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**ADOPTED**

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

41 October 31, 2018

CELIA ZAVALA
EXECUTIVE OFFICER

October 30, 2018

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT –**
**PARCEL 113 – MARINERS VILLAGE/MARINA DEL REY**
**(FOURTH DISTRICT) (4 VOTES)**

## SUBJECT

Request for approval of an Option Agreement for an Amended and Restated Lease to extend the term of the existing Parcel 113 lease, to allow for the renovation of the existing apartment buildings on the property. Exercise of the Option is contingent upon Lessee's fulfillment of the conditions set forth therein.

## IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed project is categorically exempt pursuant to Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15304 (Minor Alterations to Land) of the California Environmental Quality Act (CEQA) Guidelines and the Environmental Document Reporting Procedures and Guidelines for the County.

2. Approve and authorize the Chair of the Board to sign the Option to Amend Lease Agreement in substantially the form attached as Attachment A ("Option Agreement" or "Option") for the Amended and Restated Lease Agreement, granting to the Lessee, upon fulfillment of all stated conditions, the right to extend the term of its existing ground lease on Parcel 113 from March 31, 2023 to January 31, 2066 (approximately 42 years 10 months, which corresponds to a term of 99 years, the maximum term allowed under California law).

3. Approve and authorize the Chair of the Board to execute, upon confirmation by the Director of the

Department of Beaches and Harbors ("Director") that the Lessee has fulfilled the option conditions and has executed the same, three copies of each of the following: (a) Amended and Restated Lease in substantially similar form to Exhibit A attached to the Option Agreement ; and (b) a Memorandum of Lease as referenced in the Amended and Restated Lease Agreement, in form approved by County Counsel and County's outside counsel, to be recorded against Parcel 113.

4. Authorize the Director to execute and deliver such other ancillary documentation including without limitation, a ground lease estoppel certificate for Parcel 113 as is necessary and acceptable to Director in connection with the Option Agreement and the renovation of the parcel

## PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Marina Admiralty Company, LP, a California limited partnership ("Lessee"), has requested that the County grant an option to extend the current lease with the County for the property located at 4600 Via Marina, Marina del Rey, CA ("Lease") for an additional 42 years, 10 months with a new expiration date of January 31, 2066. (The current lease is set to expire on March 31, 2023.) Should the Lessee choose to exercise this option, the Lessee agrees to complete a renovation project within 6 years of the date of acceptance.

The proposed renovation project includes improvements to the common areas of the building, the building exterior and interior, and interior of all 981 units, as well as improvements to the Promenade, located between the building and the waterside areas and the lookout points on the promenade.

The Lessee is required to spend $100 million in Hard Costs in renovation, as defined in the proposed Lease. Other major terms include but are not limited to: (a) the creation of 196 very low income affordable housing units within the existing 981 units (20% of the existing units) without the use of County or other public agency funds or rent credit to be used for the construction of the project; (b) no long-term displacement of tenants; (c) a 6-year build-out for all renovation (including the very low income affordable units), with the interiors of the apartments being completed as tenants leave; (d) maintenance of the integrity of the original exterior architectural design; and (e) no removal of existing trees as part of scope of Renovation Work (as defined in the proposed Lease).

Reconstruction of the lookout points on the Promenade will be performed by the County at Lessee's expense (the lookout points are located outside of Parcel 113 on County property). The Lease's description of the Premises will be subsequently amended to include the lookouts. The Lessee will be required to provide public access to the Promenade and lookouts along the parcel's water-line.

As a condition to Lessee's exercise of the Option, the Lessee will work with the Department of Beaches and Harbors ("DBH") and the Community Development Commission ("CDC") to develop an affordable housing program to lease the affordable housing units.

A new reserve study clause will be added to the proposed Amended and Restated Lease to help maintain the value of the structures for both the Lessee and the County. The reserve study clause will require a neutral third party (professional reserve study company) to determine what reserves must be retained by Lessee so that there are adequate funds available to repair, replace or install capital improvements on the property, such as the roof, electrical, water, mechanical systems, structural elements, and other systems.

An outline of other Option and Lease terms is provided in Attachment B.

According to the County's economic analysis, with the recent average unit costs of construction approaching $400,000 per unit, the grant of the proposed extension with its inclusion of 196 affordable units without County subsidy amounts to almost $80 million in value that could be used to construct new affordable units elsewhere.

DBH has obtained an appraisal that confirms the returns to the County from the Option and Amended and Restated Lease for Parcel 113 are equivalent to, or greater than, fair market value, suitably adjusted for reclassification of 196 units as “affordable.”

**Implementation of Strategic Plan Goals**

The recommended actions will continue implementation of the County policies that facilitated proactive redevelopment of the parcel, which assists the County to achieve fiscal sustainability (Strategic Plan Goal No. 1, Strategy No.1) and to develop or preserve affordable housing units in L.A. County (Strategic Plan Goal No.1,Strategy No.1.5)

## FISCAL IMPACT/FINANCING

The proposed Amended and Restated Lease for the renovation of Parcel 113 reflects the County’s current market rate percentage rents for all relevant categories, subject to adjustment as provided in the proposed Amended and Restated Lease. DBH will adjust rent revenue budget in future fiscal years as necessary. The grant of the Option will produce an option fee of $100,000 to DBH, which revenue will be recognized in Fiscal Year 2018-19 as one-time over-realized revenue.

Costs of consultants and DBH’s Director, Deputy Director and County Counsel involved in the negotiation and development of the Option and Amended and Restated Lease are being reimbursed by the Lessee.

## FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The existing lease for Parcel 113 expires on March 31, 2023. The current improvements on Parcel 113 consist of 981 apartments in 28 buildings with a commercial area of approximately 27,000 square feet, with no anchorage. Parcel 113 contains approximately 23.1 acres of land. The parcel has frontage on Via Marina and is located south of Marina Harbor Apartments and Anchorage (Parcels 111 and 112) and overlooks the Main Channel.

Approval of the Option is without prejudice to the County’s full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Entering into leases of the County's Marina del Rey real property is authorized by Government Code sections 25907 and 25536. The proposed extended Lease term is in conformance with the maximum 99-year period authorized by California law.

At its meeting of September 12, 2018, the Small Craft Harbor Commission endorsed (3-0, with 1 abstention and 1 absent) the recommendations to approve the Option and the Amended and Restated Lease for Parcel 113 in the form attached. County Counsel has approved the documents as to form.

## ENVIRONMENTAL DOCUMENTATION

The proposed project is categorically exempt from CEQA pursuant to sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15304 (Minor Alterations to Land) of the state CEQA Guidelines and the Environmental Document Reporting Procedures and Guidelines for the County, because the Project involves the establishment of affordable housing units within an existing multi-family residential complex, the rolling renovation of such units and associated infrastructure with no expansion in size or number of residential units, and the opening and improvement of an existing waterfront walk. The proposed project is not subject to the exceptions to CEQA's categorical exemptions as no unusual circumstances exist on-site that would be affected by the implementation of the proposed project, there are no areas of critical concern or environmental resources that are precisely mapped or designated that would be affected by implementation of the proposed project, and the proposed project would not result in any significant cumulative effects.

## CONTRACTING PROCESS

Lessee acquired the leasehold interest through an assignment on April 14, 1972. Lessee subsequently entered into negotiations with DBH to extend the lease term for Parcel 113. Upon Lessee's demonstration that it has satisfied the conditions for exercise of the Option, including the receipt of approvals required to be obtained from governmental authorities for construction of the development project associated with that Option, DBH will present to your Board's Executive Officer the final confirmation that the conditions for exercise contained in the Option Agreement have been satisfied and will request the Chair's execution of the Amended and Restated Lease Agreement for Parcel 113 in a form substantially similar to Exhibit A attached to the Option.

## IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on other current services or projects.

## CONCLUSION

It is requested that the Executive Officer, Board of Supervisors send two original copies of the executed Option Agreement and an adopted Board Letter to the Department. Should you have any questions please contact Don Geisinger at (424) 526-7730 or dgeisinger@bh.lacounty.gov.

Respectfully submitted,

GARY JONES

Director

GJ:BL:SP:dlg

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

# OPTION TO AMEND LEASE AGREEMENT
# (PARCEL 113S)

THIS OPTION TO AMEND LEASE AGREEMENT ("**Agreement**") is made and entered into as of the 30th day of October, 2018, by and between the COUNTY OF LOS ANGELES ("**County**") and MARINA ADMIRALTY COMPANY, a California limited partnership ("**Lessee**").

## RECITALS

A. County, as lessor, and Marina Point Harbor, a limited partnership ("**Original Lessee**"), as lessee, entered into Lease No. 11834 dated February 14, 1967 (as amended, the "**Existing Lease**"), concerning the lease of certain real property in the Marina del Rey Small Craft Harbor, which as modified prior to the date hereof, is now commonly known as Parcel No. 113S, as more particularly described in the Existing Lease (the "**Premises**").

B. Pursuant to various assignments, Lessee has succeeded to the interest of Original Lessee under the Existing Lease and is the current lessee under the Existing Lease.

C. The term of the Existing Lease is currently scheduled to expire on March 31, 2023 (the "**Existing Expiration Date**").

D. Lessee has requested County, and County is willing, to grant Lessee an option to amend and restate the Existing Lease in its entirety upon the terms and conditions more specifically set forth in this Agreement, including, without limitation, (i) an extension of the term of the Existing Lease through January 31, 2066, and (ii) the renovation of the Premises and the improvements located thereon, in accordance with the terms and provisions hereof.

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## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Grant of Option. County hereby grants to Lessee an option (the "**Option**") to amend and restate the Existing Lease in its entirety upon the terms and conditions more specifically provided in this Agreement, including, without limitation (i) an extension of the term of the Existing Lease through January 31, 2066, and (ii) the renovation of the Premises and the Improvements (as defined in the form of Restated Lease) located thereon. Such amended and restated lease shall be in the form of the Amended and Restated Lease Agreement for Parcel 113 attached to this Agreement as Exhibit A (the "**Restated Lease**").

2. Option Term. The term of the Option (the "**Option Term**") shall commence on the date of this Agreement and expire on that date (the "**Option Expiration Date**") that is eighteen (18) months following the date of this Agreement, unless extended as set forth below.

If by the Option Expiration Date set forth above in this Section 2 Lessee has not been able to satisfy all of the Option Conditions and Lessee demonstrates to the reasonable satisfaction of the Director of the Department of Beaches and Harbors of the County ("**Director**") that Lessee has diligently pursued the satisfaction of the Option Conditions, then

upon Lessee's written request Director may, in Director's reasonable discretion, extend the Option Expiration Date for up to an additional six (6) month period to permit Lessee additional time to satisfy the Option Conditions. In addition to the foregoing authority of Director to grant the above extension, Director shall have the authority, in Director's reasonable discretion, to grant up to four (4) additional extensions of the Option Expiration Date of six (6) months each ("**Additional Extensions**"), if as of the Option Expiration Date (as previously extended pursuant to this Section 2) the Option Conditions still have not been satisfied and Lessee demonstrates to Director's reasonable satisfaction that Lessee has continued to diligently pursue the satisfaction of the Option Conditions. If Lessee desires to have the Option Expiration Date extended pursuant to this paragraph, then not later than thirty (30) days prior to the then-current Option Expiration Date (as previously extended), Lessee shall deliver to Director the following: (a) Lessee's written request for the extension (the "**Extension Request**"), and (b) in the case of each Additional Extension, the following fee for such Additional Extension (each, an "**Option Term Extension Fee**"): (i) One Hundred Thousand Dollars ($100,000.00) for the first Additional Extension; (ii) One Hundred Twenty Thousand Dollars ($120,000.00) for the second Additional Extension; (iii) One Hundred Forty Thousand Dollars ($140,000.00) for the third Additional Extension; and (iv) One Hundred Forty Thousand Dollars ($140,000.00) for the fourth Additional Extension. Each Option Term Extension Fee shall be non-refundable, shall be in addition to the Option Fee and shall not be applicable against the payments described in Section 5.2. Each Extension Request shall include a description of Lessee's efforts to satisfy the Option Conditions and the status and Lessee's good faith estimate of the projected date for satisfaction of the Option Conditions. Notwithstanding the foregoing, if Lessee reasonably expects to satisfy all of the Option Conditions prior to the then-existing Option Expiration Date but during the thirty (30) day period immediately preceding the then-existing Option Expiration Date a condition first arises or an event first occurs that is expected to prevent Lessee from satisfying one or more Option Conditions by the then-existing Option Expiration Date, then the required date by which Lessee must deliver an Extension Request and the associated Option Term Extension Fee shall be extended until promptly following Lessee's discovery of the condition or event that will delay its satisfaction of the Option Conditions beyond the then-existing Option Expiration Date (but not later than the then-existing Option Expiration Date).

Notwithstanding any contrary term or provision of this Agreement, there shall be no extension of the Option Expiration Date if as of the date of an Extension Request or as of the date that the Option Expiration Date would have occurred but for the requested extension, there exists an uncured Lessee Default (as defined in Section 10.12 below) or Lessee is in material breach or default of the Existing Lease after notice and the expiration of any applicable cure period applicable under the Existing Lease.

If as of the expiration of all of the foregoing permitted extensions of the Option Expiration Date Lessee has obtained all Entitlements, but the issuance of such Entitlements are (or remain) subject to the continued pendency of litigation brought by a third party unaffiliated with Lessee that contests the issuance of the Entitlements or an appeal of such litigation, then as long as there is not a Lessee Default under this Agreement and Lessee is not in material breach or default of the Existing Lease (after notice and the expiration of any applicable cure period under the Existing Lease), the Option Expiration Date shall be extended until sixty (60) days following the final resolution of such litigation or appeal, including the expiration of any remaining appeal period without an appeal having been filed; provided, however, that in no event

shall the Option Expiration Date be extended pursuant to this paragraph for longer than an aggregate of twelve (12) months. Lessee shall cooperate reasonably to defend and prosecute at Lessee's expense such litigation and/or appeal to resolution until a final determination of the matter is made by the applicable court of competent jurisdiction and all applicable cure periods have expired without an appeal having been filed.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT:

A. In no event may the Option be exercised after the Existing Expiration Date (even in the event of Unreasonable County Activity, as defined below); and

B. If prior to the Option Expiration Date Lessee reasonably determines that the Required Hard Cost Amount (as defined in Section 5.1.2 of the form of Restated Lease) will exceed $100,000,000.00, then Lessee and County shall either: (i) mutually agree to increase the required amount for the Required Hard Cost Amount to an amount in excess of $100,000,000.00; or (ii) mutually agree to make reasonable modifications to the Renovation Work; provided, that there shall be no modification in the Renovation Work as described in Section 5.1 in the form of Restated Lease, except as mutually agreed upon in writing by Director and Lessee (and in the event that Lessee and Director are unable to agree upon said modifications in the first instance, then such modifications shall be proposed by Director in his or her reasonable discretion and accepted or rejected by Lessee). In the event Director and Lessee cannot agree upon one of the alternatives described in clauses (i) and (ii) above, then either County or Lessee, in its sole discretion, may terminate this Agreement by written notice to the other.

3. Option Conditions. In addition to any other requirements for exercise of the Option set forth in this Agreement, the exercise by Lessee of the Option shall be subject to the satisfaction of all of the following conditions (the **"Option Conditions"**):

3.1 Lessee shall have received all planning, zoning and other entitlement approvals required to be obtained from governmental authorities for the construction of the Renovation Work (as defined in Section 5.1 of the form of Restated Lease) on the Premises including without limitation all required approvals by the Marina del Rey Design Control Board, the County Department of Regional Planning, the County Board of Supervisors and the California Coastal Commission, as applicable (collectively, the **"Entitlements"**), and both (a) the Entitlements shall not be subject to further appeal, and (b) there shall be no proceeding or litigation pending to appeal the issuance of the Entitlements, or to enjoin or restrain the performance of the Renovation Work (not including any proceeding or litigation brought by or on behalf of Lessee or any direct or indirect partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Lessee), or if such a proceeding or litigation has been pending, then a dismissal, decision or judgment shall have been issued in favor of the validity of the Entitlements, which dismissal, decision or judgment shall not be subject to further appeal (collectively, the **"Entitlements Condition"**).

3.2 Lessee shall have received Director's approval of the Final Plans and Specifications (as defined in Subsection 5.3.3 of the form of Restated Lease) for all of the Renovation Work, such Final Plans and Specifications shall have been approved by all required

agencies, and such Final Plans and Specifications shall have been attached as Exhibit B to the form of Restated Lease.

3.3 Lessee shall have received verification of the issuance of all permits or such other documentation deemed appropriate by County to evidence receipt of all required approvals for the Renovation Work.

3.4 Lessee shall have provided to Director reasonably satisfactory evidence that Lessee has obtained Project Financing (as defined below) sufficient to complete the Renovation Work. For purposes of this Agreement, **"Project Financing"** means a loan from an institutional lender or lenders, in amounts that when combined with Lessee's equity, are reasonably expected to provide sufficient funds to complete all of the Renovation Work, all as approved by Director in accordance with the terms and provisions of Section 12.1 of the form of Restated Lease. If Lessee desires to fund the cost of the Renovation Work entirely from Lessee equity, then upon demonstration by Lessee to the reasonable satisfaction of Director of the availability of adequate equity funds, Lessee shall be considered to have satisfied the condition of obtaining Project Financing set forth in this Section 3.4. Lessee shall furnish Director with copies of all notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, as applicable, documents evidencing equity contributions, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, for County's review and approval in connection with its assessment of the adequacy of Lessee's Project Financing; provided, however, that Lessee may redact all personal financial information from any of the foregoing.

3.5 Lessee and County shall have entered into the Look-Out Agreement, as such term is defined in Section 15.20 of the form of Restated Lease.

3.6 On or before the date ninety (90) days prior to Lessee's delivery of the Exercise Notice, Lessee shall have delivered to County a proposed program (the **"Mariners Village Affordable Housing Program"**) addressing, among other things, Lessee's proposed methods for tenant application, qualification and selection process, initial lease up process, and monitoring and affirmative marketing of the Affordable Units (as defined in Section 3.1 of the form of Restated Lease), and including an exhibit showing the proposed distribution of the Affordable Units among the buildings on the Premises, by unit type, for approval by all applicable County agencies.

3.7 Lessee, County and all applicable County agencies shall have agreed upon the Mariner's Village Affordable Housing Program.

3.8 Lessee, on one hand, and the Community Development Commission of the County of Los Angeles, the County (by and through the Department of Regional Planning), and the County (by and through the Department), on the other hand, shall have entered into the Affordable Housing Agreement (as defined in Section 3.1 of the form of Restated Lease) and shall be prepared to record such agreement in the Official Records of Los Angeles County, California, substantially concurrently with the recordation of the memorandum of lease extension provided for in Section 17.8 of the form or Restated Lease.

3.9 Lessee shall have made any payments required to be made to County pursuant to Sections 5.1 and 5.2. of this Agreement.

3.10 On or before the date sixty (60) days prior to Lessee's delivery of the Exercise Notice, Lessee shall have delivered to County's outside counsel or the County Construction Representative (as defined in Section 5.13 of the form of Restated Lease) a Cost Breakdown Update (the "**Cost Breakdown Update**"), in such reasonable detail and form as may be required by Director, including without limitation (a) the Required Hard Cost Amount (as defined in Section 5.1.2 of the form of Restated Lease) for the Renovation Work, and (b) specifications, names of manufacturer, quality standards, descriptions of materials, and the like.

3.11 Director shall have approved the Cost Breakdown Update in his or her reasonable discretion.

3.12 The Option shall not have expired or been terminated pursuant to Section 2 of this Agreement.

4. Exercise of Option. The Option shall be exercisable by Lessee only by Lessee's strict satisfaction on or before the Option Expiration Date of the following requirements "**Exercise Requirements**"): (a) Lessee shall notify County in writing of its exercise of the Option ("**Exercise Notice**"); (b) Lessee shall accompany the Exercise Notice with (i) Lessee's execution and delivery to County of the Restated Lease with any additional terms provided in this Agreement and any blank or bracketed terms set forth in Exhibit A hereto completed in accordance with the terms and provisions of this Agreement; and (ii) payment of the amounts required to be paid by Lessee to County pursuant to Section 3.9 of this Agreement; (c) as of the date of Lessee's delivery of the Exercise Notice there shall not be a Lessee Default under this Agreement nor shall Lessee be in material breach or default under the Existing Lease after notice from County and the expiration of any applicable cure period set forth in the Existing Lease; and (d) the Option Conditions shall have been satisfied and there shall be no change in circumstances that causes the Option Conditions to no longer continue to be satisfied. Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease as soon as reasonably possible thereafter, but, in any event not later than forty-five (45) days following the date of Lessee's exercise of the Option. The Effective Date of the Restated Lease (as defined in the form of Restated Lease) shall be the date the Restated Lease is executed and delivered by County, which date shall be inserted into page 1 of the Restated Lease concurrent with County's execution and delivery thereof. If Lessee's Project Financing is in a position to close within the above forty-five (45) day period, then County agrees to cooperate with Lessee to effectuate a concurrent closing of the Project Financing and County's delivery of the Restated Lease such that the Effective Date of the Restated Lease is the same as the date of the close of Lessee's Project Financing; provided, however, in no event shall such agreement to cooperate be interpreted to require County to delay the execution and delivery of the Restated Lease beyond such forty-five (45) day period; and provided, further, that County shall not be required to execute and deliver the Restated Lease unless during such forty-five (45) day period Lessee continues to satisfy the Option Conditions and Lessee's Project Financing is in a position to close on or before the execution and delivery by County of the Restated Lease. Notwithstanding the foregoing, in the event of a delay in the closing of Lessee's Project Financing, Director shall have the authority, in the exercise of Director's good faith judgment, but not the obligation, to

extend the forty-five (45) day period in which Lessee is required to close Lessee's Project Financing for up to an additional thirty (30) days.

The failure of Lessee's Project Financing to close, or Lessee's failure to continue to satisfy the Option Conditions, during the above forty-five (45) day period (as such period may be extended by Director pursuant to the last sentence of the immediately preceding paragraph) shall not in and of itself cause a termination of the Option as long as the Option Term has not expired. In the event of such a failure, as long as the Option Term has not expired, Lessee shall have the continuing right to subsequently re-exercise the Option during the remainder of the Option Term if Lessee once again satisfies all the Option Conditions, subject to Lessee causing the closing of the Project Financing and the continued satisfaction of all the Option Conditions during the forty-five (45) day period (as such period may be extended by Director pursuant to the last sentence of the immediately preceding paragraph) following such subsequent re-exercise of the Option, all in accordance with the terms and provisions of this Section 4.

5. Option Fee and Other Payments.

5.1 Option Fee. In consideration of County's grant of the Option to Lessee, Lessee shall pay to County concurrent with Lessee's execution of this Agreement the sum of One Hundred Thousand Dollars ($100,000.00) (the **"Option Fee"**). The Option Fee shall be non-refundable.

5.2 Other Payments. Concurrent with, and as a condition precedent to, the execution and delivery by County of the Restated Lease, Lessee shall also pay to County: (a) the amount (if any) by which the Monthly Minimum Rent payable by Lessee under the Restated Lease for the remainder of the calendar month during which the Restated Lease is executed and delivered by County (prorated on a per diem basis) exceeds the square foot rental paid by Lessee under the Existing Lease for such same period (prorated on a per diem basis); (b) the amount (if any) by which the Security Deposit required to be maintained by Lessee under Article 7 of the Restated Lease exceeds the amount of the security deposit then maintained by Lessee with County pursuant to Section 7 of the Existing Lease; (c) the amount (if any) of Net Proceeds Share payable by Lessee to County in connection with a Change of Ownership or Financing Event as set forth in Section 8.3; and (d) the reasonable fees of the County Construction Representative in reviewing the Final Plans and Specifications and the Cost Breakdown Update.

6. Entitlements and Plan Preparation During Option Term.

6.1 Obtaining Entitlements. Not less than ten (10) business days after the commencement of the Option Term, Lessee shall withdraw the planning application that was filed by Lessee with County in 2013 for the redevelopment and substantial rehabilitation of the Premises. During the Option Term, Lessee shall use its best efforts to satisfy the Option Conditions as soon as possible. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, and by way of example only, application fees, travel costs, architectural and engineering fees, and consulting, legal and lobbying fees, as deemed necessary by Lessee to be reasonably necessary to expedite the permit, license and other approval processes. Notwithstanding the foregoing, nothing contained in this Agreement shall require Lessee to expend funds on any particular category or categories of expenditure unless Lessee determines such expenditure is reasonably necessary.

6.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "**Department**") shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the Entitlements. Such cooperative efforts may include the Department's joinder in any application for the Entitlements, where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the form of Restated Lease) incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding any contrary provision of this Agreement, Lessee and County acknowledge that the approvals given by County under this Agreement and/or the Restated Lease shall be approvals pursuant to its authority under Section 25536 or 25907 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Restated Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Renovation Work and operation and other use of the Premises and Improvements; and that the Department's duty to cooperate and County's approvals under this Agreement and/or the Restated Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement and/or the Restated Lease.

For the purposes of this Agreement, "**Unreasonable County Activity**" means any of the following actions (or inactions) that occur after the date of this Agreement and prior to the expiration of the Option Term: (i) the Department's failure to provide required County joinder, if any, as fee title owner of the Premises, in Lessee's submittal to the applicable governmental agency of the Final Plans and Specifications (as defined in Subsection 5.3 of the form of Restated Lease) for the Renovation Work that are approved by Director for the Renovation Work; or (ii) the Department's failure to take such other actions, at no cost or expense to County, in its proprietary capacity, that are reasonably requested by Lessee and which are necessary for Lessee to proceed with the permitting and approval process, or the taking by the Department of actions in its proprietary capacity, without Lessee's consent, which are in conflict with Lessee's rights and obligations under this Agreement and actually delay the receipt of the Entitlements; or (iii) Director's failure to comply with the time periods imposed upon Director under Section 6.3 below, except in the case (if any) where a failure of Director to notify Lessee of its approval or disapproval of a matter constitutes Director's deemed approval of such matter, or constitutes Director's deemed disapproval of such matter and Director's disapproval of such matter is authorized under the circumstances. Nothing contained in this Section 6.2 or the other provisions of this Agreement shall be construed as obligating the Department or the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. It shall not be Unreasonable County Activity if County fails to accelerate the County's customary regulatory permit or approval process. No action or inaction shall constitute Unreasonable County Activity unless and until all of the following procedures and requirements have been satisfied:

(a) Within a reasonable time under the circumstances, Lessee must notify Director in writing of the specific conduct comprising the alleged Unreasonable County Activity, and the next opportunity, if any, for County to rectify such alleged conduct. If Lessee fails to notify Director in writing as specified in the immediately preceding sentence within five (5) days following Lessee's discovery of the alleged Unreasonable County Activity, then

notwithstanding any contrary provision of this Section 6.2, in no event shall Lessee be entitled to any extension of the Option Term for any period of the delay under this Section 6.2 that occurred prior to the date of Lessee's notice described in this paragraph (a).

(b) Within seven (7) days following receipt of the notice alleging Unreasonable County Activity, Director shall meet with Lessee or its authorized representative in order to determine whether Unreasonable County Activity has occurred and, if so, how such Unreasonable County Activity can be rectified and the duration of the delay caused by such Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the amount of delay under this Section 6.2 for the Unreasonable County Activity shall equal the actual amount of delay in the receipt of the Entitlements directly caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Director shall establish the length of the delay in the receipt of the Entitlements likely to be caused by the Unreasonable County Activity.

(c) If Lessee is unable to satisfy the Option Conditions prior to the Option Expiration Date as a result of Unreasonable County Activity, then the Option Expiration Date shall be extended for the period of delay beyond the Option Expiration Date in Lessee's satisfaction of the Option Conditions that is caused by Unreasonable County Activity; provided, however, that in no event shall the Option Expiration Date be extended beyond the Existing Expiration Date. If, within fourteen (14) days following receipt of Lessee's notice alleging Unreasonable County Activity, Director and Lessee have not agreed in writing as to whether delay in the receipt of the Entitlements due to Unreasonable County Activity has occurred or the length of such delay, and resulting extension of the Option Expiration Date, then the matter shall be referred to the Board of Supervisors of the County for such determination; provided, however, that in no event shall the Option Expiration Date be extended beyond the Existing Expiration Date.

6.3 Plans and Specifications for Renovation Work. The Renovation Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the form of Restated Lease. The requirements of Article 5 of the form of Restated Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Renovation Work, as set forth in more detail in Section 5.3 of the form of Restated Lease. The procedure for the preparation, submittal and approval of the plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the form of Restated Lease, except that during the period commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval, any portions of the plans, specifications and other materials described in Section 5.3 of the form of Restated Lease that are required to be submitted to governmental authorities (including the County, the Marina del Rey Design Control Board, the County Department of Regional Planning and the California Coastal Commission, as applicable) in connection with Lessee's applications for or receipt of the Entitlements for the Renovation Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in Section 3.10 of this Agreement. The standards and time

periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 6.3 shall be in accordance with the terms and provisions of Section 5.3 of the form of Restated Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule which shall facilitate Lessee's satisfaction of all Option Conditions on or before the Option Expiration Date. In addition to the plans, specifications and materials required to be submitted by Lessee to Director pursuant to this Section 6.3, or required to satisfy the Option Conditions, Lessee shall have the right, at its election, but not the obligation, to deliver to Director, for Director's approval, additional plans, specifications and materials pertaining to the Renovation Work. Director shall notify Lessee of its approval or disapproval of such additional plans, specifications and materials within the time frames and in accordance with the requirements of Section 5.3 of the form of Restated Lease. Notwithstanding the foregoing, County acknowledges that prior to the date of this Agreement Director has reviewed and approved the schematic plans and narrative description of the Renovation Work required under Subsection 5.3.1 of the form of Restated Lease. Such approved schematic plans and narrative description of the Renovation Work will be set forth or referenced in the Renovation Plan attached as Exhibit B to the form of Restated Lease. [AS OF THE GRANT OF THE OPTION, THE RENOVATION PLAN SHALL BE THE RENOVATION WORK AS DESCRIBED IN SECTION 5.1 OF THE FORM OF RESTATED LEASE. AS OF THE EXERCISE OF THE OPTION, THE RENOVATION PLAN SHALL BE AS APPROVED AND ATTACHED AS EXHIBIT B TO THE FORM OF RESTATED LEASE, INCLUDING THE APPROVED PLAN AND NARRATIVE DESCRIPTION FOR THE RENOVATION WORK AND THE FINAL PLANS AND SPECIFICATIONS FOR THE RENOVATION WORK.]

7. Non-Exercise Lease Amendment. If Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date), then (a) the Option shall automatically terminate, and (b) at County's election by written notice from Director to Lessee, the Existing Lease shall be considered to be automatically amended effective as of the Option Expiration Date (the "**Effective Amendment Date**") as follows (the "**Non-Exercise Amendment**"):

(i) the first paragraph of Section 12 of the Existing Lease shall be amended to read as follows: "The annual square foot rental for the whole of the Premises herein demised shall be 75% of the average aggregate square foot and percentage rentals payable for each year during the three year period immediately preceding the Effective Amendment Date, but in no event shall be less than $2,186,598.00, payable monthly. Effective at the end of the three-year period after the Effective Amendment Date (if any), the annual square foot rental for the whole of the Premises herein demised shall be adjusted to equal 75% of the average aggregate square foot and percentage rentals payable for each year during the three-year period immediately preceding such adjustment date. Notwithstanding the foregoing, in no event shall the annual square foot rental payable under this Lease ever be reduced below the annual square foot rental payable under this Lease immediately prior to any adjustment set forth in this paragraph.";

(ii) the percentage rental categories and gross receipt percentages set forth in Section 13 of the Existing Lease shall be amended in accordance with the

Percentage Rent categories and Gross Receipt percentages set forth in categories (a) through (s1) of Subsection 4.2.2 of the form of Restated Lease, which shall be effective on and after the Effective Amendment Date, except that the Apartments Gross Receipts Percentage shall be 10.5% throughout the entire remaining term of the Existing Lease;

(iii) add Article 16 of the form of Restated Lease to the Existing Lease, and amend Section 15 of the Existing Lease to provide for the determination and resolution of square foot and percentage rental adjustments under Section 15 of the Existing Lease in accordance with the terms, provisions and procedures set forth in Subsections 4.4.2 through 4.4.5 and Article 16 of the form of Restated Lease , provided that all references in such Subsections 4.4.2 through 4.4.5 to (I) "Renegotiation Date" and "Fair Market Rental Value" shall be deleted and (II) "Annual Minimum Rent" and "Percentage Rent" shall mean and refer to the square foot and percentage rentals referenced in the form of Restated Lease, except as set forth in clause (ii) above;

(iv) amend and restate Section 18 of the Existing Lease in full in accordance with Sections 2.2 and 2.3 of the form of Restated Lease except that Lessee shall not be required to deliver a Demolition and Removal Report to County, and County shall be entitled to deliver the County Preliminary Removal Notice and County Removal Notice at any time subsequent to the Effective Amendment Date;

(v) amend and restate Section 22 of the Existing Lease in full in accordance with Article 11 (excepting Subsections 11.2.4 and 11.2.5) and Article 12 (excepting Sections 12.3.6 and 12.12) of the form of Restated Lease, provided that all references in such Articles 11 and 12 to Net Proceeds Share, Net Refinancing Proceeds and Sections 4.6 through 4.8 shall be deleted;

(vi) add the last four (4) sentences of Section 4.5 of the form of Restated Lease to the Existing Lease;

(vii) amend and restate Section 7 of the Existing Lease in full in accordance with Article 7 of the form of Restated Lease;

(viii) intentionally omitted;

(ix) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.3, 5.4, 5.7, 5.8, 5.9 and 5.10 of the form of Restated Lease, except that all references to the "Renovation Work" shall be deleted and the terms and conditions of such Sections shall be applicable only to "Alterations;"

(x) amend and restate Sections 30, 31 and 32 of the Existing Lease in full in accordance with Article 14 of the form of Restated Lease, except that all references in Article 14 of the form of Restated Lease to "Net Proceeds Share," "Net Refinancing Proceeds" and "Permitted Capital Expenditures" shall be deleted, and except that the financial reporting requirements set forth in Subsection 14.8.1 of the form of Restated Lease shall be deleted (and Lessee shall instead comply with the financial reporting requirements set forth in the Existing Lease);

(xi) add the last sentence of Section 10.3 and all of Section 10.4 of the form of Restated Lease to the Existing Lease (for purposes hereof, the reference in Section 10.4 of the form of Restated Lease to "Sections 10.1 through 10.3 above" shall mean and refer to Section 35 of the Existing Lease, as amended; and

(xii) incorporate into the Existing Lease the definitions of capitalized terms used in the form of Restated Lease to the extent such terms are used in this Non-Exercise Amendment pursuant to clauses (i) through (xi) above.

