



*"To enrich lives through effective and caring service"*



**Santos H. Kreimann**  
Director

**Kerry Silverstrom**  
Chief Deputy

September 14, 2010

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

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

25 September 14, 2010

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

Dear Supervisors:

**APPROVAL OF MITIGATED NEGATIVE DECLARATION AND OPTION FOR AMENDED AND  
RESTATED LEASE TO FACILITATE RENOVATION –  
VILLA VENETIA APARTMENTS  
(Parcel 64 at 13900 Fiji Way)  
MARINA DEL REY  
(4th DISTRICT – 4 VOTES)**

**SUBJECT**

Request to adopt the Mitigated Negative Declaration for the renovation of the existing 224 apartment units and to approve an option agreement for an amended and restated lease to extend the term of the existing Villa Venetia Apartments lease (Parcel 64). Exercise of the option is contingent upon the lessee's receipt of entitlements and fulfillment of other conditions required therein.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Consider the Mitigated Negative Declaration for the Villa Venetia Apartments renovation project, together with any comments received during the public review period; find that the Mitigated Negative Declaration reflects the independent judgment and analysis of the Board and adopt the Mitigation Monitoring Program, finding that the Mitigation Monitoring Program is adequately designed to ensure compliance with the mitigation measures during project implementation; find on the basis of the whole record before the Board that there is no substantial evidence that the project, as revised and implemented in accordance with the Mitigated Negative Declaration and Mitigation Monitoring Program, will have a significant effect on the environment; and adopt the Mitigated Negative Declaration and Findings of Fact prepared in support of the Mitigated Negative Declaration.
2. Approve and authorize the Chair of the Board to sign the Option for Amended and Restated Lease Agreement granting to the current lessee, upon fulfillment of stated conditions, the right to extend the

term of its existing ground lease on Parcel 64 by 33 years.

3. Approve and authorize the Chair of the Board to sign the Amended and Restated Lease in substantially similar form to Exhibit A attached to the Option for Amended and Restated Lease Agreement, upon confirmation by the Director of the Department of Beaches and Harbors that the lessee has fulfilled the option conditions.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On May 18, 2004, your Board approved the assignment of Villa Venetia to the current lessee, a consortium of four Delaware limited liability companies: Lyon Villa Venetia, LLC; Lyon Villa Venetia II, LLC; Wolff Villa Venetia 224, LLC; and Wolff Villa Venetia 224 II, LLC (collectively the "Lessee"). The Lessee thereafter entered into negotiations with the County to demolish the existing apartments and develop a high-rise project consisting of 216 condominiums and 262 apartments. Due to a changing real estate and financial environment, the Lessee determined that the planned project would not be economically viable in the current real estate market and, thus, proposes now to renovate the existing 224 existing units, including apartment interiors, building façades, interior and exterior common areas, landscaping, hardscape, promenade, parking areas, and the immediately adjacent roundabout and center median within the Fiji Way right-of-way accessing the project, and to replace the building systems to the extent required by the County. As negotiated by the Chief Executive Office and the Department of Beaches and Harbors ("Department"), the Parcel 64 lease would be extended for 33 years, from its current May 10, 2021 expiration date to May 10, 2054.

In addition, if the Option for Amended and Restated Lease Agreement ("Option Agreement") is exercised, then commencing on January 1, 2013, percentage rent for the apartment units will be increased to no less than 13% for the entire term of the extended lease, with a guaranteed minimum rent of no less than \$1,100,000 per year (subject to annual CPI increases from a November 2009 base or, following the fair market rent renegotiation date 20 years after the exercise of the option, from the base in effect as of such fair market rent renegotiation date). The foregoing constitutes a rental increase of at least \$574,000 per year over 2009-10 annual rents (\$525,000) received from the parcel. Due to the Lessee's agreement to guarantee the minimum rent and pay an increased percentage rent for apartment units, there will be no additional extension fee beyond the \$100,000 option fee. A summary of the proposed terms for the lease extension is set forth in Attachment A.

The Department of Regional Planning has prepared an Initial Study for the proposed project in compliance with the California Environmental Quality Act ("CEQA") and, along with the Department, recommends your Board's adoption of the Mitigated Negative Declaration and Mitigation Monitoring Program (Attachment B). If adopted, the Lessee must thereafter obtain all regulatory approvals and provide satisfactory evidence of financing in order to exercise the option set forth in the Option Agreement (Attachment C) within six months following grant of the option. If the Lessee is unable to secure all the necessary entitlement approvals within the six-month period despite its diligent efforts, the Director may, in his discretion, provide an extension of an additional six months, as he is also able to provide if the Lessee has diligently pursued but been unable to secure project financing due to an industry-wide adverse economic condition in which financing on commercially reasonable terms is not available for the project and similar projects. If the Lessee obtains its entitlement approvals within the six-month (or twelve-month) period, but such approvals are subject to appeal or litigation brought by a third party, then the option exercise date will be tolled pending the resolution of such litigation or appeal, provided, however, that the option exercise date shall in no event be later than 42 months after the grant of the option.

The Department has obtained an appraisal that confirms the returns to the County from the lease extension for Parcel 64 are equivalent to, or greater than, fair market value.

### **Implementation of Strategic Plan Goals**

The recommended action will allow the Lessee to continue its effort towards the proactive renovation of the parcel, which will result in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness", Strategy No. 1, "Fiscal Sustainability", through a reasonable negotiated increase in the one-time and annual lease revenues from the parcel, and Goal No. 3, "Community and Municipal Services", Strategy No. 1, "Cultural and Recreational Enrichment", through improvement of the public promenade between the property and the Marina channel.

### **FISCAL IMPACT/FINANCING**

The form of Amended and Restated Lease for the renovation of Parcel 64 reflects the County's current market rate percentage rents for all relevant categories. The grant of the option and the execution of the Amended and Restated Lease will produce the following fiscal benefits to the County: 1) an option fee; and 2) revenue increases due to renovation of the apartment buildings and adjustments in the current rent percentages. Each component is discussed in detail below.

#### **Option Fee**

Lessee shall pay a non-refundable (except in the case of a default by County) fee of \$100,000 for the option, due upon your Board's approval of the Option Agreement.

#### **Revenue Increase Due to Project Renovation**

The total annual revenue derived from Parcel 64 during 2009-10 was approximately \$525,000. Commencing no later than January 1, 2013, the Lessee will pay a guaranteed minimum annual rent of no less than \$1,100,000 per year (subject to annual CPI increases from a November 2009 base), a guaranteed increase of no less than approximately \$575,000.

### **OPERATING BUDGET IMPACT**

Upon your Board's approval of the Option Agreement, the Department's Marina operating budget will receive a one-time \$100,000 option fee as stated above. The option fee is included in the Department's 2010-11 budget as one-time revenue.

All costs of consultants involved in the negotiation and development of the Option Agreement and Amended and Restated Lease are being reimbursed by the Lessee.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The existing 60-year lease for Parcel 64 expires on May 9, 2021. The current improvements on Parcel 64 consist of 224 apartments. Parcel 64 has frontage on Fiji Way and is located south of Parcel 62's Coast Guard Station, west of Ballona Creek, and southwest of Area A, a part of the Ballona Wetlands.

Because the project is a renovation without the demolition of any existing units or addition of any new units, the Mello Act and the County's Marina del Rey Affordable Housing Policy do not apply.

Approval of the Option Agreement 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 lease term is in conformance with the maximum 99-year period authorized by California law.

At its meeting on September 8, 2010, the Small Craft Harbor Commission will have considered the recommendations to approve the Option Agreement and the Amended and Restated Lease for Parcel 64 in the form attached, and its action will be communicated to your Board prior to your Board's consideration of the matter. County Counsel has approved the documents as to form.

### **ENVIRONMENTAL DOCUMENTATION**

In compliance with CEQA, an Initial Study was prepared for the proposed project. The Initial Study identified potentially significant effects of the project on traffic/access, environmental safety, and biota. Prior to release of the proposed Mitigated Negative Declaration ("MND") and Initial Study for public review, revisions in the project were made or agreed to which would avoid the significant effects or mitigate the effects to a point where no significant effects would occur.

The Initial Study and project revisions showed that, in light of the whole record before the County, the project as revised will not have a significant effect on the environment. Based on the Initial Study and project revisions, an MND was prepared for this project (Attachment B). The proposed Mitigation Monitoring Program, included with the MND, was prepared to ensure compliance with the environmental mitigation measures included as part of the final MND relative to the impacted areas during project implementation. There have been no substantial changes to the proposed project since circulation of the environmental document.

The MND was initially circulated from April 12, 2010 to May 12, 2010 and was then recirculated from July 5, 2010 through August 4, 2010 to address a comment made by the California Department of Fish and Game ("DFG") recommending weekly nesting surveys for the Great Blue Heron. The mitigation and monitoring program published in the July 5th re-circulated MND specifically described this weekly survey protocol. Public Notice was mailed to residents located within 500 feet of the subject project, pursuant to Public Resources Code section 21092, and posted at the office of the County Clerk pursuant to section 21092.3. In addition to the legal noticing requirements, the notice was posted on the property and published in The Argonaut on July 1, 2010. During the 30-day comment period, three written responses were received from public agencies. In addition, four written responses were received from the public. All comments received, as well as responses to the comments, are contained in the final MND. Individuals who sent comments received responses.

Findings of Fact in support of the MND have been prepared for your consideration and are included as part of the MND documentation provided as an attachment to Board letter.

The location of the documents and other materials constituting the record of the proceedings upon which your Board's decision will be based in this matter is the County of Los Angeles Department of Regional Planning, 320 West Temple Street, Los Angeles, California 90012. The custodian of such

documents and materials is Maral Tashjian in the Department of Regional Planning.

The project is not exempt from payment of a fee to the DFG pursuant to section 711.4 of the Fish and Game Code to defray the costs of fish and wildlife protection and management incurred by DFG. Upon your Board's adoption of the MND, the Department will file a Notice of Determination with the Registrar-Recorder/County Clerk in accordance with section 21152(a) of the California Public Resources Code, along with the Lessee's payment of the DFG-required filing and processing fees in the amount of \$2,085.25.

### **CONTRACTING PROCESS**

The Lessee acquired the leasehold interest to Parcel 64 as a result of its assumption of the assigned lease as of May 18, 2004. The Lessee thereafter entered into negotiations with the County to extend the Parcel 64 lease term. The Amended and Restated Lease for Parcel 64 will be available to the Lessee only upon the exercise of the option. Upon the Lessee's demonstration that it has satisfied the conditions for exercise of the option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for construction of the renovation project associated with that option, we will present to the Executive Officer, Board of Supervisors final confirmation that the conditions and approvals for exercise contained in the Option Agreement have been satisfied and will request execution of the Amended and Restated Lease for Parcel 64 in substantially similar form to Exhibit A attached to the Option Agreement.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on other current services or projects.

### **CONCLUSION**

It is requested that the Executive Officer, Board of Supervisors send two copies of the executed Option Agreement and an adopted Board letter to the Department of Beaches and Harbors.

The Honorable Board of Supervisors  
9/14/2010  
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Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", followed by a horizontal line.

SANTOS H. KREIMANN  
Director

SHK:ks

Enclosures

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

**OPTION TO AMEND LEASE AGREEMENT  
(Parcel 64T)**

THIS OPTION TO AMEND LEASE AGREEMENT ("**Agreement**") is made and entered into as of the 14th day of September, 2010, by and between the COUNTY OF LOS ANGELES ("**County**") and LYON VILLA VENETIA, LLC, LYON VILLA VENETIA II, LLC, WOLFF VILLA VENETIA 224, LLC, and WOLFF VILLA VENETIA 224 II, LLC, each a Delaware limited liability company (collectively, "**Lessee**").

**R E C I T A L S**

A. County, as lessor, and Jackbilt, Inc. ("**Original Lessee**"), as lessee, entered into Lease No. 4709, dated July 21, 1961, as amended and restated by Amendment No. 8 to Lease No. 4709 dated October 22, 1968, and as further amended prior to the date hereof (the "**Existing Lease**"), pursuant to which County leased to Original Lessee certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 64T, as more particularly described in the Existing Lease (the "**Premises**").

B. Lessee is the current successor-in-interest to the Original Lessee's right, title and interest as lessee under the Existing Lease.

C. The term of the Existing Lease is currently scheduled to expire on May 9, 2021 (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 May 9, 2054, and (ii) the renovation of the Premises in accordance with the terms and provisions hereof.

**A G R E E M E N T**

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 May 9, 2054, 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 substantially in the form of the Amended and Restated Lease Agreement for Parcel 64T 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 six (6) months following the date of this Agreement, subject to extension as expressly provided in this Agreement. If by the date that is six (6) months following the date of

this Agreement Lessee has been unable to satisfy either or both of the Option Conditions (as defined in Section 3 below) and in the reasonable judgment of the Director of the Department of Beaches and Harbors of the County (the “**Director**”) Lessee has proceeded with best efforts to satisfy the Option Conditions but has been delayed in doing so as a result of (a) in the case of the non-satisfaction of the Entitlements Condition, delays beyond normal entitlement processing periods in the processing by the applicable governmental authorities of Lessee’s applications for the Entitlements (as defined in Section 3.1 below) or the pendency of an appeal, proceeding or litigation described in clause (a) or (b) of Section 3.1 below (collectively, an “**Entitlements Condition Delay**”), or (b) in the case of the non-satisfaction of the Project Financing Condition (as defined in Section 3.2 below), as a result of a Financing Force Majeure Event (as defined in Section 4 below), then upon Lessee’s request Director shall extend the Option Expiration Date by one or more extensions. Such extension or extensions shall be limited to the period of any Entitlements Condition Delay or Financing Force Majeure Event (as applicable, and without duplication in the case, and to the extent, that delays are concurrent), as determined in the reasonable judgment of Director, but in no event shall the total period of any such extensions to the Option Expiration Date exceed six (6) months in the aggregate.

Notwithstanding the six (6) month aggregate limit on extensions to the Option Expiration Date set forth in the immediately preceding paragraph, if an Entitlements Condition Delay occurs due to the pendency of an appeal, proceeding or litigation described in clause (a) or (b) of Section 3.1 below, then as long as there is no Lessee Default (as defined in Section 10.12 below) under this Agreement or material uncured breach or default by Lessee under the Existing Lease (after notice and the expiration of any applicable cure period under the Existing Lease), upon request by Lessee (i) the Option Term shall be tolled pending the final resolution of such appeal, proceeding or litigation, whether such resolution is in favor of, or against, the issuance of the contested Entitlements; (ii) as long as Lessee continues to diligently prosecute the resolution of the appeal, proceeding or litigation in favor of the issuance of the contested Entitlements, the Option Expiration Date shall be extended until the earlier of (A) the final resolution of the appeal, proceeding or litigation against the issuance of the contested Entitlements; or (B) the later of (x) sixty (60) days after the final resolution of such appeal, proceeding or litigation in favor of the issuance of the contested Entitlements; or (y) the date to which the Option Expiration Date is extended (including pursuant to any unused extension periods provided in this Section 2, if and to the extent applicable) as a result of the tolling of the running of the Option Term until the final resolution of such appeal, proceeding or litigation; and (iii) the maximum six (6) month aggregate period of extension set forth in the immediately preceding paragraph shall not be applicable, but the maximum extension shall instead be to the date that is forty-two (42) months following the date of this Agreement. Director shall have no obligation to extend the Option Expiration Date, nor shall there be any tolling of the Option Term, in the case of a Lessee Default (as defined in Section 10.12 below) or if 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.

Notwithstanding the limitations on the period of an extension of the Option Expiration Date set forth in the first paragraph of this Section 2, if Lessee is unable to satisfy the Entitlements Condition due to a moratorium, temporary restraining order, injunction or other court order which prohibits the issuance of the Entitlements and which affects all other similar projects in Marina del Rey, California, 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 written 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 cessation of such moratorium, temporary restraining order, injunction or other court order; provided, however, that the Option Expiration Date shall in no event be extended beyond forty-two (42) months following the date of this Agreement.

Notwithstanding the limitations on the period of an extension of the Option Expiration Date set forth in the first paragraph of this Section 2, if the condition described in Section 5(e) below is not satisfied by the Option Expiration Date due to any failure by Director after the date of this Agreement to process Lessee's submittals of any remaining required plans, specifications and other materials pertaining to the Renovation Work for Director's approval within the time periods required under Section 5.3 of the form of Restated Lease, as provided in Section 7.3 of this Agreement, then the Option Expiration Date shall be extended for the actual period of delay in Director's processing of such Lessee submittals.

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 the following two conditions (the "**Option Conditions**"):

3.1 Lessee shall have received all discretionary planning and zoning land use entitlements and approvals required to be obtained from governmental authorities (including the County and, if required, the California Coastal Commission) for the construction of the Renovation Work on the Premises (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**"); and

3.2 Lessee shall have obtained Project Financing (as defined below) for the Renovation Work (the "**Project Financing Condition**"). For purposes of this Agreement, "**Project Financing**" means a construction loan commitment from an institutional lender or lenders, at an interest rate or rates and on other terms that are commercially reasonable, in amounts that when combined with Lessee's equity is reasonably expected to provide sufficient funds to complete 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. The actual closing of such construction loan shall be a concurrent condition to County's obligation to execute and deliver the Restated Lease.

4. Financing Force Majeure Event. Lessee shall use good faith, diligent efforts to satisfy the Project Financing Condition on or before the Option Expiration Date. Upon request from the Department during the Option Term, Lessee shall inform Director of the status of Lessee's efforts to obtain the Project Financing. If Lessee is unable to obtain Project

Financing within six (6) months after the date of this Agreement due to a Financing Force Majeure Event, then Lessee shall have the right to request Director to extend the Option Expiration Date in accordance with Section 2 of this Agreement. For purposes of this Agreement, “**Financing Force Majeure Event**” means an inability of Lessee to satisfy the Project Financing Condition due to an industry-wide adverse condition in the real estate financing markets, for projects similar to the Premises located in the Los Angeles metropolitan area, in which financing for such projects generally is not available to developers on commercially reasonable terms. As a condition to establishing a Financing Force Majeure Event, Lessee shall be required to demonstrate to the reasonable satisfaction of Director the existence of the Financing Force Majeure Event. If Lessee contests any determination by Director as to whether a Financing Force Majeure Event exists or the duration of the extension which Lessee should receive as a result thereof, then Lessee shall be entitled to submit its request for an extension directly to the County Board of Supervisors for determination.

5. Exercise of Option. The Option shall be exercisable by Lessee only upon strict satisfaction on or before the Option Expiration Date of the following conditions (the “**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 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 amount, if any, by which the Security Deposit required 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) 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 written notice from County and the expiration of any applicable cure period set forth in the Existing Lease; (d) the Option Conditions shall have been satisfied and there shall be no change in circumstances after the satisfaction of the Option Conditions that causes the Option Conditions to no longer continue to be satisfied; (e) Director shall have approved all plans, specifications and other materials for the Renovation Work required to be submitted to Director pursuant to Section 7.3 of this Agreement; and (f) Director and Lessee shall have agreed upon the Approved Phasing Schedule and the Phase Cost Amounts pursuant to Section 7.4 of this Agreement. With respect to the Exercise Requirements set forth in clauses (e) and (f) above, Director agrees to process Lessee’s submittals of any remaining required plans, specifications and other materials for the Renovation Work within the time periods required under Section 5.3 of the form of Restated Lease, and to exercise good faith, reasonable efforts to reach agreement with Lessee on the Approved Phasing Schedule and the Phase Cost Amounts within the time period required herein for exercise of the Option. Upon Lessee’s proper and timely exercise of the Option, County shall execute and deliver the Restated Lease within forty-five (45) days following the date of Lessee’s exercise of the Option; provided, however, at Lessee’s request County shall use its commercially reasonable efforts to execute the Lease within such shorter time period as reasonably requested by Lessee to effectuate the execution and delivery of the Lease on a concurrent basis with the closing of Lessee’s Project Financing. 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, 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 the Option Conditions continue to be satisfied and Lessee's Project Financing is in a position to close on or before the execution and delivery by County of the Restated Lease.

6. Option Fee/Extension Fee.

6.1 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**"). Except for a failure of the conditions to the exercise of the Option to be satisfied due to a County Default (as defined in Section 10.13 of this Agreement), the Option Fee shall be non-refundable. The Option Fee shall be applied against the Extension Fee described below if Lessee exercises the Option.

6.2 Extension Fee. If Lessee exercises the Option, Lessee shall pay County an extension fee in the amount of One Hundred Thousand (\$100,000.00) (the "**Extension Fee**") to compensate County for the value of the lease extension set forth in the Restated Lease. The Option Fee shall be applied against the Extension Fee such that no additional amount shall be required to be paid for the Extension Fee as a condition to, or in connection with, Lessee's exercise of the Option.

7. Entitlements and Plan Preparation During Option Term.

7.1 Obtaining Entitlements. During the Option Term, Lessee shall use its best efforts to satisfy the Option Conditions as soon as possible, including without limitation, the expenditure of application fees, architectural fees and consulting fees as reasonably necessary in connection with the processing of the Entitlements.

7.2 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 the foregoing, 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.

7.3 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 Restated Lease. The requirements of Article 5 of the 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 Restated Lease. The procedure for the preparation, submittal and approval of the required plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the 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 Design Control Board and the California Coastal Commission) 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 5.3 of the form of Restated Lease, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 7.3 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 conditions precedent to the exercise of the Option 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 7.3, 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 (a) the schematic plans and narrative description of the Renovation Work required under Subsection 5.3.1 of the Restated Lease; (b) the preliminary plans and specifications for the Renovation Work required under Subsection 5.3.2 of the Restated Lease; and (c) the on-site models for the renovated apartments. The approved schematic plans and narrative description of the Renovation Work are set forth or referenced in the Renovation Plan attached as Exhibit B to the Restated Lease.

7.4 Approvals Regarding Phased Construction. Prior to Lessee's exercise of the Option, Lessee shall submit to the Director (a) a plan for the phased construction of the Renovation Work and a schedule for the construction commencement and completion dates for each such phase ("**Phase**") of such construction (such schedule, as agreed upon by Lessee and Director, acting reasonably, shall be the "**Approved Phasing Schedule**"); and (b) the allocation of the "Original Cost Amount" referenced in Section 5.1 of the Restated Lease between each of the Phases (the "**Phase Cost Amounts**") for the purpose of Section 5.1 of the

Restated Lease. Lessee and Director shall exercise their good faith, reasonable efforts to agree upon the phasing plan and schedule and the Phase Cost Amounts referenced in the immediately preceding sentence. Prior to the execution of the Restated Lease, the “**Required Phase Commencement Date**” and “**Required Phase Completion Date**” for each Phase of the Renovation Work, as set forth in the Approved Phasing Schedule and referenced in Section 5.1 of the Lease, shall be inserted into Exhibit C attached to the Lease.

7.5 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.

8. 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), for any reason other than as a result of a County Default (as defined in Section 10.13 below), then (a) the Option shall automatically terminate, and (b) at County’s election by written notice from Director to Lessee to be delivered within ninety (90) days following the Option Expiration Date, the Existing Lease shall be considered to be (or to have been) automatically amended effective as of the Option Expiration Date (the “**Effective Amendment Date**”) as follows (the “**Non-Exercise Amendment**”):

(i) delete Sections 11, 13 and 14 of the Existing Lease and insert in place of such sections Subsection 4.2.2 of the form of Restated Lease (for purposes hereof, all references in such Subsection 4.2.2 to “Annual Minimum Rent” or “Monthly Minimum Rent” shall mean and refer to the square foot rental (payable annually or monthly, as applicable) referenced in Section 12 of the Existing Lease.

(ii) 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 (for purposes hereof, all references in such Subsections 4.4.2 through 4.4.5 to (I) “Renegotiation Date” shall mean and refer to each respective date on which the 10-year square foot and percentage rental adjustments are to be effective under Section 15 of the Existing Lease; (II) “Fair Market Rental Value” shall mean and refer to the “Fair Market Rental” referenced in Section 15 of the Existing Lease; and (III) “Annual Minimum Rent” and “Percentage Rent” shall mean and refer to the square foot and percentage rentals referenced in the Existing Lease);

(iii) 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;

(iv) 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 of the form of Restated Lease;

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

(vi) amend and restate Section 7 of the Existing Lease in full in accordance with Article 7 of the form of Restated Lease, except that all references to Section 10.4 of the form of Restated Lease shall be changed to Section 35 of the Existing Lease;

(vii) amend Sections 26 and 27 of the Existing Lease to adjust the amount and scope of commercial general liability, automobile liability, garagekeeper’s legal liability, workers compensation and employer’s liability insurance coverage required to be carried by Lessee to equal the amounts and coverages set forth in Subsections 9.1.1, 9.1.2 and 9.1.3 of the form of Restated Lease, to add to Section 26 of the Existing Lease the provisions of Subsection 9.1.7 of the form of Restated Lease, and to add to Section 26 of the Existing Lease the provisions of Section 9.6 of the form of Restated Lease (in each case with adjustment of any applicable internal section references to reflect the correct sections of the Existing Lease, as amended);

(viii) 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 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;”

(ix) 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 “Administrative Charge,” “Net Proceeds Share” and “Net Refinancing Proceeds” shall be deleted;

(x) add Section 10.2 and 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

(xi) 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 (x) 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 the County’s election in Section 8(b) above, County and Lessee shall execute and deliver a written document confirming the modifications to the Existing Lease set forth in this Section 8, 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). If Lessee disputes whether the requirements set forth in the first sentence of this Section 8 for the termination of the Option and the effectiveness of the Non-Exercise Amendment have been satisfied, then Lessee shall have the right to submit such dispute to arbitration in accordance with the same procedures, terms and provisions as set forth in Article 16 of the form of Restated Lease.

