

MULTIFAMILY GROUND LEASE AGREEMENT

Between

CITY OF SAN LEANDRO

(“LANDLORD”)

And

[CAL COAST ENTITY]

(“TENANT”)

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MULTIFAMILY GROUND LEASE AGREEMENT

THIS MULTIFAMILY GROUND LEASE AGREEMENT (hereinafter referred to as this “Lease”) is made and entered into this _____ day of _____, 202__ (the “Effective Date”), by and between the City of San Leandro, a California charter city and municipal corporation (“Landlord” or “City”), and [Insert Cal Coast Entity] (“Tenant”).

RECITALS

A. The City and Cal Coast Companies, LLC, a Delaware limited liability company doing business in California as Cal Coast Developer, Inc. (“Developer”), have entered into a Disposition and Development Agreement, dated as of February 24, 2020 (the “DDA”), for the development of certain City-owned property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area, as more particularly described in the DDA (the “Shoreline Property”).

B. City desires to advance the development of the Shoreline-Marina area to create new housing units, new facilities to foster economic growth, and new recreational opportunities for the public, as well as promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment and recreation opportunities for residents and expanding City’s tax base.

C. Section 1.4.4 of the DDA provides for the City to ground lease to the Developer or its affiliate a portion of the Shoreline Property for the development of a Class A Multifamily Apartment Project with approximately 285 apartment units, and associated parking, entry drive aisle, landscaping, **[insert description of public improvements such as Bay Trail and vehicular access]**, lighting and all site utilities, including but not limited to fiber optic internet service to all units, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City (the “Project”). Section 1.4.4 of the DDA sets forth certain conditions to commencement of the ground lease which must be satisfied or waived by the City.

D. Landlord owns approximately _____ acres of land within the Shoreline Property located at _____ (“Property”), the legal description of which is set forth in Exhibit A, attached hereto and incorporated herein by this reference. The Property is depicted on the Site Map attached hereto as Exhibit B and incorporated herein by this reference.

E. Tenant desires to lease the Property from Landlord in order to build and operate the Project thereon.

F. The City has determined that the conditions to commencement of this Lease, as set forth in Section 1.4.1 of the DDA, have each been satisfied or waived by City. Landlord and Tenant now desire to enter into this Lease in order to carry out the Parties’ obligations under the DDA with respect to the Project.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the parties agree as follows:

1. DEFINITIONS; PROPERTY

1.1 Definitions. Capitalized terms in this Lease shall have the following meanings.

1.1.1 “**ADA**” means the Americans with Disabilities Act.

1.1.9 “**Affiliates**” has the meaning set forth in Section 8.1.3.

1.1.10 “**Anniversary Date**” has the meaning set forth in Section 22.13.1.

1.1.11 “**Annual Financial Statement**” has the meaning set forth in Section 3.3.1.

1.1.12 “**As-Is Condition**” means the condition of the Property as of the Effective Date.

1.1.13 “**Assessments**” has the meaning set forth in Section 4.2.3.

1.1.14 “**Audit Charge**” has the meaning set forth in Section 3.3.2.

1.1.15 “**Award**” has the meaning set forth in Section 12.1

1.1.16 “**Base Rent**” means the rent that is payable as set forth in Section 3.1.

1.1.17 “**Broker**” has the meaning set forth in Section 24.1.

1.1.18 “**Class A Multifamily Apartment Project**” means a high quality multifamily apartment project which is constructed in accordance with the finishes, plans and specifications, and amenities approved by Landlord pursuant to Section 6, and which offers high quality accommodations, service and physical atmosphere consistent with other multifamily housing projects in the market area of the Project designated as Class A in accordance with property grading standards generally prevailing in the industry. A Class A Multifamily Apartment Project commands rents within the range of other Class A rents in the market area, is well merchandised with attractive landscaping, an attractive rental office and/or club building, high-end exterior and interior amenities consistent with other Class A products in the market, and high quality construction with the highest quality materials.

1.1.19 “**Concessionaire**” means third-party concessionaires or service providers which operate auxiliary facilities or provide ancillary services of the type ordinarily operated or provided by third-party apartment concessionaires or service providers, such as, but not limited to, laundry facilities, vending machines, and snack bars.

1.1.20 “**Construction Period**” means the period of time from the Effective Date to the TCO Date.

1.1.21 “**CPI**” means the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor Statistics of the United States Department of Labor, or the official successor of said Index. If said index is changed so that the base year differs from the base year used in the last Index

published prior to the commencement of the term of this Lease, the former Index shall be converted to the new Index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If said Index is discontinued or revised during the Term of this Lease, such other government index or computation with which it is replaced, as determined by said Department or said Bureau, or, failing such determination, such other government index or computation which is most similar to said Index, shall be used in order to obtain substantially the same result as would be obtained if said Index had not been discontinued or revised.

1.1.22 “**DDA**” has the meaning set forth in Recital A.

1.1.23 “**Default**” has the meaning set forth in Section 16.1.

1.1.24 “**Default Notice**” has the meaning set forth in Section 7.6.

1.1.25 “**Developer**” has the meaning set forth in Recital A.

1.1.26 “**Development Work**” has the meaning set forth in Section 2.1.2 of this Lease.

1.1.27 “**Effective Date**” has the meaning set forth in the preamble of this Lease.

1.1.28 “**Environmental Law(s)**” has the meaning set forth in Section 23.1 (b).

1.1.29 “**FFR Plan**” has the meaning set forth in Section 9.5.

1.1.30 “**Force Majeure Events**” shall have the meaning set forth in Section 6.1.9.

1.1.31 “**GAAP**” means Generally Accepted Accounting Principles.

1.1.32 “**Gross Receipts**” means, for any Lease Year, as determined on a cash basis and otherwise in accordance with GAAP, consistently applied, all gross revenue, except as otherwise provided below, from apartment unit rentals, rents and other payments paid to Tenant by Concessionaires, gross revenues generated from parking, laundry, vending machines and other revenue-generating uses, originating, transacted, or performed in whole or in part, within the Property, and any and all other revenue of whatsoever kind or nature derived from the operation of the Project on the Property, valued in money, whether received in money or otherwise, without any deduction for the cost of the property sold, the cost of materials used, labor or service costs, interest paid, losses, cost of transportation, or any other expense. Gross Receipts expressly excludes state, county and City sales and use taxes; and any proceeds of sales of trade equipment, furniture, and fixtures, and other personal property which is ordinarily used in the business but not held for sale.

1.1.33 “**Hazardous Substances**” has the meaning set forth in Section 23.1.

1.1.34 “**Horizontal Improvements**” is defined in the Scope of Development.

1.1.35 “**Improvements**” means the Project buildings and associated parking, drive aisles, publicly accessible outdoor space, landscaping, lighting, above-ground and underground utilities, [add applicable public improvements] and other improvements to be constructed by Tenant on the Property in accordance with the Scope of Development, and any other improvements which may be constructed on the Property by Tenant from time to time during the Term.

1.1.36 “**Increased Costs**” has the meaning set forth in Section 6.1.7.

1.1.37 “**Indemnitee**” has the meaning set forth in Section 8.1.2.

1.1.38 “**Institutional Investor**” has the meaning set forth in Section 7.3.1

1.1.39 “**Landlord**” has the meaning set forth in the first paragraph of this lease.

1.1.40 “**Landlord Default**” has the meaning set forth in Section 16.7.

1.1.41 “**Landlord’s Estate**” means all of Landlord’s right, title, and interest in and to (a) its fee estate in the Property, (b) its reversionary interest in the Improvements, and (c) all Base Rent and other benefits due Landlord hereunder.

1.1.42 “**Late Term Extensive Damage**” means any damage to the Improvements after the thirtieth (30th) Lease Year, whether insured or uninsured, if the reasonable cost to be incurred by Tenant to restore the Improvements to the condition required by Section 11.1 exceeds (i) thirty percent (30%) of the “replacement cost” (as defined below) of the Improvements if such damage occurs during the thirty-first (31st) Lease Year through the end of the sixty-fifth (65th) Lease Year; (ii) twenty percent (20%) of the replacement cost of the Improvements if such damage occurs during the sixty-sixth (66th) through eighty-first (81st) Lease Years; and (iii) ten percent (10%) of the replacement cost of the Improvements if such damage occurs after the eighty-second (82nd) Lease Year. For purposes of determining the extent of Late Term Extensive Damage, “replacement cost” means the actual cost of replacing the Improvements as of the date of casualty in accordance with applicable law, including, without limitation, costs of foundations and footings (excluding soils, excavation, grading and compaction), if applicable, construction, architectural, engineering, legal and administrative fees, inspection, supervision and landscape restoration.

1.1.43 “**Lease**” has the meaning set forth in the first paragraph of this Lease.

1.1.44 “**Leasehold Mortgage**” has the meaning set forth in Section 7.1 and 7.3.3 of this Lease.

1.1.45 “**Leasehold Mortgages**” has the meaning set forth in Section 7.1 and 7.3.2 of this Lease.

1.1.46 “**Lease Year**” means each January 1 to December 31 calendar year of the Term. The first Lease Year means the first full calendar year beginning on the January 1 occurring after the Rent Commencement Date.

- 1.1.47 “**Lender**” has the meaning set forth in Section 7.1 of this Lease.
- 1.1.48 “**Mello-Roos Act**” has the meaning set forth in Section 5.4.
- 1.1.49 “**Mezzanine Loan**” has the meaning set forth in Section 7.3.4.
- 1.1.50 “**Mezzanine Loan Requirements**” has the meaning set forth in Section 7.3.4.
- 1.1.51 “**Mezzanine Lender**” has the meaning set forth in Section 7.3.4.
- 1.1.52 “**Minimum Ground Rent**” has the meaning set forth in Section 3.1.1.1.
- 1.1.53 “**New Lease**” has the meaning set forth in Section 7.8.
- 1.1.54 “**Notice of Intended Taking**” has the meaning set forth in Section 12.1.
- 1.1.55 “**Notice of Termination**” has the meaning set forth in Section 7.8 of this Lease.
- 1.1.56 “**Operator**” has the meaning set forth in Section 5.2.
- 1.1.57 “**Partial Taking**” has the meaning set forth in Section 12.1.
- 1.1.58 “**Partial Year Rent Commencement Date**” has the meaning set forth in Section 3.1.1.1.
- 1.1.59 “**Participation Rent**” has the meaning set forth in Section 13.6.
- 1.1.60 “**Percentage Rent**” has the meaning set forth in Section 3.1.2 hereof.
- 1.1.61 “**Permitted Exceptions**” has the meaning set forth in Section 1.2.
- 1.1.62 “**Permitted Hazardous Substances**” has the meaning set forth in Section 23.2.
- 1.1.63 “**Permitted Transferee**” has the meaning set forth in Section 13.1.
- 1.1.64 “**Prevailing Wage Law**” has the meaning set forth in Section 6.1.6.
- 1.1.65 “**Project**” means the 285 unit multifamily apartment project facility to be constructed in accordance with the Scope of Development and continuously operated during the Term of this Lease as provided herein.
- 1.1.66 “**Project Labor Agreement**” means a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code and California Public Contracts Code Section 2500, or successor statutes.

- 1.1.67 “**Property**” has the meaning set forth in Recital D.
- 1.1.68 “**Qualified Auditor**” has the meaning set forth in Section 3.3.1.
- 1.1.69 “**Recognized Leasehold Mortgagee**” has the meaning set forth in Section 7.2.1.
- 1.1.70 “**Recognized Lender**” has the meaning set forth in Section 7.2.1.
- 1.1.71 “**Recognized Mezzanine Lender**” has the meaning set forth in Section 7.2.1.
- 1.1.72 “**Rehabilitation Plan**” has the meaning set forth in Section 9.5.
- 1.1.73 “**Rent Commencement Date**” has the meaning set forth in Section 3.1.1.2.
- 1.1.74 “**Reserve Account**” has the meaning set forth in Section 9.6.
- 1.1.75 “**Restoration Amount**” means three percent (3.0%) of the replacement cost of the Improvements immediately prior to the casualty. For purposes of calculating the Restoration Amount, “replacement cost” means the actual cost of replacing the Improvements in accordance with applicable law and the terms and conditions of this Lease, including, without limitation, costs of foundations and footings (excluding soils, excavation, grading and compaction), construction, architectural, engineering, legal and administrative fees, inspection, supervision and landscaping.
- 1.1.76 “**Schedule of Performance**” means the schedule attached hereto as Exhibit G.
- 1.1.77 “**Scope of Development**” means the description of the Improvements to be constructed by Tenant on the Property which is attached hereto as Exhibit F.
- 1.1.78 “**Security Instrument**” has the meaning set forth in Section 7.1 of this Lease.
- 1.1.79 “**Senior Recognized Leasehold Mortgage**” has the meaning set forth in Section 7.2.1.
- 1.1.80 “**Senior Recognized Leasehold Mortgagee**” has the meaning set forth in Section 7.2.1.
- 1.1.81 “**Senior Recognized Lender**” has the meaning set forth in Section 7.2.1.
- 1.1.82 “**Senior Recognized Mezzanine Lender**” has the meaning set forth in Section 7.2.1.
- 1.1.83 “**Shoreline Property**” has the meaning set forth in Recital A.

1.1.84 “**Stabilization**” has the meaning set forth in Section 13.1.

1.1.85 “**Sublease**” has the meaning set forth in Section 13.5.

1.1.86 “**Substantial Taking**” has the meaning set forth in Section 12.1.

1.1.87 “**Subtenant**” means a tenant of an apartment unit within the Project.

1.1.88 “**Taking**” has the meaning set forth in Section 12.1.

1.1.89 “**Taking Date**” has the meaning set forth in Section 12.1.

1.1.90 “**Taxes**” has the meaning set forth in Section 4.2.1.

1.1.91 “**TCO Date**” means the first day of the month immediately following the month in which a temporary certificate of occupancy (“TCO”) for the entirety of the Improvements is issued by the City.

1.1.92 “**Tenant**” has the meaning set forth in the first paragraph of this Lease.

1.1.93 “**Tenant’s Estate**” means all of Tenant’s right, title and interest in its leasehold estate in the Property, its ownership interest in all improvements on the Property, and all of its other interests under this Lease.

1.1.94 “**Tenant’s Work**” has the meaning set forth in Section 2.1.2 of this Lease.

1.1.95 “**Term**” has the meaning set forth in Section 2.3.1.

1.1.96 “**Termination Notice Period**” has the meaning set forth in Section 7.6.1.

1.1.97 “**Total Taking**” has the meaning set forth in Section 12.1.

1.1.98 “**Transfer**” has the meaning set forth in Section 13.2.

1.1.99 “**Transfer Request**” has the meaning set forth in Section 13.4.1.

1.1.100 “**Uninsurable Loss**” means the cost to restore the Improvements to the condition required by and in accordance with Section 11.1 below, which is caused by: (i) earthquake; (ii) pollution liability; (iii) flood; or (iv) any other casualty for which Tenant is not otherwise required to obtain and maintain insurance coverage pursuant to this Lease. Notwithstanding the preceding, Uninsurable Loss shall not include (a) loss caused by flood, if the Property is located in a flood zone and flood insurance can be obtained at commercially reasonable rates, nor (b) loss caused by Tenant’s release of Hazardous Substances on the Property or violation of its responsibilities pursuant to Section 23 hereof.

1.1.101 “**Vertical Improvements**” is defined in the Scope of Development.

1.2 Property; Reservations and Temporary and Permanent Access Rights. For and in consideration of Tenant's covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant and Tenant leases from Landlord, an exclusive right to possess and use, as tenant, the Property, subject to the matters set forth on Exhibit C attached hereto and incorporated herein ("Permitted Exceptions"). Not included herein are any mineral rights, water rights or any other right to excavate or withdraw minerals, gas, oil or other material as provided in Section 2.1.4 hereof.

2. DELIVERY OF PROPERTY; TERM

2.1 Delivery of Property.

2.1.1 As-Is Condition. Landlord shall deliver possession of the Property to Tenant on the Effective Date, in its As-Is Condition, and Tenant hereby accepts the Property in its As-Is Condition. Neither the Landlord, nor any officer, employee, agent or representative of the Landlord has made any representation, warranty or covenant, expressed or implied, with respect to the Property, the Project, the condition of the soil, subsoil, geology or any other physical condition of the Property, the condition of any improvements, any environmental laws or regulations, the presence of any Hazardous Substances on the Property, or any other matter, affecting the use, value, occupancy or enjoyment of the Property, the suitability of the Property for the uses permitted by this Lease, the suitability of the Property for the Project, construction of the Project, or construction or use of the Improvements on the Property, and Tenant understands and agrees that the Landlord is making no such representation, warranty or covenant, expressed or implied, it being expressly understood that the Property is being leased in its As-Is Condition with respect to all matters. Tenant acknowledges that it has had the advice of such independent professional consultants and experts as it deems necessary in connection with its investigation and study of the Property, and has, to the extent it deemed necessary, independently investigated the condition of the Property, including the soils, hydrology, seismology, and archaeology thereof, and the laws relating to the construction, maintenance, use and operation of the Improvements, including environmental, zoning and other land use entitlement requirements and procedures, height restrictions, floor area coverage limitations and similar matters, and has not relied upon any statement, representation or warranty of Landlord of any kind or nature in connection with its decision to execute and deliver this Lease and its agreement to perform the obligations of Tenant except as provided in this Lease.

2.1.2 Construction of Development Work. Upon acceptance of possession of the Property, Tenant shall construct the Improvements and shall maintain, repair, replace and renovate the Improvements as required herein (collectively, "Development Work"). In performing the Development Work, Tenant shall comply with all of the requirements of Section 6 hereof. The time of Tenant's commencement and completion of the Development Work shall occur not later than the times set forth therefor in the Schedule of Performance (subject to the occurrence of any Force Majeure Events). For purposes of the Schedule of Performance, "commencement" of the Development Work means the commencement of grading and the City's issuance of a grading permit. For purposes of the Schedule of Performance, "completion" of construction means the time that a TCO is issued for the Vertical Improvements. As set forth in Section 6, Landlord shall cooperate with Tenant in obtaining any necessary permits. Landlord

shall have approval over and shall, as needed, join in any grants or easements for any public utilities and facilities, or access roads, or other facilities useful or necessary for the Development Work and the operation of the Project and other improvements or the construction thereof.

2.1.3 Utility Services. Tenant shall be responsible, at its expense, for obtaining all electricity, water, sewer, gas, telephone and other utility services necessary for Tenant's intended use of the Property.

2.1.4 Landlord Reservation of Interests. Landlord reserves to itself the sole and exclusive right to all water rights, coal, oil, gas, and other hydrocarbons, geothermal resources, precious metals ores, base metals ores, industrial-grade silicates and carbonates, fissionable minerals of every kind and character, metallic or otherwise, whether or not presently known to science or industry, now known to exist or hereafter discovered on, within, or underlying the surface of the Property, regardless of the depth below the surface at which any such substance may be found. Landlord or its successors and assigns, however, shall not have the right for any purpose to enter on, into, or through the surface or the first 500 feet of the subsurface of the Property in connection with this reservation. Landlord shall indemnify, defend and hold Tenant harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon Landlord's activities under this paragraph.