For purposes of the Non-Exercise Amendment, all references in the form of Restated Lease to the "Effective Date" shall mean and refer to the Effective Amendment Date set forth above. Within thirty (30) days after request by County, County and Lessee shall execute and deliver a written document confirming the modifications to the Existing Lease set forth in this Section 7, but Lessee's failure to execute such written document upon request by County shall not affect the effectiveness of the Non-Exercise Amendment, which, at County's election by written notice from Director to Lessee, shall become automatically effective as of (or retroactive to) the Option Expiration Date if Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date).

8. Changes of Ownership and Financing Events During the Option Term. As additional consideration for the grant of the Option, Lessee agrees that terms and provisions similar to those set forth in Sections 4.6 through 4.8 of the form of Restated Lease (as modified and set forth in Sections 8.1 through 8.4 below) pertaining to Changes of Ownership and Financing Events (as such terms are defined in the form of Restated Lease) shall be applicable to the Existing Lease during the Option Term. Upon the expiration of the Option Term without exercise of the Option, this Section 8 shall remain in effect until the execution of the Non-Exercise Amendment, and upon execution of the Non-Exercise Amendment this Section 8 shall terminate. If the Option is exercised, then commencing after the Effective Date of the Restated Lease this Section 8 shall terminate and the terms and provisions of the Restated Lease shall control with respect to any Changes of Ownership or Financing Events that occur after the Effective Date of the Restated Lease. If a Change in Ownership or Financing Event occurs concurrent with the execution and delivery of the Restated Lease, then the terms and provisions of this Section 8 shall control with respect to such Change of Ownership or Financing Event and for purposes of the application of this Section 8, such Change of Ownership or Financing Event shall be considered to have occurred under the Existing Lease (as opposed to under the Restated Lease). Any capitalized terms set forth in Sections 8.1 through 8.4 below that are not defined in this Agreement shall have the same meanings given to such terms in the form of Restated Lease.

8.1 Changes of Ownership and Financing Events. Except as otherwise provided in this Section 8.1, each time during the period during which this Section 8 is in effect Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer) or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("**Administrative Charge**"), and (2) in the event such Change of Ownership or Financing Event is consummated, a Net Proceeds Share. "**Net Proceeds Share**" means the applicable amount determined pursuant to Section 8.3 below. Changes of Ownership and Financing Events are also subject to County approval as and to the extent required under the Existing Lease.

8.1.1 Change of Ownership. "**Change of Ownership**" means (a) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in the Existing Lease, (b) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a five percent (5%) or greater direct ownership interest in such Major Sublease, (c) any transaction or series of related transactions not described in Subsections 8.1.1(a) or (b) above which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in Lessee or a Major Sublessee, or (d) a Change of Control (as defined below) of Lessee or a Major Sublessee. "**Change of Control**" shall refer to a transaction whereby the transferee acquires a beneficial interest in Lessee or a Major Sublessee which brings its cumulative beneficial interest in Lessee or a Major Sublessee, as applicable, to greater than fifty percent (50%).

8.1.2 Excluded Transfers. Notwithstanding anything to the contrary contained in this Section 8, Changes of Ownership resulting from the following transfers ("**Excluded Transfers**") shall not be deemed to create an obligation to pay County a Net Proceeds Share:

8.1.2.1 a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure), between the date of this Agreement and the Effective Date of the Restated Lease, to any other direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) between the date of this Agreement and the Effective Date of the Restated Lease, including in each case to or from a trust for the benefit of the immediate family (as defined in Subsection 8.1.2.3 below) of any direct or indirect partner, shareholder or member of Lessee who is an individual; provided, however, that in the event any such transfer occurs during the period commencing on the date of this Agreement and ending on the Effective Date of the Restated Lease, Lessee shall be obligated to pay County a Net Proceeds Share equal to five percent (5%) of the total gross consideration payable by the transferor for the interest transferred;

8.1.2.2 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a Change of Control of Lessee or a change in the managing member or general partner of Lessee;

8.1.2.3 a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which 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, or (iii) from such a trust or any trust that is an owner in a constituent entity of Lessee as of December 26, 2017 (the "**Term Sheet Date**"), 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 described in this Subsection 8.1.2.3 is the result of gift, devise, intestate succession or operation of law;

8.1.2.4 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 traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

8.1.2.5 a mere change in the form, method or status of ownership, as long as there is no change in the actual beneficial ownership of the Existing Lease, Lessee or a Major Sublease, and such transfer does not involve an intent to avoid Lessee's obligations under this Section 8 with respect to a Change of Ownership; or

8.1.2.6 any transfer resulting from a Condemnation by County.

8.1.3 Aggregate Transfer. "**Aggregate Transfer**" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial interests in Lessee or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than those enumerated in Subsection 8.1.2 above) occurring since the later of (a) the Term Sheet Date, (b) the execution by Lessee of a Major Sublease, or (c) the most recent Change of Ownership upon which an Administrative Charge was paid to County; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

8.1.4 Beneficial Interest. As used herein, "**beneficial interest**" shall refer to the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts.

8.1.4.1 Interests Held By Entities. Except as otherwise provided herein, an interest in Lessee, the Existing Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. In the case in which more than one layer of entities exists between Lessee or a Major Sublessee, as applicable, and the ultimate owners, the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, the Existing Lease or a Major Sublease, as appropriate, and any transfers thereof.

8.1.4.2 Ownership of Multiple Assets. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to the Existing Lease or a Major Sublease, whichever is applicable, and to any other assets transferred in the same transaction in proportion to the relative fair market values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to the Existing Lease, a Major Sublease or the beneficial interests therein, as applicable.

8.1.5 Financing Events Regarding Multiple Assets. For purposes of determining the Net Proceeds Share and Net Refinancing Proceeds from a financing transaction that involves both a Financing Event under this Agreement and a financing in which other assets or interests unrelated to the Existing Lease, a Major Sublease or beneficial interests in Lessee or a Major Sublessee secure the financing, the principal amount of such financing transaction shall be apportioned to the Existing Lease, a Major Sublease and/or beneficial interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests that also secure the financing, on the other hand, in proportion to the relative fair market values of the respective assets that secure the financing.

8.2 Calculation and Payment. A deposit of Fifteen Thousand Dollars ($15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (other than an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership (other than an Excluded Transfer) or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge, together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 8.1. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 8.1 within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge and any supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in the Existing Lease or a Major Sublease, as applicable, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Lessee with the reason or

reasons for such disagreement. Failing mutual agreement within thirty (30) days after the expiration of County's thirty (30) day review period, the dispute shall be resolved by arbitration in accordance with the terms and provisions set forth in Article 16 of the form of Restated Lease in the manner prescribed therein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction, which portion shall be distributed in accordance with the arbitration of the dispute pursuant to the terms and provisions set forth in Article 16 of the form of Restated Lease, in the manner prescribed therein for the resolution of disputes concerning Fair Market Rental Value.

8.2.1 Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee or a Major Sublessee, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Term Sheet Date, or (b) the date of the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share) with respect to the Existing Lease, a Major Sublease or a Change of Ownership that included a transfer of the beneficial interest that is the subject of the current transfer.

8.2.2 Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration pursuant to the terms and provisions set forth in Article 16 of the form of Restated Lease.

8.2.3 Obligation to Pay Net Proceeds Share and Administrative Charge. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the obligation of Lessee, and in the case in which the identity of the Lessee changes with the transfer, shall be the joint and several obligation of both the Lessee entity prior to the transfer and the Lessee entity after the transfer. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in the Existing Lease, then such failure shall constitute a default by Lessee under the Existing Lease and County shall have the remedies applicable under the Existing Lease for a default by Lessee under the Existing Lease.

8.3 Net Proceeds Share. In the event of a Change of Ownership that occurs at any time during the period between the Term Sheet Date and concurrent with the execution and delivery of the Restated Lease, the "**Net Proceeds Share**" shall be Seven Million Five Hundred Thousand Dollars ($7,500,000.00) minus any amount paid to County during such period under Subsection 8.1.2.1. If the Change of Ownership occurs between the Term Sheet Date and the date of this Agreement, the payment of such Net Proceeds Share to County shall be a condition to County's execution and delivery of this Agreement. If the Change of Ownership occurs between the date of this Agreement and the execution and delivery of the Restated Lease, payment of the Net Proceeds Share to County shall be a condition to County's execution and delivery of the Restated Lease. Any Change of Ownership after the execution and delivery of the Restated Lease shall be governed by the terms and conditions of the Restated Lease.

With respect to a Financing Event that occurs at any time during the period between the Term Sheet Date and the execution and delivery of the Restated Lease, the "**Net Proceeds Share**" shall be the amount (if any) by which (I) twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event exceeds (II) the Administrative Charge paid by Lessee to County in connection with the transaction. If the Financing Event occurs between the Term Sheet Date and the date of this Agreement, the payment of such Net Proceeds Share to County shall be a condition to County's execution and delivery of this Agreement. If the Financing Event occurs between the date of this Agreement and the execution and delivery of the Restated Lease, payment of the Net Proceeds Share to County shall be a condition to County's execution and delivery of the Restated Lease. Notwithstanding the foregoing, in connection with any Financing Event used to fund the cost of the acquisition of an Ownership Interest in Lessee that constitutes an Excluded Transfer, if such Financing Event is secured by the Ownership Interest that is transferred, then the Net Refinancing Proceeds from such Financing Event shall not include the portion of the proceeds of such Financing Event used to fund the acquisition cost of such Ownership Interest. Moreover, there shall be no separate Net Proceeds Share payable with respect to any Financing Event to the extent that the loan proceeds from such Financing Event finance a Change of Ownership with respect to which County is paid a Net Proceeds Share pursuant to the first paragraph of this Section 8.3 and such Financing Event is consummated concurrent with the consummation of the Change of Ownership. Any Financing Event after the execution and delivery of the Restated Lease shall be governed by the terms and conditions of the Restated Lease.

"**Gross Transfer Proceeds**" means an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred; if Lessee and County are unable to agree upon such fair value, then the matter shall be determined pursuant to Article 16).

"**Net Refinancing Proceeds**" means the gross principal amount of any Financing Event during the period between the Term Sheet Date and concurrent with the execution and delivery of the Restated Lease, minus (a) the greatest of (i) the Base Value (as defined below), (ii) the original principal amount of any Financing Event after the Term Sheet Date, in which County was paid a share of Net Refinancing Proceeds, or (iii) in the case of a Financing Event that is consummated by an assignee of Lessee's interest under this Agreement and the Existing Lease that acquired its leasehold interest pursuant to a Change of Ownership

after the Term Sheet Date, the purchase price such assignee paid for such Change of Ownership, (b) any portion of the proceeds of the Financing Event that are not distributed to Lessee but are instead escrowed for the payment of Improvements Costs for the Renovation Work to be incurred after the Term Sheet Date, or (c) other documented Improvement Costs incurred by Lessee after the Term Sheet Date and not paid for or repaid with the proceeds of any Financing Event, and (d) Documented Transaction Costs (as defined below) with respect to such Financing Event. Notwithstanding the foregoing, there shall be no duplication of any amounts to be subtracted from the gross principal amount of any Financing Event to calculate Net Refinancing Proceeds, even if a particular amount qualifies for subtraction under more than one category.

"**Base Value**" means One Hundred Million Dollars ($100,000,000.00).

"**Improvement Costs**" means the final actual out-of-pocket design, permitting, entitlement and construction costs paid by Lessee in connection with physical capital Improvements or Alterations (as such terms are defined in the form of Restated Lease) made to the Premises that are constructed by Lessee after the Term Sheet Date and prior to the date of the transfer, in compliance with the Existing Lease, which costs have been submitted to County within ninety (90) days after the completion of such Improvements (or in the case of phased construction, within ninety (90) days after the completion of the applicable phase of such Improvements), together with a written certification from Lessee and Lessee's construction lender that such costs are accurate, and which costs shall have been approved in writing by Director. Without limitation of the foregoing, Improvement Costs shall include all actual out-of-pocket hard and soft construction costs paid to unaffiliated third parties (except that Lessee shall be entitled to include, to the extent actually incurred, construction management and/or development fees paid to an affiliate as long as the total amount of all construction management, development and similar fees paid to unaffiliated and affiliated parties does not exceed an aggregate of four percent (4%) of the hard construction costs), and actual construction period interest on Lessee's construction loan from an unaffiliated third party lender.

"**Documented Transaction Costs**" means the aggregate amount of commissions, title and escrow costs, legal fees and expenses, and other bona fide closing costs actually paid to third parties and documented to the satisfaction of Director, in connection with the consummation of the Financing Event giving rise to the obligation to pay County a Net Proceeds Share.

8.4 Transfers to which this Section 8 Applies. The provisions of this Section 8 hereof shall apply to all transfers of beneficial interests in the Existing Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise Excluded Transfers. Furthermore, a Change of Ownership shall include any transfer or series of transfers primarily structured for the purpose of avoiding the obligation to pay a Net Proceeds Share which, if viewed together, would otherwise constitute a Change of Ownership.

8.5 Payment. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such share and shall be the joint and several obligation of the transferee and transferor. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share at the Applicable Rate (as defined in the form of Restated Lease) from the date due until paid; provided, however, that in the case of a dispute as to the correct amount of the

Net Proceeds Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Net Proceeds Share and deposits the disputed portion thereof in an interest bearing escrow account at the closing of the transaction (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed portion) to secure payment thereof. In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in Subsection 8.1.1(b) above, the Net Proceeds Share shall be payable to County as and when the Gross Transfer Proceeds are received.

8.6 Shareholder, Partner, Member, Trustee and Beneficiary List. As part of the submission to County in connection with a Change of Ownership or Financing Event, and upon the request of County (which requests shall be no more frequent than once per year), Lessee shall provide County with an updated schedule listing the names and mailing addresses of (i) all shareholders, partners, members and other holders of equity or beneficial interests in Lessee, the Existing Lease or the Major Sublessee under any Major Sublease, and (ii) all shareholders, partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a five percent (5%) or greater beneficial interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a five percent (5%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws (as defined in the form of Restated Lease) from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its commercially reasonable efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or a Major Sublessee.

8.7 Effect Upon Section 4.8 of the Restated Lease of Changes of Ownership That Occur During the Option Term. If a Change of Ownership occurs during the Option Term upon which a Net Proceeds Share is payable under this Section 8, then (i) if the Gross Transfer Proceeds from such Change of Ownership exceed One Hundred Million Dollars ($100,000,000.00), then for purposes of the Restated Lease, the amount set forth in clause (a) of section 4.8.1.1 of the Restated Lease shall be modified to equal the Gross Transfer Proceeds from such Change of Ownership that occurred during the Option Term; and (ii) the amount set forth in clause (b) of Subsection 4.8.1.1 of the Restated Lease shall be $0.

9. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the form of Restated Lease) incurred by County in the review, negotiation, preparation, documentation and administration of this Agreement, the Restated Lease and the term sheets and memoranda that precede or preceded any of the foregoing. Lessee shall pay all of such Actual Costs that were incurred prior to or as

of the date of this Agreement concurrent with Lessee's execution and delivery of this Agreement. Lessee shall pay any such Actual Costs incurred by County subsequent to the date of this Agreement within thirty (30) days following receipt by Lessee of an invoice from the County for such Actual Costs.

10. Miscellaneous.

10.1 Time is of the Essence. Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

10.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

10.3 Notices. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the form of Restated Lease.

10.4 Captions. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

10.5 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees (including without limitation, attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party), including all costs for the enforcement, perfection and collection of any judgment.

10.6 No Assignment. Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion; provided, however, Lessee shall have the right to assign its rights and obligations under this Agreement (including a collateral assignment) to the same entity to whom Lessee assigns (or collaterally assigns or has collaterally assigned, as applicable) its leasehold interest under the Existing Lease in an assignment (or collateral assignment) of the Existing Lease that is (or has been) approved by County.

10.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supersedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

10.8 Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

10.9 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

10.10 Counterparts. This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

10.11 Successors and Assigns. Subject to Section 10.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

10.12 Lessee Default. For purposes of this Agreement, a "**Lessee Breach**" under this Agreement means a failure of Lessee to perform or comply with any material obligation or covenant of Lessee under this Agreement. For purposes of this Agreement, a "**Lessee Default**" under this Agreement means Lessee's failure to cure a Lessee Breach under this Agreement within (a) ten (10) days after Lessee's receipt of written notice from County in the case of the payment of money, or (b) thirty (30) days after Lessee's receipt of written notice from County in the case of any other obligation or covenant of Lessee under this Agreement; provided, however, that if the nature of the Lessee Breach under this clause (b) is such that it cannot with reasonable diligence be cured within thirty (30) days, then the cure period set forth in this clause (b) shall be extended for such additional period as reasonably required for the cure of the Lessee Breach as long as Lessee commences cure of the Lessee Breach within thirty (30) days after Lessee's receipt of written notice from County and diligently prosecutes such cure to completion.

10.13 Exhibits. Exhibit A attached to this Agreement is hereby expressly incorporated herein by reference.

10.14 Indemnification. Lessee agrees to indemnify, defend and hold County, its agents, officers and employees, harmless from and against any claim, cause of action or proceeding brought against County, its agents, officers or employees, and all liabilities and costs (including, without limitation, attorneys' fees) incurred in connection therewith, regarding any contest, opposition or challenge relating to the Entitlements for the Renovation Work, including without limitation, any contest, opposition or challenge to the issuance of any particular permit(s) or approval(s) for the Renovation Work or as to whether the Renovation Work requires the issuance of any particular permit(s) or approval(s). Lessee shall have the right to assume the defense of any such action or proceeding with counsel reasonably satisfactory to County.

In the event that any claim, action, or proceeding as described above is filed against the County, Lessee shall within ten (10) days of the filing, deliver to County an initial deposit of $5,000 from which costs shall be billed and deducted for the purpose of funding the costs incurred by County in connection with the defense, or participation or cooperation in the defense, of such claim, action or proceeding. Such deposit shall be replenished up to the amount of the initial deposit, each time unreimbursed costs incurred by County reach eighty percent (80%) of

the amount on deposit, without limitation as to the number of supplemental deposits that may be required prior to completion or resolution of the matter.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the date first set forth above.

THE COUNTY OF LOS ANGELES

By: _____
SHEILA KUEHL, Chair
of the Board of Supervisors

MARINA ADMIRALTY COMPANY, a California limited partnership

By: The Ellis Ring Revocable Trust, first restated May 15, 1995, as amended August 30, 1995, and as further amended December 18, 1995, its general partner

ORIGINAL SIGNED

_____
Joseph A. Marasco, Trustee

By: Douglas R. Ring, Inc., a California corporation, its general partner

ORIGINAL SIGNED

_____
Cynthia A. Miscikowski, President

78851

ATTEST:
CELIA ZAVALA, Executive Officer
Clerk of the Board of Supervisors
of the County of Los Angeles

By: _____
Deputy

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

CELIA ZAVALA
Executive Officer
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

MARY C. WICKHAM

County Counsel

By: _____
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

41 OCT 30 2018

CELIA ZAVALA
EXECUTIVE OFFICER



1458665.7

IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the date first set forth above.

THE COUNTY OF LOS ANGELES

ORIGINAL SIGNED

By: _____

SHEILA KUEHL, Chair

of the Board of Supervisors

MARINA ADMIRALTY COMPANY, a California limited partnership

By: The Ellis Ring Revocable Trust, first restated May 15, 1995, as amended August 30, 1995, and as further amended December 18, 1995, its general partner

_____

Joseph A. Marasco, Trustee

By: Douglas R. Ring, Inc., a California corporation, its general partner

_____

Cynthia A. Miscikowski, President

ATTEST:

CELIA ZAVALA, Acting Executive Officer – Clerk

of the Board of Supervisors

ORIGINAL SIGNED

By: _____

Deputy

APPROVED AS TO FORM:

MARY C. WICKHAM

County Counsel

ORIGINAL SIGNED

By: _____

Deputy



1458665.7

APPROVED AS TO FORM:

GLASER WEIL FINK JACOBS HOWARD & SHAPIRO, LLP

By: _____

# EXHIBIT A

# FORM OF RESTATED LEASE

# AMENDED AND RESTATED LEASE AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

MARINA ADMIRALTY COMPANY

(Lease No. _____)

Dated as of _____, 20__

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**AMENDED AND RESTATED LEASE AGREEMENT**
**PARCEL 113 – MARINA DEL REY**

THIS AMENDED AND RESTATED LEASE AGREEMENT ("**Lease**") is made and entered into as of the _____ day of _____, 201_ ("**Effective Date**"), by and between the COUNTY OF LOS ANGELES ("**County**"), as lessor, and MARINA ADMIRALTY COMPANY, a California limited partnership (together with its permitted successors and assigns, "**Lessee**"), as lessee.

RECITALS

WHEREAS, County, as lessor, and Marina Point Harbor, a limited partnership ("**Original Lessee**"), as lessee, entered into Lease No. 11834 dated February 14, 1967 (as amended prior hereto, the "**Existing Lease**"), concerning the lease of certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 113, as more specifically described on Exhibit A attached hereto and incorporated herein by reference (the "**Premises**").

WHEREAS, pursuant to various assignments Lessee has succeeded to the interest of Original Lessee under the Existing Lease and is the current lessee under the Existing Lease;

WHEREAS, the term of the Existing Lease commenced on February 1, 1967, and was originally scheduled to expire on March 31, 2023 (the "**Existing Expiration Date**");

WHEREAS, County and Lessee entered into that certain Option to Amend Lease Agreement (Parcel 113) dated as of _____ __, 201_ (the "**Option Agreement**"), pursuant to which County granted Lessee an option (the "**Option**") to amend and restate the Existing Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, (i) the extension of the term of the Existing Lease through January 31, 2066, and (ii) the renovation of the improvements on the Premises, in accordance with the terms and provisions hereof;

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement; and

WHEREAS, pursuant to the Option Agreement and the exercise of the Option, County and Lessee desire to enter into this Lease to fully amend and restate the Existing Lease in its entirety.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree that the Existing Lease is hereby amended and restated in its entirety, as follows:

1. BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the following meanings:

1.1.1 "ACCOUNTING YEAR" shall have the meaning set forth in Section 14.7.

1.1.2 "ACTUAL COST" shall mean (i) the reasonable out-of-pocket costs and expenses incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors (including the use of County's environmental consultant), (ii) costs incurred in connection with appraisals, (iii) the reasonable value of services actually provided by County's in-house counsel, and (iv) the reasonable value of services actually provided by County's lead lease negotiator/administrator and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below County department head) required by the lead lease negotiator/administrator for technical expertise or assistance. In those instances in which Lessee is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Lessee.

1.1.3 "ADA" shall have the meaning set forth in Section 1.2.1.

1.1.4 "ADDITIONAL DISPUTES" shall have the meaning set forth in Section 16(a).

1.1.5 "ADJUSTMENT DATES" shall have the meaning set forth in Section 4.3.

1.1.6 "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Section 4.6.

1.1.7 "AFFORDABLE HOUSING AGREEMENT" shall have the meaning set forth in Section 3.1.

1.1.8 "AFFORDABLE UNIT DEFAULT" shall have the meaning set forth in Subsection 13.7.1.

1.1.9 "AFFORDABLE UNITS" shall have the meaning set forth in Section 3.1.

1.1.10 "AGGREGATE TRANSFER" shall have the meaning set forth in Subsection 4.6.3.

1.1.11 "ALTERATIONS" shall have the meaning set forth in Section 5.2.

1.1.12 "ANTENNAE" shall have the meaning set forth in Subsection 3.2.2.5.

1.1.13 "ANNUAL MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1.

1.1.14 "ANNUAL RENT" shall have the meaning set forth in Section 4.2.

1.1.15 “ANNUAL RESERVE FUND EXPENDITURE PLAN” shall have the meaning set forth in Section 5.11.4.

1.1.16 “ANNUAL RESERVE FUND UPDATE” shall have the meaning set forth in Section 5.11.4.

1.1.17 “APARTMENTS GROSS RECEIPTS PERCENTAGE” shall have the meaning set forth in Subsection 4.2.2.

1.1.18 “APPLICABLE LAWS” shall have the meaning set forth in Subsection 1.2.1.

1.1.19 “APPLICABLE RATE” shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate plus three percent (3%) per annum; provided, however, that the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the preceding sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

1.1.20 “APPROVED APARTMENT LEASE” shall have the meaning set forth in Subsection 11.1.2.

1.1.21 “APPROVED GOVERNMENTAL CHANGES” shall mean any changes to the Renovation Work (or other Alterations, as applicable) required by the California Coastal Commission or other applicable governmental agency as a condition to the issuance of required governmental permits and approvals for such Renovation Work (or other Alterations, as applicable), except for any change that is a Material Modification.

1.1.22 “ASSIGNMENT STANDARDS” shall have the meaning set forth in Section 11.2

1.1.23 “AUDITOR-CONTROLLER” shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.24 “AWARD” shall have the meaning set forth in Subsection 6.1.3.

1.1.25 “BASE VALUE” shall have the meaning set forth in Subsection 4.8.1.1.

1.1.26 “BENEFICIAL INTEREST” shall have the meaning set forth in Subsection 4.6.4.

1.1.27 “BOARD” shall mean the Board of Supervisors for the County of Los Angeles.

1.1.28 “BUSINESS DAY” shall have the meaning set forth in Section 17.3.

1.1.29 "CALCULATION NOTICE" shall have the meaning set forth in Section 4.7.

1.1.30 "CASp" shall have the meaning set forth in Section 15.22

1.1.31 "CHANGE OF CONTROL" shall have the meaning set forth in Subsection 4.6.1.

1.1.32 "CHANGE OF OWNERSHIP" shall have the meaning set forth in Subsection 4.6.1.

1.1.33 "CITY" shall mean the City of Los Angeles, California.

1.1.34 "COMPONENTS" shall have the meaning set forth in Section 5.11.1.

1.1.35 CONDEMNATION" shall have the meaning set forth in Subsection 6.1.1.

1.1.36 "CONDEMNOR" shall have the meaning set forth in Subsection 6.1.4.

1.1.37 "CONTROLLING INTEREST" shall have the meaning set forth in Subsection 11.2.4.

1.1.38 "CONSTRUCTION COST INDEX" shall have the meaning set forth in Subsection 5.1.5.

1.1.39 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index--All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be reasonably agreed upon by County and Lessee.

1.1.40 "COST" shall have the meaning set forth in Subsection 4.2.2.3(6).

1.1.41 "COST ADJUSTMENT PERIOD" shall have the meaning set forth in Subsection 5.1.5.

1.1.42 "COUNTY" shall have the meaning set forth in the first paragraph of this Lease.

1.1.43 "COUNTY CONSTRUCTION REPRESENTATIVE" shall have the meaning set forth in Section 5.13.

1.1.44 "COUNTY OPTION" shall have the meaning set forth in Subsection 11.2.4.

1.1.45 "COUNTY OPTION PRICE" shall have the meaning set forth in Subsection 11.2.4.

1.1.46 "COUNTY REMOVAL NOTICE" shall have the meaning set forth in Subsection 2.3.2.

1.1.47 "COUNTY POOL RATE" shall have the meaning set forth in Subsection 4.4.5 (1) of this Lease.

1.1.48 "COUNTY PRELIMINARY REMOVAL NOTICE" shall have the meaning set forth in Subsection 2.3.2.

1.1.49 "DATE OF TAKING" shall have the meaning set forth in Subsection 6.1.2.

1.1.50 "DEMOLITION AND REMOVAL REPORT" shall have the meaning set forth in Subsection 2.3.2.

1.1.51 "DEMOLITION SECURITY" shall have the meaning set forth in Subsection 2.3.2.

1.1.52 "DEPARTMENT" shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.53 "DIRECTOR" shall mean the Director of the Department of Beaches and Harbors of the County of Los Angeles or any successor County officer responsible for the administration of this Lease.

1.1.54 "DISQUALIFICATION JUDGMENT" shall have the meaning set forth in Subsection 16.14.1.

1.1.55 "DOCUMENTED TRANSACTION COSTS" shall have the meaning set forth in Subsection 4.8.1.2.

1.1.56 "EFFECTIVE DATE" shall have the meaning set forth in the first paragraph of this Lease.

1.1.57 "ENCUMBRANCE" shall have the meaning set forth in Subsection 12.1.1.

1.1.58 "ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 12.1.1.

1.1.59 "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index upon which the parties may reasonably agree if such index is no longer published or otherwise available.

1.1.60 "EQUITY ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 12.1.1.

1.1.61 "EQUITY FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 12.2.1.

1.1.62 "ESTIMATED COSTS" shall have the meaning set forth in Subsection 2.3.2.

1.1.63 "EVENTS OF DEFAULT" shall have the meaning set forth in Section 13.1.

1.1.64 "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in Subsection 4.2.2.4.

1.1.65 "EXCLUDED CONDITIONS" shall have the meaning set forth in Subsection 1.2.3.

1.1.66 "EXCLUDED DEFAULTS" shall have the meaning set forth in Subsection 12.3.3.

1.1.67 "EXCLUDED TRANSFERS" shall have the meaning set forth in Subsection 4.6.2.

1.1.68 "EXISTING EXPIRATION DATE" shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.69 "EXISTING LEASE" shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.70 "EXTENDED TIME" shall have the meaning set forth in Section 15.15.

1.1.71 "FAIR MARKET RENTAL VALUE" shall have the meaning set forth in Subsection 4.4.1.

1.1.72 "FINAL COMPLETION CERTIFICATE" shall have the meaning set forth in Section 5.7.8.

1.1.73 "FINAL PLANS AND SPECIFICATIONS" shall have the meaning set forth in Subsection 5.3.3.

1.1.74 "FINAL RESERVE STUDY" shall have the meaning set forth in Section 5.11.1.

1.1.75 "FINANCING EVENT" shall have the meaning set forth in Subsection 12.1.1.

1.1.76 "FIRST ADJUSTMENT DATE" shall have the meaning set forth in Subsection 4.2.1.

1.1.77 "FORBEARANCE PERIOD" shall have the meaning set forth in Subsection 13.7.2.

1.1.78 "FORCE MAJEURE" shall mean any inability of a party to perform any non-monetary obligation under this Lease due to fire or other casualty, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo, governmental order or other similar unforeseeable event beyond the reasonable control of the party required to perform the subject obligation, including, in the case of a delay in the commencement or completion by Lessee of the Renovation Work or any Alteration, a delay in such construction caused by a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the commencement of such construction activity, although Lessee shall, to the extent possible, commence and complete the portions, if any, of the work, not impacted by such delay within the timeframes set forth in this Lease. In addition, in the case of the construction of the Renovation Work or any Alteration, Force Majeure shall also include (a) Unreasonable County Activity, as defined in and subject to the terms and conditions of Section 5.6 of this Lease; and (b) an injunction or restraining order against the performance of the Renovation Work or Alteration issued pursuant to a court action commenced by a plaintiff other than County or the California Coastal Commission acting in their governmental capacity, Lessee, or any person or entity affiliated with Lessee; provided, however, regardless of whether Lessee is a named party in the action, as a condition to this clause (b) Lessee shall diligently pursue the removal of any such restraining order or injunction and shall exhaust all commercially reasonable efforts to appeal such restraining order or injunction.

1.1.79 "FORECLOSURE TRANSFER" shall have the meaning set forth in Subsection 12.2.1.

1.1.80 "FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 12.2.1.

1.1.81 "GROSS ERROR" shall have the meaning set forth in Subsection 16.14.3.

1.1.82 "GROSS RECEIPTS" shall have the meaning set forth in Subsection 4.2.2.3.

1.1.83 "GROSS TRANSFER PROCEEDS" shall have the meaning set forth in Section 4.8.

1.1.84 "HAZARDOUS SUBSTANCES" shall mean the following:

(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive; and

(c) 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 pursuant to any Applicable Laws.

1.1.85 “IMPROVEMENTS” means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems, and other improvements now or hereafter located on the Premises.

1.1.86 “IMPROVEMENT COSTS” shall have the meaning set forth in Subsection 4.8.1.1.

1.1.87 “INCOME APPROACH” shall have the meaning set forth in Section 6.5.

1.1.88 “INITIAL CURE PERIOD” shall have the meaning set forth in Subsection 12.6.3(b)(1).

1.1.89 “INITIAL PERIOD” shall have the meaning set forth in Subsection 4.2.1.

1.1.90 “INITIAL PERIOD RENT” shall have the meaning set forth in Subsection 4.2.1.

1.1.91 “INITIAL RESERVE FUND PERIOD” shall have the meaning set forth in Subsection 5.11.1.

1.1.92 “INITIATING PARTY” shall have the meaning set forth in Section 16 (a).

1.1.93 “INSTITUTIONAL LENDER” shall have the meaning set forth in Subsection 12.3.1.

1.1.94 “INSURANCE RENEGOTIATION DATE” shall have the meaning set forth in Section 9.6.

1.1.95 “LATE FEE” shall have the meaning set forth in Section 4.5.

1.1.96 “LEASE” shall have the meaning set forth in the first paragraph above.

1.1.97 “LEASE YEAR” shall have the meaning set forth in Section 2.1.

1.1.98 “LESSEE” shall have the meaning set forth in the first paragraph of this Lease.

1.1.99 “LESSEE SALE PRICE” shall have the meaning set forth in Subsection 11.2.4.

1.1.100 “LOOK-OUT AGREEMENT” shall have the meaning set forth in Section 15.20.

1.1.101 “LOOK-OUT AMENDMENT” shall have the meaning set forth in Section 15.20.

1.1.102 “LOOK-OUT WORK” shall have the meaning set forth in Section 15.20.

1.1.103 “MAINTENANCE STANDARD” shall have the meaning set forth in Section 10.1.

1.1.104 “MAJOR SUBLEASE” shall have the meaning set forth in Subsection 11.1.1.

1.1.105 “MAJOR SUBLESSEE” shall have the meaning set forth in Subsection 11.1.1.

