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**SECOND AMENDED AND RESTATED GROUND LEASE**

**(Mariner's Cove)**

This Second Amended and Restated Ground Lease amends and restates that certain lease dated December 30, 1982, between the Housing Authority of the City of San Diego, a public body, as Lessor, and Lincoln Property Company No. 409, Ltd., a California limited partnership, as Lessee, which was recorded in the Office of the County Recorder of San Diego County on December 30, 1982, as **Instrument No. 82-0401677**, the Lessee's interest under which was assigned and assumed pursuant to an Assignment dated December 30, 1982, between Lincoln Property Company No. 409, Ltd., a California limited partnership, as Assignor, and Lincoln Mariners Associates Limited, a California limited partnership, as Assignee, which was recorded in the Office of the County Recorder of San Diego County on December 30, 1982, as **Instrument No. 82-0401678**.

**Documentary Transfer Tax is \$Zero** -- This Second Amended and Restated Ground Lease extends the term of an existing ground lease the original term of which was 35 years or longer. Therefore, there is no change of ownership under Revenue & Taxation Code Section 61, and therefore no transfer under Revenue & Taxation Code Section 11911.

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## SECOND AMENDED AND RESTATED GROUND LEASE

### (Mariner's Cove)

THIS SECOND AMENDED AND RESTATED GROUND LEASE ("**Lease**") is dated as of \_\_\_\_\_, 2015, by and between the Housing Authority of the City of San Diego, a body corporate and politic, ("**Lessor**") and Lincoln Mariners Associates Limited, A California Limited Liability Company ("**Lessee**") but is effective as of July 1, 2015. This Lease, amends and restates, that First Amended & Restated Lease Agreement ("**First Amended and Restated Ground Lease**") dated December 30, 1982, between Lessor and Lincoln Property Company No. 409, Ltd., A California limited partnership ("**Lincoln**"). Lessee is the successor in interest to Lincoln, through a name change.

### RECITALS

A. Lessor is the owner of that certain parcel of land located within the City of San Diego, County of San Diego, State of California, as more particularly described in the definitions below and as legally described in **Exhibit "A"** to this Lease ("**Property**"). Lessor and Lessee desire to restate the terms of the First Amended and Restated Ground Lease for the Property, document extension of the term of this Lease, and set forth the terms of an option to extend this Lease, all upon the terms and conditions set forth herein. This Lease (i) creates a leasehold estate ("**Leasehold**") in the Property, as defined in more detail below; and (ii) supersedes and replaces the First Amended and Restated Ground Lease in its entirety, except to the extent Sections 3(a) and 3(b) of this Lease expressly provide that certain provisions of the First Amended and Restated Ground Lease remain in effect for the balance of 2015.

B. Lessee intends to perform the Minimum Capital Improvements pursuant to Section 2(b) and to operate not less than five hundred (500) rental residential dwelling units ("**Rental Units**"), as well as the common areas, on the Property (collectively the "**Project**"), subject to the provisions of Section 13, Section 18 and the other terms and conditions contained in this Lease. In consideration for this Lease, Lessee has agreed to restrict the rent and occupancy of: (i) twenty percent (20%) of the Rental Units to low income tenants as set forth in Section 4(a) ("**Low Income Units**"); (ii) forty percent (40%) of the Rental Units to moderate income tenants as set forth in Section 4(b) ("**Moderate Income Units**"); and (iii) forty percent (40%) of the Rental Units to households at such rental rates as Lessee determines in its discretion as set forth in Section 4(c).

C. Lessee has agreed to expend not less than Twenty-Five Million Dollars (\$25,000,000.00) on the Minimum Capital Improvements pursuant to Section 2(b), and Lessee has further agreed to and shall complete the construction of the same on or before July 1, 2021.

D. Lessee has agreed to increases in the Ground Rent as referenced in Section 3.

E. Lessee agreed to obtain an extension of the Housing Assistance Payment Contract ("**HAP Contract**") with the United States Department of Housing and Development ("**HUD**"), as a condition to this Lease becoming operative and effective. Lessee so obtained an extension of the HAP Contract effective March 23, 2015, and execution of this Lease by both parties shall evidence the satisfaction of this condition.

F. As more fully set forth in Section 7(a), Lessor and Lessee have agreed that the Leasehold, but not the fee interest in the Property, may be encumbered by a Leasehold Mortgage, subject to the approval of Lessor, which approval shall not be unreasonably withheld by Lessor, based upon commercially reasonable terms, including, without limitation, loan to value ratio, debt coverage ratio, interest rate, loan term and all other essential parameters of the proposed Leasehold Mortgage.

G. As more fully set forth in Section 6(b), Lessor and Lessee have agreed that the Leasehold may not be sold, transferred or assigned without the express written consent of the Commission, on behalf of Lessor. The approval, if any, shall be made by the Commission in its reasonable discretion and may not be unreasonably withheld. Any proposed purchaser, transferee or assignee must have satisfactory experience in operating projects of similar size and nature, must have sufficient financial capacity to operate, repair, refurbish, maintain and manage the Property for the balance of the Term. In no event shall the Commission be required to approve any sale, transfer or assignment of the Leasehold, unless and until the Property improvements have been completed, mechanic's lien free.

H. As more fully set forth in Section 6(b)(2), Lessor and Lessee have agreed that if the proposed purchaser, transferee or assignee is a Low Income Housing Tax Credit Developer ("**LIHTC Developer**") and if the same is approved by the Commission, Lessor has agreed to cooperate with the LIHTC Developer, in its submissions to California Tax Credit Allocation Committee ("**TCAC**") and/or California Debt Limit Allocation Committee ("**CDLAC**"), if any, provided, that such cooperation does not involve any commitment to provide any approval of any financing or any financial assistance to the Project and/or the LIHTC Developer.

I. The San Diego Housing Commission, a public agency, is the administrative agent to Lessor, and administers this Lease on behalf of Lessor. Pursuant to Section 26(q), where this Lease refers to an action or approval of Lessor, it shall mean the approval of the President and CEO of the Commission, or designee, unless otherwise provided.

J. Cross-references to a specified Section means a Section of this Lease, unless cross-reference to a different agreement or document is specified.

NOW, THEREFORE, for and in consideration of the rent, covenants and agreements contained in this Lease, Lessor hereby leases the Property to Lessee and Lessee hereby leases the Property from Lessor, and Lessor and Lessee hereby covenant and agree as follows:

1. Definitions. For all purposes of this Lease, unless the context otherwise requires, the following words and phrases shall have the following meanings:

(a) Affordable Units. "Affordable Units" means the Low Income Units (defined in Recital B) and the Moderate Income Units (also defined in Recital B), the rent and occupancy of which are restricted as provided herein.

(b) Affordability Provisions. "Affordability Provisions" has that meaning ascribed to it in Section 4.

(c) Area Median Income or AMI. “Area Median Income” or “AMI” means the then current annual area median income established by HUD as the then current area median income for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area, established periodically by HUD and published in the Federal Register, as adjusted for family size. The Area Median Income shall be deemed adjusted, from time to time, in accordance with any adjustments that are authorized by HUD or any successor agency. In the event HUD ceases to establish median income as aforesaid, the Commission may use any other reasonably comparable method of computing adjustments in Area Median Income.

(d) City. “City” means the City of San Diego, a charter city.

(e) Commission. “Commission” means the San Diego Housing Commission, a public agency.

(f) Event of Default. “Event of Default” has that meaning ascribed to it in Section 22.

(g) Governmental Requirements. “Governmental Requirements” means all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of San Diego, the City, or any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Commission, Lessee, Leasehold, Improvements or Property, taking into consideration eligibility for and applicability of so-called “grandfathering” provisions or similar exemptions from compliance or grace or phase-in periods for compliance.

(h) Ground Rent. “Ground Rent” has that meaning ascribed to it in Section 3.

(i) Hazardous Materials. “Hazardous Materials” means:

(1) Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” “pollutant” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*); the Clean Water Act (33 U.S.C. §2601 *et seq.*); the Toxic Substances Control Act (15 U.S.C. §9601 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §1801 *et seq.*); or under any other laws regulating hazardous substances.

(2) Those substances included within the definitions of “Extremely Hazardous Waste,” “Hazardous Waste,” or “Restricted Hazardous Waste,” under §§25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§25140 or 44321 of the California Health and Safety Code.

(3) Those substances included within the definitions of “Hazardous Material,” “Hazardous Substance,” “Hazardous Waste,” “Toxic Air Contaminant” or “Medical Waste” under §§25281, 25316, 25501, 25501.1, 25023.2 or 39655 of the California Health and Safety Code.

(4) Those substances included within the definitions of “Oil” or a “Hazardous Substance” listed or identified pursuant to §311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, as well as any other hydrocarbonic substance or by-product.

(5) Those substances included within the definitions of “Hazardous Waste,” “Extremely Hazardous Waste” or an “Acutely Hazardous Waste” pursuant to Chapter 11 of Title 22 of the California Code of Regulations.

(6) Those substances listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to §25249.9(a) of the California Health and Safety Code.

(7) Any material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose.

(8) Any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank.

(9) Pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 *et seq.*

(10) Asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*

(11) Any radioactive material including, without limitation, any “source material,” “special nuclear material,” “by-product material,” “low-level wastes,” “high-level radioactive waste,” “spent nuclear fuel” or “transuranic waste” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. §§10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code §§25800 *et seq.*

(12) Any material regulated under the Occupational Safety and Health Act, 29 U.S.C. §§651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code §§6300 *et seq.*

(13) Any material regulated under the Clean Air Act, 42 U.S.C. §§7401 *et seq.* or pursuant to Division 26 of the California Health and Safety Code.

(14) Those substances listed in the United States Department of Transportation Table (49 CFR Part 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 CFR Part 302).



(15) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations.

(16) Any material, waste or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 U.S.C. §1321 or listed pursuant to 33 U.S.C. §1317, a flammable explosive or a radioactive material.

Provided, however, the term "Hazardous Materials" shall not include (a) substances typically used in the ordinary course of developing, operating, maintaining or inhabiting apartment complexes in California or small amounts of chemicals, cleaning agents and the like commonly employed in routine household uses in a manner typical of occupants in other similar residential properties, provided that such substances are used in compliance with applicable laws; or (b) typical drips or leaks of fuel, oil or other lubricants from vehicles parked in the parking areas of the Project.

(j) HUD. "HUD" means the United States Department of Housing and Urban Development.

(k) Imposition. "Imposition" has that meaning ascribed to it in 10(a).

(l) Improvements. "Improvements" means the five hundred (500) Rental Units, the manager's unit, and all other structures and improvements now or hereafter erected or situated on the Property, including without limitation, the common areas, retail space, foundations, footings, and any and all fixtures, equipment and machinery of every kind and nature whatsoever now or hereafter affixed or attached thereto, or now or hereafter used or procured for use in connection with the operation, use or occupancy thereof, and the appurtenances thereto, but excluding from the foregoing (a) all fixtures and articles of personal property, title of which, pursuant to any lease of space in the Improvements shall be vested in the resident under such lease; and (b) furniture, fixtures, equipment and other personal property title to which is vested in Lessee. Fee title to the Improvements are vested in Lessee and shall remain vested in Lessee during the Term.

(m) Lease Commencement Date. "Lease Commencement Date" means July 1, 2015.

(n) Leasehold. "Leasehold" means the leasehold estate created by this Lease.

(o) Leasehold Mortgage. "Leasehold Mortgage" means any mortgage or deed of trust, provided such mortgage or deed of trust is permitted under the terms and conditions of this Lease, constituting a lien upon the Leasehold. Lessee shall have no right to, and under no circumstances shall Lessee, encumber the fee interest in the Property, which fee interest shall be and remain at all times solely and exclusively owned by Lessor.

(p) Leasehold Mortgagee. "Leasehold Mortgagee" means the holder or beneficiary of a Leasehold Mortgage.

(q) Lessee. "Lessee" means Lincoln Mariners Associates Limited, A California Limited Liability Company.



(r) Lessor. "Lessor" means the Housing Authority of the City of San Diego, a body corporate and politic.

(s) Mechanic's Liens. "Mechanic's Liens" has that meaning ascribed to it in Section 19.

(t) Property. The "Property" is that certain real property owned by Lessor, located in the City of San Diego, County of San Diego, State of California, as more particularly described on **Exhibit "A"**. Except as otherwise expressly provided to the contrary in this Lease, each reference to the Property is to the described real property exclusive of any Improvements now or hereafter located on such real property, notwithstanding that any such Improvements may and shall be construed as affixed to and as constituting part of the real property.

(u) Project. "Project" has that meaning ascribed to it in Recital B.

(v) Term. The "Term" of this Lease shall commence on the Lease Commencement Date and shall expire and terminate at 12:00 midnight on December 31, 2070, unless the twenty year (20-year) option to extend the Term is timely exercised by Lessee pursuant to Section 3(d)(2), in which case: (i) the Term shall expire and terminate at 12:00 midnight on December 31, 2090; and (ii) "Term" shall mean the Term as so extended.