2.1.5 Net Lease. It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Landlord, without abatement, counterclaim, setoff or offset whatsoever, and that Tenant shall pay all costs, taxes, charges, and expenses of every kind and nature against the Property which may arise or become due during the Lease Term, and which, except as otherwise provided in this Lease and any other agreement entered into in connection with this Lease, and except to the extent arising out of a breach of this Lease by Landlord, or arising out of the negligence or willful misconduct by Landlord or its agents, employees, or contractors, which but for execution hereof would or could have been payable by Landlord.

2.2 Fee Mortgages. Landlord shall not grant any mortgage, deed of trust or other similar encumbrance upon its fee interest in the Property without the prior written approval of Tenant and its Lease Mortgagee, which approval shall not be unreasonably withheld or delayed. Such approval may be conditioned upon Landlord and its fee mortgagee entering into a subordination and non-displacement agreement with Tenant and its Lease Mortgagee.

2.3 Term.

2.3.1 Length of Initial Term. The initial term (the "Initial Term") of this Lease shall commence on the Effective Date, and shall expire fifty-five (55) years from the Effective Date, unless extended as set forth herein below.

2.3.2 Option Terms. Provided that, at the time of the exercise of an Extension Option (defined below), Tenant is not in breach of its obligations under this Lease beyond any

applicable notice and cure periods provided in this Lease, Tenant shall have an option to extend the Term on two (2) occasions (each such right, an “Extension Option”), as follows:

2.3.2.1 Length of Option Terms. The first extension of the Term shall be for a period of thirty-four (34) years, and the second extension of the Term shall be for a period of ten (10) years (each such period of time, an “Option Term”).

2.3.2.2 Exercise of Option Terms. Written notification to Landlord exercising each such option to extend the Term must be delivered to Landlord at least one (1) year, but not more than two (2) years, prior to the expiration of the Term. Such written notification shall include a certification of Tenant that Tenant is currently in compliance with the Lease. Provided Tenant has properly and timely exercised an Extension Option, and further provided that Landlord has determined that Tenant is in compliance with this Lease at the time of notification and at the time of commencement of the Option Term, the Term of this Lease shall be extended for the period of the applicable Option Term, and all terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be modified as set forth below. Promptly following each such exercise of an Extension Option, Tenant and Landlord shall prepare a notice of the exercise of such Extension Option and of the extension of the Option Term in recordable form and cause the same to be recorded in the Official Records of the County of Alameda, California. If Landlord is required to execute and have acknowledged such notice in order for such notice to be so recorded, Landlord shall promptly take all acts necessary to cause such notice to be executed, acknowledged and recorded (provided, however, that Landlord shall not be obligated to incur any third-party fees and/or costs in connection therewith unless such fees and/or costs are agreed to be paid by Tenant). Any failure to prepare, execute and/or deliver such notice(s), shall not affect the exercise by Tenant of an Extension Option and the commensurate extension of the Term.

2.3.2.3 Term. The Initial Term and Option Terms are collectively referred to herein as the “Term.”

3. BASE RENT

3.1 Base Rent. During the Term, Tenant shall pay to Landlord as rent the following amounts of Minimum Ground Rent and Percentage Rent (“Base Rent”) during the time periods set forth below. An example of the following rent calculations is set forth in Exhibit H attached hereto.

3.1.1 Minimum Ground Rent.

3.1.1.1 On or before the earlier to occur of (a) ninety (90) days after the TCO Date, or (b) thirty (30) months after the date the building permit for the foundations is ready to be issued by the City (“Rent Commencement Date”), Tenant shall pay to Landlord, in advance, monthly minimum ground rent equal to the number of apartment units in the Project, multiplied by Three Thousand Dollars (\$3,000), and divided by twelve (12) (“Minimum Ground Rent”). In the event of a Taking pursuant to Section 12 of this Lease, the Minimum Ground Rent shall be recalculated based upon the number of apartment units remaining in the Project after the Taking. All amounts shall be payable in advance on or before the first day of such calendar

month. The first month's monthly Minimum Ground Rent shall be prorated to the number of days remaining in such month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Minimum Ground Rent, Tenant shall pay to Landlord a late charge thereon equal to two percent (2%) of the delinquent amount per month from the date such sum was due and payable until paid.

3.1.1.2 Upon January 1 of each Lease Year beginning the fourth Lease Year, the Minimum Ground Rent shall be increased by two percent (2%) of the Minimum Ground Rent then in effect.

3.1.1.3 Upon January 1 of the tenth (10th), twentieth (20th), fortieth (40th), fiftieth (50th), sixtieth (60th), seventieth (70th), eightieth (80th) and ninetieth (90th) Lease Years, the Minimum Ground Rent shall be adjusted to the higher of the following: (a) the monthly amount of Minimum Ground Rent then in effect for the previous Lease Year, increased by two percent (2%) of the monthly amount of Minimum Ground Rent then in effect, or (b) the total amount of Minimum Ground Rent plus Percentage Rent due and payable during the five Lease Years preceding such date, dividing the total by five, and multiplying the result by 0.7, and dividing the total by twelve.

3.1.1.4 Upon January 1 of the thirtieth (30th) Lease Year, and at the commencement of the first and second Option Terms (the "Value Determination Dates"), the Minimum Ground Rent shall be adjusted to the higher of the following: (a) the Minimum Ground Rent then in effect for the previous Lease Year, increased by two percent (2%) of the Minimum Ground Rent then in effect, or (b) the appraised fair market rental value of the Tenant's interest in the Property. The fair market rental value of the Tenant's interest in the Property shall be based upon the fair market value of Tenant's leasehold interest in the land and not the value of Tenant's fee ownership of the Improvements, and shall be determined by appraisal as follows:

a. Appointment of Appraiser. For a period of thirty (30) days after notice from Landlord to Tenant, Landlord and Tenant shall use good faith efforts to jointly agree upon the appointment of a mutually acceptable MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1. The appraiser shall have not less than ten (10) years' experience appraising multifamily and commercial properties in the San Francisco Bay Area. In the event that the parties are unable to jointly agree upon a mutually acceptable appraiser, Landlord and Tenant shall, within ten (10) days after the expiration of the thirty (30) day period, each appoint an MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1 and shall give written notice thereof to the other party. Upon the failure of either party so to appoint, the non-defaulting party shall have the right to apply to the Superior Court of Alameda County, California, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Landlord and Tenant or, if within ten (10) days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to said Superior Court to appoint such third appraiser.

b. Determination of Fair Market Rental Value.

(i) In the event that a single mutually acceptable appraiser has been appointed by the parties, within thirty (30) days after the appointment the appraiser shall commence to determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge its determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(ii) In the event that three appraisers have been appointed by the parties, within thirty (30) days after the appointment of the third appraiser, the two appraisers directly appointed by the Parties shall each commence to independently determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge their determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(iii) The appraisers shall determine the fair market rental value of the Property as of the Value Determination Date as the date of value. Fair market rental value shall be determined for the Property only, and shall not include value attributable to the Improvements which are owned by Tenant during the Term of this Lease.

(iv) If the two appraisals arrive at different fair market rental values, the third appraiser shall select the appraisal which the third appraiser determines is closest to the fair market rental value of the Property, and such appraisal shall be deemed the fair market rental value of the Property as of the Value Determination Date.

(v) Each of the parties hereto shall (a) pay for the services of its own appointee, (b) pay one-half (1/2) of the fee charged by a mutually appointed appraiser and any appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisals.

3.1.2 Percentage Rent.

3.1.2.1 Upon the commencement of the second (2nd) Lease Year, Tenant shall annually pay Landlord annual percentage rent ("Percentage Rent") equal to Ten Percent (10%) of the Gross Receipts, less Minimum Ground Rent actually paid by Tenant to and received by Landlord for the previous Lease Year. All payments of Percentage Rent shall be paid to Landlord on or before April 1 following the Lease Year upon which the Percentage Rent is calculated.

3.1.2.2 Within twenty (20) days after the close of each calendar month of the Term of this Lease, Tenant shall deliver to Landlord, in a form reasonably satisfactory to Landlord, an account of its Gross Receipts during the preceding month.

3.1.2.3 All payments of Percentage Rent shall be paid to Landlord on a monthly basis on or before the twentieth (20th) day of each month based on the Gross Receipts for the preceding month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Percentage Rent, Tenant shall pay to Landlord interest thereon at the rate of two percent (2%) per month from the date such sum was due and payable until paid.

3.2 **Maintenance of Records.**

(a) Tenant shall at all times keep accurate and proper books, records and accounts required to determine Gross Receipts and Percentage Rent, including a written explanation of income and expense report procedures and controls ("Records").

(b) Tenant shall keep all of its Records related to this Lease at its home office. Landlord may examine and audit the Records at any and all reasonable business times, subject to reasonable prior notice. If Landlord elects to audit the Records, Landlord shall use an auditor who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing multifamily apartment projects. Landlord and its auditors may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to examine and audit such Records, unless required under applicable law and after providing notice to Tenant in accordance with Section 3.4.3 below. In no event shall any information relating to the Concessionaires be publicly disclosed, except as required by applicable law and after providing notice to Tenant in accordance with Section 3.4.3 below. All Records, including any sales tax reports that Tenant and its Concessionaires may be required to furnish to any governmental agency, shall be open to the inspection of and copying (at Landlord's sole cost and expense) by Landlord, Landlord's auditor, or other authorized representative or agent of Landlord, who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing multifamily apartment projects, at all reasonable times during business hours, subject to reasonable prior notice. Landlord shall use commercially reasonable efforts not to disrupt Tenant or the Concessionaires and to minimize interference with the day-to-day operation of Landlord and/or the Property in exercising its rights hereunder.

3.3 Annual Statements by Tenant, Verification of Records, Computation, Payment of Percentage Rent

3.3.1 On or before March 1 of each Lease Year during the Lease Term, Tenant shall submit to Landlord an "Annual Financial Statement" which shall include a breakdown, in line item detail, of Tenant's calculation of Gross Receipts and Percentage Rent payable for the prior Lease Year. Each Annual Financial Statement shall be reviewed by an independent certified public accountant or by an authorized officer of Tenant, and shall contain an expressed written opinion of such certified public accountant or officer that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with GAAP. Tenant shall also certify to Landlord that each Annual Financial Statement is accurate and consistent in all material respects with its Records. Landlord may, through its representatives, audit or perform an examination of any Annual Financial Statement and supporting documentation utilized in the creation thereof at any time, and Tenant shall provide reasonable access to all of its books and records as provided herein, using an auditor who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing multifamily apartment project projects ("Qualified Auditor"), subject to reasonable prior notice. Records must be supported by reasonable source documents.

3.3.2 If any audit or examination conducted by Landlord discloses that the payable Percentage Rent reported by Tenant for any calendar year was understated by more than two percent (2%), Tenant shall promptly pay to Landlord the actual reasonable costs incurred by Landlord for such audit or examination (the "Audit Charge") in addition to any

amounts due as Percentage Rent; otherwise Landlord shall bear all costs of such audit or examination.

3.3.3 In the event Tenant fails to submit the Annual Financial Statement (together with the required written opinion) by the required time, Tenant shall pay to Landlord a late fee in the amount of One Hundred Dollars (\$100) per day for each day after receipt by Landlord of written notice from Landlord of such failure until the Annual Financial Statement (together with the required written opinion) is submitted as required.

3.3.4 Landlord's billings for the Audit Charge shall be sufficiently detailed with reasonable backup information such as supporting paid invoices, so that Tenant may determine the fees for the various participants in the audit or examination for whom Tenant is required to pay. Prior to Tenant's obligation to pay any Audit Charge, Landlord shall have provided Tenant with the audit or examination report which is the basis for such Audit Charge, access to documents supporting such audit or examination, and a reasonable opportunity to review and discuss the audit or examination with Landlord and the auditor.

3.4 Acceptance Not Waiver; Retention of Records. Landlord's acceptance of any money paid by Tenant under this Lease, whether shown by any Annual Financial Statement furnished by Tenant or otherwise specified in this Lease, shall not constitute an admission of the accuracy or the sufficiency of the amount of such payment. Landlord may, at any time within three (3) years after the receipt of any such payment, question the sufficiency of the amount thereof and/or the accuracy of any underlying Annual Financial Statement furnished by Tenant.

3.4.1 Tenant shall retain, for five (5) years after submission to Landlord of any such Annual Financial Statement, all of Tenant's Records relating to the information shown by any such Annual Financial Statement, and shall make them available to Landlord for examination to the extent as provided above during that period. Tenant shall use commercially reasonable efforts to require that all its Concessionaires keep, maintain and retain Records of their business activities conducted within the Project for such five (5) year period, which Records shall be made available to Landlord, Landlord's auditor, or other authorized representative or agent of Landlord for inspection and copying (at Landlord's expense) as provided above. Notwithstanding the foregoing, Tenant shall not be responsible for the records of any Concessionaires.

3.4.2 Tenant shall also furnish Landlord all information reasonably requested by Landlord directly relating to the costs, expenses, earnings and profits of Tenant in connection with Tenant's operations conducted on or connected with the Property. Landlord may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to such information, unless required under the Public Records Act or other applicable law, and the conditions set forth above with requests for information shall apply.

3.4.3 Landlord covenants to keep and to cause its auditor(s) to keep the results of such audit strictly confidential except to the extent disclosure is legally required by the Public Records Act or other applicable law, or if discoverable in litigation between the parties. If Landlord receives a request for such information it shall immediately notify Tenant of such

request and deliver to Tenant copies of all correspondence received by Landlord relating to such request, and afford Tenant an opportunity to contest such request.

4. OTHER EXPENSES

4.1 Tenant Payments. During the term of this Lease, Tenant shall pay the following:

4.1.1 Utilities. From and after the Effective Date, Tenant shall pay all charges for electricity, water, gas, telephone, internet, cable, and all other utility services used on the Property. Tenant shall indemnify, defend and hold Landlord harmless against and from any loss, liability or expense resulting from any failure of Tenant to pay all such charges when due.

4.1.2 Taxes and Assessments.

4.1.2.1 Pursuant to Revenue & Taxation Code Section 107.6, Landlord hereby advises Tenant that the leasehold interest in the Property conveyed to Tenant by this Lease will be subject to property taxation, and that it is Tenant's obligation under this Lease to pay or cause to be paid all of such property taxes levied on Tenant's interests in the Property. Tenant acknowledges that it understands that property taxes will be levied on the Property despite the Landlord's ownership of fee title to the Property and any exemptions Landlord is entitled to and receives as a result of public entity ownership of the Property.

4.1.2.2 The term "Taxes," as used herein, means all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property, the Improvements and Tenant's use and enjoyment thereof, including community facilities district special taxes, but excluding Assessments which shall be paid as defined below. Tenant shall pay when due all Taxes commencing with the Effective Date and continuing throughout the Term. Any Taxes payable after the end of the Term shall be apportioned and prorated between Tenant and Landlord on a daily basis, and the portion thereof that is attributable to the period after the end of the Term shall be paid by Landlord.

4.1.2.3 The term "Assessments," as used herein, means all assessments for public improvements or benefits which heretofore or during the Term shall be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Tenant shall not cause or suffer the imposition of any Assessment upon the Property other than in connection with the Project, without the prior written consent of Landlord. (For the avoidance of doubt, an assessment made pursuant to an assessment district that covers areas other than the Property, but includes the Property, shall be deemed to be in connection with the Project.) In the event any Assessment is proposed which affects the Property other than in connection with the Project, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Tenant shall pay when due installments of all Assessments levied with respect to the Property and the leasehold estate created hereby commencing with the Effective Date and continuing throughout the Term.

4.1.2.4 Tenant covenants and agrees to pay or cause to be paid before delinquency all personal property taxes, assessments and liens of every kind and nature upon all

personal property as may be from time to time situated within the Property and the Improvements.

4.1.2.5 Tenant shall pay any business license fees imposed upon Tenant in connection with the operation of the Improvements.

4.2 Payment Date and Proof. All payments by Tenant for Assessments shall be made by Tenant prior to delinquency. Tenant shall furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts.

4.3 Failure to Pay. In the event Tenant fails to pay any of the expenses or amounts specified in this Section 4, after written notice from Landlord to Tenant and the provision to Tenant of reasonable opportunity to cure such non-payment as provided in Section 16, Landlord may, but shall not be obligated to do so, pay any such amount and the amounts so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the rate specified in Section 22.11 below.

4.4 No Counterclaim or Abatement of Base Rent; Tax Contests.

4.4.1 Payment of Base Rent. Base Rent and any other sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, and the obligations and liabilities of Tenant hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any taking of the Property or any part thereof; (b) any restriction of or prevention of or interference with any use of the Property or any part thereof; (c) any Permitted Exception, (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; (e) any claim which Tenant has or might have against Landlord; (f) any failure on part of Landlord to perform or comply with any of the terms hereof or of any other agreement with Tenant; or (g) any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall remain in full force and effect, or the respective rights of Landlord and Tenant with respect to any other then existing or subsequent breach.

4.4.2 Right to Contest. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest any Tax imposed against the Property or the Project or Tenant's possessory interest therein; provided, however that the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Tenant. Nothing in this Lease shall require tenant to pay any Tax as long as it contests the validity, applicability or amount of such Tax in good faith, and so long as it does not allow the portion of the Property affected by such Tax to be forfeited to the entity levying such Tax as a result of its nonpayment. If any such law, rule or regulation requires, as a condition to such contest, that the disputed amount be paid under protest or that bond or similar security be

provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest.

5. USE

- 5.1 Use.** Tenant shall use the Property solely for the purposes of constructing, maintaining and operating the Improvements as a Class A Multifamily Apartment Project.
- 5.2 Operation of Project.** Upon the City’s issuance of a Certificate of Occupancy for the Improvements and throughout the remainder of the Term of this Lease, the Tenant shall continuously without interruption operate a Class A Multifamily Apartment Project in the Improvements on the Property, with a cumulative total of 285 multifamily apartment units available for rent to the public (collectively, the “Project”). Tenant shall have the responsibility, subject to Force Majeure Events, to keep the Project continuously open and operating throughout the term of this Lease, including any extensions hereof, subject to closures (i) following a casualty or condemnation or other loss, (ii) following any environmental release requiring remediation, (iii) if required by law or court order for any reason, (iv) as necessary during any partial or complete renovation of the Project, or (v) matters caused by Force Majeure Events. In the event of a closure as set forth above, Tenant shall close only that portion of the Project which is necessitated by the causative event, and shall use all reasonable efforts to reopen the Project or the closed portion of the Project as soon as reasonably possible following any such closure. The Tenant shall provide at its own cost any and all equipment, fixtures, furniture and furnishings necessary for the operation of a Class A Multifamily Apartment Project. Tenant shall be responsible for hiring and training all personnel necessary to operate and maintain the Project as a Class A Multifamily Apartment Project, or shall cause a professional apartment management company to do so.
- 5.3 CC&Rs.** Tenant agrees to join and participate in the Shoreline Business Association, and any organization that is organized, formed or sponsored by Landlord for substantially all businesses in the Shoreline-Marina area to pay for their fair share of maintenance, capital replacement reserves, and/or promotion of the Shoreline area and basin, which could include, without limitation, a property owners’ association, business improvement district or other form of organization. The boundaries of the area subject to such organization shall be determined by Landlord or the participants in such organization. **[To be discussed]**
- 5.4 CFD.** Landlord and Tenant shall cooperate in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the “Mello-Roos Act”), which may be responsible for funding the maintenance of public roads, public entryways, landscaped areas, trails and parks, as provided in Section 1.5 of the DDA. **[To be discussed]**

5.5 Public Access Easements. Tenant shall reasonably approve such grants and easements for public improvements, public utilities and facilities, access roads and trails, and other facilities which required as a condition of City approval of the Project, or otherwise useful or necessary for the Development Work and the construction and operation of the Project.