1.1.106 “MATERIAL MODIFICATION” shall (subject to Section 5.9) mean a modification to the Renovation Work (or other Alterations, as applicable) with respect to which any one of the following applies: (1) the total cost of the modifications exceeds one percent (1%) of the total estimated construction cost (including both hard and soft construction costs) of the Renovation Work or the other Alterations that are then proposed to be constructed by Lessee (subject, in the case of the Renovation Work, to adjustment in the Required Hard Cost Amount pursuant to Section 5.1.5); (2) the proposed modification is structural in nature; (3) the modification materially affects or is visible from the exterior of the Improvements; (4) the modification is not in compliance with the Permitted Uses under this Lease; or (5) the modification (a) changes the total number of apartment units, (b) reduces the number of parking spaces, except for a corresponding reduction in the number of parking spaces required for the Improvements (based on parking ratios required under Applicable Law, without variance) resulting from a reduction in the square footage of, or number of apartment units in, the Improvements (including without limitation a reduction in the number of Affordable Units), or (c) pertains to the Promenade or Outlooks (following the recordation of the Look-Out Amendment).

1.1.107 “MINIMUM STANDARDS” shall mean the requirements of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey approved in 1989, as modified by County or the Department from time to time in a manner consistent with commercially reasonable standards applicable to other comparable residential apartment projects in Marina del Rey.

1.1.108 “MONTHLY MINIMUM RENT” shall have the meaning set forth in Subsection 4.2.1.

1.1.109 “NET AWARDS AND PAYMENTS” shall have the meaning set forth in Section 6.7.

1.1.110 “NET PROCEEDS SHARE” shall have the meaning set forth in Section 4.6.

1.1.111 “NET REFINANCING PROCEEDS” shall have the meaning set forth in Subsection 4.8.5.

1.1.112 “NET TRANSFER PROCEEDS” shall have the applicable meaning set forth in Subsection 4.8.1 or 4.8.2.

1.1.113 “NOTICE OF COMPLETION” shall have the meaning set forth in Subsection 5.7.7.

1.1.114 “OPTION” shall have the meaning set forth in the fourth paragraph of the Recitals to this Lease.

1.1.115 “OPTION AGREEMENT” shall have the meaning set forth in the fourth paragraph of the Recitals to this Lease.

1.1.116 “OPTION FEE” shall have the meaning set forth in Subsection 4.8.1.1.

1.1.117 “ORIGINAL LESSEE” shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.118 “OWNERSHIP INTERESTS” shall have the meaning set forth in Subsection 12.1.1.

1.1.119 “PARTIAL TAKING” shall have the meaning set forth in Section 6.5.

1.1.120 “PAYMENT BOND” shall have the meaning set forth in Subsection 5.4.4.2.

1.1.121 “PERCENTAGE RENT” shall have the meaning set forth in Subsection 4.2.2.

1.1.122 “PERFORMANCE BOND” shall have the meaning set forth in Subsection 5.4.4.1.

1.1.123 “PERMITTED CAPITAL EXPENDITURES” shall have the meaning set forth in Section 5.11.

1.1.124 “PERMITTED USES” shall have the meaning set forth in Section 3.1.

1.1.125 “PORTION SUBJECT TO DEMOLITION” shall have the meaning set forth in Subsection 2.3.2.

1.1.126 “POST TERM REMOVAL PERIOD” shall have the meaning set forth in Subsection 2.3.2.

1.1.127 “POTENTIAL RESERVE STUDY COMPANY” shall have the meaning set forth in Section 5.11.1.

1.1.128 “PREMISES” shall have the meaning set forth in the recitals to this Lease.

1.1.129 “PRIMARY COVERAGE” shall have the meaning set forth in Subsection 9.1.1.

1.1.130 “PRIME RATE” shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or it successor, or if Bank of America, N.A. and its successor cease to exist then the prime or reference rate announced from time to time by the largest state chartered bank in California in term of deposits.

1.1.131 “PRIOR FINANCING EVENT PRINCIPAL BALANCE” shall have the meaning set forth in Subsection 4.8.5.

1.1.132 “PROMENADE” shall have the meaning set forth in Section 15.21.

1.1.133 “PROPOSED TRANSFER” shall have the meaning set forth in Subsection 11.2.4.

1.1.134 “PUBLIC WORKS DIRECTOR” shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.135 “PURCHASE MONEY NOTE” shall have the meaning set forth in Subsection 4.7.2.

1.1.136 “QUALIFIED CPA” shall have the meaning set forth in Subsection 14.8.1.

1.1.137 “QUALIFIED HARD COSTS” shall have the meaning set forth in Section 5.1.3.

1.1.138 “RENEGOTIATION DATES” shall have the meaning set forth in Section 4.4.

1.1.139 “RENOVATION PLAN” shall have the meaning set forth in Section 5.1.

1.1.140 “RENOVATION WORK” shall have the meaning set forth in Section 5.1.

1.1.141 “REPLY” shall have the meaning set forth in Section 16.5(3).

1.1.142 “REQUEST FOR ARBITRATION” shall have the meaning set forth in Section 16(a).

1.1.143 “REQUIRED CONSTRUCTION COMMENCEMENT DATE” shall have the meaning set forth in Section 5.1(6).

1.1.144 “REQUIRED CONSTRUCTION COMPLETION DATE” shall have the meaning set forth in Section 5.1(6)

1.1.145 “REQUIRED HARD COST AMOUNT” shall have the meaning set forth in Section 5.1.4.

1.1.146 “RESERVE FUND” shall have the meaning set forth in Section 5.11.1.

1.1.147 “RESERVE STUDY” shall have the meaning set forth in Section 5.11.1.

1.1.148 “RESERVE STUDY COMPANY” shall have the meaning set forth in Section 5.11.1.

1.1.149 “RESPONSE” shall have the meaning set forth in Section 16(a).

1.1.150 “RESPONDING PARTY” shall have the meaning set forth in Section 16(a).

1.1.151 “REVERSION” shall have the meaning set forth in Section 12.12.

1.1.152 “REVERSION AMENDMENT” shall have the meaning set forth in Section 5.1.7.

1.1.153 “REVERSION CONDITION” shall have the meaning set forth in Section 12.12.

1.1.154 “SECURITY DEPOSIT” shall have the meaning set forth in Section 7.1.

1.1.155 “SEPARATE DISPUTE” shall have the meaning set forth in Subsection 16.10.1.

1.1.156 “STATE” shall mean the State of California.

1.1.157 “STATEMENT OF POSITION” shall have the meaning set forth in Subsection 16.5(2)(a).

1.1.158 “SUBLEASE” shall have the meaning set forth in Subsection 11.1.1.

1.1.159 “SUBLESSEE” shall have the meaning set forth in Subsection 11.1.1.

1.1.160 “SUBSTANTIAL COMPLETION” means the completion of the Renovation Work or other work of Improvement (as applicable) (i) in compliance with the Final Plans and Specifications and all Applicable Laws, and (ii) the receipt of a verification of completion or such other documentation deemed appropriate by County to evidence completion of the Renovation Work or other subject Improvement (if applicable with respect to the particular work), subject only to minor punch-list items that do not interfere with the use and occupancy of the subject Improvements, provided that any such minor punch-list items are completed in a diligent manner as soon as reasonably possible thereafter.

1.1.161 “TERM” shall have the meaning set forth in Section 2.1.

1.1.162 “THRESHOLD AMOUNT” shall have the meaning set forth in Subsection 5.11.2.

1.1.163 “UMBRELLA COVERAGE” shall have the meaning set forth in Subsection 9.1.1.

1.1.164 “UNINSURED LOSS” shall have the meaning set forth in Section 10.5.

1.1.165 “UNREASONABLE COUNTY ACTIVITY” shall have the meaning set forth in Section 5.6.

1.1.166 “WRITTEN APPRAISAL EVIDENCE” shall have the meaning set forth in Section 16.7.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein. This Lease fully amends, restates, replaces and supersedes the Existing Lease.

1.2.1 As-Is. Lessee acknowledges that (1) it is currently in possession of the Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Premises since February 1, 1967, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors under the Existing Lease with contractors selected by them. Except as provided in Subsection 1.2.3, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party as of the Effective Date, and Lessee hereby represents that it has performed all investigations that it deems necessary or appropriate with respect to the condition of the Premises or Improvements. Lessee hereby accepts the Premises on an "AS-IS, WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, heating, ventilating and air conditioning, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land or Improvements, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and the Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy, of the Premises or any Improvements located thereon for any particular purpose, (v) the zoning, entitlements or other legal status of the Premises or Improvements, and any public or private restrictions affecting use or occupancy of the Premises or Improvements, (vi) the compliance of the Premises or Improvements with any applicable codes, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions or laws of the County, State, United States of America, California Coastal Commission or any other local, state or federal governmental or quasi-governmental entity ("**Applicable Laws**"), including, without limitation, relevant provisions of the Americans with Disabilities Act ("**ADA**"), (vii) the presence of any underground storage tank or Hazardous Substances on, in, under or about the Premises, Improvements, the adjoining or neighboring property, or ground or other subsurface waters, (viii) the quality of any labor and materials used in any Improvements, (ix) except as provided in Section 1.2.2 below, the condition of title to the Premises or Improvements, and (x) the economics of the operation of the Premises or Improvements. Notwithstanding the foregoing, this Subsection 1.2.1 shall not alter the parties' respective rights and obligations under the Existing Lease with respect to any environmental matters accruing or arising prior to the Effective Date.

1.2.2 Title. County represents that County owns fee title to the Premises and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County

and/or any other public entity or agency with jurisdiction in, to or over the Premises, 0and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy the Premises pursuant to the terms and conditions of this Lease.

1.2.3 Excluded Conditions. Notwithstanding anything to the contrary set forth herein, the terms and provisions of Subsection 1.2.1 shall not be applicable to any sewer, storm drain or other improvements which have been dedicated to (and such dedication has been accepted by) the Department of Public Works of the County ("**Excluded Conditions**"); provided, however, that this Lease (as opposed to any separate dedication acceptance or other contractual or legal obligation) shall not create any obligation or liability on the part of County with respect to such sewer, storm drain and other improvements.

2. TERM; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of the Lease ("**Term**") commenced on February 1, 1967 and, unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on January 31, 2066. For purposes of this Lease, "**Lease Year**" shall mean each calendar year (or partial calendar year) (January 1 through December 31) during the Term of this Lease.

2.2 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease, and except as specifically provided herein, Lessee shall own all Improvements now existing and constructed by Lessee or its predecessors on the Premises, or hereafter constructed by Lessee upon the Premises, and all alterations, additions or modifications made thereto by Lessee.

2.3 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

2.3.1 County's Election to Receive Improvements. Unless Lessee is expressly directed by County in writing in accordance with this Section 2.3 to demolish and remove Improvements upon the expiration or earlier termination of the Term, all Improvements located on, in, or under the Premises (including all fixtures or equipment affixed thereto) shall remain upon and be surrendered with the Premises as part thereof, and title to such Improvements shall vest in County without any compensation to Lessee. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to (a) receive any and all proceeds which are attributable to the Condemnation of Improvements belonging to Lessee immediately prior to the taking of possession by the Condemnor, to the extent provided in Article 6 of this Lease; or (b) remove any furniture or equipment that is neither permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.3.2 Duty to Remove. No later than six (6) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert

reasonably approved by County that details and estimates the cost and required time period for the removal of all Improvements on the Premises at the expiration of the Term (the "**Demolition and Removal Report**").

County may elect to require Lessee at the end of the Term or any earlier termination of this Lease to remove, at the sole cost and expense of Lessee, all or any portion of the Improvements located on, in or under the Premises, whether placed or maintained thereon by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; provided, however, such portion ("**Portion Subject to Demolition**") of the Improvements designated by County for demolition must be able to be demolished separately from other portions of the then-existing Improvements which County has designated to remain. Lessee shall complete the required demolition and removal and shall restore and surrender to County possession of the Premises in the following condition: (a) as to any portion of the Premises on which the Improvements are required to be demolished, such portion of the Premises shall be surrendered to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps; and (b) as to any portion of the Premises on which the Improvements are not required to be demolished, the Premises and such Improvements shall be surrendered to County in the condition in which the Premises and Improvements are required to be maintained and repaired under this Lease. In the case of the termination of the Lease at the scheduled expiration date of the Term, County shall notify Lessee in writing as to whether at the time of such notice County intends to require Lessee to demolish and remove the Improvements or a Portion Subject to Demolition ("**County Preliminary Removal Notice**") by the later of (a) one (1) year following delivery by Lessee to County of the Demolition and Removal Report, or (b) five (5) years prior to the then-scheduled expiration date of the Term. Such notice shall not be an irrevocable election by County to require such demolition and removal, but County shall not have the right to subsequently require Lessee to demolish and remove the Improvements or a Portion Subject to Demolition unless County so notifies Lessee in the County Preliminary Removal Notice. No later than one (1) year prior to the then-scheduled expiration date of the Term, County shall notify Lessee in writing of County's irrevocable election as to whether County requires Lessee to remove the Improvements or a Portion Subject to Demolition at the expiration of the Term ("**County Removal Notice**"). If County elects to require Lessee to demolish and remove all of the Improvements or a Portion Subject to Demolition, Lessee shall complete such demolition and removal and otherwise comply with Lessee's surrender obligations under this Section 2.3 on or before the expiration of the Term of the Lease. In the case of the termination of the Lease at the scheduled expiration date of the Term, Lessee shall have the right, by written notice to County not later than thirty (30) days prior to the scheduled expiration date of the Term, to extend the date by which Lessee must complete the Improvement removal and Premises surrender obligations under this Subsection 2.3.2 and/or the Lessee's removal obligations under Subsection 2.3.4 below to a date not more than one hundred twenty (120) days after the expiration of the Term (the "**Post Term Removal Period**"); provided, however, that all of the Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Premises or to maintain and repair those Improvements required to be demolished) shall be applicable during the Post Term Removal Period, including without limitation, the Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for the Post Term Removal Period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term multiplied by the number of months in the Post Term

Removal Period. Such Monthly Minimum Rent amount for the entire Post Term Removal Period shall be paid by Lessee in advance prior to the commencement of the Post Term Removal Period.

In the case of a termination of the Lease prior to the scheduled expiration date of the Term, any election by County to require Lessee to remove the Improvements or a Portion Subject to Termination must be made by County's delivery of the County Removal Notice not later than sixty (60) days after the effective date of such termination, and if County elects to require Lessee to demolish and remove all or a portion of the Improvements on a termination of the Lease prior to the scheduled expiration of the Term, Lessee shall complete such demolition and removal and otherwise comply with Lessee's surrender obligations under this Section 2.3 on or before the later of (a) ninety (90) days after the date on which this Lease terminated, or (b) if Lessee has submitted a Demolition and Removal Report to County, that period after the date on which this Lease terminated equal to the estimated demolition and removal period set forth in the Demolition and Removal Report.

Upon issuance by County of a County Removal Notice that is issued by County in contemplation of the termination of this Lease as of the scheduled expiration date of the Term, Lessee shall within ninety (90) days after receipt of the County Removal Notice, provide County with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee, which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to Director ("**Demolition Security**"), and (ii) a schedule satisfactory to Director for the delivery by Lessee of the security described in clause (i) above, which schedule shall in all events provide for a full funding of the security not later than two (2) years prior to the expiration of the Term. The amount of any Demolition Security shall be equal to the estimated costs to remove the Improvements as set forth in the Demolition and Removal Report (the "**Estimated Costs**"), adjusted to reflect the percentage change in the ENR Index from the date on which the Estimated Cost was determined until the date on which Lessee delivers the Demolition Security. Thereafter, Lessee shall increase the amount of the Demolition Security on an annual basis (on or before each successive anniversary of the required date for Lessee's original delivery to County of the Demolition Security) by the same percentage as the percentage increase (if any) in the ENR Index over the preceding year. Any uncured failure by Lessee to deliver the Demolition Security described in this Subsection 2.3.2 shall constitute an Event of Default. The Demolition Security may be funded in whole or in part through amounts available for such purpose in the Reserve Fund to the extent permitted under the terms and conditions of the penultimate paragraph of Subsection 5.11 of this Lease. County shall have the right to revoke County's election to require the removal of all Improvements or a Portion Subject to Demolition at the end of the scheduled expiration of the Term of the Lease by written notice to Lessee of such revocation at any time not later than ninety (90) days prior to the scheduled expiration date of the Lease. If County revokes its prior County Removal Notice, then any Demolition Security previously delivered by Lessee to County pursuant to this paragraph shall be returned to Lessee within thirty (30) days following the date of such revocation. Upon completion of all of Lessee's obligations under this Section 2.3, the remaining balance of any Demolition Security held by County (and not used by County pursuant to Subsection 2.3.3 or 2.3.4 below) shall be returned to Lessee.

If County fails to elect to require Lessee to remove all of the Improvements on the Premises in accordance with the terms of this Section 2.3 (or revokes such election as provided above), then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall surrender possession to County of the Premises and those Improvements not required to be removed by Lessee, in the condition in which such Improvements are required to be repaired and maintained under this Lease.

2.3.3 County's Right to Remove Improvements. If County elects to have Lessee demolish and remove Improvements and Lessee fails to do so in accordance with this Lease, County may, at its election, retain, sell, remove or demolish such Improvements. In the event of any demolition or removal by County of Improvements required to have been demolished and removed by Lessee, Lessee shall reimburse County for any Actual Costs incurred by County in connection with such demolition and removal in excess of any funds used by County from the Demolition Security for such purpose and any consideration received by County as a result of any sale of the demolished Improvements; provided, however, that County shall be under no obligation to Lessee to effectuate any such sale or, in the case of a sale, to obtain any required level of compensation in connection with such sale.

2.3.4 Duty to Remove Personal Property. No later than the expiration of the Term or sooner termination of this Lease (subject to Lessee's rights with respect to the Post Term Removal Period described in Subsection 2.3.2 above), Lessee shall in all events remove, at its cost and expense, all furniture, equipment and other personal property that is not affixed to the Improvements or reasonably necessary for the orderly operation of the Premises or Improvements. If Lessee fails to remove such furniture, equipment and other personal property within said period, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest therein, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in which event Lessee shall reimburse County for its Actual Costs incurred in connection with any such sale, removal or demolition in excess of any consideration received by County as a result thereof.

2.3.5 Title to Certain Improvements Passes to County; Lessee to Maintain. As between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Premises shall vest in County upon construction or installation to the extent that they are not owned by a utility company or other third party provider. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities (other than any sewer, storm drain or other utility systems which have been dedicated to and accepted by County pursuant to a dedication separate from this Lease), shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

3. USE OF PREMISES.

3.1 Specific Primary Use. The Premises and Improvements shall be used by Lessee for the operation and management of a residential apartment project, the Promenade and such other related and incidental uses as are specifically approved by County (collectively, the foregoing shall be referred to herein as the "**Permitted Uses**"). Except as specifically provided herein, the Premises and Improvements shall not be used for any purpose other than the Permitted Uses, without the prior written consent of County. County makes no representation or warranty

regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws. Lessee specifically acknowledges that the Premises and Improvements shall include one hundred ninety six (196) affordable rental units for Very Low Income tenants (the "**Affordable Units**") pursuant to the terms and conditions of that certain Covenants, Conditions and Restrictions (Parcel 113) by and among Lessee, the Community Development Commission of the County of Los Angeles, the County (by and through the Department of Regional Planning), and the County (by and through the Department), to be recorded in the Official Records of Los Angeles County, California, substantially concurrently with the recordation of the memorandum of lease extension provided for in Section 17.8 hereof (the "**Affordable Housing Agreement**"). The form of the Affordable Housing Agreement is attached as Exhibit D hereto.

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises or the Improvements, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Premises or Improvements be permitted to be operated or maintained in a manner that renders the Premises or Improvements a fire hazard.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Premises and Improvements as set forth in this Lease, the following uses of the Premises and Improvements are expressly prohibited:

3.2.2.1 The Premises and Improvements shall not be used or developed in any way which violates any Applicable Law.

3.2.2.2 The Premises and Improvements shall not be used or developed in any way in a manner inconsistent with the Permitted Uses. Without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity; provided, however, that this Subsection 3.2.2.2 shall not be interpreted to regulate in violation of Applicable Law the private activity of an individual that is confined to such individual's private residence;

3.2.2.3 All Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease, except as such condition is affected by the performance of the Renovation Work or Alterations in accordance with the requirements of Article 5 of this Lease.

3.2.2.4 No condition shall be permitted to exist upon the Premises or Improvements which induces, breeds or harbors infectious plant diseases, rodents or noxious insects, and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Premises or Improvements which create a danger to

the health or safety of any persons occupying, using, working at, or patronizing the Premises or Improvements.

3.2.2.5 Without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation (collectively, "**antennae**") shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise; provided that the foregoing requirement to obtain Director's approval as to any antennae shall be inapplicable to the extent that such requirement violates Applicable Law.

3.2.2.6 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Premises, except (i) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as necessary to perform water testing or monitoring, or any dewatering program to relieve soil water pressure.

3.2.2.7 Except for the Excluded Conditions, no adverse environmental condition in violation of Applicable Laws shall be permitted to exist on or in any portion of the Premises or the Improvements, nor shall any Hazardous Substances be permitted to be generated, treated, stored, released, disposed of, or otherwise deposited in or on, or allowed to emanate from, the Premises, the Improvements or any portion thereof, including, without limitation, into subsurface waters; provided, however, that Hazardous Substances may be stored or used on the Premises or in the Improvements, so long as such storage and use is of a type and quantity, and conducted in a manner (a) in the ordinary course of business of an otherwise Permitted Use, (b) in accordance with standard industry practices for such Permitted Use, and (c) in compliance with all Applicable Laws. Lessee shall not be required to remove Hazardous Substances existing in the building materials of the existing Improvements as of the Effective Date if and to the extent that such Hazardous Substances in their condition in such Improvements as of the Effective Date do not require remediation or removal under Applicable Laws in effect as of the Effective Date; provided, however, that (i) such Hazardous Substances shall be removed or remediated if and to the extent required under any Applicable Laws hereafter applicable to the Premises and/or the Improvements located thereon, (ii) such Hazardous Substances shall be removed or remediated if and to the extent required under the Renovation Plan or the Final Plans and Specifications for the Renovation Work, or if required under Applicable Laws that apply to the performance of the Renovation Work, and (iii) any removal or remediation of such Hazardous Substances, including without limitation, any disposal thereof, shall be performed in compliance with all Applicable Laws.

This Subsection 3.2.2.7 shall not impose liability upon Lessee to County for any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Premises or any Improvement as long as (I) such

Hazardous Substances did not originate at or from the Premises or Improvements, and (II) with respect to Hazardous Substances that did not originate at or from the Premises or Improvements, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees.

3.2.2.8 The following uses shall not be permitted: (a) fuel sales; (b) boat or vehicle repair, other than minor servicing or owner maintenance; (c) live bait sales; (d) commercial sport fishing and tour boats; and (e) trailer boat launching or storage; provided, however, that facilities for handling and storing dinghies, small skiffs and similar craft may be permitted upon prior approval in writing from Director, which approval shall not be unreasonable withheld, conditioned or delayed.

3.3 Active Public Use. The parties acknowledge that County's objective in entering into this Lease is the complete and continuous use of the facilities and amenities located in Marina del Rey by and for the benefit of the public, without discrimination as to race, gender or religion, and for the generation and realization by County of revenue therefrom. Accordingly, Lessee agrees and covenants that it will operate the Premises and Improvements fully and continuously (except to the extent that Lessee is prevented from doing so due to Force Majeure or due to temporary interruption as necessary for the Renovation Work, maintenance, repair, renovation, alteration or other improvement work required or permitted to be performed by Lessee under this Lease) in light of these objectives, consistent with the operation of comparable residential facilities, and that it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease, provided, that Lessee shall self-subsidize the Affordable Units from the rental income available to Lessee from the Premises and there shall be no "rent credits" or "subsidies" provided by County to Lessee for such Affordable Units. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 Days of Operation. The Promenade shall be open every day of the year, except for any closure approved by Director required to perform (a) any Alteration permitted under this Lease, or (b) maintenance, repair, replacement or restoration work permitted or required under this Lease. Any changes in the days or hours of operation of the Promenade shall be subject to the written approval of Director, which approval shall not be unreasonably withheld, conditioned or delayed.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs and banners which are placed on, or are visible from, the exterior of the Premises or Improvements shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved by Director (and to the extent required under then Applicable Law, the Design Control Board), in writing, whether pursuant to Article 5 of this Lease or otherwise, prior to the erection or installation of said art, sign, display, identification, monument, awning or advertising sign. Director shall not unreasonably withhold its approval of the matters described in this Section 3.5. Any dispute as to whether Director has unreasonably withheld its approval of a matter described in this Section 3.5 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.6 Compliance with Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all required licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises or Improvements. Without limitation of the foregoing, Lessee shall comply with (i) all conditions and requirements of any applicable Coastal Development Permits, (ii) all public access requirements of the Marina del Rey Local Coastal Program, as amended and (iii) the Affordable Housing Agreement.

3.7 Rules and Regulations. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises and Improvements as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other residential apartment facilities in Marina del Rey and delivered in writing to Lessee. Any dispute as to whether County has acted unreasonably in connection with the matters described in this Section 3.7 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.8 Reservations. Lessee and County expressly agree that this Lease and all of Lessee's rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way existing as of the date of the Existing Lease or otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, and also subject to any other encumbrances, reservations, licenses, easements and rights of way consented to by Lessee in writing.

Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the right of County or City existing as of the Effective Date or otherwise disclosed to or known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or the City to convey such easements and transfer such rights to others. Notwithstanding the foregoing or anything herein to the contrary, County agrees to cooperate with Lessee, at Lessee's cost, in Lessee's efforts to address title matters, if any, which would prevent Lessee from proceeding with the redevelopment of the Premises in accordance with the Renovation Work, as long as such efforts do not materially adversely affect the County (e.g., cooperating with Lessee in the relocation at Lessee's cost of any easements which interfere with the Renovation Work, to the extent such relocation is reasonably acceptable to County).

3.9 Compliance With Affordable Housing Agreement. Lessee shall at all times strictly comply with all promises, covenants, conditions and agreements of Lessee set forth in the Affordable Housing Agreement.

## 4. PAYMENTS TO COUNTY.

4.1 Net Lease. The parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to County. The rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off or other withholding. Except as specifically set forth herein, Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses

attributable to the operation and maintenance of the Premises and Improvements, including without limitation the parking areas included within the Premises.

4.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay or cause to be paid all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to the Premises and Improvements.

4.1.2 Taxes and Assessments. Lessee agrees to pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Premises or the Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option or Lessee's exercise thereof. Lessee shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Lessee. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Lessee shall include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee's interest requires the payment of a possessory interest tax.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay County (a) the Annual Minimum Rent described in Subsection 4.2.1 below, and (b) the Percentage Rent described in Subsection 4.2.2 below. For purposes of this Lease "**Annual Rent**" shall mean the aggregate of the Annual Minimum Rent and Percentage Rent.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent. Lessee shall pay to County the minimum rent described in this Subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 and 4.4 below) during each Lease Year during the Term (the "**Annual Minimum Rent**"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "**Monthly Minimum Rent**"); provided, however, if any period during which the Annual Minimum Rent is calculated is shorter or longer than a calendar year, then the Annual Minimum Rent for such period shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

During the period from the Effective Date through the sixth ($6^{th}$) anniversary of the Effective Date, subject to extension to the extent of delay caused by Unreasonable County

Activity pursuant to Section 5.6 hereof (the "**Initial Period**"), the Annual Minimum Rent shall be Two Million One Hundred Eighty Six Thousand Five Hundred Ninety Eight Dollars ($2,186,598.00), payable in monthly installments of One Hundred Eighty Two Thousand Two Hundred Sixteen and 50/100 Dollars ($182,216.50) (the "**Initial Period Rent**").

As of the day immediately following the Initial Period (the "**First Adjustment Date**"), and for three (3) years thereafter, the Annual Minimum Rent shall be adjusted to equal the greater of (a) the Initial Period Rent, or (b) seventy-five percent (75%) of the average of the total Annual Rent set forth in the pro-forma projections dated June 4, 2017 delivered by Lessee to County prior to the Effective Date to be payable by Lessee to County each year under Section 4.2 of this Lease during the three (3) year period immediately following the First Adjustment Date. Not later than three (3) months prior to the First Adjustment Date, Lessee shall deliver to Director for Director's reasonable approval Lessee's estimate of projected Gross Receipts for the three (3) year period following the First Adjustment Date. Upon approval by Director, such projected Gross Receipts shall be used to calculate the Annual Minimum Rent payable by Lessee under this paragraph.

As of the January 1 that first follows the third (3rd) anniversary of the First Adjustment Date, and thereafter during the remainder of the Term, the Annual Minimum Rent shall be adjusted in accordance with the terms and provisions of Sections 4.3 and 4.4 below.

4.2.2 Percentage Rent. For the purposes of this Lease, "**Percentage Rent**" for any given month or year shall be defined as the sum of the amounts set forth in this Subsection 4.2.2, less the Annual Minimum Rent for such month or year. Gross Receipts (as defined herein) from each transaction, sale or activity of Lessee (or any Sublessee) on, from or within the Premises or Improvements shall be reported under one or more of the percentage categories set forth below, as applicable. It is understood that Article 3 of this Lease provides for the Permitted Uses of the Premises and that the percentage categories listed below are not all applicable to this Lease and are in no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this Subsection 4.2.2, with such determinations and interpretations to be a guideline in determining the appropriate categories.

Within fifteen (15) days after the close of each and every calendar month of the Term, Lessee shall pay to County a sum equal to the total of the following percentages of Gross Receipts for such previous month, less the amount of the installment of Monthly Minimum Rent paid for such previous month.

(a) Intentionally Omitted;

(b) TWENTY PERCENT (20%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities and landside storage space;

(c) the Apartments Gross Receipts Percentage (as defined below) of Gross Receipts or other fees charged for (1) the occupancy of apartments, (2) the rental or use of meeting rooms, or (3) the rental or use of land and/or water or facilities for activities not

otherwise provided for in this section, such as but not limited to television, motion pictures or other media filming purposes; the "**Apartments Gross Receipts Percentage**" shall be TEN AND ONE-HALF PERCENT (10.5%) from the Effective Date until June 30, 2034; ELEVEN AND ONE-HALF PERCENT from July 1, 2034 until June 30, 2044; TWELVE AND ONE-HALF PERCENT (12.5%) from July 1, 2044 until June 30, 2054; and FOURTEEN AND ONE-HALF PERCENT (14.5%) for the remainder of the Term;

(c1) TWELVE PERCENT (12%) of Gross Receipts or other fees charged for the rental, use or occupancy of (1) offices utilized for banking, financial or investment activities, internal clerical or administrative activities (other than Lessee's management office), business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, yacht club purposes, or similar uses; or (2) restaurants, stores, shops, or other retail establishments; provided that, except as provided in Subsection 4.2.2.5, Gross Receipts or other fees charged for the occupancy of restaurants, stores, shops or other commercial establishments shall not be included in the calculation of Percentage Rent under this category (c1) if the Gross Receipts from the operation of such businesses (as opposed to the rentals paid for the rental, use or occupancy of the space) are required to be reported under another Percentage Rent category;

(d) Intentionally omitted;

(e) FIVE PERCENT (5%) of commissions or other fees earned from car rental agencies, laundry and dry cleaning commissions and other similar activities where earnings are normally on a commission basis;

(f) With respect to service enterprises, including, without limitation, cable television, internet, satellite, telecommunication or other antennae fees, telephone and other utility services, and valet parking services, FIVE PERCENT (5%) of the Gross Receipts received by Lessee (or a Lessee affiliate or Sublessee) from such enterprise if Lessee (or a Lessee affiliate or Sublessee) is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or a Lessee affiliate or Sublessee) from such enterprise if a third party provider is the operator of such enterprise;

(g) SIX PERCENT (6%) of the Gross Receipts received by Lessee (or a Lessee affiliate or Sublessee) if Lessee (or a Lessee affiliate or Sublessee) is the operator of the enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or a Lessee affiliate or Sublessee) if a third party provider is the operator of the enterprise, from the rental of boats or from other commercial boating activities, including, but not limited to, charter boats, bareboat charters and sport fishing, or from the rental of bicycles, cycles carriages, scooters or other similar equipment;

(h) With respect to the installation or operation of coin-operated vending or service machines, including pay telephones, FIVE PERCENT (5%) of the Gross Receipts received by Lessee (or a Lessee affiliate or Sublessee) from such enterprise if Lessee (or a Lessee affiliate or Sublessee) is the operator of such enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or fees collected by Lessee (or a Lessee affiliate or Sublessee) from such enterprise if a third party provider is the operator of such enterprise;

(i) TEN PERCENT (10%) of Gross Receipts from the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on-premises sale of alcoholic beverages, except as provided for in category (j);

(j) THREE PERCENT (3%) of Gross Receipts from the operation of a restaurant, restaurant/cocktail lounge combination, coffee shop, beach or theater food facility, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under category "(s)" below; a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;

(k) Intentionally omitted;

(l) Intentionally omitted;

(m) FIFTEEN PERCENT (15%) of Gross Receipts from club dues, initiation fees and assessments, except that separate assessments for capital improvements may be exempted; provided that to qualify for such an exemption Lessee must comply with the "Criteria for Eligibility for Exemption of Special Assessments from Gross Receipts" issued by Director;

(n) Intentionally omitted;

(o) Intentionally omitted;

(p) Intentionally omitted;

(q) FIVE PERCENT (5%) of Gross Receipts of cover charges or other fees charged for admission to facilities featuring entertainment, except that Gross Receipts from movie theaters shall be reportable under category (s) below;

(r) TWENTY PERCENT (20%) of Gross Receipts from parking fees, except that (1) parking fees or charges, if any, which are collected in conjunction with an activity the Gross Receipts from which are required to be reported in a percentage category higher than twenty percent (20%) shall be included in Percentage Rent at such higher percentage; and (2) valet parking charges, fees and tips shall not be included in Percentage Rent under this category, but instead shall be included in Percentage Rent under category (f) above;

(s) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services consistent with the Permitted Uses, but not specifically provided for elsewhere in this Subsection 4.2.2; and

(s1) FIVE PERCENT (5%) of the Gross Receipts from the operation of all stores, shops or boutiques selling items at retail.

If with the prior approval of County or Director Lessee hereafter engages in a use that is not currently permitted under this Lease and as to which there is no specific percentage set forth above applicable to such additional or related use, then concurrent with the approval by County or Director of such specific additional use, Director and Lessee shall negotiate in good faith with Lessee to establish the specific percentage to be applied to such use. Such percentage shall be the greater of (1) the average Gross Receipts percentage received by County from other lessees with respect to that category of activities within Marina del Rey, California at the time of approval of the additional or related use, and (2) the most recent agreement between County and a Marina del Rey lessee, whether by arbitration or otherwise, with respect to the appropriate Gross Receipts percentage to be applied to that use. The Percentage Rent for the additional or related use as determined pursuant to this paragraph shall remain in effect until the next Renegotiation Date.