## 2. Use and Ownership of the Property and Improvements.

(a) Use of the Property. Lessor hereby leases the Property to Lessee. The Property is leased to Lessee solely and exclusively for the purpose of operating, maintaining, repairing, altering and improving the Project in accordance with the terms and conditions of this Lease, including leasing the Affordable Units in accordance with Section 4 and performing the Minimum Capital Improvements (defined in Section 2(b)). The Project shall comply, to the extent required by Governmental Requirements, with all federal accessibility standards. Lessee covenants and agrees to use the Property solely and exclusively for such purposes and to diligently pursue said purposes for the Term. Lessor and Lessee agree that Lessee will have the burdens and benefits of ownership for federal income tax purposes and will be entitled to all tax benefits including the depreciation attributable to the Project during the Term.

(b) Minimum Capital Improvements. On or before July 1, 2021, Lessee shall make capital improvements to the Property which shall include roofs, siding, infrastructure, landscaping and/or interiors, as reasonably approved by Lessor ("**Minimum Capital Improvements**"); provided, however, Lessee's obligation to perform the Minimum Capital Improvements as described in this Section 2(b) is subject to Section 6(b)(2). The cost of the Minimum Capital Improvements (including both so-called "hard costs", including the cost of labor and materials, and so-called "soft costs", including the cost of preparing designs, preparing plans, specifications and drawings and obtaining permits, including fees payable to obtain permits) shall be not less than \$25,000,000.00. The scope of the Minimum Capital Improvements shall include exterior and/or interior repairs as designated by Lessee (which may include a space plan or plans and specifications, as applicable) and shall be subject to the

approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. In addition, the Minimum Capital Improvements shall include the community room.

(c) Title to Improvements. All of the Improvements existing, constructed or installed upon the Property shall, at all times during the Term, be and remain real property, with fee title thereto being vested in Lessee, for tax and all other purposes; provided, however, upon the expiration or earlier termination of this Lease, title to any such Improvements shall vest in Lessor.

(d) Title to Personal Property. Lessor acknowledges that any equipment or other personal property of Lessee now or hereafter located on the Property shall be and remain the personal property of Lessee and shall not become a part of the Leasehold. To the extent that Lessee grants a lien or security interest in such equipment or other personal property to any Leasehold Mortgagee to secure obligations owed by Lessee to the Leasehold Mortgagee, Lessor agrees that, upon enforcement or exercise by such Leasehold Mortgagee of any of its rights with respect thereto, Lessor shall afford Leasehold Mortgagee reasonable access to the Property for the purpose of preserving its interest therein or enforcing or exercising its rights and remedies, subject to the terms and conditions of this Lease.

### 3. Ground Rent.

(a) Ground Rent During the Initial 55 year term. Rent described in this Section 3 is defined as the “**Ground Rent**”. During the balance of 2015, from July 1, 2015 through December 31, 2015, the Ground Rent shall be as set forth in the First Amended and Restated Ground Lease, which is six percent (6%) of total gross income. Except as set forth in the immediately preceding sentence, Lessee shall have no further obligation to pay rent pursuant to or as set forth in the First Amended and Restated Ground Lease. During the next six years of the initial 55-year term the annual Ground Rent shall be as follows:

<u>Period</u>	<u>Annual Ground Rent Amount</u>
1/1/2016-12/31/2016	\$667,640.00
1/1/2017-12/31/2017	\$767,640.00
1/1/2018-12/31/2018	\$867,640.00
1/1/2019-12/31/2019	\$967,640.00
1/1/2020-12/31/2020	\$1,203,326.00
1/1/2021-12/31/2021	\$1,239,426.00 [Base Rent for CPI Purposes]

For 2022 and each following year of the initial 55-year term, Ground Rent shall be increased annually commencing as of each January 1st (“**Adjustment Date**”) based on the CPI, as follows.

“**CPI**” means the Consumer Price Index for San Diego - All Urban Consumers - All Items (less food and energy) Base 1982-1984=100 as published by the United States Department of Labor, Bureau of Labor Statistics. Currently, the CPI is published semi-annually, once for the first half of a year and once for the second half of a year. If the Index ceases to be published, then the successor or substitute index shall be used. If the base reference period for the Index is

changed, such conversion formula or table as may be published by the Bureau of Labor Statistics shall be used.

(1) Comparison CPI and Base CPI. The “**Comparison CPI**” is the CPI published for the first half of the year immediately preceding the Adjustment Date, and the “**Base CPI**” is the CPI published for the first half of the year immediately preceding the year of the Comparison CPI. (For example, for the Adjustment Date of January 1, 2022, the Comparison CPI would be the CPI published for the first half of 2021, and the Base CPI would be the CPI published for the first half of 2020.) If the Comparison CPI is higher than the Base CPI, then the Ground Rent payable commencing as of the Adjustment Date shall be calculated by increasing the previous year’s Ground Rent by the percentage increase of the Comparison CPI over the Base CPI; provided, however, in no event shall Ground Rent for any year be reduced below the amount of Ground Rent payable during the immediately preceding year, nor be more than 3% greater than the amount of Ground Rent payable during the immediately preceding year. (Also for example and illustration only, assume for the Adjustment Date of January 1, 2022, the Comparison CPI is 132, and the Base CPI is 130. The increase in the CPI is 1.54% (132 divided by 130 equals 1.0154.) The annual Ground Rent for 2022 would be the Ground Rent for 2021 (i.e., \$1,239,426.00) multiplied by 1.0154, which equals \$1,258,513.16.)

(b) Monthly Payable Rent. During the balance of 2015, the annual Ground Rent shall be paid monthly as set forth in the First Amended and Restated Ground Lease. Commencing January 1, 2016, and during the remaining Term, Lessee shall pay monthly Ground Rent to Lessor in the amount of 1/12 of that year’s annual Ground Rent, due on the 1<sup>st</sup> of each month.

(c) Delinquent Rent. In the event Lessee fails to pay all or any part of the applicable rents within five (5) days after the due date thereof, Lessor shall provide written notice of the same to Lessee and if Lessee fails to pay or any part of the applicable rents within ten (10) days after delivery of such written notice, then Lessee shall pay to Lessor in addition to the delinquent rent, a sum of money equal to five percent (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after an additional fifteen (15) days of becoming delinquent Lessee shall pay to Lessor in addition to the delinquent rent, instead of said five percent (5%) of said delinquent rent, a sum of money equal to ten percent (10%) of said delinquent rent. Lessee and Lessor agree that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to Lessor as a result of such a default and that the foregoing formula is a fair and reasonable method of approximating such damages.

(d) Reappraisal and Ground Rent January 1, 2041 and During the Option Period.

(1) Year 2041 Reappraisal. No earlier than January 1, 2040 and no later than March 31, 2040, Lessor may, at its sole option, elect by written notice to Lessee to have the Ground Rent for calendar year 2041 be fair market rent (based on the then-current condition of the Improvements and factoring in all applicable use restrictions set forth in this Lease) determined by the appraisal process set forth in Section 3(d)(2). In the event of the reappraisal there shall be no floor or ceiling for the Ground Rent being established; provided, however, in the event that Lessor does not elect to have the Ground Rent for 2041 determined by appraisal, the Ground Rent for 2041 shall be the Ground Rent

established for the prior year (i.e., 2040) subject to CPI increase capped at 3% of the Ground Rent payable for 2040. In the latter case of no reappraisal, in no event shall the Ground Rent for 2041 be less than the Ground Rent payable for 2040. The reappraisal shall utilize the procedure referenced within Section 3(d)(2) and shall factor in the then-current condition of the Improvements and all applicable use restrictions set forth in this Lease). In addition to the Ground Rent adjustment for calendar year 2041, calendar year 2042 and each year thereafter during the remainder of the Term through December 31, 2070, the Ground Rent shall be subject to an annual CPI increase; provided, however, in no event shall the Ground Rent: (A) be decreased from year to year, even if the CPI declines from one year to another; or (B) be increased by more than 3% of the Ground Rent payable during the immediately preceding calendar year.

(2) Reappraisal (if option exercised). If Lessee exercises the option to extend the Term, the annual Ground Rent for the first year of the option period shall be fair market rent for the Property (based on the then-current condition of the Improvements and factoring in all applicable use restrictions set forth in this Lease) based upon a reappraisal using procedure referenced below in this Section 3(d)(2). In no event shall the Ground Rent for the first year of the option period (i.e., calendar year 2071) be less than the Ground Rent for the last year of the original Term (i.e., calendar year 2070). If Lessee is interested in exercising the option, Lessee will so notify Lessor no later than July 31, 2070, and the parties shall meet, confer and negotiate in an effort to reach agreement on the fair market rent for the first year of the option period. If after 30 days the parties are unable to reach agreement, the fair market rent for the first year of the option period shall be determined by appraisal. Each party will retain an appraiser at its own cost for such purpose. The appraisers must be licensed in the State of California, must be a State Certified Appraiser and have at least 10 years' experience appraising similar properties in the San Diego community, including experience in determining fair market rent for ground leases. If the fair market rent stated in each appraisal is the same, the fair market rent stated in the appraisals will be the fair market rent for the first year of the option period. If the fair market rents stated in the appraisals are different, but are within 10% of the amount of higher appraisal, then the average of the two appraisals shall be the fair market rent for the first year of the option period. If the fair market rent stated the appraisals are different, and are not within 10% of the amount of higher appraisal, then the two appraisers previously selected shall select a third appraiser with the same qualifications. Each party will bear one-half of the cost of selecting the third appraiser and of paying the third appraiser's fee. If the two appraisers previously selected cannot agree on a third appraiser, then the two appraisers shall, within five (5) days after the date on which they agree they are unable to agree on a third appraiser, request the Superior Court in and for the County of San Diego, State of California, to appoint the third appraiser. The fair market rent for the first year of the option period shall then be the average of the fair market rent stated in the third appraisal and the fair market rent stated in the earlier appraisal (either Lessor's or Lessee's) that is closest to the fair market rent stated in the third appraisal, but no lower than the Ground Rent for the last year of the original Term (i.e., calendar year 2070). After the fair market rent for the first year of the option period is determined, Lessee will have 30 days within which to exercise the option by delivering written notice of exercise to Lessor. Notwithstanding the foregoing sentence, in no event shall the notice to exercise option be delivered, if at all, later than

December 1, 2070. For the second and each succeeding year of the option period, the annual Ground Rent shall be subject to an annual CPI increase; provided, however, in no event shall the Ground Rent: (A) be decreased from year to year, even if the CPI declines from one year to another; or (B) be increased by more than 3% of the Ground Rent payable during the immediately preceding calendar year.

(e) ACH Payment. Rent may be paid, at Lessee's option, either (i) by check and sent by ordinary first class mail to the first address of Lessor set forth in Section 25; or (ii) by ACH transfer (or such other automated payment system as may be implemented in the future to replace ACH transfers) to an account designated by Landlord in writing to Tenant substantially concurrently with the parties signing and entering into this Lease.

4. Affordability Restrictions. The provisions of this Section 4 shall be referred to collectively herein as the "**Affordability Provisions**."

(a) Low Income Units. Lessee agrees to rent twenty percent (20%) of all Rental Units within the Project ("**Low Income Units**") to low income tenants under the terms and conditions of the Project Based Section 8 Housing Assistance Payments Basic Renewal Contract (HUD Contract No. CA168023079) between Lessee and Los Angeles LOMOD Corporation (as HUD Contract Administrator) dated March 23, 2015 and pursuant to the terms and conditions for renewals thereof under the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended ("**Section 8 Program**"). Lessee shall administer said low income housing program pursuant to the terms and provisions of the HAP Contract and in accordance with HUD guidelines, as amended from time to time.

(1) HAP Agreement Not Extended But Project Based Section 8 Program Continues to Exist. Each year during the term of the Lease, as it may be extended by the exercise of an option or options, Lessee agrees to use good faith efforts to annually extend the term of the HAP Contract. If through no fault of the Lessee, HUD does not extend or renew the HAP Contract but the HUD Project Based Section 8 Program continues in effect, Lessee shall continue to rent the Low Income Units to low income tenants, earning at or below 80% of AMI, at monthly rents which do not exceed thirty percent (30%) of eighty percent (80%) of AMI.

(2) Project Based Section 8 Program No Longer Exists And Successor Program Exists. In the event, that HUD's Project Based Section 8 Program is eliminated, Lessee shall continue to rent the Low Income Units to tenants with low income, at rents affordable to those low income tenants, as defined by and pursuant to, any successor program created by any federal, state or local agency to replace the Project Based Section 8 Program applicable to the Project.

