

APPENDIX 13
COMPENSATION ON TERMINATION

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The compensation payable by the County to the Developer upon Termination of this Project Agreement following the Financial Close Date and prior to the Expiration Date is set forth in this Appendix. Prior to the Financial Close Date, the Developer shall be entitled to compensation upon the Termination of this Project Agreement only to the extent provided in Appendix 3 (Financial Close Procedures and Conditions).

1. DEFINITIONS AND SECTION REFERENCES

1.1. **Definitions.** In this Appendix, in addition to the definitions set out in this Project Agreement, the following capitalized terms have the meanings set forth below:

“Contingent Funding Liabilities” means direct or indirect liabilities or contingent liabilities, if any, of the Unit Holders in respect of financial obligations owed to the Developer, to the general partner of the Developer, to any party under the Junior Debt or the Senior Lenders under the Senior Financing Agreements, such as, for example, the amount a Unit Holder has agreed to contribute to the Developer, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt or equity bridge loans.

“Cost to Complete” means in respect of any termination of this Project Agreement that occurs on or prior to the Scheduled Occupancy Readiness Date, all losses that the County determines it is reasonably likely to incur as a direct result of the termination of this Project Agreement in connection with achieving the Scheduled Occupancy Readiness Date, including (without double-counting):

(1) Those external, out-of-pocket costs that the County reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with the County to achieve the Occupancy Readiness Conditions, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; plus

(2) Those costs (internal and external) reasonably projected to be incurred by the County in relation to:

(a) Remediation of any defective Design-Build Work; and

(b) Rectification or cure of any breach of this Project Agreement by the Developer; plus

(3) Costs that the County reasonably and properly projects that it will incur in achieving the Occupancy Readiness Conditions; plus

(4) Any other losses that the County would, but for the termination of this Project Agreement, not have incurred prior to the achievement of the Occupancy Readiness Conditions, which may include costs associated with the termination, and changes in the scope of the Design-Build Work that are approved or have been authorized to proceed in accordance with this Project Agreement prior to the Termination Date; minus

(5) Any Insurance Proceeds available to the County for the purposes of achieving the Occupancy Readiness Date.

“Design-Build Work Value” means an amount equal to the Design-Build Contract Price minus the Cost to Complete.

“Employee Information” means written details related to employees employed by the Developer or any of the Project Contractors or Subcontractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (1) the staffing plan and total number of such employees;
- (2) the employment costs for such employees;
- (3) the amount or severance payable to such employees used in the calculation of any Employee Payment and all relevant information used in determining such amounts; and
- (4) any other information that the County may reasonably require in relation to the calculation of Employee Payments.

“Project Contractor Breakage Costs” means the amount payable by the Developer to a Project Contractor under the terms of a Project Contract as a direct result of the termination of this Project Agreement, but reduced (without duplication) to the extent that:

- (1) The Developer, a Project Contractor or any Subcontractor fails to take all reasonable steps to mitigate such amount;
- (2) Such amount relates to any agreements or arrangements entered into by the Developer, a Project Contractor or a Subcontractor other than in the ordinary course of business and on commercial arm’s length terms;
- (3) Such amount is a Distribution; and
- (4) Such amount includes any loss of overhead or profit of the Facility Manager or its Subcontractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set forth in the applicable Project Contract or Subcontract).

“Termination Deductions Amount” means any accrued monthly Deductions that, as of the Termination Date, have not been taken into account in the calculation of any payment actually made to the Developer by the County prior to the Termination Date.

1.2. Section References in this Appendix. All Section references in this Appendix are to Sections of this Appendix, except Section references explicitly made to Sections, Articles, or Appendices of this Project Agreement.