Lessee may offer concierge services as an amenity for the occupants of the residential apartments, such as, but not limited to, services to obtain entertainment, sporting event or amusement park tickets, transportation services, merchandise, food or other services for such residential apartment occupants. If payment is received from a concierge patron that represents merely reimbursement of the cost for the subject ticket, merchandise, food or service obtained for the concierge patron, then such payment shall not be included in Gross Receipts to the extent that such reimbursement is remitted to the ticket, merchandise, food or service provider. However, if (i) any business other than merely providing concierge services is operated on or from the Premises (for example, but not limited to, the sale or brokering of the sale of entertainment, sporting event or amusement park tickets, merchandise, food or other services), then all receipts from such business shall be included in Gross Receipts, and Percentage Rent shall be paid with respect to such Gross Receipts in accordance with the applicable Percentage Rent category set forth above in this Subsection 4.2.2; (ii) if only concierge services are provided, but any payment or other compensation is received from the concierge patron in excess of the amount required to reimburse the cost of the ticket, merchandise, food or service obtained for the concierge patron (for example, but not limited to, a mark-up, service fee or other compensation), then the amount of such excess payment or other compensation shall be included in Gross Receipts, and Percentage Rent shall be paid with respect to such Gross Receipts in accordance with Percentage Rent category (f) above; and (iii) if any payment or other compensation is received from a ticket, merchandise, food or servicer provider or other party in the nature of a commission or other compensation relating to the services described in this paragraph, then such payment or other compensation shall be included in Gross Receipts, and Percentage Rent shall be paid with respect to such Gross Receipts in accordance with Percentage Rent category (f) above.

4.2.2.1 Other Activities. If Director or Lessee reasonably determine that a percentage of Gross Receipts is not suitable or applicable for a particular activity not described above, although permitted hereunder, Director and Lessee shall mutually establish a minimum monthly payment to County as payment for the privilege of engaging therein, which shall remain effective until the next Renegotiation Date. Said minimum monthly amount shall be reasonable in accordance with the revenue generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor.

4.2.2.2 Payment of Percentage Rent/Accounting Records and Procedures. Within fifteen (15) days after the close of each and every calendar month of the Term hereof (including the Initial Period when no Percentage Rent is payable) Lessee shall deliver to the Department a report of Gross Receipts by category for such previous month ("**Monthly Gross Receipts Statement**"). The Monthly Gross Receipts Statement shall be in such form as may be reasonably approved by Director. From and after the expiration of the Initial Period, (a) the Monthly Gross Receipts Statement shall include a calculation of the Percentage Rent payable under this Lease; and (b) on or before the day the Gross Receipts payment is required to be delivered to the Department, Lessee shall pay to County the amount by which the Percentage Rent for such previous month exceeds the Monthly Minimum Rent paid by Lessee for such previous month. Lessee's obligation to pay Percentage Rent for the Gross Receipts derived during the last whole or partial calendar month during the Term shall survive the expiration or earlier termination of this Lease. Lessee agrees to and shall comply with, and shall cause all of Sublessees to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 14 of this Lease.

4.2.2.3 Gross Receipts. Except as herein otherwise provided, the term "**Gross Receipts**" as used in this Lease means all money, cash receipts, or other things of value, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense reimbursements, fees and commissions made or earned by Lessee and/or all Sublessees, from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise, calculated in accordance with the accounting method described in the last sentence of Section 14.1.

(1) Except as otherwise set forth herein, there shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit (but the value of any free rent period shall not be imputed as Gross Receipts, to the extent it is in conformance with then current market conditions), collection costs, discounts from credit card operations (except as provided in subsection (5)(i) below), insurance and taxes.

(2) Gross Receipts shall not include direct taxes imposed upon the consumer and collected therefrom by Lessee such as, without limitation, retail sales taxes, excise taxes, or related direct taxes paid periodically by Lessee to a governmental agency accompanied by a tax return statement.

(3) Gross Receipts shall not include security deposits paid by a Sublessee to Lessee to be held by Lessee as security for Sublessee's obligations under its Sublease, license or permit, except to the extent Lessee allocates or applies any portion of such security deposit to unpaid rent or other amounts owed by such Sublessee to Lessee, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application.

(4) Gross Receipts must include the usual charges for any services, goods, rentals or facilities provided by Lessee or Sublessees. Bona fide bad debts actually accrued for amounts owed by Sublessees, concessionaires, customers or patrons may be

deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously not reported as Gross Receipts shall be included in Gross Receipts at the time they are collected.

(5) In those instances where Gross Receipts are based on the sale of merchandise, food, beverage or services, Gross Receipts shall not include any of the following items; provided, however, that the non-inclusion in Gross Receipts of the following items shall not be construed or interpreted to permit the reduction of, or any offset against, Gross Receipts by or for the amount of such items:

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or Sublessee and not for the purpose of consummating a sale made in, about or from the Premises;

b. an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever Lessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

c. sales of fixtures, equipment or property which are not Lessee's stock in trade;

d. receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

e. interest earned by Lessee on funds arising from the Premises or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

f. tips and gratuities paid to employees;

g. goods or meals provided to employees of the business operation at cost or less, and complimentary meals offered for promotional purposes; provided, however, that the amounts excluded under this paragraph (g) in connection with a particular business operation shall not exceed two percent (2%) of the Gross Receipts from such business operation in any year;

h. receipts from vending machines used solely by employees of the business operation;

i. fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card; provided, however, that the amounts excluded under this paragraph (i) in connection with a particular business operation shall not exceed one percent (1%) of the Gross Receipts from such business operation in any year;

j. interest or other charges paid by customers of Sublessees for the extension of credit; and

k. the sale of promotional merchandise by Sublessees at cost.

l. amounts received for services rendered by a Sublessee of any individual apartment in connection with the operation by such Sublessee of an in home business in such apartment unit, as long as the primary purpose of Sublessee's use of the apartment unit is for residential occupancy and such in home business is an incident to such residential use.

(6) Gross Receipts shall not include payments received by Lessee from a Sublessee for the Cost of such Sublessee's submetered electricity, water or gas, provided (A) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical, water or gas charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (B) the reimbursed sum is in an amount equal to the Cost of the Sublessee's electricity, water or gas; and (C) the amount received is actually credited against the cost of the Sublessee's electricity, water or gas. For the purpose of this paragraph (6), the "**Cost**" of a Sublessee's electricity, water or gas shall mean the actual out-of-pocket costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's electric bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of electricity, water or gas and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease. The terms and provisions of this paragraph 6 shall also be applicable to other submetered utility charges, to the extent that it is customary for Sublessees to be responsible for such other utility charges.

(7) Gross Receipts shall not include aggregate payments received by Lessee from Sublessees for the administration of electronic or digital payments by Sublessees to Lessee, except to the extent such payments received by Lessee from Sublessees exceed the total cost of such services paid by Lessee to the financial institution, servicer or other provider of such services. The Percentage Rent payable by Lessee shall be FIVE PERCENT (5%) of the excess over any such "pass through" payment amounts.

(8) Gross Receipts shall not include aggregate payments received by Lessee from Sublessees for the cost of cable television, internet, satellite, telecommunications and telephone or other similar services provided on a bulk basis to the Premises by the provider

of such services, except to the extent such payments received by Lessee from Sublessees exceed the total cost of such services paid by Lessee to the provider of such services. The Percentage Rent payable by Lessee shall be FIVE PERCENT (5%) of any such excess over the "pass through" bulk service payments.

4.2.2.4 Excess Payments Credit. From and after the expiration of the Initial Period, if payments of Monthly Minimum Rent and Percentage Rent actually made by Lessee in a particular Lease Year exceed the total Annual Minimum Rent and Percentage Rent that would have been due for such Lease Year if computed on an annual basis at the end of such Lease Year, Lessee shall be permitted to credit that excess amount ("**Excess Percentage Rent Payment**") against the succeeding monthly installments of Percentage Rent otherwise due under this Subsection 4.2.2 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days after County's verification of such overpayment, which County agrees to use its reasonable efforts to diligently complete after receipt by County of all information required for County to calculate the Excess Percentage Rent Payment and to resolve any audits of Percentage Rent. Any disputes relating to Gross Receipts and calculation of rental payments shall be submitted to arbitration as set forth in Article 16 of this Lease.

4.2.2.5 Effect of Sublessee Doing Business. Except as specifically provided to the contrary in this Lease, where a Sublessee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold except for a business conducted under Item (1) of category (c1) of Subsection 4.2.2, for purposes of determining Percentage Rent Lessee shall report whichever of the following results in the greater Percentage Rent: (i) the Gross Receipts received by each Sublessee under one or more of categories (a) through (s1) of Subsection 4.2.2; or (ii) the Gross Receipts received by Lessee from such Sublessee under category (c) or (c1) of Subsection 4.2.2.

4.2.2.6 Interest, Service Fees or Late Charges. Interest, service fees or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

4.2.2.7 Percentage Rent Does Not Affect Permitted Uses. It is understood and acknowledged by Lessee that Section 3.1 of this Lease sets forth the Permitted Uses of the Premises by Lessee; thus, the Percentage Rent categories listed in Subsection 4.2.2 are not all necessarily applicable to this Lease and are in no way intended to expand the Permitted Uses.

4.2.2.8 Policy Statements. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the foregoing Subsections of this Lease.

4.3 Adjustments to Annual Minimum Rent. As of the third anniversary of the First Adjustment Date, and every three (3) years thereafter until the First Renegotiation Date, and thereafter each third (3rd), sixth (6th) and ninth (9th) anniversary of each Renegotiation Date (each an "**Adjustment Date**" and collectively the "**Adjustment Dates**"), the Annual Minimum

Rent shall be adjusted to the amount which equals seventy five percent (75%) of the average of the total Annual Rent payable by Lessee to County each year under Section 4.2 of this Lease during the three (3) year period immediately preceding the Adjustment Date; provided, however, that the Annual Minimum Rent shall be never be reduced to less than the Annual Minimum Rent in effect immediately prior to the then-applicable Adjustment Date.

4.4 Renegotiation of Annual Minimum and Percentage Rents. Except as to the Apartments Gross Receipts Percentage defined in Subsection 4.2.2(c) above, effective as of the first January 1 following the twelfth ($12^{th}$) anniversary of the Effective Date, the January 1 following the subsequent eighth ($8^{th}$) anniversary of the Effective Date thereafter, and the January 1 following each subsequent tenth (10th) anniversary of the Effective Date thereafter (each a "**Renegotiation Date**" and collectively, the "**Renegotiation Dates**"), the Annual Minimum Rent and Percentage Rent for all categories (except the Apartments Gross Receipts Percentage) shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.4.1 Fair Market Rental Value. As used herein, "**Fair Market Rental Value**" shall mean, as of each Renegotiation Date, the fair market rent, including an annual minimum rent and percentage rent, with the percentage rent expressed as the respective percentages of Gross Receipts in accordance with the categories enumerated in Subsection 4.2.2 (except for the Apartments Gross Receipts Percentage), which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Lease, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms' length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

Notwithstanding any contrary provision of this Lease, in connection with the readjustment of Annual Minimum Rent and Percentage Rent pursuant to this Section 4.4: (a) in no event shall the Annual Minimum Rent ever be reduced to an amount less than the Annual Minimum Rent in effect immediately prior to the Renegotiation Date, (b) the Apartments Gross Receipts Percentage shall not be adjusted as of each Renegotiation Date, but instead shall be as set forth in category (c) of Subsection 4.2.2 above), (c) in no event shall any individual Percentage Rent category other than category (c) of Subsection 4.2.2 (i.e., each of categories (a), (b) and (d) through (s1) in Subsection 4.2.2 above) ever be reduced below the percentage for such Percentage Rent category set forth in Subsection 4.2.2 above, and (d) the immediately preceding provisions of clauses (b) and (c) of this paragraph as to a particular Percentage Rent category shall have no effect on the determination of the Fair Market Rental Value for any other Percentage Rent category. For example, if the actual Fair Market Rental Value percentage for category (c) of Subsection 4.2.2 is less than 14.5%, then the fact that the Apartments Gross Receipts Percentage shall be 14.5% shall not be a basis for decreasing the Fair Market Rental Value for any other Percentage Rent category.

4.4.2 Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth

Lessee's determination of the Fair Market Rental Value of the Premises for (a) the Annual Minimum Rent, and (b) the Gross Receipts percentage for each of the Percentage Rent categories set forth in Section 4.2.2 (excluding category (c) of Subsection 4.2.2). Lessee's notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Lessee deems relevant or as may be reasonably requested by County. Within one hundred twenty (120) days after receipt of Lessee's notice, if County disagrees with Lessee's determination, County shall deliver to Lessee written notice of such disagreement, together with County's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as County deems relevant or as may be reasonably requested by Lessee, to the extent available to County. If County fails to deliver to Lessee notice of its disagreement within the aforementioned period and such failure continues for fifteen (15) days after receipt of written notice from Lessee, then Lessee's determination of Fair Market Rental Value shall be binding on County as of the Renegotiation Date; provided, however, that Lessee's notice to County shall conspicuously state in boldfaced type that such determination of Fair Market Rental Value shall be binding on County unless County delivers notice of its disagreement within such fifteen (15) day period.

If Lessee fails to deliver the notice described in the first sentence of this subsection, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for fifteen (15) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee, and Lessee shall have fifteen (15) days after the submittal by County to Lessee of County's determination of Fair Market Rental Value to deliver to County written notice of Lessee's agreement or disagreement with County's determination. If Lessee fails to deliver notice of such disagreement within such fifteen (15) day period and County's notice to Lessee conspicuously stated in bold faced type that such determination of Fair Market Rental Value shall be binding on Lessee unless Lessee delivers notice of its disagreement within such fifteen (15) day period, then County's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date.

4.4.3 Negotiation of Fair Market Rental Value. If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in Subsection 4.4.2, County and Lessee shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease that documents the new Annual Minimum Rent and Percentage Rent so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

4.4.4 Arbitration. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in Subsection 4.4.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair

Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration the terms and provisions applicable to the calculation of the Fair Market Rental Value set forth in Subsection 4.4.1. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.4.5 Retroactivity. In the event that, pursuant to Subsections 4.4.3 or 4.4.4 hereof, the parties execute an amendment to this Lease setting forth the new Annual Minimum Rent and Percentage Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Lessee shall pay to County, or County shall pay or, at its election, credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the following rates:

(1) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller ("**County Pool Rate**"); and,

(2) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the Prime Rate in effect as of the date that is six (6) months after the Renegotiation Date, and such interest shall accrue for the period from the date that is six (6) months after the Renegotiation Date until the date of payment.

No late fee shall be payable under Section 4.5 with respect to any underpayment of rent retroactively readjusted pursuant to this Subsection 4.4.5 as long as Lessee pays to County any such rent underpayment and accrued interest within the thirty (30) day period prescribed in this Subsection 4.4.5.

4.5 Payment and Late Fees. Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Minimum Monthly Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth ($15^{th}$) day of the calendar month following each month of the Term, calculated as follows: the Lessee shall calculate the total Percentage Rent owed to County for the relevant month of the Term; it shall deduct from said amount the total Monthly Minimum Rent paid to County for that same month; if the resulting amount is a positive number, Lessee shall pay that amount to County; if that amount is a negative number, no Percentage Rent shall be paid to County for that month but nevertheless the Monthly Minimum Rent shall be paid

every month of the Term hereof. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Subsection 4.2.2.4. Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County.

Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand. In the event any payment under this Lease is not received by County by the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("**Late Fee**") of six percent (6%) of the unpaid amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that no Late Fee shall be assessed in the case of the first late payment by Lessee during any Lease Year as long as such late payment is cured within five (5) business days after Lessee receives written notice from County. In addition to any Late Fee, any unpaid rent due shall, without requirement or application of any notice period, additionally bear interest at an annual rate equal to the Applicable Rate, computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County); provided, however, with respect to any obligation of an Encumbrance Holder in connection with the exercise of its cure rights under Article 12 below, interest accrual on any particular obligation for periods prior to the Encumbrance Holder's acquisition of leasehold title to the Premises shall be limited to a maximum of three (3) years.

4.6 Changes of Ownership and Financing Events. Except as otherwise provided in this Section 4.6, each time Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer) or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("**Administrative Charge**") and (2) subject to the remaining provisions of this paragraph, a Net Proceeds Share, in the event County approves such proposed Change of Ownership or Financing Event and such transaction is consummated. "**Net Proceeds Share**" shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Changes of Ownership are subject to County approval as provided in Article 11 of this Lease. Financing Events are not Changes of Ownership, but are subject to County approval as provided in Article 12 of this Lease.

4.6.1 Change of Ownership. "**Change of Ownership**" shall mean (a) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in this Lease, (b) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a five percent (5%) or greater direct ownership interest in such Major Sublease, (c) any transaction or series of related transactions not described in subsections 4.6.1(a) or (b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in

Lessee or a Major Sublessee, or (d) a Change of Control (as defined below) of Lessee or a Major Sublessee. For the purposes of this Lease, "**Change of Control**" shall refer to a transaction whereby the transferee acquires a beneficial interest in Lessee or a Major Sublessee which brings its cumulative beneficial interest in Lessee or a Major Sublessee, as applicable, to greater than fifty percent (50%).

4.6.2 Excluded Transfers. Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers ("**Excluded Transfers**") shall not be deemed to create an obligation to pay County a Net Proceeds Share or any Administrative Charge:

4.6.2.1 a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date or such later date on which a Change of Ownership occurred as to the interest transferred, to any other direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date or the date on which a Change of Ownership occurred as to the interest transferred, including in each case to or from a trust for the benefit of the immediate family (as defined in Subsection 4.6.2.3 below) of any direct or indirect partner, shareholder or member of Lessee who is an individual;

4.6.2.2 a transfer to a spouse (or to a domestic partner if domestic partners are afforded property rights under then-existing Applicable Laws) in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a Change of Control of Lessee or a change in the managing member or general partner of Lessee;

4.6.2.3 a transfer of ownership interests in Lessee or in constituent entities of Lessee (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 Lessee as of the Effective Date, 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 described in this Subsection 4.6.2.3 is the result of gift, devise, intestate succession or operation of law, or (iv) in connection with a pledge by any partners of a constituent entity of Lessee to an affiliate of such partner;

4.6.2.4 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 traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

4.6.2.5 a mere change in the form, method or status of ownership, as long as there is no change in the actual beneficial ownership of this Lease, Lessee or a Major Sublease, and such transfer does not involve an intent to avoid Lessee's obligations under this Lease with respect to a Change of Ownership;

4.6.2.6 any transfer resulting from a Condemnation by County; or

4.6.2.7 any assignment of the Lease by Lessee to a parent, subsidiary or affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.

4.6.3 Aggregate Transfer. "**Aggregate Transfer**" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial interests in Lessee or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than those enumerated in Subsection 4.6.2) occurring since the later of (a) the Effective Date, (b) the execution of a Major Sublease in the case of an Aggregate Transfer involving a Major Sublessee, or (c) the most recent Change of Ownership upon which an Administrative Charge was paid to County; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

4.6.4 Beneficial Interest. As used in this Lease, "**beneficial interest**" shall refer to the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts.

4.6.4.1 Interests Held By Entities. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. In the case in which more than one layer of entities exists between Lessee or a Major Sublessee, as applicable, and the ultimate owners, the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Lessee shall have any liability to County under this Lease, except for liability arising from fraud or malfeasance.

4.6.4.2 Ownership of Multiple Assets. For purposes of determining the Gross Transfer Proceeds and Net Transfer Proceeds from a transaction or event that involves both a Change of Ownership and also the transfer of other assets or interests

unrelated to this Lease, a Major Sublease or beneficial interests in Lessee or a Major Sublessee (as applicable), the proceeds of such transaction or event shall be apportioned to this Lease, a Major Sublease and/or beneficial interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests, on the other hand, in proportion to the relative fair market values of the respective assets transferred.

4.6.5 Financing Events Regarding Multiple Assets. For purposes of determining the Net Proceeds Share and Net Refinancing Proceeds from a financing transaction that involves both a Financing Event under this Lease and a financing in which other assets or interests unrelated to this Lease, a Major Sublease or beneficial interests in Lessee or a Major Sublessee secure the financing, the principal amount of such financing transaction shall be apportioned to this Lease, a Major Sublease and/or beneficial interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests that also secure the financing, on the other hand, in proportion to the relative fair market values of the respective assets that secure the financing.

4.7 Calculation and Payment. A deposit of Fifteen Thousand Dollars ($15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (other than an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership (other than an Excluded Transfer) or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6 within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. At the time of Lessee's request for County approval of the proposed transaction (or in the case of a transaction, if any, as to which a Net Proceeds Share is payable but County's approval is not required, then at the time of Lessee's notice to County of the transaction, but in no event later than the consummation of the transaction), Lessee shall present (or cause to be presented) to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the

related adjustment of Improvement Costs, if any. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Lessee with the reason or reasons for such disagreement. Failing mutual agreement within thirty (30) days after the expiration of County's thirty (30) day review period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1 Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee or a Major Sublessee, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, or (b) the date of the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share) with respect to this Lease, a Major Sublease or a Change of Ownership that included a transfer of the beneficial interest that is the subject of the current transfer.

4.7.2 Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration pursuant to Article 16 below.

4.7.3 Obligation to Pay Net Proceeds Share and Administrative Charge. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the obligation of Lessee, and in the case in which the identity of the Lessee changes with the transfer, shall be the joint and several obligation of both the Lessee entity prior to the transfer and the Lessee entity after the transfer. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in this Lease, then County shall have the remedies set forth in Section 13.3 hereof.

4.8 Net Proceeds Share. In the event of a Change of Ownership, the "**Net Proceeds Share**" shall be the amount by which the greater of the following exceeds the Administrative

Charge paid by Lessee to County in connection with such Change of Ownership: (a) the lesser of (i) the Net Transfer Proceeds from such Change of Ownership, or (ii) five percent (5%) of the Gross Transfer Proceeds from such Change of Ownership; or (b) twenty percent (20%) of the Net Transfer Proceeds from such Change of Ownership.

With respect to a Financing Event, the "**Net Proceeds Share**" shall be the amount (if any) by which (I) twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event exceeds (II) the Administrative Charge paid by Lessee to County in connection with the transaction. Notwithstanding the foregoing, in connection with any Financing Event used to fund the cost of the acquisition of an Ownership Interest in Lessee that constitutes an Excluded Transfer, if such Financing Event is secured by the Ownership Interest that is transferred, then the Net Refinancing Proceeds from such Financing Event shall not include the portion of the proceeds of such Financing Event used to fund the acquisition cost of such Ownership Interest. [Moreover, there shall be no separate Net Proceeds Share payable with respect to any Financing Event to the extent that the loan proceeds from such Financing Event finance a Change of Ownership with respect to which County is paid a Net Proceeds Share pursuant to the first paragraph of this Section 4.8 and such Financing Event is consummated concurrent with the consummation of the Change of Ownership.

"**Gross Transfer Proceeds**" shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred; if Lessee and County are unable to agree upon such fair value, then the matter shall be determined pursuant to Article 16.

Notwithstanding any contrary provision of this Section 4.8, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Change of Ownership or Financing Event, as applicable, pursuant to the remaining provisions of Section 4.8 below, there shall be no duplication of any amounts to be subtracted from Gross Transfer Proceeds or the gross principal amount of any Financing Event (as applicable), even if a particular amount qualifies for subtraction under more than one category.

4.8.1 Transaction by Initial Lessee. In the case of a transfer by Lessee (but not a transfer by a successor or assignee of Lessee) constituting a Change of Ownership for which a Net Proceeds Share is payable, "**Net Transfer Proceeds**" shall mean the Gross Transfer Proceeds from the transfer (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, which is not an Excluded Transfer, such Gross Proceeds shall in no event be deemed to be less than the fair market value of the interest transferred), less the following costs with respect to Lessee (but not its successors or assignees):

4.8.1.1 The sum of (a) One Hundred Million Dollars $100,000,000.00, plus (b) the amount of the "**Option Fee**" and any "Option Term Extension Fee" paid by Lessee under the Option Agreement, plus (c) the actual out-of-pocket costs incurred by Lessee for its third party consultants and attorneys in connection with the negotiation and consummation of the Option Agreement and this Lease, plus (d) the Actual Costs reimbursed by Lessee to County in connection with the negotiation and

consummation of the Option Agreement and this Lease (the sum of the amounts in (a), (b), (c) and (d) are referred to as the "**Base Value**"), plus (e) the final actual out-of-pocket design, engineering, permitting, entitlement and construction costs paid by Lessee in connection with (I) the Renovation Work, or (II) other physical capital Improvements or Alterations made to the Premises after the Effective Date that are constructed by Lessee in compliance with Article 5 of this Lease, in each case to the extent that such costs have been submitted to County within ninety (90) days after the completion of such Improvements, together with a written certification from Lessee that such costs are accurate and verification from Lessee's Encumbrance Holder that such Encumbrance Holder has funded such costs (to the extent that Lessee has an Encumbrance Holder and such Encumbrance Holder has funded such costs (the amounts described in this clause (e) are referred to as "**Improvement Costs**"). Without limitation of the definition of Improvement Costs above, Improvement Costs shall include all actual out-of-pocket hard and soft construction costs paid by Lessee to unaffiliated third parties (except that Lessee shall be entitled to include, to the extent actually incurred, as a soft cost construction management and/or development fees paid to an affiliate as long as the total amount of all construction management, development and similar fees paid to unaffiliated and affiliated parties does not exceed an aggregate of four percent (4%) of the hard construction costs), and actual construction period interest on Lessee's construction loan from an unaffiliated third party lender; provided, however, that in no event shall soft cost (including the construction period interest described above) exceed thirty five percent (35%) of the hard costs.

Notwithstanding the immediately preceding paragraph, if a Change of Ownership occurs during the period between December 26, 2017 and the Effective Date as to which County receives a "Net Proceeds Share" payable to County under Section 8.3 of the Option Agreement, then the "**Base Value**" shall mean the amount of Gross Transfer Proceeds from the most recent Change of Ownership as to which County received a Net Proceeds Share under Section 8.3 of the Option Agreement.

With respect to Improvement Costs pertaining to the Renovation Work, Lessee shall submit the Improvement Costs to the County Construction Representative on a progress basis at the end of each ninety (90) day period during construction, along with a final accounting of total Improvement Costs for the Renovation Work within ninety (90) days after the completion of the Renovation Work. With respect to Improvement Costs for Alterations which are not part of the Renovation Work, Lessee shall submit such Improvement Costs to the County Construction Representative on an annual basis within ninety (90) days following the end of each Lease Year. Lessee shall accompany each ninety (90)-day progress accounting for the Improvement Costs for the Renovation Work, the final accounting of costs for the Renovation Work, and the annual accounting for Alterations, with a written certification from Lessee that such costs are accurate and verification from Lessee's Encumbrance Holder such Encumbrance Holder has funded such costs (to the extent that Lessee has an Encumbrance Holder and such Encumbrance Holder has funded such costs). If by the date required for Lessee's submission of the Improvement Costs for all or a portion of the Renovation Work or for the Alterations

the final amount of the Improvement Costs is not established because of a dispute or disputes between Lessee and its contractor(s), then Lessee shall note such dispute(s) in its submission of the Improvement Costs for the Renovation Work or for the Alterations (including a description of the costs and the amounts under dispute). Lessee shall thereafter notify the County Construction Representative in writing within thirty (30) days after the resolution of any such dispute as to any final adjustment required to the amount of the Improvement Costs for the Renovation Work or the Alterations to reflect the resolution of such dispute.

4.8.1.2 Commissions, title and escrow costs, documentary transfer taxes, sales and use taxes, reasonable attorneys' fees, prepayment fees, penalties or other similar charges (such as yield maintenance premiums or defeasance costs), and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of Director, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share, including the Administrative Charge paid to County for such transaction (but without double counting) (collectively, "**Documented Transaction Costs**").

4.8.1.3 That portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Lessee paid County a Net Proceeds Share.

4.8.2 Transfer by Lessee's Successor. In the case of a transfer by a Lessee other than the original entity executing this Lease, "**Net Transfer Proceeds**" shall mean the Gross Transfer Proceeds received by that successor (but in the case of a transfer to a third party affiliated with or otherwise related to the transferor, such Gross Transfer Proceeds shall in no event be deemed to be less than the fair market value of the interests transferred), minus the following costs with respect to such successor Lessee:

4.8.2.1 The greatest of (a) the sum of the Base Value, plus Improvement Costs incurred subsequent to the Effective Date but prior to the acquisition of the leasehold interest by such successor; (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired (or to the extent that such successor acquired its interest herein pursuant to an exchange of property or other non-monetary interests, then the fair market value of the property or other interests transferred by such successor as the consideration for such successor's acquisition of the interest hereunder acquired by such successor);or (c) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Lessee's acquisition of the leasehold, and with respect to which County was paid a Net Proceeds Share, plus the principal amount of any financing existing as of the date on which such seller acquired the leasehold or subsequently obtained by Lessee, if such financing has not been refinanced, but without duplication;

4.8.2.2 Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises (but not

duplicative of the principal amount of any Financing Event described in clause 4.8.2.1(c) above, the proceeds of which were used to fund such Improvement Costs); provided that such costs have been submitted to County, with an appropriate lender (if any) and Lessee certification, as provided in Subsection 4.8.1.1; and

4.8.2.3 Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.8.3 Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in Subsection 4.6.1(b), Subsections 4.8.1 and 4.8.2 shall apply (as applicable), except that any rents or other amounts received by Lessee from the Major Sublessee a percentage of which is passed through to County under any provision of this Lease (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.4 Other Transfers. With respect to any Change of Ownership that is not an Excluded Transfer and is not described in Subsections 4.8.1 through 4.8.3 (e.g., a transfer of a beneficial interest in Lessee or a Major Sublessee), Subsections 4.8.1, 4.8.2 and 4.8.3 shall apply to such Change of Ownership (as applicable), as adjusted pursuant to the immediately following sentence. For purposes of the application of Sections 4.8.1 and 4.8.2 to a Change of Ownership under this Section 4.8.4, in lieu of deducting the Base Value and Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or which was transferred in the past but constitutes a portion of an Aggregate Transfer (which cost shall in no event be deemed to be less than a pro rata share (i.e., the percentage of the entire beneficial interest in Lessee that is then being transferred) of the Base Value and Improvement Costs (or with respect to a transfer of a beneficial interest in a Lessee that is not the original Lessee Entity that executed this Lease, such cost shall in no event be deemed to be less than the pro rata share (i.e., the percentage of the entire beneficial interest in Lessee that is then being transferred) of the sum of Subsections 4.8.2.1 and 4.8.2.2 as of the respective date of the transfer of each interest in the aggregation pool)) shall be deducted. Furthermore, in the event that any such Change of Ownership produces a Net Proceeds Share, the then-existing Improvement Costs shall be increased by an appropriate amount to reflect the basis on which the Net Proceeds Share was calculated, and the basis of the interest that was transferred and for which a Net Proceeds Share was paid shall also be increased for subsequent transfers of the same interest, as if realized by Lessee or a Major Sublessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as applicable.

4.8.5 Net Refinancing Proceeds. "**Net Refinancing Proceeds**" shall mean the gross principal amount of any Financing Event after the Effective Date, minus (a) the greatest of (i) the Base Value plus the Improvement Costs incurred prior to the date of the current Financing Event as to which the amount of Net Refinancing Proceeds is then being calculated, (ii) the Prior Financing Event Principal Balance (as defined below), or (iii) in the case of a successor Lessee, the purchase price such successor paid to Lessee or such successor's seller for the interest acquired, (b) any portion of the proceeds of the Financing Event which shall be used for Improvement Costs to be incurred after the date of the Financing Event, (c) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event (but without duplication to the extent included in the amount determined under clause (a) above),

and (d) Documented Transaction Costs with respect to such Financing Event. Notwithstanding the foregoing, there shall be no double counting of Improvement Costs in clauses (a), (b) and (c) above. In addition, notwithstanding any contrary provision of Section 4.6 above pursuant to which a Net Proceeds Share would be due upon a Financing Event, if the purpose of a Financing Event is to fund the acquisition cost (or a portion of the acquisition cost) of a Change of Ownership that is not an Excluded Transfer, then to the extent that the gross principal amount of the Financing does not exceed the gross sale or transfer price of such Change of Ownership, and if the Financing Event is consummated concurrently with the consummation of the Change of Ownership, there shall not be any separate Net Proceeds Share payable in connection with such Financing Event.

For purposes of this Subsection 4.8.5, "**Prior Financing Event Principal Balance**" shall mean an amount equal to the original principal amount of a Financing Event consummated after the Effective Date but prior to the then-subject Financing Event; provided, however, if there were more than one such previous Financing Event after the Effective Date, then the calculation shall be performed for each such previous Financing Event after the Effective Date, and the higher or highest amount so determined shall be the Prior Financing Event Principal Balance.

4.8.6 Transfers to which Sections 4.6 through 4.8 Apply. The provisions of Sections 4.6 through 4.8 hereof shall apply to all transfers of beneficial interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of Sections 4.6 through 4.8 of this Lease, and the principles set forth therein, shall apply to any transfer or series of transfers primarily structured for the purpose of avoiding the obligation to pay Net Proceeds Share set forth in Sections 4.6 through 4.8 of this Lease and which, viewed together, would otherwise constitute a Change of Ownership.

4.8.7 Payment. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such share and shall be the joint and several obligation of the transferee and transferor. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share at the Applicable Rate from the date due until paid; provided, however, that in the case of a dispute as to the correct amount of the Net Proceeds Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Net Proceeds Share and deposits the disputed portion thereof in an interest bearing escrow account at the closing of the transaction (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed portion) to secure payment thereof. In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in Subsection 4.6.1(b), the Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the payments derived by Lessee from said Change of Ownership (other than any payments passed through to County under this Lease).

4.8.8 Shareholder, Partner, Member, Trustee and Beneficiary List. As part of the submission for approval of a Change of Ownership or Financing Event, and upon the request of County (which requests shall be no more frequent than once per year), Lessee shall provide County with an updated schedule listing the names and mailing addresses of (i) all shareholders, partners, members and other holders of equity or beneficial interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (ii) all shareholders, partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a five percent (5%) or greater beneficial interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a five percent (5%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or a Major Sublessee.