6. IMPROVEMENTS CONSTRUCTED BY TENANT

6.1 Construction.

6.1.1 Construction of Improvements. Tenant shall construct the Improvements in accordance with the Scope of Development, and in accordance with all building and other permits that may be issued in connection therewith. Tenant shall submit all construction plans, and commence and complete all construction of the Improvements, and shall satisfy all other obligations and conditions of this Lease, within the times established therefor in the Schedule of Performance and the text of this Lease, subject to Force Majeure Events pursuant to Section 6.1.9 hereof. Once construction of the Improvements is commenced, it shall continuously and diligently be pursued to completion and shall not be abandoned for more than thirty (30) days. During the course of construction and prior to issuance of the final TCO for the Improvements, Tenant shall provide monthly reports to Landlord of the progress of construction. The Improvements shall include all of the improvements contained in the approved construction plans and drawings, including without limitation the Project, sidewalks, trails, plazas, landscaping, and parking. The construction of the Improvements shall include compliance with any mitigation monitoring plan adopted by the City in accordance with CEQA by the City for the Shoreline Project. The cost of planning, designing, developing, and constructing the Improvements shall be borne solely by the Tenant.

6.1.2 Landlord's Cooperation in Construction of the Improvements. Landlord shall cooperate with and assist Tenant, to the extent reasonably requested by Tenant, in Tenant's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the undertaking and performance of the development of the Improvements. Such cooperative efforts may include Landlord's joinder in any application for such approval, consent, permit or variance, where joinder therein by Landlord is required or helpful; provided, however, that Tenant shall reimburse Landlord for Landlord's actual and reasonable third party out-of-pocket costs incurred in connection with such joinder or cooperative efforts (other than the costs of any brokers, including brokerage commissions) within thirty (30) days after Landlord delivers an itemized statement of costs to Tenant. Notwithstanding the foregoing, Tenant and Landlord acknowledge that the approvals given by Landlord under this Lease in no way release Tenant from obtaining, at Tenant's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Property and operation and other use of such Improvements on the Property; and that Landlord's duty to cooperate and Landlord's approvals under this Lease do not in any way modify or limit the exercise of Landlord's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

6.1.3 Construction Contract. Tenant shall enter into contracts with one or more general contractors for the demolition, grading and construction work for the Improvements with

a general contractor reasonably acceptable to the City, which general contractor shall be duly licensed in the State and shall have significant experience in organizing and contracting public-private development projects of the type and scale similar to the Project.

6.1.4 Construction Requirements. No development or construction on the Property shall be undertaken until Tenant shall have procured and paid for all required permits, licenses and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon completion of construction of the Improvements, Tenant shall furnish Landlord with a certificate of substantial completion executed by the architect for the Improvements, and a complete set of “as built” plans for the Improvements. Tenant shall thereafter furnish Landlord with copies of the updated plans showing all material changes and modifications to the Improvements.

6.1.5 Compliance with Laws. Tenant shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the ADA, Government Code Section 4450, et seq., Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq., and the California Building Standards Code, Health and Safety Code Section 18900, et seq. The design, construction and operation of the Improvements shall be in compliance with any mitigation measures adopted in accordance with CEQA for the Project and the Shoreline Project. This Lease does not provide Tenant any vested rights to construct the Improvements in accordance with the existing policies, rules and regulations of the City, or to construct the Improvements subject only to the existing conditions of approval which may have been previously approved by the City, except as Tenant may already have obtained vested rights to develop the Improvements in accordance with a Development Agreement between City and Tenant or a vesting tentative map.

6.1.6 Prevailing Wages. If and to the extent required by applicable federal and state laws, rules and regulations, Tenant and its contractors and subcontractors shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Improvements as required herein and described in the Scope of Development, in compliance with Labor Code Section 1720, et seq., any applicable federal labor laws and standards, and implementing regulations, and perform all other applicable obligations, including the employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and fulfilling all duties under the Civil Code or any other provision of law pertaining to providing, obtaining and maintaining all bonds to secure the payment of wages to workers required to be paid prevailing wages, and compliance with all regulations and statutory requirements pertaining thereto, all as may be amended from time to time (the “**Prevailing Wage Law**”). Tenant shall periodically, upon request of Landlord, certify to Landlord that, to its knowledge, it is in compliance with the requirements of this paragraph.

6.1.7 Indemnity. Tenant shall indemnify, defend (with counsel approved by Landlord) and hold Landlord and its respective elected and appointed officers, employees, agents, consultants, and contractors (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Lease, including but not limited to the Prevailing Wage Laws, or any act or omission of Tenant related to this Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to such Claims. It is further agreed that Landlord does not and shall not waive any rights against Tenant which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Landlord, or Tenant’s deposit with Landlord of any of the insurance policies described in this Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease and the issuance of a Certificate of Completion for the Improvements. Tenant’s indemnification obligations under this Section shall not apply to any Claim which arises as a result of an Indemnitee’s gross negligence or willful misconduct.

6.1.8 Project Labor Agreement. Prior to the Effective Date of the Lease, and throughout the term of construction of the Improvements, Tenant shall negotiate, enter into, remain a party to and comply with at least one Project Labor Agreement with respect to the construction of the Improvements.

6.1.9 Performance and Payment Bonds.

6.1.9.1 Prior to commencement of any construction work on the Project, Tenant shall cause its general contractor to deliver to the Landlord copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the Landlord as obligee and shall be in a form acceptable to the City Attorney. In lieu of such performance and payment bonds, subject to City Attorney’s approval of the form and substance thereof, Tenant may submit evidence satisfactory to the Landlord of contractor’s ability to commence and complete construction of the Project in the form of subguard insurance, an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Landlord required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Landlord. Such evidence must be submitted to Landlord in approvable form in sufficient time to allow for review and approval prior to the scheduled construction start date.

6.1.10 Force Majeure. Performance by either party hereunder shall not be deemed to be in default, and the time within which a party shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party

seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Improvements, enemy action, civil disturbances, wars, terrorist acts, fire, earthquakes, unavoidable casualties, litigation involving this Lease or the land use approvals of the Improvements, or bankruptcy, insolvency or defaults of lenders or equity investors (“**Force Majeure Events**”). Any extension of time for Force Majeure Events shall be for a reasonable period, not to exceed twelve (12) months, and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Notwithstanding any provision of this Lease to the contrary, delays due to inability to obtain financing, recession or other general economic conditions, adverse market conditions, adverse interest rates, and/or the lack of funds or financing to complete the Improvements, shall not constitute Force Majeure Events.

6.2 Fixtures and Equipment. In constructing the Improvements upon the Property, Tenant and its Concessionaires may place or install in the Project such trade fixtures and equipment as Tenant or its Concessionaires shall deem reasonably desirable for the conduct of business therein. Personal property, trade fixtures and equipment used in the conduct of business by Tenant and its Concessionaires (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the Improvements) placed by Tenant or its Concessionaires on or in the Improvements shall not become part of the real property, even if nailed, screwed or otherwise fastened to the improvements or buildings of the Project, but shall retain their status as personal property. Such personal property may be removed by Tenant or its Concessionaires at any time so long as any damage to the property of Landlord occasioned by such removal is thereupon repaired. All other fixtures, equipment and improvements (including but not limited to the Improvements and all fixtures and equipment necessary for their operation and maintenance) constructed or installed upon the Property shall be deemed to be the property of Tenant and, upon the end of the Term, shall become part of the Property and become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant or its Concessionaires do not remove their personal property and trade fixtures which they are permitted by this Section 6.2 to remove from the Improvements within thirty (30) days following the end of the Term, Landlord may as its election (i) require Tenant to remove such property at Tenant’s sole expense, and Tenant shall be liable for any damage to the property of Landlord caused by such removal, (ii) treat said personal property and trade fixtures as abandoned, retaining said properties as part of the Property, or (iii) have the personal property and trade fixtures removed and stored at Tenant’s expense. Tenant shall promptly reimburse Landlord for any damage caused to the Property by the removal of personal property and trade fixtures, whether removal is by Tenant or Landlord.

6.3 Mechanics and Labor Liens. Tenant shall not permit any claim of lien made by any mechanic, materialmen, laborer, or other similar liens, asserted by reason of contracts

made by Tenant, to stand against the Landlord's fee interest in the Property, to Landlord's fee simple estate in reversion of the Improvements, nor against Tenant's leasehold interest therein for Work or labor done, services performed, or material used or furnished to be used in or about the Property for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Tenant, its agents, or Concessionaires. Tenant shall cause any such claim of lien to be fully discharged within (30) days after the date of filing thereof, provided, however, that Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall post an undertaking as may be required or permitted by law or is otherwise sufficient to prevent the lien, claim of encumbrance from attaching to the fee interest in the Property. Tenant shall not be deemed to be in breach of this Section 6.3 so long as Tenant is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation results therefrom, discharges said lien. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Landlord, express or implied, by inference or otherwise, to any person or entity for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property, the Improvements, or any part thereof. Prior to commencement of construction of the Improvements on the Property, Tenant shall give Landlord not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws. Landlord shall have the right at all reasonable times and places after at least ten (10) days advance notice to post, and as appropriate to keep posted, any notices on the Property which Landlord may deem reasonably necessary for the protection of Landlord's interest in the Property from mechanic's liens or other claims. Tenant shall give Landlord at least ten (10) days prior written notice of the commencement of any work to be done upon the Property under this Section, in order to enable Landlord to post such notices. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, NO MECHANICS' OR OTHER LIENS SHALL BE ALLOWED AGAINST THE ESTATE OF LANDLORD BY REASON OF ANY CONSENT GIVEN BY LANDLORD TO TENANT TO IMPROVE THE PROPERTY.**

- 6.4 Development Rights.** Tenant shall not represent to any person, governmental body or other entity that Tenant is the fee owner of the Property, nor shall Tenant execute any petition, application, permit, plat or other document on behalf of Landlord, without Landlord's express prior written consent (which Landlord shall not unreasonably withhold, condition or delay).
- 6.5 Hold Harmless.** Tenant shall indemnify, defend and hold harmless Landlord and the Property from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind of description of any person or entity, directly or indirectly arising out of, caused by, or resulting from the cost of construction of the Improvements or repairs made at any time to be the Improvements (including repairs, restoration and rebuilding). Tenant shall regularly and timely pay

any and all amounts that are due and payable to third parties with respect to such work and will maintain its books and records, with respect to all aspects of such work and materials therefore, and will make them available for inspection by Landlord or its representatives as reasonably requested. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other person to improve the Property or any portion of the Property, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Nothing in this Lease shall require Tenant to pay any such amount or lien as long as it contests the validity, applicability or amount of such matter in good faith, and so long as it does not allow the portion of the Property affected by such lien to be forfeited.

6.6 Permits, Compliance with Codes. All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements and any subsequent improvements, repairs, replacements or renewals to the Property or Improvements shall be acquired as required by applicable laws, ordinances or regulations including but not limited to, building codes and the ADA (Americans with Disabilities Act), by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Property during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Tenant is responsible, at Tenant's sole cost and expense, to cause the Improvements and the Property to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Property during the Term of this Lease, whether now in effect, or hereinafter adopted or enacted.

6.7 Completion of Improvements; Ownership of Improvements. Tenant shall submit to Landlord reproducible "as built" drawings of all Improvements constructed on the Property. During the Term of this Lease, the Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall automatically vest in the Landlord without further action of any party, without any obligation by the Landlord to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to the Landlord; provided, however, at Landlord's request, upon expiration or termination of this Lease, Tenant shall execute, acknowledge, and deliver to the Landlord a good and sufficient quitclaim deed with respect to any interest of Tenant in the Improvements. Thirty (30) days prior to the expiration of the Term, Tenant shall deliver copies of all service contracts for the Project to the Landlord.

7. LEASEHOLD MORTGAGES AND MEZZANINE FINANCING

7.1 Leasehold Mortgage and Mezzanine Financing Authorized. Subject to each and all of the terms and conditions listed in Paragraphs (a) – (d) below, Tenant, and its successors and assigns, shall have the right to mortgage, pledge, or conditionally assign its leasehold estate in the Property and its interest in all improvements thereon, and to refinance such mortgages, pledges and assignments, by way of one or more “Leasehold Mortgages” (as that term is defined below) (which may be of different priority and exist at the same time), and any and all collateral security agreements from time to time required by the holder of a Leasehold Mortgage (a “Leasehold Mortgage”), including collateral assignments of this Lease, any Subleases, assignments or pledges of rents, and any and all rights incidental to the Property, and security interests under the Uniform Commercial Code or any successor laws to secure the payment of any loan or loans obtained by Tenant with respect to the Property, subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and subject to the limitations set forth in the definition of “Leasehold Mortgage” below. In addition, Tenant, and its successors and assigns, shall have the right to obtain one or more “Mezzanine Loans” as defined below, and subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and subject to the limitations set forth in the definition of “Mezzanine Loan” below. Each pledge or other such security given in connection with a Mezzanine Loan and each Leasehold Mortgage as defined is sometimes referred to herein as a “Security Instrument”, and each Leasehold Mortgagee and Mezzanine Lender is sometimes referred to herein as a “Lender”. In no event shall the fee interest of Landlord in the Property, residual interest of Landlord in the Improvements, or any Base Rent due to Landlord hereunder be subordinate to any Security Instrument.

(a) Prior to the issuance of a TCO, Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited in purpose to and the principal amount of all such Leasehold Mortgages and Mezzanine Loans shall not exceed the amount necessary and appropriate to develop the Improvements, and to acquire and install equipment and fixtures thereon. Said amount shall include all hard and soft costs of acquisition, development, construction, and operation of the Improvements.

(b) After the issuance of a TCO, the principal amount of all Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited to an amount that does not exceed the sum of the fair market rental value of the Property (land) and the value of Tenant’s fee ownership of the Improvements; provided, that such requirement shall not result in a default with respect to any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO, nor shall such requirement prohibit Tenant from refinancing any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of a TCO as long as the principal amount of such refinancing does not exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO and Tenant does not receive a payment of net proceeds from the refinancing. Tenant shall obtain Landlord’s written approval prior to refinancing any Leasehold Mortgage or Mezzanine Loan if the principal amount of such refinancing will exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage and

Mezzanine Loan, and/or if Tenant will receive a payment of net proceeds from the refinancing. Tenant shall compensate Landlord for Landlord's actual and reasonable costs to verify the fair market rental value of the Property and the value of the Improvements, and to review and approve any Leasehold Mortgage or Mezzanine Loan and related loan documents that require Landlord's approval, including in-house payroll and administrative costs and out-of-pocket costs paid by Landlord to consultants and attorneys.

(c) Any permitted Leasehold Mortgages and Mezzanine Loans entered into by Tenant are to be originated only by Institutional Investors (as defined in Section 7.3 hereof) approved in writing by Landlord, which approval will not be unreasonably conditioned, delayed, or withheld. Landlord shall state the reasons for any such disapproval in writing.

(d) All rights acquired by said Leasehold Mortgagee or Mezzanine Lender shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions, and restrictions is or shall be waived by Landlord by reason of the giving of such Leasehold Mortgage or Mezzanine Loan.

7.2 Notice to Landlord.

7.2.1 If Tenant shall mortgage Tenant's leasehold estate to an Institutional Investor or enter or allow its members or partners to enter into a Mezzanine Loan for a term not beyond the end of the Term, and if the holder of any related Security Instrument shall provide Landlord with notice of such Security Instrument together with a true copy of such Security Instrument and the name and address of the Lender, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Section 7 shall apply in respect to each such Security Instrument held by an Institutional Investor. Each Leasehold Mortgagee who notifies Landlord in writing of its name and address for notice purposes shall be deemed a "Recognized Leasehold Mortgagee." The most senior recognized Leasehold Mortgagee from time to time, as determined by Landlord based upon such notices from Leasehold Mortgagees, shall be referred to in this Lease, and be entitled to the rights of, the "Senior Recognized Leasehold Mortgagee;" and the Recognized Leasehold Mortgagee held by such Senior Recognized Leasehold Mortgagee shall be referred to in this Lease as the "Senior Recognized Leasehold Mortgagee," provided, however, that if the Senior Recognized Leasehold Mortgagee elects not to exercise its rights hereunder, the next most Senior Recognized Leasehold Mortgagee will have the right to exercise the rights of a Senior Recognized Leasehold Mortgagee, provided, that a Senior Recognized Leasehold Mortgagee may agree to permit a junior lender or lenders to exercise some or all of the rights of a Senior Recognized Leasehold Mortgagee. Each Mezzanine Lender who notifies Landlord in writing of its name and address for notice purposes, and with such notice furnishes to Landlord a copy of the applicable Security Instrument shall be deemed a "Recognized Mezzanine Lender". Each Recognized Leasehold Mortgagee and Recognized Mezzanine Lender is sometimes referred to herein as a "Recognized Lender". The most senior Recognized Mezzanine Lender from time to time, based upon such notices from such Recognized Mezzanine Lender or a notice from the Senior Recognized Mezzanine Lender designating another Recognized Lender as the "Senior Recognized Mezzanine Lender", shall so long as the Mezzanine Loan satisfies the Mezzanine Loan Requirements and shall remain unsatisfied, or until written notice of satisfaction thereof is given by such Recognized Mezzanine

Lender to Landlord (whichever shall first occur), be referred to in this Lease as, and each such Recognized Mezzanine Lender shall individually be entitled to the rights of, the “Senior Recognized Mezzanine Lender”. The Senior Recognized Leasehold Mortgagee and Senior Recognized Mezzanine Lender are referred to collectively herein as the “Senior Recognized Lenders.”

7.2.2 In the event of any assignment of a Recognized Leasehold Mortgage or Recognized Mezzanine Loan or in the event of a change of address or name for notice purposes of a Recognized Lender or of an assignee of any Recognized Lender, notice of the new name and address for notice purposes shall be provided to Landlord in substantially like manner; provided, however, any such assignee shall be an Institutional Investor as defined herein.

7.2.3 Promptly upon receipt of a communication purporting to constitute the notice provided for by Section 7.2.1. above, Landlord shall acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 7.2.1 above or, in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 7.2.2 above, and specify the specific basis of such nonconformity.

7.2.4 Tenant and each Recognized Lender shall give Landlord written notice of any default by Tenant under a Security Instrument; provided, however, that the failure of a Recognized Lender to deliver to Landlord written notice of a default by Tenant under a Security Instrument shall not invalidate or otherwise affect such notice in any manner whatsoever, or a Recognized Lender’s rights hereunder in any manner whatsoever.

7.3 Definitions.

7.3.1 The term “**Institutional Investor**” as used in Section 7 shall refer to any entity with assets in excess of One Hundred Million Dollars (\$100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made, and which is a (i) savings bank, (ii) savings and loan association, (iii) commercial bank, (iv) credit union, (v) insurance company, (vi) real estate investment trust, (vii) pension fund, (viii) commercial finance lender or other financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, or any affiliate of the foregoing, or (ix) such other lender as may be approved by Landlord in writing in advance, which approval shall not be unreasonably withheld. The term “Institutional Investor” shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of One Hundred Million Dollars (\$100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made.