2. TERMINATION FOR COUNTY EVENT OF DEFAULT OR UPON TERMINATION FOR CONVENIENCE

2.1. Calculation. If either the County or the Developer terminates this Project Agreement pursuant to a Termination for Convenience pursuant to subsection 22.2(A)(1) of this Project Agreement whereby the County has a right to terminate; a termination for County Event of Default pursuant to Section 21.2 of this Project Agreement whereby the Developer has a right to terminate; or a Termination by Court Ruling pursuant to subsections 22.2(A)(5) or 22.2(B)(3) of this Project Agreement whereby either party shall have a right to terminate, the County will pay to the Developer on the Termination Amount Due Date a Termination Amount equal to the aggregate, without duplication, of:

- (a) the Senior Debt as at the Termination Date with per diem interest on amounts falling within paragraph (1) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Amount Due Date;
- (b) Employee Payments and Project Contractor Breakage Costs;

- (c) any accrued but unpaid amounts owing and payable by the County to the Developer under this Project Agreement including amounts due and payable by the County for the Developer's performance under subsections 22.3(A)(3) and 22.4(A)(4), and 22.4(A)(5) of this Project Agreement;
- (d) any Insurance Receivables, if and to the extent the Developer has assigned them to the County; and
- (e) an amount calculated as the net present value of the anticipated future Distributions paid on or in respect of Units and fees, principal, interest and breakage costs paid or repaid on Junior Debt as of the Early Termination Date based on an appraisal by an independent third party expert appraiser that is nationally recognized for the conduct of valuation exercises. The appraisal shall be provided within 90 days of the appointment by both the County and the Developer of such independent appraiser (provided that if the parties fail to agree on the identity of such independent appraiser and fail to complete such appointment by the 15th Business Day following the Termination Date, either Party may request through the Dispute Resolution Procedure under Article 18 of the Project Agreement the selection and appointment of such independent appraiser within 15 Business Days of such request). For purposes of the calculation of such net present value, the Parties shall instruct the independent appraiser to:
 - (i) utilize a discount rate no less than the Initial Base Case Equity IRR minus four percent (4%);
 - (ii) estimate the anticipated future nominal Distributions based on the performance of the project up to the Termination Date employing an approach that considers the most recent Financial Model and making any adjustments for positive or negative operating performance that is not yet reflected in the Financial Model; and
 - (iii) assume that the Units are unimpeded and fully transferable, that the Project would remain a going concern if not for the termination, there is no adverse effect from a County Default and, if it has not occurred, then Occupancy Readiness would have occurred as scheduled;

The determination of the independent appraiser shall, except in the case of manifest error or fraud, be final unless either party challenges such determination within 30 days of the date of the determination by submission to the Dispute Resolution Procedure.

Less, to the extent it is a positive amount, the aggregate amount without double counting of the following:

- (f) the aggregate of all credit balances on any bank accounts held by or on behalf of the Developer on the Termination Date that are secured in favor of the Senior Lenders;
- (g) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under a Project Contract or claims against other third parties which have not been determined or have been determined but not yet paid, provided that in such case the Developer will assign any such rights and claims under the Project Contracts or claims against other third parties to the County and give the County reasonable assistance in prosecuting such claims;
- (h) to the extent not taken into account in calculating the amount under (b) above, the amount of any Contingent Funding Liabilities that are triggered as a result of or in relation to a termination of this Project Agreement;

- (i) the market value of any other assets and rights of the Developer (other than those transferred to the County pursuant to this Project Agreement) less liabilities of the Developer properly incurred in carrying out its obligations under this Project Agreement at the Termination Amount Due Date to the extent realized before the Termination Amount Due Date, provided that no account will be taken of any liabilities and obligations of the Developer arising out of:
 - (1) agreements or arrangements entered into by the Developer to the extent that such agreements or arrangements were not entered into in connection with the Developer's obligations in relation to the Project; or
 - (2) agreements or arrangements entered into by the Developer to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;
- (j) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Lenders to the Developer as a result of a prepayment under the Senior Financing Agreements;
- (k) any amounts received by the Senior Lenders (or on their behalf) on or after the Termination Date and before the Termination Amount Due Date as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and
- (l) any other amounts that the County is entitled to set-off or deduct under this Project Agreement.

