised during the public discussion.

- **Purpose.** Clarified what the purpose is for this facility: a centrally located facility within the Sleepy Hollow community that has multi-functions, namely, as office space, storage space, meeting space, and emergency space. It will act as a base location for the community’s disaster preparedness program. The space will store supplies such as drinking water, generators, food, and cots.
- **Funding.** Clarified that the Fire District is not financing or having anything to do with the construction of the facility. Rather, the Fire District would lease the building from the Homeowner’s Association. **Chris Warner, Real Estate Negotiator**, added that the lease in question would commence only after the community center was built and ready for occupancy. “This would just be a lease.”

The Chair then made these comments to the audience:

- Said that the Board has really listened to the concerns of the residents on this issue, and especially understands the concerns of the clubhouse neighbors. “Compromises were made,” but this project “is the will of the community” as the majority of residents are in favor.
- Regarding comments made by Mr. Bruce Baum referring to an accountant’s review of the District’s financial health, the Chair expressed surprise that an accountant would comment on the District’s finances without first contacting the board to meet or at least to speak on the phone. The District has four and a half million dollars in reserves separated by funds such as the operational fund, liability fund, Firewise fund, etc. The board has the discretion to move the money around between funds. Also it is not true the idea that the District would have to use funds to pay back in the event of a fire (as Santa Rosa had to do) because the District is not a town or city, but rather, a special district of the County of Marin. Therefore, information purported by the accountant is not accurate.
- The Chair also clarified that the cost of the lease in question would be less than \$100,000 per year. Every year the District “has had net revenue in excess of the cost of the lease year after year, and has still been able to accomplish many projects.”
- Said that the District also has legal representation.
- The Chair and the other members of the District board have no conflict of interest as they are not in the homeowner’s association and have no financial stake in the deal.
- Director Finn added that next year will be the 70th anniversary of the District. “The work of the District cannot be done from our garages and kitchens anymore.” He also said that this issue boils down to policy preferences; people have two choices, to run for the board and pursue different preferences, or to sue. Hopeful to reach a conclusion in the next several weeks.
- Director and Treasurer, Sharon Adams, made a pitch for residents to become “block preparedness captains,” as part of the community preparedness program she runs.

6. Adjournment to next special meeting tentatively scheduled for November 17, 2018. Being no further business, the Chair called this meeting adjourned at 1153 hours, and proposed that the next meeting be held three weeks from today, on Saturday, November 17, 2018. He introduced Eva Denegri Baker who will do the minutes of this meeting, which will be posted on the District’s website.

SECRETARY'S CERTIFICATE:

I hereby certify that the foregoing is a true and correct copy of the minutes of the Special Meeting of the Board of Directors, held on October 27, 2018.

Thomas J. Finn, Secretary

MINUTES OF SPECIAL MEETING OF
BOARD OF DIRECTORS
OF THE
SLEEPY HOLLOW FIRE PROTECTION DISTRICT

August 8, 2018

A duly noticed Special Meeting of the Board of Directors of the Sleepy Hollow Fire Protection District was convened at 6:20 p.m. on August 8, 2018 at 1317 Butterfield Road, San Anselmo, California. A quorum was achieved by the presence of each of the Directors of the District, namely, Richard Shortall, Thomas Finn, and Sharon Adams. Richard Shortall, as President, presided as Chairman and called the meeting to order. Thomas Finn, as Secretary, recorded the proceedings.

Public Discussion

Resident John Grubb thanked the Board for its vegetation management efforts and other services that it has provided this summer.

Approval of Prior Meeting Minutes

The Minutes of the Board's June 15, 2018 Regular Meeting were unanimously approved.

Adjournment to Closed Session

President Shortall announced that the Board would adjourn to a Closed Session as authorized by California Government Code Section 54956.8 for the purpose of conferring with designated negotiator Christopher J. Warner and Special Counsel Danielle Gensch and Natasha Saggur Sheth re: discussions between the District and the Sleepy Hollow Homes Association (SHHA) and Sleepy Hollow Charitable Foundation (SHCF) regarding real property located at 1317 Butterfield Road and other possible commercial transactions. The Meeting was then adjourned to Closed Session.

Re-Convene from Closed Session

President Shortall reconvened the Meeting at 6:25 p.m. and announced that the Board had, in the Closed Session just concluded, taken no publicly reportable action, including no decision as to the District's possible participation in or transaction with

respect to the Project. He stated that direction has been given by the Board to the designated negotiator to prepare a report to the Board and to the public on a potential lease transaction in connection with the Project. He stated that any future consideration of the foregoing will follow the District's established public process for taking any such action.

Adjournment

Since there was no further business to come before the Meeting, upon motion made and seconded, the Meeting was adjourned at 8:00 p.m.

Thomas J. Finn, Secretary