7.3.2 The term “Leasehold Mortgage” as used in this Section 7 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant’s leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

7.3.3 The term “Leasehold Mortgagee” as used in this Section 7 shall refer to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the

notice provided for by Section 7.2 above, has been given and received and as to which the provisions of this Section 7 are applicable.

7.3.4 The term “Mezzanine Loan” means one or more loans made to Tenant or to the owner of any ownership interest in Tenant which satisfies each of the following requirements (collectively, the “Mezzanine Loan Requirements”): (i) such loan is secured by a security interest in, pledge of, or other conditional right to the ownership interests in Tenant or in any entity which owns (directly or indirectly) an ownership interest in Tenant, and such other security given to the Mezzanine Lender as is customary for mezzanine loans and related to the foregoing collateral, which shall be the sole security for such Mezzanine Loan; (ii) such loan is made by an Institutional Investor (each a “Mezzanine Lender”); (iii) such loan becomes due prior to the expiration of the Term, (iv) the documentation evidencing or relating thereto does not contain or secure obligations unrelated to the Property and (v) the documentation evidencing or relating to such loan has been approved in advance by Landlord as complying with this definition of a Mezzanine Loan.

7.4 Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Senior Recognized Lender unless consented to in writing by such each Senior Recognized Lender; provided, however, that nothing in this Section 7.4 shall limit or derogate from Landlord’s rights to terminate this Lease in accordance with the provisions of this Section 7.

7.5 Default Notice. Landlord, upon providing Tenant any notice of: (i) default under this Lease, or (ii) an intention to terminate this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to each Senior Recognized Lender for which Landlord has received a notice address. From and after such notice has been given to each Senior Recognized Lender, a Senior Recognized Lender shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 7.6 and 7.7 below, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. Landlord shall accept performance by or at the instigation of such Senior Recognized Lender as if the same had been done by Tenant. Tenant authorizes each Senior Recognized Lender to take any such action at such Senior Recognized Lender’s option and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

7.6 Notice to Leasehold Mortgagee.

7.6.1 Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, Landlord shall notify each Senior Recognized Lender in writing (of which Landlord has been notified pursuant to Section 7.2.1 above) of Landlord’s intent to so terminate this Lease (a “**Default Notice**”) at least thirty (30) days in advance of the proposed effective date of such termination (which shall not be earlier than the date of expiration of all notice and cure periods that Tenant may have to cure such default), if such default is capable of being cured by the payment of money, and at least sixty (60) days in advance of the proposed effective date of such termination (as such time period

may be extended as set forth below), if such default is not capable of being cured by the payment of money. The provisions of Section 7.7 below shall apply if, during such thirty (30) or sixty (60) day period (each such period a “**Termination Notice Period**”), any Senior Recognized Lender shall:

7.6.1.1 notify Landlord of such Senior Recognized Lender’s desire to nullify such notice;

7.6.1.2 pay or cause to be paid all past due Base Rent, all past due additional rent, if any, all other past due monetary obligations then due and in arrears, and all Base Rent, additional rent and other monetary obligations as specified in the Termination Notice to such Senior Recognized Lender and which may become due during such thirty (30) period; and

7.6.1.3 comply with all non-monetary requirements of this Lease then in default and, as determined by Landlord, reasonably susceptible of being complied with by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), and proceed to comply with reasonable diligence and continuity with such requirements reasonably susceptible of being complied with by such Senior Recognized Lender within the notice period, provided, however, (i) that if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Senior Recognized Lender commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Tenant commences to cure the default within Tenant’s applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Senior Recognized Lender’s initial cure period shall commence upon the later of the end of Tenant’s cure period or the date upon which Landlord notifies the Senior Recognized Lender that Tenant has failed or ceased to cure the default with due diligence; and (ii) provided, further, that such Senior Recognized Lender shall not be required during such sixty (60) day period (as it may be extended pursuant to the terms hereof) to cure or commence to cure any default consisting of Tenant’s failure to satisfy and discharge any lien, charge or encumbrance against the Tenant’s interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender.

7.6.1.4 Any notice to be given by Landlord to a Senior Recognized Lender pursuant to any provision of this Section 7 shall be deemed properly addressed if sent to the Senior Recognized Lender who served the notice referred to in Section 7.2.1 above, unless notice of a change of Senior Recognized Lender ownership has been given to Landlord pursuant to Section 7.2.1 above. Such notices, demands and requests shall be given in the manner described in Section 19 below and shall in all respects be governed by the provisions of that Section.

7.7 Procedure on Default.

7.7.1 If Landlord has delivered to a Senior Recognized Lender a Default Notice, and a Senior Recognized Lender shall have proceeded in the manner provided for by Section 7.6.1 above, the specified date for the termination of this Lease as fixed by Landlord in its

Default Notice shall be extended for a period of sixty (60) days, provided that such Senior Recognized Lender shall during such sixty (60) day period:

7.7.2 Pay or cause to be paid the Base Rent, additional rent, if any, and other monetary obligations of Tenant under this Lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender, and (b) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure); and

7.7.3 If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity. If such Senior Recognized Lender is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

7.7.4 If at the end of such sixty (60) day period such Senior Recognized Lender is complying with Section 7.7.1 above, this Lease shall not then terminate, and the time for completion by such Senior Recognized Lender of such proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 7.7.1 above and, thereafter for so long as such Senior Recognized Lender proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 7.7, however, shall be construed to extend this Lease beyond the Term, nor to require a Senior Recognized Lender to continue such foreclosure proceedings after the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosing proceedings, and this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

7.7.5 If a Senior Recognized Lender is complying with Section 7.7.1 above, upon (i) the acquisition of Tenant's leasehold herein by such Senior Recognized Lender or any other purchaser at a foreclosure sale or otherwise and (ii) the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property which is junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided, however, that such Senior Recognized Lender or its designee or any other such party acquiring the Tenant's leasehold estate created hereby shall agree in writing to assume all obligations of the Tenant hereunder, subject to the provisions of this Section 7.

7.7.6 For the purposes of this Section 7, the making of a Security Instrument shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Lender, prior to foreclosure of the Security Instrument or other entry into possession of the leasehold estate, shall not be obligated to assume the performance of any of the terms, covenants or conditions on the part of

the Tenant to be performed hereunder. The purchaser (including any Lender) at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Security Instrument, or the assignee or transferee in lieu of the foreclosure of any Security Instrument shall be deemed to be an assignee or transferee within the meaning of this Section 7, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment; provided, however, that following any damage or destruction but prior to restoration of the Improvements (if so elected by Tenant to be performed as set forth in Section 11.1.1), Senior Recognized Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Senior Recognized Lender assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to restore in the manner provided in this Lease, the Improvements or the part thereof to which the lien or title of such Senior Recognized Lender relates, and submitted evidence reasonably satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation, or, if determined not to be qualified, engages a qualified party to perform such obligation.

7.7.7 If a Recognized Leasehold Mortgagee, whether by foreclosure, assignment and/or deed in lieu of foreclosure, or otherwise, acquires Tenant's entire interest in the Property and all improvements thereon (or in the case of a Recognized Mezzanine Lender, acquires a controlling ownership interest in Tenant), the Recognized Lender shall have the right, without further consent of Landlord, to sell, assign or transfer Tenant's entire interest in the Property and all improvements thereon, and if such Recognized Lender is a Recognized Mezzanine Lender, the interests of any partner (or member) of Tenant, as applicable, to a Permitted Transferee and, otherwise, to a purchaser, assignee or transferee with the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and upon such sale, assignment or transfer such Recognized Lender or Recognized Mezzanine Lender shall be fully and completely released from its obligations under this Lease; provided that such purchaser, assignee or transferee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease to be performed hereunder from and after the date of such purchase and assignment and the purchaser, assignee or transferee is a Permitted Transferee or has previously been approved in writing by Landlord, which approval shall not be unreasonably withheld. A transfer that is made in compliance with the terms of this Section 7.7 shall be deemed to be a permitted sale, transfer or assignment.

7.7.8 Tenant shall not transfer, sell or assign any redemption rights from any foreclosure sale to any person who is not a Permitted Transferee or otherwise approved by Landlord in accordance with the provisions of Section 13 below.

7.8 New Lease. The provisions of this Section 7.8 shall apply in the event of the termination of this Lease by reason of a default on the part of Tenant or the rejection of this Lease by Tenant in bankruptcy. If the Senior Recognized Lenders shall have waived in writing their rights under Sections 7.6 and 7.7 above within sixty (60) days after the Senior Recognized Lenders' receipt of notice required by Section 7.6.1 above, or if the Senior Recognized Lenders are deemed to have waived their rights to proceed under Section 7.7 by their failure to proceed in the manner provided for by Section

7.6.1, Landlord shall provide each Senior Recognized Lender with written notice that this Lease has been terminated ("Notice of Termination"), together with a statement of all sums which would at that time be due under this Lease, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("New Lease") of the Property with the Senior Recognized Lender for the remainder of the Term of this Lease, effective as of the date of termination of this Lease, at the Base Rent and additional rent, if any, and upon the terms, covenants and conditions (including all escalations of Base Rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

7.8.1 Such Recognized Lender shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Recognized Lender receives Landlord's Notice of Termination of this Lease given pursuant to this Section 7.8.

7.8.2 Such Recognized Lender shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 7.8 or under the New Lease, an amount equal to the net income derived by Landlord from the Property during the period from the date of termination of this Lease to the date of the beginning of the lease term of such New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 7.8, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and the Recognized Lender or its designee shall agree to pay any additional sum ultimately determined to be payable pursuant to arbitration as provided in Section 14 below, plus interest as allowed by law, and such obligation shall be adequately secured.

7.8.3 Such Recognized Lender or its designee shall agree to remedy any of Tenant's defaults of which said Recognized Lender was notified by Landlord's Notice of Termination and which, as determined by Landlord, are reasonably susceptible of being so cured by Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure).

7.8.4 If a Senior Recognized Lender has made an election pursuant to the foregoing provisions of this Section to enter into a New Lease, Landlord shall not execute, amend or terminate any Subleases of the Property during such sixty (60) day period without the prior written consent of the Senior Recognized Lender which has made such election.

7.8.5 Any such New Lease may, at the option of the Senior Recognized Lender so electing to enter into such New Lease, name as tenant a nominee or wholly owned subsidiary of such Senior Recognized Lender, or, in the case where the Senior Recognized Lender so electing to enter into such New Lease is acting as agent for a syndication of lenders, an entity which is controlled by one or more of such lenders. If as a result of any such termination Landlord shall succeed to the interests of Tenant under any Sublease or other rights of Tenant

with respect to the Property or any portion thereof, Landlord shall execute and deliver an assignment without representation, warranty or recourse of all such interests to the tenant under the New Lease simultaneously with the delivery of such New Lease.

7.8.6 The provisions of this Section 7.8 shall survive the termination of this Lease.

7.8.7 In the event that both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender give such notice, the rights of the Senior Recognized Leasehold Mortgagee under this Section 7.8 shall prevail.

7.9 New Lease Priorities. If both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender shall request a New Lease pursuant to Section 7.8 above, Landlord shall enter into such New Lease with the Senior Recognized Leasehold Mortgagee, or with the designee of such Senior Recognized Leasehold Mortgagee. Landlord, without liability to Tenant or any Recognized Lender with an adverse claim, may rely upon a mortgagee's title insurance policy or preliminary commitment therefor, issued by a responsible title insurance company doing business within the State of California, as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

7.10 Lender Need Not Cure Specified Default. Nothing herein contained shall require any Recognized Lender or their designee as a condition to its exercise of right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure), including, but not limited to, the default referred to in Section 15 below, in order to comply with the provisions of Sections 7.6 or 7.7 above, or as a condition of entering into a New Lease provided for by Section 7.8 above. No exercise of any of the rights by a Lender permitted to it under this Lease, its Security Instrument or otherwise, shall ever be deemed an assumption of and agreement to perform the obligations of Tenant under this Lease, unless and until (i) such Lender takes possession of the Property or any portion thereof, or, by foreclosure or otherwise, acquires Tenant's interest in the Property (or, in the case of a Mezzanine Lender, acquires a controlling interest in Tenant), and then, except as otherwise specifically provided herein, only with respect to those obligations arising during the period of such possession or the holding of such interest by such Lender; or (ii) such Lender, or any wholly-owned subsidiary to whom it may transfer Tenant's interest in the Property, expressly elects by notice to Landlord to assume and perform such obligations.

7.11 Eminent Domain. Tenant's share, as provided by Section 11 of this Lease, of the proceeds arising from an exercise of the power of Eminent Domain shall, subject to the provisions of Section 11 below, be disposed of as provided for by any Leasehold Mortgage.

7.12 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all property insurance policies required to be carried by Tenant

hereunder on condition that the insurance proceeds are to be applied in the manner specified in the Leasehold Mortgage.

- 7.13 Legal Proceedings.** Landlord shall give each Recognized Lender prompt notice of the commencement of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Recognized Lender shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do consent to such intervention. In the event any Recognized Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Recognized Lender notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Recognized Lenders not intervening after receipt of notice of the proceedings. In addition to the notice requirements in Section 7.2.4, in the event a Recognized Lender commences any judicial or non-judicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceedings shall be provided to Landlord at the same time notice thereof is given Tenant.
- 7.14 No Merger.** So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Lease after default by Tenant, provided that no Recognized Lender shall have requested and been granted a New Lease pursuant to the provisions of Section 7.8 above.
- 7.15 Estoppel Certificate.** Landlord and Tenant shall, at any time and from time to time hereafter, but not more frequently than twice in any one year period (or more frequently if such request is made in connection with any sale by Landlord of its fee interest or sale or mortgage by Tenant of Tenant's leasehold interest or permitted subletting by Tenant under this Lease) execute, acknowledge and deliver to Tenant (or at Tenant's request, to any prospective Lender, or other prospective transferee of Tenant's interest under this Lease) or to Landlord (or at Landlord's request, to any prospective transferee of Landlord's fee interest), as the case may be, within thirty (30) business days after a request, a certificate substantially in the form of Exhibit E stating to the best of such person's knowledge after a commercially reasonable inquiry (a) 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 or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Base Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of the certifying person, there are then existing any material defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to the certifying person, directly related to this Lease and reasonably requested by the requesting party or customarily included in estoppel certificates for the transaction in question. In addition, if requested, at the request of the requesting person, the certifying person shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by

the certifying person that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by the requesting person or a prospective Mortgagee, or other prospective transferee of such interest under this Lease.

- 7.16 Notices.** Notices from Landlord to each Recognized Lender shall be mailed to the address furnished Landlord pursuant to Section 7.2 above, and those from each Recognized Lender to Landlord shall be mailed to the address designated pursuant to the provisions of Section 19 below. Such notices, demands and requests shall be given in the manner described in Section 19 below, and shall in all respects be governed by the provisions of that section.
- 7.17 Erroneous Payments.** No payment made to Landlord by a Recognized Lender shall constitute agreement that such payment was, in fact, due under the terms of this Lease, and a Recognized Lender having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided the Recognized Lender shall have made demand therefor not later than one year after the date of its payment.
- 7.18 Amendment of Lease.** Landlord shall promptly make such reasonable amendments or modifications of this Lease as are requested by Tenant on behalf of any Lender or prospective Lender, and will execute and deliver instruments in recordable form evidencing the same, provided that there will be no change in the Term of this Lease or any material and adverse change in any of the substantive obligations, rights or remedies of Landlord.
- 7.19 Certain Tenant Rights.** The right, if any, of the Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute, and the right of the Tenant to modify, restate, terminate, surrender or cancel this Lease may not be exercised by the Tenant without the express prior written consent of the Senior Recognized Lenders; and any exercise of the foregoing rights of the Tenant without the prior consent of the Senior Recognized Lenders may be voided at the option of a Senior Recognized Lender. Nothing in the preceding sentence shall create, or imply the existence of, any right of Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy; any such rights are limited to those provided under the terms of this Lease and applicable law.
- 7.20 Limitation on Liability.** Notwithstanding anything to the contrary in this Lease, no Recognized Lender or its assigns shall have any liability under this Lease beyond its interest in this Lease and the sub-rents, other income and all proceeds actually received by Recognized Lender or, if not actually received, income and proceeds held in trust to which Recognized Lender is otherwise entitled to receive, including, but not limited to, Recognized Lender's interest in insurance proceeds and awards, arising from or in connection with the Property, even if it becomes Tenant.

7.21 No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Property, nor its right to receive Base Rent, to any Leasehold Mortgagee.

8. TENANT'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE

8.1 Indemnity.

8.1.1 Tenant shall indemnify, defend and save harmless Landlord and its officers, employees, contractors, agents, representatives and volunteers (collectively, the "**Indemnitees**") from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the development, use, occupation, and control of the Property by Tenant, its Concessionaires, invitees, agents, employees, guests, customers, licensees or permittees, except as may arise solely out of the willful or grossly negligent act of the Indemnitees. Landlord and Tenant agree that this provision shall not require Tenant to indemnify, defend and save the Indemnitees harmless from the Indemnitees' gross negligence or willful misconduct, if any.

8.1.2 All provisions of this Lease pursuant to which the Tenant agrees to indemnify the Indemnitees against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Property, shall not apply to damages caused by or resulting from the sole negligence of the Indemnitees. The indemnifications provided in this Article 8 shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

8.1.3 Unless otherwise expressly provided in this Lease to the contrary, Landlord shall have no responsibility, control or liability with respect to any aspect of the Property or any activity conducted thereon from and after the Effective Date during the Term of this Lease. Notwithstanding anything to the contrary in this Lease, to the greatest extent permitted by law, and except to the extent caused by Landlord's negligence or willful misconduct, Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Property from any cause. Without limiting the foregoing, neither Landlord nor any of the Indemnitees shall be liable for and, except as otherwise provided in Section 11.1.1, there shall be no abatement of Base Rent for, (i) any damage to Tenant's property, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Property or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Property or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Property, or (v) any latent

or other defect in the Property. This Section 8 shall survive the expiration or earlier termination of this Lease.

8.2 Acquisition of Insurance Policies. Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of California satisfactory to Landlord reasonably covering and protecting Tenant. Such insurance may be provided by blanket policies covering multiple properties.

8.3 Types of Required Insurance. [SUBJECT TO REVIEW OF CITY RISK MANAGEMENT] Subject to the requirements of any Lender, Tenant shall procure and maintain the following:

8.3.1 Commercial General Liability Insurance. Commercial liability insurance including contractual liability covering claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Improvements, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.13(a) below) no less than the following:

Bodily Injury and Property Damage Liability – Five Million Dollars (\$5,000,000) each occurrence; Ten Million Dollars (\$10,000,000) Aggregate

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 8 for the Property and Improvements.

8.3.2 Physical Property Damage Insurance. Physical damage insurance covering all real and personal property located on or in, or constituting a part of, the Property (including but not limited to the Improvements) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of California, (iii) explosion of steam and pressure boilers and similar apparatus located in the Improvements, and (iv) flood damage if the Property is located within a flood plain. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverage, then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of: (i) the first sentence of Section 8.4 below; and (ii) Section 8.4.4 below.