(3) Project Based Section 8 Program No Longer Exists and No Successor Program Exists. If HUD's Project Based Section 8 Program, which provides subsidies to Low Income households who earn at or below 80% of AMI, or any successor program is terminated, eliminated, abolished or not otherwise in existence and there is no successor program, Lessee shall continue to rent the Low Income Units to households earning 80% of AMI or less at rents which are affordable for the balance of the term of the Lease, as it



may be extended by the exercise of option(s). For the purposes of this subsection, rents that are affordable to households earning 80% of AMI or less, must be established by Lessee in complete compliance with all applicable federal, state and local laws and ordinances then in effect, and which are then being utilized to establish the amount of rent that is affordable to households earning 80% or less of the AMI.

(b) Moderate Income Units. Lessee agrees to rent forty percent (40%) of all Rental Units within the Project to tenants with incomes at or below one hundred twenty percent (120%) of AMI ("**Moderate Income Units**"). Determinations of eligibility to rent Moderate Income Units shall be made in accordance with Section 4(e). All of the Moderate Income Units shall be rented at monthly rents which do not exceed 1/12<sup>th</sup> of thirty percent (30%) of one hundred twenty percent (120%) of AMI.

(c) Unrestricted Rental Units. Subject to Sections 4(a) and 4(b), Lessee shall have the unrestricted right to sublease to others the remaining forty percent (40%) of the Rental Units within the Project at such rental rates as Lessee determines in its discretion.

(d) Rent Adjustments. Lessee may make any adjustments in rents for the Low Income Units and the Moderate Income Units provided (i) such adjusted rents are consistent with the standards for rent for such Rental Units as set forth in Sections 4(a) and 4(b); and (ii) with respect to Low Income Units, are based on the terms and conditions set forth in the HAP Contract. Any such adjustment for Moderate Income Units will take place on the anniversary date of each tenant's rental agreement or when a new rental agreement is entered into by Lessee as a result of the turnover of such a unit in the Project.

(e) Determinations of Eligibility for Low and Moderate Income Units. The eligibility of each prospective resident for a Moderate Income Unit under the restrictions set forth in Section 4(b) shall be certified by Lessee which shall submit such certification and all supporting documentation on forms acceptable to the Commission, in its reasonable discretion, for a determination of resident eligibility, prior to such resident's occupancy. At the time of initial lease-up, the Commission will rely upon the certification of the Lessee and no formal approval of any prospective tenant shall be required. No Moderate Income Unit may be rented to a prospective resident or occupied by any person unless and until the Lessee certifies that the prospective resident or occupant is eligible to lease the Moderate Income Unit as determined in accordance with such Affordability Provisions. No more often than semi-annually, the Commission shall have the right to audit the records of the Lessee, upon reasonable written notice, to verify that the certifications of the Lessee concerning occupancy and rent levels are in full and compliance with the Moderate Income Affordability Provisions of Section 4(b).

(1) As to the Low Income Units, if the HAP Contract is no longer in effect as referenced within Section 4(a)(1), the eligibility of each prospective resident for a Low Income Unit under the restrictions set forth in Section 4(a)(1) shall be certified by Lessee which shall submit such certification and all supporting documentation on forms acceptable to the Commission, in its reasonable discretion, for a determination of resident eligibility, prior to such resident's occupancy. No Low Income Unit may be rented to a prospective resident or occupied by any person unless and until the Lessee certifies that the prospective resident or occupant is eligible to lease the Low Income Unit as

determined in accordance with the Affordability Provisions and that the rents being charged are in accordance with such Section 4(a)(1).

(2) If the HAP Contract is no longer in effect as described in Section 4(a)(2) herein, then no Low Income Unit may be rented to a prospective resident or occupied by any person unless and until the Lessee has certified to the Commission that the prospective resident or occupant is eligible to lease the Low Income Unit as determined in accordance with the Affordability Provisions of Section 4(a)(2) and that rents being charged are in accordance with the provisions of Section 4(a)(2) above.

(3) If the HAP Contract is no longer in effect as described in Section 4(a)(3) herein, then Lessee shall certify to the Commission, in accordance with the provisions of the new program, that the Low Income households are eligible to occupy the Low Income Units in accordance with the occupancy and rental provisions of the new program. Semi-annually, the Commission shall have the right to audit the records of the Lessee, upon reasonable written notice, to verify that the certifications of the Lessee concerning Low Income occupancy and rental rates are in full and compliance with the Low Income Affordability Provisions of Section 4(a)(3).

(f) Relationship with Lessee. No Affordable Unit shall be occupied by: (i) any individuals who are members, managers, partners or shareholders in Lessee; (ii) any relative (by blood or marriage) of any individuals who are members, managers, partners or shareholders in Lessee; (iii) any individuals who are members, managers, partners or shareholders in any entity having an interest in Lessee, the Leasehold or the Property; (iv) any officer, employee, agent or consultant of the Lessee; or (v) any relative (by blood or marriage) of any officer, employee, agent or consultant of the Lessee.

5. HAP Contract renewal. As the HAP Contract for the Low Income Units comes up for periodic renewal during the Term, Lessee shall use commercially reasonable efforts to extend the HAP Contract during each year of the Term, provided the renewed HAP Contract would confer on Lessee economic benefits that are the same as or comparable to those under the so-called "Section 8" housing program in effect on the Lease Commencement Date. Commercially reasonable efforts include applying for renewals and extensions of the HAP Contract, and processing such applications diligently. In the event that the HAP Contract is not extended by HUD, during any year of the Term, the Low Income Units must continue to be affordable to and occupied by households earning at or below 80% of AMI.

6. Covenants and Conditions.

(a) Quiet Enjoyment. Lessor covenants and agrees that Lessee, upon paying the rent provided for in this Lease and upon performing and keeping all of the covenants, agreements and provisions of this Lease, shall and may lawfully and quietly hold, occupy and enjoy the Property and the Leasehold during the Term.

(b) Sale, Transfer or Assignment of Leasehold.

(1) The Leasehold interest of Lessee shall not be sold, transferred or assigned without the consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. The proposed buyer, transferee or assignee must have experience in operating projects of similar size, must have sufficient financial wherewithal to operate, repair, maintain and manage the Project for the balance of the Term and potential option period, as Lessor shall reasonably approve. No sale, transfer or assignment of the Leasehold interest shall be effective without the prior written consent of Lessor as set forth in this Section. Except as set forth in Section 6(b)(2), in no event shall Lessor be required to approve any sale, transfer or assignment of the Leasehold interest unless and until the Minimum Capital Improvements (defined in Section 2(b)) have been constructed in a good, workmanlike and defect free manner and a Notice of Completion shall have been duly recorded, without the filing of any mechanic's liens (or, if one or more mechanic's liens has been filed, the same has expired or has been bonded or otherwise cured by or on behalf of Lessee).

(2) In the event that a Low Income Housing Tax Credit Developer ("**LIHTC Developer**") is the proposed assignee, buyer or transferee, and in the event that Lessor approves of such buyer, transferee or assignee pursuant to Section 6(b)(1) Lessor (a) agrees to cooperate with the approved LIHTC Developer in its submissions to TCAC and/or CDLAC, if any; and (b) recognizes that if a sale, transfer or assignment to an LIHTC Developer is proposed before the end of 2020, the LIHTC Developer may propose capital improvements different from those described in Section 2(b), which may include a proposed different time frame for performing the capital improvements, and in such event, Lessor shall review the proposed sale, transfer or assignment and the related proposed different scope of work and time frame; provided, however, in no event shall the amount of improvements be less than the \$25,000,000 referenced within Section 2(b), hereof and in no event shall the improvements be completed later than July 1, 2021 (unless Lessor approves a different proposed time frame); and, provided further, that in no event shall this offer to cooperate be construed as any obligation of Lessor to approve financing or any financial assistance to the project and/or the LIHTC Developer. In addition to the foregoing in this Section 6(b)(2), if this Lease is assigned to a LIHTC Developer, and if any terms, conditions or provisions of this Lease conflict with or are inconsistent with the rules of the tax credit program of the LIHTC Developer, then, anything in the Lease to the contrary notwithstanding: (a) such terms, conditions or provisions of this Lease that conflict with or are inconsistent with the rules of the tax credit program shall be subordinate to the rules of the tax credit program; and (b) the rules of the tax credit program shall govern and control over such terms, conditions or provisions of this Lease.

(3) Subject to the requirements of this Section 6(b), no such assignment shall be effective for any purpose unless and until (i) Lessee's interest in the Improvements shall be transferred to the assignee of this Lease and (ii) there shall be delivered to Lessor (A) a duplicate original of the instrument or instruments of transfer of this Lease and of



the assignor's interest in the Improvements in recordable form, containing the name and address of the transferee and (B) an instrument of assumption by the transferee of all of Lessee's obligations under this Lease in a form and format reasonably acceptable to Lessor. This Lease and any interest herein shall not be assignable by operation of law without the written consent of Lessor. Nothing contained in this Section 6(b) or elsewhere in this Lease shall prohibit or otherwise impair Lessor's right to assign Lessor's right, title and interest in and to this Lease.

7. Encumbrances.

(a) Encumbrance of the Leasehold Estate/Refinance. Lessee may refinance its Leasehold interest in the Property upon commercially reasonable terms for construction and/or permanent financing, including loan to value ratios, debt coverage ratios and interest rates. Any refinancing shall be subject to the approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. The proceeds of any financing shall belong to Lessee, as shall the obligations under the Leasehold financing documents. Lessee shall have no right to, and under no circumstances shall Lessee, encumber Lessor's fee interest in the Property, which fee interest shall be and remain at all times solely and exclusively owned by Lessor. Only the Leasehold interest of Lessee and the interest of Lessee in the improvements shall be eligible to be encumbered. A Leasehold Mortgagee may enforce any such Leasehold Mortgage and acquire title to the Leasehold in any lawful way. Lessor agrees to accept performance by each Leasehold Mortgagee of any cures, conditions and covenants as though performed by Lessee, and agrees to permit each Leasehold Mortgagee access to the Premises to take all such actions as may be necessary or useful to perform any condition or covenant of this Lease or to cure any default of Lessee. Any person or entity acquiring the Leasehold as a result of foreclosure of a Leasehold Mortgage or assignment of the Leasehold under this Lease in lieu of such foreclosure shall be obligated to perform only the obligations imposed on Lessee by this Lease commencing as of the date of the foreclosure of the Leasehold Mortgage or assignment in lieu of such foreclosure and ending as of the date any assignment of this Lease to a successor tenant in accordance with the requirements of Section 6(b). The rights and privileges hereunder of any Leasehold Mortgagee shall be subject to the rights and privileges of any other Leasehold Mortgagee whose lien has priority over the lien of such Leasehold Mortgagee; provided, however, nothing in this Lease precludes Leasehold Mortgagees from entering into one or more intercreditor agreements establishing the relative priority of their respective rights and remedies. In addition, Leasehold Mortgagees shall have the cure and other rights set forth in Section 22.

8. Compliance With All Codes, Orders and Ordinances.

(a) Compliance. Lessee covenants throughout the Term, at Lessee's sole cost and expense, to promptly comply with all Governmental Requirements applicable to the Property, the Leasehold or the Improvements; provided, however, Lessor and the Commission shall comply with all Governmental Requirements applicable to them in their respective roles as governmental entities or agencies. Lessee shall likewise observe and comply with the requirements of all policies of public liability, fire, and all other policies of insurance at any time in force with respect to the Improvements.

(b) Disputes. Lessee shall have the right to contest by appropriate legal proceedings, the validity or application of any Governmental Requirement of the nature referred to in Section 8(a), and if by the terms of any such Governmental Requirement, compliance therewith pending the prosecution of any such proceeding may legally be held in abeyance without the incurrence of a lien, charge or liability of any kind against the Property, the Improvements or the Leasehold and without subjecting Lessee to any criminal liability of any kind or nature whatsoever for failure to comply therewith and without subjecting Lessor to any liability of any kind or nature whatsoever for failure to immediately comply therewith, Lessee may postpone compliance therewith until the final determination of any proceedings, provided that all such proceedings shall be prosecuted with due diligence and dispatch. Under no circumstances shall any such contest of any Governmental Requirement of the nature referred to in Section 8(a), result in any cost, liability or expense to Lessor whatsoever.

(c) Prevailing Wages. To the extent required by Governmental Requirements, Lessee and its general contractors and subcontractors shall pay prevailing wages for work done at the Project, including the Minimum Capital Improvements pursuant to Section 2(b).

9. Utilities. Lessee shall pay or cause to be paid, as and when they become due and payable, all charges for water, gas, telephone, electricity, garbage, refuse and all other utilities and communication services rendered or used on or about the Property or the Improvements at all times during the Term; provided, however, nothing contained in this Section 9 shall limit or otherwise impair Lessee's ability to charge the residents of the individual dwelling units in the Project for such amounts and/or to have all such amounts billed directly to the residents of the individual dwelling units in the Project.