To the extent that the assets and rights referred to in item (i) of this Section are not realized and applied pursuant to that Section, the Developer will on payment of the amount due under item (i) assign such assets and rights to the County.

2.2. Notice to the County. As soon as practicable after termination of this Project Agreement pursuant to a Termination for Convenience pursuant to subsection 22.2(A)(1), a termination for County Event of Default pursuant to Section 21.2, or a Termination by Court Ruling pursuant to subsection 22.2(A)(5) or subsection 22.2(B)(3) of this Project Agreement, the Developer will, acting reasonably, notify the County of the Termination Amount as of an estimated Termination Amount Due Date and include in such notice the details and calculations of each component thereof, including a revised and up to date financial model and certificates from the Senior Lenders as to the amounts owed to them. With the notification of the Termination Amount, the Developer shall also provide to the County all such documents and information as may be reasonably required by the County to confirm the amount of the Termination Amount including Employee Information.

3. NO-FAULT TERMINATION

3.1. Calculation. If the Developer or the County terminates this Project Agreement pursuant to a Force Majeure Termination Notice pursuant to subsection 14.2(E) (Failure to Agree; Right to Terminate) or a termination for an Insurance Unavailability Event pursuant to subsection 14.5(B) (Termination by County) the County will pay to the Developer on the Termination Amount Due Date a Termination Amount equal to the aggregate of:

- (a) the Senior Debt as at the Termination Amount Due Date with per diem interest on amounts falling within paragraph (1) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Amount Due Date until (and including) the Termination Amount Due Date;

- (b) any accrued but unpaid amounts owing and payable by the County to the Developer under this Project Agreement;
- (c) the amount, if any, by which the Junior Debt exceeds the amount of all Distributions made in respect of Junior Debt;
- (d) the amount, if any, by which the amount of capital contributed to the Developer by the Unit Holders exceeds the amount of Distributions made by the Developer to its Unit Holders;
- (e) Employee Payments and Project Contractor Breakage Costs; and
- (f) the greater of: (i) \$0; or (ii) the Handback Retainage Account balance minus an amount equal to the cost of the remaining Handback Work; and

Less:

- (g) Insurance Receivables payable to the Developer on or after the Termination Date;
- (h) the aggregate of all credit balances on any bank accounts held by or on behalf of the Developer on the Termination Date that are secured in favor of the Senior Lenders;
- (i) the amount of any Distributions made other than those referred to in items (c) and (d) of this Section;
- (j) the greater of: (i) \$0; or (ii) an amount equal to the cost of the remaining Handback Work minus the Handback Retainage Account balance; and
- (k) any other amounts that the County is entitled to set-off or deduct under this Project Agreement.

3.2. Notice to the County. As soon as practicable after termination of this Project Agreement as contemplated by this Section 3, the Developer shall, acting reasonably, notify the County of the Termination Amount as of an estimated Termination Amount Due Date and include in such notice the details and calculations of each component thereof, including a revised and up to date financial model and certificates from the Senior Lenders as to the amounts owed to them and shall also provide to the County all such documents and information reasonably required by the County to confirm the amount of the Termination Amount including Employee Information.

4. DEVELOPER EVENT OF DEFAULT – PRIOR TO THE OCCUPANCY READINESS DATE

4.1. Calculation. If the County terminates this Project Agreement pursuant to Article 20 (Developer Events of Default) of this Project Agreement prior to the Occupancy Readiness Date, the County will pay to the Developer on the Termination Amount Due Date an amount equal to:

- (a) The lower of
 - (1) The Design-Build Work Value; or
 - (2) 80% of the Senior Debt

Less:

- (b) Insurance Receivables payable to the Developer on or after the Termination Date;
- (c) the aggregate of all credit balances on any bank accounts held by or on behalf of the Developer on the Termination Date that are secured in favor of the Senior Lenders;

- (d) 80% of the Senior Debt Breakage Amounts payable or credited to the Developer that arise as a result of the early termination of this Project Agreement on the Termination Date; and
- (e) any other amounts due and owing to the County pursuant to this Project Agreement.