8.3.3 Builder's Risk Insurance. Builder's all-risk insurance in an amount not less than the hard costs of construction during construction of the Improvements and during any subsequent restorations, alterations or changes in the Improvements that may be made by Tenant at a hard cost in excess of One Million Dollars (\$1,000,000) per job (adjusted every Tenth Anniversary Date during the Term as provided in Section 22.8.1 below). The insurance coverage required under this Section 8.3.3 shall name any and all Leasehold Mortgagee(s) as loss payees.

8.3.4 Worker's Compensation Insurance. Worker's Compensation and Employer's Liability Insurance with respect to any work by employees of Tenant on or about the Property.

8.3.5 Business Interruption Insurance. Business interruption insurance or rental loss insurance as required by any lender to Tenant.

8.3.6 Automobile Insurance. A Commercial Automobile Liability policy in the amount of Two Million Dollars (\$2,000,000), combined single limit for bodily injury and property damage. Coverage shall include “Owned, Non-Owned and Hired” automobiles, which shall protect Tenant and Landlord from claims for such damages.

8.3.7 Mutual Waivers of Recovery. Landlord, Tenant, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire, extended coverage or other property insurance policy maintained by Tenant with respect to its Improvements or Property or by Landlord with respect to the Property (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other, including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Improvements or Property, or Landlord with respect to the Property, shall contain, in the case of Tenant’s policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord’s policies, a waiver of subrogation provision or endorsement in favor of Tenant, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. Tenant agrees to indemnify, protect, defend and hold harmless the Landlord from and against any claim, suit or cause of action asserted or brought by Tenant’s insurers for, on behalf of, or in the name of Tenant, including, but not limited to, claims for contribution, indemnity or subrogation, brought in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR TENANT.

8.4 Terms of Insurance. The policies required under Section 8.3.1 above, shall name Landlord as additional insured and Tenant shall provide promptly to Landlord certificates of insurance with respect to such policies. Further, all policies of insurance described in Section 8.3.1 above, shall:

8.4.1 Be written as primary policies not contributing with and not in excess of coverage that Landlord may carry;

8.4.2 Contain an endorsement providing that such insurance may not be materially changed, amended or cancelled with respect to Landlord, except after thirty (30) days prior written notice from Tenant to Landlord or, in the event of non-payment, after ten days (10) prior written notice from Tenant to Landlord;

8.4.3 Contain an endorsement containing express waiver of any right of subrogation by the insurance company against Landlord, its agents and employees;

8.4.4 Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Tenant which might otherwise result in a forfeiture of said insurance;

8.4.5 Provide that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums; and

8.4.6 Be provided by insurance carriers with an A.M. Best rating of not less than A:VII.

8.5 Landlord's Acquisition of Insurance. If Tenant at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefor, after ten (10) days prior notice to Tenant and a reasonable opportunity to cure, Landlord shall have the right to procure such insurance (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided in Section 22.11 below, from the date of such expenditure by Landlord until repayment thereof by Tenant. Any policies of insurance obtained by Landlord covering physical damage to the Property or Improvements shall contain a waiver of subrogation against Tenant if and to the extent such waiver is obtainable and if Tenant pays to Landlord on demand the additional costs, if any, incurred in obtaining such waiver. Any insurance or self-insurance procured or maintained by Landlord shall be excess coverage, non-contributory and for the benefit of the Landlord only.

8.6 Proceeds. All proceeds of Tenant's insurance shall, except as provided otherwise in Section 8.7 below, be applied in accordance with the provision of Section 11 below.

8.7 Application of Proceeds of Physical Damage Insurance. With respect to any insurance policies as described in Section 8.3.2 (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 11 below and, subject to the rights of Leasehold Mortgagees pursuant to Leasehold Mortgages, in the event of any repair, replacement, restoration or rebuilding, be paid over to Tenant.

9. REPAIRS AND MAINTENANCE

9.1 Acceptance of Property. EXCEPT AS OTHERWISE PROVIDED HEREIN, TENANT ACCEPTS THE PROPERTY AND ANY IMPROVEMENTS THEREON AS IS, WHERE IS, IN THE CONDITION THEY ARE IN ON THE DATE THIS LEASE IS EXECUTED WITHOUT THE OBLIGATION OF LANDLORD TO MAKE ANY REPAIRS, ADDITIONS OR IMPROVEMENTS THERETO.

9.2 Tenant's Maintenance Obligations. During the Term hereof, Tenant agrees to keep and maintain the Improvements and the Property, and every part thereof, including without limitation, all buildings, all exterior facades, all sidewalks, all exterior areas, any appurtenances and fixtures, the structural elements of the buildings, all parking facilities, roofs, walls, plumbing, heating, ventilation, air conditioning, plazas, and landscaping, at Tenant's sole cost and expense, in good repair, in a neat, clean, safe,

and orderly condition, in accordance with the standard of maintenance of prudent owners of high quality, Class A Multifamily Apartment Projects within the East Bay Area region, in accordance with any property improvement plan required by any lender, and in compliance with the City Municipal Code and all applicable laws. Tenant agrees to perform all day-to-day maintenance, repairs and replacements reasonably necessary to maintain and preserve the Improvements and the Property, and to provide administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are reasonably necessary for the maintenance of the Improvements. Tenant agrees that Landlord shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Improvements and the Property. Tenant hereby waives all rights to make repairs or to cause any work to be performed at the expense of Landlord as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable.

9.3 Landlord's Inspections. Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof. Landlord may, after reasonable advance notice, enter upon the Property, or any portion thereof, from time to time, solely for the purpose of inspecting the Property or a suspected breach of this Lease by Tenant that reasonably requires entry upon the Property. In so doing, Landlord shall use reasonable efforts to minimize disruption to Tenant or its Subtenants or Concessionaires. Landlord shall not be liable to Tenant or its Subtenants or Concessionaires, or any person or entity claiming through Tenant or its Subtenants or Concessionaires, or to the occupant of any portion of the Property for any loss, damage or harm arising out of Landlord's exercise of the rights of entry reserved herein, except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors, officers or employees.

9.4 Landlord's Repairs. If Tenant fails to make repairs or replacements as required in this Lease and such failure has a material adverse impact on the operation of the Property, after the expiration of any applicable notice and cure period, Landlord may once again notify Tenant of said failure in writing, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 9.4 OF THE LEASE, AND IF TENANT FAILS TO CURE SUCH DEFAULT WITHIN THIRTY (30) DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH THIRTY (30) DAY PERIOD AND DILIGENTLY PROSECUTED THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 9.4 OF THE LEASE." If Tenant then fails to make the repairs or replacements or commence the repairs or replacements as provided above, within such ten (10) business day period, Landlord may make such repairs and replacements at Tenant's expense. Tenant shall reimburse Landlord for the actual and reasonable costs thereof within thirty (30) days after Landlord's notice specifying such costs together with a written invoice therefor. Such costs may include, without limitation, the reasonably necessary cost of design, labor, material, equipment, the value of services provided by Landlord's employees in the actual performance of the repairs and

replacements, and the cost of professional services such as attorneys, accountants, contractors and other consultants as may be reasonably incurred or paid by Landlord. If Landlord makes such repairs or replacements, Tenant shall indemnify and hold Landlord harmless from and against all claims, demands, loss or liability of any kind arising out of or connected in any way with such work, including, but not limited to claims by Tenant, its officers, employees, agents, Subtenants, Concessionaires and the patrons or visitors of Tenant or its Subtenants or Concessionaires except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors and employees.

9.5 Capital Reinvestment. Tenant shall annually prepare and submit to Landlord for Landlord's reasonable approval a five-year plan for rehabilitation of the Improvements ("Rehabilitation Plan"). Each Rehabilitation Plan shall describe what work is necessary to maintain the structural integrity of the Improvements, and keep the Improvements in a commercially reasonable condition which is sufficient to operate a Class A Multifamily Apartment Project therein, and shall set forth a detailed program of expenditures to be undertaken by Tenant within such five year period, broken down by Lease Year. Tenant shall perform the work set forth in each approved Rehabilitation Plan within the times set forth therein. Tenant shall also annually prepare and submit to Landlord for Landlord's reasonable approval a five-year plan for renovation and replacement of furniture, fixtures and equipment in the common areas of the Project ("FFR Plan"). Each FFR Plan shall determine what furniture, fixtures and equipment are necessary in the common areas of the Project to maintain the Project as a Class A Multifamily Apartment Project, and shall set forth a detailed program of expenditures for furniture, fixtures and equipment broken down by calendar year. Tenant shall perform the renovation and replacement set forth in each approved FFR Plan within the times set forth therein.

9.6 Reserve Account. Tenant shall establish and maintain a capital reserve account at all times during the Term of the Lease ("Reserve Account"). The funds to be placed and maintained in the Reserve Account during each Lease Year shall be not less than the amount set forth in the approved Rehabilitation Plan for the current five year Rehabilitation Plan period. Notwithstanding the foregoing, if the lender requires a larger minimum deposit into the Reserve Account, Tenant shall maintain such larger required amount in the Reserve Account. The funds in the Reserve Account shall be expended only for capital repairs, improvements, and replacements to the Project fixtures and equipment in accordance with the current approved Rehabilitation Plan and FFR Plan, and capital repairs to and replacement of the Project with a long useful life and which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Reserve Account does not in any manner relieve or lessen Tenant's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Tenant shall submit to Landlord an accounting for the Reserve Account.

9.7 Condition at End of Lease. Upon vacating the Property at the end of the Term, Tenant shall leave the Property and all Improvements in the state of repair and

cleanliness required to be maintained by Tenant during the Term of this Lease, wear and tear and casualty excepted, and shall peaceably surrender the same to Landlord. On the date Tenant is required by this section to surrender possession, Tenant shall deliver to Landlord such proper and executed instruments in recordable form, releasing, quitclaiming and conveying to Landlord all right, title and interest of Tenant and any other party claiming by or through Tenant or Tenant's Estate in and to the Property and/or the Improvements, including, without limitation, such documents necessary for Landlord to demonstrate to a title company that this Lease no longer encumbers the Property and Improvements, and that title to the Improvements shall have vested in Landlord, free and clear of all liens, encumbrances or title exceptions, other than the Permitted Title Exceptions, exceptions to title not otherwise created by or through Tenant, and title exceptions approved by Landlord in writing. All provisions of this section shall survive any termination of this Lease.

10. QUIET POSSESSION

10.1 Quiet and Peaceful Possession. Landlord covenants that it has full right, power and authority to make this Lease. Landlord covenants that Tenant, so long as Tenant is not in default hereunder and subject to the provisions of this Lease, and except for Landlord's actions in the case of an emergency for the purposes of protecting public health or safety, which actions shall be strictly limited in duration and scope so as to minimize to the extent possible any interference with the possession and use of the Property by Tenant, Tenant shall have quiet and peaceful possession of the Property during the entire Term of this Lease. However, except as provided in this Lease, Landlord shall in no event be liable in damages or otherwise, nor shall Tenant be released from any obligation hereunder, because of the unavailability, delay, quality, quantity or interruption of any service or amenity, or any termination, interruption or disturbance of services or amenities, or any cause due to any omission, act or neglect of Tenant or its servants, agents, employees, licensees, business invitees, or any person claiming by or through Tenant or any third party except to the extent any of the foregoing are caused by the gross negligence or willful misconduct of Landlord or its officers, agents or employees, in violation of its obligations under this Lease.

10.2 Other Activities in Shoreline Marina Area. Tenant acknowledges that from time to time during the term of this Lease, and at such times and intervals as may be determined by Landlord in its reasonable discretion, construction, rehabilitation, replacement, repair and restoration activities may be conducted by the authority of Landlord within the Shoreline Marina area. Landlord agrees that such activities shall be performed during such hours and durations that are reasonable for such activities. Tenant acknowledges that said activities and related operations may be necessary and for the benefit of Tenant, its Subtenants, its guests and customers, other tenants and the public, and that the conduct of such activities shall not be deemed to have disturbed or interfered with the possession and use of the Property by Tenant or anyone claiming under Tenant, or to have caused Tenant to be evicted, either actually or constructively, from the Property, and shall, under no circumstances, entitle Tenant or others claiming under or through Tenant to claim or recover incidental or consequential damages from Landlord on account of such activities.

11. DAMAGE OR DESTRUCTION

11.1 Effect of Damage or Destruction.

(a) Tenant's Duty to Restore. Subject to Section 11.1(b) below, if any Improvements are damaged by fire, other peril or any other cause during the Lease Term, then Tenant, at its sole cost and expense, shall, within three (3) years after the date of casualty, or such shorter period of time as is reasonably necessary for the restoration (subject to delays caused by Force Majeure Events), restore the Leasehold Improvements in compliance with and to the extent permitted by all then applicable laws and this Lease shall remain in full force and effect, without abatement of Base Rent or other charges, except to the extent of rental loss insurance proceeds paid to Landlord. All insurance proceeds payable as a result of such casualty shall be applied in the following order of priority:

- i. First, as provided by any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;
- ii. Second, to Tenant for the payment of all costs and expenses to complete the restoration of the Improvements required of Tenant pursuant to this subsection; and
- iii. Third, the remainder of insurance proceeds, if any, shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (ii) above shall be deemed to be held in trust for the benefit of Landlord and Tenant by the recipient for the purpose of restoration of the Improvements

(b) Tenant's Termination Rights. Notwithstanding anything to the contrary in this Lease:

(i) Election Not to Reconstruct. If an Uninsurable Loss in excess of the Restoration Amount or any Late Term Extensive Damage occurs, then Tenant, by delivery of written notice to Landlord within six (6) months after the occurrence of the damage, may elect not to reconstruct the Improvements, in which case Tenant, at its sole cost, shall remove all debris; restore the Property to a safe condition in compliance with all applicable laws; and maintain such Improvements which are not damaged in the condition required by this Lease. Following such election, this Lease shall continue to remain in full force and effect, without abatement of Base Rent or other charges. Tenant's failure to make an election in writing within six (6) months after the date of the occurrence of the damage shall constitute Tenant's affirmative election not to restore the damaged Improvements pursuant to Section 11.1(a) above. All insurance proceeds payable as a result of such casualty with regard to Late Term Extensive Damage which Tenant elects not to reconstruct as provided hereinabove shall be applied in the following order of priority:

- A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to Tenant for the payment of all costs and expenses to complete the demolitions and/or restorations required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all Rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (B) above shall be deemed to be held in trust for the purposes and uses described therein.

Notwithstanding the foregoing, Tenant shall be responsible for repairing any damage to Improvements caused by an Uninsurable Loss if the Uninsurable Loss is less than the Restoration Amount.

(c) Infeasibility. Notwithstanding Section 11.1(a), if reconstruction of the Improvements following any casualty is physically infeasible because of physical conditions of the Property, or if the City or any other governmental authority cannot legally grant the permits and approvals for repair or restoration of the Improvements so that the Project shall continue to have not less than the original number of apartment units, plus facilities substantially equivalent to those existing prior to the casualty and reasonably desirable for the reconstructed Project taking into consideration any reduction in apartment units, and in any case sufficient to maintain the Class A Multifamily Apartment Project operating standards set forth herein (the "Minimum Restoration Level"), then Tenant may terminate this Lease as of the date set forth in its written notice to Landlord so stating. If the City or any governmental authority can legally grant permits and approvals for repair and restoration of the Improvements so that the total capacity of the Project after restoration will be at least the Minimum Restoration Level but less than the total capacity of the Project originally approved by the City land use entitlements, then Minimum Ground Rent shall thereafter be reduced to reflect the number of apartment units in the Project. Landlord shall cooperate with Tenant and use good faith efforts to have permits and approvals for repair granted for the highest number of apartment units legally available, up to the number of apartment units originally approved by the City land use entitlements, but Landlord shall have the right to require that the Improvements contain the amenities required by this Lease, subject to reduction in size and/or capacity as specified in this Section 11.1(c). If Tenant elects to terminate this Lease pursuant to this section, Tenant, at its sole cost, shall, prior to the effective date of the termination remove all debris from the Property, restore any Improvements not removed, remove all safety hazards from the Property and restore the Property to a safe condition in compliance with all applicable laws. Subject to Tenant's completion of its obligations in the immediately preceding sentence, upon the termination date set forth in Tenant's written notice to Landlord of its election to terminate: (i) all Minimum Ground Rent and other sums due pursuant to this Lease shall be prorated as of the date of termination and paid by Tenant; (ii) this Lease shall expire and terminate; and (iii) neither Landlord nor Tenant shall have any further obligations hereunder, except for those obligations which have accrued prior to the date of termination or which are intended to survive termination of the Lease. All insurance proceeds payable as a result of such damage and Tenant's election to terminate shall be applied in the following order of priority:

A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to the payment of all expenses incurred by Tenant in completing the demolition and/or restoration required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

(d) General Provisions. Landlord shall not be required to repair any injury or damage to the Improvements on the Property. Landlord and Tenant hereby waive the provisions of (i) Sections 1932(2) and 1933(4) of the Civil Code of California and any other provisions of Law from time to time in effect during the term of this Lease and relating to the effect on leases of partial or total destruction of leased premises; and (ii) Sections 1941 and 1942 of the Civil Code, providing for repairs to and of the Property. Landlord and Tenant agree that their respective rights upon any damage or destruction of the Improvements shall be those specifically set forth in this Article 11.

12. CONDEMNATION

12.1 Definitions. As used in this Article, the following words have following meanings:

12.1.1 “Award” means the compensation paid for the Taking, as hereinafter defined, whether by judgment, agreement or otherwise.

12.1.2 “Taking” means the taking or damaging of the Property or the Improvements or any portion thereof as the result of the exercise of the power of eminent domain, or for any public or quasi-public use under any statute. Taking also includes a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending.

12.1.3 “Taking Date”: means the date on which the condemning authority takes actual physical possession of the Property, the Improvements or any portion thereof, as the case may be.

12.1.4 “Total Taking”: means the taking of the title to all of the Property and the Tenant’s Estate.

12.1.5 “Substantial Taking” means the Taking of the fee title to a portion of the Property or title to Tenant’s Estate, or both, if one or more of the following conditions result:

12.1.5.1 the portion of the Property and/or Tenant’s Estate not so taken cannot be repaired or reconstructed, as to constitute a Class A Multifamily Apartment Project capable of producing net operating income generally proportionate to that which was produced by the Project immediately preceding the Taking;

12.1.5.2 such Taking, in the reasonable judgment of Tenant, prevents or impedes Tenant in the conduct of its business on the Property, in an economically viable manner; and

12.1.5.3 the cost of repairing or replacing the Improvements exceeds fifty percent (50%) of the fair market value of Tenant's Estate immediately preceding such Taking.

12.1.6 "Partial Taking" means any Taking of title that is not either a Total or a Substantial Taking.

12.1.7 "Notice of Intended Taking" means any notice or notification on which a prudent person would rely as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease.