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 (to the extent not previously reimbursed by Lessee). Lessee shall pay all of such Actual Costs that were incurred prior to or as of the date of this Agreement (and which were not previously reimbursed by Lessee) 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.

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 to the same entity to whom Lessee assigns its leasehold interest under the Existing Lease in an assignment of the Existing Lease that is 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 supercedes 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 County Default. For purposes of this Agreement, a “**County Breach**” under this Agreement means a failure of County to perform or comply with any material obligation or covenant of County under this Agreement. For purposes of this Agreement, a “**County Default**” under this Agreement means County's failure to cure a County Breach under this Agreement within thirty (30) days after County's receipt of written notice from Lessee; provided, however, that if the nature of the County Breach is such that it cannot with reasonable diligence be cured within thirty (30) days, then the cure period set forth in this Section 10.13 shall be extended for such additional period as reasonably required for the cure of the County Breach as long as County commences cure of the County Breach within thirty (30) days after County's receipt of written notice from Lessee and diligently prosecutes such cure to completion.

10.14 Representation Regarding Existing Encumbrances. Lessee represents and warrants to County that as of the date of this Agreement there are no deeds of trust, mortgages or other security interests that encumber Lessee's interest in the Existing Lease or the Premises other than the “Deed of Trust” referenced in the Lender Consent attached to this Agreement. The grant of the Option set forth in this Agreement is contingent upon (a) the accuracy of the foregoing representation and warranty, and (b) the execution by the beneficiary of such Deed of Trust and delivery to County of such executed Lender Consent concurrent with the execution and delivery of this Agreement by Lessee and County.

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

10.16 Lessee Designation. The four entities that collectively comprise the Lessee under the Existing Lease and this Agreement (each, a “**Lessee Entity**”) shall be jointly and severally liable for Lessee's obligations under this Agreement. County shall have the right, but not the obligation, to rely upon, and Lessee (including each of the Lessee Entities collectively comprising Lessee) shall be bound by, any act, omission, election, notice or other communication by or from any one or more of such entities. At County's election, County shall have the right, but not the obligation, to disregard inconsistent or conflicting acts, notices, elections or communications received from two or more Lessee Entities, and County shall have the right, but not the obligation, to consider such inconsistent or conflicting acts, notices, elections or communications to not have been performed, delivered or made by or on behalf of Lessee. At County's request, Lessee shall cause any notice, election or other communication purportedly from, by or on behalf of Lessee, but not signed by all Lessee Entities that collectively comprise Lessee, to be signed or otherwise confirmed in writing by all such Lessee Entities, and pending receipt of such signatures or written confirmation, County shall have the right, but not the obligation, to treat such notice, election or other communication to not have

been made or delivered by or on behalf of Lessee. Notwithstanding the foregoing, Lessee hereby designates Lyon Management Group, Inc., a California corporation (“**LMGI**”), to have authority to act on behalf of, and to bind, Lessee (including all of the Lessee Entities) in connection with acts, omissions, notices, elections or communications under this Agreement, and any act, omission, notice, election or communication by or from LMGI shall bind Lessee (including all of the Lessee Entities) and County shall have the right to rely thereon. Lessee may, from time to time, by written notice to County signed by all Lessee Entities that comprise Lessee, designate such other person(s) or entity(ies) with authority to act on behalf of, and to bind, Lessee (including all of the Lessee Entities) as provided herein.

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: *[Signature]*

Chair, Board of Supervisors

ATTEST:

SACHI A. HAMAI, Executive Officer  
of the Board of Supervisors

By: *[Signature]*

Deputy

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN,  
County Counsel

By: *[Signature]*

Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

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

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

SACHI A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

By: *[Signature]*

Deputy



**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

LYON VILLA VENETIA, LLC, a Delaware  
limited liability company

By: Lyon Villa Venetia Partners, LLC, a  
Delaware limited liability company, its  
sole member

By: Lyon Housing (Villa Venetia) XLIII,  
LLC, its Manager

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

LYON VILLA VENETIA II, LLC, a Delaware  
limited liability company

By: Lyon Villa Venetia Partners, LLC, a  
Delaware limited liability company, its  
sole member

By: Lyon Housing (Villa Venetia) XLIII,  
LLC, its Manager

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

WOLFF VILLA VENETIA 224, LLC, a  
Delaware limited liability company

By: Lyon Villa Venetia Partners, LLC, a  
Delaware limited liability company, its  
sole member

By: Lyon Housing (Villa Venetia) XLIII,  
LLC, its Manager

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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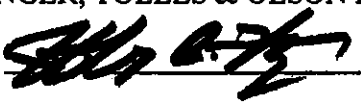
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*[Signature]*  
SACHI A. HAMAI  
EXECUTIVE OFFICER



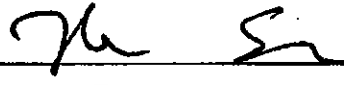
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IN WITNESS WHEREOF, County and Lessee have entered into this Agreement  
as of the date first set forth above.

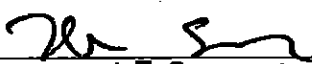
<p><b>THE COUNTY OF LOS ANGELES</b></p> <p>By: _____ Chair, Board of Supervisors</p> <p><b>ATTEST:</b></p> <p>SACHI A. HAMAI, Executive Officer of the Board of Supervisors</p> <p>By: _____ Deputy</p> <p><b>APPROVED AS TO FORM:</b></p> <p>ANDREA SHERIDAN ORDIN, County Counsel</p> <p>By: _____ Deputy</p> <p><b>APPROVED AS TO FORM:</b></p> <p>MUNGER, TOLLES &amp; OLSON LLP</p> <p>By:  _____</p>	<p><b>LYON VILLA VENETIA, LLC, a Delaware limited liability company</b></p> <p>By: Lyon Villa Venetia Partners, LLC, a Delaware limited liability company, its sole member</p> <p>By: Lyon Housing (Villa Venetia) XLIII, LLC, its Manager</p> <p>By: _____ Name: _____ Its: _____</p> <p><b>LYON VILLA VENETIA II, LLC, a Delaware limited liability company</b></p> <p>By: Lyon Villa Venetia Partners, LLC, a Delaware limited liability company, its sole member</p> <p>By: Lyon Housing (Villa Venetia) XLIII, LLC, its Manager</p> <p>By: _____ Name: _____ Its: _____</p> <p><b>WOLFF VILLA VENETIA 224, LLC, a Delaware limited liability company</b></p> <p>By: Lyon Villa Venetia Partners, LLC, a Delaware limited liability company, its sole member</p> <p>By: Lyon Housing (Villa Venetia) XLIII, LLC, its Manager</p> <p>By: _____ Name: _____ Its: _____</p>
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IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the date first set forth above.

<p>THE COUNTY OF LOS ANGELES</p> <p>By: _____ Chair, Board of Supervisors</p> <p>ATTEST:</p> <p>SACHI A. HAMAI, Executive Officer of the Board of Supervisors</p> <p>By: _____ Deputy</p> <p>APPROVED AS TO FORM:</p> <p>ANDREA SHERIDAN ORDIN, County Counsel</p> <p>By: _____ Deputy</p> <p>APPROVED AS TO FORM:</p> <p>MUNGER, TOLLES &amp; OLSON LLP</p> <p>By: _____</p>	<p>LYON VILLA VENETIA, LLC, a Delaware limited liability company</p> <p>By: Lyon Villa Venetia Partners, LLC, a Delaware limited liability company, its sole member</p> <p>By: Lyon Housing (Villa Venetia) XLIII, LLC, its Manager</p> <p>By:  Name: Frank T. Suryan, Jr. Its: President</p> <p>LYON VILLA VENETIA II, LLC, a Delaware limited liability company</p> <p>By: Lyon Villa Venetia Partners, LLC, a Delaware limited liability company, its sole member</p> <p>By: Lyon Housing (Villa Venetia) XLIII, LLC, its Manager</p> <p>By:  Name: Frank T. Suryan, Jr. Its: President</p> <p>WOLFF VILLA VENETIA 224, LLC, a Delaware limited liability company</p> <p>By: Lyon Villa Venetia Partners, LLC, a Delaware limited liability company, its sole member</p> <p>By: Lyon Housing (Villa Venetia) XLIII, LLC, its Manager</p> <p>By:  Name: Frank T. Suryan, Jr. Its: President</p>
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	<p>WOLFF VILLA VENETIA 224 II, LLC, a Delaware limited liability company</p> <p>By: Lyon Villa Venetia Partners, LLC, a Delaware limited liability company, its sole member</p> <p>By: Lyon Housing (Villa Venetia) XLIII, LLC, its Manager</p> <p>By: <u></u> Name: <u>Mark T. Suryan, Jr</u> Its: <u>President</u></p>
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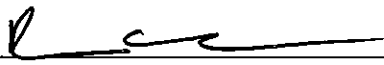
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## **LENDER CONSENT**

The undersigned represents that it is the agent for the current beneficiary under that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of May 25, 2004, and recorded in the Official Records of Los Angeles County, California on May 28, 2004, as Instrument No. 04-1376619 (the "Deed of Trust"). In connection with such Deed of Trust, County, Lessee and CSE Mortgage LLC, as lender, entered into that certain Ground Lease Estoppel Certificate and Consent dated as of March 29, 2010 ("Ground Lease Estoppel Certificate"), which Ground Lease Estoppel Certificate remains in full force and effect. As the agent for the current beneficiary under the Deed of Trust and the current lender under the Ground Lease Estoppel Certificate, the undersigned hereby consents to the foregoing Option to Amend Lease Agreement and agrees that the Deed of Trust shall be subject to and bound by any Non-Exercise Amendment referenced in Section 8 of the Option to Amend Lease Agreement that hereafter becomes effective in accordance with the terms and provisions of such Option to Amend Lease Agreement. In the event of any conflict between the terms and provisions of the Option to Amend Lease Agreement and the terms and provisions of the Ground Lease Estoppel Certificate, the terms and provisions of the Option to Amend Lease Agreement shall control.

*[Signature page follows]*

NS/CSE FINANCE, LLC,  
a Delaware limited liability company

By:   
Name: \_\_\_\_\_  
Title: **Daniel R. Gilbert**  
**Executive Vice President &**  
**Chief Investment Officer**



**EXHIBIT A**

**FORM OF RESTATED LEASE**

**AMENDED AND RESTATED LEASE AGREEMENT  
PARCEL 64T — MARINA DEL REY**

THIS AMENDED AND RESTATED LEASE AGREEMENT (“**Lease**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (“**Effective Date**”), by and between the COUNTY OF LOS ANGELES (“**County**”), as lessor, and LYON VILLA VENETIA, LLC, LYON VILLA VENETIA II, LLC, WOLFF VILLA VENETIA 224, LLC, and WOLFF VILLA VENETIA 224 II, LLC, each a Delaware limited liability company (collectively, with their permitted successors and assigns, “**Lessee**”), as lessee.

**RECITALS**

WHEREAS, County and Jackbilt, Inc. (the “**Original Lessee**”), entered into Lease No. 4709, dated July 21, 1961, as amended and restated by Amendment No. 8 to Lease No. 4709 dated October 22, 1968, and as further amended prior to the date hereof (the “**Existing Lease**”), pursuant to which County leased to Original Lessee certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 64T and more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the “**Premises**”);

WHEREAS, the term of the Existing Lease commenced on May 10, 1961 and was originally scheduled to expire on May 9, 2021 (the “**Existing Expiration Date**”);

WHEREAS, Lessee is the current successor-in-interest to the Original Lessee’s right, title and interest as lessee under the Existing Lease;

WHEREAS, County and Lessee entered into that certain Option to Amend Lease Agreement (Parcel 64T) dated as of \_\_\_\_\_, 2010 (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 May 9, 2054, and (ii) the renovation of the Improvements on the Premises, all in accordance with the terms and provisions set forth in this Lease; and

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

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for 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 “**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 after written notice from County and the expiration of 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. Actual Costs shall exclude any fees, costs or other amounts arising from any act or omission that constitutes a failure by County to comply with the terms of this Lease.

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

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

1.1.4 "ADJUSTED PHASE COST AMOUNT" shall have the meaning set forth in Section 5.1.

1.1.5 "ADJUSTMENT DATE" shall have the meaning set forth in Subsection 4.3.1.2.

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

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

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

1.1.9 "ANNUAL DEPOSIT AMOUNT" shall have the meaning set forth in Section 5.12.

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

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

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

1.1.13 "APPLICABLE LAWS" shall have the meaning set forth in Subsection 1.2.1.

1.1.14 “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.

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

1.1.16 “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.

1.1.17 “APPROVED PHASING SCHEDULE” shall have the meaning set forth in Section 5.1.

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

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

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

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

1.1.22 “beneficial interest” shall have the meaning set forth in Subsection 4.6.4.

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

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

1.1.25 “CALCULATION NOTICE” shall have the meaning set forth in Section 4.7.

1.1.26 “CAPITAL IMPROVEMENT FUND” shall have the meaning set forth in Section 5.13.

1.1.27 “CHANGE OF OWNERSHIP” shall have the meaning set forth in Subsection 4.6.1.

1.1.28 “CHANGE OF CONTROL” shall have the meaning set forth in Subsection 4.6.1.

- 1.1.29 “CITY” shall mean the City of Los Angeles, California.
- 1.1.30 “COMPLETION DATE” shall mean the date of the substantial completion of the Renovation Work.
- 1.1.31 “CONDEMNATION” shall have the meaning set forth in Subsection 6.1.1.
- 1.1.32 “CONDEMNOR” shall have the meaning set forth in Subsection 6.1.4.
- 1.1.33 “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.
- 1.1.34 “CONSTRUCTION COST ADJUSTMENT PERIOD” shall have the meaning set forth in Section 5.1.
- 1.1.35 “COST” shall have the meaning set forth in Subsection 4.2.2.3(6).
- 1.1.36 “COUNTY” shall have the meaning set forth in the first paragraph of this Lease.
- 1.1.37 “COUNTY COUNSEL” shall mean the Office of the Los Angeles County Counsel.
- 1.1.38 “COUNTY OPTION” shall have the meaning set forth in Subsection 11.2.4.
- 1.1.39 “COUNTY OPTION PRICE” shall have the meaning set forth in Subsection 11.2.4.
- 1.1.40 “COUNTY POOL RATE” shall have the meaning set forth in Subsection 4.4.7 of this Lease.
- 1.1.41 “COUNTY REMOVAL NOTICE” shall have the meaning set forth in Subsection 2.3.2 of this Lease.
- 1.1.42 “DATE OF TAKING” shall have the meaning set forth in Subsection 6.1.2.
- 1.1.43 “DEMOLITION AND REMOVAL REPORT” shall have the meaning set forth in Subsection 2.3.2.
- 1.1.44 “DEMOLITION SECURITY” shall have the meaning set forth in Subsection 2.3.2.

1.1.45 “DEPARTMENT” shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.46 “DEPOSIT DATE” shall have the meaning set forth in Section 5.12.

1.1.47 “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.

1.1.48 “DISQUALIFICATION JUDGMENT” shall have the meaning set forth in Subsection 16.14.1.

1.1.49 “DOCUMENTED TRANSACTION COSTS” shall have the meaning set forth in Subsection 4.8.1.2.

1.1.50 “EFFECTIVE DATE” shall have the meaning set forth in the first paragraph of this Lease.

1.1.51 “ENCUMBRANCE” shall have the meaning set forth in Subsection 12.1.1.

1.1.52 “ENCUMBRANCE HOLDER” shall have the meaning set forth in Subsection 12.1.1.

1.1.53 “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.

1.1.54 “EQUITY FINANCING EVENT” shall have the meaning set forth in Section 12.1.

1.1.55 “ESTIMATED COSTS” shall have the meaning set forth in Subsection 2.3.2.

1.1.56 “EVENTS OF DEFAULT” shall have the meaning set forth in Section 13.1.

1.1.57 “EXCLUDED DEFAULTS” shall have the meaning set forth in Section 12.3.

1.1.58 “EXCLUDED TRANSFERS” shall have the meaning set forth in Subsection 4.6.2.

1.1.59 “EXISTING EXPIRATION DATE” shall have the meaning set forth in the second paragraph of the Recitals to this Lease.

1.1.60 “EXISTING LEASE” shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.61 “EXCESS PERCENTAGE RENT PAYMENT” shall have the meaning set forth in Subsection 4.2.2.4.

1.1.62 “EXTENDED TIME” shall have the meaning set forth in Section 15.15.

1.1.63 “FAIR MARKET RENTAL VALUE” shall have the meaning set forth in Subsection 4.4.1.

1.1.64 “FINAL PLANS AND SPECIFICATIONS” shall have the meaning set forth in Subsection 5.3.3.

1.1.65 “FINANCING EVENT” shall have the meaning set forth in Section 12.1.

1.1.66 “FIRST DEPOSIT DATE” shall have the meaning set forth in Section 5.12.

1.1.67 “FIRST RENEGOTIATION DATE” shall have the meaning set forth in Section 4.4.

1.1.68 “FORCE MAJEURE” shall mean any inability of a party to perform any non-monetary obligation under this Lease due to fire or other casualty; acts of God; civil riots; embargo; governmental order; governmental moratorium; industry-wide strikes; shortage or unavailability of materials; or other similar causes beyond the reasonable control of the party required to perform the subject obligation.

1.1.69 “FORECLOSURE TRANSFER” shall have the meaning set forth in Subsection 12.1.2.1.

1.1.70 “FORECLOSURE TRANSFEREE” shall have the meaning set forth in Subsection 12.1.2.1.

1.1.71 “GMR” shall have the meaning set forth in Subsection 4.3.1.3.

1.1.72 “GMR COMMENCEMENT DATE” shall have the meaning set forth in Subsection 4.3.1.1.

1.1.73 “GROSS ERROR” shall have the meaning set forth in Subsection 16.14.3.

1.1.74 “GROSS RECEIPTS” shall have the meaning set forth in Subsection 4.2.2.3.

1.1.75 “GROSS TRANSFER PROCEEDS” shall have the meaning set forth in Section 4.8.

1.1.76 “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.

1.1.77 “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.

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

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

1.1.80 “INITIAL CURE PERIOD” shall have the meaning set forth in Subsection 12.4.1(2)(a).

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

1.1.82 “INSTITUTIONAL LENDER” shall have the meaning set forth in Subsection 12.1.3.1.

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

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

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

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

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

1.1.88 “LESSEE ENTITY” shall have the meaning set forth in Subsection 1.2.3.



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

1.1.90 “LESSEE’S DETERMINATION NOTICE” shall have the meaning set forth in Subsection 4.4.4.

1.1.91 “LMGI” shall have the meaning set forth in Subsection 1.2.3.

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

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

1.1.94 “MATERIAL MODIFICATION” shall 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 the greater of (a) One Hundred Thousand Dollars (\$100,000.00), adjusted annually to reflect the percentage change in the ENR from the Effective Date to the date on which the modification is requested, or (b) one percent (1%) of the total estimated construction cost of the Renovation Work (or the other Alterations that are then proposed to be constructed by Lessee); (2) the proposed modification is structural in nature; (3) the modification pertains to the exterior of the Improvements or materially affects the appearance of the Improvements from the exterior; (4) the modification is not in compliance with the Permitted Uses under this Lease; or (5) the modification (a) changes the total square footage of the Improvements by more than two percent (2%), (b) changes the total number of apartment units, (c) 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 or number of units of the Improvements, or (d) pertains to the Promenade.

1.1.95 “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 project and marina facilities in Marina del Rey.

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

1.1.97 “M&S INDEX” shall have the meaning set forth in Section 5.1.

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

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

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

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

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

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

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

1.1.105 “OPTION FEE” shall have the meaning given such term in the Option Agreement.

1.1.106 “ORIGINAL COST AMOUNT” shall have the meaning set forth in Section 5.1.

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

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

1.1.109 “PAYMENT BOND” shall have the meaning set forth in Subsection 5.4.3.2.

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

1.1.111 “PERFORMANCE BOND” shall have the meaning set forth in Subsection 5.4.3.1.

1.1.112 “PERMITTED CAPITAL EXPENDITURES” shall have the meaning set forth in Section 5.13.

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

1.1.114 “PHASE” shall have the meaning set forth in Section 5.1.

1.1.115 “PHASE COST AMOUNT” shall have the meaning set forth in Section 5.1.

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

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

1.1.118 “PREMISES” shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

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

1.1.120 “PRIME RATE” shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or its 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.

1.1.121 “PROMENADE” shall have the meaning set forth in Section 15.20.

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

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

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

1.1.125 “RELATED LESSEE ENTITY” shall have the meaning set forth in Subsection 4.6.2.2.

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

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

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

1.1.129 “REPLY” shall have the meaning set forth in Section 16.5.

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

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

1.1.132 “REQUIRED COMPLETION DATE” shall have the meaning set forth in Section 5.1.

1.1.133 “REQUIRED PHASE COMMENCEMENT DATE” shall have the meaning set forth in Section 5.1.

1.1.134 “REQUIRED PHASE COMPLETION DATE” shall have the meaning set forth in Section 5.1.

1.1.135 “REQUIRED COST AMOUNT” shall have the meaning set forth in Section 5.1.

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

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

1.1.138 “REVERSION” shall have the meaning set forth in Section 12.10.

1.1.139 “REVERSION AMENDMENT” shall have the meaning set forth in Section 5.1.

1.1.140 “REVERSION CONDITION” shall have the meaning set forth in Section 12.10.

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

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

1.1.143 “STATE” shall mean the State of California.

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

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

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

1.1.147 “SUBSEQUENT RENOVATION” shall have the meaning set forth in Section 5.11.

1.1.148 “SUBSEQUENT RENOVATION FUND” shall have the meaning set forth in Section 5.12.

1.1.149 “SUBSEQUENT RENOVATION PLAN” shall have the meaning set forth in Section 5.11.

1.1.150 “substantial completion” (or “substantially complete” or similar derivations) means the completion of the Renovation Work (or in reference to the Subsequent Renovation, the completion of the Subsequent Renovation), including without limitation, the receipt of all temporary certificates of occupancy (with Lessee having the obligation to obtain permanent certificates of occupancy promptly thereafter) or other applicable governmental certificates or approvals required for legal use and occupancy of the Improvements on the Premises, subject only to minor punch-list items that do not materially interfere with the use and occupancy of the Improvements, provided that any such minor punch-list items are completed in a diligent manner as soon as reasonably possible thereafter.

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

1.1.152 “TIME OF THE ESSENCE” shall have the meaning set forth in Section 15.2.

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

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

1.1.155 “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 1961, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors with contractors selected by them. Except as provided in Subsection 1.2.2, 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 or under the Premises or Improvements, or ground or other subsurface waters, (viii) the quality of any labor and materials used in any Improvements, (ix) the condition of title to the Premises or Improvements, and (x) the economics of the operation of the Premises or Improvements. The terms and provisions of this Subsection 1.2.1 are an acknowledgment and agreement as between Lessee and County and County’s agents, employees, successors and assigns, and are not intended to benefit or be enforceable by any other person or entity, and are not intended as a waiver of any of Lessee’s rights against any other person or entity.

1.2.2 Title. County represents and warrants 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 having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure and enforce Lessee’s rights under this Lease, as amended from time to time.