10. Payment of Taxes, Assessments, Etc.

(a) All Taxes Paid in a Timely Manner. In addition to the payment of the Ground Rent to Lessor, Lessee covenants and agrees to pay, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all property taxes, assessments, water and sewer rates and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever (all of which taxes, assessments, water and sewer rates or charges, and other governmental charges are hereinafter referred to as an "**Imposition**"), which are assessed, levied or imposed on, become a lien upon, or become payable with respect to, the Property, the Leasehold and/or the Improvements and the sidewalks or streets in front of or adjoining the Property and the Improvements, during the Term. Nothing contained herein is intended to, or shall be interpreted to, prohibit Lessee from seeking a property tax exemption with respect to the Leasehold under Governmental Requirements, including California Revenue and Taxation Code Sections 214(g) and/or 236. Notwithstanding the foregoing, if, by Governmental Requirements, any such Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and shall pay only such installments as may become due during the Term as the same respectively become due and before any fine, penalty, interest or cost may be added thereto, for the non-payment of any such installment and interest. In addition, if any Imposition relates to a fiscal period of a taxing authority, a part of which period is included within the Term and a part of

which is included in a period of time after the termination of this Lease, such Imposition shall (whether or not such Imposition shall be assessed, levied, imposed or become a lien upon the Property, the Leasehold and/or the Improvements, or shall become payable, during the Term) be adjusted between Lessor and Lessee as of the expiration of the Term or earlier termination of this Lease, so that Lessor shall pay that portion of such Imposition which relates to that part of the fiscal period after the expiration of the Term or earlier termination of this Lease, and Lessee shall pay that portion of which relates to the period before the expiration of the Term or earlier termination of this Lease.

(b) Tax Receipts. Lessee, when and if requested by Lessor, shall provide Commission with official receipts of the appropriate taxing authority or other evidence satisfactory to Commission evidencing payment of any and all Impositions.

(c) Lessee Not Required to Pay Taxes Unrelated to the Property. Nothing contained in this Lease shall require Lessee to pay any franchise, corporate, estate, inheritance, succession, capital levy, stamp tax, transfer tax or other charge owed by Lessor or the Commission, or any income, excess profits or revenue tax or any other tax, assessment, charge or levy upon the rent payable by Lessee to Lessor under this Lease, nor shall any tax, assessment, charge or levy of the character described in this Section 10(c) be deemed to be included within the term "Imposition" as defined above.

(d) Tax Disputes. Lessee shall have the right to contest the amount or validity, or to seek a refund, in whole or in part, of any Imposition by appropriate proceedings, and notwithstanding the provisions of Section 10(a), this shall not be deemed or construed in any way as relieving, modifying or extending Lessee's covenants to pay any such Imposition at the time and in the manner as provided in this Section 10, unless Lessee shall have deposited with Lessor or a bank or trust company designated by Lessor, as security for the payment of such Imposition, money or a corporate surety bond or other security acceptable to Lessor in an amount equal to one hundred ten percent (110%) of the amount so contested and unpaid together with the estimated amount of all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Property, the Leasehold and/or Improvements or any part thereof in said proceedings, whereupon Lessee may postpone or defer payment of such Imposition. Upon the termination of such proceedings, Lessee shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith, and upon such payment, Lessor shall return, or cause such bank or trust company to return, the amount above referred to without interest. If, at any time during the continuance of such proceedings, Lessor shall deem the amount deposited with Lessor, or any Leasehold Mortgagee, or secured by any surety bond, insufficient, Lessee shall, within ten (10) days after written demand from Lessor, deposit with Lessor or such bank or trust company such additional sum as Lessor may request, and upon failure of Lessee to do so, the amount theretofore deposited may be applied by Lessor, or any Leasehold Mortgagee, or such bank or trust company to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any and all costs, fees or other liability accruing in any such proceedings, including without limitation any and all costs, fees or other liabilities of Lessor, and the balance, if any, shall be returned to Lessee. Lessor shall not be subjected to any liability for the payment of any costs or expenses in

connection with any such proceeding, and Lessee covenants and agrees to indemnify, save and hold harmless Lessor from any such costs or expenses, including any and all costs incurred by Lessor, including attorneys' fees.

(e) Prima Facie Evidence of Non-Payment. The certificate, advice or bill of the appropriate official designated by Governmental Requirement to make or issue the same or to receive payment of any Imposition, of non-payment thereof, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

(f) Lessor or Leasehold Mortgagee Right to Cure. If Lessee in violation of the provisions of this Lease fails to pay and discharge any Imposition, then Lessor or any Leasehold Mortgagee may, but shall not be obligated to, pay or discharge such Imposition, and all such amounts paid by Lessor, including without limitation, costs, expenses, interest, penalties and attorneys' fees, together with simple interest at an annual rate of ten percent (10%) per annum, from the date of any such payment, shall be deemed to be and shall be payable immediately by Lessee to Lessor or a Leasehold Mortgagee, as applicable, as additional rent.

(g) Federal and State Income Tax Treatment. Lessor and Lessee agree that Lessee will have the burdens and benefits of ownership for federal and state income tax purposes and will be entitled to all tax benefits including, without limitation, the depreciation attributable to the Project during the Term.

11. Covenants to Maintain the Property and Improvements. Subject to the provisions of this Lease concerning condemnation, alteration, damage and destruction of the Improvements, Lessee, at its sole expense, shall maintain or cause to be maintained in good order, repair and operation the Property and the Improvements, including without limitation all furnishings, fixtures, equipment thereon or therein throughout the Term, without expense to Lessor, and to perform or cause to be performed all repairs and replacements necessary to maintain and preserve the Property, the Leasehold and the Improvements, including without limitation all furnishings, fixtures, equipment thereon or therein, in a good, safe and sanitary condition, free of defects and code violations, in compliance with Governmental Requirements, and equal in value, quality and use to the condition of the Improvements, including furnishings, fixtures and equipment, as originally constructed or installed, reasonable wear and tear excepted. Under no circumstances shall (a) Lessor be required to make any repairs, replacements or otherwise perform any maintenance, of any kind, nature or description whatsoever, of the Property, Leasehold or Improvements; or (b) Lessee be required to make any repairs, replacements or otherwise perform any maintenance, of any kind, nature or description whatsoever, with respect to public improvements in the vicinity of the Project, such as public streets, sidewalks or drainage facilities. Lessee hereby expressly waives all right to make repairs at Lessor's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced or restated. All landscaping shall be maintained in a good condition, taking into consideration the effect of Governmental Requirements imposing limitations or restrictions on irrigation. Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations to the Property or the Improvements and Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Property and the Improvements.

12. Waste. Lessee shall not commit or suffer to be committed any voluntary or permissive waste of the Property, the Leasehold or the Improvements, or any part thereof. Damage or Destruction of the Improvements.

(a) Restoration of Damaged or Destroyed Improvements. During the Term, Lessee covenants that in case of damage to or destruction of the Improvements by fire or any other cause, similar or dissimilar, insured or uninsured, Lessee will promptly, at its sole cost and expense, restore, repair, replace or rebuild the Improvements as nearly as possible to the condition, quality and class such Improvements were in immediately prior to such damage or destruction; provided, however, subject to Lessor's reasonable approval, Lessee shall be entitled to implement such changes in the apartment units, amenities and other Improvements as Lessee determines are desirable and appropriate to recognize changes that have occurred in apartment housing and living since the original construction of the Project and the completion of the Minimum Capital Improvements, as well as trends that are then occurring. Such restoration, repairs, replacement or rebuilding shall be commenced promptly and prosecuted with reasonable diligence.

(b) Insurance Proceeds. If insurance proceeds, if any, recovered in respect of any insured damage or destruction, less any cost of recovery, shall be insufficient to pay the entire cost of such restoration, repairs, replacement or rebuilding, Lessee covenants to pay any deficiency in its entirety.

(c) Obligation to Continue Paying Rent. Lessee's obligation to make payment of the rent and all other charges on the part of Lessee to be paid and to perform all other covenants and agreements on the part of Lessee to be performed shall not be affected by any such damage to or destruction of the Improvements and Lessee hereby waives the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and of any other Governmental Requirement now or hereafter in effect contrary to such obligations of Lessee as set forth in this Lease, or which relieves Lessee from such obligation.

(d) Notice and Rights of Leasehold Mortgagee. Lessor will provide reasonable prior written notice to all Leasehold Mortgagees of any proceedings for adjustment or adjudication of any insurance claim involving the Property and will permit any Leasehold Mortgagee to participate therein as an interested party. Lessor agrees that in the event Lessor and any Leasehold Mortgagee are named as loss payees under any policy of casualty insurance, the proceeds of such policy shall be paid and applied as provided in the applicable Leasehold Mortgage.

(e) Notwithstanding anything to the contrary contained in this Lease, if:

(i) there is damage to or destruction of the Improvements during the last five (5) years of the Term and either (1) the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements, or (2) the time required to complete such repair would exceed 12 months, commencing on the date of such damage to or destruction of the Improvements; or



(ii) there is damage to or destruction of the Improvements which (1) arises from a cause which is not required to be insured against under any provision of this Lease, or (2) arises from a cause which is in fact insured against in compliance with the terms of this Lease, but for which the recoverable proceeds of such insurance are less than 100% of the cost to repair said damage or destruction (excluding any deductibles and provided that Lessee has maintained all insurance required under this Lease), and (3) the cost to Lessee (which is not covered by insurance proceeds) of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements after the application of any available insurance proceeds; or

(iii) there is damage to or destruction of the Improvements and the Governmental Restrictions then in effect with respect to the Property prohibit the construction of economically viable replacement Improvements with respect to a use which Lessee either has the right to engage in under this Lease or which the Lessee desires to engage in and Lessor will permit to be engaged in,

then, in each case, Lessee shall have the option to terminate this Lease, subject to Lessee's satisfaction of each of the following requirements: (A) Lessee shall, within ninety (90) days after the event giving rise to such right to terminate, give Lessor written notice of Lessee's election to terminate ("Notice of Election to Terminate"); and (B) Lessee shall, at the election of Lessor (which election shall be communicated in writing to Lessee ("Demolition Notice") within thirty (30) days after Lessor's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed Improvements and any other Improvements that Lessor may designate in the Demolition Notice, and shall complete said demolition and removal and shall vacate the Leasehold within ninety (90) days after Lessor's delivery of the Demolition Notice (which vacation date shall be the termination date of this Lease). Any and all property damage insurance proceeds paid to Lessee as a result of the damage or destruction giving rise to the termination, shall be distributed to the Lessor to the extent such proceeds (if any) remain after payment to any Leasehold Mortgagees pursuant to Section 16(d), payment for the cost of razing and removing the Improvements pursuant to this Section and payment to Lessee for the unamortized out-of-pocket cost of Improvements made by Lessee, including the Minimum Capital Improvements, amortized over the period equal to the lesser of the useful life of such Improvements or the remaining Term of this Lease (including any options to extend the Term). Hazardous Materials.

(a) Condition of the Site. Lessee shall take all prudent, commercially reasonable precautions to prevent the release in, on or under the Property of any Hazardous Materials. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Lessee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

(b) Required Disclosures. Lessee shall notify Lessor, and provide to Lessor a copy or copies, of all permits, disclosures, applications or inquiries relating to Hazardous Materials on the Property, including notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements

and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. Lessee shall report to Lessor, as soon as possible after each incident, any unusual or potentially important incidents with respect to Hazardous Materials on the Property. In the event of a release of any Hazardous Materials from the Property into the environment, Lessee shall, as soon as possible after the release, furnish to Lessor a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon written request from Lessor, Lessee shall furnish to Lessor a copy or copies of any and all inquiries relating to or affecting Hazardous Materials on the Property, including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential. Lessee discloses that at the date of this Lease: (i) there is asbestos in the roof sealant of the buildings on the Property; (ii) such asbestos is not friable and is currently contained in compliance with Governmental Requirements governing non-friable asbestos contained in such building materials.

(c) Lessee Indemnity. Lessee agrees to indemnify, defend and hold the City, Lessor, Commission, and all of their respective commissioners, members, agents, officers, representatives, directors and employees ("**Indemnified Parties**") harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon any of the following: (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property in violation of Governmental Requirements governing Hazardous Materials, or (ii) the violation, or alleged violation, of Governmental Requirements relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property. The indemnification of the Indemnified Parties by Lessee set forth in this Section 14 shall apply to Hazardous Materials that came to be on, under, in or about the Property during Lessee's lease of the Property (but Lessee's indemnification obligation set forth in this Section 13 shall not apply with respect to Hazardous Materials that came to be on, under, in or about the Property from any adjacent property through no fault of Lessee (including from any adjacent property) or prior to the effective date of the First Amended and Restated Ground Lease or after the later of: (1) termination of this Lease; or (2) Lessee is no longer in possession of the Property or Leasehold). This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. This indemnity provided in this Section 14(c) does not include any condition arising to the extent caused by the action or inaction of any one or more of the Indemnified Parties. Notwithstanding anything contained in this Lease to the contrary, Lessee's duty to indemnify the Indemnified Parties as set forth in this Section 13(c) shall survive and remain an outstanding obligation of Lessee after termination of this Lease for the applicable statute of limitations.