12.2 Total or Substantial Taking of Property. In the event of a Total Taking, except for a Taking for temporary use, Tenant's obligation to pay rent shall terminate on, and Tenant's interest in the Property and the Improvements shall terminate on, the Taking Date. In the event of a Taking, except for a Taking for temporary use, which Tenant considers to be a Substantial Taking, Tenant may, provided that all Leasehold Mortgagee(s) consent in writing thereto, deliver written notice to Landlord within sixty (60) days after Tenant receives a Notice of Intended Taking, notify Landlord of the Substantial Taking. If Tenant does not so notify Landlord, or any of Tenant's Leasehold Mortgagees refuse to consent thereto, the Taking shall be deemed a Partial Taking. If Landlord does not dispute Tenant's contention that there has been a Substantial Taking within ten (10) days of Landlord's receipt of Tenant's written notice, or if it is determined, by order of the judicial referee, that there has been a Substantial Taking, then the Taking shall be considered a Substantial Taking, and Tenant shall be entitled to terminate this Lease effective as of the Taking Date if (i) Tenant delivers possession of the Property and Improvements to Landlord within sixty (60) days after the Taking Date, (ii) Tenant complies with all Lease provisions concerning apportionment of the Award and (iii) Tenant has complied with all Lease provisions concerning surrender of the Property, including, without limitation, all applicable provisions concerning removal of Improvements. If these conditions are not met, the Taking shall be treated as a Partial Taking.

12.3 Apportionment and Distribution of Total Taking and Substantial Taking. In the event of a Total Taking or Substantial Taking, Landlord and Tenant shall each formulate its own claim for an Award with respect to its respective interests, but will cooperate with the other party, to the extent possible, in an attempt to maximize the Award to be received by each, and Awards shall be distributed to Tenant (subject to the rights of any applicable Leasehold Mortgagee under its Leasehold Mortgage) to the extent that such Award is attributable to the present value of Tenant's Estate, and to Landlord to the extent that such Award is attributable to Landlord's right, title, and interest in and to (a) the present value of its fee estate in the Property, subject to this

Lease; (b) the present value of its reversionary interest in the Improvements, if any, and (c) the present value of all Base Rent due Landlord hereunder.

12.4 Partial Taking; Abatement and Restoration. If there is a Partial Taking of the Property, except for a Taking for temporary use, the following shall apply. This Lease shall remain in full force and effect on the portion of the Property and Improvements not Taken, except that, notwithstanding anything in this Lease which is or appears to be to the contrary, the Base Rent due under this Lease shall be reduced in the same ratio that the market value of Tenant's Estate as improved immediately prior to the Taking is reduced by the Taking. The reduction in market value of Tenant's Estate shall take into account and shall be determined subject to any permitted Subleases then in effect, and shall be determined upon completion of any repairs, modifications, or alterations to the Improvements on the Property to be made hereunder following the Partial Taking. Within a reasonable time period after a Partial Taking, at Tenant's expense and in the manner specified in the provisions of this Lease relating to construction, maintenance, repairs, and alterations, Tenant shall reconstruct, repair, alter, or modify the Improvements on the Property as Tenant deems appropriate so as to make them an operable whole to the extent allowed by governmental laws and restrictions.

12.5 Apportionment and Distribution of Award for Partial Taking. On a Partial Taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be distributed first, as necessary to cover the cost of restoring the Improvements on the Property to a complete architectural unit of a quality equal to or greater than such Improvements before the Taking (to the extent allowed by governmental laws and restrictions), and, thereafter, for apportionment between Landlord and Tenant based upon the formula set forth in Section 12.3.

12.6 Taking for Temporary Use. If there is a Taking of the Property for temporary use for a period equal to or less than three (3) months, (i) this Lease shall continue in full force and effect, (ii) Tenant shall continue to comply with Tenant's obligations under this Lease not rendered physically impossible by such Taking, (iii) neither the Term nor the Base Rent shall be reduced or affected in any way, but the Base Rent shall continue at the level of the last Base Rent paid prior to the Taking (including any subsequent increases in such Base Rent provided for under this Lease), and (iv) Tenant shall be entitled to any Award for the use or estate taken. If any such Taking is for a period extending beyond such three (3) month period, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings, as appropriate.

12.7 Notice of Taking; Representation.

12.7.1 The party receiving any notice of the following kinds shall promptly give the other party notice of the receipt, contents and date of the notice received: (a) Notice of an intended Taking; (b) Service of any legal process relating to condemnation of the Property or the Improvements; (c) Notice in connection with any proceedings or negotiations with respect to

such a condemnation; or (d) Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

12.7.2 The party receiving any notice, Landlord, Tenant and all persons and entities holding under Tenant each shall have the right to represent their respective interest in each proceeding or negotiation with respect to a Taking and to make full proof of such parties' claims. No agreement, settlement, sale, or transfer to or with the condemning authority shall be made without the consent of Landlord, Tenant and the Senior Recognized Leasehold Mortgagee, if any. Landlord and Tenant each agree to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

12.8 Disputes in Division of Award. If the respective portions of any Award to be received by Landlord, Tenant and any Leasehold Mortgagee are not fixed in the proceedings for such Taking, Landlord, Tenant and any Leasehold Mortgagee shall attempt to agree in writing on such respective portions within thirty (30) days after the date of the final determination of the amount of such Award.

12.9 Separate Claims. Nothing contained in this Article 12 shall prevent either Landlord, Tenant or any Leasehold Mortgagee from filing or prosecuting separately their respective claims pursuant to this Article 12 for an Award or payment on account of the Takings to which this Article 12 applies, provided any such proceeding shall not reduce the amount of the Award provided to any other party pursuant to the terms of this Lease.

13. TRANSFERS

13.1 No Transfer Without Landlord's Consent. The qualifications and identity of Tenant are of particular concern to Landlord. It is because of those qualifications and identity that Landlord has entered into this Lease with Tenant. Except as otherwise provided below, during the Term of this Lease, (a) no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease, (b) Tenant shall not make any total or partial sale, transfer, conveyance, assignment, Sublease, or subdivision of the whole or any part of the Property or the Improvements thereon (excluding deeds of trusts and mortgages), and (c) there shall not be a change in the controlling interest of Tenant, without the prior written approval of Landlord, except as expressly permitted below. Prior to Stabilization (as herein defined), Landlord may disapprove a request for a Transfer in its sole and absolute discretion except as expressly permitted below. For purposes hereof, "Stabilization" means the point at which the Project has reached ninety-five percent (95%) occupancy for three consecutive one-month periods. After Stabilization, Landlord's consent shall not be unreasonably withheld, conditioned or delayed. With respect to a proposed Transfer of the Property, Tenant's request for approval shall be accompanied by sufficient evidence regarding the proposed transferee's ability to finance the Transfer and operate and manage a project of this size, in sufficient detail to enable Landlord to evaluate the proposed transferee pursuant to the criteria set forth in this Section 13.1 and as reasonably determined by Landlord. Landlord shall evaluate each proposed transferee

on the basis of the respective qualifications set forth above, and may reasonably disapprove any proposed transferee, during the period for which this Section 13.1 applies, which Landlord reasonably determines does not possess these qualifications. Notwithstanding any provision in this Section 13 to the contrary, in no event shall Tenant make any Transfer which would or could likely be effective beyond the Term (including extensions thereof) without the prior written consent of the Landlord. A Sublease or an assignment and assumption agreement in form reasonably satisfactory to Landlord shall also be required for all proposed Transfers. Should Landlord consent to a Transfer, (i) such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Lease, including any then-existing default or breach, and such restrictions or prohibitions shall apply to each successive Transfer, and (ii) such Transfer shall relieve the transferring Tenant of its liability under this Lease and such transferring Tenant shall be released from performance of any of the terms, covenants and conditions of this Lease upon such Transfer, and thereafter the assignee Tenant shall be liable under this Lease, provided that the assigning Tenant shall retain all indemnification obligations pursuant to this Lease, and shall remain responsible for any obligations hereunder which arose prior to the effective date of the assignment and assumption agreement. As used herein, "Permitted Transferee" means a person or entity (i) that possesses the experience and qualifications necessary for the proper performance of Tenant's obligations under this Lease following completion of the Project, and (ii) that possesses the financial resources typical of owners of similar projects.

13.2 Definition of Transfer. For purposes of this Lease, "Transfer" means any sale, lease, Sublease, assignment or other transfer by Tenant of all or any of its interest in or rights or obligations under this Lease or with respect to the Property, other than through (i) a transfer which this Lease expressly provides may be made without Landlord's consent, (ii) Affiliate Transfers, (iii) Leasehold Mortgages, and (iv) Subleases (as defined in Section 13.5 hereof).

13.3 Affiliate Transfers. Notwithstanding the provisions of Sections 13.1 or 13.2, the following transactions shall not constitute a Transfer, shall not release Tenant from its obligations hereunder and shall not require the consent of Landlord:

13.3.1 the transfer of ownership of any ownership interests in Tenant to any Affiliate of Tenant or from one owner of ownership interests in Tenant to another owner of ownership interests in Tenant; or

13.3.2 the assignment to any trustee by way of a deed of trust in favor of any Leasehold Mortgagee, for the purpose of creating a Leasehold Mortgage, or to any such Leasehold Mortgagee or other purchaser in connection with a foreclosure of a Leasehold Mortgage; or

13.3.3 a transfer of ownership interests in Tenant or in constituent entities of Tenant for estate planning purposes (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of

the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer is described in this item (iii) is the result of gift, devise, intestate succession or operation of law, (iv) in connection with a pledge by any partner, shareholder or member of a constituent entity of Tenant to a Mezzanine Lender as security for a Mezzanine Loan; or

13.3.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities is/are traded publicly on a national stock exchange or is traded in the over-the-counter market and the price for which is regularly quoted in a recognized national quotation service; or

13.3.5 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership interest of Tenant remains the same as that on the Effective Date or as otherwise permitted in accordance with this Section 13.3 above; or

13.3.6 any transfer resulting from a Taking.

13.4 Conditions Precedent to Transfer. The following are conditions precedent to Tenant's right to Transfer this Lease:

13.4.1 Tenant shall give Landlord ninety (90) days prior written notice of the proposed Transfer setting forth therein (i) the identity of the proposed transferee; and (ii) the proposed transferee's proposed use of the Property (the "**Transfer Request**"). Within thirty (30) days of the receipt of the Transfer Request, Landlord will notify Tenant in writing of the Landlord's consent or rejection of the proposed Transfer. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within thirty (30) days of the receipt of the Transfer Request, Tenant may provide Landlord a second Transfer Request notice which states in bold that Landlord's failure to approve or disapprove the proposed transfer within fifteen (15) days of the date of receipt of the second Transfer Request notice will result in the proposed transfer being deemed approved by Landlord. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within fifteen (15) days of the receipt of the second Transfer Request notice, Landlord shall be deemed to have approved the proposed Transfer.

13.4.2 The proposed transferee (including, for the avoidance of doubt, a Permitted Transferee) shall assume all the covenants and conditions to be performed by Tenant pursuant to this Lease after the date of such Transfer by execution of an instrument in form and substance reasonably satisfactory to Landlord, which shall be in the form of a Sublease when the Permitted Transferee is a Subtenant. Upon consummation of any Transfer of Tenant's Estate, the transferee shall cause to be recorded in the Official Records an appropriate instrument reflecting such Transfer, which shall be in the form of a memorandum of Sublease when the Permitted Transferee is a Subtenant.

13.4.3 Tenant shall pay Landlord Participation Rent in the amount of two percent (2%) of the Gross Sales Proceeds of such Transfer pursuant to Section 13.6 hereof, concurrently with the closing of such Transfer.

13.4.4 No uncured Default shall exist hereunder on the date of Transfer.

13.5 Subleases. Each of the following shall apply to any and all Subleases for the Improvements:

13.5.1 Subleases of individual apartment units within the Project shall not require prior approval of the Landlord.

13.5.2 Each Sublease shall contain a provision reasonably satisfactory to Landlord, requiring the Subtenant to attorn to Landlord upon a Default by Tenant hereunder and notice to Subtenant that Tenant has defaulted under this Lease and Subtenant is instructed to make Subtenant's rental payments to Landlord.

13.5.3 Each Sublease is expressly subordinate to the interests and rights of Landlord in the Property and under this Lease, and requires the Subtenant to take no action in contravention of the terms of this Lease.

13.5.4 Each Sublease is of a duration not greater than the Term of this Lease.

13.5.5 Each Sublease shall be in compliance with all applicable laws.

13.5.6 Subject to the rights of any Recognized Lender, as additional security for the performance of Tenant's obligations hereunder, Tenant hereby grants to Landlord a security interest in and to all of Tenant's right to receive any rentals or other payments under such Subleases and this Lease shall constitute a security agreement for such purposes under laws of the State of California. Tenant shall execute such financing statements as may be reasonably required to perfect such security interest.

13.6 Participation Rent from Transfer Proceeds. Upon any sale, transfer or assignment of any portion of Tenant's interest in this Lease or the Property to a third party or third parties, Landlord shall receive "**Participation Rent**" in the amount of two percent (2%) of "**Gross Sales Proceeds**" of all such sales, transfers and assignments retroactively. "Gross Sales Proceeds" means the gross consideration received by the transferor or any affiliate as a result of a transfer, without deductions for costs or expenses relating to the sale, transfer or assignment. Notwithstanding anything to the contrary contained herein, Participation Rent will not be due and owing for (i) financing or refinancing or equity financing and any foreclosure or deed in lieu of foreclosure in connection with any financing, refinancing or equity financing, (ii) any "key money" contribution or similar payment by a Project operator, or (iii) the direct or indirect sale of assets, merger, consolidation or upper tier transfers of interests in a parent or affiliate which owns directly or indirectly, an interest in Tenant or any entity holding an interest in the Lease, so long as there is no payment or distribution of consideration in connection with such transaction. An example of Participation Rent calculations is set forth in Exhibit H attached hereto.

13.7 Assignment by Landlord. If Landlord sells or otherwise transfers the Property, or if Landlord assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Landlord's obligations hereunder which arise

on or after the date of sale or transfer, and Landlord shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer of assignment, but this Lease shall otherwise remain in full force and effect.

14. [DELETED]

15. INSOLVENCY

15.1 Landlord's Remedies. If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Tenant where possession is not restored to Tenant within one hundred twenty (120) days; or if any action is taken or suffered by Tenant pursuant to an insolvency, bankruptcy or reorganization act (unless such is dismissed within one hundred twenty (120) days); or if Tenant makes a general assignment for the benefit of its creditors; and if such assignment continues for a period of one hundred twenty (120) days, it shall, at Landlord's option, constitute a default by Tenant and Landlord shall be entitled to the remedies set forth in Section 16 below, which may be exercised by Landlord without prior notice or demand upon Tenant. Notwithstanding the foregoing, as long as there is a Recognized Lender, neither the bankruptcy nor the insolvency of Tenant shall operate or permit Landlord to terminate this Lease as long as all Base Rent and all other charges of whatsoever nature payable by Tenant continue to be paid in accordance with the terms of this Lease.

16. DEFAULT

16.1 Breach and Default by Tenant. In addition to Section 15, the occurrence of any of the following shall constitute a default (a "Default") under this Lease:

16.1.1 Failure to make any payments of Base Rent or other payments due under this Lease if the failure to pay is not cured within ten (10) days after written notice of such default has been received by Tenant; or

16.1.2 Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such failure has been received by Tenant. If the failure cannot reasonably be cured within such thirty (30) day period (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), then the Tenant shall not be in default under this Lease if it pays all Base Rent and all other items required to be paid under this Lease and commences to cure any such non-monetary default within such thirty (30) day period and diligently and in good faith and with reasonable diligence prosecutes the cure of such default to completion, but in no event later than ninety (90) days after written notice of such default has been received by Tenant.

16.2 Notice of Breach or Default. Any notice which Landlord is required to give pursuant to Section 16.1 as a condition to the exercise by Landlord of any right to terminate this Lease shall be in addition to, and not in lieu of, any notice required under applicable law.

16.3 Landlord's Remedies. In the event of a Tenant Default, subject to the rights of any Recognized Lender under Article 7, Landlord shall have cumulatively, or in the

alternative, all rights and remedies provided by law or equity and, in addition, all of the following contractual remedies, provided that Tenant's liability hereunder shall be limited to actual damages sustained by Landlord as a result of the Tenant Default and shall not in any event include any consequential, indirect or punitive damages:

16.3.1 Termination. Landlord may, at its election, terminate this Lease by giving Tenant written notice of termination. On the giving of such notice: (a) all of Tenant's rights under this Lease, and in the Property, the Tenant Estate and the Improvements shall terminate and be of no further force and effect; (b) Tenant shall promptly surrender and vacate the Property and the Improvements; and (c) Landlord may reenter and take possession of the Property and the Improvements. Termination shall not relieve Tenant from its obligation to pay any sums then due to Landlord, or from any claim for damages previously accrued or then-accruing against Tenant up to the date of termination. To the fullest extent permitted by applicable law, Tenant hereby waives all rights of redemption and reinstatement in the event this Lease is terminated under this Section 16.3.1.

16.3.2 Damages Upon Lease Termination. If Landlord terminates this Lease pursuant to the provisions of Section 16.3.1, then, without limiting any other remedy available to Landlord, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of award of the unpaid Base Rent and all other amounts which had accrued up to the date of such termination, (ii) the worth at the time of award of the unpaid Base Rent which would have been earned under this Lease after such termination up to the date of such award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the date of award of the unpaid Base Rent which would have been earned under this Lease for the balance of the Term occurring after the date of award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant'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 those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, attorney's fees, court costs, and all other unpaid amounts hereunder), all of which shall be deemed to be Base Rent hereunder. The "worth at the time of award" of the amounts referred to above shall be determined in accordance with Civil Code Section 1951.2(b) or successor statute.

16.3.3 Keep Lease in Effect. Without terminating this Lease, so long as Landlord does not deprive Tenant of possession of the Property and allows Tenant to assign or sublet subject only to Landlord's rights set forth herein, Landlord may continue this Lease in effect and bring suit from time to time for Base Rent and other sums due, and for any subsequent Tenant Default of the same or other covenants and agreements herein. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant written notice of termination pursuant to Section 16.3.1.

16.3.4 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Section 16.3.3, Landlord may thereafter elect to terminate this Lease and all of Tenant's rights in or to the Property and the Improvements pursuant to Section 16.3.1,

unless prior to such termination, Tenant has cured all Tenant Defaults giving rise to Landlord's right to terminate this Lease.

- 16.4 Costs.** If Landlord incurs any reasonable cost or expense occasioned by a Tenant Default or a breach by Tenant of a covenant or representation that, if not cured within the applicable cure period, if any, would become a Tenant Default (including but not limited to reasonable attorneys' fees and costs), then Landlord shall be entitled to receive such costs, including without limitation, that portion of any brokers' fees relating to the remaining term of this Lease which are incurred by Landlord in connection with re-letting the whole or any part of the Property or the Improvements; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Property and the Improvements into a condition meeting the requirements of this Lease or the requirements of a Sublease; and all other reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.
- 16.5 Cumulative Remedies.** The remedies given to Landlord herein shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or equity, or elsewhere provided in this Lease. A party's liability for damages under this Lease shall be limited to actual damages sustained and shall not include any consequential, indirect or punitive damages.
- 16.6 Waiver of Default.** No waiver by a Party of any Default by the other Party shall constitute a waiver of any other Default by such Party, whether of the same or any other covenant or condition hereunder. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise. The acceptance of Base Rent or any other payment by Landlord after the occurrence of a Tenant Default shall not constitute a waiver of such Tenant Default or any other Tenant Default that may exist at such time, regardless of Landlord's knowledge of any such Tenant Default at the time of accepting such Base Rent, nor shall the acceptance of Base Rent or any other payment by Landlord after termination or expiration of this Lease constitute a reinstatement, extension, or renewal of this Lease or a revocation of any notice or other act by Landlord.
- 16.7 Landlord Default and Tenant Remedies.** Landlord's failure to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed shall constitute a "Landlord Default": (a) if such failure can reasonably be cured within thirty (30) days after Landlord's receipt of written notice from Tenant respecting such failure and such failure is not cured within such thirty (30) day period; or (b) if such failure cannot reasonably be cured within said thirty (30) day period and Landlord fails to promptly commence to cure such failure upon receipt of Tenant's written notice with respect to the same, or thereafter fails to continue to make diligent and reasonable efforts to cure such failure.