5. RENOVATION WORK; ALTERATIONS.

5.1 Renovation Work. Promptly following the Effective Date, Lessee shall renovate the Premises and existing Improvements in accordance with the terms and provisions of this Section 5.1 and the Renovation Plan attached to this Lease as Exhibit B (the "**Renovation Plan**"), including the Final Plans and Specifications for such work, and in compliance with the time periods set forth in this Section 5.1. The renovation work described in this Section 5.1 and the Renovation Plan is referred to herein as the "**Renovation Work**." The Renovation Work shall be performed in accordance with the Renovation Plan and the Final Plans and Specifications for the Renovation Work approved by Director prior to the Effective Date under the Option Agreement or, with respect to Alterations after the Effective Date, as established under Subsection 5.3.3 of this Lease. The Renovation Work shall not include any deferred maintenance, except such deferred maintenance as is included in the "RD: Part 4 Redevelopment" in that certain Leasehold Premise Maintenance Deficiency Report, dated August 7 through 8, 2017, as hereinafter updated or revised, prepared by the Department and shall be reconciled with said Maintenance Deficiency Report. Lessee shall be responsible for the acquisition and compliance with all required governmental (including, without limitation, County, Coastal Commission, and Design Control Board) planning and entitlement approvals required to perform the Renovation Work. The Renovation Work shall include without limitation the following:

(a) Lessee shall improve public access to the Premises, by removing certain locked gates and constructing a Promenade along the waterfront connecting to the adjacent County park; such Promenade shall incorporate colored pavers, decomposed granite, landscape, seating areas, drinking fountain, bike racks and pet parks, and shall

include an appropriate landscape buffer separating the public Promenade space from the private residential space on the Premises. Existing physical constraints of the lease line, which terminates at the top of the revetment and the footprint of the existing buildings located along the waterfront, will dictate that the width of the Promenade may vary from twenty (20) feet to twenty-eight (28) feet;

(b) Lessee shall protect the urban forest appearance of the Premises, including the maintenance and protection of approximately nine hundred fifty (950) mature trees, and the renovation of the meandering manmade streams, waterfalls and other water features throughout the undulating grounds on the Premises;

(c) Lessee shall replace and repair certain infrastructure improvements, including without limitation the replacement of the central hot water boiler system with an energy efficient system, the replacement of the exterior site lighting with energy efficient LED fixtures, the location and repair, as needed, of wet utility obstructions created by the mature trees, the trenchless reline of those damaged underground waste lines and drainage lines, and the repaving of three private streets (Northwest Passage, Captains Row and Old Harbor Lane);

(d) Lessee shall renovate the exterior of the buildings on the Premises, including the renovation of the exterior facades of the eleven (11) different building types (nine (9) different residential buildings, one (1) retail building and one (1) parking cores structure), including new vinyl windows, fiberglass patio doors and aluminum patio/balcony railings, and the installation of new roofing, roof fascia, rain gutters, downspouts, scuppers, deck coatings, and the painting of the stucco facades and stain to the wood facades;

(e) Lessee shall renovate and improve the interior space of the village building, including upgrades to the leasing and management offices including new light fixtures, door hardware, flooring and wall finishes), upgrades to the amenities available to residents (such as new fitness equipment, and upgrades to the business center, men's and women's locker rooms and saunas, and the multi-purpose room), and shall install a state-of-the-art communication/data systems in the village building;

(f) Lessee shall renovate the interiors of all buildings on the Premises, including the renovation of the building corridors, laundry rooms, and common areas, including installation of new wall finishes, flooring and light fixtures; and

(g) Lessee shall renovate and update the interior of all nine hundred eighty one (981) apartment units in the Premises (it being understood that the market rate units and the Affordable Units shall receive the same upgrades), including (i) kitchen upgrades (wood cabinetry, quartz or granite countertops, appliances such as stoves, side by side refrigerators, dishwashers and microwaves), plumbing fixtures, light fixtures, door hardware, tile flooring and wall finishes, (ii) bathroom upgrades, including wood cabinetry, quartz or granite countertops, plumbing fixtures, light fixtures, door hardware, tile flooring, wall finishes, bathtub enclosures and mirrors, (iii) renovation of the living areas (living rooms, dining rooms, bedrooms and dens), including wall finishes, light

fixtures, door hardware, window coverings, engineered wood flooring and state of the art communication/data systems, and (iv) the updating of all smoke detectors, carbon monoxide detectors, and GFI protected outlets. Nothing herein shall obligated Lessee to remove popcorn ceilings, install air conditioning within units or install washer/dryers.

5.1.2 Costs of Renovation Work.. Lessee shall be solely responsible for hard and soft costs and expenses incurred in connection with the performance of the Renovation Work (including all design, engineering, entitlement and construction activities). Lessee shall expend on the Renovation Work the Required Hard Cost Amount (as defined in Section 5.14 below) for Qualified Hard Costs. Only Qualified Hard Costs (as defined below) may be used to satisfy the Required Hard Cost Amount. Lessee shall be required to perform the Renovation Work in accordance with the requirements and standards set forth in this Article 5 even if the hard costs necessary to do so exceed the Required Hard Cost Amount (as determined in accordance with Section 5.14 below).

5.1.3 Qualified Hard Costs. "**Qualified Hard Costs**" shall mean all out-of-pocket hard construction costs paid to third parties (and in-house construction labor as provided in clause (b) below) for the construction of the Renovation Work and the Look-Out Work. Except as expressly set forth herein, hard construction costs shall have the meaning customarily ascribed to such term in the construction industry. Hard construction costs shall include construction costs that are readily identifiable, such as labor and materials, and shall also include, but not be limited to: (a) profit, overhead and general conditions paid to the general contractor (but not exceeding fifteen percent (15%) of the Required Hard Cost Amount); (b) actual hard costs paid to in-house construction labor for actual services at market rates for comparable services provided by third party laborers (but not greater than the hourly rate paid by Lessee to such laborers); (c) materials purchased by Lessee at market rates; (d) third party contract cost for labor and materials, at market rates; (e) the Option Fee; (f) all costs related to any alternative security described in Section 5.4.5; and (g) the costs of the County Construction Representative. Without limitation of those costs that are customarily excluded from hard construction costs, Qualified Hard Costs shall not include: (i) any imputed cost or value of the existing Improvements, or any imputed cost or value of land or the existing leasehold estate; (ii) architectural, design and engineering fees; (iii) governmental construction permit fees; (iv) development fees; (v) accounting, legal and bond costs; (vi) insurance costs (other than construction insurance incurred in connection with the Renovation Work); and (vii) construction loan fees, costs or interest. Qualified Hard Costs shall not include any costs incurred prior to the Effective Date. Director shall have the right to confirm all Qualified Hard Costs.

5.1.4 Required Hard Cost Amount. The "**Required Hard Cost Amount**" for the Renovation Work means One Hundred Million Dollars ($100,000,000.00). As of the date the Final Plans and Specifications are permit-ready, Lessee assumes all risk with respect to its calculations of the Qualified Hard Costs and Required Hard Cost Amount resulting from any cause, including without limitation increased costs of materials, inflation, existing labor costs, and any enactment by the County or by the Federal government of any law, ruling and/or regulation. If prior to the completion of the Renovation Work, Lessee reasonably determines that the Qualified Hard Cost amount will exceed $100,000,000.00, then Lessee and County shall either: (a) mutually agree to increase the required amount for the Required Hard Cost Amount to an amount in excess of $100,000,000.00; or (b) mutually agree to make reasonable modifications

to the Renovation Work; provided, that there shall be no modification or changes in the Renovation Work as described in Section 5.1, except as mutually agreed upon in writing by Director and Lessee (and in the event that Lessee and Director are unable to agree upon said modifications, then such modifications shall be decided by the Director in his or her reasonable discretion).

5.1.5 Adjustment to Required Hard Cost Amount. If Lessee has not commenced construction of the Renovation Work on or before January 1, 2022, the Required Hard Cost Amount shall be increased by the same percentage increase (if any) in the ENR Construction Cost Index (the "**Construction Cost Index**") during the period (the "**Cost Adjustment Period**") extending from January 1, 2022 through the month during which the construction is actually commenced. If the Construction Cost Index is not published on a monthly basis, then the reporting dates of the Construction Cost Index closest in time to the Cost Adjustment Period shall be used. The Required Hard Cost shall not be subject to any decrease because of a decrease in the Construction Cost Index that may occur for the Cost Adjustment Period.

5.1.6 Renovation Work Schedule. Lessee shall comply with all time deadlines and schedules set forth in this Article 5 relating to the completion of the design and construction of the Renovation Work (subject to any extension set forth in Section 5.6 for Force Majeure delay). Lessee's failure to do so shall, if not cured within the applicable cure period set forth in Subsection 13.1.3, constitute an Event of Default. Except to the extent Lessee is prevented from so doing by Force Majeure delay as provided in Section 5.6, Lessee shall cause (1) the commencement of construction of the Renovation Work to occur on or before the date which is ninety (90) days following the Effective Date (the "**Required Construction Commencement Date**"); (2) following commencement of construction of the Renovation Work diligently continue performance of the Renovation Work through completion of the Renovation Work in accordance with the construction schedule submitted to and approved by Director pursuant to Section 5.4.6 below; (3) substantially complete the Redevelopment not later than the sixth ($6^{th}$) anniversary of the Effective Date (the "**Required Construction Completion Date**").

Lessee shall have two (2) options to extend the Required Construction Completion Date for six (6) months each. Each such option shall be exercisable by Lessee (I) delivering to County thirty (30) days' prior written notice of its exercise of an extension option; and (II) concurrent with the delivery of its exercise notice paying to County an extension fee of $25,000 for the first six-month extension and $35,000.00 for the second six-month extension. In no event shall the Required Construction Completion Date be extended for more than an aggregate of one (1) year pursuant to this paragraph.

In the event that Lessee has exercised all available extension options set forth above with respect to the Required Construction Completion Date, but the completion is further delayed due to Force Majeure, then the Required Completion Date shall be subject to further extension for such Force Majeure delay; provided, however, that Lessee shall commence and complete the portions, if any, of the Renovation Work not impacted by such Force Majeure delay on or before the Required Construction Completion Date. Lessee and Director shall discuss and attempt to agree on the length of time of such Force Majeure delay. If they are unable to agree within thirty (30) days after the event or occurrence giving rise to Lessee's claim of Force Majeure delay, the

matter will be subject to arbitration, as provided in Article 16 hereof. Lessee shall provide to the County written notice of any Force Majeure delay for which Lessee seeks an extension for the Required Construction Completion Date, which notice shall be given to the County within thirty (30) days of such Force Majeure occurrence; failure to provide said notice shall be deemed a wavier by Lessee to seek any extension.

Notwithstanding any contrary provision of this Article 5, except as provided in Section 5.6.2 below, in no event shall the Required Construction Commencement Date or the Required Construction Completion Date as extended pursuant to the extension options set forth above, be further extended for Force Majeure by an aggregate of more than one (1) year for all Force Majeure delays.

5.1.7 Failure to Comply with Renovation Work Schedule. Lessee acknowledges that the principal inducement to County to enter into this Lease, including the extension of the Term as provided herein, is the timely commencement, performance and completion by Lessee of the Renovation Work. If Lessee fails to comply with its obligations under this Section 5.1 to commence and complete the Renovation Work by the Required Construction Commencement Date or the Required Construction Completion Date (as such dates may be extended pursuant to the provisions of this Section 5.1 or Section 5.6 below, if applicable), then in addition to any other right or remedy which County may have in connection therewith (but subject to Section 12.12), at County's election by written notice to Lessee, this Lease shall be automatically amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Existing Lease (including, without limitation, the Existing Expiration Date, or this Lease shall terminate if such Existing Expiration Date has already occurred), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "**Reversion Amendment**"). Notwithstanding the foregoing, and any provision to the contrary in this Lease, if and as long as Lessee has commenced construction of the Renovation Work and is diligently prosecuting and continues to diligently prosecute such construction to completion, then the Lease shall not be amended by the Reversion Amendment unless and until such time as the delay in the completion of the Renovation Work exceeds the Required Construction Completion Date (as extended pursuant to the provisions of this Section 5.1 or Section 5.6 below, if applicable) by more than six (6) months.

In addition, in the event that Lessee fails to comply with its obligations under this Section 5.1 to complete the Renovation Work by the Required Construction Completion Date (as such date may be extended pursuant to the provisions of this Section 5.1 or Section 5.6 below, if applicable), then in addition to any other right or remedy which County may have in connection with such failure (but subject to Section 12.12), at County's election by written notice to Lessee, then during any period after the Required Construction Completion Date during which the Renovation Work is not yet substantially complete, County in its sole and absolute discretion shall have the option to: (i) declare that such failure shall constitute a material default of this Lease, or (ii) require that Lessee pay to the County additional imputed Percentage Rent equal to the additional Percentage Rent that would have been payable if the Renovation Work had been completed by the Required Construction Completion Date, based on the additional Gross Receipts reasonably expected to have been received at then prevailing market rental rates for any units not immediately available for lease during such period if the Renovation Work had been completed by the Required Construction Completion Date.

5.2 Application of Article 5 to Renovation Work. The remaining sections of this Article 5 after this Section 5.2 pertain to the construction of the Renovation Work and to any other Alterations (as defined below) which Lessee may be required or desire to make to the Premises during the Term. For purposes of this Lease, "**Alterations**" shall mean the construction of any alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease after this Section 5.2 that are applicable to Alterations shall also be applicable to the Renovation Work and Alterations.

5.3 Plans and Specifications for Renovation Work and Alterations. Lessee shall not perform any Renovation Work or Alterations, as the case may be, without the prior written approval of the Director, which approval shall not be unreasonably withheld, conditioned or delayed. Prior and as a condition precedent to the construction of the Renovation Work or any Alterations, as the case may be, Lessee shall submit to Director, for Director's approval, the plans, specifications and other materials described in this Section 5.3 pertaining to such Renovation Work or Alterations (except to the extent such submittals and approvals have been previously completed with respect to the Renovation Work pursuant to the Option Agreement). All Renovation Work and Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Lease.

5.3.1 Schematics and Narrative. Lessee shall submit to Director an electronic disc, flash drive or other data storage device that includes flash memory with an integrated USB interface, or other electronic copy of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the Alterations. Such plans shall, among other things, clearly delineate the architectural theme or motif of the Alterations and shall identify and illustrate all affected boundaries of the Premises and all affected rights-of-way or other areas reserved to County or third parties which are located thereon. After receipt of such plans, Director shall have sixty (60) days within which to approve or disapprove such submission in writing. Failure of Director to approve such submission in writing within said sixty (60) day period shall be deemed disapproval of said submission. Any disapproval shall be accompanied by a statement from the Director disclosing Director's objections to the submission. After approval of schematic plans (or subsequent approval of preliminary plans or Final Plans and Specifications) by Director, if changes in such plans are required by conditions of approval of the Alterations imposed by the California Coastal Commission or other governmental agency with jurisdiction, Lessee shall promptly advise Director in writing of such changes and Director shall not disapprove those changes that constitute Approved Governmental Changes.

5.3.2 Preliminary Plans and Specifications. As soon as reasonably practicable after Director's approval of the materials submitted pursuant to Subsection 5.3.1, Lessee shall submit to Director an electronic disc, flash drive or other data storage device that includes flash memory with an integrated USB interface, or other electronic copy of preliminary plans, outline specifications and construction cost estimates for the Alterations. The preliminary plans, outline specifications and construction cost estimate shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved schematics and narrative shall be separately

identified and described. The preliminary plans shall be of a detail and scope that is typically associated with design development drawings. Director shall have twenty-one (21) days from receipt within which to approve or reasonably disapprove such submission, and Director may disapprove said preliminary plans only on the grounds that (i) they do not reflect a natural evolution from the approved schematic plans or that they materially differ from the approved schematic plans and narrative (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the schematic plans do not meet the requirements for the Improvements set forth in this Article 5. Any disapproval shall be accompanied by a statement from Director disclosing the specific objections to the submission, except that no failure of Director to include such specific objections shall be deemed an approval of the subject plans. Failure of Director to disapprove said preliminary plans within twenty one (21) days after Director's receipt thereof shall be deemed Director's approval thereof; provided, however, that in the event that the preliminary plans, outline specifications and construction cost estimates contain substantial changes from the approved schematics and narrative (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold face type:

> "PURSUANT TO SUBSECTION 5.3.2 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU (OTHER THAN APPROVED GOVERNMENTAL CHANGES), YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."
>
> Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission.

5.3.3 Final Plans and Specifications. As soon as reasonably practicable after Director's approval of the preliminary plans, outline specifications and construction cost estimates, Lessee shall submit for approval by Director an electronic disc, flash drive or other data storage device that includes flash memory with an integrated USB interface, or other electronic copy of final plans, detailed specifications and a construction cost estimate for the Alterations, together with one (1) set of appropriate structural computations (if structural work is contemplated), identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code. Lessee shall file duplicate copies of the final plans, detailed specifications and construction cost statement required by this Section with the County Director

of Public Works, together with the necessary and appropriate applications for building permits. Any difference in the scope, size, configuration, arrangement or motif of the Alterations from those described in the approved preliminary plans and specifications shall be separately identified and described. Director shall have twenty one (21) days after receipt within which to approve or disapprove such submission, and Director may disapprove such submission only on the grounds that (i) they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and construction cost estimates (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the preliminary plans do not meet the requirements for the Improvements set forth in this Article 5. Failure of Director to disapprove said final plans and related materials within twenty one (21) days after Director's receipt shall be deemed Director's approval thereof; provided, however, that in the event that the final plans, detailed specifications and construction cost estimate contain substantial changes from the approved preliminary plans and specifications (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed specifications and construction cost estimate, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in boldface type:

> "PURSUANT TO SUBSECTION 5.3.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU (OTHER THAN APPROVED GOVERNMENTAL CHANGES), YOU HAVE TWENTY-ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission. Director's approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall be deemed reasonable to disapprove any submission not in substantial conformity with the approved preliminary plans and specifications (exclusive of any Approved Governmental Changes), or which contains new, different or additional specifications for the Improvements which were not expressly set forth in, and approved by Director as a part of, the preliminary plans and which do not meet the requirements for the Improvements set forth in this Article 5. No Material Modification shall be made to the Renovation Work described in the final plans, specifications and costs approved by Director (the "**Final Plans and Specifications**") or to any Alterations without the prior written approval of Director, which shall not be unreasonably withheld, conditioned or delayed.

5.4 Conditions Precedent to the Commencement of Construction. No Renovation Work or other Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.4.1 Approved Final Plans and Specifications. The Final Plana and Specifications for such Renovation Work or Alterations, as the case may be, including estimated costs, have been approved by Director.

5.4.2 Permits and Other Approvals. Lessee shall have received and furnished the Department with copies of all permits, licenses, governmental approvals and other documentation deemed appropriate by County to evidence receipt of all required approvals for commencement of the Renovation Work or Alterations, as the case may be. It is understood that building or other non-discretionary permits for each phase of the Renovation Work shall be obtained prior to the commencement of work thereon and shall be obtained in accordance with the time schedule provided by Lessee to Director and approved by Director.

5.4.3 Copies of Construction Contracts. Lessee shall have furnished County with copies of any contract(s) entered into between Lessee and any general contractor(s) employed for the purpose of constructing the Renovation Work or Alterations, as the case may be.

5.4.4 Performance and Payment Bonds. Lessee shall, at its own cost and expense, have furnished County with the following separate corporate surety bonds (or with the substitute security set forth below) not less than ten (10) days prior to the commencement of construction, which bonds (or other security) must be in form and content reasonably satisfactory to County:

5.4.4.1 A corporate surety performance bond ("**Performance Bond**") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of the Required Hard Construction Cost for the Renovation Work, as such amount may be increased pursuant to the terms of this Lease, or all hard construction costs approved by County in conjunction with the approved Final Plans and Specifications for any approved Alterations. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to County. It shall name Lessee as principal and said issuer as surety, and County as obligee (and which may include an Encumbrance Holder as an additional obligee), assuring full and satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Renovation Work in accordance with the Final Plans and Specifications on or before the Required Construction Completion Date, as it may be extended pursuant to the provisions of this Lease, or such Alterations in accordance with the Final Plans and Specifications approved by Director for such Alterations.

5.4.4.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety and County as obligee (and which may include an Encumbrance Holder as an additional obligee), in a sum equal to one hundred percent

(100%) of the total construction cost anticipated to be incurred in connection with the approved Final Plans and Specifications, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "**Payment Bond**"). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this Subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this Subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this Subsection 5.4.3.

5.4.5 Alternative Security. In lieu of providing the Payment and Performance Bonds, Lessee may provide any of the following alternative security: (i) a completion guaranty, in form and substance reasonably acceptable to Director, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Director, to comply with the terms of such guaranty in view of the potential financial responsibility involved, (ii) a certificate of deposit, cash or United States governmental security, (iii) a letter of credit, or (iv) a set aside letter from Lessee's construction lender. The security described in clause (ii), (iii) and (iv) above shall be in an amount equal to one hundred percent (100%) of the construction contract price for hard costs, and shall permit County to draw thereon to complete the construction of the Improvements if same have not been completed by Lessee or if a material Event of Default has occurred under this Lease. Any alternative security provided by Lessee pursuant to this subsection shall name County and Lessee's construction lender as co-beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this Subsection 5.4.4 shall be delivery by Lessee to County of an opinion of counsel from a law firm and in a form acceptable to County to the effect that the construction work does not constitute a public work of improvement requiring the delivery of the bonds described in Subsection 5.4.3 above. Director shall have the authority, in his reasonable discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.6 Evidence of Financing. Lessee shall have provided evidence reasonably satisfactory to County of its having sufficient financial resources, as reasonably determined by Director, to complete the subject Alterations. Lessee shall furnish Director with copies of all final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, as applicable, documents evidencing equity contributions, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Premises, within seven (7) days after such document or instrument becomes effective; provided, however, that Lessee may redact all personal financial information from any of the foregoing.

5.4.7 Work Schedule. With respect to the Renovation Work, unless the construction schedule for the Renovation Work is submitted to and approved by Director prior to

the Effective Date, Lessee shall submit to Director no later than thirty (30) days after the Effective Date a construction schedule for the performance of the Renovation Work. Director shall have the right to reasonably approve such construction schedule as being consistent and compatible with the Required Construction Commencement Date and Required Construction Completion Date set forth in Section 5.1 above; provided, however, that Director shall have no liability in connection with the approval of such construction schedule, nor shall Director's approval of such construction schedule in any manner relieve or otherwise affect Lessee's obligations under this Lease with respect to the commencement and completion of the Renovation Work on or before the respective required dates for such commencement and completion set forth in Section 5.1 above.

5.5 County Cooperation. In its proprietary capacity, the Department shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Renovation Work and any subsequent Alterations. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Cost incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Lease are approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code; that approvals given under this Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Premises and operation and other use of such Improvements on the Premises; and that the Department's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

5.6 Delays in Commencement and Completion of Renovation Work. Upon commencement of construction of the Renovation Work, Lessee shall thereafter diligently pursue the completion of such construction by the Required Construction Completion Date, subject to Force Majeure as set forth below. If Lessee is delayed in the commencement of construction or completion of the Renovation Work due to Force Majeure, then the Required Construction Commencement Date and the Required Construction Completion Date, if and to the extent that the event actually causes a delay in the commencement and completion of construction (as applicable) shall be extended by the period of the delay caused by such Force Majeure. Notwithstanding the foregoing, (a) any extension due to Force Majeure shall be limited to the period of the delay caused by the Force Majeure event and no such delay shall be considered to have commenced unless Lessee notifies Director in writing of the commencement of such delay within ten (10) business days after Lessee's discovery of the delay; and (b) except as provided in Section 5.6.2 for delay caused by Unreasonable County Activity, in no event shall the Required Construction Commencement Date and the Required Construction Completion Date be extended for more than an aggregate of one year due to Force Majeure. Lessee and Director shall discuss and attempt to agree on the length of time of any entitled delay due to Force Majeure pursuant to this Section 5.6. If they are unable to agree within thirty (30) days after written notice from

Lessee of the event or occurrence giving rise to Lessee's claim to an entitlement to a delay under this Section 5.6, the matter shall be arbitrated as set forth in Article 16.

In the case of the Renovation Work, the definition of Force Majeure shall also include delays in the commencement and completion of the Renovation Work due to Unreasonable County Activity. For the purposes of this Lease, "**Unreasonable County Activity**" means any of the following that occurs after the Effective Date: (i) the Department's failure to provide required County joinder, if any, as fee title owner of the Premises, in Lessee's submittal to the applicable governmental agency of the Final Plans and Specifications for the Renovation Work (as applicable) that are approved by the Department; or (ii) the Department's failure to take such other actions, at no cost or expense to County, in its proprietary capacity, that are reasonably requested by Lessee and which are necessary for Lessee to proceed with the permitting and approval process for the Renovation Work, or the taking by the Department of actions in its proprietary capacity, without Lessee's consent, which are in conflict with Lessee's rights and obligations under this Lease and actually delay the receipt of any remaining permits or approvals for the Renovation Work; or (iii) the Department's failure to comply with the time periods imposed upon the Department under Section 5.3 above, except in the case (if any) where a failure of the Department to notify Lessee of its approval or disapproval of a matter constitutes County's deemed approval of such matter, or constitutes County's deemed disapproval of such matter and County's disapproval of such matter is authorized under the circumstances. Nothing contained in Section 5.5 above, this Section 5.6 or any other provisions of this Lease shall be construed as obliging the Department or the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. It shall not be Unreasonable County Activity if County fails to accelerate the County's customary regulatory permit or approval process. No action or inaction shall constitute Unreasonable County Activity unless and until all of the following procedures and requirements have been satisfied:

5.6.1 Within a reasonable time under the circumstances, Lessee must notify Director in writing of the specific conduct comprising the alleged Unreasonable County Activity, and the next opportunity, if any, for County to rectify such alleged conduct. If Lessee fails to notify Director in writing as specified in the immediately preceding sentence within five (5) days following Lessee's discovery of the alleged Unreasonable County Activity, then notwithstanding any contrary provision of this Section 5.6, in no event shall Lessee be entitled to any extension for any period of the delay under this Section 5.6 that occurred prior to the date of Lessee's notice described in this Subsection 5.6.1.

5.6.2 Within seven (7) days following receipt of the notice alleging Unreasonable County Activity, Director shall meet with Lessee or its authorized representative in order to determine whether Unreasonable County Activity has occurred and, if so, how such Unreasonable County Activity can be rectified and the duration of the delay caused by such Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the amount of delay under this Section 5.6 for the Unreasonable County Activity shall equal the actual amount of delay directly caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying

action will not produce the results desired by Lessee), then Lessee and Director shall establish the length of the delay likely to be caused by the Unreasonable County Activity.

5.6.3 If, within fourteen (14) days following receipt of Lessee's notice alleging Unreasonable County Activity, Director and Lessee have not agreed in writing as to whether delay due to Unreasonable County Activity has occurred or the length of such delay, then the matter shall be referred to the Board of Supervisors of the County for such determination.

5.7 Manner of Construction.

5.7.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due diligence. Lessee shall take all commercially reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County harmless from and against all damages, costs, expenses, losses or claims arising out of or in connection with the performance of such work, except to the extent that such damages, costs, expenses, losses or claims are caused by County, its employees, contractors or agents. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control materially adverse effects associated with construction projects in well populated and developed areas of Southern California.

5.7.2 Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that does not unnecessarily interfere (taking into account the nature of such utility work) with the provision of such services to the Premises and other persons.

5.7.3 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.7.4 Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all Applicable Laws. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.7.5 Notice to Director; Damage to County Improvements. Lessee further agrees to keep Director apprised of the progress of the work to the end that Director may timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing

on or around the Premises, including but not limited to underground conduits and utility lines. If any such County-owned improvement is damaged in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within two (2) business days after demand by County. In the case of damage to a County-owned improvement that does not involve risk of personal injury, risk of damage to other improvements, risk of curtailment or diminishment of service or access, or any other emergency situation, the references to "five (5) business days" in this Subsection 5.7.5 shall be changed to "thirty (30) days."

5.7.6 Rights of Access. Representatives of the Department shall, upon reasonable notice and at reasonable times during normal business hours, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, but at no cost or expense to Lessee, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Lessee's construction and/or operations, and County shall comply with industry safety standards in connection with any such access. Lessee shall have the right to have a representative present to accompany the representatives of the Department in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage, County shall have the right to enter the Premises immediately and without notice to or accompaniment by Lessee.

5.7.7 Notice of Completion; As-Built Drawings. Upon completion of the Renovation Work or any other Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Los Angeles a Notice of Completion (the "**Notice of Completion**") with respect to the Renovation Work or subsequent Alterations, as the case may be, and Lessee shall deliver to County, at no cost to County, an electronic disc, flash drive or other data storage device that includes flash memory with an integrated USB interface, or other electronic copy of final as-built plans and specifications of the relevant Improvements (or such portions thereof as affected by the work and as to which plans would customarily be prepared (e.g., excluding those components of interior renovations as to which plans are not applicable)).

5.7.8 Final Completion Certificate. Promptly after Substantial Completion of the Renovation Work or any Alterations, upon Lessee's request, County shall execute and deliver to Lessee a final completion certificate (the "**Final Completion Certificate**") as to the work which is the subject thereof, which shall conclusively evidence the completion of such work by Lessee in accordance with the terms of this Lease, subject only to minor punch-list items that do not interfere with the use and occupancy of the subject Improvements, which Lessee shall complete in a diligent manner as soon as reasonably possible thereafter.

5.8 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with Alterations shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County (and Lessee's Encumbrance

Holder(s) if required by Lessee's Encumbrance Holder(s)) as security to County for Lessee's performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by County due to Lessee's default, County (or if County enters into a new lease with Lessee's Encumbrance Holder pursuant to Article 12, then Lessee's Encumbrance Holder) may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract for such Alterations, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trademarks, trade names or logos of Lessee or any such architect, design professional or contractor. The assignment to County and Lessee's Encumbrance Holder(s) described in this Section 5.8 shall be effective until the Final Completion Certificate for the subject work is issued, and shall be subordinate to the security interest, if any, of Lessee's construction lender in the assigned contract, which subordination shall be in a form reasonably acceptable to Lessee's construction lender.

5.9 Where Director Approval Not Required. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3) for Alterations where all of the following conditions are satisfied: (i) the total cost of the Alterations is less than Two Hundred Thousand Dollars ($200,000), adjusted annually to reflect the increase or decrease in the ENR Index from and after the Effective Date; provided, however, that in no event shall such adjustment result in a reduction of the threshold for Director approval to less than Two Hundred Thousand Dollars ($200,000); (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes materially affect or are visible from the exterior of the Premises. In all circumstances where Lessee is entitled to construct any improvement in or to the Premises under this Section 5.9, Lessee shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish electronic copies of "as-built" plans upon completion of such work to County.

5.10 Protection of County. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the Premises or County.

5.10.1 Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which County may deem necessary for the protection of County, the Premises and the Improvements thereon from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises, in order to enable County timely to post such notices.

5.10.2 Prompt Payment. Lessee shall make, or cause to be made, prompt payment (subject to reasonable dispute) of all monies due and owing to all persons doing any

work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee.

5.10.3 Liens; Indemnity. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it.

In the event any lien is recorded, Lessee shall, within twenty (20) days after demand, furnish any one of the following, as determined by Lessee: (i) a bond which in accordance with the provisions of applicable law results in the removal of such lien from the Premises, (ii) a Set Aside Letter from Lessee's construction lender, in form and substance reasonably satisfactory to County, setting aside sufficient funds from Lessee's construction loan for the satisfaction of such lien, or (iii) a title insurance policy or endorsement insuring County against any loss or liability arising out of such lien, together with any other evidence requested by County to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or County.

5.11 Reserve Fund.

5.11.1 Establishment of Reserve Fund . Commencing on the Effective Date, Lessee shall establish and maintain a reserve fund (the "**Reserve Fund** ") in accordance with the provisions of this Section 5.11 for the cost of Permitted Capital Expenditures (as defined below) for the Premises. Commencing on the Effective Date, and on each anniversary of the Effective Date until the earlier of (a) the sixth ($6^{th}$) anniversary of the Effective Date or (b) the date of the Final Completion Certificate for the Renovation Work (the "**Initial Reserve Fund Period**"), Lessee shall contribute Fifty Thousand Dollars ($50,000.00) to the Reserve Fund. Commencing at the end of the Initial Reserve Fund Period and continuing through the remaining Term (and subject to reaching the Threshold Amount, as defined below), Lessee shall make monthly contributions to the Reserve Fund on the same day that Monthly Minimum Rent payments are due each calendar month in the amount equal to the sum of (i) the greater of one and one half percent (1.5%) of Gross Receipts or Forty Dollars ($40.00) per residential unit, plus (ii) the amounts established by the then current Reserve Study (as defined below), with such Reserve Study amounts to be established without any consideration or offset for the amounts described in clause (i) above. For purposes of contributions to the Reserve Fund, Gross Receipts shall include rental loss insurance proceeds received by Lessee with respect to any Improvements that are vacant due to an insured casualty If at any time the then-existing balance in the Reserve Fund reaches the Threshold Amount (as defined below), Lessee thereafter shall not be required to make further contributions to the Reserve Fund except as necessary to maintain the balance of the Reserve Fund in an amount at least equal to the Threshold Amount. The "**Threshold Amount**" shall mean the aggregate amount of contributions required to be made to the Reserve

Fund over the five (5) -year period covered by the then-current Reserve Study. The Threshold Amount shall be adjusted annually following each updated Reserve Study.

Lessee shall keep the Reserve Fund fully funded at all times. All interest and earnings on the funds in the Reserve Fund shall be added to the Reserve Fund, and shall be treated as a credit against the Reserve Fund contributions otherwise required to be made by Lessee pursuant to this Section 5.11.

County shall be permitted to engage a consultant at Lessee's sole cost and expense to review and/or monitor (i) Reserve Fund expenditures and (ii) the performance by Lessee of the capital repair work required under this Lease or the applicable Reserve Study.