15. Indemnification of Lessor by Lessee.

(a) Definitions. The following definitions are applicable to this Section 15 only:

(1) Claims. “**Claims**” means any and all threatened (in writing), pending or completed claims, actions, suits, proceedings, arbitrations, damages, liabilities, injunctive relief, injuries to person or property, fines, penalties, causes of action, losses, costs, expenses and judgments, whether civil, administrative or investigative, and defending any one or more appeals therefrom, but only if and to the extent brought by an unaffiliated third party against an Indemnified Party.

(2) Expenses. “**Expenses**” means reasonable attorneys’ fees, retainers, court costs, staff time, transcripts, fees of experts, witness fees, arbitration fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all and all other direct or indirect costs and disbursements associated with any Claims, including without limitation expenses of establishing a right to indemnification under this Section 15.

(3) Indemnified Parties. “**Indemnified Parties**” means the City, Commission, Lessor and all of their respective commissioners, members, agents, officers, representatives, directors and employees (individually an “**Indemnified Party**”).

(4) Liabilities. “**Liabilities**” means the obligations (including an obligation incurred by way of settlement) to pay any Claim or Expense on behalf of an Indemnified Party to the third party making the Claim.

(b) Indemnification. Subject to the waiver of subrogation set forth in Section 16(e), and except for those Claims arising directly out of the gross negligence or willful misconduct of an Indemnified Party, Lessee hereby agrees to indemnify, protect and hold harmless the Indemnified Parties from and against any and all Claims both (i) asserted against any Indemnified Party by an unaffiliated third party; and (ii) based on either (A) occurrences occurring on the Property after the date of the First Amended and Restated Ground Lease, or (B) transactions with respect to the Property or the Leasehold between Lessee and third parties other than any Indemnified Party.

(c) Separate Rights of Action. A separate right of action hereunder shall arise each time each Indemnified Party acquires knowledge of any matters described herein. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action.

(d) Right to Defend. Each Indemnified Party shall have the right, but not the obligation, to conduct its own defense with respect to any Claims and to retain legal counsel of its own choosing. Lessee shall pay for or reimburse any such Indemnified Party for any and all Expenses and Liabilities reasonably incurred by such Indemnified Party, as such Expenses and Liabilities are incurred. An Indemnified Party’s election to defend itself as provided in this Section, shall not in any way limit Lessee’s obligation to reimburse and pay for any and all



reasonable Liabilities and Expenses reasonably incurred by the Indemnified Parties with respect to any Claims; provided, however, any Indemnified Party may elect in its sole discretion to demand that Lessee defend and pay all Expenses with respect to any Claims, provided the Claims if determined adversely to such Indemnified Party, would be covered by the foregoing indemnification provisions. Upon any such demand by any Indemnified Party, Lessee shall pay Expenses with respect to such Claims; such defense shall be at Lessee's sole cost and expense and by counsel reasonably approved by such Indemnified Party.

(e) Survival. Lessee's duty to indemnify shall survive and remain an outstanding obligation of Lessee upon the termination of this Lease for the applicable statute of limitations.

(f) Notification of Claims. The Indemnified Parties will promptly notify Lessee in writing of any Claims, including providing copies of any complaint, other pleadings or motion (including supporting papers) pertaining thereto.

16. Required Insurance.

(a) Minimum Requirements. During the Term, Lessee at its sole cost and expense shall:

(1) Keep or cause to be kept a policy or policies of insurance against loss or damage to the Improvements on the Property resulting from fire, windstorm, hail, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage casualty insurance policies. In addition, if Lessee carries coverage voluntarily for additional causes (such as earthquake, riot, civil commotion, or other), such coverage shall be treated in all respects as the policy or policies required to be kept under this Section 16(a)(1), for so long as Lessee continues to voluntarily carry such coverage. All insurance hereunder shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements as defined in Section 16(b).

(2) Maintain or cause to be maintained commercial general liability insurance naming the Commission, Lessor, City and the Leasehold Mortgagees as additional insureds, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, in on or about the Property, the Leasehold or the Improvements; to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, as a result of the acts or omissions of Lessee, its agents, servants or employees alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of Lessee or under its control or direction arising from the use and occupancy of the Property, the Leasehold or the Improvements; and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of Lessee in connection with the Property, the Leasehold the Improvements, or Lessee or its sublessees, or any person acting for Lessee or under its control or direction. Such property damage and personal injury insurance shall also protect Lessor and such additional insureds against incurring any legal cost in defending

claims for alleged loss. Such personal Injury and property damage insurance shall be maintained in full force and effect during the entire Term in an amount of at least Two Million Dollars (\$2,000,000), adjusted for inflation, combined single limit. Lessee agrees that provisions of this paragraph as to liability insurance shall not be construed to limit in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, or the activities of any other person or persons for which Lessee is otherwise responsible.

(3) If Lessee has employees, maintain or cause to be maintained workers' compensation insurance issued by an insurance carrier authorized under the laws of the State of California for workers' compensation and employer's liability under the Workers' Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Lessee in connection with the Property, the Leasehold or the Improvements, and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of, any person incurring or suffering injury or death in connection with the Property, the Leasehold or the Improvements, or the operation thereof by Lessee.

(b) Definition of Full Insurable Value. The term "**full insurable value**" as used in Section 16(a) and elsewhere in this Lease, shall mean the actual replacement cost of the Improvements. To ascertain the amount of coverage required, Lessee shall cause the full insurable value to be determined from time to time by a cost estimator, by the insurer or by any appraiser mutually acceptable to Lessor and Lessee, not less often than once each three (3) years; except that no such appraisals shall be required if the policy is written on a "replacement cost" basis.

(c) General Insurance Provisions. All insurance provided for under Section 16(a)(2) shall be for the benefit of Lessee and the additional insureds described above (i.e., the Commission, Lessor, City and the Leasehold Mortgagees). All insurance provided for under Section 16 shall be periodically reviewed by the parties for the purpose of mutually increasing or decreasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation and in the same location as the Property. All insurance provided for under Section 16 shall be effected under policies issued by insurers licensed or permitted to do business in the state of California and reasonably approved by Lessor, Lessor may not withhold approval of any insurer having a rating of A-VII or better in Best Insurance Guide, or if Best Insurance Guide is no longer in existence, similar or comparable rating. All insurance required to be maintained by Lessee pursuant to Section 16 may be taken out under a blanket insurance policy or policies covering other premises or properties, and other named or additional insureds in addition to the parties hereto; provided, however, that any such policy or policies of blanket insurance, or supplemental written certification from the insurers under such policies, shall specify therein the amount of insurance allocated to the coverage required under Section 16 (except that no such allocation shall be required if coverage is provided on a "blanket limit" basis) and provided further, that in all other respects, any such blanket policy shall comply with the other provisions of Section 16. All certificates of insurance shall provide that such certificates and the policies related thereto shall

not be canceled without at least thirty (30) days' (ten (10) days for non-payment of premium) prior written notice to Lessor. All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the named insureds. Certificates of insurance (and, at Lessor's request, copies of each required policy) shall be deposited with Lessor together with appropriate evidence of payment of the current premiums therefor; and as soon as practicable prior to expiration (but not less than ten (10) days before expiration) of any such policy, certificates of renewal policies shall be so deposited.

(d) Failure to Maintain Insurance. If Lessee fails or refuses to procure or maintain insurance as required by this Lease, Lessor shall have the right, at Lessor's election, to procure and maintain the insurance described in Section 16 for the benefit of Lessee and Lessor. The premiums paid by Lessor shall be treated as supplemental Ground Rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Lessor shall give prompt notice of the payment of such premiums, stating the amount paid and the name of the insured(s) which shall include Lessee

(e) Waiver of Subrogation. Each party waives its right of recovery against the other party, the other party's officers, directors, agents, representatives, employees, partners, members, managers, successors and assigns with respect to any loss or damage, including consequential loss or damage, to the waiving party's property caused by, resulting from or occasioned by any peril or perils covered by any policy or policies carried or required to be carried by the waiving party.

17. Lessor's Right to Perform Lessees Covenants. Lessee covenants and agrees that if it fails to perform any of the covenants contained herein within the time limits provided herein, after any notice of any default has been given, including without limitation any failure to pay any Imposition in accordance with the provisions of Section 10, or to take out, pay for, maintain or deliver any of the insurance policies provided for in Section 16, or to fail to cause any lien of the character referred to in Section 20 to be discharged as provided therein, or shall fail to perform any other act on its part to be performed, then Lessor may (but shall not be obligated to), following 10 days after delivering an additional written notice to Lessee stating that Lessor intends to exercise its self-help remedies pursuant to this Section, but without waiving or releasing Lessee from any obligations of Lessee contained in this Lease contained, (a) pay any Imposition payable by Lessee pursuant to the provisions of Section 10, or (b) take out, pay for and maintain any of its insurance policies provided for in Section 16, or (c) discharge any lien of the character referred to in Section 20 as provided therein, or (d) perform any other act on Lessee's part to be performed as provided in this Lease; provided, however, that so long as a Leasehold Mortgage shall be outstanding, Lessor shall not take any action of the character specified in the foregoing clause "(c)" (except when reasonably necessary to protect its interest in the Property and/or the Improvements, including without limitation enforcement of the Affordability Provisions), or "(d)" until after the written notice specified in Sections 7 and 22 has been given to the Leasehold Mortgagee(s) and the expiration of all cure periods provided in Sections 7 and 22. All sums so paid by Lessor and all necessary incidental costs and expenses paid or incurred by Lessor in connection with the performance of any such act by Lessor, together with interest thereon at the rate of ten percent (10%) per annum from the date of making of such expenditure by Lessor, shall be payable to Lessor on demand or, at the option of Lessor, may be added to any rent then due or thereafter becoming due under this Lease, and Lessee

covenants to pay any such sum or sums, and Lessor shall have (in addition to any other right or remedy of Lessor) the same rights and remedies in the event of the non-payment of any such sums by Lessee as in the case of default by Lessee in the payment of rent.

18. Condemnation.

(a) Total Taking. If, at any time during the Term, there shall be a total taking or a constructive total taking of the fee title to the Property and Improvements in condemnation proceedings or by any right of eminent domain, this Lease shall terminate on the date of such taking and the rent and other charges payable by Lessee under this Lease shall be apportioned and paid to the date of such taking. For the purposes of this Section, the term “**a constructive total taking**” shall mean a taking of such scope that the untaken portion of the Property and Improvements is insufficient to permit the restoration of the existing Improvements so as to constitute a complete, economical project.

(b) Distribution of Proceeds in the Event of a Total Taking. In the event of any such total taking or constructive total taking and the termination of this Lease, the award or awards for such taking, less the costs of the determination and collection of the amount of the award or awards (“**Condemnation Proceeds**”), shall be distributed as follows:

(1) Each permitted Leasehold Mortgage shall first be entitled to as much of the Condemnation Proceeds as shall be necessary to repay its Leasehold Mortgage (with all such proceeds being allocated to the Leasehold Mortgagees in order of their respective lien priority (first to last));

(2) Lessor shall be entitled to receive and retain as its own property, and Lessee hereby assigns to Lessor, such remaining portion of the Condemnation Proceeds as shall equal the fair market value of the Lessor’s interest in this Lease (i.e., the present value of future rent plus the value of Lessor’s reversionary interest).

(3) Lessee shall then be entitled to receive, and Commission hereby assigns to Lessee, the balance of the Condemnation Proceeds, if any.

(c) Partial Taking. In the event of a taking which is less than a total taking or constructive total taking (“**Partial Taking**”), this Lease shall not terminate or be affected in any way, except as provided in Section 18(i), and the Condemnation Proceeds shall (i) first be paid to Lessee for the purpose of performing repairs and restoration pursuant to Section 18(d) (and Lessee shall apply the same to restore, repair, replace or rebuild the Improvements pursuant to Section 18(d)), and then (ii) Lessor shall be entitled to receive and retain as its own property, that portion of the remaining Condemnation Proceeds as shall equal the fair market value of the Lessor’s interest in this Lease with respect to the portion of the Property taken (i.e., the present value of future rent for the portion of the Property taken plus the value of Lessor’s reversionary interest in the portion of the Property taken) (“**Lessor’s Proceeds**”). Lessee shall then be entitled to receive the balance of the Condemnation proceeds (“**Lessee’s Proceeds**”).

(d) Distribution of Proceeds in the Event of a Partial Taking. Subject to Section 18(g), in the event of a Partial Taking, Lessee, at its sole cost and expense, shall proceed with due diligence to restore, repair, replace or rebuild the remaining part of the Improvements to

substantially its former condition or with such changes or alterations reasonably necessary so as to constitute a complete, rentable project.

(e) Partial Termination in the Event of a Partial Taking. In the event of a partial taking, this Lease shall terminate as to the portion of the Property so taken and the rent payable for the balance of the Term shall be reduced by a sum equivalent to the portion of the Property taken, such reduction to be effective as of the date of Lessor's receipt of such Condemnation Proceeds. Until the amount of the reduction of the rent shall have been determined, Lessee shall continue to pay to Lessor the rent provided for in Section 3.