17. LANDLORD MAY INSPECT THE PROPERTY

17.1 Advance Notice for Inspection. Tenant shall permit Landlord and its agents to enter into and upon the Property and the Improvements with 48 hours advance written notice to Tenant for the purpose of inspecting the same, except in the case of an emergency for which advance notice shall not be required, and for the purpose of posting notices of non-responsibility.

18. HOLDING OVER

18.1 Terms Upon Holding Over. This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant without the express written consent of Landlord shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Property, and such occupancy shall be construed to be a tenancy from month-to-month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that the rent shall increase to an amount equal to One Hundred Fifty Percent (150%) of the amount of Base Rent due for the last month of the term of this Lease.

19. NOTICES

19.1 Address for Notices. Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties or their assignees by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Property, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally-recognized courier service, provided a receipt is required, at its Notice Address set forth below, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

At the date of the execution of this Lease, the address of Tenant is:

[Entity Name]
11755 Wilshire Blvd., Suite 1660
Los Angeles, CA 90025
Attn: Edward J. Miller

with copy to:

Nicholas F. Klein, Esq.
11755 Wilshire Boulevard, Suite 1660
Los Angeles, CA 90025

And the address of Landlord is:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: Community Development Director

with copy to:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Attorney

20. SUCCESSORS

20.1 Binding on Successors and Assigns. The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns, to the extent the Lease is assignable, and upon any person, firms, corporation coming into ownership or possession of any interests in the Property by operation of law or otherwise, and shall be construed as covenants running with the land.

21. TERMINATION

21.1 Rights Upon Termination. Upon the termination of this Lease by expiration of time or otherwise, the rights of Tenant and of all persons, firms, corporations and entities claiming under Tenant in and to the Property (and all improvements thereon, unless specified otherwise in Section 6.2 above) shall cease.

22. MISCELLANEOUS

22.1 Nondiscrimination. Tenant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, physical or mental disability, or sexual orientation, or on the basis of any other category or status not permitted by law in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, Subtenants, Concessionaires, or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

22.2 Compliance with Law. Tenant agrees, at its sole cost and expense, to itself comply, and to use its commercially reasonable efforts to secure compliance by all contractors and Concessionaires and Subtenants of the Property and Improvements, with all the requirements now in force, or which may hereafter be in force, of all municipal,

county, state and federal authorities pertaining to the Property and the Improvements, as well as operations conducted thereon, and to faithfully observe and use its commercially reasonable efforts to secure compliance by all contractors and Concessionaires and Subtenants of the Property and Improvements with, in the use of the Property and the Improvements with all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, Tenant shall use good faith efforts to prevent Concessionaires and Subtenants from maintaining any nuisance or other unlawful conduct on or about the Property, and shall take such actions as are reasonably required to abate any such violations by Concessionaires and Subtenants of the Property and Improvements. The judgment of any court of competent jurisdiction, or the admission of Tenant or any Concessionaire, Subtenant or permittee in any action or proceeding against them, or any of them, whether Landlord be a party thereto or not, that the Concessionaire, Subtenant or permittee has violated any such ordinance or statute in the use of the Property or the Improvements shall be conclusive of that fact as between Landlord and Tenant, or such Concessionaire, Subtenant or permittee.

22.3 Conflict of Interest. No member, official or employee of Landlord shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested. Tenant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

22.4 Further Actions and Instruments; City Manager Authority. Each of the parties shall reasonably cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Lease and the satisfaction of the conditions of this Lease. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Lease to carry out the intent and to fulfill the provisions of this Lease or to evidence or consummate the transactions contemplated by this Lease. Landlord hereby authorizes the City Manager to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Lease on behalf of the Landlord so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the Landlord as specified herein, or reduce the revenue earned or to be earned by Landlord, as may be necessary or proper to satisfy the purpose and intent of this Lease. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration and action any action or additional agreement under the City Manager's authority if the City Manager determines it is in the best interests of Landlord to do so. The City Manager may delegate some or all of his or her powers and duties under this Lease to one or more management level employees of the City.

- 22.5 Section Headings.** The section headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.
- 22.6 Amendments.** Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither Landlord nor Tenant shall be bound by verbal or implied agreements.
- 22.7 Extensions of Time.** Times of performance under this Lease may be extended in writing by the mutual agreement of Landlord and Tenant, as applicable. The City Manager (or designee) shall have the authority in his or her sole and absolute discretion on behalf of Landlord to approve extensions of time not to exceed a cumulative total of ninety (90) days.
- 22.8 Waiver.** The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of Base Rent by Landlord following a breach by Tenant of any provision of this Lease shall not constitute a waiver of any right of Landlord with respect to such breach. Landlord shall be deemed to have waived any right hereunder only if Landlord shall expressly do so in writing.
- 22.9 Cumulative Remedies.** Each right, power and remedy of Landlord provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all such other rights, powers or remedies.
- 22.10 Time of Essence.** Time is expressly declared to be of the essence of this Lease and each and every covenant of Tenant hereunder.
- 22.11 Late Charge and Interest.** In the event Tenant fails to make any payment of Base Rent due hereunder upon the date due, Landlord shall be entitled to collect from Tenant a late charge equal to five percent (5%) of the amount of the delinquent payment. In the event Landlord pays any sum or incurs any expense which Tenant is obligated to pay hereunder, or which is made on behalf of Tenant, Landlord shall be entitled to receive reimbursement thereof from Tenant upon demand, together with interest thereon from the date of expenditure at the maximum rate allowed by California law.
- 22.12 Entire Agreement.** This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, Landlord or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid. Specifically, without

limitation, this Lease supersedes the DDA with respect to the terms and conditions of the Landlord's ground lease of the Property to the Tenant. In the event of any inconsistency between the terms and conditions of this Lease and the terms and conditions of the DDA with respect to the Property, the terms and conditions of this Lease shall prevail.

- 22.13 Escalation.** The dollar amounts listed in Sections 8.3.1 and 8.3.3 above, shall be adjusted on the tenth anniversary following the Effective Date and every tenth (10th) anniversary date thereafter ("Anniversary Date") during the Term of this Lease to a dollar amount which bears the same ratio to the original dollar amount set forth herein as the following described index figure published for the latest date prior to the date such adjustment is to be effective bears to such index figure published for the latest month prior to the date hereof. The index figure to be utilized in calculating such adjustment shall be the CPI.
- 22.14 Language.** The word "Tenant" when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if, there be more than one (1), the obligations hereof shall be joint and several. The words "persons" whenever used shall include individuals, firms, associations and corporations. This Lease, and its terms, have been freely negotiated by Landlord and Tenant. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against Landlord or Tenant.
- 22.15 Invalidity.** If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.
- 22.16 Applicable Law.** This Lease shall be interpreted and construed under and pursuant to the laws of the State of California. Any reference to a statute enacted by the State of California shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise.
- 22.17 Provisions Independent.** Unless otherwise specifically indicated, all provisions set forth in this Lease are independent of one another, and the obligations or duty of either party hereto under any one provision is not dependent upon either party performing under the terms of any other provision.
- 22.18 Date of Execution.** The date this Lease is executed shall be deemed to be the day and year first written above.
- 22.19 Survival.** All obligations of Tenant to be performed after the Termination Date shall not cease upon the termination of this Lease, and but shall continue as obligations until fully performed.
- 22.20 Recordation.** A memorandum of lease in the form attached hereto as Exhibit D shall be promptly executed and acknowledged by the Parties and recorded by Tenant in the

county in which the Property is located. Tenant shall provide Landlord with a true copy of the recorded document, showing the date of recordation and file number.

22.21 Net Lease

22.22.1 No Liability for Landlord Taxes. Nothing herein contained shall be construed so as to require Tenant to pay or be liable for any gift, inheritance, property, franchise, income, profit, capital or similar tax, or any other tax in lieu of any of the foregoing, imposed upon Landlord, or the successors or assigns of Landlord, unless such tax shall be imposed or levied upon or with respect to rents payable to Landlord herein in lieu of real property taxes upon the property.

22.22.2 No Reduction of Base Rent. No abatement, diminution or reduction of the rental or other charges payable by Tenant under this Lease shall be claimed by or allowed to Tenant for any inconvenience, interruption, cessation or loss of business or otherwise caused directly or indirectly by any present or future laws, rules, requirements, orders, directives, ordinances or regulations of the United Landlord of America, or of the County or City government or any other municipal, government or lawful authority whatsoever, by damage to or destruction of any portion of or all of the improvements by fire, the elements or any other cause whatsoever, or by priorities, rationing, or curtailment of labor or materials or by war or any matter or things resulting therefrom or by any other cause or causes, except as otherwise specifically provided in this Lease.

22.23 Limitation of Liability.

22.23.1 Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual officers or employees of Landlord, and Tenant shall not seek recourse against the individual officers or employees of Landlord, or against any of their personal assets for satisfaction of any liability with respect to this Lease. Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the Property, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, its officers, employees, contractors, consultants, attorneys, volunteers, or any other persons or entities having any interest in Landlord. Tenant's sole and exclusive remedy for a default or breach of this Lease by Landlord shall be either (i) an action for damages for breach of this Lease, (ii) an action for injunctive relief, or (iii) an action for specific performance; Tenant hereby waiving and agreeing that Tenant shall have no offset rights or right to terminate this Lease on account of any breach or default by Landlord under this Lease. Under no circumstances whatsoever shall Landlord ever be liable to Tenant for punitive, consequential or special damages arising out of or relating to this Lease, common law or by way of tort. Tenant waives any and all rights it may have to such damages arising out of or relating to this Lease, including, but not limited to, damages incurred as a result of Landlord's breach of or default under this Lease, and/or Landlord's breach of common law, tort or statutory duties owed to Tenant, if any.

22.24 No Partnership or Joint Venture. Nothing in this Lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

23. HAZARDOUS SUBSTANCES

23.1 “Hazardous Substances” means all of the following:

23.1.1 Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic substance”, “solid waste” or similarly defined substance, product, waste or other material pursuant to any Environmental Law (which Environmental Law shall include any and all regulations in the Code of Federal Regulations or any other regulations implemented under the authority of such Environmental Law), including all of the following and their state equivalents or implementing laws: (i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. (“CERCLA”); (ii) The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; (iii) Those substances listed on the United States Department of Transportation Table (49 C.F.R. 172.01 and amendments thereto); (iv) The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. (“RCRA”); (v) The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.; (vi) The Clean Water Act, 33 U.S.C. §1251 et. seq.; (vii) The Clean Air Act, 42 U.S.C. §7401 et. seq.; and (viii) any other Federal, state or local law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; or any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above laws or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or Federal court.

23.1.2 any Environmental Law, petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

23.1.3 Any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive;

23.1.4 Lead based paint and other forms of lead and heavy metals, mold, grease tanks, waste storage areas, batteries, light bulbs, refrigerators, freezers, appliances, heating and cooling systems, thermostats, electronic devices, electrical switches, gauges, thermometers, aerosol cans, cleaning products, formaldehyde, polyurethane, pressure treated wood containing arsenic, and building materials containing PCBs or volatile organic compounds, and

23.1.5 Any other substance, product, waste or material defined or to be treated or handled as a Hazardous Substance pursuant to the provisions of this Lease.

23.2 The term “**Hazardous Substances**” shall include the following “**Permitted Hazardous Substances:**” all (i) construction supplies, (ii) gardening supplies, (iii) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property or within the Improvements, (iv) general office supplies and products, cleaning supplies and

products, and other commonly used supplies and products, in each case to the extent the same are [A] used in a regular and customary manner or in the manner for which they were designed; [B] customarily used in the ordinary course of business by Tenant or commonly used by Subtenants under Subleases; [C] used, stored and handled in such amounts as is normal and prudent for the user's business conducted on the Property; and [D] used, handled, stored and disposed of in compliance with all applicable Environmental Laws and product labeling and handling instructions.

23.3 “Environmental Law(s)” means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, formal guidelines, or permit conditions, in existence as of the Effective Date of this Lease or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Laws shall include, without limitation, all of the laws listed under the definition of Hazardous Substances.

23.4 Environmental Inspections. Tenant has had an opportunity, prior to the Effective Date of this Lease, to engage its own environmental consultant to make such investigations of the Property as Tenant has deemed necessary, and Tenant has approved the environmental condition of the Property.

23.5 Presence and Use of Hazardous Substances. Tenant shall not keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any Hazardous Substances on the Property; provided, however, that Tenant, its Subtenants and Concessionaires and their permittees may use, store, handle and transport on the Property Permitted Hazardous Substances. Tenant, its Subtenants and Concessionaires and their permittees shall: (a) use, store, handle and transport such Permitted Hazardous Substances in accordance with all Environmental Laws, and (b) not construct, operate or use disposal facilities for Permitted Hazardous Substances on the Property or within any improvements located thereon. Landlord shall not generate, use, store, release, dump, transport, handle or dispose of any Hazardous Substances on the Property in violation of Environmental Laws.

23.6 Cleanup Costs, Default and Indemnification.

23.6.1 Tenant shall be fully and completely liable to Landlord for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

23.6.2 Tenant shall indemnify, defend and save Landlord harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Landlord (as well

as Landlord's attorneys' fees and costs) as a result of Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances.

23.6.3 Upon and after the Commencement Date of this Lease, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the 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 occurring after the Commencement Date or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property arising after the Commencement Date, excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Landlord, or its officers, employees, agents or representatives. 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, including injunctive, mandamus, equity or action at law, 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 environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Tenant's obligations under this Section 23.6 shall survive the expiration of this Lease.

23.7 Duty to Prevent Hazardous Materials Contamination. Tenant shall take all commercially reasonable precautions to prevent the release of any Hazardous Materials into the environment in violation of Governmental Requirements, but such precautions shall not prohibit the use of substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Governmental Requirements. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials.

23.8 Right of Entry. Notwithstanding any other term or provision of this Lease, in the event Landlord in good faith has reason to believe that a violation of applicable Governmental Regulations as determined by a final non-appeal order, with respect to Hazardous Materials on the Property Tenant shall, subject to the rights of Subtenants, permit Landlord or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than forty-eight (48) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency remedial action with respect to Hazardous Materials and Hazardous Materials Contamination in violation of Governmental Requirements as determined by a final non-appealable order on or affecting the Property, or to discharge Tenant's obligations hereunder with respect to such Hazardous Materials Contamination when Tenant has failed to do so after notice from Landlord and an opportunity to cure such deficiency, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 23 OF THE LEASE, AND IF TENANT FAILS

TO CURE SUCH DEFAULT WITHIN TEN (10) BUSINESS DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH TEN (10) BUSINESS DAY PERIOD AND DILIGENTLY PROSECUTE THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 23 OF THE LEASE." All actual third party costs and expenses incurred by Landlord in connection with performing Tenant's obligations hereunder shall be reimbursed by Tenant to Landlord within thirty (30) days of Tenant's receipt of written request therefor. Landlord shall use commercially reasonable efforts not to disrupt Tenant or the Concessionaires and Subtenants and to minimize interference with the day to day operation of the Property in exercising its rights under this Section 23.

23.9 Environmental Inquiries. Tenant shall notify Landlord, and provide to Landlord a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: 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. In the event of a release of any Hazardous Materials into the environment in violation of Governmental Requirements, Tenant shall, as soon as reasonably possible after the release, furnish to Landlord a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Landlord, Tenant shall furnish to Landlord a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting 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

23.10 Storage or Handling of Hazardous Materials. Tenant, at its sole cost and expense, shall comply and shall use commercially reasonable efforts to cause its Concessionaires and Subtenants to comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property, including without limitation wastes generated in connection with the uses conducted on the Property. In the event Tenant and/or any of its Concessionaires and Subtenants will store, use, transport, handle or dispose of any Hazardous Materials in violation of Governmental Requirements, Tenant shall promptly notify Landlord in writing. Tenant shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by Landlord in its reasonable good faith judgment, Landlord may require Tenant, at Tenant's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property in violation of Governmental Requirements. Such monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property, shall be satisfactory to Landlord, in Landlord's

reasonable good faith discretion. Tenant's obligations hereunder shall survive the termination of this Lease.

24. BROKER'S COMMISSION; AGENCY DISCLOSURE

24.1 Warranty of No Brokers. Landlord and Tenant each represents and warrants to the other that no Real Estate Agent or Broker was involved in negotiating this transaction, [except for (i) _____ who represented Tenant ("Broker") and whose commission shall be paid by Tenant.] Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by Landlord and Tenant. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, arising out of the broker's or finder's claim. The provisions of this Section shall survive expiration or other termination of this Lease, and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Lease is executed as of the day and year first above written.

LANDLORD:

CITY OF SAN LEANDRO
a California charter city

By: _____
Jeff Kay
City Manager

ATTEST:

Leticia I. Miguel
City Clerk

APPROVED AS TO FORM:

City Attorney

TENANT:

[Cal Coast Entity]

By: _____
Edward J. Miller
Authorized Signatory

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Being a portion of Parcel 3 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2, as shown on said Parcel Map (223 M 50-53);

Thence leaving said corner, the following courses and distances:

- North 72°26'52" West, 53.79 feet;
- South 72°26'34" West, 239.33 feet;
- South 29°07'04" East, 458.13 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 82°09'06", for an arc length of 43.01 feet;
- North 68°43'50" East, 630.34 feet to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 35°04'04" West, 322.24 feet to the beginning of a curve to the right, having a radius of 1,184.00 feet;
- Northwesterly along said curve, through a central angle of 05°55'36", for an arc length of 122.47 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 30.00 feet, with a radial line that bears North 60°51'32" East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

Southwesterly along said curve, through a central angle of 103°39'07", for an arc length of 54.27 feet;
South 74°30'39" West, 310.85 feet to the Point of **BEGINNING**.

Containing 277,515 square feet or 6.371 acres, more or less.

EXHIBIT B

MAP OF PROPERTY

[To Be Attached]

EXHIBIT C
PERMITTED EXCEPTIONS
[To Be Inserted]

EXHIBIT D

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Clerk

Exempt From Recording Fee Pursuant to Government Code Sections 6103 and 27383

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“Memorandum”) is hereby entered into as of _____, 202_ by and between the CITY OF SAN LEANDRO, a California charter city and municipal corporation (the “Landlord”), and [Cal Coast Entity] (the “Tenant”).

RECITALS

A. Landlord and Tenant have entered into a “Ground Lease” dated concurrently herewith for those certain parcels of real property which are legally described in Exhibit A attached hereto and incorporated herein by reference (the “Property”). A copy of the Ground Lease is available for public inspection at Landlord’s office at 835 E. 14th Street, San Leandro, California. The term of the Ground Lease is fifty-five (55) years, with options to extend the term for thirty-four (34) years and ten (10) years.

B. The Ground Lease provides that a short form memorandum of the Ground Lease shall be executed and recorded in the Official Records of Alameda County, California.