5.11.2 Use of Reserve Fund. Lessee and County agree that the purpose of the Reserve Fund shall be to provide funds for the costs of additions, capital repairs, replacements, renovations or other capital upgrades of or to the Improvements, equipment or systems on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation/elevators, security systems, communications systems, irrigation systems, structural or roof, walkways and driveways, windows and exterior painting) that enhance the quality of the Improvements or their major systems as set forth in the applicable Reserve Study, after the completion of the Redevelopment Work ("**Permitted Capital Expenditures**"). Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. The Reserve Fund may be used only for capital repairs, replacements or upgrades to improvements, equipment or systems, or other capital upgrades that enhance the quality of the project as set forth in the Reserve Study as it may be modified from time to time, and as may be approved from time to time by Director. All specific purposes and costs for which Lessee desires to utilize amounts from the Reserve Fund shall be subject to Director's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

The Reserve Fund shall not be used for any of the following, all of which shall be separately funded by Lessee: (a) the cost of any portion of the Renovation Work or the cost of correcting any defect in the Renovation Work; (b) the cost of curing any deficiencies arising from the failure of Lessee to maintain and repair the Improvements in accordance with the requirements of this Lease; (c) costs or expenses reimbursed by insurance, warranties or any other third party; (d) the costs of the initial construction of any new buildings or building additions; (e) the costs of new project amenities (e.g., barbeques or fitness equipment) or new common area furniture; (f) the cost of periodic, recurring or ordinary non-capital expenditures, repairs, maintenance or replacements that keep the Improvements or their major systems in good operating condition, but that do not significantly add to their value or appreciably prolong their useful life or that otherwise constitute non-capital expenditures under generally accepted accounting principles consistently applied; (g) the costs for any necessary repairs to remedy any broken or damaged Improvements; (h) the costs of furniture or appliances, except as expressly permitted by a Reserve Study or as otherwise approved by Director; or (i) the cost of any repair or replacement of an individual or a selected group of individual items, unless (A) such capital repair or replacement is part of a larger plan (which may be a phased plan) of capital repair or replacement of all, or substantially all, similar items, or (B) such capital repair or replacement of an individual or selected group of individual items is expressly set forth in the applicable

Reserve Study and approved by Director.

Without limiting the prohibition in clause (d) above, the Reserve Fund shall not be used for additional improvements, equipment or systems that were not part of the Improvements upon completion of the Renovation Work or subsequently installed as an approved Alteration under this Lease with Lessee's other funds, except for such upgrades as are approved by Director and only to the extent that the then-current updated Reserve Study anticipates use of the applicable Reserve Fund for such purposes or the applicable Reserve Study is updated to adjust the future monthly Reserve Fund contributions to account for the unanticipated expenditure.

Notwithstanding anything to the contrary contained hereinabove, any omission in the Reserve Study (including any failure in the Reserve Study to include an item that should be repaired, maintained or replaced), shall not release Lessee from any responsibility or obligation it may have to make a capital expenditure for items not foreseen or included in the Reserve Study and/or part of the Reserve Fund.

5.11.3 Reserve Studies. In order to provide the requisite funds for the Reserve Fund , Lessee shall cause a reserve study with respect to the Improvements (the "**Reserve Study**") to be prepared four (4) months prior to the sixth ($6^{th}$) anniversary of the Effective, and four (4) months prior to every five (5)- year anniversary of the Effective Date thereafter. Lessee shall prepare each Reserve Study at its sole cost and expense. Each Reserve Study shall be conducted and prepared by a company mutually acceptable to County and Lessee, which company has special expertise in preparing capital improvement reserve studies for similar and comparable projects (e.g. physically similar in age and other physical characteristics) within a ten (10) mile radius of the Premises. In the event County and Lessee cannot agree upon a mutually acceptable company to prepare the Reserve Study, then Lessee and the Director shall each engage a company that is able to perform the Reserve Study (each, a "**Potential Reserve Study Company**") and the Potential Reserve Study Companies shall, amongst themselves, confer and determine which Potential Reserve Study Company shall perform the Reserve Study. If the Potential Reserve Study Companies cannot mutually agree on which Potential Reserve Study Company shall perform the Reserve Study, the Potential Reserve Study Companies shall collectively select an independent Reserve Study Company to perform the Reserve Study. (The reserve company actually engaged, whether by agreement of County and Lessee or pursuant to the procedures set forth in the preceding sentence, shall be referred to as the "**Reserve Study Company**"). Each Reserve Study shall address the monthly contribution required to sustain the Improvements for the full Term of this Lease. In the event of any conflict regarding the appropriate levels of contribution to the Reserve Fund recommended by the Reserve Study Company, on the one hand, and any report and/or property assessment prepared for the benefit of any Encumbrance Holder, on the other, regarding is own separate reserve fund, the Reserve Study Company shall take the views of such consultant into consideration, but the final decision as to the appropriate levels of contribution to the Reserve Fund shall be determined solely by the Reserve Study Company.

The first Reserve Study shall identify any existing deferred maintenance and repair deficiencies that exist at the date of the first Reserve Study. Lessee shall be required to remedy any such maintenance deficiencies at Lessee's cost (without any use of the Reserve Fund ) within ninety (90) days after the expiration of the Initial Reserve Fund Period. If Lessee requires

additional time to complete all existing maintenance deficiencies, then Lessee shall submit a schedule of repairs for Director's written approval, which approval will not be unreasonably withheld.

Each Reserve Study shall determine the monthly contribution amount required to be made to the Reserve Fund. If Director approves any expenditure from the Reserve Fund outside of those anticipated under the then-current Reserve Study (as previously updated), then such Reserve Study shall be updated within ninety (90) days following the date such expenditure is made to adjust the future monthly Reserve Fund contributions to take into consideration the unanticipated expenditure. Such updated Reserve Study shall remain applicable for the ensuing five (5)-year period, unless such updated Reserve Study is required to be further updated prior to the expiration of such five (5)-year period pursuant to this sentence.

Each Reserve Study shall, at a minimum, contain the following: (i) identification of all major components (consisting of all Permitted Capital Expenditures, including without limitation all improvements within a unit (e.g., carpets, drapes, appliances, wall coverings, countertops and the like) that have a remaining useful life of less than thirty (30) years (collectively, the "**Components**"); (ii) identification of the probable remaining useful life of the Components as of the date of the applicable Reserve Study; (iii) an estimate of the cost of repair, replacement, or restoration of the Components identified in clause (i); and (iv) an estimate of the total annual contribution to the Reserve Fund necessary to defray the cost to replace or restore the Components identified in clause (i) during and at the end of their useful life, after subtracting total funds then held in the Reserve Fund as of the date of the study. The Reserve Study Company shall have sole and absolute discretion in determining which Components to consider for the applicable Reserve Study; provided, however, that when the useful life of any Component becomes thirty (30) years or less, it shall be added to the Reserve Study.

For the purpose of each Reserve Study: (a) "useful life" is defined as the number of years the individual Component is expected to serve its intended purpose if given regular and proper maintenance, and (b) "remaining useful life" is defined as the expected number of years the individual Component will continue to serve its intended purpose prior to repair or replacement. In determining the remaining life of a Component, a certain level of continued preventative maintenance is assumed, but shall be stated explicitly wherever possible in the applicable Reserve Study. Lessee hereby agrees to make all improvements to all Components that the Reserve Study recommends be replaced or upgraded.

Lessee shall be required to renovate or replace particular Components (as identified in the Reserve Study by the Reserve Study Company) at the end of the expected useful life of such Component and otherwise make expenditures prescribed in the most recent applicable Reserve Study. Lessee shall be required to make any such renovations or replacements within ninety (90) days after the expiration of the useful life of the applicable Component and to make such expenditures within ninety (90) days after receipt of the most recent applicable Reserve Study. If Lessee requires additional time to complete any such renovations, replacements or expenditures, Lessee shall submit a schedule for Director's written approval, which approval will not be unreasonably withheld.

5.11.4 Annual Updates to Reserve Studies. At least one hundred twenty (120) days prior to each calendar year, the Reserve Study Company shall review the then current Reserve Study to update cost changes and take into consideration expenditures actually made during the preceding year to determine whether additional needed funds should be contributed to the Reserve Fund that were not included in the prior year's review of the applicable Reserve Study (each an "**Annual Reserve Fund Update**"). To assist the Reserve Study Company in preparing the Annual Reserve Fund Update and to avoid the necessity for the Reserve Study Company to enter the Premises, Lessee shall provide to the Reserve Study Company an accounting of all expenditures made by Lessee for the repair, maintenance, replacements, and capital improvements performed for such calendar year, and the Reserve Study Company shall take such expenditures into account in preparing the Annual Reserve Fund Update.

Lessee shall submit to Director, for Director's reasonable approval, an annual Reserve Fund expenditure plan ("**Annual Reserve Fund Expenditure Plan**") at least sixty (60) days prior to the commencement of each calendar year following the expiration of the Initial Reserve Fund Period, and the Director or the County shall respond within ninety (90) days thereafter with specific written objections consistent with the Reserve Study, and if Director or County has no objections, then Lessee's proposed Annual Reserve Fund Expenditure shall be approved. Each Annual Reserve Fund Expenditure Plan shall be consistent with the most recent updated Reserve Study, subject to modification for any unforeseen capital improvement requirements. Expenditures from the Reserve Fund shall be consistent with the approved Annual Reserve Fund Expenditure Plan for such year, provided that Lessee shall have the right during each calendar year to submit for Director's reasonable approval one or more mid- year modifications to the Annual Reserve Fund Expenditure Plan to address unforeseen capital improvement requirements that arise during such year.

5.11.5 Final Reserve Study. A final updated Reserve Study (the "**Final Reserve Study**") shall be prepared and delivered to County no later than five (5) years prior to the expiration of the Term. Prior to the preparation of the Final Reserve Study, County shall inform Lessee as to whether it intends to require the demolition of some or all of the Improvements at the end of the Term. The Final Reserve Study shall determine the monthly amounts, if any, required to be deposited to the Reserve Fund to fully fund (when combined with any amounts already on deposit in the Reserve Fund) the expected cost of capital improvements and replacements during the remaining Lease Term or the expected demolition costs (if County has indicated that it intends to required demolition of some or all of the Improvements). The monthly contribution amounts required for the Reserve Fund shall take into consideration any then current balance in the Reserve Fund.

Concurrently with the delivery of the Final Reserve Study, Lessee shall deliver to County the Demolition and Removal Report in accordance with Section 2.3.2. As set forth in Section 2.3.2, the Demolition and Removal Report shall detail the cost and time period required for the demolition and removal of all Improvements or a Portion Subject to Demolition.

If County elects not to require Lessee to demolish the Improvements or a Portion Subject to Demolition at the end of the Term, then: (i) the Final Reserve Study shall not make any adjustment for the cost for the future replacement of the Improvements during the remaining Lease Term, (ii) the Reserve Fund deposits thereafter required to be made by Lessee shall

continue to be used for purposes permitted under this Section 5.11, and (iii) any remaining funds in the Reserve Fund at the of the Term shall be released to County. If County elects to require Lessee to demolish the Improvements or a Portion Subject to Demolition (as defined in Section 2.3.2) at the end of the Term and requires Lessee to provide security for its obligation to perform such removal obligations in accordance with Section 2.3.2 of this Lease, then Lessee shall contribute to the Reserve Fund amounts thereafter required to be made by Lessee towards Lessee's obligations to fund the security requirements in Subsection 2.3.2, but only if and to the extent that there are sufficient funds made available in the Reserve Fund for any needed capital expenditures for any remaining Improvements, as determined by Director in Director's reasonable discretion.

As long as Lessee makes the expenditures prescribed under the Reserve Studies (as updated from time to time) and complies with its obligations under this Lease with regard to the replacement of the Improvements during the Term and the demolition and removal of the Improvements at the end of the Term (if required), any surplus funds in the Reserve Fund at the end of the term shall be released to Lessee.

5.11.6 Reserve Fund Account. The Reserve Fund shall be held in a separate account established with an Institutional Lender (which may be Lessee's Encumbrance Holder) reasonably acceptable to and approved by Director. Lessee shall make deposits into the Reserve Fund as required hereunder and make disbursements from the Reserve Fund account as required or permitted hereunder, but only for the permitted purposes and amounts set forth herein and in accordance with the current approved Annual Reserve Fund Expenditure Plan (with such adjustments as may be approved by Director). Lessee shall have the right to maintain the Reserve Fund with an Institutional Lender that is an approved Encumbrance Holder and to grant such lender a security interest in Lessee's interest in the Reserve Fund account, subject to administration of the Reserve in accordance with the requirements of this Section 5.11. Subject to the foregoing, the Reserve Fund account may concurrently satisfy a separate reserve fund requirement of Lessee's Encumbrance Holder. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder. On or before January 15 and July 15 of each year (and at any other time within thirty (30) days prior written notice from Director to Lessee) Lessee shall deliver to Director evidence reasonably satisfactory to Director of the account in which the Reserve Fund exists and a report that details all deposits to, earnings on, withdrawals from and the balance of the Reserve Fund.

5.12 Local Hiring Requirements. In connection with all construction or renovation projects undertaken pursuant to this Lease, Lessee shall comply, and shall cause its contractors to comply, with the terms and conditions of County's Countywide Local and Targeted Worker Hire Program – Mandatory and Best Effort described in Exhibit E attached to this Lease, as such program may be amended from time to time.

5.13 County Representative; Construction Meetings. County shall have the right to engage an outside consultant and/or a County employee (each, a "**County Construction Representative**") having expertise in rehabilitation and/or construction of residential developments similar to the Renovation Work, at Lessee's sole cost and expense (but as an allowable component of Qualified Hard Costs), (a) prior to the Effective Date, to review the

Final Plans and Specifications and the Cost Breakdown Update, in accordance with the Option Agreement, and (b) on and after the Effective Date, to review and monitor the performance of the Renovation Work, and to administer the requirements pertaining to Qualified Hard Costs and the Required Hard Cost Amount. County shall be advised of, and the County Construction Representative(s) and an employee of the Department shall be permitted to attend, all regularly scheduled, on-site construction meetings to be attended by Lessee's general contractor. For such regularly scheduled meetings, Lessee shall provide at least forty-eight (48) hours' prior notice (which notice may be by telephone or email) of the date, time and place of such regularly scheduled meeting, to the persons designated by Director from time to time to represent County at such regularly-scheduled meetings. In addition to the foregoing, the County Construction Representative(s) and the designated Department employee shall be allowed to review all reports provided by the general contractor to Lessee, including construction status reports and budget revisions. During the construction of the Renovation Work, Lessee shall provide to the County Construction Representative a quarterly Cost Breakdown Update, commencing on the first (1st) day of the fourth (4th) calendar month following commencement of construction of the Renovation Work.

6. CONDEMNATION.

6.1 Definitions.

6.1.1 Condemnation. "**Condemnation**" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2 Date of Taking. "**Date of Taking**" means the earliest of (a) the date that the Condemnor has the right of occupancy pursuant to an order for possession issued by a court asserting jurisdiction over the Premises; (b) the date that the final order of Condemnation is issued in the event of a transfer by power of eminent domain; or (c) title is transferred to any Condemnor through voluntary sale or transfer, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.3 Award. "**Award**" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

6.1.4 Condemnor. "**Condemnor**" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties' Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any Condemnation of all or any part of the Premises, any Improvements on the Premises or any interest in this Lease by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Premises are rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Premises shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction, Lessee's business on the Premises could not be operated at a commercially reasonable economic level taking into consideration the amount of funds, if any, in excess of the Award, necessary to continue such operation. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the Date of Taking. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease's continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5, below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such Condemnation shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Premises as nearly as possible to its value, condition and character immediately prior to such Condemnation, taking into account, however, any necessary reduction in size or other change resulting from the Condemnation; provided, however, that in case of a Condemnation for temporary use, Lessee shall not be required to effect restoration until such Condemnation is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Premises not so taken (a "**Partial Taking**"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date, as described in Subsection 4.3 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Rent paid by Lessee to County prior to the Date of Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Premises which remains after the Partial Taking bears to the fair market value of the entire Premises immediately prior to the Partial Taking. If the parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be settled through arbitration in the manner set forth in Article 16 hereof. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "**Income Approach**"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waiver of Code of Civil Procedure Section 1265.130. Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a Partial Taking of the Premises.

6.7 Payment of Award. Awards and other payments on account of a Condemnation, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

6.7.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Condemnation, other than a total Condemnation or a Partial Taking which results in termination hereof or a taking for temporary use, shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in monthly installments equal to the sum set forth in Lessee's written request for payment submitted to County together with supporting invoices and documentation demonstrating that the requested sums are for payments to contractors, consultants, architects, engineers, counsel, or materialmen engaged in the restoration of the Premises and any Improvements. Such requested sums shall be paid by County to Lessee or its designee(s) within thirty (30) days after County has received such request in writing reasonably supported by accompanying invoices and documentation. In the event that County disputes any sum requested by Lessee pursuant to the preceding sentence, County shall promptly pay the undisputed portion and provide Lessee with a written notice detailing the reasons for County's dispute. Thereafter, Director and Lessee shall promptly meet and negotiate in good faith to resolve any dispute; provided, however, that any dispute not resolved within thirty (30) days after Lessee has received notice from County of its dispute shall be submitted to arbitration pursuant to Article 16. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (1) the then value of County's interest in the Premises (including its interest hereunder) and (2) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the Condemnation pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments.

In case of a Condemnation described in this Subsection 6.7.1, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

6.7.2 Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Section 6.7.1, above.

6.7.3 Total Condemnation and Partial Taking with Termination. Net Awards and Payments received on account of a total Condemnation or a Partial Taking which results in the termination of this Lease shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of (a) the sum of (1) the present value of all Annual Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of

the portion of the Premises (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term and (2) the present value of the portion of the Premises (with the Improvements thereon) subject to the taking from and after the expiration of the Term or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Premises (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term.

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Premises plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Premises, determined as of the date of such taking, less payments made under paragraph Second above. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4.

Fourth: The balance shall be paid to County.

If County is the condemning authority in connection with a total Condemnation or a Partial Taking that results in the termination of the Lease, and such total Condemnation or Partial Taking pertains to only Lessee's interest, then Lessee shall be entitled to the entire amount of any Net Awards and Payments.

In the event of a total Condemnation or a Partial Taking that results in the termination of this Lease, County shall promptly pay or authorize the payment of, as applicable, to Lessee all sums held by County or third parties as the Reserve Fund, the Security Deposit, and, upon completion by Lessee of its obligations under Section 2.3 of this Lease with respect to any portion of the Premises not taken in the Condemnation, the remaining Demolition Security.

6.7.4 Disputes. Any dispute under Article 6 concerning the fair market value of the Premises or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the parties, shall be submitted to arbitration pursuant to Article 16 of this Lease. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

7. SECURITY DEPOSIT.

7.1 Amount and Use. Lessee shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in an amount equal to the sum of three (3) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted to reflect any change in the Monthly Minimum Rent during the Term of this Lease.

The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, and (b) any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. Lessee shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer. As long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 13.1.2, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

## 8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards and members thereof, and officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an

attorney selected by Lessee and reasonably satisfactory to County, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County or its respective Boards and members thereof, officers, agents, employees or volunteers, or for other claims or caused of action brought against County or its respective Boards, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation, or (d) the performance of the Renovation Work or any Alterations. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease.

9. INSURANCE.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A: VII as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency (unless otherwise approved by Director, which approval shall not be unreasonably withheld).

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

| | |
|---|---|
| General Aggregate: | $20,000,000 |
| Products/Completed Operations Aggregate: | $20,000,000 |
| Personal and Advertising Injury: | $10,000,000 |
| Each Occurrence: | $10,000,000 |

Lessee may satisfy the above coverage limits with a combination of primary coverage ("**Primary Coverage**") and excess liability coverage ("**Umbrella Coverage**") (as long as (a) Lessee's Primary Coverage is at least One Million Dollars ($1,000,000) per occurrence, Two Million Dollars ($2,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Subsection 9.1.1.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than One Million Dollars ($1,000,000) of Primary Coverage and One Million Dollars ($1,000,000) of Umbrella Coverage, for each accident and providing coverage for all "owned", "leased," "hired" and "non-owned" vehicles, or coverage for "any auto." During any period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than Three Million Dollars ($3,000,000) for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

| | |
|---|---|
| Each Accident: | $1,000,000 |
| Disease - policy limit: | $1,000,000 |
| Disease - each employee: | $1,000,000 |

9.1.4 Commercial Property insurance covering damage to the Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than $250,000 or 5% of the property value, whichever is less, and also including business interruption, including loss of rent equal to twenty four (24) months of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Premises and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Premises or all of the existing Improvements are being demolished in connection with the construction of Renovation Work, the obligation to provide insurance under this Subsection 9.1.4 shall not be applicable so long as the insurance coverage described in Subsection 9.1.5 below is carried.

9.1.5 For construction projects on the Premises, including the Renovation Work, any other Alterations or restoration of the Improvements, Lessee or Lessee's contractor or subcontractors will provide the following insurance (Director reserves the right to determine the coverage and coverage limit required on a project by project basis.):

9.1.5.1 Builder's Risk Course of Construction to insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) or equivalent. This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils). Such insurance shall be extended to include boiler and machinery coverage for air conditioning, heating and other equipment during testing.

This insurance shall be written on a completed-value basis and cover the entire value of the construction project, against loss or damage until completion and acceptance by Lessee.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the Renovation Work or other Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (a) in the case of the Renovation Work, three (3) years after the date the Renovation Work is completed and accepted by Lessee, or (b) in the case of Alterations after the completion of the Renovation Work, such period after the date such Alterations are completed and accepted by Lessee as reasonably determined by Director, but not to exceed three (3) years after such completion and acceptance.

9.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as reasonably required by Director for the Renovation Work or other Alterations. Such insurance shall cover liability arising out of Lessee's and Lessee's contractors' use of autos, including coverage for all "owned," "leased," "hired" and "non-owned" automobiles, or coverage for "any auto."

9.1.5.4 Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of licensed professionals (i.e. architects, engineers, surveyors, etc.) rendering services in connection with the design or construction of the Renovation Work or subsequent Alterations. This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this Subsection 9.1.5.4 shall be (a) Three Million Dollars ($3,000,000) with respect to the prime architect for the Renovation Work (or such lesser amount as required by Director for the prime architect in connection with any subsequent Alterations), and (b) One Million Dollars ($1,000,000) with respect to each other architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Renovation Work or subsequent Alterations, provided that Director shall have the discretion to reduce the coverage limits under this clause (b) if appropriate in the judgment of Director based on the nature and scope of the services being provided.

9.1.5.5 Worker's Compensation and Employer's Liability Insurance or qualified self-insurance satisfying statutory requirements. Such coverage shall provide Employer's Liability coverage with limits of not less than One Million Dollars ($1,000,000) per accident and shall be endorsed to wavier subrogation against County for injury to Lessee's or Lessee's contractor's employees. If Lessee or Lessee's contractor will provide leased employees, is an employee leasing or temporary staffing firm or is a professional employer organization, such coverage shall also include an Alternate Employer endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming County as the Alternate Employer, and the endorsement form shall be modified to provide that County will

receive not less than thirty (30) days advance written notice of cancellation of this coverage provision.

9.1.5.6 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants, and if such insurance is available. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as reasonably required by Director for the Renovation Work or other Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars ($5,000,000) per occurrence and an annual aggregate of Ten Million Dollars ($10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Subsections 9.1.4 and 9.1.5.1 shall name County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 12.8, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice. In the event of a loss, except as expressly provided to the contrary in this Lease, Lessee shall be obligated to use the insurance proceeds received by Lessee to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 10 hereof. Subject to Section 12.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Subsection 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Renovation Work or other Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding $25,000 or such other commercially reasonable amount as approved by the Director; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance

shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to County a certificate of insurance.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

Lessee's policies shall not obligate County to pay any portion of any Lessee deductible or self-insured retention. County retains the right to required Lessee to reduce or eliminate policy deductibles and self-insured retentions as respects County, or to provide a bond guaranteeing Lessee's payment of all deductibles and self-insured retentions, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

9.4 Additional Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(a) that County, its special districts, elected officials, officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(b) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(c) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(e) to the extent of the indemnification obligations of Lessee in favor of any additional insureds, the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(f) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(g) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Subsections 9.1.1, 9.1.2 and 9.1.3 shall be subject to adjustment as of each fifth (5th) anniversary of the Effective Date (each, an "**Insurance Renegotiation Date**"), consistent with the amounts of such liability insurance then being required by County under similar ground leases for comparable developments and uses in the Marina del Rey Small Craft Harbor, including any adjustments then being approved by County (if any), based on differences in size, scope, uses or risks between the Premises and such other developments. If County and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Premises which involves injury or property damage over Fifty Thousand Dollars ($50,000.00) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. Such notification shall be made in writing within 72 hours after Lessee first becomes aware of the claim or threatened claim.

## 10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon (excluding the Excluded

Conditions), in conformance with the Minimum Standards regarding the use and occupancy of residential projects in Marina del Rey (such as the Premises) as revised from time to time by County in a manner consistent with commercially reasonable maintenance standards applicable to other comparable residential projects (as applicable) in Marina del Rey (the "**Maintenance Standard**"). Any dispute as to whether revisions to the Maintenance Standard adopted by the County from time to time pursuant to the immediately preceding sentence is commercially reasonable shall be submitted to arbitration pursuant to Article 16 of this Lease. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises (including the Look-Outs, following the recordation of the Look-Out Amendment and the Promenade) and all equipment, physical structures or other Improvements of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10 (except that during periods of construction of the Renovation Work or other Alterations or reconstruction of damaged or destroyed Improvements, Lessee's obligations as to the areas of the Premises under construction shall be controlled by Article 5 of this Lease). Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Director to Lessee incident to the provisions of this Article 10. Lessee shall maintain all Improvements on the Premises (including the Look-Outs, following the recordation of the Look-Out Amendment, and the Promenade, but excluding the Excluded Conditions) in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction of Director and in compliance with all Applicable Laws. Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Premises and the building footprints on the Premises as reasonably satisfactory to Director. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Premises free and clear of rubbish and litter. County in its proprietary capacity shall have the right with reasonable notice to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Premises. The exclusion of the Excluded Conditions from Lessee's maintenance obligations under this Section 10.1 shall not relieve Lessee from the obligation to repair and restore any damage to the Excluded Conditions caused by Lessee, its agents, employees, Sublessees or contractors, or by Improvements constructed by or on behalf of Lessee, and Lessee hereby agrees to perform such repair or restoration work at Lessee's sole cost and expense.

10.2 Intentionally Omitted.

10.3 Water Quality Management Program and Tree Trimming. During the remaining Term of the Lease, Lessee shall comply with any reasonable water quality management requirements hereafter adopted by County and imposed on a non-discriminatory basis to other similar operations in Marina del Rey. During the remaining Term of the Lease, Lessee shall cause all trees located on the Premises to be trimmed and otherwise maintained in compliance with Policy No. 23 and Policy No. 34 of the Marina del Rey Land Use Plan dated February 8, 2012, as such policies are updated, modified or replaced from time to time by County.

10.4 Maintenance Deficiencies. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Sections 10.1 through 10.3 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's written deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.4), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars ($100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured. Notwithstanding the foregoing, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

For purposes of determining the number of items of deficiency set forth in a deficiency notice received from County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.4 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to Director within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with Director, then Director shall exercise Director's reasonable discretion in considering Lessee's contest. If Lessee's contest is made on a reasonable and good faith basis, then, in cases that do not include health, safety or any emergency condition, the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and continuing until Director notifies Lessee in writing that Director accepts or denies Lessee's contest. If Director denies Lessee's contest, Lessee may request arbitration pursuant to Article 16. The One Hundred Dollars ($100) per diem amount set forth in this Section 10.4 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.4 within fifteen (15) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.5 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Premises or any Improvements located thereon (other than the Excluded

Conditions, except to the extent damage thereto is caused by the Lessee, its agents, employees, Sublessees or contractors, or by Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.5, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.5, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises where all or substantially all of the Improvements on the Premises (other than the Excluded Conditions) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "**Uninsured Loss**"), and where all of the following occur:

10.5.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification under penalty of perjury that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this Subsection 10.5.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.5.2 No more than sixty (60) days following the giving of the notice required by Subsection 10.5.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris and other rubble from the Premises; secure the Premises against trespassers; and, at County's election, remove all remaining Improvements on the Premises.

10.5.3 No more than sixty (60) days following the giving of the notice required under Subsection 10.5.1, Lessee delivers to County a quitclaim deed to the Premises in recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.5.4 Within fifteen (15) days following County's receipt of the notice referred to in Subsection 10.5.1, County has not received both (a) written notice from any Encumbrance Holder objecting to such termination and (b) an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.6 <u>No Option to Terminate for Insured Casualty</u>. Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the

Premises where the damage or destruction results from a cause required to be insured against by this Lease.

10.7 No County Obligation to Make Repairs County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises.

10.8 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, Director may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time as established by Director, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 13.5.

10.9 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises. Any entry by County onto the Premises pursuant to this Section 10.9, and any entry onto the Premises to perform work on the Seawall pursuant to Section 10.7 above, shall be made in accordance with the following requirements: (i) prior to entry onto the Premises County shall cause each of its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Premises, which insurance coverage shall be consistent with County's insurance requirements generally applicable to County contractors, and shall name Lessee and any then-current Encumbrance Holder as an additional insured; (ii) County's contractors shall comply with industry standard safety requirements; and (iii) County shall repair, or cause its contractors to repair, any damage to the Premises caused by the activities of County and/or it contractors on the Premises pursuant to this Section 10.9 or Section 10.7.

10.10 Notice of Damage. Lessee shall give prompt notice to County of any fire or damage affecting the Premises or the Improvements from any cause whatsoever.

10.11 Waiver of Civil Code Sections. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

## 11. ASSIGNMENT AND SUBLEASE.

### 11.1 Subleases.

11.1.1 Definition. The term "**Sublease**" shall mean any lease, license, permit, concession or other interest in the Premises or the Improvements, or a right to use the Premises or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises or all or substantially all of any Improvement is sometimes

referred to in this Lease as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Lease as a "**Major Sublessee**".

11.1.2 Approval Required. At least thirty (30) days prior to the proposed effective date of (a) any Sublease that is not a Major Sublease or an Approved Apartment Lease (as defined below), or (b) any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or assignment or amendment thereof), to Director for approval, which approval shall not be unreasonably withheld or conditioned. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Premises subject to the Sublease. If Director disapproves a Sublease, Director shall notify Lessee in writing of the reason or reasons for such disapproval.

Notwithstanding any contrary provision of this Article 11, Lessee shall not be required to obtain County's approval of any Sublease of an individual apartment unit in the ordinary course (but not the master lease of multiple units) to a person or persons who will physically occupy the subleased unit, as long as such Sublease is in the form of the standard residential apartment lease hereafter submitted to and approved by County and the term of such Sublease does not exceed twelve (12) months (each, an "**Approved Apartment Lease**"). The terms and provisions of Sections 11.2 and 11.3 of this Lease shall not be applicable to Approved Apartment Leases. Upon request by County, Lessee shall furnish County with a current rent roll respecting the Approved Apartment Leases and a copy of all of such Approved Apartment Leases.

11.1.3 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable owner or manager of residential facilities such as exist on the Premises. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than forty-five (45) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 11.2.

11.2 Approval of Assignments and Major Subleases. Except as specifically provided in this Article 11, Lessee shall not, without the prior written consent of County, which shall be based upon factors described in Exhibit C hereto, which is incorporated herein by this reference ("**Assignment Standards**"), and which shall be applied in a commercially reasonable manner, either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege therein (excluding an Approved Apartment Lease, but including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or enter into a Major Sublease affecting the Premises, or license the use of all or substantially all of the Premises. There shall be no partial assignment of this Lease or Lessee's right or obligations hereunder. Notwithstanding the foregoing, Lessee shall have the right, without the prior approval of County, to retain an affiliate of Lessee as the

property manager for the Premises so long as such affiliate has adequate experience in the operation of residential facilities consistent with the Maintenance Standard. Any Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee (as opposed to an assignment of the Lease) shall not require County consent if it is an Excluded Transfer. If such Change of Ownership with respect to beneficial ownership interests is not an Excluded Transfer, then it shall require County's consent as if it constituted an assignment of Lessee's interest in this Lease. For avoidance of doubt, any actual assignment of Lessee's interest in this Lease shall require County consent even if it is an Excluded Transfer; provided, however, that in the case of an assignment of the Lessee's interest in the Lease that constitutes an Excluded Transfer, Director shall have the authority to grant consent on behalf of County. In addition, for purposes of this provision, the following (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity which owns, or is an entity which owns, an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County's consent. These same limitations and approval requirements as to Lessee's interest under the Lease shall also apply with respect to the Sublessee's interest under a Major Sublease.

11.2.1 County's Use of Discretion and Limitation on Permissible Assignees. In exercising its discretion to approve assignments as provided in this Section 11.2, County shall take into account the Assignment Standards and, if County determines that such Assignment Standards are satisfied, County shall not unreasonably withhold, condition or delay its consent to any proposed assignment. If County withholds its consent to an assignment or Major Sublease, County shall notify Lessee in writing of the reason or reasons for such disapproval.

11.2.2 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.2.3.1 Prior to entering into any agreement requiring the approval of County pursuant to this Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information reasonably relevant to the proposed assignment, including without limitation any term

sheets, letters of intent, draft Major Subleases, any other documents which set forth any proposed agreement regarding the Premises and the information set forth in Subsection 11.2.3.5. County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County discuss an assignment with any proposed assignee without providing Lessee the right to be present at any such discussion.

11.2.3.2 In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

11.2.3.3 Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 11.

11.2.3.4 Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment. (without any duplication with any Administrative Charge payable under Section 4.6).

11.2.3.5 Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(a) Nature of the Assignee. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder.

(b) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(c) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Premises (unless the assignment is pursuant to a Change of Ownership that is an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial interests in the constituent owners of Lessee, and following such transfer there is no intended change in the financing plan for the operation and improvement of the Premises) and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Premises. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(d) Business Plan. County shall be provided with the proposed assignee's business plan for the Premises (unless the assignment is pursuant to a Change of Ownership that constitutes an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the business plan for the Premises), including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(e) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(f) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(g) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Premises.

(h) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other non-confidential

information which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of $25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.2.3.6 Nondisturbance. At the request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement and a ground lessor's estoppel certificate on commercially reasonable terms in favor of any Major Sublessee.

11.2.3.7 Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as reasonably approved or supplied by County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

11.2.4 County Right to Recapture. If, after the Existing Expiration Date, Lessee proposes to assign its interest in this Lease, proposes to enter into any Major Sublease affecting the Premises or proposes to transfer a Controlling Interest in Lessee, in each case excluding any Excluded Transfer (with any such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire, which notice shall include the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. For purposes hereof, a "**Controlling Interest**" in Lessee shall mean fifty percent (50%) or more of the direct or indirect beneficial interest in Lessee. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided in this Subsection 11.2.4. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, Lessee shall deliver to County an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months. During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. At Lessee's request, any third party granted access to the Premises or Lessee's books and records pursuant to this Subsection 11.2.4 shall be required to execute a right of entry license and confidentiality agreement on commercially reasonable terms. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "**County Option Price**") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent

(7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to cause Lessee to issue the County Option within said thirty (30) day period, or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (a) or (b), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) so long as (1) the actual price for the Proposed Transfer is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee and (2) the transfer is consummated not later than twelve (12) months after the later of (a) or (b). In the event of a proposed Major Sublease, County's election shall pertain to such portion of the Premises subject to the proposed Major Sublease and, in the event that County elects to acquire such portion of Lessee's interest in the Premises, Lessee's Annual Minimum Rent shall be proportionally reduced and Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this Subsection 11.2.4 shall not apply to (I) Financing Events, or (II) those events identified in Subsection 4.6.2 of this Lease.