1.2.3 Definition of Lessee. As of the date of this Lease, the parties agree and acknowledge that the Lessee collectively consists of the following four Delaware limited liability companies each holding the respective percentage tenancy in common interest in the leasehold interest under this Lease set forth below:

Lyon Villa Venetia, LLC	30.02%
Lyon Villa Venetia II, LLC	19.98%
Wolff Villa Venetia 224, LLC	31.4%
Wolff Villa Venetia 224 II, LLC	18.6%

For purposes of this Lease, each of the above four entities (and each of their respective successors and assigns) are sometimes individually referred to as a “**Lessee Entity**” and

collectively as “**Lessee Entities.**” Each and all of the Lessee Entities shall be jointly and severally liable for Lessee’s obligations and liabilities under this Lease. County shall have the right, but not the obligation, to rely upon, and Lessee (including each of the Lessee Entities collectively comprising Lessee) shall be bound by, any act, omission, election, notice or other communication by or from any one or more of the Lessee Entities. At County’s election, County shall have the right, but not the obligation, to disregard inconsistent or conflicting acts, notices, elections or communications received from two or more Lessee Entities, and County shall have the right, but not the obligation, to consider such inconsistent or conflicting acts, notices, elections or communications to not have been performed, delivered or made by or on behalf of Lessee. At County’s request, Lessee shall cause any notice, election or other communication purportedly from, by or on behalf of Lessee, but not signed by all Lessee Entities that collectively comprise Lessee, to be signed or otherwise confirmed in writing by all such Lessee Entities, and pending receipt of such signatures or written confirmation, County shall have the right, but not the obligation, to treat such notice, election or other communication to not have been made or delivered by or on behalf of Lessee. Notwithstanding the foregoing, Lessee hereby designates Lyon Management Group, Inc., a California corporation (“**LMGI**”), to have authority to act on behalf of, and to bind, Lessee (including all of the Lessee Entities) in connection with acts, omissions, notices, elections or communications under this Lease, and any act, omission, notice, election or communication by or from LMGI shall bind Lessee (including all of the Lessee Entities) and County shall have the right to rely thereon. Lessee may, from time to time, by written notice to County signed by all Lessee Entities that comprise Lessee, designate such other person(s) or entity(ies) with authority to act on behalf of, and to bind, Lessee (including all of the Lessee Entities) as provided herein.

2. **TERM; OWNERSHIP OF IMPROVEMENTS.**

2.1 **Term.** The term of the Lease (“**Term**”) commenced on May 10, 1961 and, unless terminated sooner in accordance with the provisions of this Lease, shall expire at 11:59 p.m. on May 9, 2054. For purposes of this Lease, “**Lease Year**” shall mean each calendar year (or partial calendar) 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 appliances, furniture or equipment that are 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, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.3.2 Duty to Remove. No earlier than eleven (11) years, and no later than ten (10) 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"**).

In accordance with the terms of this Section 2.3, 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 reasonably subject to being 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 good and usable condition, consisting of a level, graded site with no excavations, hollows, hills or humps.

In the case of the termination of the Lease at the scheduled expiration date of the Term, any election by County to require Lessee to demolish and remove the Improvements or a Portion Subject to Demolition must be made by County in writing to Lessee (**"County Removal Notice"**) not later than five (5) years prior to the then-scheduled expiration date of the Term. 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) 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.

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 Demolition must be made by County in a County Removal Notice sent to Lessee 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 date that is the longer of the following periods after receipt by Lessee of the County Removal Notice (and County's notice of termination of the Lease): (a) ninety (90) days, or (b) if Lessee has submitted a Demolition and Removal Report to County, that period equal to the estimated demolition and removal period set forth in the Demolition and Removal Report.

Upon receipt of a County Removal Notice, 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, reasonably satisfactory to Director (which security shall, if applicable, bear interest which is added to the Demolition Security) ("**Demolition Security**"), and (ii) a schedule reasonably satisfactory to Director for the delivery by Lessee of the security described in clause (i) above, which schedule may provide for a periodic funding of the Demolition Security on a schedule reasonably satisfactory to Director, provided that such schedule shall in all events provide for a funding of any remaining unfunded security not later than three (3) years prior to the expiration of the Term. Lessee may substitute equivalent types of Demolition Security reasonably approved by Director. 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 (after written notice and the expiration of the cure period set forth in Subsection 13.1.1) shall constitute an Event of Default. 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 six (6) months prior to the scheduled expiration date

of the Lease; provided, however, that any written election or notice by County under this Section 2.3 that County will not require demolition and/or removal of the Improvements or a Portion Subject to Demolition shall be irrevocable. If County revokes a prior County Removal Notice, then any Demolition Security previously delivered by Lessee to County pursuant to this paragraph may be used by Lessee without restriction, and County agrees to execute and deliver commercially reasonable documentation effectuating same if requested by Lessee. Upon completion of all of Lessee's obligations under this Section 2.3, the remaining balance of any Demolition Security (not used by County pursuant to Subsection 2.3.3 or 2.3.4 below) may be used by Lessee without restriction, and County agrees to execute and deliver commercially reasonable documentation effectuating same if requested by Lessee. Subject to and in accordance with the provisions of Section 5.13, available funds in the Capital Improvement Fund may, under the circumstances and upon satisfaction of the requirements set forth in Section 5.13, be used towards satisfaction of the Demolition Security requirements of this Section 2.3.2.

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 (subject to Lessee's rights under Subsections 2.3.1 and 2.3.4) 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.

Each and every Sublease shall provide that such Sublease is subordinate to this Lease, that such Sublease shall terminate not later than the scheduled or earlier termination of this Lease, and that the Sublessee (and any and all other occupants of the subleased premises) shall vacate and surrender possession of the subleased premises upon the termination of this Lease. Except as County otherwise notifies Lessee in writing, Lessee shall be responsible at Lessee's sole cost and expense, for the eviction and removal from the Premises and Improvements of all Sublessees at the expiration or earlier termination of this Lease, including without limitation, the delivery to all Sublessees of all notices required under Applicable Law for the timely vacation of the Premises and Improvements by such Sublessees on or prior to the termination of this Lease (or in the case of a termination of the Lease prior to the scheduled expiration of the Term pursuant to a termination notice that is delivered after the date required under Applicable Law for the delivery of required notices for the timely vacation of the Premises and Improvements by the Sublessees, then as soon as possible thereafter). County shall have the right, but not the obligation, to send any such notices to the Sublessees at Lessee's cost and expense. If notwithstanding Lessee's compliance with the foregoing requirements Lessee is not permitted by Applicable Law to evict (or otherwise re-acquire possession of the Improvements from) a Sublessee to permit the demolition of the Improvements within the time period required under this Subsection 2.3.2, then the Post Term Removal Period shall be extended for such period as necessary to permit the completion of the eviction of (or other re-acquisition of possession of the Improvements from) the Sublessees for the demolition of the Improvements as required under this Section 2.3.

2.3.3 County's Right to Remove Improvements. If County elects to have Lessee demolish and remove Improvements pursuant to its rights hereunder, 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 therefor.

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 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. Except where Lessee is obligated to remove the Improvements at the expiration or earlier termination of this Lease, Lessee shall repair any damage caused by the removal of furniture, equipment and other personal property from the Premises. If Lessee fails to remove furniture, equipment and other personal property as required herein within the period required above, 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. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities, shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term, except to the extent such maintenance, repair or replacement is required as a result of damage caused by County or its agents or employees, in which case such maintenance, repair or replacement shall be County's responsibility.

### 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 and such other related and incidental uses as are specifically approved by County (collectively, 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 shall operate the Premises and Improvements in accordance with a minimum standard of operation that is at least consistent with the upgraded project amenities and services set forth in the Renovation Plan.

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 as is necessary to allow Lessee to perform its maintenance, repair and renovation obligations pursuant to this Lease.

3.2.2.7 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. In addition, 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 unreasonably 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 (subject to the construction periods contemplated herein) of the Premises and Improvements, 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 in light of these objectives, consistent with the operation of comparable residential apartment projects, and that it will use commercially reasonable efforts to maximize the County's revenue therefrom in accordance with this Lease. 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 of Promenade. The Promenade (as defined in Section 15.20) shall be open to the public every day of the year during such hours as prescribed by Director, except for any closure approved by Director required to perform any maintenance, repair, replacement, renovation, alteration or restoration work permitted or required under this Lease.

3.5 Signs and Awnings. Any and all art and displays (to the extent that the requirement of prior approval of the aforementioned items does not violate Applicable Laws), awnings and 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.

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 Coastal Development Permit No(s). \_\_\_\_\_ **[PRIOR TO LEASE EXECUTION INSERT ANY COASTAL DEVELOPMENT PERMIT NO(S). ISSUED FOR RENOVATION WORK]**, which conditions and requirements are incorporated into this Lease by reference, and (ii) all public access requirements of the Marina del Rey Local Coastal Program, as amended.

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 comparable residential apartment projects in Marina del Rey, and delivered in writing to Lessee.

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, 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, which consent may be withheld by Lessee in its sole and absolute discretion.

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 in writing to, or actually known to, any Lessee Entity, 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 City to convey such easements and transfer such rights to others. For purposes hereof, any written disclosure to, or knowledge of, LMGI, shall be deemed to constitute written disclosure to, or knowledge of (as applicable), the Lessee Entities.

#### 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. Except as specifically set forth herein, 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 Lease Year is shorter than a calendar year, then the Annual Minimum Rent 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 until the GMR Commencement Date (as defined in Section 4.3 below), the Annual Minimum Rent shall be equal to seventy-five percent (75%) of the average total annual square foot rental and percentage rent that was payable by Lessee under the Existing Lease for each of the first three years of the last three and one-half years prior to the Effective Date. Effective on and after the GMR Commencement Date, the Annual Minimum Rent shall be established in accordance with the terms and provisions of Sections 4.3 and 4.4 of this Lease.

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 Monthly Minimum Rent or Annual Minimum Rent for such month or year (as applicable). 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 the applicable percentage category set forth below.

(a) NOT APPLICABLE;

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

(c) THIRTEEN PERCENT (13%) 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;

(c1) TWELVE PERCENT (12%) of Gross Receipts or other fees charged for the 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 commercial 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 occupancy of the space) are required to be reported under another percentage rent category;

(d) NOT APPLICABLE;

(e) FIVE PERCENT (5%) of commissions or other fees earned from boat brokerage, car rental agencies, marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, 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 Sublessee) from such enterprise if Lessee (or such Sublessee) is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or a Sublessee) from such enterprise if a third party provider is the operator of such enterprise;

(g) NOT APPLICABLE;

(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 Sublessee) from such enterprise if Lessee (or a Sublessee) is the operator of such enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or fees collected by Lessee (or a 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 AND ONE-HALF PERCENT (3½%) 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) NOT APPLICABLE;

(l) NOT APPLICABLE;

(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) NOT APPLICABLE;

(o) NOT APPLICABLE;

(p) NOT APPLICABLE;

(q) FIVE PERCENT (5%) of Gross Receipts from cover charges or other fees charged for admission to facilities featuring entertainment, excluding movie theaters, whose Gross Receipts 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 percentage received by County 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 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.

4.2.2.1 Payment of Percentage Rent. Within fifteen (15) days after the close of each and every calendar month of the Term hereof, Lessee shall file with

County a report of Gross Receipts by category for such previous month, and the amount of Percentage Rent resulting therefrom. Lessee shall include with such report a payment to County of the amount by which the Percentage Rent for such previous month exceeds the Monthly Minimum Rent paid by Lessee for such previous month.

4.2.2.2 Accounting Records and Procedures. Lessee agrees to and shall comply with, and shall cause all 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, without duplication, the gross amount of all money, receipts, compensation, or other things of value, including but not limited to charges, sales price, rentals, payments, reimbursements (including, without limitation, common area maintenance or other expenses, taxes, utilities, insurance and other payments or reimbursements), fees and commissions made or earned by Lessee and/or all Sublessees, whether collected or accrued 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, food, beverages or merchandise.

(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, collection costs, discounts from credit card operations, 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 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 and in the amount so collected.

(5) In those instances where Gross Receipts are based on the sale of merchandise, food, beverages or services, Gross Receipts shall not include any of the following 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, including, but not limited to casualty insurance, other than rental interruption or business interruption insurance covering 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;

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

(6) Gross Receipts shall not include payments received by Lessee from a Sublessee for the Cost of such Sublessee's submetered electricity, provided (A) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical 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; and (C) the amount received is actually credited against the cost of the Sublessee's electricity. For the purpose of this paragraph (6), the "**Cost**" of a Sublessee's electricity 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, 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 all 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 amounts received by the Sublessee of an individual apartment unit 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.

4.2.2.4 Excess Payments Credit. 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 Monthly Minimum Rent otherwise due and/or if not exhausted, 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.

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 Prior to First Renegotiation Date. During the period commencing on the GMR Commencement Date and continuing until the First Renegotiation Date (as defined in Section 4.4 below), the Annual Minimum Rent shall be established in accordance with the terms and provisions of this Section 4.3.

4.3.1 Definitions. For purposes of this Lease, the following terms shall be defined as set forth below:

4.3.1.1 **"GMR Commencement Date"** means January 1, 2013.

4.3.1.2 **"Adjustment Date"** means the GMR Commencement Date and each January 1 thereafter during the remaining Term of the Lease, excluding the First Renegotiation Date.

4.3.1.3 **"GMR"** means One Million One Hundred Thousand Dollars (\$1,100,000.00) per year, increased by the same percentage as the percentage increase (if any) in the Consumer Price Index for the period from November, 2009 until the second month preceding the month that includes the Adjustment Date on which the then-current adjustment in the Annual Minimum Rent takes effect. For purposes of clarification, the GMR shall never be less than One Million One Hundred Thousand Dollars (\$1,100,000.00) per Lease Year.

4.3.2 Adjustments to Annual Minimum Rent. Effective upon the GMR Commencement Date, the Annual Minimum Rent shall be adjusted to equal the GMR for the GMR Commencement Date. Effective as of each Adjustment Date following the GMR Commencement Date (until the First Renegotiation Date), the Annual Minimum Rent shall be adjusted on an annual basis to equal the greater of the GMR for such Adjustment Date or the Annual Minimum Rent in effect under this Subsection 4.3.2 for the year immediately preceding such Adjustment Date.

4.4 Renegotiation of Annual Minimum and Percentage Rents. For purposes of this Lease, the “**First Renegotiation Date**” means the January 1 that is the closest (either before or after) to the twentieth (20<sup>th</sup>) anniversary of the Effective Date. Effective on the First Renegotiation Date, the Annual Minimum Rent shall be readjusted in accordance with this Section 4.4. Effective on the First Renegotiation Date and each subsequent tenth (10th) anniversary thereafter (individually, with the First Renegotiation Date, each a “**Renegotiation Date**” and collectively, the “**Renegotiation Dates**”), the Percentage Rent shall be readjusted in accordance with this Section 4.4.

4.4.1 Fair Market Rental Value. As used herein, “**Fair Market Rental Value**” means, as of each Renegotiation Date, the fair market rent, expressed in terms of an Annual Minimum Rent and Percentage Rent (with Percentage Rent calculated based on percentages of Gross Receipts in accordance with the categories enumerated in Subsection 4.2.2), which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses 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.

4.4.2 Annual Minimum Rent. Effective on the First Renegotiation Date, the Annual Minimum Rent shall be adjusted to equal the Annual Minimum Rent component of Fair Market Rental Value determined in accordance with the terms and provisions of this Section 4.4; provided, however, that in no event shall the Annual Minimum Rent that becomes effective on the First Renegotiation Date be less than the greater of (a) seventy-five percent (75%) of the average total Annual Rent that was payable for each of the three (3) years immediately preceding the First Renegotiation Date, or (b) One Million One Hundred Thousand Dollars (\$1,100,000.00). Effective on each Adjustment Date after the First Renegotiation Date and continuing during the remaining Term of the Lease, the Annual Minimum Rent shall be adjusted on an annual basis to an amount equal to the amount of the Annual Minimum Rent that became effective on the First Renegotiation Date in accordance with the terms of this Subsection 4.4.2 above, increased by the same percentage as the percentage increase (if any) in the Consumer Price Index for the period from the month of November that immediately precedes such Adjustment Date as compared to the Consumer Price Index for the month of November immediately preceding the First Renegotiation Date; provided, however, that commencing with the first Adjustment Date following the First Renegotiation Date and continuing during the

remaining Term of the Lease in no event shall the Annual Minimum Rent ever be reduced to an amount that is less than the Annual Minimum Rent that was in effect for the year immediately preceding such Adjustment Date. The Annual Minimum Rent shall not be subject to renegotiation at any Renegotiation Date after the First Renegotiation Date.

4.4.3 Percentage Rent. Effective on the First Renegotiation Date and each Renegotiation Date thereafter during the remaining Term of the Lease, the Percentage Rent shall be adjusted to an amount equal to the Percentage Rent component of Fair Market Rental Value determined in accordance with this Section 4.4; provided, however, that in no event shall the percentage for any particular Percentage Rent category set forth in categories (a) through (s1) of 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 provided, further, that the foregoing requirement that no percentage for a particular Percentage Rent category ever be reduced below the percentage for such Percentage Rent category set forth in Subsection 4.2.2 above, shall have no effect on the determination of the Fair Market Rental Value for any other Percentage Rent category in which the Fair Market Rental Value percentage for such category might be greater than that set forth for such category in Subsection 4.2.2 above. In addition, the amount of Annual Minimum Rent proscribed by Subsection 4.4.2 above shall have no effect on the determination of the Percentage Rent component of the Fair Market Rental Value under this Subsection 4.4.3.

4.4.4 Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to each Renegotiation Date, Lessee shall deliver to County written notice (“**Lessee’s Determination Notice**”) setting forth Lessee’s determination of the Percentage Rent component of the Fair Market Rental Value of the Premises for each of the Percentage Rent categories set forth in clauses (a) through (s1) of Subsection 4.2.2 which constitute Permitted Uses at such time (with any remaining category percentages to be subsequently calculated, if necessary, in accordance with the grammatical paragraph immediately preceding Subsection 4.2.2.1 of this Lease), expressed in terms of a percentage for each such Percentage Rent category. In addition, in the case of the First Renegotiation Date, Lessee’s Determination Notice shall also include Lessee’s determination of the Annual Minimum Rent component of the Fair Market Rental Value of the Premises for the First Renegotiation Date. Lessee’s Determination Notice shall be accompanied by a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determinations, 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 Determination Notice, if County disagrees with Lessee’s determinations, County shall deliver to Lessee written notice of such disagreement, together with County’s determinations of any disputed components of the Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determinations, 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 thirty (30) days after receipt of a subsequent written notice from Lessee, then Lessee's determinations of Fair Market Rental Value set forth in Lessee's Determination Notice shall be binding on County as of the Renegotiation Date (subject to the minimum Annual Minimum Rent (if applicable) and Percentage Rent provisions set forth in this Section 4.4); provided, however, that Lessee's subsequent written notice to County shall conspicuously state in bold faced type that such determinations of Fair Market Rental Value shall be binding on County unless County delivers notice of its disagreement within such thirty (30) day period.

If Lessee fails to deliver Lessee's Determination Notice in compliance with this Subsection 4.4.4 and such failure continues for thirty (30) days after receipt of written notice from County, then County shall submit its determinations of Fair Market Rental Value to Lessee, and Lessee shall have thirty (30) days after the submittal by County to Lessee of County's determinations of Fair Market Rental Value to deliver to County written notice of Lessee's agreement or disagreement with County's determinations. If Lessee fails to deliver notice of such disagreement within such thirty (30) day period, and such failure continues for ten (10) days after receipt of a subsequent written notice from County, then County's determinations of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date; provided, however, that County's subsequent notice to Lessee shall conspicuously state in bold faced type that such determinations of Fair Market Rental Value shall be binding on Lessee unless Lessee delivers notice of its disagreement within such ten (10) day period.

4.4.5 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 4.4.4 above, County and Lessee shall have sixty (60) days from the delivery of the notice of disagreement in which to agree upon the disputed components of 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 (if applicable) and Percentage Rent percentages 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, or after the Renegotiation Date has occurred, at the agreed upon new levels with respect to any undisputed components of Fair Market Rental Value.

4.4.6 Arbitration. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in Subsection 4.4.5, then, unless the parties agree otherwise, the disputed components of 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 (in accordance with the provisions of Article 16) setting forth the new Annual Minimum Rent (if applicable) and Percentage Rent percentages as determined by arbitration. In order to determine the Annual Minimum Rent (if applicable) and Percentage Rent components of the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration the terms and provisions set forth in

Subsections 4.4.1 through 4.4.3 above. 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, or after the Renegotiation Date has occurred, at the agreed upon new levels with respect to any undisputed components of Fair Market Rental Value.

4.4.7 Retroactivity. In the event that, pursuant to Subsections 4.4.5 or 4.4.6 hereof, the parties execute an amendment to this Lease setting forth the newly effective Annual Minimum Rent (if applicable) and Percentage Rent components of the Fair Market Rental Value, 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) the actual Annual Rent payable by Lessee and (b) the actual Annual Rent paid by Lessee, 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 an applicable rental payment was payable or paid (or credited), as the case may be, at the following annual 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) month after the Renegotiation Date, plus one percent (1%), 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 4.4.7 as long as Lessee pays to County any such rent underpayment and accrued interest within the thirty (30) day period prescribed in this Subsection 4.4.7.

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<sup>th</sup>) 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 two (2) business days after Lessee receives written notice from County. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Prime Rate plus three percent (3%), 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).

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) a Net Proceeds Share, in the event such Change of Ownership or Financing Event 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 or a Lessee Entity of five percent (5%) or greater tenancy in common or other direct ownership interest in the collective leasehold interest of Lessee under this Lease, (b) the execution of a Major Sublease or the transfer by a Major Sublessee of a five percent (5%) or greater tenancy in common or other direct ownership interest in the sub-leasehold interest under a Major Sublease, (c) any transaction or series of related transactions not described in clause (a) or (b) above of this Subsection 4.6.1 that constitutes an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in (i) Lessee, (ii) a Lessee Entity that owns a five percent (5%) or greater tenancy in common or other direct ownership interest in the collective leasehold interest

under this Lease, or (iii) a Major Sublessee, or (d) a Change of Control (as defined below) of (i) Lessee, (ii) a Lessee Entity that owns a five percent (5%) or greater tenancy in common or other direct ownership interest in the collective leasehold interest under this Lease, or (iii) a Major Sublessee. For the purposes of this Lease, “**Change of Control**” with respect to an entity shall refer to a transaction whereby the transferee acquires a direct or indirect beneficial interest in such entity which brings its direct or indirect cumulative beneficial interest in such entity to greater than fifty percent (50%) of the entire beneficial interest in such entity. An Equity Financing Event approved in accordance with Article 12 of this Lease shall not constitute a Change of Ownership.

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

4.6.2.1 a transfer of the transferee’s leasehold interest under this Lease (or a portion thereof) by a Lessee Entity to another person or entity that is a Lessee Entity as of both the Effective Date and immediately prior to the transfer;

4.6.2.2 a transfer by any person or entity that is a direct or indirect partner, shareholder or member of a Lessee Entity (including a limited partnership, corporation or limited liability company that is a direct or indirect owner in a Lessee Entity’s ownership structure), to any other person or entity that as of both the Effective Date and immediately prior to the transfer is a direct or indirect partner, shareholder or member of a Lessee Entity (including a limited partnership, corporation or limited liability company that is a direct or indirect owner in a Lessee Entity’s ownership structure) (such person or entity, a “**Related Lessee Entity**”), or to any limited partnership, corporation or limited liability company that controls, is controlled by, or is under common control with, a Related Lessee Entity; as used in this Subsection 4.6.2.2, “**control**” means the ownership of more than fifty percent (50%) of the economic interest and voting control of an entity.

4.6.2.3 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 a Lessee Entity or a change in the managing member or general partner of such Lessee Entity, except if the transfer otherwise constitutes an Excluded Transfer under another paragraph of this Subsection 4.6.2;

4.6.2.4 a transfer of ownership interests in a Lessee Entity or in constituent partners, shareholders or members of a Lessee Entity (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, or (iii) from such a trust or any trust that is an owner in a constituent entity of such Lessee Entity 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 4.6.2.4 is the result of gift, devise, intestate succession or operation of law;

4.6.2.5 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;

4.6.2.6 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 leasehold interest under this Lease, a Lessee Entity, the sub-leasehold interest under a Major Sublease, or a Major Sublessee, and such transfer does not involve an intent to avoid the terms and provisions of this Lease pertaining to a Change of Ownership;

4.6.2.7 any transfer resulting from a Condemnation;

4.6.2.8 any transfer contemplated in Subsection 12.1.2.1 or 12.1.2.2; or

4.6.2.9 any and all Approved Apartment Leases.

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 a Lessee Entity or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than an Excluded Transfer) 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 a Lessee Entity (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, trusts or other entities.

4.6.4.1 Interests Held By Entities. Except as otherwise provided herein, an interest in a Lessee Entity or a Major Sublessee 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. Where more than one layer of entities exists between a Lessee Entity or a Major Sublessee, as applicable, and the ultimate owners, then the

foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in a Lessee Entity or a Major Sublessee, 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 a Lessee Entity or a Major Sublessee shall have any liability to County under this Lease.

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, 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 each 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, if any, 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 the transaction is approved, and if the amounts of any Administrative Charge and Net Proceeds Share are less than the deposit, then County shall refund to Lessee the excess amount of the deposit within thirty (30) days after the amounts of the Administrative Charge and Net Proceeds Share are determined. If County disapproves the proposed transaction then, within thirty (30) days after written 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 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 and any 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 respond in writing 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 in writing. If the parties are unable to agree as to the amount of the Net Proceeds Share (or any associated Improvement Costs adjustment) 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, which 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 Beneficial Interest in Lessee or a Major Sublessee.