(f) Temporary Taking. If, at any time during the Term, the whole or any part of the Property, the Leasehold, or of the Improvements shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy ("**Temporary Taking**") the foregoing provisions of this Section 18 shall not apply and Lessee shall continue to pay, in the manner at the times specified in this Lease, the full amounts of the rent and other charges payable by Lessee under this Lease, except only to the extent that Lessee may be prevented from so doing pursuant to the terms of the order of the condemning authority. Lessee shall perform and observe all of the other terms, covenants, conditions and obligations of this Lease upon the part of Lessee to be performed and observed, as though such taking had not occurred, except only to the extent that Lessee may be prevented from so doing pursuant to the terms of the order of the condemning authority. In the event of any such Temporary Taking, Lessee shall be entitled to receive the entire amount of the Condemnation Proceeds made for such taking, whether paid by way of damages, rent or otherwise unless such period of temporary use or occupancy shall extend beyond the termination of this Lease, in which case the Condemnation Proceeds shall be apportioned between Lessor and Lessee as of the date of termination of this Lease. Lessee covenants that, upon the expiration of any such period of temporary use or occupancy during the Term, it will, at its sole cost and expense, restore the Improvements (if the nature of the temporary taking results in the need for restoration), as nearly as may be reasonably possible, to the condition in which the same was immediately prior to such taking, wear and tear during such temporary use or occupancy excepted. To the extent that Lessor receives any portion of the Condemnation Proceeds as compensation for the cost of restoration or repair of the Improvements, Lessor shall pay such sum to Lessee and Lessee shall use such amount solely for restoration of the Improvements by Lessee as provided above. Any such amount not used for restoration of the Improvements by Lessee shall be returned to Lessor. Any portion of the Condemnation Proceeds received by Lessee as compensation for the cost of restoration of the Improvements shall, if such period of temporary use or occupancy shall extend beyond the Term, be paid to Lessor on the date of termination of this Lease.

(g) Lessor Consent to Distribution to Leasehold Mortgagee. If Lessee shall assign to any Leasehold Mortgagee any Condemnation Proceeds to which Lessee or such Leasehold Mortgagee is entitled, Lessor shall recognize such assignment and shall consent to the payment of the Condemnation Proceeds to such assignee as its interest may appear.

(h) Lessee Participation in Condemnation Proceedings. Lessor shall provide reasonable prior notice to Lessee and any Leasehold Mortgagee of any proceedings for adjustment or adjudication of any condemnation claim involving the Property and Lessee and any Leasehold Mortgagee shall have the right to participate in any condemnation proceeding for



the sole and limited purpose of protecting their rights under this Lease, and in this connection, specifically and without limitation to introduce evidence independently of Lessor to establish the value of the Leasehold or damage to the Improvements.

(i) Notwithstanding anything to the contrary contained in this Lease, if:

(1) there is a Partial Taking of the Improvements during the last five (5) years of the Term and either (1) the cost of repairing and restoring pursuant to Section 18(d) exceeds the cost of demolishing and removing the remaining Improvements, or (2) the time required to complete repairs and restoration pursuant to Section 18(d) would exceed 12 months, commencing on the date of such Partial Taking of the Improvements; or

(2) there is a Partial Taking of the Improvements (1) for which the proceeds made available to Lessee pursuant to item "(i)" of Section 18(c) are less than 100% of the cost to repair and restore pursuant to Section 18(d), and (2) the cost to Lessee of repairing and restoring pursuant to Section 18(d), to the extent not covered by the proceeds made available to Lessee pursuant to item "(i)" of Section 18(c), exceeds the cost of demolishing and removing the remaining Improvements after the effect of such Partial Taking of the Improvements; or

(3) there is a partial taking of the Improvements and the Governmental Restrictions then in effect with respect to the Property prohibit the construction of economically viable replacement Improvements with respect to a use which Lessee either has the right to engage in under this Lease or which the Lessee desires to engage in and Lessor will permit to be engaged in,

then, in each case, Lessee shall have the option to terminate this Lease, subject to Lessee's satisfaction of each of the following requirements: (A) Lessee shall, within ninety (90) days after the event giving rise to such right to terminate, give Lessor written notice of Lessee's election to terminate ("Notice of Election to Terminate"); and (B) Lessee shall, at the election of Lessor (which election shall be communicated in writing to Lessee ("Demolition Notice") within thirty (30) days after Lessor's receipt of the Notice of Election to Terminate), raze and remove the remaining Improvements and any other Improvements that Lessor may designate in the Demolition Notice, and shall complete said demolition and removal and shall vacate the Leasehold within ninety (90) days after Lessor's delivery of the Demolition Notice (which vacation date shall be the termination date of this Lease). Any and all proceeds recovered as a result of such partial taking of the Improvements which are paid to Lessee as a result of the partial taking of the Improvements giving rise to the termination, shall be distributed to the Lessor to the extent such proceeds (if any) remain after payment to any Leasehold Mortgagees, payment for the cost of razing and removing the Improvements pursuant to this Section and payment to Lessee for the unamortized out-of-pocket cost of Improvements made by Lessee, including the Minimum Capital Improvements, amortized over the period equal to the lesser of the useful life of such Improvements or the remaining Term of this Lease (including any options to extend the Term).

19. Maintenance and Alteration of Improvements. Lessee shall have the right to improve or alter the Property in the ordinary course of business consistent with the uses permitted hereunder or repair and maintain the Improvements without the Lessor's consent. Notwithstanding the foregoing, except for the Minimum Capital Improvements, Lessee agrees not to demolish or otherwise materially alter any portion of the Improvements and not to construct or install any buildings or structures on the Property, the Leasehold or otherwise materially improve or alter the Property or the Leasehold in any manner except in accordance with a scope of work submitted to Lessor and approved by Lessor in writing. Lessee shall not make any major structural or architectural design alterations to approved buildings, structures or improvement installed on the Property or the Leasehold except in accordance with the scope of work previously approved in writing by Lessor. This provision shall not limit or set aside any obligation of Lessee under this Lease to maintain the Property and the Improvements during the entire Term in a good, safe, healthy and sanitary condition free from defects and code violations, including structural repair and, subject to Section 13, restoration of damaged or worn Improvements. Lessor shall not be obligated to make any improvements or alterations to the Property or the Improvements or to assume any expenses therefor. Any such changes or alterations shall be made in all cases subject to the following conditions which Lessee covenants to observe and perform:

(a) No construction, change or alteration shall be undertaken until Lessee shall have procured and paid for, so far as the same may be required, from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction and Lessor agrees, at no cost to Lessor, to join in the application for such permits or authorizations whenever such action is necessary.

(b) Any construction, change or alteration of the Project and/or Property shall be conducted under the supervision of an architect or engineer licensed as such in the State of California (who may be an employee of Lessee) selected by Lessee and plans therefor shall be submitted to Lessor, in order to give Lessor an opportunity to determine that such construction, change or alteration will comply with the provisions of this Section 19.

(c) All construction, changes and alterations shall be of such a character that, when completed, the value and utility of the Improvements shall be not less than the value and utility of the Improvements immediately before any such construction, change or alteration; Lessee shall, prior to the commencement of demolition or construction submit to Lessor preliminary drawings and outline specifications to be approved by Lessor which approval shall not be unreasonably withheld, conditioned or delayed and which shall have reference only to establishing that such new Improvements will be of a value not substantially less than the value of the Improvements to be demolished and that such new Improvements, when completed, will constitute all or a part of a completed rentable project capable of producing a fair and reasonable net annual income, after payment of all Operating Expenses.

(d) All work done in connection with any construction, change or alteration shall be done in a good and workmanlike manner and in compliance with all applicable Governmental Requirements. The cost of all such construction, change or alteration shall be paid in cash or its

equivalent, so that the Property, the Leasehold and the Improvements shall at all times be free of liens for labor and materials supplied or claimed to have been supplied or such liens shall be bonded-over to Lessor's reasonable satisfaction. The work of any construction, change or alteration shall be prosecuted with reasonable dispatch, unavoidable delays excepted. Worker's compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against the Commission, City, Lessor, Lessee or the Property, the Leasehold or the Improvements, and general liability and property damage insurance (which may be effected by endorsement, if obtainable, on the insurance required to be carried as provided in this Lease) for the mutual benefit of Lessee and Lessor with limits of not less than those required to be carried as provided in this Lease, shall be maintained by Lessee at Lessee's sole cost and expense at all times when any work is in process in connection with any construction, change or alteration.

20. Mechanic's Liens. Lessee shall not suffer or permit any mechanic's, vendor's, laborer's, or materialman's statutory or similar liens (collectively "**Mechanic's Liens**") to be filed against the Property, the Leasehold or the Improvements, nor against the Leasehold, by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding any interest in the Property, the Leasehold and/or the Improvements or any part thereof through or under Lessee. If any such Mechanic's Lien shall be filed, Lessee shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise; provided, however, that Lessee shall have the right to contest, with due diligence, the validity or amount of any such lien or claimed lien, if Lessee posts a bond and causes the lien to be released from the Property, the Leasehold or the Improvements. Subject to the foregoing provisions, if Lessee fails to cause such lien to be discharged within such 30-day period, then, in addition to any other right or remedy of Lessor, Lessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Lessor, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvements, alteration to or repair of the Property or the Improvements or any part thereof, nor as giving Lessee a right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any Mechanic's Liens against the Property, the Leasehold or the Improvements.

21. Lessee to Use Property in a Lawful Manner.

(a) Lawful Uses Only. Lessee shall not use or allow the Improvements or the Property or any parts thereof, to be used or occupied for any unlawful purpose or for any dangerous or noxious trade or business.

(b) Delivery to Lessor Upon Termination. Upon termination of this Lease, Lessee shall surrender to Lessor the Property and the Improvements, in good order and repair, reasonable wear and tear, damage by casualty and the effect of condemnation excepted, and also except as Lessee may have been prevented from maintaining the Improvements in good order and repair by occupation of the Improvements by any governmental or quasi-governmental entity which has taken the temporary use of the Improvements and shall then be in possession of the



Improvements. Upon such termination, Lessee shall also deliver to Lessor all leases, lease files, plans, records, registers and all other papers and documents which may be necessary or appropriate for the proper operation and management of the Property and the Improvements; provided, however, Lessee shall not be obligated to deliver internal, confidential or privileged communications or work product.

(c) Inspection. Lessee agrees to permit Lessor and the authorized representatives of Lessor and the holder of any mortgage or deed of trust encumbering Lessor's fee title interest in the Property ("**Fee Mortgage**") to enter the Property or the Improvements upon reasonable advance notice of at least two (2) business days for the purpose of inspecting the same or exhibiting the same to prospective purchasers of the Property.

## 22. Bankruptcy and Other Events of Default.

(a) Termination of Lease in Event of Bankruptcy. Lessee agrees that in the event all or substantially all of Lessee's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of thirty (30) days, or should Lessee make an assignment for the benefit of creditors or be finally adjudicated a bankrupt, or should Lessee institute any proceeding under the Federal Bankruptcy Code as the same now exists or under any amendment thereof which may hereafter be enacted, or under any other act relating to the subject of bankruptcy, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization, or should any involuntary proceeding be filed against Lessee under any such bankruptcy laws and such proceeding is not dismissed within ninety (90) days thereafter (each an "**Event of Default**"), then this Lease and any interests of Lessee in and to the Property and the Leasehold shall not become an asset in any of such proceedings and (i) such event shall constitute an Event of Default hereunder and (ii) subject to Lessee and Leasehold Mortgagee cure rights, in addition to any and all other rights or remedies of Lessor under this Lease or as otherwise provided by law, it shall be lawful for Lessor to declare the Term ended and to reenter the Property and take possession thereof and remove all persons therefrom, and Lessee shall have no further claim thereon or hereunder.

(b) Events of Default. In addition to any Events of Default set forth in Section 22(a), each of the following shall be an Event of Default, if the same is not cured prior to the expiration of the cure periods set forth in this Section 22(b), if any: (i) Lessee at any time is in default with respect to any rental payments or other charges payable by Lessee under this Lease, and if such default continues for a period of ten (10) days after written notice from Lessor to Lessee; (ii) Lessee is in default in the prompt and full performance of any other of its promises, covenants or agreements contained in this Lease and such default or breach of performance continues for more than thirty (30) days after written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, provided, however, that if such default or breach is not reasonably capable of being cured by Lessee within such thirty (30) day period, Lessee shall have such additional time to cure such default or breach as may be reasonably required by Lessee to cure such default or breach; (iii) Lessee abandons the Property or the Leasehold; or (iv) Lessee breaches the Affordability Provisions hereof, and such breach continues for a period of thirty (30) days after written notice from Lessor to Lessee, provided, however, that if such default or breach is not reasonably capable of being cured by Lessee within such thirty (30) day period, Lessee shall have such additional time not to exceed ninety (90) days to cure such default or

breach as may be reasonably required by Lessee to cure such default or breach. Upon the occurrence of any one or more of the foregoing Events of Default (and the expiration of any cure periods applicable to Leasehold Mortgagees as set forth in Section 22(c)), Lessor shall, in addition to any or all other rights or remedies of Lessor under this Lease or as otherwise permitted by law, at the option of Lessor, without further notice or demand of any kind to Lessee, have the following rights:

(1) The right of Lessor to declare the Term ended, to declare this Lease terminated and to reenter the Property and take possession thereof and remove all persons therefrom, and Lessee shall have no further claim thereon or thereunder.