11.2.5 County Credits Toward Purchase Price. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Net Proceeds Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price and (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any (including a provisional credit in an amount reasonably acceptable to County for any amounts that may arise from an audit by County, but that have not yet been determined as of that date), with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In the case of any unpaid rental amounts that may be found to be owing to County in connection with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

11.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of

Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

11.4 Property Management. Notwithstanding any contrary provision of this Article 11, Lessee shall be permitted to hire one or more management companies of its choosing for property management of the Premises and/or may conduct such property management activities using its own staff. County hereby approves the continued engagement by Lessee of the Lessee-affiliated company that performed the property management services for the Premises immediately prior to the Effective Date or any other future company that is owned or controlled by the owner(s) of such Lessee-affiliated company. Any other management company hired by Lessee to perform property management of the Premises shall at the time of such engagement (a) have at least five (5) years' of experience in the operation and management of at least 2,000 rental apartments, without material violations of law or discrimination, and (b) have a valid license to manage residential dwelling units issued by the California Department of Real Estate (or its successor). Following an assignment of the Lease, the execution of a Major Sublease or a Change of Ownership of the Lessee executing this Lease, to the extent Lessee uses Lessee's own staff for property management of the Premises, Lessee’s own staff at the time of such engagement shall have at least (i) five (5) years' of experience in the operation and management of at least 2,000 rental apartments, without material violations of law or discrimination, and (ii) have a valid license to manage residential dwelling units issued by the California Department of Real Estate (or its successor).

11.5 Transfers Prior to Completion of Renovation Work. Lessee acknowledges that the identity of the entity executing this Lease as of the Effective Date is of material importance to County with respect to the performance of the Renovation Work and the terms and provisions of this Lease that have been negotiated by County and Lessee pertaining to the Renovation Work. Notwithstanding any contrary provision of this Lease, prior to the substantial completion of the Renovation Work, there shall be no assignment of this Lease by Lessee, no Change of Ownership (that is not an Excluded Transfer), and no Sublease of the Premises or any portion thereof (other than an Approved Apartment Lease), without the prior written consent of County in accordance with the terms and provisions of this Article 11; provided, however, that without limitation of the Assignment Standards set forth on Exhibit C County shall have the right to require that the assignee, sublessee and/or holder of management control of such assignee, sublessee or Lessee (in the case of a Change of Ownership) possess, in County’s reasonable judgment, significant experience in the performance of work of a nature and scope commensurate with the Renovation Work.

12. ENCUMBRANCES.

12.1 Financing Events.

12.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a "**Financing Event**" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of Section 12.1.2 below and Sections 4.6 through 4.8 above, a "**Financing Event**" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease; and (ii) an "**Encumbrance**" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (A) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants) or (B) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "**Encumbrance Holder**") as security for a loan. The term "**Encumbrance Holder**" shall also be deemed to include any and all affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease. The term "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 County Approval Required. Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Event(s). Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Renovation Work) to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Renovation Work) after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee), Director shall within thirty (30) days of such request deliver to

Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this Subsection 12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

12.2 Consent Requirements In The Event of a Foreclosure Transfer.

12.2.1 Definitions. As used herein, a "**Foreclosure Transfer**" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof. A "**Foreclosure Transferee**" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "**Equity Foreclosure Transferee**" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

12.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer.

12.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

12.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity

fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "**Institutional Lender**"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with Subsection 12.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

12.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in Subsection 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults), subject to possible release of liability upon a subsequent transfer pursuant to Section 11.3 above.

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, (ii) is a non-monetary default that can only be cured by a prior lessee, (iii) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (iv) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "**Excluded Defaults**"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to Subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Subsection 12.3.3 shall also inure to the benefit of the Lessee.

12.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Net Proceeds Share, (ii) any acceleration of any financial obligation of Lessee under this Lease, (iii) any recapture right on the part of County, or (iv) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 12.2.3, shall be deemed to be excluded from the definition of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure

Transferee is an Encumbrance Holder (as more fully explained in Subsection 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction and Renovation Work described in Sections 5.1 above (other than any obligations to make deposits into the Reserve Fund) shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this Subsection 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 No Subordination. County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with Subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

12.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

12.6.1 Right to Cure. Each Encumbrance Holder and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, and in accordance with the provisions of this Article 12, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

12.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 13.5 or imposing the daily payment set forth in Section 10.4), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Major Sublessee and Encumbrance Holder which has notified Director in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the Lender's cure rights set forth in this Section 12.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.4.

12.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after its receipt of the aforesaid notice of default. If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "**initial cure period**"), provided, however, 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 Encumbrance Holder or Major Sublessee 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 Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial

cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in subsection (1) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

12.7 New Lease.

12.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute

and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in Subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.7.2 Priority of New Lease. The new lease made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee interest in the Premises, and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.8 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the Improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (ii) any funds required to be held in the Reserve Fund (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

12.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

12.12 Rights of Encumbrance Holders With Respect to Reversion. As used in this Section 12.12, the "**Reversion**" refers to the amendment of this Lease described in Section 5.1 whereby the terms and conditions of this Lease are automatically amended in accordance with the Reversion Amendment described in such Section 5.1, and the "**Reversion Condition**" refers to the condition that causes the Reversion, namely the failure of Lessee to comply with its obligations under Section 5.1 to commence and complete the Renovation Work by the applicable dates set forth in Section 5.1 (as extended by Section 5.6, if applicable). Notwithstanding anything in Section 5.1 of this Lease to the contrary, so long as an Encumbrance Holder exists with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee, the Reversion shall not occur unless and until (i) the County has given written notice of the occurrence of the Reversion Condition to each such Encumbrance Holder in accordance with Subsection 12.6.2 (which notice shall describe the Reversion Condition that has occurred, and shall include the following statement in all capital and bold letters: "**YOUR FAILURE TO COMMENCE A CURE OF THE DEFAULT DESCRIBE IN THIS NOTICE WITHIN 60 DAYS OF YOUR RECEIPT OF THIS NOTICE, AND TO THEREAFTER PURSUE SUCH CURE TO COMPLETION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION 12.6.3(b) OF THE LEASE APPLICABLE TO NONMONETARY DEFAULTS, WILL RESULT IN AN AUTOMATIC AMENDMENT AND REVERSION OF THE TERMS OF THE LEASE IN ACCORDANCE WITH THE REVERSION AMENDMENT DESCRIBED IN SECTION 5.1 OF THE LEASE**"), and (ii) no such Encumbrance Holder commences a cure of the default within 60 days of its receipt of such notice and thereafter pursues such cure to completion in accordance with the provisions of Subsection 12.6.3(b) of the Lease applicable to nonmonetary defaults. Further, in the event that a Reversion occurs, such Reversion shall be subject to the "new lease" provisions of Section 12.7 of the Lease (and in such event the Reversion shall be deemed a "termination" of this Lease solely for purposes of Section 12.7 and the "new lease" to be entered into pursuant to Section 12.7 shall mean a new lease on the same terms as this Lease, not the Existing Lease).

13. DEFAULT.

13.1 Events of Default. The following are deemed to be "**Events of Default**" hereunder:

13.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, deposits to the Reserve Fund), within ten (10) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, within such ten (10) day period.

13.1.2 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Lease if not cured within ten (10) days after written notice of such failure.

13.1.3 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee's failure to perform from Director; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time. Notwithstanding any contrary provision of this Section 13.1.3, the proviso set forth in the immediately preceding sentence providing for an extension of the cure period beyond thirty five (35) days shall not be applicable to any failure of Lessee to comply with the Required Construction Commencement Date or Required Construction Completion Date set forth in Section 5.1 (as such dates may extended pursuant to Sections 5.6, and subject to Section 12.12).

13.1.4 Non-Use of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days after written notice by County, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease.

13.1.5 Default Under Affordable Housing Agreement. The failure of Lessee to keep, perform, and observe any and all promises, covenants, conditions and agreements set forth in the Affordable Housing Agreement, within the applicable cure period set forth therein.

Any notice required to be given by County pursuant to Subsections 13.1.1 through and including 13.1.5 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Except with respect to breaches or defaults with respect to the payment of money, Lessee shall not be considered in default as to any provision of this Lease (and no late fees or interest will be incurred) to the extent such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body with jurisdiction, or any other circumstances which are physically or legally impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, County shall have in addition to any other remedies in law or equity and the remedies in Subsection 13.7 below, the following remedies (and all such remedies of County shall be cumulative):

13.3.1 Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all of Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall

surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this Subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in Subsection 13.4.3, or from Lessee's obligation to remove Improvements at County's election in accordance with Article 2. County agrees to use reasonable efforts to mitigate damages, and shall permit such access to the Premises as is reasonably necessary to permit Lessee to comply with its removal obligations.

13.3.2 Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Subsection 13.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 13.2, hereof. County agrees to use reasonable efforts to mitigate damages.

13.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section, County shall be entitled to recover from Lessee as damages:

13.4.1 Unpaid Rent. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

13.4.2 Post-Termination Rent. The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned under this Lease until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; and

13.4.3 Post Award Rent. The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and

13.4.4 Other Amounts. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Shares and Net Refinancing Proceeds.

13.4.5 Interest Rate. The "worth at the time of award" of the amounts referred to in Subsections 13.4.1 and 13.4.2 is computed by allowing interest at the rate specified in this Lease, or if no such rate is specified, the lawful rate. The " worth at the time of award" of the amounts referred to in Subsection 3.4.3 is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

13.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (1) twice the amount expended by County to cure such default and (2) the amount expended by County to cure such default, plus one thousand dollars ($1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days' notice to any person having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof.

13.7 Affordable Unit Default.

13.7.1 Affordable Unit Default. On or before the date that is sixty (60) days prior to the Required Construction Completion Date (as such date may be extended pursuant to the provisions of this Lease), Lessee shall provide to County a detailed breakdown of the number of Affordable Units then (a) leased to Very Low Income Households (as defined in the Affordable Housing Agreement), or (b) set aside for leasing to Very Low Income Households. In the event Lessee fails to fully complete and lease all 196 Affordable Units to Very Low Income Households on or before the Required Construction Completion Date, as such date may be extended pursuant to the provisions of this Lease (the "**Affordable Unit Default**"), then (i) within five (5) days following the Required Construction Completion Date, as so extended, Lessee shall identify to County in writing and set aside for exclusive rental to Very Low Income

Households a number of Affordable Units (of the types required under the Affordable Housing Agreement) equal to the difference between 196 and the number of Affordable Units completed and leased to Very Low Income Households as of the Required Construction Completion Date, as so extended, and shall thereafter diligently proceed to complete and lease such set-aside Affordable Units to Very Low Income Households; and (ii) commencing on the Required Construction Completion Date, as so extended, Lessee shall pay to County the sum of Two Hundred Dollars ($200.00) per day for each uncompleted and unleased Affordable Unit, with a minimum payment of One Thousand Dollars ($1,000.00) per day, for each day after the Required Construction Completion Date, as so extended, that all 196 Affordable Units are not fully complete and leased, as liquidated damages for the Affordable Unit Default. In this regard, County and Lessee acknowledge and agree that (y) County's monetary damages in the event of Lessee's Affordable Unit Default are difficult, if not impossible, to determine, and the above liquidated damages are a fair estimate of those damages which has been agreed to in an effort to make those damages certain, and (z) the payment of such liquidated damages is not intended as a forfeiture or penalty but is intended to constitute liquidated damages to County pursuant to California Civil Code Section 1671. The liquidated damages payable under this Subsection 13.7.1 are solely for the Affordable Unit Default, and the payment thereof shall not excuse Lessee from any other monetary or non-monetary obligations hereunder (including without limitation the payment of Annual Minimum Rent and Percentage Rent).

13.7.2 Limited Forbearance During Forbearance Period. So long as Lessee timely makes the liquidated damage payments set forth in Subsection 13.7.1, during the period commencing on the Required Construction Completion Date, as it may be extended pursuant to the provisions of this Lease, and ending on the second (2nd) anniversary thereof (the "**Forbearance Period**"), County shall forebear from the exercise of its right to terminate this Lease under Section 13.3 hereof and seek monetary damages against Lessee under Section 13.4 hereof because of the Affordable Unit Default. During the Forbearance Period, County shall be entitled to pursue all of its rights and remedies available under this Lease or at law or equity for any Event of Default other than the Affordable Unit Default. If the Affordable Unit Default shall be continuing upon the expiration of the Forbearance Period, County may exercise any and all of its rights and remedies under this Lease for the Affordable Unit Default or any other Event of Default, including without limitation termination of this Lease under Section 13.3 and suit for monetary damages under Section 13.4, as well as collection of any unpaid liquidated damages due under Section 13.7.1.

## 14. ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or a Sublessee's, as applicable) other business operations, if any. With respect to the

calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize either: (i) the accrual method of accounting, or (ii) a modified accrual method of accounting, modified in that (A) delinquent rents due from residential tenants who are individual persons (but not corporate tenants) are not accrued, (B) expenses are accrued on an approximate basis (i.e., materiality) each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, and (C) depreciation is calculated on a tax basis rather than a GAAP basis.

14.2 Cash Registers. To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to Director in advance of installation for his approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's Sublessees (including licensees, permittees, concessionaires and any other occupants of any portion of the Premises) keep records sufficient to permit County and County's auditors to determine the proper levels of Percentage Rent and other sums due under this Lease.

Notwithstanding any provision to the contrary in this Lease, this Section 14.2 shall apply only to Sublessees of that portion of the Premises known as the Town Center who enter into an extension of a Sublease in effect on the Effective Date or a enter into a new Sublease after the Effective Date, and any provision of the Existing Lease addressing the subject matter of this Section 14.2 shall continue to apply to Sublessees under a Sublease in effect on the Effective Date until such Sublesssee enters into an extension of the existing Sublease or a new Sublease.

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

14.4 Availability of Records for Inspector's Audit. Books of account and records for the then current and five (5) prior Accounting Years as hereinabove required shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities designated by County shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the

terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1 Entry by County. Upon at least one (1) business day advance notice, County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 Cost of Audit. In the event that, for any reason, Lessee does not make available to County (or its authorized representatives or agents) Lessee's (or its Sublessee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5. Except as provided in this Section 14.5, Lessee shall not be responsible for the expenses incurred by County in conducting any such audit.

14.6 Additional Accounting Methods. Upon written notice from County, County may require the installation of any additional accounting methods or machines which are typically used by major residential management companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

14.7 Accounting Year. The term "**Accounting Year**" as used herein shall mean each calendar year during the Term.

14.8 Annual Financial Statements.

14.8.1 Generally. Within six (6) months after the end of each Accounting Year, Lessee shall furnish to County the following financial statements: (a) a balance sheet of Lessee as of the end of such Accounting Year, certified by Lessee's chief financial officer as accurately reflecting Lessee's assets and liabilities, which balance sheet may be unaudited, provided that at Count's request not more often than once every other Accounting Year, such balance sheet shall be audited by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County (a "**Qualified CPA**");and (b) a profit and loss statement of Lessee for such Accounting Year, audited and certified by a Qualified CPA, and (c) a Gross Receipts and Percentage Rent statement for such Accounting Year, audited and certified by a Qualified CPA, which statement shall include a certifications and unqualified opinion such Qualified CPA (1) concerning Lessee's Gross Receipts (including a breakdown by category), and (2) that the correct amount of Percentage Rent has been paid to County in connection with such Gross Receipts. All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises,

notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.8.2 Additional Reporting Requirements. In addition, Lessee shall promptly deliver to County all information delivered by Lessee to any Encumbrance Holder, of any level of seniority, by the same means, at the same time and in the same form as delivered to such Encumbrance Holder, with respect to: (i) the financial affairs of Lessee and each guarantor of Lessee's obligations, including without limitation all annual financial statements of Lessee and such guarantor (including balance sheets, income statements, statements of operations, and statements of cash flow), all income tax returns of Lessee and such guarantor, and all operating statements for the Premises (showing net operating income and net cash flow results), and (ii) the construction and construction-related activities on the Premises, including without limitation all construction budgets, construction schedules, construction status reports, schedules of estimated advances, cash flow reports and comparisons of actual costs versus budgeted costs for each construction or renovation project.

14.9 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records. County shall provide written notice to Lessee of the failure of any Sublessee or other person or entity to comply with this Section after County's discovery of such failure, and provide Lessee with the right to cure any failure to so comply by payment to County of amounts which may be owing to County, as shown on an audit conducted by County, or on an audit supplied by Lessee or such Sublessee or other person or entity, and accepted by County, or as otherwise determined pursuant to Section 14.10. In such event County shall permit Lessee to subrogate to any right of County to enforce this provision against such Sublessee or other person or entity, to the extent Lessee does not have a direct right of enforcement against such Sublessee or other person or entity.

14.10 Inadequacy of Records. In the event that Lessee or its Sublessees (including licensees or concessionaires) fail to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as reasonably determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

15. MISCELLANEOUS.

15.1 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

15.2 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

15.3 County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it.

15.4 County Disclosure and Lessee's Waiver.

15.4.1 Disclosures and Waiver.

15.4.1.1 "AS IS". Lessee acknowledges that it is currently in possession of the Premises and that Lessee or its predecessors-in-interest as lessee under the Existing Lease have continuously occupied and/or managed and operated the Premises since 1967. Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

15.4.1.2 Lessee acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Lessee agrees that, it will make no demands upon County for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.4.1.3 Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, including without limitation any existence of Hazardous Materials in, on or under the Premises or any other environmental condition affecting the Premises, regardless of whether or not said conditions were known at the time of the execution of this instrument. The waiver and release set forth in this Subsection 15.4.1.3 (i) shall not apply to the Excluded Conditions, and (ii) shall not alter the parties' rights and obligations under the Existing Lease with respect to any abandoned wells or other environmental conditions existing on the Premises as of the Effective Date.

15.4.1.4 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of Subsection 15.4.1.3 above.

_____
Lessee's Initials

15.4.2 Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

15.5 Holding Over. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred twenty-five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal, except as expressly provided in Subsection 2.3.2 with respect to any Post Term Removal Period.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding ground lessee (or subtenant) arising from such failure to surrender, and any lost profits to County resulting therefrom, provided that County notifies Lessee that Lessee's failure to timely surrender the Premises will cause County to incur such lost profits.

15.6 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease,

nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.7 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease.

15.8 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Premises in the case of an Event of Default, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee.

Except to the extent arising out of or caused by the gross negligence or willful misconduct of County, Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises in the case of an Event of Default, including the removal of persons and property and storage of such property by County and its agents.

15.9 Place of Payment and Filing. All rentals shall be paid to and all statements and reports herein required and other items deliverable to County hereunder shall be filed with or delivered to the Department. Checks, drafts, letters of credit and money orders shall be made payable to the County of Los Angeles.

15.10 Service of Written Notice or Process. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.10. If Lessee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the date of delivery or attempted delivery in the case of registered or certified mail, as evidenced by the mail receipt (but in any case not later than the date of actual receipt).

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

| | |
|---|---|
| COUNTY: | Director<br>Department of Beaches and Harbors<br>Los Angeles County<br>13837 Fiji Way<br>Marina del Rey, California 90292<br>Phone: 310/305-9522<br>Fax: 310/821-6345 |
| <u>With a Copy to</u>: | Office of County Counsel<br>Los Angeles County<br>500 West Temple Street<br>Los Angeles, California 90012<br>Attn: County Counsel<br>Phone: 213/974-1801<br>Fax: 213/617-7182 |
| LESSEE: | Marina Admiralty Company<br>c/o E&S Ring Management Company |

6601 Center Drive West, Suite 600
Los Angeles, California 90045
Attn: _____
Phone: (31) 337-5400
Fax: _____

With a Copy to: Kane, Ballmer & Berkman
515 South Figueroa Street, Suite 780
Los Angeles, California 90071 3301
Attention: Glenn F. Wasserman, Esq.
Phone: 213/617-0480
Fax: 213/625-0931

Either party shall have the right to change its notice address by written notice to the other party of such change in accordance with the provisions of this Section 15.10.

15.11 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable within five (5) days after Lessee's receipt of written demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

15.12 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

15.13 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation reasonable attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease. Subject to Section 16.13, no amendment shall be binding upon an Encumbrance Holder as to which County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Director either (a) approves such request in writing, or

(b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the "**Extended Time**") and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved. If Director disapproves a matter that requires its approval under this Lease, then Director shall notify Lessee in writing of the reason or reasons for such disapproval.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Director determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or County's Board of Supervisors, the time period for County performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (i) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (ii) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (iii) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease. Prospective purchasers, Major Sublessees and Encumbrance Holders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

15.20 Look-Outs. County and Lessee acknowledge that certain reconstruction work will be required in connection with the "look-outs" located on County-owned property adjoining the Premises (the "**Look-Out Work**"). Pursuant to that certain Look-Out Agreement entered into

by County and Lessee concurrently herewith (the "**Look-Out Agreement**"), County shall procure all permits relating to the Look-Out Work and will perform the Look-Out Work concurrently with Lessee's work on the Promenade, but Lessee shall pay all hard and soft costs incurred by County in connection with the Look-Out Work. To the extent set forth in the Look-Out Agreement, and to the extent such hard costs qualify as Qualified Hard Costs, the hard costs of the construction of the Look-Out Work shall be included within the Required Construction Hard Cost. Upon completion of the Look-Out Work, County will implement such surveys and make such administrative filings as shall be necessary to adjust the boundary of the Premises to include the Look-Outs and, at such time, County and Lessee shall execute and deliver a recordable amendment to this Lease modifying the legal description of the Premises to include the Look-Outs (the "**Look-Out Amendment**") and shall promptly record the Look-Out Amendment or a memorandum thereof in the Public Records of Los Angeles County. Upon such recordation, the Look-Outs and any additional land added to the Premises by means of the Look-Out Amendment shall be subject to the provisions of this Lease, including without limitation all provisions relating to maintenance and insurance. In addition to the foregoing, and notwithstanding the fact that the Look-Outs shall not be included within the Premises until the recordation of the Look-Out Amendment, Lessee shall maintain the Look-Outs as provided in this Lease prior to the recordation of the Look-Out Amendment and the incorporation of the Look-Outs into the Premises.

15.21 Promenade. The Renovation Work includes the development (or as applicable renovation) by Lessee of a continuous pedestrian walkway circling the entire frontage of the waterside areas of the Premises with new pavers in the existing paved walk, landscaping, lighting, seating, water fountains, fencing, bicycle racks and other improvements (the "**Promenade**") as described in the Renovation Plan and in accordance with the Final Plans and Specifications for such work described in Article 5. County hereby reserves a public easement for access over and use of the Promenade for fire lane uses, pedestrian purposes and such other related uses (including, if approved by County, bicycling, rollerblading and similar activities) as may be established by County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Promenade in accordance with commercially reasonable maintenance and repair standards established by County from time to time. The exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Promenade to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Subsection 5.7.7 of this Lease. At the request of either party, such legal description shall be recorded in the Official Records of Los Angeles County as a supplement to this Lease.

15.22 CASp Disclosure. Pursuant to Section 1938 of the California Civil Code, County hereby advises Lessee that the Premises have not undergone an inspection by a Certified Access Specialist ("**CASp**"). The following statement is hereby included in this Lease:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of

the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

The parties hereby mutually agree that any inspection by a CASp shall be performed at Lessee's sole cost and expense and at a time reasonably satisfactory to County so that County may, at its option, have a representative present during any such inspection. The parties hereby mutually agree that any and all repairs or alterations necessary to correct violations of construction-related accessibility standards within the Premises or the Improvements shall be performed by Lessee at Lessee's sole cost and expense and in accordance with the requirements set forth elsewhere in this Lease. The parties acknowledge and agree that, notwithstanding any presumption set forth in California Civil Code Section 1938, Lessee shall be solely responsible and liable to make any and all repairs or alterations necessary to correct violations of construction-related accessibility standards in any CASp inspection report. Lessee hereby agrees that, to the fullest extent permitted by law, Lessee shall treat any inspection by a CASp and the CASp inspection report as strictly confidential and shall not disclose the content of any such inspection report, except as necessary for Lessee to complete repairs and corrections of violations of construction-related accessibility standards. Lessee acknowledges that Lessee's obligations set forth in this section are in addition to (and not in lieu of) Lessee's obligations regarding compliance with the ADA and construction related accessibility standards set forth elsewhere in this Lease, and nothing in this section shall be construed to limit or diminish Lessee's obligations set forth elsewhere in this Lease.

16. ARBITRATION.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "**Initiating Party**") may initiate the arbitration process by sending written notice ("**Request for Arbitration**") to the other party (the "**Responding Party**") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) days after service of the Request for Arbitration, the Responding Party shall file a "**Response**" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "**Additional Disputes**" he shall follow the format described for the Initiating Party. The Initiating Party will respond within ten (10) days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 Selection of Arbitrator. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 Arbitrator. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 Scope of Arbitration. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 Immunity. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 Section 1282.2. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(2) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a

different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(a) a written "**Statement of Position**," as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(b) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(c) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(3) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("**Reply**"). The Reply shall contain the following information:

(a) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(b) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(c) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such Written Appraisal Evidence); and

(e) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(4) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

16.6 Statements of Position. The Statement of Position to be delivered by Section 16.5 shall comply with the following requirements:

(1) Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

(2) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.

16.7 Written Appraisal Evidence. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof ("**Written Appraisal Evidence**"), unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by Section 4.4.1. Written Appraisal Evidence in connection with disputes arising out of Article 6 of this Lease shall predicate any valuation conclusions contained therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

16.8 Evidence. The provisions of Code of Civil Procedure § 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the requirements of Section 16.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not have been delivered to the other party in accordance with Section 16.5, provided such evidence is otherwise permissible hereunder.

16.9 Discovery. The provisions of Code of Civil Procedure § 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 16.5; provided, however, each party shall have the right, no later than seven (7) days prior to the date first set for the hearing, to conduct a deposition, not to exceed three (3) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of any person identified by the other party as an expert witness pursuant to Sections 16.5 (2)(b) or 16.5 (3)(b).

16.10 Awards of Arbitrators.

16.10.1 Monetary Issues. With respect to monetary disputes (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered separate disputes (a "**Separate Dispute**"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and three Percentage Rent categories to be renegotiated pursuant to Section 4.4 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.6, then there shall be five Separate Disputes and the arbitrator shall be permitted to select the County's Statement of Position with respect to none, some or all of such five Separate Disputes and select the Lessee's Statement of Position, on the balance, if any, of such five Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.10.2 Nonmonetary Issues. With respect to nonmonetary issues and disputes, the arbitrator shall determine the most appropriate resolution of the issue or dispute, taking into account the Statements of Position submitted by the parties, and shall render an award accordingly. Such award shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.11 Powers of Arbitrator. In rendering the award, the arbitrator shall have the power to consult or examine experts or authorities not disclosed by a party pursuant to Section 16.5(2) hereof, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.12 Costs of Arbitration. Lessee and County shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred or approved by the arbitrator. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

16.13 Amendment to Implement Judgment. Within ten (10) days after the issuance of any award by the arbitrator becomes final, if the award involves the adjustment of the rent, insurance levels or other matters under the Lease, then County will draft a proposed amendment to the Lease setting forth the relevant terms of such award and transmit such proposed amendment to Lessee and any Encumbrance Holder(s) as to which County has been provided written notice, for their review. Within ten (10) days after delivery of the proposed amendment to Lessee and such Encumbrance Holder(s) for their review, Lessee or any such Encumbrance Holder(s) shall have the right to notify County in writing of any deficiencies or errors in the proposed amendment. If County does not receive notice of a deficiency or error within such ten (10) day period, then Lessee shall execute the amendment within seven (7) days after the end of such ten (10) day period and such amendment shall be binding on Lessee and all Encumbrance Holders. If the parties (including an Encumbrance Holder) shall, in good faith, disagree upon the form of any such amendment, such disagreement shall be submitted to the arbitrator for resolution. Upon execution by Lessee, any amendment described in this Section 16.13 shall thereafter be executed by County as soon as reasonably practicable.

16.14 Impact of Gross Error Allegations. Where either party has charged the arbitrator with Gross Error:

16.14.1 The award shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("**Disqualification Judgment**"). In the event of a Disqualification Judgment, the arbitration process shall begin over immediately in accordance with this Section 16.14, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

16.14.2 The party alleging Gross Error shall have the burden of proof.

16.14.3 For the purposes of this Section 16.14, the term "**Gross Error**" shall mean that the arbitration award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

16.15 Notice.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO

SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

| _____ | _____ |
|---|---|
| Initials of Lessee | Initials of County |

17. DEFINITION OF TERMS; INTERPRETATION.

17.1 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

17.2 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

17.3 Business Days. For the purposes of this Lease, "**business day**" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "Optional Bank Holidays" as defined in Section 7.1 of the California Civil Code.

17.4 Parties Represented by Consultants, Counsel. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsperson shall not apply to this Lease.

17.5 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.6 Reasonableness Standard. Except where a different standard or an express response period is specifically provided herein, whenever the consent of County or Lessee is required under this Lease, such consent shall not be unreasonably withheld, conditioned or delayed, and whenever this Lease grants County or Lessee the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, County and Lessee shall act reasonably and in good faith. These provisions shall only apply to County acting in its proprietary capacity.

17.7 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Sections 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.8 Memorandum of Lease. The parties hereto shall execute and acknowledge a memorandum of lease extension, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

17.9 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, County and Lessee have entered into this Lease as of the Effective Date.

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

MARINA ADMIRALTY COMPANY, a California limited partnership

By: The Ellis Ring Revocable Trust, first restated May 15, 1995, as amended August 30, 1995, and as further amended December 18, 1995, its general partner

By: _____
Name: Joseph A. Marasco
Title: Trustee

By: Douglas R. Ring, Inc., a California corporation, its general partner

By: _____
Name: Cynthia Miscikowski
Title: President

ATTEST:

CELIA ZAVALA, Acting Executive Officer – Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

MARY C. WICKHAM,
County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

Glaser Weil Fink Jacobs Howard & Shapiro LLP

By: _____

# EXHIBIT A

## LEGAL DESCRIPTION OF PREMISES

Subject to all reservations and easements set forth in the Lease to which this Exhibit A is attached, including, those set forth in Section 3.8 and the public easement reserved by the County in Section 15.21.

# EXHIBIT B

## RENOVATION PLAN

**AS OF THE GRANT OF THE OPTION, THE RENOVATION PLAN SHALL BE THE RENOVATION WORK AS DESCRIBED IN SECTION 5.1 OF THIS LEASE.**

**AS OF THE EXERCISE OF THE OPTION, THE RENOVATION PLAN SHALL BE AS APPROVED AND ATTACHED HERETO AS EXHIBIT B, AND SHALL INCLUDE THE APPROVED SCHEMATIC PLANS AND NARRATIVE DESCRIPTION FOR THE RENOVATION WORK AND THE APPROVED FINAL PLANS AND SPECIFICATION FOR THE RENOVATION WORK.**

# EXHIBIT C

## ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 11.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing from an Encumbrance Holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved Encumbrance Holder, or (c) the first transfer by that Encumbrance Holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth (as set forth in the preceding sentence) or similar security satisfactory to County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.

2. The proposed assignee must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Premises, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All such approvals of County will not be unreasonably withheld, conditioned or delayed.

3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or who own the entity which will so acquire Lessee's interest, irrespective of the tier at which such individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of County.

4. The price to be paid for the acquired interest shall not result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the transferee must agree that) County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the

Lease; provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any Improvements thereon.

7. The proposed transferee does not have interests which, when aggregated with all other interests granted by County to such transferee, would violate any policy formally adopted by County restricting the economic concentration of interests granted in the Marina del Rey area, which is uniformly applicable to all Marina del Rey lessees.

8. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Marina del Rey.

# EXHIBIT D

## AFFORDABLE HOUSING AGREEMENT

**FOR PURPOSES OF THE EXECUTION OF THE OPTION AGREEMENT, THE ATTACHED DRAFT AFFORDABLE OPTION AGREEMENT IS ATTACHED TO THIS LEASE AS EXHIBIT D.**

**AS OF THE EXERCISE OF THE OPTION, THE FINAL AFFORDABLE HOUSING AGREEMENT, AS NEGOTIATED AND APPROVED BY CDC AND THE COUNTY, IN ITS PROPRIETARY CAPACITY AS LESSOR UNDER THIS LEASE, SHALL BE ATTACHED HERETO AS EXHIBIT D.**

**THIS INSTRUMENT IS SUBJECT TO APPROVAL BY THE COMMUNITY DEVELOPMENT COMMISSION OF THE COUNTY OF LOS ANGELES PRIOR TO THE EFFECTIVE DATE OF THE AMENDED LEASE**

RECORDING REQUESTED BY
AND AFTER RECORDATION, MAILTO:

COMMUNITY DEVELOPMENT
COMMISSION OF THE COUNTY
OF LOS ANGELES
700 West Main Street
Alhambra, CA 91801
Attn: Director, Economic and Housing
Development Division

---

(Space Above Line for Recorder's Use)

This Agreement is recorded at the request and for the benefit of the Community Development Commission of the County of Los Angeles and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

## COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS AGREEMENT CONTAINING COVENANTS, CONDITIONS, AND RESTRICTIONS ("Agreement") is executed as of the _____ day of _____, _____, by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE COUNTY OF LOS ANGELES ("CDC"), the COUNTY OF LOS ANGELES by and through the DEPARTMENT OF REGIONAL PLANNING ("DRP"), and THE DEPARTMENT OF BEACHES & HARBORS ("DBH"), and MARINA ADMIRALTY COMPANY, a California limited partnership, ("Lessee"), for the real property described as 4242 Via Marina, Parcel 15, Marina Del Rey, California.

WHEREAS, pursuant to that certain Amended and Restated Lease Agreement dated on or about the date of this Agreement (the "Ground Lease") by and between Lessee and the County of Los Angeles, Lessee leases from County that certain real property located within the unincorporated area of the County commonly known as 4600 Via Marina or "Marina del Rey Lease Parcel No. 113," Marina del Rey, and more specifically described in Exhibit "A" attached hereto and hereby made a part hereof (the "Site").