(a)     Where a Change of Ownership (other than an Excluded Transfer) has occurred by reason of the transfer of less than all of the beneficial interests in Lessee or a Lessee Entity, then the Net Proceeds Share with respect to such Change of Ownership shall be calculated with respect to (but only with respect to) those portions of the beneficial interest in Lessee or such Lessee Entity, as applicable, that have been acquired by the transferee since the later of (i) the Effective Date, or (ii) the date of the most recent event creating the 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 (x) a transfer of a leasehold interest by the Lessee Entity in which such beneficial interest is owned, or (y) a Change of Ownership that included a transfer of the beneficial interest that is the subject of the current transfer.

(b)     Where a Change of Ownership (other than an Excluded Transfer) has occurred by reason of the transfer of less than all of the beneficial interests in a Major Sublessee, then the Net Proceeds Share with respect to such Change of Ownership shall be calculated with respect to (but only with respect to) those portions of the beneficial interest in the Major Sublessee that have been acquired by the transferee since the later of

(i) the Effective Date, or (ii) the date of the most recent event creating the 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 (x) a transfer of the sub-leasehold interest under such Major Sublease, or (y) 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**”), then for purposes of calculating the Net Proceeds Share from such transaction, 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 discounted to present value. 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 submitted to binding 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 or a Lessee Entity changes with the transfer, shall be the joint and several obligation of both the Lessee Entities prior to the transfer and the Lessee Entities 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 (excluding Excluded Transfers), the “**Net Proceeds Share**” shall be the amount by which the greater of the following exceeds the Administrative Charge payable 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. Notwithstanding the foregoing, with respect to the first Change of Ownership that is not an Excluded Transfer and that occurs prior to the tenth (10<sup>th</sup>) anniversary of the earlier of the Completion Date or the Required Completion Date (but, for avoidance of doubt, not with respect to the second or any subsequent Change of Ownership during such ten (10) year period, and not with respect to any Change of Ownership after the tenth (10<sup>th</sup>) anniversary of the earlier of the Completion Date or the Required Completion Date), the reference to “five percent (5%)” in clause (a)(ii) of the immediately preceding sentence shall instead be “two and one-half percent (2.5%)” and the reference to “twenty percent (20%)” in clause (b) of the immediately preceding sentence shall instead be “ten percent (10%).”

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.

**“Gross Transfer Proceeds”** shall mean (subject to Subsection 4.6.4.2) 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).

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 Original Lessee. In the case of a transfer by an original Lessee Entity executing this Lease and any successor or assignee of such Lessee Entity that acquired its interest through an Excluded Transfer (but not a transfer by a successor or assignee of such Lessee Entity that did not acquire its interest through an Excluded Transfer) constituting a Change of Ownership for which a Net Proceeds Share is payable, **“Net Transfer Proceeds”** shall mean the Gross Transfer Proceeds from such transfer, less the following amounts:

4.8.1.1 The sum of (a) Thirty-Four Million Dollars (\$34,000,000.00) (the **“Base Value”**), plus (b) (1) the final actual out-of-pocket costs and fees reasonably paid by Lessee after the Effective Date for the design, permitting (including obtaining the entitlements) and construction of the Renovation Work or other physical capital Improvements or Alterations to the Premises after the Effective Date constructed by Lessee in compliance with Article 5 of this Lease, plus (2) the actual out-of-pocket costs and fees reasonably paid by Lessee prior to the Effective Date for the design and permitting (including obtaining the entitlements) of the Renovation Work (but not in connection with any other previously contemplated or proposed Alteration or other Improvement plan for the Premises) and the construction costs of the model residential units for the Renovation Work (the amounts described in this clause (b) are referred to as **“Improvement Costs”**). The following shall apply in further defining Improvement Costs: (i) all actual out-of-pocket hard and soft construction costs shall be included in Improvement Costs, provided that no fees, costs or other amounts paid to affiliates of Lessee shall be included (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); (ii) Improvement Costs shall include the actual interest accrued during the construction period for the Renovation Work or other applicable Alterations described above in this Subsection 4.8.1.1 on any construction loan obtained from an unaffiliated third party lender for such work; and (iii) Improvement

Costs shall include the actual out-of-pocket fees and other costs paid by Lessee to third parties in connection with the origination and closing of any construction loan obtained from an unaffiliated third party lender for the Renovation Work or other applicable Alterations described above in this Subsection 4.8.1.1.

With respect to Improvement Costs pertaining to the Renovation Work or the Subsequent Renovation, Lessee shall submit the Improvement Costs to Director on a progress basis at the end of each ninety (90) day period during construction of each such project, along with a final accounting of total Improvement Costs for the applicable project within ninety (90) days after the completion of the work. With respect to Improvement Costs for Alterations which are not part of the Renovation Work or the Subsequent Renovation, Lessee shall submit such Improvement Costs to Director on an annual basis within ninety (90) days following the end of each Lease Year. Lessee shall accompany the final accounting of the Improvement Costs for each project with a written certification from Lessee that such costs are accurate, and a written acknowledgment by Lessee's construction lender (to the extent that such construction lender exists and the construction lender has funded such costs) that such costs were funded by such lender. If by the date required for Lessee's submission of the Improvement Costs for a particular project the final amount of the Improvement Costs for such project 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 such project (including a description of the costs and the amounts under dispute). Lessee shall thereafter notify Director 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 such project to reflect the resolution of such dispute.

4.8.1.2 Commissions, title and escrow costs, legal fees and expenses, and other bona fide closing costs actually paid by the transferor to third parties and documented to the reasonable satisfaction of Director, which costs were directly attributable to the negotiation, documentation and consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share, and the Actual Costs reimbursed by Lessee to County with respect to the review and approval of such transaction (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 Entity other than an original Lessee Entity executing this Lease (or other than any successor or assignee of such original Lessee Entity that acquired its interest through an Excluded Transfer), constituting a Change of Ownership for which a Net Proceeds Share is payable, "**Net Transfer Proceeds**" shall mean the Gross Transfer Proceeds received by that successor from such transfer, minus the following amounts with respect to such successor Lessee Entity:

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 interest by such successor, (b) the purchase price such successor paid for the interest acquired or (c) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor'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 successor acquired its interest or that was subsequently obtained, if such financing has not been refinanced, but without duplication;

4.8.2.2 Improvement Costs actually paid by such successor after such successor's acquisition of its 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 Lessee certification and construction lender acknowledgment (if applicable), 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 that are received by Lessee from the Major Sublessee and with respect to which a percentage 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 a Lessee Entity 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 (calculated by multiplying the Base Value and Improvement Costs by 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 Entity that is not an original Lessee Entity, such cost shall in no event be deemed to be less than the pro rata share (calculated by multiplying the sum of Subsections 4.8.2.1 and 4.8.2.2 by 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 a Lessee Entity 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, plus in the case of secondary financing the original principal balance of any existing financing that is not repaid as a part of such secondary financing, minus (a) the greatest of (i) the Base Value plus Improvement Costs incurred prior to the date of the current Financing Event as to which Net Refinancing Proceeds is then being calculated, (ii) the original principal amount of any refinancing consummated after the Effective Date but prior to the then subject Financing Event (plus if the financing described in this clause (ii) was secondary financing, the original principal balance of any then existing financing that was not repaid as a part of such secondary financing), 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.

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 that is not an Excluded Transfer.

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 Lessee Entities both before and after the date of the transfer. 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 pursuant to an escrow agreement reasonably acceptable to Lessee and County (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 the consummation by Lessee of a Major Sublease as described in Subsection 4.6.1(b) that is not an Excluded Transfer, the Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds are actually received by Lessee, with the Net Proceeds Share being equitably apportioned to the payments derived by Lessee from said Major Sublease (with any payments passed through to County under this Lease being excluded from any Net Proceeds Share calculation).

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 all shareholders, partners, members and other holders of beneficial interests in a Lessee Entity or a Major Sublessee, or a constituent ownership entity thereof (regardless of the number of layers of such entities), if (a) such interest equals or exceeds a five percent (5%) beneficial interest in a Lessee Entity and also equals or exceeds a two percent (2%) beneficial interest in the total beneficial interests in all Lessee Entities, or (b) such interest equals or exceeds a five percent (5%) beneficial interest in a Major Sublessee and, if there are multiple Major Sublessees, also equals or exceeds a two percent (2%) beneficial interest in the total beneficial interests in all Major Sublessees. 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 a beneficial interest that (i) is equal to or exceeds a five percent (5%) beneficial interest in a Lessee Entity and that also exceeds a two percent (2%) beneficial interest in the total beneficial interest in all Lessee Entities, or (ii) is equal to or exceeds a five percent (5%) beneficial interest in a Major Sublessee and, if there are multiple Major Sublessees, also equals or exceeds a two percent (2%) beneficial interest in the total beneficial interests in all Major Sublessees; 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 sentence 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 any holder of a five percent (5%) or greater beneficial interest in a Lessee Entity or a Major Sublessee (that also constitutes a two percent (2%) or greater beneficial interest in the total beneficial interests in all Lessee Entities or Major Sublessees, as applicable).

## 5. RENOVATION WORK; ALTERATIONS.

5.1 Renovation Work. Promptly following the Effective Date, Lessee shall renovate the existing Improvements, including the renovation of the interior of all of the existing 224 residential units, building facades, interior and exterior common areas, landscaping, hardscape, the

immediately adjacent round-about and center median within the public right-of-way that provides access to the Premises, the Promenade and the parking areas, with all required parking for the Premises and Improvements to be provided on the Premises. The foregoing renovation work shall include the replacement of all building systems, including all heating, ventilation and air conditioning, electrical (at least from the panel to switches and plugs, as well as from the panel to the meter to the building panel to the extent required by any applicable governmental authority due to electrical capacity requirements), plumbing (except if Lessee demonstrates to the satisfaction of the Department through a third party review acceptable to the Department that the useful life of the existing plumbing system extends beyond the remaining Term of the Lease), elevator and other building systems and equipment. The landscaping and construction process for the foregoing work shall take into consideration the preservation of wildlife habitat on the Premises. The work described above in this Section 5.1 shall be performed in accordance with the renovation plan attached to this Lease as Exhibit B (the “**Renovation Plan**”) and is referred to in this Lease as the “**Renovation Work**.” The Renovation Work shall be performed in accordance with the Final Plans and Specifications for the Renovation Work (as established under the Option Agreement to the extent that the Final Plans and Specifications for the Renovation Work are approved by Director prior to the Effective Date, or as established under Subsection 5.3.3 below to the extent that the Final Plans and Specifications for the Renovation Work are not approved by Director until after the Effective Date).

Lessee shall be responsible for the acquisition and compliance with all required governmental (including, without limitation, County, Coastal Commission (if applicable) and Design Control Board) planning and entitlement approvals required to perform the Renovation Work.

Lessee shall be solely responsible for all costs and expenses incurred in connection with the performance of the Renovation Work (including all design, entitlement and construction activities). Lessee shall expend not less than the Required Cost Amount (as defined below) for the out-of-pocket hard construction costs (excluding all soft costs, financing charges, the Option Fee or the value of the existing leasehold or existing Improvements) to perform the Renovation Work. For purposes of this Section 5.1, hard construction costs shall include: (a) the cost of the general contractor; and (b) actual hard costs of utilization of in-house construction labor for actual services rendered and at market rates for comparable services provided by third party laborers (but not greater than the hourly rate actual paid by Lessee to such in-house laborers). The calculation of the amount of hard construction costs shall be subject to confirmation and reasonable approval by Director of such costs.

The “**Required Cost Amount**” means \$24,890,000 (the “**Original Cost Amount**”), as adjusted in accordance with the terms and provisions of this paragraph to account for increases (if any) in the Marshall & Swift Index, Low Rise Apartments, published by the Real Estate Research Council of Southern California (the “**M&S Index**”) after the date of the Option Agreement. Director has previously approved a schedule for the phased construction of the Renovation Work pursuant to Section 7.4 of the Option Agreement (the “**Approved Phasing Schedule**”). In order to account for such phased construction of the Renovation Work, the Original Cost Amount has been allocated among the various phases of the Renovation Work set forth in the Approved Phasing Schedule (each, a “**Phase**”) in the amounts agreed upon by Lessee and Director pursuant to Section 7.4 of the Option Agreement (the “**Phase Cost Amounts**”). The Phase Cost Amount

for each Phase of the Renovation Work shall be increased (but not decreased) by the same percentage increase (if any) in the M&S Index for the period (the “**Construction Cost Adjustment Period**”) from [PRIOR TO LEASE EXECUTION, INSERT THE MONTH THAT IS THE THIRD MONTH PRECEDING THE MONTH DURING WHICH THE OPTION AGREEMENT IS APPROVED BY THE BOARD] until the third month preceding the month during which the construction of such Phase of the Renovation Work is commenced; provided, however, that if the work for a Phase is commenced but subsequently there is an interruption in the diligent and continuous prosecution of such work to completion, then the Construction Cost Adjustment Period for such Phase shall continue until the third month preceding the month during which the diligent and continuous prosecution of such work to completion is recommenced. The Phase Cost Amount for each Phase, as increased pursuant to the immediately preceding sentence, shall be referred to herein as the “**Adjusted Phase Cost Amount**.” If the M&S Index is not reported on a monthly basis, then the reporting date closest in time to the particular month referenced in this paragraph shall be utilized to determine each Adjusted Phase Cost Amount. If the M&S Index ceases to be published, then the Adjusted Phase Cost Amounts shall be determined by reference to a comparable construction cost index reasonably selected by Director. The “**Required Cost Amount**” shall mean the sum of all of the Adjusted Phase Cost Amounts.

Lessee shall comply with all time deadlines and schedules described in this Article 5 relating to the completion of the design and construction of the Renovation Work. Lessee’s failure to do so, if not cured within the applicable cure period set forth in Subsection 13.1.3, shall constitute an Event of Default. Except for any extension for Force Majeure delays provided in Section 5.6 below, Lessee shall cause (1) the commencement of construction of each Phase of the Renovation Work to occur on or before the “**Required Phase Commencement Date**” for such Phase set forth on Exhibit C attached to this Lease; (2) each Phase of the Renovation Work to be substantially completed on or before the “**Required Phase Completion Date**” for such Phase set forth on Exhibit C attached to this Lease; and (3) all of the Renovation Work to be substantially completed on or before the third (3<sup>rd</sup>) anniversary of the Effective Date of this Lease (as such date may be extended pursuant to the express provisions of this Lease, the “**Required Completion Date**”). Notwithstanding the foregoing, Lessee shall have the right to extend each Required Phase Commencement Date and Required Phase Completion Date, and the Required Completion Date for up to one six (6)-month period subject to the following: (I) as a condition precedent to any such extension, Lessee shall provide Director with ninety (90) days’ prior written notice of the extension; and (II) no such extension, in the aggregate with any and all other extensions, shall result in a cumulative extension of each Required Phase Commencement Date, Required Phase Completion Date or Required Completion Date by more than an aggregate of six (6) months beyond the respective dates set forth in the immediately preceding sentence. In no event shall any extensions pursuant to this paragraph result in, or otherwise entitle Lessee to, any extension or deferral of, or delay in, the GMR Commencement Date.

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 to commence the Renovation Work by the required date set forth in this Section 5.1 or to substantially complete the Renovation Work by the Required Completion Date, as such dates may be extended in accordance with this Section 5.1 and/or Section 5.6 (if applicable), then in

addition to any other right or remedy which County may have in connection with such failure, but subject to the terms and provisions of Section 12.10, 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), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "**Reversion Amendment**") effective as of the date of County's written notice of its election to effectuate such Reversion Amendment.

5.2 Application of Article 5 to Renovation Work. The remaining sections of this Article 5 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, including without limitation, the Subsequent Renovation described in Section 5.11 below. 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. Both the Renovation Work and the Subsequent Renovation shall be considered to be Alterations. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease shall be applicable to the Renovation Work and the Subsequent Renovation.

5.3 Plans and Specifications for Alterations. Except as otherwise expressly provided in this Lease to the contrary, Lessee shall make no Alterations without the prior written approval of the Director, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to and as a condition precedent to the construction of any Alterations requiring Director's approval, Lessee shall submit to Director, for Director's approval, which approval shall not be unreasonably withheld, conditioned or delayed, the plans, specifications and other materials described in this Section 5.3 pertaining to such Alterations (except to the extent such submittals and approvals have been previously completed with respect to Renovation Work pursuant to the Option Agreement). All 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 six (6) sets of schematic plans together with a narrative description and a preliminary construction cost estimate, 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 the boundaries of the Premises and all rights-of-way or other areas reserved to County or third parties 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. 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. Following any disapproval of the schematic plans, Lessee shall have the right to re-submit revised schematic plans to Director for Director's approval pursuant to this Subsection 5.3.1. 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 thereover, 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 practicable, but in no event later than thirty (30) days after Director's approval of the materials submitted pursuant to Subsection 5.3.1, Lessee shall submit to Director six (6) sets 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. 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. 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, 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 faced 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, 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 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. Following any disapproval of Lessee's submission under this Subsection 5.3.2, Lessee shall have the right to re-submit revised preliminary plans, outline specifications and construction cost estimates to Director for Director's approval pursuant to this Subsection 5.3.2.

5.3.3 Final Plans and Specifications. As soon as practicable, but in no event later than sixty (60) days after the later of (a) approval of the preliminary plans, outline specifications and construction cost estimate by Director, or (b) final approval by the California Coastal Commission (if required), Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost estimate for the Alterations, together with one (1) set of appropriate structural computations, 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, 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 bold faced 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, 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 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. Following any disapproval of Lessee's submission under this Subsection 5.3.3, Lessee shall have the right to re-submit revised final plans, detailed specifications and construction cost estimate to Director for Director's approval pursuant to this Subsection 5.3.3. No material modification shall be made to the Alterations described in the approved final plans, specifications and costs (the "**Final Plans and Specifications**") 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, the Subsequent Renovation or other Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.4.1 Permits and Other Approvals. Lessee shall have received and furnished the Department with copies of all permits, licenses and other governmental approvals necessary for commencement of the Renovation Work or other Alterations.

5.4.2 Copies of Construction Contracts. Lessee shall have furnished County with copies of any contract(s) entered into between Lessee and any general contractor(s) engaged for the purpose of constructing the Renovation Work or other Alterations.

5.4.3 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:

5.4.3.1 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 all hard construction costs approved by County in conjunction with the approved Alteration. 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 Improvements described in the Final Plans and Specifications.

5.4.3.2 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 work, 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.

5.4.4 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 net worth and liquidity that in the good faith judgment of Director is sufficient 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) other form of security approved by Director. The security described in clauses (ii) through (iv) shall be in an amount equal to one hundred percent (100%) of the construction contract price, and shall permit County to draw thereon to complete the construction of the Improvements if the same have not been completed by Lessee as required pursuant to the terms of this Lease, or if an Event of Default has occurred under this Lease. In addition, Director also shall have the authority to accept in lieu of the Payment and Performance Bonds, so-called “Subguard” insurance in such amount, on such terms and issued by such carrier as approved by Director in Director’s good faith discretion, in combination with such other security, such as a completion guaranty, as acceptable to Director in Director’s good faith discretion. Any alternative security provided by Lessee pursuant to this subsection may 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 discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.5 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 Renovation Work or other Alterations, as applicable. 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, evidence of equity, 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. Lessee shall have the right to redact from internal limited liability company or partnership documentation information that is confidential, except to the extent that such information is required to be disclosed pursuant to any other term or provision of this Lease; provided, however, that if any redacted information is relevant to the grant of Director's approval of any matter under this Lease, then Lessee acknowledges that Director shall have the right to disapprove the matter based on the non-disclosure by Lessee of the redacted material; and provided, further, that in no event shall Lessee have the right to redact any material that is relevant to the calculation of any amounts required to be paid by Lessee under this Lease or that is relevant to the determination as to whether Lessee has complied with the terms and provisions of this Lease.

5.4.6 Work Schedule. With respect to the Renovation Work, Lessee shall have provided County with a construction schedule which will result in the completion of the various Phases of the Renovation Work in accordance with the Required Phase Completion Dates set forth on Exhibit C attached to this Lease, and the completion of the entire Renovation Work on or before the Required Completion Date.

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 described in Section 5.1 above and the Subsequent Renovation described in Section 5.11 below, as applicable. 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 each Phase of the Renovation Work by the Required Phase Completion Date for such Phase and the completion of all of the Renovation Work by the Required Completion Date. If Lessee is delayed in the commencement of construction or completion of a Phase of the Renovation Work due to Force Majeure, then the Required Phase Commencement Date and/or the Required Phase Completion Date (if and to the extent that the event actually causes a delay in the commencement or completion of construction of the applicable Phase of the Renovation Work) shall be extended by the period of the delay caused by such Force Majeure. If and to the extent that a delay pertaining to one or more of the Phases of the Renovation Work delays the commencement or completion of another Phase of the Renovation Work, then the Required Phase

Commencement Date and/or Required Phase Completion Date, as applicable, for the later Phase shall be extended by the actual delay caused by such Force Majeure event pertaining to the preceding Phase or Phases, it being understood that the Phases are intended to be completed sequentially. If and to the extent that a delay pertaining to one or more of the Phases of the Renovation Work delays the completion of all of the Renovation Work, then the Required Completion Date shall be extended by the actual delay in the completion of the Renovation Work caused by such Force Majeure event. Notwithstanding any contrary provision of this Lease, (a) any extension of a Required Phase Commencement Date or a Required Phase Completion Date, or the Required Completion Date, shall be limited to the actual period of the Force Majeure delay and no such Force Majeure delay shall be considered to have commenced unless Lessee notifies Director in writing of the commencement of the delay within ten (10) business days after Lessee's discovery of the delay; (b) in no event shall any Required Phase Commencement Date or Required Phase Completion Date, or the Required Completion Date, be extended for an aggregate of more than two (2) years due to Force Majeure delays (including any and all delays caused by delays in earlier Phases); and (c) in no event shall the Required Completion Date be extended beyond the fifth (5<sup>th</sup>) anniversary of the Effective Date for any reason, including any extension under this Section 5.6 or any extension under Section 5.1 above. 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 Lessee and Director 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.

## 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 best industry practices for comparable developed areas to reasonably minimize material adverse effects associated with the work.

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 minimizes material interference 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 Alterations 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 seawalls, underground conduits and utility lines. If any such County-owned improvement is damaged as a result of said construction activity, Lessee agrees to promptly repair such damage 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 prior written notice and at reasonable times, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, 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. 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 Improvements and Lessee shall deliver to County, at no cost to County, two (2) sets of Conoflex or Mylar final as-built plans and specifications of the Improvements.

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 (subject to the collateral assignment to Lessee's Encumbrance Holder) 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 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 trade marks, trade names or logos of Lessee or any such architect, design professional or contractor, or the right to use such plans for anything other than Alterations on the Premises.

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 (other than the Renovation Work) where all of the following conditions are satisfied: (i) the total cost of the project is less than One Hundred Thousand Dollars (\$100,000), 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 One Hundred Thousand Dollars (\$100,000)); (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes materially affect the exterior of the Improvements or the appearance of the Improvements from the exterior; provided, however, that whenever Lessee makes or constructs or permits any Alterations in or to the Premises, Lessee shall (a) give written notice thereof (including a description of the work to be done and any permits obtained for such work), and (b) furnish a copy of "as-built" plans upon completion of such work to County (to the extent that it is appropriate for plans to be prepared for the subject work).

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 County's interest in the Premises.

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 Alterations to be done on the Premises, in order to enable County timely to post such notices, except in the event of an emergency, in which case only such notice shall be required as is practicable given the relevant circumstances.