5. TERMINATION FOR DEVELOPER EVENT OF DEFAULT – AFTER OCCUPANCY READINESS DATE

5.1. Termination Amount. If the County terminates this Project Agreement pursuant to Article 20 (Developer Events of Default) of this Project Agreement after the Occupancy Readiness Date, the County will pay to the Developer on the Termination Amount Due Date a Termination Amount equal to:

- (1) 80% of the Senior Debt, less
- (2) any Termination Deductions Amount and any other amounts due and owing to the County pursuant to this Project Agreement.

6. ADJUSTMENTS AND DISPUTES

6.1. Time Related Adjustments. It is understood that the calculations of the Termination Amount pursuant to Sections 2 (Termination for County Event of Default or Upon Termination for Convenience) and Section 3 (No-Fault Termination) of this Appendix are as of an estimated Termination Amount Due Date, and that such estimated date may not be the actual Termination Amount Due Date for reasons including the existence of a Dispute. The parties shall act reasonably in adjusting the amount of each such Termination Amount to reflect the actual Termination Amount Due Date.

6.2. Finality. If the County issues notice of termination of this Project Agreement due to a Developer Event of Default, termination shall be effective and final regardless of whether the County is correct in determining that it has the right to terminate for Developer Event of Default. If it is determined that the County lacked such right, then such termination shall be treated as a Termination for Convenience as provided in this Appendix 13, Section 2 for the purpose of determining the Termination Amount.

6.3. Certification of Senior Debt. The County will be entitled to rely on one or more certificates of officers of the Senior Lenders or their agent as conclusive evidence of the amount of the Senior Debt. The receipt of this amount by the Developer, the Senior Lenders or their agent will discharge the County's obligation to pay any portion of compensation due to the Developer that is attributable to the Senior Debt.

6.4. Full Settlement. Any and all amounts paid by the County to the Developer or the Developer to the County under this Appendix or any agreement or determination that the County has no obligations to make any payment to the Developer under this Appendix will be in full and final settlement of each party's rights and claims against each other for termination of this Project Agreement and any Project Contract, whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the date of termination of this Project Agreement (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Termination Amount; and
- (b) any liability of either party to the other that may arise after the date of termination of this Project Agreement (but not from the termination itself), including, liabilities arising under the provisions of this Project Agreement which are intended by Section 3.2 (Survival) of this Project Agreement to survive termination, to the

extent any such liability has not already been taken into account in determining the Termination Amount.

The Developer agrees that the applicable Termination Amount provided for in this Appendix shall fully and adequately compensate the Developer for all costs, foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Developer's right to perform this Project Agreement and the Developer shall not be entitled to recover any other damages as a result of the termination of this Project Agreement.

6.5. Disputes.

If the County does not agree with the Developer's determination of the Termination Amount under Section 2 (Termination for County Event of Default or Upon Termination for Convenience) or Section 3 (No-Fault Termination) of this Appendix, the County may, within 20 Business Days of the notice referred to in Section 2.2 (Notice to County) or Section 3.2 (Notice to County) of this Appendix as the case may be, refer the matter to the Dispute Resolution Procedure. If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in this Section, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Amount as of the estimated Termination Amount Due Date.

6.6. Limitation on Set Off.

Except in connection with a termination of this Project Agreement pursuant to Article 20 (Developer Events of Default), the County is not entitled to set off any amount against any Termination Amount if the effect of exercising such right of set off would be to reduce the amount payable to the Developer to less than an amount equal to the Senior Debt net of Senior Debt Breakage Amounts payable or credited to the Developer.

7. TERMINATION PAYMENT DATE

7.1. Termination Amount Due Date. The Termination Amount Due Date will be the date that is 60 days after the Developer's satisfaction of its obligations under Section 22.3 (Transfer to the County of Assets, Contracts and Documents) and Section 22.4 (Transitional Arrangements) of this Project Agreement, except as delayed by the Dispute Resolution Procedure under Section 6.5 (Disputes).