WHEREAS, pursuant to the Ground Lease, Lessee is renovating the existing apartment complex on the Site (the "Project") in accordance with final plans and specifications approved by the County (the "Final Plans and Specifications"), such renovations anticipated to take place over six (6) years from the date hereof, with upgrades to the interior of apartments (the "Renovation Work") to occur during turn-over as current tenants move out, at an anticipated rate of approximately 170 renovated units per year.

WHEREAS, the Ground Lease requires that the Lessee enter into a joint agreement with the CDC, DRP and DBH stipulating that one hundred ninety six (196) of the apartments in the Project must have an affordable rent (as defined in California Health & Safety Code Section 50053) and shall be designated for very low-income tenants (as defined in Section 22.08.090 of the County Zoning Ordinance), for the life of the Ground Lease (until January 31, 2066).

NOW, THEREFORE, pursuant to, and in consideration of the foregoing recitals, which are hereby deemed a contractual part hereof and as required by the Ground Lease approved by the County of Los Angeles, it is hereby promised, covenanted and agreed to as follows:

## ARTICLE 1.
## DEFINITIONS

1.1 "Affordable Housing Cost' means a rental rate which results in monthly payments which, including a utility allowance periodically established by the Housing Authority of the County of Los Angeles does not exceed: for a Very Low-Income Household, the product of thirty percent (30%) times fifty percent (50%) of the Area Median Income adjusted for Family Size appropriate to the Designated Unit.

Except to the extent "grandfathered" under state law or otherwise exempted by state law. The foregoing definition of "Affordable Housing Cost" shall be deemed amended to correspond with future amendments of the definition of "affordable rent" in California Health & Safety Code Section 50053. The rental rates for this Project shall reflect rates, respectively, for studio, one-bedroom, two-bedroom and three-bedroom apartments, as updated and published annually by the Los Angeles County Department of Regional Planning on their website. An example of the "Rent schedule" is attached hereto as "Exhibit C".

1.2 "Area Median Income" or "AMI" means the median income for Los Angeles/Long Beach Metropolitan Statistical Area as adjusted for family size and published by the California Department of Housing and Community Development ("HCD") pursuant to Health and Safety Code Section 50053 or any successor entity designated under state law as responsible for establishing such "Area Median Income."

1.3 "Eligible Person" means a person who rents a Designated Unit and who intends to occupy said unit as a principal residence.

1.4 "Family Size Appropriate" shall mean: a household of one or two persons for a studio unit; two or three persons for a one-bedoom unit; three or four persons for a two-bedroom unit; and four or five persons for a three-bedroom unit.

1.5 "Household Income" means the current adjusted gross income, as calculated for Federal Income Tax purposes, of a Very-low Income Person or Household, who is a Renter of a Designated Unit and includes the adjusted gross income similarly calculated of all persons who intend to reside permanently within a Designated Unit during the term of the applicable lease established periodically by the Department of Regional Planning. The Project's household income shall be depicted in "Exhibit D", titled "Income Limits" attached hereto.

1.6 "Very Low-Income Households" means persons and families whose annual Household Incomes do not exceed fifty percent (50%) of Area Median Income, adjusted for family size and other adjustment factors by HCD.

## ARTICLE 2. RENTAL PROVISIONS

2.1 Limitations on Tenants.

a. Notwithstanding anything to the contrary in this Agreement and subject to any rights of termination set forth in the Ground Lease, Lessee hereby covenants on behalf of itself, and its successors and assigns, which covenant shall run with the land and bind every successor and assign in interest of that Lessee, that, throughout the Term of this Agreement, Lessee and such successors and assigns shall use and operate the Site in accordance with the terms of this Agreement, the Ground Lease, the Final Plans and Specifications, and applicable County, State, and local affordable housing laws, regulations, and ordinances. A total of one hundred ninety six (196) (the "Designated Units") of the 981 total rental dwelling units permitted in the Project shall be income restricted and leased only at an Affordable Housing Cost to Very Low-Income Households. The Project's Designated Units shall be depicted in "Exhibit B", titled "Project Affordable Unit Location" attached hereto. As of the date hereof, Exhibit "B" is a site plan that shows the proposed distribution of the Designated Units, by unit types (e.g., studio, one-bedroom, two-bedroom and three-bedroom apartments), among the existing buildings in the Project. Not later than 60 days after the Substantial Completion of the residential units in the Project (as defined in the Ground Lease), or the rental of 196 units at Affordable Housing Cost to Very Low-Income Households, whichever occurs first, Lessee shall submit to CDC a final site plan identifying all of the Designated Units, which shall thereupon replace Exhibit "B" as an administrative amendment to this Agreement, and be incorporated herein by this reference.

b. Lessee shall designate approximately twenty percent (20%) of each unit type (e.g., studio, one-bedroom, two-bedroom and three-bedroom) to be set-aside and rented at Affordable Housing Cost to Very Low-Income Households as the Renovation Work on such units is completed. The Designated Units shall be of comparable size and design as the other dwelling units in the Project, and shall be made available for leasing to Very Low-Income Households generally at the same time as the other dwelling units in the Project.

c. Lessee shall specifically provide in each Designated Unit lease and shall enforce the requirement that each Designated Unit be occupied at all times by an Eligible Person who has leased that Designated Unit, and that any other occupants of the unit be another qualified

member of the lessee's household. CDC shall be identified as a third party beneficiary of that covenant and shall have the right to directly enforce that restriction in the event Lessee fails to do so. Prior to execution of Designated Unit lease with respect to the Project, Lessee shall submit to CDC and obtain its written approval of a standard form occupancy lease and Lessee shall thereafter use the approved form for all leases of Designated Units in the Project, with only such further modifications (other than permitted adjustments to Affordable Housing Costs) thereto as are first submitted to and approved in writing by CDC. CDC shall provide a written response to Lessee on any submission made by Lessee to CDC for CDC's approval under this Section 2.1 within ten (10) business days of such submission. If CDC does not provide a written response within such ten (10) day period, Lessee's submission to CDC shall be deemed to be approved by CDC with no further action required by Lessee.

2.2 Tenant Selection Process; Reports and Records Concerning Tenancies. Lessee shall carry out an affirmative marketing program to attract prospective tenants of all minority and non-minority groups in the housing market area regardless of race, color, religion, gender, national origin disability, or familial status. The affirmative marketing program shall endeavor to inform group(s) of persons not likely to apply for the housing without special outreach efforts (because of existing neighborhood of racial or ethnic patterns, location of the housing, or other factors} about the housing and make such groups feel welcome to apply.

Lessee shall maintain such records and satisfy such reporting requirements as may be reasonably imposed by CDC, with advance written notice to Lessee, to monitor compliance with the leasing requirements described in Section 2.1 above, including without limitation the requirement that Lessee deliver reports to the CDC, including the following: (a) commencing 90 days after the first Designated Unit has been leased to a Very Low-Income Household and until all 196 Designated Units have been leased to Very Low-Income Households, a quarterly report containing the following: (i) a list of all the Designated Units that have been leased, including the name of each tenant, the Designated Unit occupied, the income of the tenant and amount of rent payable by each tenant; (ii) a list of all apartment unit types not rented but completed and available for lease to Very Low-Income Households; and (iii) after the Required Construction Completion Date (as defined in the Ground Lease), a list of all apartment units that have been set-aside,if any; and (b) commencing at the close of the first full calendar year following the date of the initial occupancy all 196 Designated Units, , and continuing annually thereafter, setting forth the name of each tenant, the Designated Unit occupied and the income of the tenant and the amount of rent payable by each tenant. Lessee shall also be required to have each prospective tenant complete a rental application prior to occupancy and to obtain evidence from each such tenant as may be reasonably required by the CDC to certify such tenant's qualification for occupancy of the Project. Lessee's obligation to provide such reports shall remain in force and effect for the same duration as the use covenants set forth in this Article 2.

2.3 Monitoring. Lessee shall enter into a Monitoring Agreement with the CDC, to pay an annual fee (the "Annual Fee") of $165.00 per Designated Unit (adjusted annually at the end of each calendar year after the Term Commencement Date, defined herein, in accord with the changes in the year-end value of the Consumer Price Index published by the U.S. Bureau of Labor Statistics for the Los Angeles-Riverside-Orange County Area to defray costs of ongoing compliance, inspection, and reporting regarding the on-site Designated Units.

## ARTICLE 3.
## DISCRIMINATION

3.1 Lessee's Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation or ancestry in the sale ,transfer, use, occupancy, tenure or enjoyment of the Designated Unit, nor shall Lessee 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 Eligible Lessee of the Designated Unit or any portion thereof. The nondiscrimination and nonsegregation covenants set forth herein shall remain in effect in perpetuity.

Lessee shall refrain from restricting the sale or lease of the Designated Unit on the basis of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation or ancestry. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, and his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation or ancestry in the sale, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing Agreements shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, and his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the Lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the parties to this contract or any person claiming under or through them, establish or permit any such practice or

practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the premises."

## ARTICLE 4.
## SUCCESSORS IN INTEREST

4.1 Covenants Run With the Land. The Covenants, Conditions and Restrictions established in this Agreement shall run with the land and shall without regard to technical classification and designation, be binding on Lessee and any successor In interest to Lessee's interest in the Site or the Ground Lease, or any part thereof, for the benefit of and in favor of CDC and its successors and assigns. The covenants of this Agreement shall remain in effect through the Term of this Agreement.

The Designated Units and the maintenance thereof touch and concern the Site and inure to the benefit of any and all present or successive lessees of the Site. Therefore, whenever the word "lessee" is used herein, it shall include the Lessee as of date of execution of this Agreement, and any and all successor lessees or assigns of the Site and the Ground Lease, and the provisions hereof are expressly binding upon all such successive lessees and assigns and the parties agree all such provisions shall run with the land. CDC shall cause a fully executed copy of this Agreement to be recorded in the Office of the Los Angeles County Recorder. Notwithstanding the foregoing, in the event the Lessee or any of its successors or assigns shall convey its interest in all or any portion of the Site or the Ground Lease, the conveying lessee shall, after the date of recording such conveyance, be free from all liabilities respecting the performance of the restrictions, covenants or conditions contained in this Agreement thereafter to be performed with respect to the Site or the Ground Lease, or any part thereof, it being intended that the restrictions, covenants and conditions shall be binding upon the record Lessees of the Site or holders of the Ground Lease interest in the Site only during such time as that person or entity ls the lessee of the Site, provided that the conveying lessee shall remain liable for any actions prior to the date of the conveyance.

## ARTICLE 5.
## MISCELLANEOUS

5.1 Enforcement. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that CDC shall be deemed the beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants running with the land have been provided. Each covenant of Lessee, shall, without regard to technical classification and designation, inure to the benefit of the successors, transferees and assigns of CDC for the entire period during which such covenants shall be in force and effect, and shall be binding upon the successors, transferees and assigns of Lessee, whether by merger, consolidation, sale, transfer, liquidation or otherwise. The covenants herein running with the land shall also be equitable servitudes upon the Site and each part thereof and shall bind each and every person having any interest in the Site, the Ground Lease, or part thereof, whether such interest is fee, easement, leasehold, beneficial or otherwise, and each successor or assign of such

person having any such interest in the Site, the Ground Lease, or part thereof. CDC shall have the right if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach to which it may be entitled. In the event that suit Is brought for the enforcement of this Agreement or as the result of any alleged breach hereof, the prevailing party or parties In such suit shall be entitled to recover their reasonable attorneys' fees from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof. Except for CDC, the covenants and restrictions contained in this Agreement shall not benefit or be enforceable by any owner of any other real property or any person or entity having any interest in any such other real property.

5.2 Default. Failure by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The aggrieved party shall give written notice of the default to the party in default in accordance with Section 5.9 hereof (such notice, the "Default Notice"). The defaulting party shall no longer be In default if the defaulting party cures such default within thirty (30) days after receiving the Default Notice; provided, however, that if such default cannot be reasonably cured within such thirty (30) day period, the defaulting party shall be given such longer period as reasonably necessary and the defaulting party shall no longer be in default if it commences to cure such default within such thirty (30) day period and completes such cure with reasonable and due diligence.

The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise hereunder. Except for the remedy of liquidated damages set forth in Section 13.7.1 of the Ground Lease, the exercise of any remedy shall not preclude the exercise of other remedies CDC or Lessee may have at law or at equity.

5.3 Modification. This Agreement may be modified only by subsequent mutual written agreement executed by Lessee, the County, and CDC.

5.4 Term. Lessee's obligations under this Agreement shall begin on the first date that the Renovation Work on any of the Designated Units of the Project to be renovated by the Lessee on the Site is completed (the "Term Commencement Date"). Lessee has the right to record an affidavit with the Final Building Permit Approval (or Certificate of Occupancy or a verification of completion or other documentation deemed appropriate County to evidence completion of the Renovation Work as to one or more of the Designated Units) to reflect the commencement of the Term of this Agreement. This Agreement shall expire, and all benefits and burdens associated with this Agreement shall cease, on January 31, 2066.

5.5 Interpretation. The provisions of this document shall be liberally construed to effectuate its purpose. Time is of the essence of this Agreement.

5.6 Severability. Invalidation of any of the covenants, conditions, restrictions, or other provisions contained in this Agreement by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, which shall remain in full force and effect.

5.7 Headings. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections or paragraphs.

5.8 Effective Date. This Agreement shall take effect upon the recordation of a fully executed Agreement in the Official Records of Los Angeles, County.

5.9 Notices. Formal notices, demands, and communications between the CDC, County and Lessee shall be given either by personal service, by overnight courier, or by mailing In the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the principal offices of CDC or Lessee, as follows:

If to CDC: Community Development Commission
of the County of Los Angeles
700 West Main Street
Alhambra, California 91801
Attn: Director of Economic and Housing Development

If to DRP: Department of Regional Planning
of the County of Los Angeles
320 West Temple Avenue, 13th Floor
Los Angeles, CA 90012
Attn: Director of Planning

If to DBH: Department of Beaches & Harbors
of the County of Los Angeles
13837 Fiji Way
Marina del Rey, CA 90292
Attn: Director of Beaches & Harbors

If to Lessee: Marina Admiralty Company
a California limited partnership
4600 Via Marina
Marina del Rey, CA 90292
Attn: _____

Notices shall be effective upon receipt, if given by personal delivery, the earlier of (l) three (3) business days after deposit with United States Mail, or (ii) the date of actual receipt as evidenced by the return receipt, if delivered by certified mall, or (iii) one (1) day after deposit with the delivery service, If delivered by overnight guaranteed delivery service. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Agreement.

5.10 Exhibits. Each Exhibit mentioned in this Agreement is attached hereto and incorporated herein by this reference.

5.11 Execution in Counterparts. The parties may execute this document in two or more counterparts; each counterpart shall be deemed an original instrument as against any party who has executed it.

5.12 Compliance with Laws. Lessee shall comply with Applicable Governmental Restrictions. As used herein, "Applicable Governmental Restrictions" shall mean and include any and all laws, statutes, ordinances, codes, rules, regulations, directives, writs, injunctions, orders, decrees, rulings, conditions of approval, or authorizations, now in force or which may hereafter be in force, of any governmental entity, agency or political subdivision as they apply to the performance of this Agreement or development or operation of the Project, including specifically but without limitation all code and other requirements of the jurisdiction in which the Project is located and, to the extent applicable, the following: the California Environmental Quality Act; fair housing laws, prevailing wage laws (e.g. Cal. Labor Code 1720 et seq. and the federal Davis-Bacon Act (40 U.S.C. 276a), Executive Order 11246 and 11375, Equal Opportunity in Employment (Non-discrimination in Employment by Government Contractors and Subcontractors), and any other federal, state and local laws.

5.13 Indemnification. Lessee agrees to indemnify, defend (with counsel reasonably approved by the CDC), and hold harmless the County of Los Angeles, CDC, DRP, and DBH ("Public Agencies") from and against any and all costs (including reasonable attorney's fees), liability, demands, damages, claims, causes of action, fees (including reasonable attorneys' fees and costs and expert witness fees), and expenses, including, but not limited to, claims for bodily injury, property damage, and death that the Public Agencies incur or suffer (hereinafter collectively referred to as "Liabilities") that arise (whether by negligence, willful act or otherwise), out of, pertain to, or relate to this Agreement, the services and/or materials provided pursuant to this Agreement, the Property, or Project. Lessee shall not be required to indemnify, defend, and hold harmless the Public Agencies from any Liabilities that arise from the material breach of this Agreement by, or the sole negligence or willful misconduct of, the Public Agencies and the Public Agencies' officers or employees.

(signatures to follow)

**EXHIBIT E**

**LOCAL HIRING REQUIREMENTS**

**SECTION 00 19 12**

**COUNTYWIDE LOCAL AND TARGETED WORKER HIRE PROGRAM - MANDATORY AND BEST EFFORTS**

18. PART 1 – GENERAL
19. 1.01 Summary

This Section 00 19 12 includes:

19.1.1.1. Part 1 – General
19.1.1.2. 1.01 – Summary

1.02 – Definitions
1.03 – Local and Targeted Worker Hire Program (LTWHP)

19.1.1.3. Part 2 – Administration

2.01 – Administration
2.02 – Examples of Community Service Providers

19.1.1.4. Part 3 – Forms

19.1.1.5. 3.01 - Form 00 19 12-1: LTWHP Craft Employee Request Form
19.1.1.5. 3.02 - Form 00 19 12-2: LTWHP Utilization Plan

3.03 - Form 00 19 12-3: FPL List of Zip Codes
3.04 - Form 00 19 12-4: Local and Targeted Worker Hire Status Report

*CONTRACT ADMINISTRATOR PLEASE VERIFY THAT THE SET GOAL MATCHES WITH BOARD LETTER, 30% BEST EFFORT (PROJECT BUDGET between $500K and $2.5M); 30% MANDATORY (PROJECT BUDGET >$2.5M)*

*If the project budget is greater than $2.5 million with no federal funding:*

1.01 **MANDATORY HIRING GOALS FOR THIS PROJECT**

The County of Los Angeles has implemented a Local and Targeted Worker Hire Policy (LTWHP) to facilitate the hiring of Local and Targeted workers. Pursuant to this policy, this project has a **mandatory goal** of at least 30 percent of total California Construction Labor Hours worked be performed by a qualified Local Resident. In addition, at least 10 percent of total California Construction Labor Hours worked on this project shall be

performed by County residents classified as a Targeted Worker. Hours worked by a Targeted Worker who is also a Local Resident may be applied towards both the mandatory 30 percent Local Hire and 10 percent Targeted Worker Hire goals.

*If the project budget is between $500,000 and $2.5 million or is an affordable housing project with a budget greater than $2.5 million with no federal funding:*

1.01 BEST EFFORTS HIRING GOALS FOR THIS PROJECT

The County of Los Angeles has implemented a Local and Targeted Worker Hire Policy (LTWHP) to facilitate the hiring of Local and Targeted workers. Pursuant to this policy, this project has a **best efforts goal** of at least 30 percent of total California Construction Labor Hours worked by performed by a qualified Local Resident. There is no Targeted Worker hiring requirement.

1.02 definitions

Terms used in the implementation of the LTWHP shall be defined as follows:

A. **California Construction Labor Hours –** Includes all craft worker hours performed on the project by California residents, excluding the hours performed by off-site material fabricators, designers, project office staff, or vendors.

B. **Certified Payroll Reports** – The Contractor shall comply with the requirements of Section 1776 of the Labor Code, State of California for the submission of Certified Payroll Reports (CPR). The Contractor and Contractor's subcontractors shall submit a copy of all CPR's to the County on a monthly basis, no later than on the first Monday of the subsequent month. General contractor and all its subcontractors shall submit all CPR's to the County electronically if an online system is designated by the County**.**

C. **Community Service Providers –** A network of public and private partners working to support workers and businesses by serving their employment and training needs. These providers include local one-stop job/career centers funded by the Federal Workforce Innovation and Opportunities Act (WIOA). These centers help businesses find skilled workers and connect customers to work related training and education; most services are available at no cost. Examples of Community Service Providers are listed in Section 2.02.

D. **Craft Employee Request Form –** The form used by the contractor and its subcontractors to request dispatch of craft workers (including, but not limited to, apprentices and journeymen), who are Local Residents or Targeted Workers, from a Community Service Provider or union hiring hall in the event that assistance in obtaining such workers is needed. The request form is submitted by the contractor/subcontractor, completed and executed by the Community Service

Provider or union hiring hall, and a copy retained by the General Contractor for auditing purposes.

E. **Local and Targeted Worker Hire Status Report** – A monthly report required to be submitted to the County as listed on Form 00 19 12-4.

F. **Local Resident** – A Local Resident is defined as an individual whose primary place of residence is within the Tier 1 or Tier 2 ZIP Codes of the County, as listed in Forms 00 19 12-1 and 00 19 12-3.

G. **Targeted Worker -** A Targeted Worker is an individual who is a County resident and faces at least one or more of the following barriers to employment:

1. Has a documented annual income at or below 100 percent of the Federal Poverty Level;
2. No high school diploma or GED;
3. A history of involvement with the criminal justice system;
4. Protracted unemployment (receiving unemployment benefits for at least 6 months);
5. Is a current recipient of government cash or food assistance benefits;
6. Is homeless or has been homeless within the last year;
7. Is a custodial single parent;
8. Is a former foster youth; or
9. Is a veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C.4215[a]).

H. **Tier 1 Zip Codes** – Tier 1 ZIP Codes are those Zip codes listed in Form 00 19 12-1.

I. **Tier 2 Zip Codes** – Tier 2 ZIP Codes are those Zip codes listed in Form 00 19 12-3.

J. **Utilization Plan** – The form submitted by the general contractor on behalf of itself and its subcontractors prior to commencing work, specifying a Manpower Utilization Plan, which contains the manpower plan and schedule for the hiring of qualified Local Residents and Targeted Workers, including the use of the subcontractors' workforce to meet the LTWHP hiring goal. The general contractor shall submit updates of the Utilization Plan to reflect changes in project conditions, schedules, or subcontractors.

1.03 LOCAL and TARGETED WORKER HIRE PROGRAM

*If mandatory:*

A. The Contractor and its Subcontractors shall meet the following minimum mandatory Local Resident and Target Worker hiring requirements:

1. At least 30 percent of total California Construction Labor Hours worked on the project must be performed by a qualified Local Resident.

2. Additionally, at least 10 percent of total California Construction Labor Hours worked on the project shall be performed by a Targeted Worker. The hours worked by a Targeted Worker who is also a Local Resident may also be applied towards the 30 percent Local Resident hiring goal.

*If best efforts:*

A. The General Contractor and its Subcontractors shall use best efforts to meet the following Local Resident and Target Worker hiring requirements:

1. Best efforts shall be used to ensure that at least 30 percent of total California Construction Labor Hours worked on the project are performed by a qualified Local Resident.

B. The available pool of Local Residents whose primary place of residence is within Tier 1 ZIP Codes (listed under Form 00 19 12-1), must first be exhausted in the manner specified in Section 2.01E before employing worker(s) from Tier 2 ZIP Codes (listed under Form 00 19 12-3).

C. All California Construction Labor Hours shall be included in the calculation for the percentage requirements set forth in Section 1.03 A.

D. The General Contractor and its Subcontractors shall not discriminate against or give preference to any particular individual or group based on race, color, gender, sexual orientation, age or disability.

1.1 PART 2 – ADMINISTRATION

1.2 2.01 Administration & Compliance

A. The Contractor and its Subcontractors shall use the Craft Employee Request Form (Form 00 19 12-1) for all requests for dispatch of qualified Local Residents and Targeted Workers craft workers (including apprentices and journeymen) in the event that assistance in obtaining such workers is needed from a Community Service Provider, union hiring hall, or other source.

B. Prior to commencing work, the Contractor, on behalf of itself and its Subcontractors, shall submit a Manpower Utilization Plan (Form 00 19 12-2) to the County Project Manager that contains the manpower plan and schedule for the hiring of qualified Local and Targeted Workers and the assignment and use of the subcontractors' workforce to meet the Local Worker Hiring requirement. The Contractor, thereafter, shall submit updates of the Manpower Utilization Plan to reflect changes in project conditions, schedule, or subcontractors.

C. No later than the first Monday of each month, the Contractor shall submit to the designated County representative a completed Local and Targeted Hire Status Report containing the relevant information for the preceding month. The Local and Targeted Hire Status Report shall contain, at a minimum, the information specified below for general contractor and each subcontractor:

1. For each California Project Craft Worker (apprentices and journeymen): (a) the total labor hours, total number of all workers (apprentices and journeymen), hours worked on the project; and (b) the wages earned on the project.

2. Total number of Local Residents (apprentices and journeymen), hours worked (apprentices and journeymen), segregated by Tier 1 and Tier 2 Residency Preference Areas, and wages earned by each Local Resident.

3. Total number of Targeted Worker hours worked (apprentices and journeymen).(by Tier 1 and Tier 2 Residency Preference Areas)

4. Total number of hours worked by Local Residents by subcontractor.

C. *(sic)* On the first Monday of each month, the Contractor and all its Subcontractors shall submit the Local and Targeted Hire Status Report to the designated County representative (or submit the data online if the County elects to provide an online system), to demonstrate progress in meeting the Manpower Utilization Plan. Failure to submit the Local and Targeted Worker Hire Status Report to the designated County representative shall be deemed to constitute zero percent local hire participation for the month and the County may retain the Monthly Local Hire Participation Contract Compliance Value of $1,000 for that month.

D. The County may, in its sole discretion, elect to provide an online system for the Contractor and all of its subcontractors to input the data required in the Local and Targeted Worker Hire Status Report. If the County so elects, the Contractor and Subcontractors shall utilize that online system in lieu of completing and submitting the Local and Targeted Worker Hire Status Report.

E. The Contractor and its Subcontractors shall first meet the Local and Targeted Worker Hire participation requirement by employing qualified workers from the Tier 1 Preference Area. If the Contractor is unable to meet their entire Local and Targeted Worker Hire need from this area, it must submit to the Project Manager a statement on company letterhead certifying that it has exhausted all available qualified Local and Targeted Workers from this area during a 48 hour period before pursuing manpower from the Tier 2 Preference Area.

F. The Contractor's compliance with the approved Manpower Utilization Plan will be evaluated monthly using the Local and Targeted Hire Status Report. The Local and Targeted Worker Hire Participation Compliance Rectification Amount will be determined by multiplying the Monthly Local Hire Participation Contract Compliance Value of $1,000 by the number of months since the issuance of the Notice to Proceed multiplied by the fraction (percentage) generated by dividing the Cumulative Actual Local Hire Participation (numerator) by the Cumulative Forecast Local Hire Participation (denominator). To this end, the County will release the Local and Targeted Worker Hire Participation Compliance Rectification Amount in direct proportion to the actual Local and Targeted Worker Hire participation levels achieved by the Contractor and as forecasted in the Manpower Utilization Plan.

| Monthly Local Hire Participation Contract Compliance Value | X | Number of Months Since Notice to Proceed (NTP) | X | Cumulative Actual Local Hire Participation / Cumulative Forecast Local Hire Participation | = | Local Hire Participation Compliance Rectification Amount |
|---|---|---|---|---|---|---|
| ($1,000) | (Multiply) | | (Multiply) | (Divide) | (Equals) | |

G. On a monthly basis, the County will release the Local and Targeted Worker Hire Participation Compliance Rectification Amount, minus the total value of previous releases, in direct proportion to the actual Local and Targeted Worker Hire participation levels achieved by the Contractor consistent with the Manpower Utilization Plan. If the Cumulative Actual Local Hire Participation exceeds the Cumulative Forecast Local Hire Participation, the County will release the Local Hire Participation Compliance Rectification Amount based on a value not to exceed 100percent. The total aggregate amount to be withheld, or released, for the Local Worker Hiring Requirement shall not exceed $_____ (based on $1,000 / month for __ months).

| Local Hire Participation Compliance Rectification Amount | - | Cumulative Value of Previous Monthly Releases | = | Current Month's Release |
|---|---|---|---|---|
| | | (Minus) | | (Equals) |

H. At the conclusion of the project, the County will conduct a final evaluation of the General Contractor's compliance with the Manpower Utilization Plan as

described in Section 2.01.B and execute a final release of funds, if applicable, as described in Section 2.01.F. The General Contractor's failure to meet the Local and Targeted Worker Hiring Requirement in Section 1.01 by the conclusion of the project shall result in the County imposing liquidated damages and deducting such amount otherwise owed to the General Contractor in its final payment. The County will not be required to pay interest on any amounts withheld during the term of the contract.

I. The County and General Contractor specifically agree that the Local and Targeted Hire Participation Compliance Rectification Amount, minus the total value of previous releases, in direct proportion to the actual Local and Targeted hire participation levels achieved by the General Contractor consistent with the Manpower Utilization Plan, shall be imposed as liquidated damages, and not as a forfeiture or penalty. It is further specifically agreed that the aforesaid amount is presumed to be the amount of damages sustained due to the General Contractor's inability to achieve the Local and Targeted Worker Hiring Requirement in Section 1.01.

J. For construction contracts where the work is performed for a private County Lessee, the Lessee shall be responsible for administration of all aspects of this Section 2.01, including the calculation and collection of the Local Hire Participation Compliance Rectification Amount. At the conclusion of the project, the Lessee shall pay over the designated County representative any such amounts collected, and shall provide a full report to the designated County Representative of all monthly information required to be collected in this Section 2.01.

1.3 2.02 COMMUNITY SERVICE PROVIDERS

Examples of Community Service Providers that may be used by Contractors and Subcontractors to identify Local Residents and Targeted Workers include:

Los Angeles County Community and Senior Services: http://css.lacounty.gov/

Los Angeles County America's Job Centers of California: http://workforce.lacounty.gov/

Cal Jobs: http://www.caljobs.ca.gov/vosnet/Default.aspx

LA Jobs: https://www.jobsla.org/vosnet/Default.aspx

Helmets to Hardhats: https://www.helmetstohardhats.org

America's Job Center of California: http://www.americasjobcenter.ca.gov/

20. part 3 – forms

21. Form 00 19 12-1: LTWHP Craft Employee Request Form

21.1.1.1 Form 00 19 12-2: LTWHP Utilization Plan for PROJECT NAME

Form 00 19 12-3: FPL List of Zip Codes

Form 00 19 12-4: Local and Targeted Worker Hire Status Report

# Outline of Other Option and Lease Terms

I. Option
   a. Extension of Term:
      i. Expiration Date of Original Lease: March 31, 2023
      ii. Extension: April 1, 2023-January 31, 2066 (approximately 42 years 10 months)
   b. Option Period plus extensions/fees, to extend exercise of Option:
      i. Option Period: 18 months plus 5 additional 6-month extensions.
      ii. 1st 6-month Extension: No charge
      iii. 2nd 6-month Extension: $100,000
      iv. 3rd 6-month Extension: $120,000
      v. 4th 6-month Extension: $140,000
      vi. 5th 6-month Extension: $140,000
      vii. Notwithstanding any of the above, the Option MUST be exercised no later than March 31, 2023, which is the expiration date of the existing lease.
   c. Conditions to satisfy prior to grant of Option
      i. Payment of $100,000 Option Fee
      ii. Compliance with CEQA
   d. Conditions to satisfy for Lessee to exercise Option
      i. All regulatory approvals to be obtained
      ii. Director's approval of final plans and specs
      iii. Permit-ready plans
      iv. Satisfactory evidence of financing for the entire project
      v. Agreement re scope of work for lookouts. See Section II below.
      vi. Agreement as to location of affordable housing units within the project
      vii. Execution of CC&Rs re affordable housing covenant

II. Scope of Work
   a. The scope will include common area, Promenade, building exterior and interior improvements, and renovation of the interior of the units. All units, both market and affordable, will be renovated in the same manner.
   b. Lessee's Hard Costs for the entire Scope of Work will be $100 Million, indexed from January 1, 2022.
   c. Lessee will pay prevailing wage and comply with the County's Local and Targeted Worker Hire requirement.

d. County will procure permits and reconstruct the lookouts, which are located on County property. Lessee has agreed to pay all County costs (hard and soft) for the reconstruction of the lookouts but will debit the hard costs against the $100 Million construction budget. After reconstruction, County will adjust the property boundary line to add the lookouts to Parcel 113 (for maintenance and liability purposes).
e. Lessee will open up and expand the Promenade (although it will not be expanded to the prescribed 28 feet as there will not be enough room).
f. No removal of trees as part of scope of Renovation Work.
g. No County or other public agency funds or rent credit to be used in the construction of the project.

III. Renovation Work Schedule
a. Work must commence within 90 days from Effective Date of Lease.
b. Work must be completed within 72 months of Effective Date.
c. Two 6-month extensions for Required Completion of Construction Date may be purchased for payments of $25,000 and $35,000 respectively.
d. Any claimed force majeure delay period shall not exceed one year.

IV. Required Hard Costs: $100 Million
a. $100 Million is not indexed to inflation unless work has not commenced prior to January 1, 2022.

V. Reserve Study to replace County's standard capital improvement fund to allow reserve funds to be used for the replacement of major components of the buildings and other structures.

VI. Affordable Housing: See Exhibit I below

VII. Rent
a. Minimum Rent: $2,186,598 for 6 years after Effective Date
b. Adjustment of Minimum Annual Rent: After the first 6 years and thereafter every 3 years, standard computation of minimum rent with no possible decrease of minimum rent thereafter.
c. Percentage Rent: Apartments
    i. 10.5% until July 1, 2035
    ii. 11.5% for the next 10 years
    iii. 12.5% for the next 10 years
    iv. 14.5% for remainder of term.

VIII. Participation: Standard fee of the greater of 5% gross v. 20% net, except if sold during Option Period then the Participation Fee will be $7.5 Million. Participation for refinance is standard.

IX. Remainder of Terms Standard MDR Term Sheet Requirements

X. Exhibit I-Affordable Housing
a. 196 units will be available to Very Low Income Tenants, as defined by statute.

b. No County or other public agency funds or rent credit to be used in the construction of the project
c. No tenant displacement except for temporary displacement within Mariners Village to renovate tenant's unit.
d. Affordable housing covenant will run for the extended lease term (March 31, 2066).
e. Not less than 3 months prior to exercise of Option, Lessee shall submit to County a Mariners Village Affordable Housing Program that will contain methods of: i) tenant selection; ii) affordable unit lease-up; and iii) marketing, all of which will comply with County requirements.
f. 60 days prior to the required completion (of construction) date, Lessee shall provide a detailed breakdown of types and location of the affordable units.
g. If all 196 affordable units are not completed and available before the required completion of construction date, Lessee shall pay $200 per unit per day with a minimum of $1,000 per day until all the affordable units become available.