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 the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, 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 Subsequent Renovation. In addition to the Renovation Work to be performed by Lessee pursuant to Section 5.1, Lessee shall be required to complete an additional renovation of the Improvements during the remaining Term of the Lease in accordance with the terms and provisions of this Section 5.11 (the "**Subsequent Renovation**"). The construction of the Subsequent Renovation shall be commenced by Lessee by such date that is reasonably expected to facilitate the substantial completion of the Subsequent Renovation by not later than the twenty-third (23<sup>rd</sup>) anniversary of the Effective Date; provided, however, that Lessee shall not commence the construction of the Subsequent Renovation prior to the twentieth (20<sup>th</sup>) anniversary of the Effective Date. Lessee shall substantially complete the Subsequent Renovation by not later than the twenty-third (23<sup>rd</sup>) anniversary of the Effective Date. The Subsequent Renovation shall consist of such renovation and construction work as necessary to re-position the Improvements to then-current market conditions, including without limitation, the renovation of the Improvements to a condition and appearance commensurate with the design and quality of other comparable first-class residential apartment projects then existing in Marina del Rey; provided, however, that Lessee shall, at a minimum be required to expend for Subsequent Renovation costs permitted under the second paragraph of Section 5.12 below, not less than the full amount of the funds accumulated (or required to be accumulated, if such funds are not accumulated) in the Subsequent Renovation Fund pursuant to Section 5.12 below. Prior to the commencement of construction of the Subsequent Renovation, Lessee shall submit to Director a renovation plan for the Subsequent Renovation (the "**Subsequent Renovation Plan**"), which renovation plan shall (a) describe the proposed renovation work in reasonable detail, (b) include a design, governmental approval and construction schedule for the work described therein, (c) include a preliminary budget for all work costs, and (d) address such other matters as Director reasonably requests. The Subsequent Renovation Plan shall be submitted by Lessee to County not later than such date as, taking into

consideration the approval periods described in this Section 5.11 and Section 5.3 above, and the estimated time required to obtain all necessary governmental approvals and permits, will reasonably be expected to permit the completion by Lessee of the Subsequent Renovation by the date required under this Section 5.11. Director shall have sixty (60) days after receipt of the Subsequent Renovation Plan within which to reasonably approve or disapprove the Subsequent Renovation Plan, or to approve the Subsequent Renovation Plan subject to conditions imposed by Director in Director's reasonable judgment. Failure of Director to notify Lessee in writing of Director's approval or disapproval of the Subsequent Renovation Plan shall be deemed Director's disapproval of the Subsequent Renovation Plan. If Director disapproves the Subsequent Renovation Plan, then Director shall accompany such disapproval with (or notify Lessee, within thirty (30) days after any deemed disapproval, of) Director's objections to the submission. Following any disapproval of the proposed Subsequent Renovation Plan, Lessee shall have the right to re-submit a revised Subsequent Renovation Plan to Director for Director's approval pursuant to this Section 5.11. Upon Director's approval of the Subsequent Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Subsequent Renovation and to commence and complete the Subsequent Renovation in accordance with the Subsequent Renovation Plan and the terms and conditions of this Article 5. The process for the submission and approval of the actual plans and specifications for the Subsequent Renovations shall proceed in accordance with the protocol for plan submission and approval set forth in Section 5.3 of this Lease, except that the schematic plan submittal requirements set forth in Subsection 5.3.1 shall not be applicable to the extent that the Subsequent Renovation Plan approved by Director satisfies the requirements of such Subsection 5.3.1. Lessee's failure to comply with the schedule approved by Director as part of Subsequent Renovation Plan and/or to meet the construction commencement and completion deadlines pertaining to the Subsequent Renovation set forth in this Section 5.11 (except to the extent due to Force Majeure delay) shall, if not cured within the cure period set forth in Subsection 13.1.3, constitute an Event of Default. Any dispute as to whether Director has failed to exercise reasonable judgment in the approval or disapproval of the Subsequent Renovation Plan shall be submitted to arbitration pursuant to Article 16 of this Lease. If the arbitrator determines that Director failed to exercise reasonable judgment in the approval or disapproval of the Subsequent Renovation Plan and as a result thereof Lessee is delayed in the commencement or completion of the Subsequent Renovation by the required commencement or completion dates set forth in the first paragraph of this Section 5.11, then the required dates for the commencement and completion of such Subsequent Renovation shall be extended by the duration of the delay caused by Director's failure to reasonably approve the Subsequent Renovation Plan, provided that the required dates for the commencement and completion of the Subsequent Renovation shall not be extended beyond the dates reasonably required for the commencement and completion by Lessee of the Subsequent Renovation.

5.12 Subsequent Renovation Fund. Commencing on or before the fifteenth (15<sup>th</sup>) day of January that is the closest to the fifth (5<sup>th</sup>) anniversary of the Required Completion Date (the "**First Deposit Date**"), and continuing thereafter on an annual basis on or before each successive anniversary of the First Deposit Date until the date of the completion of the Subsequent Renovation (each, a "**Deposit Date**"), Lessee shall establish and maintain a reserve fund (the "**Subsequent Renovation Fund**") in accordance with the provisions of this Section 5.12 for the purpose of funding the cost of the Subsequent Renovation; provided, however, that Lessee's obligation to perform the Subsequent Renovation shall not be limited to the funds available in the Subsequent Renovation Fund. The Subsequent Renovation Fund shall be held in an account

established with a reputable financial institution reasonably acceptable to Director (which shall include Lessee's Encumbrance Holder) into which deposits shall be made by Lessee pursuant to this Section 5.12. On or before each Deposit Date, Lessee shall make an annual deposit to the Subsequent Renovation Fund in an amount equal to the Annual Deposit Amount (as defined below). For purposes of this Section 5.12, the "**Annual Deposit Amount**" means the greater of (a) one and one-half percent (1.5%) of total Gross Receipts for the immediately preceding Lease Year, or (b) \$650 for each apartment unit, adjusted on an annual basis for each Deposit Date by the same percentage as the percentage increase in the Consumer Price Index from November, 2009 to the month of November immediately preceding such then-current Deposit Date. All interest and earnings on the Subsequent Renovation Fund shall be added to the Subsequent Renovation Fund, but shall not be treated as a credit against the Subsequent Renovation Fund deposits required to be made by Lessee pursuant to this Section 5.12. In lieu of annual deposits to the Subsequent Renovation Fund, Lessee and Director, may mutually agree upon substitute arrangements satisfactory to Director for the establishment of an adequate security source for the performance of the Subsequent Renovation, such as a bonding mechanism or a letter of credit.

Disbursements shall be made from the Subsequent Renovation Fund only for actual out-of-pocket costs for the design, permitting, entitlements and construction (including furnishings, equipment and fixtures, if and to the extent included in the Subsequent Renovation, as approved by Director) of the approved Subsequent Renovation which have been verified by Director. The Subsequent Renovation Fund may also be used to fund construction period interest actually paid to any unaffiliated third party construction lender for the Subsequent Renovation. If funds remain in the Subsequent Renovation Fund after the Subsequent Renovation has been completed and all costs for the Subsequent Renovation have been paid in full, then any such excess funds may be used by Lessee without restriction, and County agrees to promptly execute and deliver any commercially reasonable documentation effectuating same if requested by Lessee. Prior to the disbursement of any amounts from the Subsequent Renovation Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Subsequent Renovation Fund. Director shall have no obligation to approve the disbursement of amounts from the Subsequent Renovation Fund unless and until Director has approved Lessee's Subsequent Renovation Plan for such Subsequent Renovation and Lessee has furnished to Director evidence reasonably satisfactory to Director that Lessee has sufficient financial resources (taking into consideration the Subsequent Renovation Fund) to pay for all costs of such Subsequent Renovation.

**5.13 Capital Improvement Fund.** Commencing with the month following the date of commencement of the Renovation Work (but not later than the Required Phase Commencement Date for the first Phase of the Renovation Work), and continuing each month thereafter during the remaining Term of the Lease, Lessee shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.13 for the cost of Permitted Capital Expenditures (as defined below) for the Premises. On or before the fifteenth (15) day of each such month Lessee shall make a monthly deposit to the Capital Improvement Fund in the following applicable amount: (a) for the above time period prior to the earlier of the Completion Date or the Required Completion Date, the monthly deposit to the Capital Improvement Fund shall be in the amount of one and one-half percent (1.5%) of Gross Receipts for the immediately preceding month; and (b) for the time period from the earlier of the Completion Date or the Required Completion Date through the end of the Term of the Lease, the

monthly deposit to the Capital Improvement Fund shall be the greater of (i) one and one-half percent (1.5%) of Gross Receipts for the immediately preceding month, or (ii) \$54.17 for each apartment unit, adjusted on an annual basis each January 1 by the same percentage as the percentage increase in the Consumer Price Index from November, 2009 to the month of November immediately preceding such then-current January 1 adjustment date. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the monthly Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.13.

Lessee and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Renovation Work (“**Permitted Capital Expenditures**”). Permitted Capital Improvements also include such items as (i) replacement or major resurfacing (1½” or deeper) of the parking lot (not including a slurry coat or other lesser treatment), and (ii) complete replacement (but not modification or repair) of particular signage or landscape/hardscape. Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the Improvements or their major systems in an ordinarily efficient operating condition, but that do not materially add to their value or appreciably prolong their useful life. In addition, the Capital Improvement Fund shall not be used for such items as remodels and building additions, new project amenities (e.g., barbeques or fitness equipment) or new common area furniture. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee. All specific purposes and costs for which Lessee desires to utilize amounts from the Capital Improvement Fund shall be subject to Director’s approval, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any contrary provision of this Lease, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Renovation Work or the Subsequent Renovation.

The Capital Improvement Fund shall be held in an account established with a reputable financial institution (including Lessee’s Encumbrance Holder) reasonably acceptable to Director into which deposits shall be made by Lessee pursuant to this Section 5.13. Lessee shall have the right to partially or fully satisfy the Capital Improvement Fund obligations of this Section 5.13 with capital improvement reserves required by Lessee’s Encumbrance Holder, as long as such capital improvement reserves are in all material respects administered in accordance, and otherwise comply, with the terms, provisions and requirements of this Section 5.13.

No disbursements shall be made from the Capital Improvement Fund until after the tenth (10<sup>th</sup>) anniversary of the Completion Date. In addition, no disbursements shall be made from the Capital Improvement Fund after the tenth (10<sup>th</sup>) anniversary of the Completion Date to cure deficiencies arising from the failure of Lessee to maintain and repair the Improvements in accordance with the requirements of this Lease prior to the tenth (10<sup>th</sup>) anniversary of the

Completion Date. Disbursements shall be made from the Capital Improvement Fund for costs reasonably approved by Director which have been incurred after the tenth (10<sup>th</sup>) anniversary of the Completion Date and that satisfy the requirements of this Section 5.13. Capital Improvement Funds shall be used only after applicable warranty or product insurance proceeds or other amounts payable by third parties are exhausted or determined to be unavailable (or determined to not be available in a timely manner based on the nature of the capital improvement; provided, however, that if any such warranty or product insurance proceeds or other amounts payable by third parties are subsequently collected by Lessee, then such proceeds or other amounts collected by Lessee shall be re-deposited to the Capital Improvement Fund to the extent of the aggregate amount of the previous disbursements from the Capital Improvement Fund for such capital improvement). For the purpose of obtaining Director's prior approval of any Capital Improvement Fund disbursements, Lessee shall submit to Director on an annual calendar year basis a capital expenditure plan for the upcoming year that details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Director shall have sixty (60) days after receipt of the capital expenditure plan for the upcoming year within which to reasonably approve or disapprove such plan. If Director fails to notify Lessee in writing of Director's approval or disapproval of the capital expenditure plan within the sixty (60) day period noted above, Lessee shall send Director a transmittal letter containing the following text prominently displayed in bold faced type:

**“PURSUANT TO SECTION 5.13 OF THE AMENDED AND  
RESTATED LEASE AGREEMENT, YOU HAVE TEN (10) DAYS  
AFTER RECEIPT OF THIS NOTICE IN WHICH TO APPROVE OR  
DISAPPROVE THE CAPITAL EXPENDITURE PLAN SUBMITTED  
TO YOU FOR THE UPCOMING YEAR. FAILURE TO DISAPPROVE  
THE CAPITAL EXPENDITURE PLAN IN WRITING WITHIN TEN  
(10) DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL  
CONSTITUTE YOUR APPROVAL OF THE CAPITAL EXPENDITURE  
PLAN.”**

Director's failure to disapprove the capital expenditure plan for the upcoming year in writing within ten (10) days following the Director's receipt of the transmittal letter referred to above in this Section 5.13, shall be deemed Director's approval of such submission; provided, however, that no such deemed approval shall constitute any approval of any expenditure that is not in compliance with the terms and provisions of this Section 5.13; and provided, further, that no such deemed approval shall constitute an approval of any actual Alteration work, it being agreed that the approval of any actual Alteration work shall proceed in accordance with the terms and provisions of Section 5.3 of this Lease. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Director as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. The time periods for Director's approval or disapproval of such revisions or new requested expenditures shall be the same as for the original submission of such then-current capital

expenditure plan, together with the same deemed approval mechanism set forth above. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Capital Improvement Fund.

All amounts then existing in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than ten (10) years prior to the expiration of the Term of the Lease. Capital Improvement Fund deposits made after such date shall continue to be used for Permitted Capital Expenditure purposes under this Section 5.13; provided, however, if County elects to require Lessee to remove the Improvements at the end of the Term pursuant to the terms of this Lease and requires Lessee to provide security to secure its obligation to perform such removal obligations in accordance with Subsection 2.3.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.13 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 Capital Improvement Fund for any needed Permitted Capital Expenditures, as determined by Director in Director's reasonable discretion.

At the expiration or earlier termination of this Lease (including without limitation, any termination following a Condemnation or casualty pursuant to the terms of Article 6 and Article 10, respectively), and performance by Lessee of all of its obligations under this Lease, any remaining amounts in the Capital Improvement Fund and/or the Subsequent Renovation Fund may be used by Lessee without restriction, and County agrees to promptly execute and deliver any commercially reasonable documentation effectuating same if requested by Lessee.

## 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 and Lessee shall have no obligation to demolish and/or remove any Improvements from the Premises that are taken by Condemnation.

6.4 Effect of Partial Taking. If a portion of the Premises is taken by Condemnation, then this Lease shall terminate with respect to the portion of the Premises that is taken by Condemnation, but shall remain in effect with respect to the remaining portion of the Premises, except that Lessee may elect to terminate this Lease with respect to the entire Premises if the remaining portion of the Premises is rendered unsuitable (as described 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 the Lease with respect to the entire Premises under this Section 6.4 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 to terminate the Lease with respect to the entire Premises shall result in the Lease continuing in full force and effect with respect to the portion of the Premises not taken by Condemnation, except that a portion of the Annual Minimum Rent shall be abated pursuant to Section 6.5, below.

If the Lease is terminated pursuant to this Section 6.4 with respect to only the portion of the Premises taken by Condemnation, then Lessee shall not be required to perform any demolition or removal of the Improvements under Section 2.3 located on those portions of the Premises that are taken by such Condemnation. If the Lease is terminated pursuant to this Section 6.4 with respect to all of the Premises, then Lessee shall not be required to perform any demolition or removal of the Improvements under Section 2.3 located on those portions of the Premises that are taken by such Condemnation, but Lessee shall be obligated to perform Lessee's demolition and removal obligations under Section 2.3 with respect to the Improvements located on those portions of the Premises that are not taken by Condemnation.

In the event that Lessee does not elect under this Section 6.4 to terminate the Lease with respect to all of the Premises, 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 to which the Lease continues, 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 commence 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; provided, however, that if following a Partial Taking in the reasonable judgment of Director the Capital Improvement Fund and/or Subsequent Renovation Fund (taking into consideration the then-existing balance of the particular fund, the amount of the future required contributions to the particular fund, and the size and nature of the Improvements on the remaining Premises) exceeds the amounts reasonably estimated to be required to satisfy the reasonably expected expenditures to be covered by the particular fund, then at the request of Lessee, Director and Lessee shall mutually agree in good faith upon an adjustment to the required amounts of the Capital Improvement Fund and/or Subsequent Renovation Fund (as applicable) to more accurately reflect the reasonably expected expenditures to be funded from the particular fund, and any excess amounts may be used by Lessee without restriction.

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. Subject to Section 12.6, Net Awards and Payments received on account of a Condemnation, other than a total Condemnation or a Partial Taking which results in termination of the Lease with respect to the entire Premises, and other than a taking for temporary use, shall be held by County. If restoration or repair work to the remaining Premises is required as a result of the Partial Taking, then County shall pay out to Lessee or Lessee’s designee(s), amounts of the Net Awards and Payments for costs incurred by Lessee to perform such restoration or repair work, 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, of the Net Awards and Payments on a Partial Taking that does not result in a termination of the Lease with respect to the entire Premises shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (1) the fair market value immediately prior to the Date of Taking of County's interest under this Lease (including reversionary interest) with respect to the portion of the Premises and Improvements taken in the Partial Taking, as compared to (2) the fair market value immediately prior to the Date of Taking of Lessee's remaining leasehold interest in the Premises (including its rights to use the Improvements for the remainder of the Term of the Lease, and including any bonus value in the Lease). Any determinations of fair market value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. 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 with respect to the entire Premises 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 during the remainder of the Term of the Lease, determined as of immediately prior to the Date of Taking (including any bonus value in the Lease), 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.

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 held by County under the Existing Lease immediately prior to the Effective Date shall be applied against and considered to be a part of, the Security Deposit required under 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 reasonable 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, 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 any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, of the Premises; provided, however, that this clause (a) shall not be applicable to the Promenade except in the case of the negligence or willful misconduct of Lessee, 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; provided, however, that this clause (b) shall not be applicable to the Promenade except in the case of the negligence or willful misconduct of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees; or (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. 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 (or such higher rating as may be required by an Encumbrance Holder) 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.

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 Five Million Dollars (\$5,000,000) per occurrence, Five Million Dollars (\$5,000,000) 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", "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), excluding earthquake, and 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, which ever is less, and also including business interruption, including loss of rent equal to eighteen (18) 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 as required pursuant to Article 10 hereof.

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 (County 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). This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, Hazardous Substance 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. 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 the 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 County, 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 the County for the Renovation Work or other Alterations. Such insurance shall include coverage for all "owned," "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 the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.). 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 contractor, subcontractor, 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 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or Hazardous Substances, 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 Hazardous Substances, 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 Hazardous Substances 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 the County 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 (other than the private activity of individuals that is confined to such individuals' respective private residences), 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.

9.1.7 If use of the Premises or Improvements involves a marina operation, berthing, docking, and/or launching of boats and/or pleasure crafts, and/or use of floating docks, piers and/or ramps, Lessee shall carry Marina Operator's Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence, and Ten Million Dollars (\$10,000,000) aggregate. If written on a "claims made" form, the coverage shall also provide an extended two (2) year reporting period commencing upon the expiration or earlier termination of the Lease, or replacement coverage shall be maintained until such time.

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 12.6, 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 property 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 12.6, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee, and County agrees to promptly execute and deliver commercially reasonable documentation effectuating same if requested by 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.

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 (except with respect to the insurance required by Subsection 9.1.5) and shall additionally provide:

- (a) that County and its respective Board of Supervisors and members thereof, and County's 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 and does not cure such failure within five (5) business days after written notice from County, 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, 9.1.3 and 9.1.7 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) 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 (including the Promenade), in conformance with such reasonable rules and regulations regarding the use and occupancy of residential apartment projects in Marina del Rey (such as the Premises) as may be promulgated by County from time to time for general applicability on a non-discriminatory basis, as revised from time to time. 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 Promenade) and all equipment, Improvements or physical structures 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 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 in a safe, clean 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 is 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. Lessee's obligation to maintain and restore is absolute, and is not in any way dependent upon the existence or availability of insurance proceeds, except as otherwise provided in this Lease.

10.2 Tree Trimming. 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 the Marina del Rey tree trimming policy attached to this Lease as Exhibit E, as such policy is updated from time to time by County.

10.3 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. With respect to the exercise of County's rights under this Section 10.3, County shall use its commercially reasonable efforts not to unreasonably interfere with the operation of, or access to, the Premises.

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 10.2 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 require Lessee to take all appropriate steps to avoid damage or injury as promptly as possible given the circumstances. 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 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 ten (10) days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with Director, then Director shall exercise 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 (3<sup>rd</sup>) 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 required to be paid by Lessee in accordance with 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, 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 the damage or destruction to the Improvements renders the Improvements substantially unusable for their intended purpose and such damage or destruction resulted from a cause (a) not required to be insured against by this Lease or (b) for which coverage existed, but for which the insurer does not provide the insurance proceeds to Lessee due to the insurer's insolvency (the circumstances reference in clause (a) or (b), an "**Uninsured Loss**"). Lessee's right to terminate the Lease pursuant to the immediately preceding sentence shall be conditioned upon the satisfaction of all of the following:

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; at County's election, remove all remaining Improvements on the Premises; and deliver to County a quitclaim deed to the Premises in recordable form, in form and content satisfactory to County and/or 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.

10.5.3 During the fifteen (15) day period following County's receipt of Lessee's termination notice, County shall have received neither (a) a written notice from any Encumbrance Holder objecting to such termination, nor (b) an agreement containing an effective assignment of Lessee's interest in this Lease to an 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 No Option to Terminate for Insured Casualty. Lessee shall have no option to terminate this Lease, or otherwise be relieved of its obligation to restore the Improvements on the Premises, in the case of damage to or destruction of the Premises or any Improvements located thereon, except in the event of a termination of the Lease pursuant to Section 10.5 above as a result of an Uninsured Loss.

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, unless the need for such repair or maintenance is caused by County's gross negligence or willful misconduct.

10.8 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required under this Article 10, Director may notify Lessee of said failure in writing, and if Lessee fails to cure said failure and make repairs or replacements within such time period as set forth in Director's notice to Lessee (which time period shall not be shorter than the time period to which Lessee is entitled under Section 10.4 above), 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 Notice of Damage. Lessee shall give prompt notice to County of any fire or other material damage affecting the Premises or the Improvements from any cause whatsoever.

10.10 Casualty Near End of Term. Notwithstanding any contrary provision hereof, if (a) during the last eighteen (18) months of the Term of the Lease, the Improvements are destroyed or substantially damaged such that more than twenty-five percent (25%) of the residential units will not be able to be occupied for a period of ninety (90) days or longer, (b) County has issued a County Removal Notice as to all or substantially all of the Improvements located on the Premises, and (c) the County Removal Notice has not been revoked by County prior to the date of the damage or destruction or within thirty (30) days after the date of such damage or destruction (but, as provided in Subsection 2.3.2 County shall have no right to revoke a County Removal Notice during the last six (6) months of the Term of the Lease), then Lessee shall have the right to terminate this Lease by written notice to County within sixty (60) days after the date of the damage or destruction, provided that as a condition to such termination all of the following must be satisfied:

10.10.1 To be effective, Lessee's termination notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to terminate the Lease 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 10.10.1. 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 the Lease.

10.10.2 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; remove all remaining Improvements on the Premises required to be removed under the County Removal Notice and any other damaged Improvements required by County to be removed; and deliver to County a quitclaim deed to the Premises in recordable form, in form and content satisfactory to County and/or 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.

10.10.3 During the fifteen (15) day period following County's receipt of Lessee's termination notice, County shall have received neither (a) a written notice from any Encumbrance Holder objecting to such termination, nor (b) an agreement containing an effective assignment of Lessee's interest in this Lease to an Encumbrance Holder, whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.11 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 the Improvements, or a portion thereof, which is conveyed or granted by Lessee (or any Lessee Entity) to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease; provided, however, that the term Sublease shall exclude any easements or other similar rights granted to utility companies or telecommunication service providers. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease (whether a direct Sublease or any sub-sublease at any level under a Sublease) which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises 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 any Sublease that is not a Major Sublease or an Approved Apartment Lease (as defined below), or of any assignment or material amendment of such Sublease,

Lessee shall submit a copy of such Sublease (or assignment or material amendment thereof), to Director for approval, which approval shall not be unreasonably withheld, conditioned or delayed. To the extent practical, Director shall approve or disapprove said proposed Sublease, or said proposed assignment or material amendment of a Sublease, within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, or any such assignment or material amendment of a Sublease, be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall not violate any term, covenant or other provision of this Lease applicable to the portion of the Premises subject to the Sublease.

Notwithstanding any contrary provision of this Article 11, Lessee shall not be required to obtain County's or Director's approval of any Sublease of an individual apartment 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 substantially in the form of the standard residential apartment lease approved from time to time 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. A Major Sublease shall be granted to only a reputable owner or manager of comparable 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 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 (including any Lessee Entity) shall not, without the prior written consent of County, which shall be based upon the requirements set forth in this Section 11.2 and the factors described in Exhibit D hereto, which is incorporated herein by this reference ("**Assignment Standards**"), either directly or indirectly give, assign, transfer, or grant control of this Lease or any interest, right, or privilege therein (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. Any Change of Ownership that is not an Excluded Transfer shall constitute an assignment of an interest in the Lease that requires County's consent pursuant to this Section 11. Excluded Transfers shall not require County's consent. In addition, for purposes of this provision, to the extent not an Excluded Transfer or an Equity Financing Event approved pursuant to Article 12 below, the following 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 Lessee or a Lessee Entity 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 a general partner or managing member of 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 or transfers as provided in this Section 11.2, County shall take into account the Assignment Standards and, if County, acting reasonably, determines that such Assignment Standards are satisfied, County shall not unreasonably withhold, condition or delay its consent to any proposed assignment or transfer. If County withholds its consent to an assignment or transfer, County shall advise Lessee in writing of the reason or reasons for such disapproval either concurrent with its disapproval of the assignment or transfer, or promptly thereafter upon the request of Lessee.