(2) The right of Lessor without declaring this Lease ended to reenter the Property and occupy the whole or any part thereof for and on account of Lessee and to collect the rent and any other charges that may thereafter become payable.

(3) The right of Lessor, even though it may have reentered the Property, to thereafter elect to terminate this Lease and all of the rights of Lessee in or to the Property and the Leasehold.

(c) Leasehold Mortgagee Cure Rights.

(1) Notice to Leasehold Mortgagees. Lessor will give to any Leasehold Mortgagee that has delivered to Lessor prior written notice of the address of such Leasehold Mortgagee, a copy of any notice or other communication from Lessor to Lessee under this Section 22 at the time of giving such notice or communication to Lessee.

(2) Leasehold Mortgagee Cure Periods. No Leasehold Mortgagee shall have the obligation to cure any Event of Default by Lessee described in Section 22(a). Lessor shall give to each Leasehold Mortgagee prompt written notice of the occurrence of an Event of Default. In the case of an Event of Default by Lessee in the payment of money, Lessor will not take any action to exercise any remedy by reason thereof, unless such Event of Default is not cured by any Leasehold Mortgagee within thirty (30) days after Lessor gives each Leasehold Mortgagee written notice of such Event of Default. In the case of any Event of Default by Lessee other than a default in the payment of money and other than an Event of Default by Lessee described in Section 22(a), Lessor will not take any action to exercise any remedy by reason thereof, unless such Event of Default is not cured by any Leasehold Mortgagee within ninety (90) days after Lessor gives each Leasehold Mortgagee written notice of such Event of Default; provided, however, that if any Leasehold Mortgagee commences to cure the non-monetary default within such ninety (90) day period and thereafter diligently prosecutes the same to completion, then such Leasehold Mortgagee shall have such longer period of time as is necessary to cure such Event of Default, not to exceed one hundred fifty (150) days from the date Lessor gives each Leasehold Mortgagee written notice of such Event of Default (except as otherwise provided in Section 22(c)(3)).

(3) Leasehold Mortgagee Cure Rights. In the event that any Event of Default is cured by a Leasehold Mortgagee, as set forth in Section 22(c)(2), Lessor shall accept such performance on the part of such Leasehold Mortgagee as though the same had been done or performed by Lessee. For such purpose, Lessor and Lessee hereby authorize such Leasehold Mortgagee to enter upon the Property and to exercise any of its rights and powers under this Lease. The commencement of judicial or non-judicial foreclosure proceedings by a Leasehold Mortgagee shall be deemed the commencement of a cure, as provided in Section 22(c)(2), so long as the Leasehold Mortgagee thereafter diligently prosecutes the same to completion; provided, however, the time period set forth above shall be tolled during the period such foreclosure proceedings are pending; and provided further, if the default is cured by Lessee or another person, Lessor will accept such cure and the Leasehold Mortgagee may discontinue such proceedings and/or possession. If a Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceeding involving Lessee, from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings for the Leasehold Mortgagee shall be extended for the period of such prohibition. Following the acquisition of the Leasehold by the Leasehold Mortgagee, or its designee, either as a result of judicial foreclosure or trustee sale proceedings or acceptance of an assignment in lieu of foreclosure, the Leasehold Mortgagee or party acquiring title to the Leasehold shall, within ninety (90) days thereafter, commence to cure all defaults hereunder reasonably susceptible of being cured by the Leasehold Mortgagee and thereafter diligently process such cure to completion. During the period that such Leasehold Mortgagee shall be in possession of the Leasehold and/or during the pendency of any foreclosure proceedings instituted by any Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid the Ground Rent and all other charges of whatsoever nature which are payable by Lessee hereunder which accrue during said period (subject to the notice and cure provisions contained in this Lease). Any purchaser at any foreclosure sale, including, without limitation, any Leasehold Mortgagee, shall be liable to perform only the obligations imposed on Lessee by this Lease incurred or accrued during the period such person has ownership of the Leasehold. Notwithstanding anything to the contrary contained elsewhere herein, on transfer of the Leasehold estate created by this Lease at any foreclosure sale under any Leasehold Mortgage (or by deed or assignment in lieu of foreclosure), or upon creation of a new Lease, all of the following defaults and Events of Default relating to any prior owner of the Leasehold estate created under this Lease shall automatically be deemed cured:

(i) Any failure by any prior Lessee to make a disclosure of a hazardous substance release as required by the California Health and Safety Code, this Lease or otherwise;

(ii) Any default in the payment of rent, any default under any provision restricting transfers, encumbrances or similar matters, and any default resulting from a default under any other document, instrument or agreement;

(iii) Any breach of any representation or warranty given by any prior Lessee;

(iv) Any other defaults personal to any prior Lessee and/or not otherwise reasonably curable by each Leasehold Mortgagee;

(v) Attachment, execution or other judicial levy upon this Lease or the Leasehold estate hereby created, provided such attachment, execution or levy either (i) was commenced or occurred at the direction or request of the Leasehold Mortgagee in question, or (ii) would be subject and subordinate to the Leasehold Mortgage in question;

(vi) Assignment of this Lease or the Leasehold estate hereby created for the direct or indirect benefit of creditors of any prior Lessee (provided such assignment, as a matter of law or contract) is or was subject to the Leasehold Mortgage in question);

(vii) Judicial appointment of a receiver or similar officer to take possession of property of any prior Lessee (other than the Property); and

(viii) Filing any petition by, for or against any prior Lessee (or any affiliate) under any chapter of the federal Bankruptcy Act or any federal or state debtor relief statute, as amended.

(4) New Ground Lease Agreement With Leasehold Mortgagee. After the expiration of any applicable grace period given Lessee and each Leasehold Mortgagee under this Lease to cure a default, in the event that this Lease is terminated for any reason, including, without limitation, any termination or rejection through bankruptcy proceedings, Lessor shall give each Leasehold Mortgagee prompt written notice of such termination. Each Leasehold Mortgagee or its assignee shall have the right within sixty (60) days after receipt of such notice of termination, to request and obtain from Lessor a new lease to replace this Lease; provided however, that should more than one Leasehold Mortgagee make such demand, only the senior-most Leasehold Mortgagee's demand shall be honored by Lessor. Such new lease shall be for a term equal to the remainder of the Term before giving effect to such termination and shall contain the same covenants, agreements, terms, provisions and limitations as this Lease. Such new lease shall be executed and delivered by Lessor to such requesting Leasehold Mortgagee or its assignee within thirty (30) days after receipt by Lessor of written notice from such Leasehold Mortgagee of such election and upon payment by such Leasehold Mortgagee of all sums owing by Lessee under the provisions of this Lease (subject to Section 22(c)(3)(ii) and less the rent and other income actually collected by Lessor in the meantime from any sublessees or other occupants of the Premises). In connection with such a new Lease, Lessor shall assign to Leasehold Mortgagee or its nominee all of Lessor's interest in all existing subleases of all or any part of the Property and all attornments given by the sublessees, provided that such Leasehold Mortgagee assumes Lessee's obligations as sublandlord under any subleases then in effect to the extent such assumption is necessary in order to continue such subleases in effect. Lessor shall not terminate or agree to terminate any sublease or enter into any new lease or sublease for all or any portion of the Property without such Leasehold Mortgagee's prior written consent, unless such Leasehold Mortgagee fails to timely deliver request for a new Lease under this Section.

In connection with any such new Lease, Lessor shall also, by grant deed, convey to the applicable Leasehold Mortgagee or its nominee fee title to the Improvements, if any, which become vested in Lessor as a result of termination of this Lease. Upon the execution and delivery of such new lease, the new "Lessee" may take all appropriate steps as shall be necessary to remove the terminated Lessee from the Leasehold and the Improvements, but Lessor shall not be subject to any liability for the payments of fees, including attorneys' fees, costs or expenses in connection with such removal; and such new "Lessee" shall pay all fees, including attorneys' fees costs and expenses reasonably incurred by Lessor (or, on demand, make reimbursements therefor to Lessor).

(d) Reentry Not Termination of Lease. If Lessor has reentered the Property under the provisions of Section 22(b)(2), Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee to pay rent thereafter to accrue, or its liability for damages under any of the provisions of this Lease, by any such reentry or by any action in unlawful detainer, or otherwise, to obtain possession of the Property, unless Lessor shall have notified Lessee in writing that it has so elected to terminate this Lease. In the event of any entry or taking possession of the Property as provided above, Lessor shall have the right, but not the obligation, to remove from the Property all or any part of the personal property of Lessee located therein (distinguished from the personal property of residents) and may place the same in storage at a public warehouse at the expense and risk of the owner or owners thereof.

(e) Termination of Lease. If Lessor terminates this Lease under the provisions of Subsections 22(b)(1) or (3), Lessor may recover from Lessee as damages:

(1) the value at the time of award of any unpaid rent which had been earned at the time of such termination;

(2) the value at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Lessee proves could have been reasonably avoided;

(3) the value 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 Lessee proves could be reasonably avoided;

(4) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Lessor in maintaining or preserving the Property or the Leasehold after such default, preparing the Improvements for reletting to a new resident, any repairs or alterations to the Improvements for such reletting, leasing commissions, or any other costs necessary or appropriate to relet the Property; and

(5) at Lessor's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time at law or in equity.



The foregoing notwithstanding, the parties expressly agree that Lessee shall not be liable for accrued Ground Rent in excess of \$3,000,000.00; provided, however, such \$3,000,000.00 cap shall be adjusted for any judgment in a year following 2022 by the CPI using the methodology set forth in Section 3(a).

(f) Value at the Time of Award Defined. As used in Subsections 22(e)(1) and (2), the “**value at the time of award**” is computed by allowing interest at the rate of ten percent (10%) per annum. As used in Subsection 22(e)(3), the “**value at the time of award**” is computed by discounting such amount at the discount rate of the San Francisco Federal Reserve Bank, at the time of award, plus one percent.

(g) Furniture, Fixtures and Equipment. In the Event of Default, after expiration of the notice and cure periods afforded to Lessee and all Leasehold Mortgagees under this Lease and subject to the rights of Leasehold Mortgagees, all of Lessee’s fixtures, furniture, equipment, improvements, additions, alterations, and other personal property shall remain on the Property and in that event, and continuing during the length of such default, Lessor shall have the right, subject to Governmental Requirements, to take the exclusive possession of same and to use same, rent or charge free, until all defaults are cured or, at its option, at any time during the Term, to require Lessee to forthwith remove Lessee’s fixtures, furniture, equipment and other personal property.

(h) Reentry Upon Termination. Upon the termination of this Lease pursuant to any of the provisions of this Section 21, it shall be lawful for Lessor, without formal demand or notice of any kind, to re-enter the Property and the Improvements by summary dispossession proceedings or any other action or proceeding authorized by law, to remove Lessee therefrom.

(i) Compliance. Lessor shall not be deemed to be in default in the performance of any obligation required to be performed by it under this Lease until it has failed to perform such obligation within thirty (30) days after written notice by Lessee to Lessor specifying the nature of Lessor’s default; provided, however, that if the nature of Lessor’s obligation is such that more than thirty (30) days are required for its performance, then Lessor shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

23. Limitation of Lessor Liability. The term “Lessor” as used in this Lease, so far as covenants or obligations on the part of Lessor are concerned shall be limited to mean and include only the owner or owners at the time in question of the fee of the Property and in the event of any transfer or transfers of the title to such fee, Lessor herein named (and in case of any subsequent transfers or conveyances the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance from all obligations on the part of Lessor contained in this Lease to be performed thereafter, provided that any prepaid rent or trust funds in the hands of such Lessor or the then grantor at the time of such transfer, shall be transferred to the grantee or transferee, who shall expressly assume, subject to the limitations of this Section, all of the terms, covenants and conditions in this Lease contained on the part of Lessor thereafter to be performed, it being intended by this Section that the covenants and obligations contained in this Lease on the part of Lessor shall, subject to the provisions of this Section 23, be binding on



Lessor, its successors and assigns, only during and in respect of their respective successive periods of ownership.

24. Estoppel Certificates.

(a) By Lessee. Lessee agrees at any time and from time to time upon not less than twenty (20) days prior notice by Lessor to execute, acknowledge and deliver to Lessor a statement in writing (i) certifying 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 stating the modifications), and the dates to which the rent has been paid; and (ii) stating whether or not to the then-current actual knowledge of the signer of such statement (who must be a person within Lessee's organization with knowledge of the day-to-day matters pertaining to this Lease and the operation of the Project) Lessee is then in default or may be in default with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease, and, if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied upon by Lessor or any prospective purchaser of the fee or any Fee Mortgage (defined in Section 21(c)) thereof or any assignee of any Fee Mortgage but reliance on such statement may not extend to any default as to which the signer shall have had no actual knowledge.