NOW, THEREFORE, the parties hereto certify as follows:

Landlord, pursuant to the Ground Lease, hereby leases the Property to the Tenant upon the terms and conditions provided for therein. This Memorandum of Lease is not a complete summary of the Ground Lease, and shall not be used to interpret the provisions of the Ground Lease.

LANDLORD:

CITY OF SAN LEANDRO,
a California charter city and municipal corporation

By: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TENANT:

[Cal Coast Entity]

By: _____

By: _____

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

That real property located in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of Parcel 3 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2, as shown on said Parcel Map (223 M 50-53);

Thence leaving said corner, the following courses and distances:

- North 72°26'52" West, 53.79 feet;
- South 72°26'34" West, 239.33 feet;
- South 29°07'04" East, 458.13 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 82°09'06", for an arc length of 43.01 feet;
- North 68°43'50" East, 630.34 feet to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 35°04'04" West, 322.24 feet to the beginning of a curve to the right, having a radius of 1,184.00 feet;
- Northwesterly along said curve, through a central angle of 05°55'36", for an arc length of 122.47 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 30.00 feet, with a radial line that bears North 60°51'32" East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

Southwesterly along said curve, through a central angle of 103°39'07", for an arc length of 54.27 feet;
South 74°30'39" West, 310.85 feet to the Point of **BEGINNING**.

Containing 277,515 square feet or 6.371 acres, more or less.

EXHIBIT E

GROUND LEASE ESTOPPEL CERTIFICATE

DATE: _____, _____

RE: Ground Lease dated _____, ____ (the "Ground Lease") by and between the City Of San Leandro, a California charter city and municipal corporation ("Landlord"), and [Cal Coast Entity] ("Tenant"), covering certain real property located in San Leandro, California and described in Exhibit A attached hereto and made a part hereof (the "Property").

THIS GROUND LEASE ESTOPPEL CERTIFICATE (this "Instrument") is executed and delivered as of _____, _____, by _____, in connection with _____. Capitalized terms used herein have the meanings set forth in the Ground Lease unless otherwise defined herein. The undersigned hereby certifies, declares and agrees as follows:

1. Ground Lease. Pursuant to the terms of the Ground Lease, Landlord has leased to Tenant and Tenant has leased from Landlord, the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the Ground Lease is in full force and effect and the documents and instruments comprising the Ground Lease as hereinabove described, together with this Instrument, represent all of the documents and instruments that constitute the Ground Lease, and other than as described above, the Ground Lease has not been modified, supplemented or amended, orally or in writing or in any other manner having any continuing operative effect [or, if there have been modifications, that the Ground Lease is in full force and effect as modified, and stating the modifications, or if the Ground Lease is not in full force and effect, so stating]. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, no default has occurred under the Ground Lease and no condition exists which, but for the passage of time, the giving of notice, or both, would constitute a default under the terms of the Ground Lease [or, if there have been defaults, stating the nature of the defaults]. Except for the Ground Lease and the Disposition and Development Agreement between Landlord and Cal Coast Development, LLC, a Delaware limited liability company doing business in California as CC Development LLC, dated as of _____, 2020, [state any other such agreements, if any], there are no agreements between Landlord and Tenant in any way concerning the subject matter of the Ground Lease or the occupancy or use of the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the current interests of Landlord and Tenant under the Ground Lease have not been assigned [or, if there have been assignments, stating such assignments].

2. Lease Term. The term of the Ground Lease commenced on [insert date], and is scheduled to terminate on [insert date]. Tenant has the right to extend the term of the Ground Lease for an extended term of thirty-four (34) years and an extended term of ten (10) years, subject to conditions set forth in the Ground Lease.

3. Rent. No rent under the Ground Lease beyond the current month has been paid in advance by Tenant.

4. Deposits. Tenant does not make any type of escrow deposits with Landlord. Landlord holds no security deposit from Tenant.

5. No Bankruptcy. No bankruptcy proceedings, whether voluntary or otherwise, are pending or, to Landlord's actual knowledge, threatened against Landlord.

6. No Violations; Condemnation. The undersigned has not received any written notice of any pending eminent domain proceedings or other governmental actions that could affect the Property. The undersigned has not received any written notice that Landlord, Tenant or [identify management company, if any] is in violation of any law applicable to the Property (including, but not limited to, any environmental law or the Americans with Disabilities Act) [state exceptions, if any].

7. [Fee Encumbrances. Landlord has not entered into any agreement to subordinate the Ground Lease to any existing or future mortgages, deeds of trust or other liens on the fee interest in the Property.] [Delete if inapplicable]

8. Insurance Coverage. As of the date hereof, Tenant has provided to Landlord, and Landlord has approved, current certificates and/or policies of insurance complying (as of the date hereof) with all of the terms and requirements regarding the same as set forth in the Ground Lease.

9. [Leasehold Mortgage; Leasehold Mortgagee. Landlord hereby acknowledges that the Deed of Trust, together with the other documents and instruments executed by Tenant in favor of Lender in connection with the Loan and the Deed of Trust, constitutes and shall be deemed to be a "Leasehold Mortgage" pursuant to the terms and conditions of the Ground Lease, and that Lender is and shall be deemed to be a "Leasehold Mortgagee," for all purposes under and as such terms are defined in the Ground Lease, subject to all of the terms and conditions of the Ground Lease applicable to a Leasehold Mortgagee thereunder.] [**Conform to transaction**]

10. [Notice and Cure Rights. Landlord shall provide Lender with copies of all notices of default that are delivered to Tenant contemporaneously with the furnishing of such notices to Tenant to the extent provided in Section 19 of the Ground Lease. Landlord shall not terminate the Ground Lease as a result of a default on the part of Tenant under the Ground Lease pending the exercise of the cure and/or foreclosure rights of Lender as a Leasehold Mortgagee in accordance with Section 7.6 of the Ground Lease. Landlord acknowledges that Lender has given Landlord effective notice of the name and address of Lender, as set forth below, pursuant to Section 7.2 of the Ground Lease. Any notice, demand, request or other instrument given by Landlord to Lender shall be delivered to Lender at the address specified below: [**Conform to transaction**]

[name]

[address]

With a copy to:

[name]

[address]

11. Miscellaneous. If there is a conflict between the terms of the Ground Lease and this Ground Lease Estoppel Certificate, the terms of the Ground Lease shall prevail. The captions of the sections of this Instrument are for convenience only and shall not have any interpretive meaning.

12. Counterparts. This Instrument and any subsequent modifications, amendments, waivers, consents or supplements thereof, if any, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the date first written above.

By: _____

Name: _____

Title: _____

EXHIBIT A TO GROUND LEASE ESTOPPEL CERTIFICATE

The land is situated in the City of San Leandro, County of Alameda, State of California, and is described as follows:

Being a portion of Parcel 3 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2, as shown on said Parcel Map (223 M 50-53);

Thence leaving said corner, the following courses and distances:

- North $72^{\circ}26'52''$ West, 53.79 feet;
- South $72^{\circ}26'34''$ West, 239.33 feet;
- South $29^{\circ}07'04''$ East, 458.13 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of $82^{\circ}09'06''$, for an arc length of 43.01 feet;
- North $68^{\circ}43'50''$ East, 630.34 feet to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North $35^{\circ}04'04''$ West, 322.24 feet to the beginning of a curve to the right, having a radius of 1,184.00 feet;
- Northwesterly along said curve, through a central angle of $05^{\circ}55'36''$, for an arc length of 122.47 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 30.00 feet, with a radial line that bears North $60^{\circ}51'32''$ East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

Southwesterly along said curve, through a central angle of $103^{\circ}39'07''$, for an arc length of 54.27 feet;
South $74^{\circ}30'39''$ West, 310.85 feet to the Point of **BEGINNING**.

Containing 277,515 square feet or 6.371 acres, more or less.

EXHIBIT F

SCOPE OF DEVELOPMENT

For the purposes of this agreement, the following definitions shall apply:

Horizontal Improvements: Improvements to the underlying land and infrastructure before the Vertical Improvements can be realized. This includes flood plain and sea level rise mitigation, geotechnical mitigation, grading and installation of onsite and offsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.

Vertical Improvements: Construction of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

Multifamily Element

- a) Developer shall design and construct a multifamily residential development with approximately two hundred eighty-five (285) rental units (“Multifamily Element”).
- b) The Multifamily Element shall include parking, landscaping, lighting and all onsite and offsite utilities, including but not limited to fiber optic internet service to all units, all in conformance with the City Building and Zoning codes, and pursuant to plans to be approved by the City.
- c) Parking for the Multifamily Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.
- d) The unit mix and any amenities are subject to the Project Approvals, as defined in Section 2.1 of the Agreement.
- e) The Multifamily Element shall meet the objectives of the City’s Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq.*) by paying a fee in-lieu of providing affordable rental units (the “Affordable Rental Housing In-Lieu Fee”). If Developer elects not to pay the Affordable Rental Housing In-Lieu Fee, the size and income distribution of the affordable rental units shall be subject to the requirements of the Inclusionary Housing Ordinance.

EXHIBIT “G”

SCHEDULE OF PERFORMANCE

Multifamily Element	
All conditions precedent to commencement of Multifamily Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Multifamily Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Multifamily Lease
Approval of permits for Horizontal Improvements for the Multifamily Element (including grading, encroachment and demolition)	Prior to Effective Date of Multifamily Lease
Construction drawings for Vertical Improvements submitted for Building Permit review, accepted as complete and in plan check.	Prior to Effective Date of Multifamily Lease
Commencement of construction of Horizontal Improvements for the Multifamily Element	Within 90 days of Effective Date of Multifamily Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Multifamily Element	Within 18 months of commencement of construction of Horizontal Improvements for Multifamily Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Multifamily Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Multifamily Element (e.g., foundation), permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Multifamily Element	Within 33 months after approval of first Building Permit for Vertical Improvements for Multifamily Element, TCO is received

Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 33 months after approval of first Building Permit for Vertical Improvements for Multifamily Element
-------------------------------	--

It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Ground Lease, including, without limitation, extension due to Force Majeure. Times of performance under the Agreement may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may be granted or denied in the Parties' sole and absolute discretion.

EXHIBIT H

EXAMPLES OF RENT CALCULATIONS*

The parties acknowledge that this Exhibit H reflects hypothetical values for purposes of illustration only and that the values shown in this exhibit in no way reflect what the actual amounts or anticipated amounts are or will be. Further, the parties acknowledge that if there is a conflict between the examples shown in this Exhibit H and the terms set forth in the body of the Lease, the terms set forth in the body of the Lease prevail.

EXAMPLES:

Base Rent – Section 3.1

The number of apartment units that will be the subject of this Lease is unknown. For that reason, the dollar amount of the Minimum Ground Rent is unknown. The definition of Minimum Ground Rent is a formula for how to solve for the Minimum Ground Rent due on the Rent Commencement Date (and once the number of apartment units is known).

“Rent Commencement Date” means on or before the earlier to occur of (a) ninety (90) days after the TCO Date, or (b) thirty (30) months after the Effective Date.

“Lease Year” means each January 1 to December 31 calendar year of the Term. The first Lease Year (Lease Year 1) means the first full calendar year beginning on the January 1 occurring after the Rent Commencement Date.

24.1.1.1 “Minimum Ground Rent” means (i) \$3,000 per apartment unit; (ii) multiplied by the number of apartment units, and (iii) divided by 12 to determine the monthly Minimum Ground Rent.

Initial Partial Year Prior to Lease Year 1 (i.e. Stub Period)

“Minimum Ground Rent” for the Stub Period means an amount determined by multiplying the number of days in the Stub Period by the result obtained by dividing the Annual Minimum Ground Rent by 365. Stub Period commences with the Rent Commencement Date and continues until January 1 of the first Lease Year (Lease Year 1).

EXAMPLE

To solve for the Minimum Ground Rent that applies during the Stub Period:

1. Divide the Annual Minimum Ground Rent by 365

2. Multiply the result by the number of days in the Stub Period.
 - If the Annual Minimum Ground Rent is \$855,000 and there are 75 days in the Stub Period, the Minimum Ground Rent for the Stub Period is \$175,685 [(\$855,000/365) x 75]

Beginning Lease Year 1

Once you know the Minimum Ground Rent, no further calculations are necessary to determine the Minimum Ground Rent that applies for Lease Year 1.

Subsequent Lease Years

Beginning Lease Year 2, Minimum Ground Rent increases by 2.0% and every year thereafter by 2%.

EXAMPLE

“Minimum Ground Rent” means . . . for each subsequent twelve-month period that is not an Adjusted Rent Period, an amount equal to (x) the prior year’s Minimum Ground Rent plus (y) the result obtained by multiplying the prior year’s Minimum Ground Rent by 0.02 . . .

To solve for the increase in Minimum Ground Rent from Year 1 to Year 2:

1. Multiply the Minimum Ground Rent for Year 1 by 0.02.
2. Add the result to the Minimum Ground Rent for Year 1.
 - If the Minimum Ground Rent for Year 1 is \$855,000, Minimum Ground Rent for Year 2 will increase by 2.0%, to \$872,100. [$\$855,000 + (\$855,000 \times .02)$]
 - In each subsequent twelve-month period, Minimum Ground Rent will increase by 2.0%. Following each Adjusted Rent Period, Minimum Ground Rent will continue to increase by 2.0% annually until the next Rent Adjustment Date.

Full Rent (Minimum Ground Rent and Percentage Rent)

Rent is always paid in advance. Because percentage rent is determined based on financial results, the tenant is required to pay Minimum Ground Rent in advance (either monthly or annually) and to subsequently make a “catch up” payment based on Total Gross Receipts derived over the rental period. That means, the Full Rent due for any particular period is the sum of the Minimum Ground Rent and the Percentage Rent due for that period.

“Total Gross Receipts” means the sum of the Apartment Gross Receipts and Concessionaire Gross Receipts received during a Lease Year.

Tenant shall pay the following rent . . . beginning on the Rent Commencement Date and continuing through the remaining Lease Term, the Full Rent will be the Minimum Ground Rent over the relevant period plus the Percentage Rent, if any, over the relevant period (the “Full Rent”).

To calculate the Full Rent for a particular period:

1. Determine the Annual Minimum Ground Rent for the relevant period
2. Determine the Percentage Rent for the relevant period.
 - Prior to the second (2nd) Lease Year, there is no annual percentage rent (“**Percentage Rent**”).
 - Upon the commencement of the second (2nd) Lease Year and continuing thereafter, calculate the annual Percentage Rent equal to Five Percent (10%) of the Total Gross Receipts
3. To determine the Full Rent for a particular period, add the Annual Minimum Ground Rent for the relevant period to amount that the Percentage Rent exceeds the Annual Minimum Ground Rent for the same period.

EXAMPLE

- If the Annual Minimum Ground Rent is \$925,000, the Percentage Rent for the same period is \$1,000,000, then the Full Rent will equal \$1,000,000. $(925,000 + [(\$1,000,000 - 925,000) = \$75,000] = \$1,000,000)$

Minimum Ground Rent – Adjustment in Lease Years 10, 20, 40, 50, 60, 70, 80 and 90 – Section 3.1

Adjusting Minimum Ground Rent is an effort to lessen the difference between Minimum Ground Rent and Full Rent, which would otherwise increase over time.

“**Adjusted Minimum Ground Rent**” Upon January 1 of the tenth (10th), twentieth (20th), fortieth (40th), fiftieth (50th), sixtieth (60th), seventieth (70th), eightieth (80th) and ninetieth (90th) Lease Years, the monthly amount of Minimum Ground Rent shall be adjusted to the higher of the following: (a) the monthly amount of Minimum Ground Rent then in effect for the previous Lease Year, increased by two percent (2%), or (b) the total amount of Full Rent (Minimum Ground Rent plus Percentage Rent) due and payable during the five (5) Lease Years preceding such date, dividing the total by five, and multiplying the result by 0.7, and dividing by twelve.

EXAMPLE 1

Assuming the Full Rent is \$1,000,000 in 2025, \$1,050,000 in 2026, \$1,100,000 in 2027, \$1,150,000 in 2028, and \$1,200,000 in 2029 and further assuming that the Minimum Ground

Rent paid in 2029 is \$1,001,769, the Adjusted Minimum Ground Rent that will take effect on January 1, 2030, will be calculated as follows:

1. Calculate the average Full Periodic Rent for 2025, 2026, 2027, 2028 and 2029:

<u>Year</u>	<u>Full Rent</u>
2025	\$ 1,000,000
2026	\$ 1,050,000
2027	\$ 1,100,000
2028	\$ 1,150,000
2029	<u>\$ 1,200,000</u>
Total	\$5,500,000
Average (÷ by 5)	\$1,100,000

2. Calculate 70% of the average Full Rent:

$$\$1,100,000 \times .7 = \$770,000$$

3. Multiply the prior year's Minimum Ground Rent by 0.02.

$$\$1,001,769 \times .02 = \$ 20,035$$

4. Add the result to the prior year's Minimum Ground Rent.

$$\$1,001,769 + \$ 20,035 = \$ 1,021,804$$

5. Conclusion: The Adjusted Minimum Ground Rent for 2030 will be \$1,021,804 because 70% of the average Full Periodic Rent is lower than the prior year's Minimum Ground Rent plus 2%. The monthly Minimum Ground Rent would then be \$85,150.33 (\$1,021,804 ÷ by 12).

Example 2

Assuming the Full Rent is \$1,300,000 in 2025, \$1,400,000 in 2026, \$1,500,000 in 2027, \$1,600,000 in 2028, and \$1,700,000 in 2029 and further assuming that the Minimum Ground Rent paid in 2029 is \$1,001,769, the Adjusted Minimum Ground Rent that will take effect on January 1, 2030, will be calculated as follows:

1. Calculate the average Full Periodic Rent for 2025, 2026, 2027, 2028 and 2029:

<u>Year</u>	<u>Full Rent</u>
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2025	\$1,300,000
2026	\$1,400,000
2027	\$1,500,000
2028	\$1,600,000
2029	<u>\$1,700,000</u>
Total	\$7,500,000
Average (÷ by 5)	\$1,500,000

- Calculate 70% of the average Full Rent:

$$\$1,500,000 \times .7 = \$1,050,000$$

- Multiply the prior year's Minimum Ground Rent by 0.02.

$$\$1,001,769 \times .02 = \$ 20,035$$

- Add the result to the prior year's Minimum Ground Rent.

$$\$1,001,769 + \$ 20,035 = \$ 1,021,804$$

- Conclusion: The Adjusted Minimum Ground Rent for 2030 will be \$1,050,000 because 70% of the average Full Periodic Rent is higher than the prior year's Minimum Ground Rent plus 2%. The monthly Minimum Ground Rent would then be \$87,500 ($\$1,050,000 \div 12$).

Participation Rent from Transfer Proceeds – Section 13.6

Participation Rent is paid in the event of a Transfer.

To solve for Participation Rent:

- Determine Gross Sales Proceeds. If the consideration for the Transfer is a combination of cash, a note and shares of stock, the Gross Sales Proceeds would equal:

Cash	\$ 150,000,000
Face Value of Note	\$ 40,000,000
Value of Stock	<u>\$ 10,000,000</u>
Gross Sales Proceeds	\$ 200,000,000

- Multiply the Gross Sales Proceeds by .02. If Gross Sales Proceeds equal \$200,000,000, the Participation Rent will be \$4,000,000. ($\$200,000,000 \times .02$)

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