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 any federal bankruptcy law.

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 consummating any transaction requiring the approval of County pursuant to Sections 11.1 or 11.2 of this Lease, Lessee (or the entity seeking approval of such transaction) shall notify County and deliver to County all information reasonably relevant to the proposed transaction, 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 transaction documents, 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 or transfer 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 or transfer 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 or transfer, whether or not County ultimately grants its approval to such transaction (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, if applicable.

(c) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation 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, if applicable, 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 and are applicable, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC financing statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of \$25,000 annually affecting the Premises and that are being assumed by the assignee, 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 on commercially reasonable terms in favor of any Major Sublessee; provided, however, that in no event shall County have the obligation to recognize or attorn to any Major Sublessee upon terms less favorable to County than those set forth in this Lease.

11.2.3.7 Final Documents. Prior to granting its approval for any proposed assignment or transfer, 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 Lessee (including one or more Lessee Entities) proposes an assignment of fifty percent (50%) or more of the leasehold interest in this Lease, proposes to enter into any Major Sublease affecting the Premises, or proposes to transfer a Controlling Interest in Lessee or any Lessee Entity or Entities collectively holding a fifty percent (50%) or greater share of the leasehold interest in this Lease, in each case excluding any and all Excluded Transfers (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 Lessee (or the subject Lessee Entity or Entities) is willing to consummate the Proposed Transfer. For purposes hereof, a “**Controlling Interest**” shall mean fifty percent (50%) or more of the direct or indirect beneficial ownership of the capital and profits interests in Lessee (or the applicable Lessee Entity). 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 all books and records pertaining to the ownership and operation of the Premises 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 and confidentiality agreement on commercially reasonable terms. In the event that County elects to be granted 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 be granted 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 Lessee (or the applicable Lessee Entity or Entities) shall be entitled 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 ninety-five percent (95%) of 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) (which twelve (12) month period shall be extended to the extent the closing is delayed due to a delay by County in approving the transaction within sixty (60) days after County has received a notice from Lessee requesting County’s

approval of such transaction and all information required by County under this Lease to permit County to evaluate the transaction). In the event of a proposed Major Sublease, County's election shall pertain to that portion of the Premises subject to the proposed Major Sublease and, in the event that County elects to acquire Lessee's interest in such portion of the Premises, Lessee's Annual Minimum Rent and Security Deposit shall be proportionally reduced, Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee, and Lessee's obligations with respect to the Capital Improvement Fund, Subsequent Renovation Fund and Demolition Security shall be reduced to reasonably reflect the expected expenditures required under Section 5.13 for Permitted Capital Expenditures, Section 5.11 for the Subsequent Renovation, and Section 2.3 for the demolition and removal of Improvements, respectively, with respect to the portion of the Premises retained by Lessee, and County agrees to promptly execute and deliver commercially reasonable documentation effectuating same if requested 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 (or partial termination of this Lease, if and as applicable), 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) Excluded Transfers.

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. If at the closing of the exercise of the County Option there is an unresolved dispute with County as to the appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have the right to require that the disputed amount be held in escrow after the closing pending resolution of such dispute pursuant to Article 16 of this Lease, in accordance with an escrow agreement reasonably acceptable to Lessee and County.

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 a management company that satisfies the requirements of this Section 11.4 for the property management of the Premises and Improvements. County hereby acknowledges that LMGI has been approved as the current property management company for the Premises and the Improvements. 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).

## 12. ENCUMBRANCES.

12.1 Financing Events. Lessee shall not consummate a Financing Event (as defined below) without the prior written consent of Director, which consent shall not be unreasonably withheld, conditioned or delayed. For the purposes of this Lease, including without limitation, the provisions of Sections 4.6 through 4.8 hereof, a “**Financing Event**” shall mean (i) any debt financing or refinancing consummated by Lessee, whether with private or institutional lenders, where such financing or refinancing is an Encumbrance (as defined below); or (ii) any equity financing or refinancing, whether with private or institutional lenders, where the financing or refinancing is secured by beneficial interests in Lessee and the absolute assignment of the beneficial interests secured by such financing or refinancing would require the consent of County under this Lease. For purposes of this Lease, an “**Equity Financing Event**” means a Financing Event described in clause (ii) of the foregoing definition of Financing Event. Lessee shall submit to Director a complete set of all proposed transaction documents in connection with each proposed Financing Event. 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 further reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. The same restrictions and approval requirements and procedures set forth above in this paragraph with respect to a Financing Event pertaining to Lessee's leasehold interest in this Lease or beneficial interests in Lessee shall apply with respect to any financing or refinancing transaction secured by the leasehold interest in any Major Sublease or the direct or indirect beneficial ownership interests in a Major Sublessee.

12.1.1 Encumbrances. As used in this Lease, an “**Encumbrance**” shall be any direct or indirect grant, assignment, transfer, mortgage, hypothecation, grant of control over, pledge or encumbrance of the following as security for a Financing Event: (a) all or any portion of 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 Sublessees, or (b) all of the beneficial interests in Lessee. As used in this Lease, an “**Encumbrance Holder**” shall be the holder of an Encumbrance that has been approved by Director. 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.

12.1.2 Consent Not Required to Transfer Resulting from Foreclosure. The written consent of County shall not be required in the case of:

12.1.2.1 A transfer of this Lease or a Major Sublease at a foreclosure sale or at a judicial foreclosure, or voluntary conveyance to the Encumbrance Holder or its affiliate in lieu of such foreclosure (“**Foreclosure Transfer**” and the transferee in a Foreclosure Transfer is referred to herein as a “**Foreclosure Transferee**”); or

12.1.2.2 A single subsequent transfer of the Lease or a Major Sublease by an Encumbrance Holder who was a purchaser at such foreclosure sale or transfer in lieu thereof, provided that such single subsequent transferee expressly agrees in writing to assume and to perform all of the obligations under this Lease (or, if applicable, a Major Sublease), except with respect to Excluded Defaults accruing prior to the transferee's period of ownership.

12.1.3 Effect of Foreclosure. In the event of a transfer under Subsection 12.1.2, the Encumbrance Holder shall forthwith give notice to County in writing of any such transfer setting forth the name and address of the transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.1.3.1 Any transferee under the provisions of Subsection 12.1.2.1 which is a commercial bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust or other similar financial institution which ordinarily engages in the business of making loans secured by collateral similar to the Premises, or an affiliate thereof (“**Institutional Lender**”), shall be liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults accruing prior to the Institutional Lender’s period of ownership) arising under the Lease from the date of transfer under Subsection 12.1.1.1 until a subsequent transfer of the Lease approved by County.

12.1.3.2 A transferee under Subsection 12.1.2.1 which is not an Institutional Lender and any subsequent transferee under the provisions of Subsection 12.1.2.2 shall be liable to perform the full obligations of Lessee under this Lease whether accruing prior to, during or after such transferee’s period of ownership (but excluding Excluded Defaults accruing prior to such transferee’s period of ownership) and as a condition to the completion of such transfer must cure, remedy, or correct any Event of Default existing at the time of such transfer or arising thereafter due to an event or occurrence before the date of transfer (other than Excluded Defaults).

12.1.3.3 Neither an Administrative Charge nor any Net Proceeds Share shall be payable in respect of or charged against any amount payable under the Encumbrance to or for the benefit of the Encumbrance Holder in connection with a transfer pursuant to Subsection 12.1.2.

12.2 Right to Notice and Cure Defaults. All Encumbrance Holders and Major Sublessees shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, but prior to the termination of this Lease, and as further provided in Section 12.4, 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.

12.3 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 Section 12.1, 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 any pre-existing Event of Default that (a) is an incurable non-monetary default, (b) is a non-monetary default that can only be cured by a prior lessee, (c) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (d) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, “**Excluded Defaults**”).

12.4 Delay in Exercising Termination Remedy. 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, the late fee and interest provisions in Section 4.5 and the per diem payment provisions set forth in Section 10.4), unless it first shall have given written notice of such default to each and every then-existing Major Sublessee and Encumbrance Holder that has notified Director in writing of its security interest 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 cure rights of an Encumbrance Holder or Major Sublessee shall not delay, toll or otherwise affect the County's rights under Section 4.5 or 10.4.

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

(1) 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 mailing of the aforesaid notice of default to the Encumbrance Holder or the Major Sublessee. 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.

(2) 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:

(a) If an Encumbrance Holder or Major Sublessee cures, remedies and corrects the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (except that 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 curing of such default reasonably requires activity over a longer period of time, such default may be cured if within said initial cure period, such Encumbrance Holder or Major Sublessee commences 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.

(b) 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 or appoint a receiver to take possession of the Premises, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings or proceedings to appoint a receiver to take possession of the Premises, and prosecutes the same thereafter with due diligence, said sixty (60) day period shall be extended by the time necessary to complete such foreclosure proceedings or proceedings appointing a receiver, as applicable, or (ii) if said Encumbrance Holder is prevented from commencing foreclosure proceedings or proceedings to appoint a receiver, by any order, judgment or decree of any court or regulatory body with jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such 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 or proceedings to appoint a receiver, as applicable. Within thirty-five (35) days after a Foreclosure Transfer or appointment of a receiver is completed, the Foreclosure Transferee or receiver 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 paragraph (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, or proceeding appointing a receiver, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

## 12.5 New Lease.

12.5.1 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 12.5 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.5 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 12.5, 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 12.1.2.2 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 sixty (60) 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.

12.5.2 Priority of New Lease. The new lease made pursuant to this Section 12.5 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. County agrees to require each such fee encumbrance holder to confirm the same in writing (in form reasonably approved by each Encumbrance Holder or its title insurer).

12.6 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 Subsequent Renovation Fund and Capital Improvement 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.

12.7 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, if required pursuant to the relevant loan documents.

12.8 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. In connection with any amendment of this Lease, County agrees to request each such fee Encumbrance Holder to re-confirm in writing the continuing priority of this Lease.

12.9 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.

12.10 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 respective dates set forth in Section 5.1 (as extended by Section 5.1 or 5.6, as 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, 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 Section 12.4 (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 DESCRIBED 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 12.4.1(2) 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 (as such time period may be subject to extension as expressly provided in Section 12.4) and thereafter pursues such cure to completion in accordance with the provisions of Subsection 12.4.1(2) 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 12.5 of the Lease (and in such event the Reversion shall be deemed a "termination" of this Lease solely for purposes of Section 12.5 and the "new lease" to be entered into pursuant to Section 12.5 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 Subsequent Renovation Fund and/or Capital Improvement Fund, or providing the Demolition Security required under Subsection 2.3.2), within five (5) 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 as specified in such written notice, within such five (5) 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 of 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 Phase Commencement Dates, Required Phase Completion Dates or the Required Completion Date set forth in Sections 5.1 or to any failure of Lessee to commence or substantially complete the construction of the Subsequent Renovation by the applicable dates set forth in 5.11 above.

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, except when prevented by events of Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease.

Any notice required to be given by County pursuant to Subsections 13.1.1 through and including 13.1.3 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. The failure of Lessee to perform a non-monetary obligation under this Lease (i.e., an obligation that does not pertain to the payment of money) shall not constitute an Event of Default (and no late fees or interest will be incurred) to the extent that Lessee is prevented from performing such non-monetary obligation due to circumstances that constitute Force Majeure, as long as (a) Lessee notifies County in writing of the circumstances preventing its performance promptly following Lessee becoming aware of such circumstances; (b) Lessee performs such non-monetary obligation to the extent the performance thereof is not prevented by the circumstances of Force Majeure; (c) Lessee exercises diligent efforts to remedy, mitigate or resolve the circumstances constituting such Force Majeure; and (d) Lessee cures the non-performed obligation under this Lease with diligence following the remedy, mitigation or resolution of the circumstances of Force Majeure 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 12.4 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are 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. The terms and provisions of this Subsection 13.3.1 are subject to Article 12 of this Lease.

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 unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to County; and

13.4.3 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.

13.5 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.

#### 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, 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 Lease 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. Lessee shall utilize the accrual method of accounting with respect to the preparation of the reports, statements and maintenance of records required under this Lease (including without limitation, with respect to the calculation of Gross Receipts).

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. The requirements of this paragraph may be waived in advance by Director upon submission by Lessee of an acceptable substitute plan for recording sales and other revenue.

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, but excluding Sublessees of individual apartment units), keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, and to verify the amount and use of the Permitted Capital Expenditures.

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 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 shall have the right at any reasonable times, after advance written notice has been provided to Lessee in accordance with Section 14.4.1 below, 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 three (3) business days' advance written 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 its (or its Sublessee's) original records and books of account at the Premises or at a location within Los Angeles County as required pursuant to the terms hereof, 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. In the event that a County audit determines that Lessee has overpaid County, then the terms and provisions of the last sentence of Section 14.7 below shall be applicable to such overpayment.

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 in West Los Angeles 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 Annual Financial Statements. Within six (6) months after the end of each Lease Year, Lessee shall deliver to County a statement of Gross Receipts for such year (including a breakdown by Percentage Rent category) and the amount of any Permitted Capital Expenditures in such year, certified by a Certified Public Accountant who is a member of the American Institute of Certified Public Accounts and is reasonably satisfactory to County. 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. In the event that it is determined that Lessee has overpaid County, Lessee may deduct the amount from subsequent rent payments until the full amount of such overpayment has been repaid, or if the Term expires prior to Lessee having been fully repaid, County shall refund the remaining balance to Lessee within thirty (30) days after the end of the Term and the completion of all audits.

14.8 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees (including licensees, concessionaires and others conducting business operations on or from the Premises, but excluding Sublessees under Approved Apartment Subleases that occupy their premises primarily for residential purposes and not for the operation of business) to comply with

all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records.

14.9 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 determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's reasonable 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 predecessor-in-interest has continuously occupied and/or managed and operated the Premises since 1961. 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. Lessee hereby acknowledges that it has performed all investigations required by Lessee, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

15.4.1.2 Lessee acknowledges that the present condition of the Premises may cause Lessee to 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 with the present condition of the Premises.

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, regardless of whether or not said conditions were known at the time of the execution of this instrument.

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.

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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 tenant ground lessee (or subtenant) arising from such failure to surrender, and any lost profits to County resulting therefrom.

**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.

Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such lawful 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  
Department of Beaches and Harbors  
Los Angeles County  
13837 Fiji Way  
Marina del Rey, California 90292  
Phone: 310/305-9522  
Fax: 310/821-6345

With a Copy to: Office of County Counsel  
Los Angeles County  
500 West Temple Street  
Los Angeles, California 90012  
Attn: County Counsel  
Phone: 213/974-1801  
Fax: 213/617-7182

LESSEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

With a Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

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) business 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 and headings 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 the fees, costs and expenses incurred by the prevailing party 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, or except as expressly provided to the contrary 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. Except as expressly provided to the contrary in this Lease, if Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Director in good faith 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 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 provided that following receipt of the necessary approval or vote County diligently proceeds to perform the action.

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 Waterfront Promenade. The Renovation Work includes the development (or as applicable, renovation) by Lessee of a continuous pedestrian walkway with landscaping, lighting, seating, fencing 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 for the Promenade established by County from time to time on a nondiscriminatory basis. 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.

15.21 Partial Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance is to any extent held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will not be affected thereby, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

15.22 Entire Agreement. This Lease (including the Exhibits hereto) contains all of the agreements of the parties hereto with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters will be effective for any purpose unless specifically provided under, or incorporated in, the provisions of this Lease. There are no covenants, promises, agreements, representations, warranties or understandings, either oral or written, between County, in its proprietary capacity, or Lessee regarding the Premises other than as are set forth herein (and in the Exhibits hereto).

15.23 Independent Business. The relationship between County and Lessee is solely that of landlord and tenant, and is not and will not be deemed to be a partnership, joint venture or agency relationship.

15.24 Broker's Commissions. Each of the parties represents and warrants that it has not engaged a broker or done anything to incur a claim for brokerage commissions or finders' fees in connection with the execution of this Lease, and agrees to indemnify the other against, and defend and hold it harmless from, all liability arising from any such claim to the extent arising from the indemnifying party's acts or omissions, including, without limitation, the cost of attorneys' fees in connection therewith.

## 16. ARBITRATION.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be submitted to 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**” such party 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. The arbitrator shall satisfy the qualifications set forth in Section 16.2 below.

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 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 setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes ("**Statement of Position**");

(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 at least 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 (i.e., upon the expiration of the period set forth in California Code of Civil Procedure § 1288 for the filing of a petition to vacate or correct the award), 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. Except as expressly provided in this Lease, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Lease shall refer to this Lease as a whole and not to any particular provision of this Lease.

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 draftsman 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.

<p>THE COUNTY OF LOS ANGELES</p> <p>By: _____ Chair, Board of Supervisors</p> <p>ATTEST:</p> <p>SACHI A. HAMAI, Executive Officer of the Board of Supervisors</p> <p>By: _____ Deputy</p> <p>APPROVED AS TO FORM:</p> <p>ANDREA SHERIDAN ORDIN, County Counsel</p> <p>By: _____ Deputy</p> <p>APPROVED AS TO FORM:</p> <p>MUNGER, TOLLES &amp; OLSON LLP</p> <p>By: _____</p>	<p>LYON VILLA VENETIA, LLC, a Delaware limited liability company</p> <p>By: Lyon Treetop, LLC, a Delaware limited liability company, its managing member</p> <p>By: _____ Name: _____ Its: _____</p> <p>LYON VILLA VENETIA II, LLC, a Delaware limited liability company</p> <p>By: Lyon Peppertree, LLC, a Delaware limited liability company, its managing member</p> <p>By: _____ Name: _____ Its: _____</p> <p>WOLFF VILLA VENETIA 224, LLC, a Delaware limited liability company</p> <p>By: Wolff Villa Venetia 224 Holding Company, LLC, a Washington limited liability company, its managing member</p> <p>By: _____ Name: _____ Its: _____</p> <p>WOLFF VILLA VENETIA 224 II, LLC, a Delaware limited liability company</p> <p>By: Wolff Villa Venetia 224 II Holding Company, LLC, a Washington limited liability company, its managing member</p> <p>By: _____ Name: _____ Its: _____</p>
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**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

Parcels 892 to 898 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1, Pages 53 to 70 inclusive, of Assessor's Maps, in the Office of the Recorder of said County.

Excepting therefrom that portion of Parcel 892 which lies northeasterly, easterly and southeasterly of a curve concave to the west, having a radius of 55 feet, tangent to the northeasterly line of said Parcel 892 and tangent to the southeasterly line of said Parcel 892.

Also excepting therefrom that portion of Parcel 892 which lies northerly of said northeasterly line of Parcel 892 and its northwesterly prolongation.

Also reserving and excepting unto the County of Los Angeles rights of way for sanitary sewers, access, fire access and harbor utility purposes in and across those portions thereof designated on said map as easements to be reserved by said County for such purposes.

And subject to the public easement reserved in Section 15.20 of the foregoing Lease.



**EXHIBIT B**  
**RENOVATION PLAN**

See attached.

## TERM SHEET EXHIBIT B – PARCEL 64

August 25, 2010

<b><i>Term Sheet Template Item</i></b>	<b><i>Lessee Proposal Parcel 64</i></b>
<b>1) SCOPE OF WORK</b>	
<p><b>A reasonably detailed, written narrative description of the work to be done, including each of the following:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> <b>All new construction and renovation</b></li><li><input type="checkbox"/> <b>Timing for the start of the work</b></li><li><input type="checkbox"/> <b>Timing for the completion of the work</b></li></ul> <p><b>The narrative shall include all applicable components of the project, grouped as set forth below.</b></p>	
<b>a) Apartments, Office and Commercial (Note: for renovation-only apartment projects, use "Renovation Comparison Worksheet" instead of this section)</b>	
<ul style="list-style-type: none"><li>• <b>Demolition (of existing improvements prior to commencing work)</b></li></ul>	See Exhibit A-41, "Renovation Comparison Worksheet"
<ul style="list-style-type: none"><li>• <b>New building construction</b></li></ul>	See Exhibit A-41, "Renovation Comparison Worksheet"
<ul style="list-style-type: none"><li>• <b>Remodeled building exteriors</b></li></ul>	See Exhibit A-41, "Renovation Comparison Worksheet"
<ul style="list-style-type: none"><li>• <b>Remodeled building interiors</b></li></ul>	See Exhibit A-41, "Renovation Comparison Worksheet"
<ul style="list-style-type: none"><li>• <b>Remodeled interior building common areas</b></li></ul>	See Exhibit A-41, "Renovation Comparison Worksheet"
<ul style="list-style-type: none"><li>• <b>Remodeled exterior building common areas</b></li></ul>	See Exhibit A-41, "Renovation Comparison Worksheet"

<b><i>Term Sheet Template Item</i></b>	<b><i>Lessee Proposal Parcel 64</i></b>
<ul style="list-style-type: none"> <li>• <b>Landscaping</b></li> </ul>	See Exhibit A-41, "Renovation Comparison Worksheet"
<b>b) Marina</b>	
<ul style="list-style-type: none"> <li>• <b>Replacement of docks and slips, including design and materials</b></li> </ul>	This item does not apply because there currently are no slips on the property and there is no intention of adding any slips as part of this renovation effort.
<ul style="list-style-type: none"> <li>• <b>Retention of existing slip count, including slip count before and after by slip size</b></li> </ul>	This item does not apply because there currently are no slips on the property and there is no intention of adding any slips as part of this renovation effort.
<ul style="list-style-type: none"> <li>• <b>Retention of marine commercial facilities, including area count before and after for each category</b></li> </ul>	This item does not apply because there currently are no marine commercial facilities on the property and there is no intention of adding any as part of this renovation effort.
<b>c) Promenade</b>	
<ul style="list-style-type: none"> <li>• <b>Walkway design and materials</b></li> </ul>	The Waterfront Promenade will feature enhanced paving materials to create an aesthetic quality to match the renovated property. Scored concrete modules create a sense of movement akin to the water of the marina and ocean beyond while allowing for pedestrian, bike and emergency vehicle traffic.
<ul style="list-style-type: none"> <li>• <b>Fencing design and materials</b></li> </ul>	Fencing along the Waterfront Promenade will be marine grade railing and pickets to endure the harsh waterfront conditions of the marine environment. The fencing will provide unobstructed views, reduced maintenance and maintain the nautical aesthetic of the marina and surrounding waterfront.