(b) By Lessor. Lessor agrees at any time and from time to time upon not less than twenty (20) days prior notice by Lessee or any Leasehold Mortgagee to execute, acknowledge and deliver to Lessee a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications) and the dates to which the rent has been paid; and (ii) stating whether or not to the then-current actual knowledge of the signer of such statement (who must be a person within Lessor's organization with knowledge of the day-to-day matters pertaining to this Lease) Lessee is then in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and, if Lessee is in default, specifying each such default of which the signer may have knowledge, it being intended that such statement delivered pursuant to this Section may be relied upon by any prospective transferee of Lessee's interest in this Lease and the Improvements or any Leasehold Mortgagee or any assignee of any Leasehold Mortgage, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge.

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Lessor: Housing Authority of the City of San Diego  
C/O San Diego Housing Commission  
Attn: President & CEO  
1122 Broadway, Suite 300  
San Diego, CA 92101  
Re: Mariner's Cove Ground Lease

Copy to: San Diego Housing Commission  
Attn: Deborah Ruane, Sr. Vice President  
1122 Broadway, Suite 300  
San Diego, CA 92101  
Re: Mariner's Cove Ground Lease

Copy to: Christensen & Spath LLP  
550 West C Street, Suite 1660  
San Diego, CA 92101  
Re: Mariner's Cove Ground Lease  
(provided that the effectiveness of a notice  
delivered to Lessor is not conditioned on  
delivery to Christensen & Spath LLP  
or other counsel retained by Lessor)

Lessee: Lincoln Mariners Associates Limited  
c/o Apartment Investment and Management Company  
4582 S. Ulster Street, Suite 1100  
Denver, CO 80237  
Attn: General Counsel  
Re: Mariner's Cove Ground Lease

Copy to: Lincoln Mariners Associates Limited  
c/o Apartment Investment and Management Company  
4582 S. Ulster Street, Suite 1100  
Denver, CO 80237  
Attn: Chief Administrative Officer  
Re: Mariner's Cove Ground Lease  
(provided that the effectiveness of a notice  
delivered to Lessee is not conditioned on  
delivery to the Chief Administrative Officer)

26. General Conditions.

(a) Remedies Cumulative. The specified remedies to which a party may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the party may be lawfully entitled in case of any breach or threatened breach by the other party of any provision of this Lease. The failure of a party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option contained in this Lease shall not be construed as a waiver or a relinquishment for the future of such covenant or option.

(b) No Waiver. A receipt by Lessor of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach, and no waiver by a party of any provision of this Lease shall be deemed to have been made unless expressly in writing and signed by the waiving party. In addition to the other remedies provided in this Lease, a party shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions or provisions of this Lease.

(c) Amendments. No waiver, modification, amendment, discharge or change of this Lease shall be valid unless it is in writing and signed by Lessor and Lessee and consented to by each Leasehold Mortgagee, if any.

(d) No Real Estate Brokers. Each of Lessor and Lessee hereby represents and warrants that it has dealt with no real estate broker, agent or party who may be entitled to a Lessor or fee on account of this Lease. Each of Lessor and Lessee hereby indemnifies and agrees to hold the other party harmless from and against any loss, cost, liability and expense, including attorneys' fees, which may be incurred in the event the foregoing representation and warranty proves incorrect.

(e) Representations. Lessor hereby disclaims any warranty, guaranty or representation of the nature and condition of the Property, including (but not by way of limitation) the soil and geology and suitability thereof for any and all activities and uses which Lessee may elect to conduct thereon at any time during the Term, the manner of construction and the conditions and state of repair or lack of repair of all improvements located thereon, and the nature and extent of the rights of others with respect to the Property, whether by way of easement, right of way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise.

(f) Captions. The captions in this Lease are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Lease or any of the provisions of this Lease.

(g) Invalidity of Particular Provisions. If any term or provision of this Lease or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by Governmental Requirements.

(h) Successors Bound. Subject to the other provisions of this Lease, this Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective legal representatives, successors, heirs and permitted assigns, and wherever a reference in this Lease is made to either Lessor or Lessee, such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such party, as if in every case so expressed.

(i) Recordation. This Lease shall be recorded as an encumbrance against the Property in the Office of the County Recorder of San Diego County, California.

(j) Governing Law. This Lease shall be interpreted and construed in accordance with California law.

(k) Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(l) Entire Agreement. This Lease, together with any written modifications or amendments hereafter entered into contain the entire agreement between the parties relating to the transactions contemplated by this Lease and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded.

(m) No Third-Party Rights. Nothing in this Lease, express or implied, is intended to confer upon any person, other than the parties to this Lease, the Leasehold Mortgagees (who are third-party beneficiaries of this Lease) and their respective successors and assigns, any rights or remedies.

(n) Time Of Essence. Time is of the essence in this Lease.

(o) Attorneys' Fees. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Lease shall be entitled to their expert witness fees, if any, as part of their costs of suit, and attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP Section 998. All claims, disputes, causes of action or controversies shall be subject solely to the jurisdiction of the San Diego Superior Court.

(p) Relationship. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between Lessor and Lessee or between either or both of them and any third party.

(q) Lessor Approval. Where this Lease refers to an action or approval of Lessor, it shall mean the approval of the President and CEO of the Commission, or designee, unless otherwise required by law. Any provision of this Lease which provides for the Lessor's approval shall be subject to the following procedure: (i) Lessee shall provide the Lessor with written notice of Lessee's request for the approval in reasonable detail and with supporting documentation as reasonably necessary; (ii) within 30 days after the Lessor's receipt of such written notice, Lessor shall notify Lessee of Lessor's approval or disapproval; provided, however, if such approval by Lessor must be made or ratified by the board of Lessor or by the

City of San Diego City Council, then (A) such 30-day period shall be deemed extended for such time as is reasonably required for the board of the Lessor or the City of San Diego City Council to approve or disapprove the same, and (B) Lessor shall make good-faith efforts for the request for approval to be placed on the agendas of the board of Lessor or the City of San Diego City Council, as applicable, as soon as reasonably practicable; and (iii) in the event Lessor fails to provide Lessee with written notice of the Lessor's approval or disapproval within such 30-day period (or such longer time as set forth in (ii), above), Lessee's request shall be deemed approved.

(r) Exhibits and Recitals Incorporated. All exhibits referred to in this Lease are hereby incorporated in this Lease by this reference, regardless of whether or not the exhibits are actually attached to this Lease. The Recitals to this Lease are hereby incorporated in this Lease by this reference.

(s) No Merger of Lease With the Fee Estate. There shall be no merger of this Lease or any interest in this Lease, nor of the Leasehold, with the fee estate in the Property for any reason.

(t) Signature Authority. All individuals signing this Lease for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to one another that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

(u) Mediation and Binding Arbitration. Prior to filing for any arbitration as set forth in this Section 26(u), the parties shall mediate the dispute before a mutually acceptable mediator. If the parties are unable to agree on a mediator, then the mediator shall be selected according to the rules of the American Arbitration Association for selecting mediators. In the event the dispute is not settled through mediation, then any controversy arising out of or related to this Lease or the breach thereof which cannot be settled in accordance with any other terms of this Lease, shall be resolved as follows:

(1) Where the total sum in dispute is \$100,000.00 or greater, said controversy or breach shall be settled by binding arbitration in San Diego in accordance with the rules of the American Arbitration Association, and any judgment entered upon the award rendered be enforced by appropriate judicial action pursuant to the California Code of Civil Procedure. The arbitration panel shall consist of three (3) members, one selected by each party to the dispute within thirty (30) days following notice by one party that it desired that a matter be arbitrated, and the third selected by the first two members within thirty (30) days after their selection. The arbitration panel shall determine which party shall bear any attorneys' fees, any fees and expenses of the arbitration and any other tribunal fees and expenses. Each party shall bear its own costs of producing witnesses on its behalf and any other cost or expenses incurred by it. The arbitration panel shall render a decision within thirty (30) days following the close of presentation by the parties of their cases and any rebuttal.

(2) Where the total sum in dispute is less than \$100,000.00, said controversy or breach shall be settled by binding arbitration as described in Section 26(u)(1), except that in lieu of an arbitration panel, there shall be a sole arbitrator, provided the parties are able to reach agreement on the selection of said arbitrator. In the event the parties are unable to reach agreement on the selection of the sole arbitrator as referred to above, either party may seek appropriate judicial action.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

**LESSEE:**

Lincoln Mariners Associates Limited, a California limited partnership

By: LAC Properties GP II Limited Partnership,  
a Delaware limited partnership, its operating general partner

By: LAC Property QRS II Inc.,  
A Delaware corporation, its general partner

By: Paul Benson  
Name: PAUL BENSON  
Title: CEO

By: Miles Cortez  
Name: MILES CORTEZ  
Title: EXECUTIVE VICE PRESIDENT

By: Social Services & Affordable Housing Corporation,  
its managing general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LESSOR:**

Housing Authority of the City of San Diego, a Body Corporate and Politic

By: San Diego Housing Commission, a public agency, its administrative agent

By: \_\_\_\_\_  
Richard C. Gentry, President & CEO



(2) Where the total sum in dispute is less than \$100,000.00, said controversy or breach shall be settled by binding arbitration as described in Section 26(u)(1), except that in lieu of an arbitration panel, there shall be a sole arbitrator, provided the parties are able to reach agreement on the selection of said arbitrator. In the event the parties are unable to reach agreement on the selection of the sole arbitrator as referred to above, either party may seek appropriate judicial action.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

**LESSEE:**

Lincoln Mariners Associates Limited, a California limited partnership

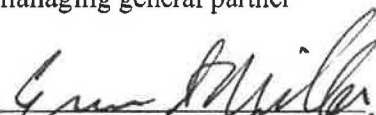
By: LAC Properties GP II Limited Partnership,  
a Delaware limited partnership, its operating general partner

By: LAC Property QRS II Inc.,  
A Delaware corporation, its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


By: Social Services & Affordable Housing Corporation,  
its managing general partner

By:   
Name: ERIC F. MILLER  
Title: ASSISTANT SECRETARY

**LESSOR:**

Housing Authority of the City of San Diego, a Body Corporate and Politic


By: San Diego Housing Commission, a public agency, its administrative agent

By:   
Richard C. Gentry, President & CEO

**APPROVED AS TO FORM:**

Christensen & Spath LLP


By: \_\_\_\_\_

  
Walter F. Spath III  
General Counsel for San Diego Housing  
Commission, administrative agent for  
Lessor

**APPROVED AS TO FORM:**

Hecht Solberg Robinson Goldberg & Bagley  
LLP

By: \_\_\_\_\_

  
Michael J. Maher  
Attorney for Lessee

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF COLORADO )  
~~CALIFORNIA~~ ) ss.  
COUNTY OF DENVER )

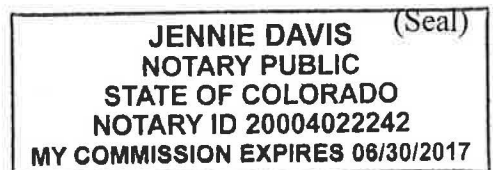
On OCTOBER 12, 2015, before me, JENNIE DAVIS,  
NOTARY PUBLIC (insert name and title of the officer)  
personally appeared PAUL BELDIN,

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

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

WITNESS my hand and official seal.

Signature Jennie Davis



**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**COLORADO**  
STATE OF ~~CALIFORNIA~~ )  
 ) ss.  
COUNTY OF DENVER )

On OCTOBER 12, 2015, before me, JENNIE DAVIS,  
NOTARY PUBLIC (insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Jennie Davis

JENNIE DAVIS  
NOTARY PUBLIC  
STATE OF COLORADO (Seal)  
NOTARY ID 20004022242  
MY COMMISSION EXPIRES 06/30/2017

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss.

On October 12, 2015, before me, NANCY WONG, NOTARY PUBLIC  
 \_\_\_\_\_ (insert name and title of the officer)

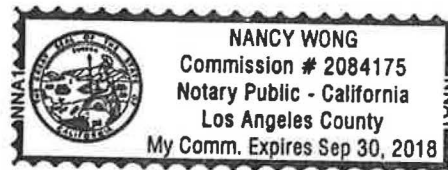
personally appeared ERIC S. MILLER,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their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

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

WITNESS my hand and official seal.

Signature

W. J.



(Seal)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
                                                          ) ss.  
COUNTY OF San Diego            )

On October 19, 2015, before me, Angela G. Risotti, Notary Public  
\_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Angela G. Risotti



(Seal)



**Exhibit "A"**

PARCEL 2 OF PARCEL MAP NO. 12389, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 22, 1982.

APN: 760-102-38 AND 441-090-43