<b><i>Term Sheet Template Item</i></b>	<b><i>Lessee Proposal Parcel 64</i></b>
<ul style="list-style-type: none"> <li>• <b>Lighting design and materials</b></li> </ul>	Waterfront Promenade lighting will be installed to provide visual security and function as an element to enhance the nautical design aesthetic, while limiting light pollution for dark skies considerations. Pedestrian pole lights will be installed to compliment the promenade fencing and seamlessly blend with the overall composition of materials. Bollard lights will also be installed as part of the fence and railing to provide light at the lower pedestrian level and reduce the need for additional pole lights.
<b>d) Signage</b>	
<ul style="list-style-type: none"> <li>• <b>New signage program</b></li> </ul>	See Exhibit A-41, "Renovation Comparison Worksheet"

<b><i>Term Sheet Template Item</i></b>	<b><i>Lessee Proposal Parcel 64</i></b>
<b>2) PLANS &amp; DRAWINGS</b>	
<b>Preliminary plans for all work to be done</b>	
<b>Exhibit A-     Site Plan</b>	
<ul style="list-style-type: none"> <li>• <b>Reduced color site plans (8.5x11 or 11x17), showing work described above, including all structures, hardscape, promenade, landscaping and slips</b></li> </ul>	<p>See the following exhibits:</p> <ul style="list-style-type: none"> <li>• Exhibit A-2, "Parcel 64 Site Plan"</li> <li>• Exhibit A-34, "Parcel 64 Auto Court"</li> <li>• Exhibit A-35, "Parcel 64 Garden Terrace"</li> <li>• Exhibit A-36, Parcel 64 Sunset Terrace"</li> <li>• Exhibit A-37, "Parcel 64 Paseo Terrace &amp; Linear Park"</li> <li>• Exhibit A-38, "Parcel 64 Pool Terrace"</li> <li>• Exhibit A-39, "Parcel 64 Waterfront Promenade Section #1"</li> <li>• Exhibit A-40, "Parcel 64 Waterfront Promenade Section #2"</li> </ul>

<b><i>Term Sheet Template Item</i></b>	<b><i>Lessee Proposal Parcel 64</i></b>
<p><b>b) Building Elevation</b></p> <p><b>A reduced color elevation (8.5x11 or 11x17) drawing that shows all new and/or renovated building elevations</b></p>	<p>See the following exhibits:</p> <ul style="list-style-type: none"> <li>• Exhibit A-1, "Parcel 64 Existing Conditions"</li> <li>• Exhibit A-2, "Parcel 64 Site Plan"</li> <li>• Exhibit A-3, "Parcel 64 Proposed Rendering – Auto Court View – Entry Facades of Building 13900 &amp; 13902 – Looking Southwest"</li> <li>• Exhibit A-4, "Parcel 64 – Proposed Rendering – Waterfront Promenade View – Building 13904/06 – Looking Southeast"</li> <li>• Exhibit A-5, "Parcel 64 Before &amp; After Building 13908/10 North Elevation"</li> <li>• Exhibit A-6, "Parcel 64 Before &amp; After Building 13908/10 Northeast Elevation"</li> <li>• Exhibit A-7, "Parcel 64 Before &amp; After Building 13908/10 Southeast Elevation"</li> <li>• Exhibit A-8, "Parcel 64 Before &amp; After Building 13908/10 Southwest End Elevation"</li> <li>• Exhibit A-9, "Parcel 64 Before &amp; After Building 13908/10 Northwest Interior Elevation"</li> <li>• Exhibit A-10, "Parcel 64 Before &amp; After Building 13908/10 Southwest Interior Elevation"</li> <li>• Exhibit A-11, "Parcel 64 Before &amp; After Building 13908/10 SouthWest End Elevation"</li> <li>• Exhibit A-12, "Parcel 64 Before &amp; After Building 13904/06 South Elevation"</li> <li>• Exhibit A-13, "Parcel 64 Before &amp; After Building 13904/06 North Interior Elevation"</li> <li>• Exhibit A-14, "Parcel 64 Before &amp; After Building 13904/06 West Elevation"</li> <li>• Exhibit A-15, "Parcel 64 Before &amp; After Building 13904/06 North Elevation"</li> <li>• Exhibit A-16, "Parcel 64 Before &amp; After Building 13904/06 East Elevation"</li> <li>• Exhibit A-17, "Parcel 64 Before &amp; After Building 13902 South Elevation"</li> <li>• Exhibit A-18, "Parcel 64 Before &amp; After Building 13900 West Elevation"</li> <li>• Exhibit A-19, "Parcel 64 Before &amp; After Building 13902 East Elevation"</li> </ul>

<b><i>Term Sheet Template Item</i></b>	<b><i>Lessee Proposal Parcel 64</i></b>
<ul style="list-style-type: none"> <li>• <b>(Continued)</b> <b>A reduced color elevation (8.5x11 or 11x17) drawing that shows all new and/or renovated building elevations</b></li> </ul>	<ul style="list-style-type: none"> <li>• Exhibit A-20, Parcel 64 Before &amp; After Building 13902 West Elevation"</li> <li>• Exhibit A-21, "Parcel 64 Before &amp; After Building 13900 North Elevation"</li> <li>• Exhibit A-22, "Parcel 64 Before &amp; After Building 13900 East Elevation"</li> <li>• Exhibit A-23, "Parcel 64 Before &amp; After – Auto Court View – Entry Façade of Building 13900 – Looking Northwest"</li> <li>• Exhibit A-24, "Parcel 64 Before &amp; After – Court View – Entry Façade of Building 13902 – Looking West"</li> <li>• Exhibit A-25, "Parcel 64 Before &amp; After – Auto Court View – Fitness/Leasing Building – Looking Southeast"</li> <li>• Exhibit A-26, "Parcel 64 Before &amp; After – Garden Terrace View – Fitness/Leasing Building – Looking Northwest"</li> <li>• Exhibit A-27, "Parcel 64 Before &amp; After – Garden Terrace View – Building 13904/06 and 13908/10 – Looking Southwest"</li> <li>• Exhibit A-28, "Parcel 64 Before &amp; After – Garden Terrace View – Building 13904/06 – Looking Northwest"</li> <li>• Exhibit A-29, "Parcel 64 Before &amp; After – Sunset Court View – Building 13904/06 – Looking Northeast"</li> <li>• Exhibit A-30, "Parcel 64 Before &amp; After – Waterfront Promenade View – Building 13904/06 – Looking Northeast"</li> <li>• Exhibit A-31, "Parcel 64 Before &amp; After – Waterfront Promenade View – Building 13904/06 – Looking Southeast"</li> <li>• Exhibit A-32, "Parcel 64 Before &amp; After – Pool Terrace View – Building 13902 – Looking Southwest"</li> <li>• Exhibit A-33, "Parcel 64 Before &amp; After – Pool Terrace View – Building 13900 – Looking Northwest"</li> <li>• Exhibit A-34, "Parcel 64 Auto Court"</li> <li>• Exhibit A-35, "Parcel 64 Garden Terrace"</li> <li>• Exhibit A-36, "Parcel 64 Sunset Terrace"</li> <li>• Exhibit A-37, "Parcel 64 Paseo Terrace &amp; Linear Park"</li> <li>• Exhibit A-38, "Parcel 64 Pool Terrace"</li> <li>• Exhibit A-39, "Parcel 64 Waterfront Promenade Section #1"</li> <li>• Exhibit A-40, "Parcel 64 Waterfront Promenade Section #2"</li> </ul>
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<b><i>Term Sheet Template Item</i></b>	<b><i>Lessee Proposal Parcel 64</i></b>
<b>c) Landscaping Plan</b>	
<ul style="list-style-type: none"> <li><b>If not already included in the above materials</b></li> </ul>	See Exhibit A-2, "Parcel 64 Site Plan"
<b>d) Dock Construction Plan</b>	
<ul style="list-style-type: none"> <li><b>Dock construction plan, including physical layout of docks and slips</b></li> </ul>	This item does not apply because there currently are no slips on the property and there is no intention of adding slips as part of this renovation effort.



<i><b>Term Sheet Template Item</b></i>	<i><b>Lessee Proposal Parcel 64</b></i>
<b>3) BUDGET</b>	
Exhibit A- <b>Budget worksheet</b>	
<ul style="list-style-type: none"> <li><b>Estimated cost for all of the work agreed upon</b></li> </ul>	<p>\$24.89 million, as follows:</p> <p>Exterior – Building \$8.59 million</p> <p>Exterior – Sitework/Landscaping \$4.1 million</p> <p>Interior - Units \$10.2 million</p> <p>Interior – Common Area \$2 million</p>

Exhibit A-1  
Parcel 64 Aerial View-Existing Conditions dated 10/1/09



A-1 Parcel 64 Aerial View-Existing Conditions

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Oct 1, 2009

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Exhibit A-2  
Parcel 64 Site Plan



Exhibit A-3

"Parcel 64 Proposed Rendering – Auto Court View – Entry Facades of Building 13900 & 13901 – Looking Southwest"



A-3 Parcel 64 Proposed Rendering- Auto Court View - Entry Facades of Building 13900 and 13902 - Looking Southwest

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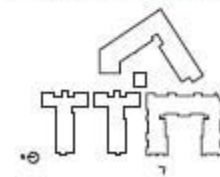
Exhibit A-4

"Parcel 64 Proposed Rendering – Auto Court View – Entry Facades of Building 13900 & 13901 – Looking Southeast"



A-4 Parcel 64 Proposed Rendering- Waterfront Promenade View - Building 13904/06 - Looking Southeast

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Exhibit A-5  
 "Parcel 64 Before & After Building 13908/13910 North Elevation"

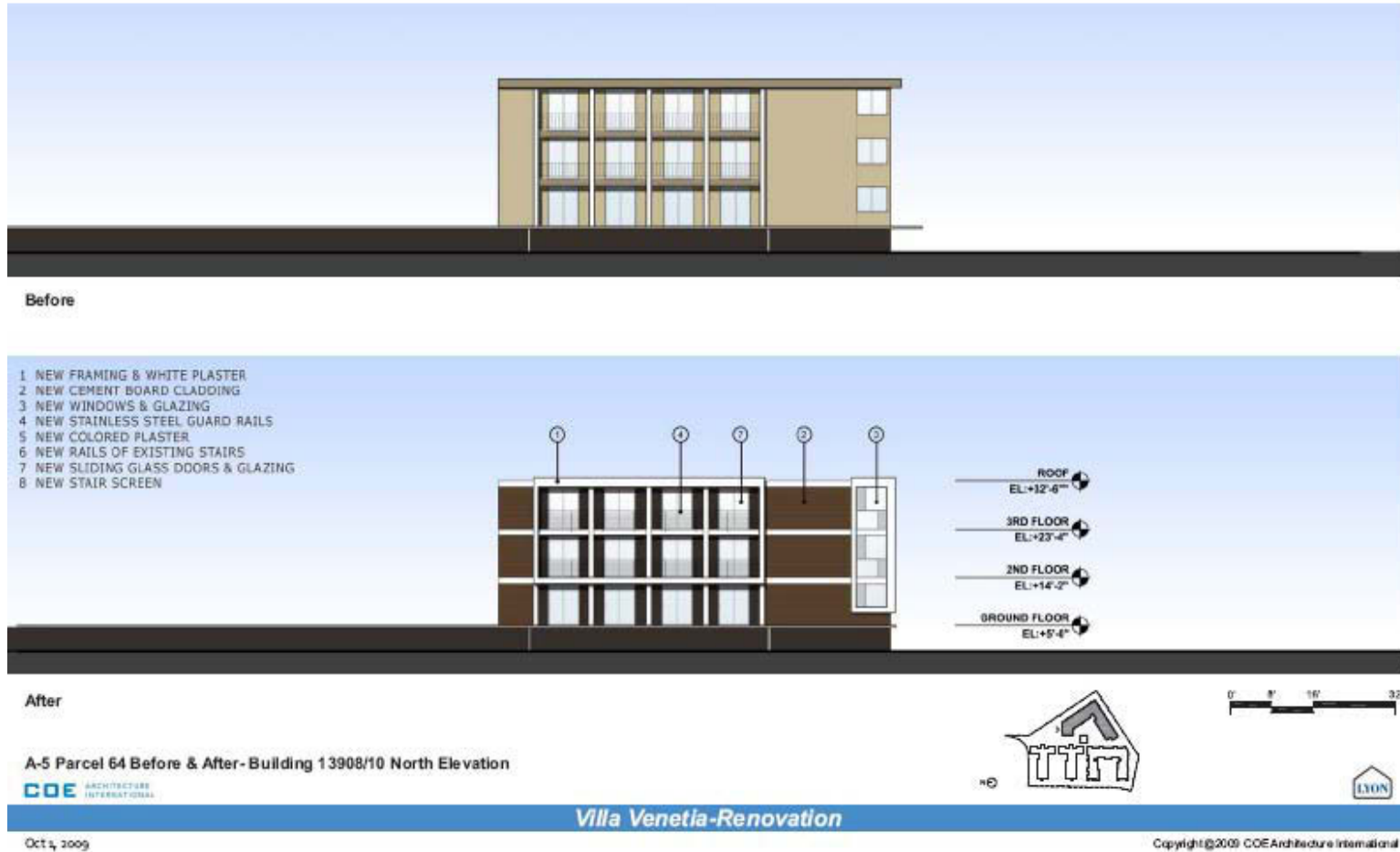


Exhibit A-6

Parcel 64 Before & After-Building 13908/10 Northeast Elevation dated 10/1/09



Exhibit A-7

Parcel 64 Before & After-Building 13908/10 Southeast Elevation dated 10/1/09



Before



After

A-7 Parcel 64 Before & After-Building 13908/10 Southeast Elevation



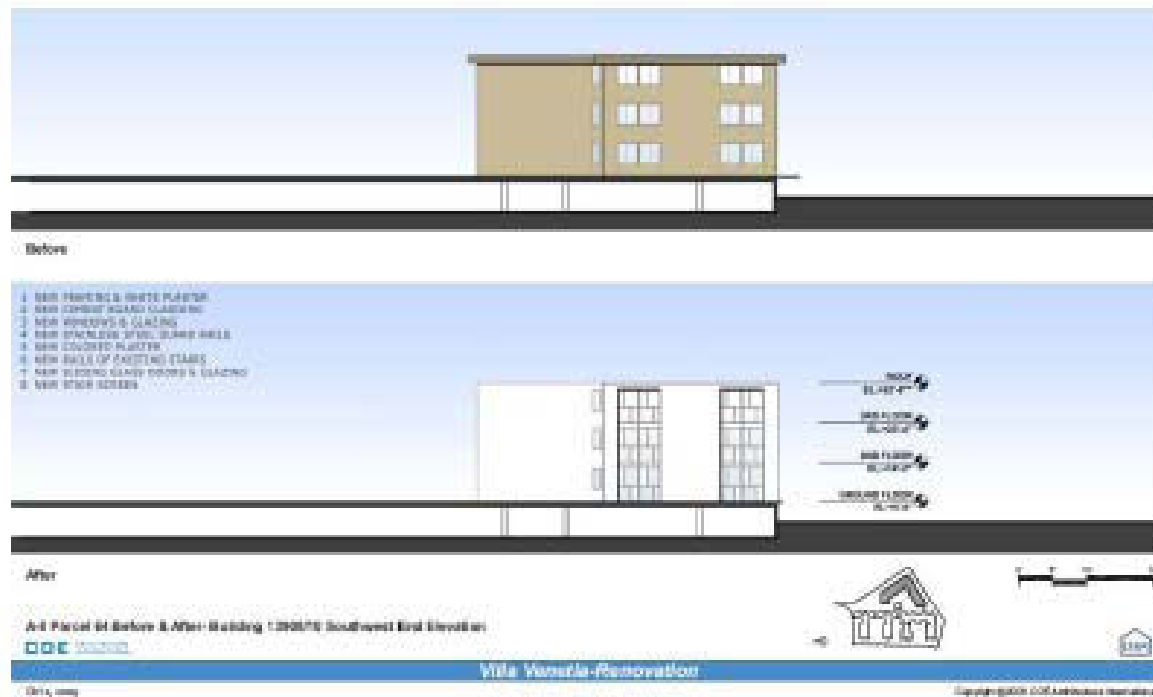
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Parcel 64 Before & After-Building 13908/10 Southwest End Elevation dated 10/1/09



## Exhibit A-9

Parcel 64 Before & After-Building 13908/10 Northwest Interior Elevation dated 10/1/09

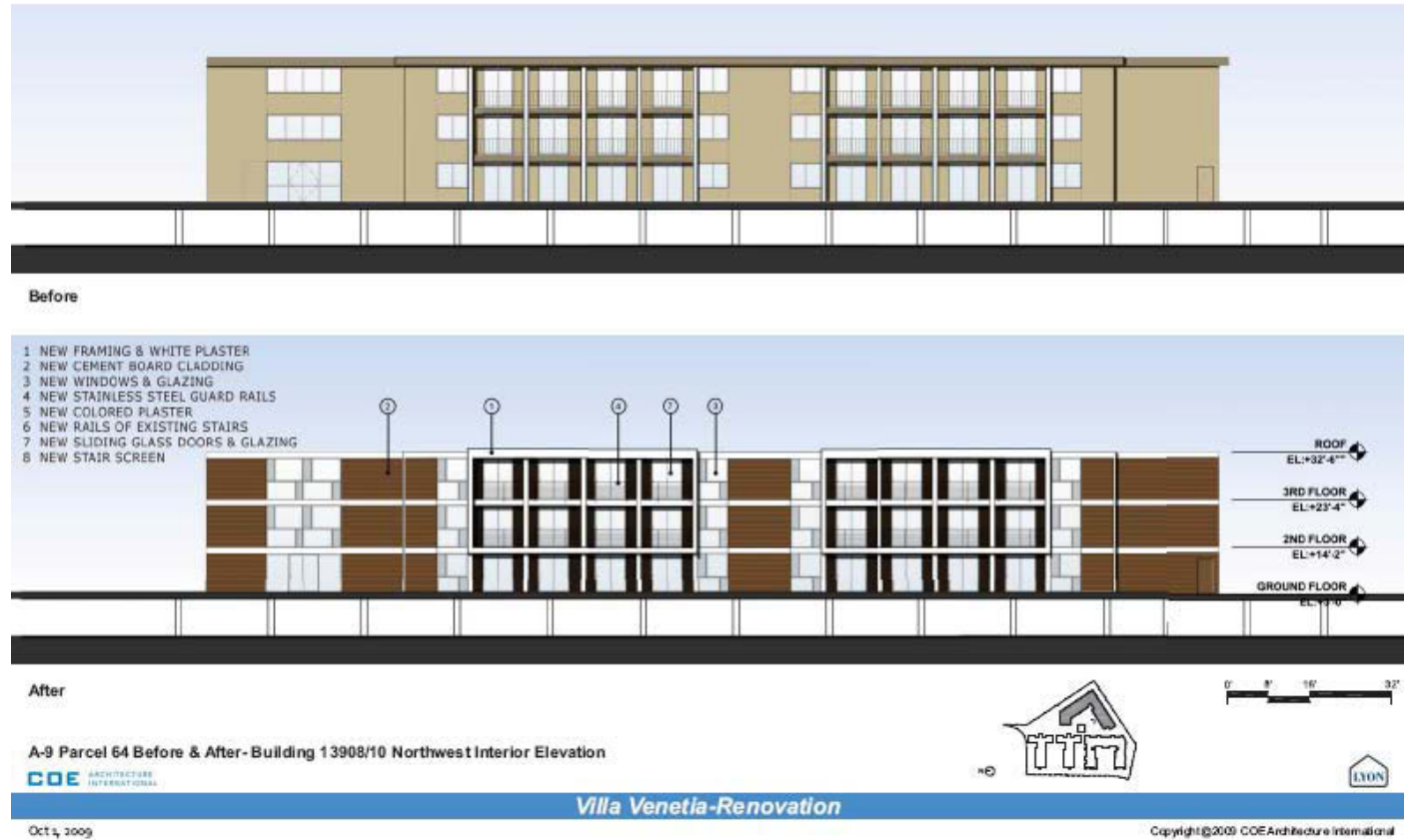


Exhibit A-10  
Parcel 64 Before & After-Building 13908/10 Southwest Interior Elevation



Before



After

A-10 Parcel 64 Before & After- Building 13908/10 Southwest Interior Elevation

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## Exhibit A-11

### Parcel 64 Before & After-Building 13908/10 Southwest End Elevation

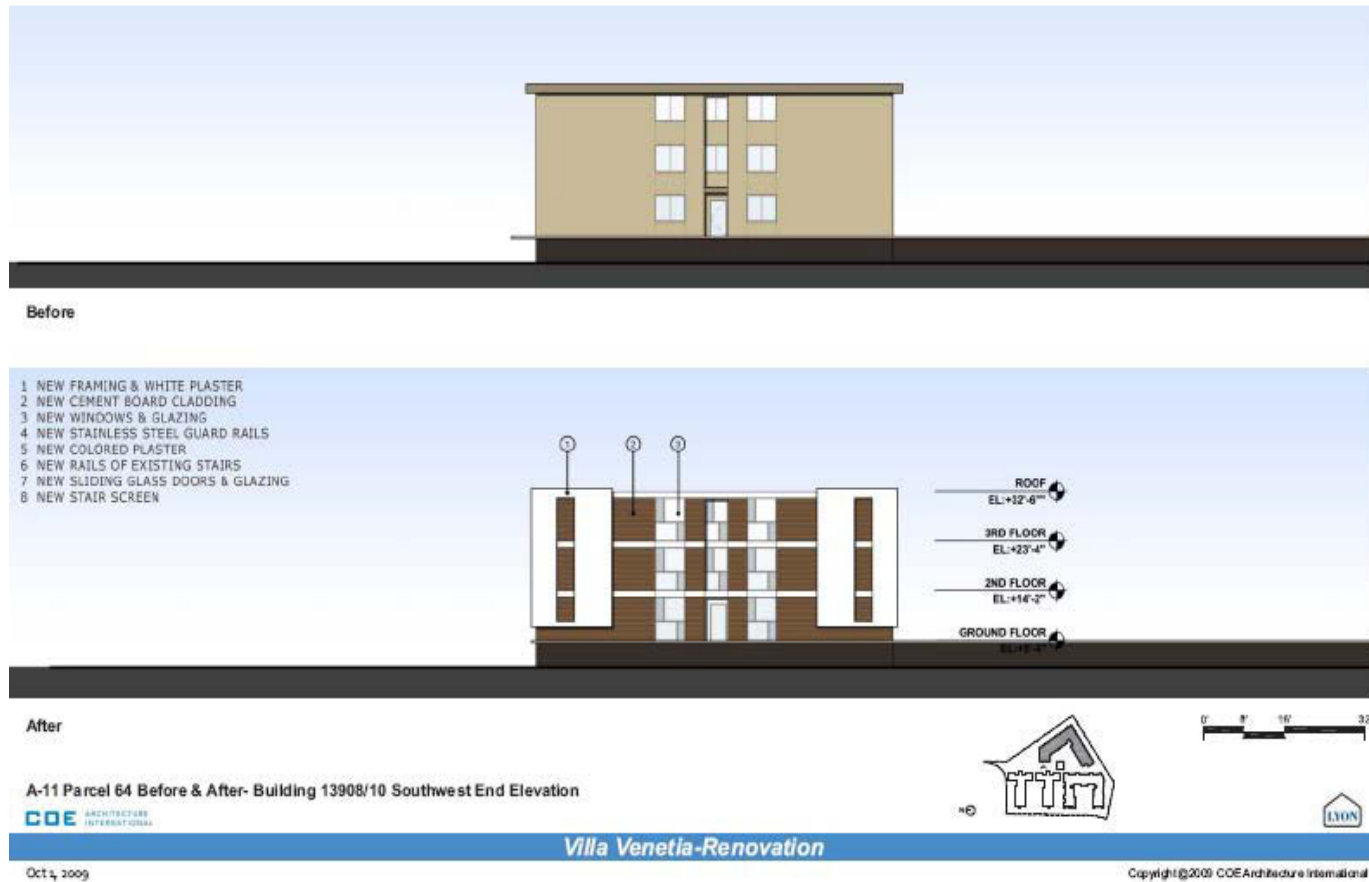


Exhibit A-12  
Parcel 64 Before & After-Building 13904/06 South Elevation



Exhibit A-13  
Parcel 64 Before & After-Building 13904/06 North Interior Elevation

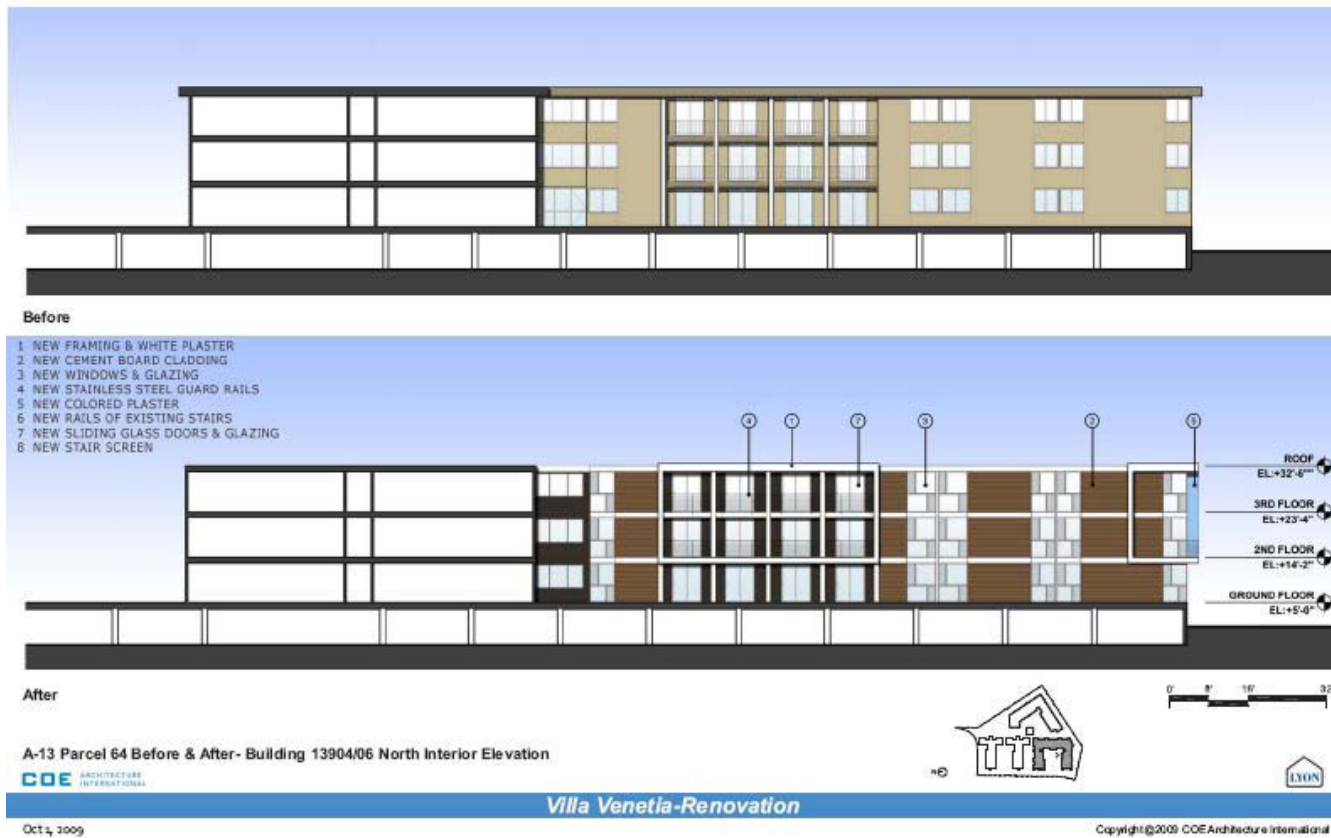


Exhibit A-14  
Parcel 64 Before & After-Building 13904/06 West Elevation



Exhibit A-15  
Parcel 64 Before & After-Building 13904/06 North Elevation



Before



After

A-15 Parcel 64 Before & After- Building 13904/06 North Elevation

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Exhibit A-16  
Parcel 64 Before & After-Building 13904/06 East Elevation



Before



After

A-16 Parcel 64 Before & After- Building 13904/06 East Elevation

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Exhibit A-17  
Parcel 64 Before & After-Building 13902 South Elevation



Exhibit A-18  
Parcel 64 Before & After-Building 13900 West Elevation



Exhibit A-19  
Parcel 64 Before & After-Building 13902 East Elevation



Exhibit A-20  
Parcel 64 Before & After-Building 13902 West Elevation



Exhibit A-21  
Parcel 64 Before & After-Building 13900 North Elevation





Exhibit A-22  
Parcel 64 Before & After-Building 13900 East Elevation



Before



After

A-22 Parcel 64 Before & After- Building 13900 East Elevation

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Exhibit A-23

Parcel 64 Before & After-Auto Court View-Entry Façade of Building 13900-Looking Northwest



Before



After

A-23 Parcel 64 Before & After- Auto Court View - Entry Facade of Building 13900 - Looking Northwest

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Exhibit A-24

Parcel 64 Before & After-Auto Court View-Entry Façade of Building 13902-Looking West

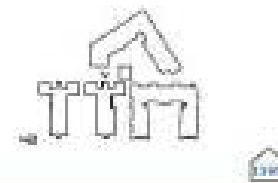


Before



After

A-24 Parcel 64 Before & After-Auto Court View - Entry Façade of Building 13902 - Looking West



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Exhibit A-25  
Parcel 64 Before & After Auto Court View-Fitness/Leasing Building-Looking Southeast



Before



After

A-25 Parcel 64 Before & After- Auto Court View - Fitness/Leasing Building - Looking Southeast

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Exhibit A-26

Parcel 64 Before & After-Garden Terrace View-Fitness/Leasing Building-Looking Northwest



Before



After

A-26 Parcel 64 Before & After- Garden Terrace View - Fitness/Leasing Building - Looking Northwest



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Exhibit A-27

Parcel 64 Before & After-Garden Terrace View- Building 13904 and 13908/10-Looking Southwest



Before

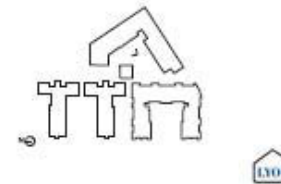


After

A-27 Parcel 64 Before & After- Garden Terrace View - Building 13904/06 and 13908/10 - Looking Southwest



Oct 4, 2009



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Exhibit A-28

Parcel 64 Before & After-Garden Terrace View- Building 13904/06-Looking Northwest



Before



After

A-28 Parcel 64 Before & After- Garden Terrace View - Building 13904/06 - Looking Northwest

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Exhibit A-29

Parcel 64 Before & After-Sunset Court View- Building 13904/06-Looking Northeast



Before



After

A-29 Parcel 64 Before & After- Sunset Court View - Building 13904/06 - Looking Northeast

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Exhibit A-30

Before & After-Waterfront Promenade View –Building 13904/06-Looking Northeast



Before



After

A-30 Parcel 64 Before & After- Waterfront Promenade View - Building 13904/06 - Looking Northeast

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Exhibit A-31

Parcel 64 Before & After-Waterfront Promenade View-Building 13904/06-Looking Southeast



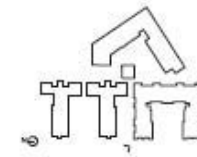
Before



After

A-31 Parcel 64 Before & After- Waterfront Promenade View - Building 13904/06 - Looking Southeast

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Exhibit A-32

Parcel 64 Before & After-Pool Terrace View- Building 13902-Looking Southwest



Before



After

A-32 Parcel 64 Before & After- Pool Terrace View - Building 13902 - Looking Southwest

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Exhibit A-33

Parcel 64 Before & After-Pool Terrace View- Building 13900-Looking Northwest



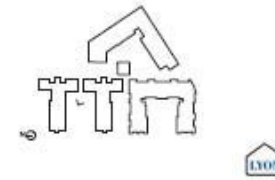
Before



After

A-33 Parcel 64 Before & After- Pool Terrace View - Building 13900 - Looking Northwest

COE ARCHITECTURE  
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Exhibit A-34  
Parcel 64 Auto Court



A-34 PARCEL 64 AUTO COURT



VILLA VENETIA - RENOVATION

MELÉNDREZ

Exhibit A-35  
Parcel 64 Garden Terrace





Exhibit A-36  
Parcel 64 Sunset Terrace



A-36 PARCEL 64 SUNSET TERRACE

COE ARCHITECTURE  
INTERNATIONAL

VILLA VENETIA - RENOVATION

MELÉNDREZ

Exhibit A-37  
Parcel 64 Paseo Terrace and Linear Park



A-37 PARCEL 64 PASEO TERRACE AND LINEAR PARK

COE

VILLA VENETIA - RENOVATION

MELÉNDREZ

Exhibit A-38  
Parcel 64 Pool Terrace



A-38 PARCEL 64 POOL TERRACE

Exhibit A-39 Parcel 64 Waterfront Promenade Lookout
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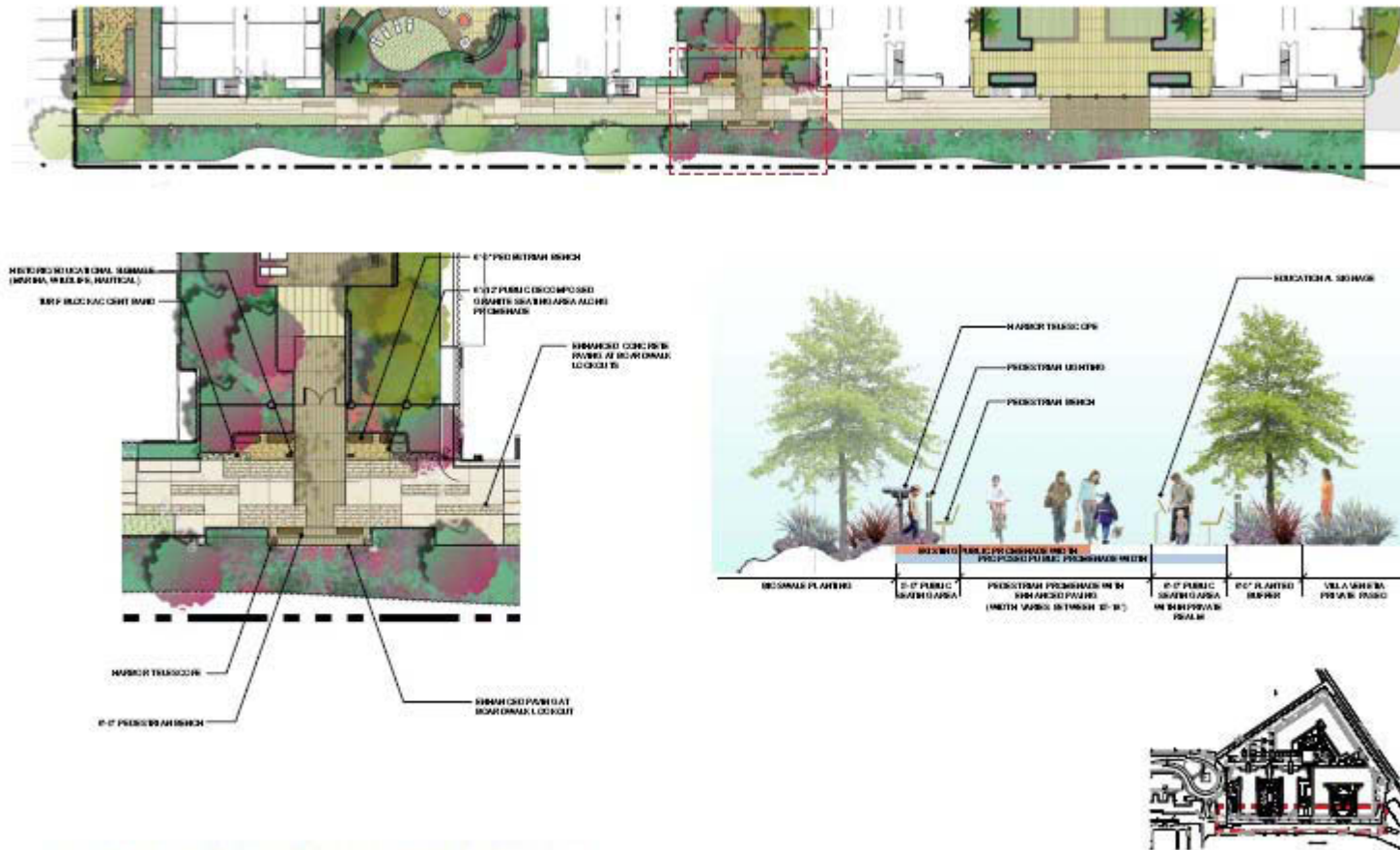
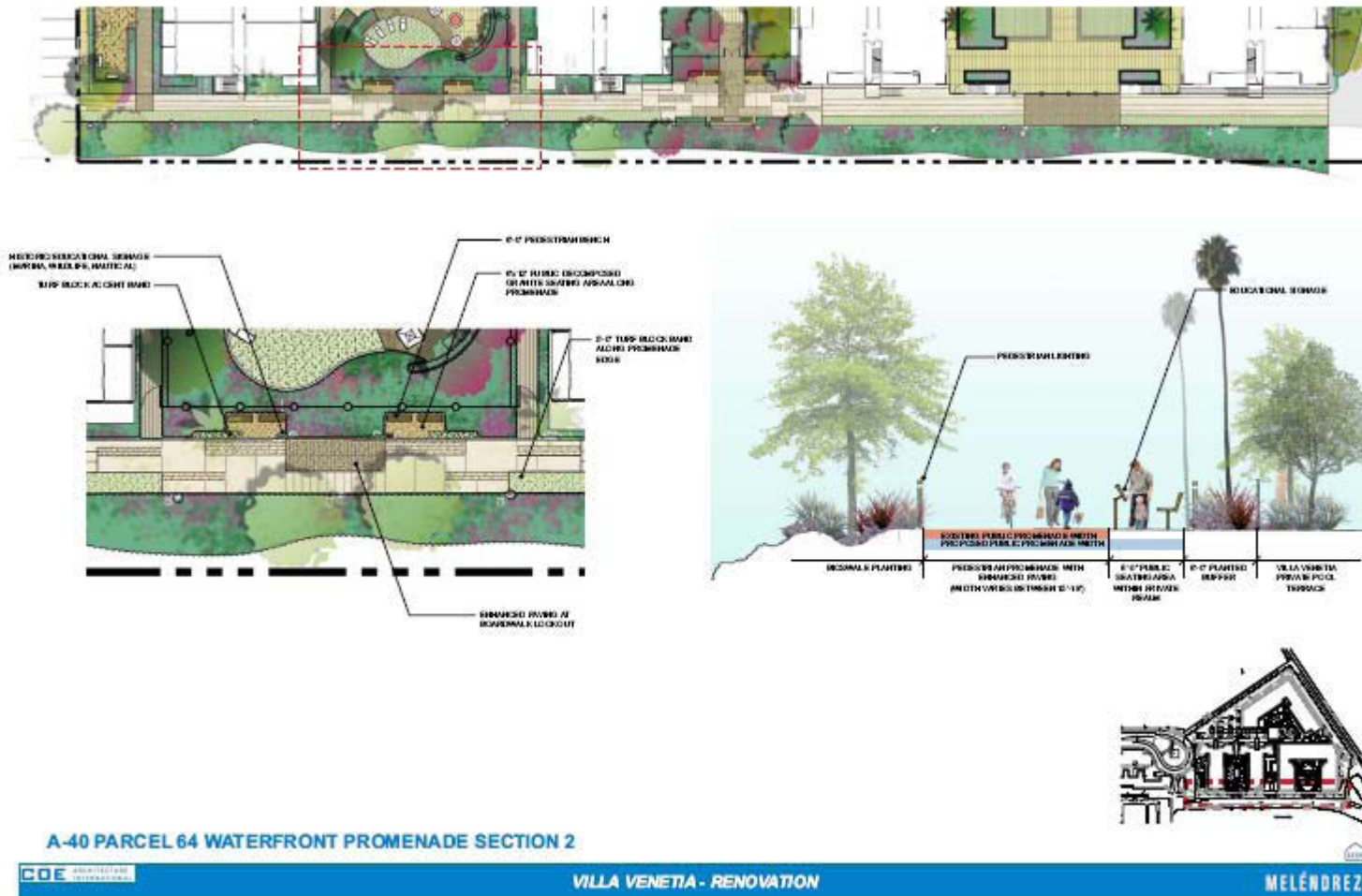




Exhibit A-40  
Parcel 64 Waterfront Promenade Lookout Section #2



## Exhibit A-41

### RENOVATION COMPARISON WORKSHEET – PARCEL 64

August 25, 2010

<i><b>Apartment Renovation Template Item</b></i>	<i>64 Lessee Proposal</i>
<b>1) EXTERIOR</b>	
<b>a) Building Exterior - All building exteriors should receive a facelift that give the building a more clean, contemporary look appropriate for this waterside location and should include the following:</b>	<p>The exteriors of each building will be completely redesigned, including the Leasing/Clubhouse building. Large vertical wall areas of existing plaster will be replaced with horizontal board siding in a wood tone to give the buildings a modern detail and warmth. Groupings of private balconies will be surrounded with a plaster "frame" that will distinguish them from the rest of the building. Some interior surfaces of the balcony "frames" will be painted with accent colors. Horizontal bands of plaster will occur at each floor line to tie the exterior design together. The parapet of the balcony "frames" will extend beyond the adjacent walls to create variety and interest at the roof lines. Parapets will be added away from the building edge to strategically conceal mechanical equipment. Existing bedroom windows will be enlarged in the vertical dimension and extended to the floor line. The current exposed exterior exit stair towers will be enclosed with a window-wall system.</p>
<input type="checkbox"/> <b>Exterior surface – Revitalization of the surface (stucco, plaster, wood)</b>	<p>All buildings will be completely revitalized and repainted. The existing stucco will be carefully prepped and sanded in order to create permanent bedding for the new design elements and paint. Existing wood surfaces and trim will be removed or replaced.</p>

<b><i>Apartment Renovation Template Item</i></b>	<b><i>64 Lessee Proposal</i></b>
<ul style="list-style-type: none"> <li>❑ <b>Patio/Balcony – Replace wooden railing and surfaces with metal (show finish)</b></li> </ul>	<p>All balcony rails, both metal and wood on buildings will be removed. Balconies water sealed and flashed. New railings will be installed on all balconies and walkways. Wood or aluminum rails at private balconies will be replaced with modern stainless steel cable rails. Wood rails on public walkways will be replaced with glass rails.</p> <p><i>Resurface Balcony</i> Existing balconies will be resurfaced and all surface cracks will be repaired. We will install a two-part epoxy no-skid water proofing system. This system will be of a color to complement the exteriors of the buildings.</p>
<ul style="list-style-type: none"> <li>❑ <b>Parapet Walls - All exterior walls should be modified insure a more modern look</b></li> </ul>	N/A We do not have parapet walls
<b>b) Common Areas</b>	
<ul style="list-style-type: none"> <li>❑ <b>Hardscape - All hardscape should be reviewed and upgrade/replaced where reasonable possible so as to give the impression of a totally new project</b></li> </ul>	<p>The current main entry will be redesigned, including upgraded landscaping and hardscape. Drainage and electrical systems will be upgraded, where needed. A reconfigured motor court entrance will be installed, including newly paved hardscape designed to greatly enhance the arrival experience. The reconfigured motor court will provide an additional 13 parking spaces to the existing project. New ground lighting, irrigation and entry monumentation will be installed. Common area interior walkways will be improved with new concrete.</p>

<b><i>Apartment Renovation Template Item</i></b>	<b><i>64 Lessee Proposal</i></b>
<p>❑ <b>Landscaping- All existing landscaping, with particular attention given to those areas that are affected by the remodeling of the building exterior, should be reviewed and upgraded where reasonably possible.</b></p>	<p>Each of the courtyards and perimeter areas will be personalized with its own landscape upgrade, which will include ground lighting and irrigation. Planting, trees and water features will enhance the redesigned natural environment, including a new pool and spa. The areas of the hardscape will be enhanced as well on the podium building with new topcoat waterproofing walk decks.</p> <p>Existing plant material of significance will be retained or relocated, specifically the Monterey Cypress at the northwest corner of the property and within the existing parking area, which are to remain. New drought tolerant plant materials will be selected for their ability to flourish in the unique coastal conditions of Marina del Rey while meeting the aesthetic and maintenance desires of the project. This plant palette will minimize the water usage required for onsite irrigation.</p>
<p><b>c) Signage - Replace all existing building monument, building ID, and amenity signage.</b></p>	<p>The property currently has extremely poor identification. We will install new custom designed property identification monument and signage at the front entry. Additionally, we will be designing and installing a way finding graphics package throughout the property for better identification and access for residents, emergency crews, and on-site guests.</p>
<p><b>d) Lighting - Replace all existing exterior lighting lens/fixtures</b></p>	<p>Landscape, building and area lighting on the property will be replaced and upgraded to enhance the building profiles, as well as, create better-lit paths for ingress and egress.</p>

<b><i>Apartment Renovation Template Item</i></b>	<b><i>64 Lessee Proposal</i></b>
<b>2) INTERIOR</b>	
<b>a) Common Areas</b>	
<input type="checkbox"/> <b>Entry Door – replace with raised panel doors with new hardware (show finish and brand)</b>	New contemporary panel entry doors will be installed with a brushed nickel/brushed chrome finish Quickset Smart Key Systems or equivalent. The door will be painted with a decorator selected paint finish to coordinate with upgraded corridor specifications.
<input type="checkbox"/> <b>Hallways-should include new paint/wall coving, door moldings, chair rail molding, carpet and padding, light fixtures and door tags.</b>	The building entries and hallways will all be completely modernized and designed by a professional interior design firm. Lighting will be an important element to open up the hallway spaces to make them feel warm and inviting. The use of recessed lighting and wall sconces will bring light in the hallways and make a statement at each apartment entry. Walls and ceilings will be reconditioned and painted with designer coordinated colors to warm the spaces. The hallways will be carpeted with a contemporary styled commercial grade carpet/padding and new baseboard and molding trim.
<input type="checkbox"/> <b>Trash Room - Should include new paint, flooring and lighting</b>	All trash rooms will be reconditioned and painted. New light fixtures and vinyl flooring will be installed.
<input type="checkbox"/> <b>Elevators - Should include new panels flooring and lighting</b>	Each of the four elevator cabs will have the existing finishes removed and replaced with new updated Formica raised panel surfaces. Most control equipment will be replaced.

<b><i>Apartment Renovation Template Item</i></b>	<i>64 Lessee Proposal</i>
<b>b) Apartment Interiors: Kitchens</b>	
<input type="checkbox"/> <b>Cabinets:</b>  <b>(i) Replace or refinish existing cabinets and</b>  <b>(ii) Install new routed panel cabinet doors and drawer fronts</b>	New cabinets will be installed in the kitchen and bath. Cabinets will have European designed thermo foil constructed doors and side panels installed. New hardware will be mounted on each door and drawer in the pull bar format with cylinder style brush chrome pulls. (Excel cabinets or equal)
<input type="checkbox"/> <b>Counters - Replace Formica counter tops.</b>	Each counter top in every kitchen will be replaced with 2 centimeter thickness upgraded slab granite or Cesar stone or equivalent with a modern flat edge detail. Counters will be complimented with full height tile/granite backsplash detailing.
<input type="checkbox"/> <b>Faucets-Install new faucets (name brand)</b>	New single lever/pullout spray (brushed nickel or brushed chrome) faucets will be installed. Kohler or Price Pfister or equivalent
<input type="checkbox"/> <b>Sinks/ Replace resurface existing sinks</b>	Kitchen sinks will be replaced with under mount brushed steel dual compartment sinks

<b><i>Apartment Renovation Template Item</i></b>	<b><i>64 Lessee Proposal</i></b>
<input type="checkbox"/> <b>Appliances- New stoves, dishwashers, microwaves and refrigerators where appropriate name brand and model</b>	<p>A new multi-cycle dishwasher, four-burner glass top electric cook top, under counter oven, microwave and eighteen cubic foot refrigerator/freezer will be installed in each unit. The finish will be General Electric proprietary product line of clean steel finish.</p> <p><i>Appliances</i></p> <ul style="list-style-type: none"> <li>- Refrigerator – GE – GTL21KCX OR EQUAL</li> <li>- Oven - GE - JTP30SP OR EQUAL</li> <li>- Range Top –GE - PP912SM OR EQUAL</li> <li>- Dishwasher – GE – GLD4500/50/60N OR EQUAL</li> <li>- Microwave - GE - JVM1540LNCS OR EQUAL</li> <li>- Washer/Dryer - GE - WSM2700/80H OR EQUAL</li> </ul>
<b>c) Apartment Interiors: Bathrooms</b>	
<input type="checkbox"/> <b>Cabinets:</b> <p><b>(i) Replace or refinish existing cabinets</b></p> <p><b>(ii) Install new routed panel cabinets doors and drawer fronts</b></p> <p><b>(iii) Replace Formica counters</b></p>	<p>Each cabinet will be replaced with European designed thermo foil constructed doors. New hardware (brushed chrome finish) will be mounted on each door and drawer. The interiors will be white. (Excel cabinets or equal)</p> <p>Existing counters will be removed and replaced with new slab granite or Cesar Stone with a designer backslash detail(Group I – Tivoli A3 or equal)</p>
<input type="checkbox"/> <b>Vanity mirrors - Install new mirrors as needed (show finish)</b>	<p>New 1/4" float mirrors will be installed full height" along the top of every vanity countertop, new recessed can lighting will also be installed.</p>

<b><i>Apartment Renovation Template Item</i></b>	<b><i>64 Lessee Proposal</i></b>
<input type="checkbox"/> <b>Faucets-Install new faucets (name brand)</b>	New dual handle faucets will be installed Kohler, Price Pfister or equivalent in a brushed nickel or brushed chrome finish)
<input type="checkbox"/> <b>Sinks/ Replace resurface existing sinks</b>	Sinks will be replaced with white under mount china bowls set into the countertops.
<input type="checkbox"/> <b>Fixtures -Replace towel bars, toilet paper holder, medicine cabinets</b>	All towel bars, toilet paper holders and medicine cabinets will be replaced. Towel bars and toilet paper holders will be brushed chrome, euro square designed with round rods. The medicine cabinets will be Zaca Brand with corrosion free and customizable interiors
<input type="checkbox"/> <b>Shower/Bathtub:</b>  <b>(i) Replace/ resurface existing tubs and enclosure</b>  <b>(ii) Replace shower doors (show finish)</b>  <b>(iii) Replace tub faucet, showerhead, drain hardware</b>	<p>Evaluate each shower/tub to determine whether to resurface or replace.</p> <p>Tubs and enclosures will either be replaced or resurfaced, depending on condition. Shower doors will be replaced with clear glass and polished chrome finish. Shower curtain rods will be installed for shower/ bathtub combinations.</p> <p>All bathtubs will be replaced with larger oval tubs with designer selected tile surround detailing. Tub faucets, showerheads and drain hardware will be replaced with Price Pfister, Kohler or equivalent in a brushed nickel or brushed chrome finish.</p>



<b><i>Apartment Renovation Template Item</i></b>	<b><i>64 Lessee Proposal</i></b>
<b>3) GENERAL</b>	
<b>a) Walls - Prepped and painted</b>	Walls in each unit will be completely reconditioned and repainted, including complete removal of all face and switch plates, plugs, a two-coat roll on paint job and installation of new plates switches/plugs. (Dunn Edwards Paint or equal)
<b>b) Windows</b>	
<input type="checkbox"/> <b>Remove existing metal framed windows and doors and replace with double paned vinyl windows</b>	All windows will be replaced with double paned vinyl windows. Retro fit windows will be used. (International Window Corporation or equal)
<input type="checkbox"/> <b>Replace all window coverings</b>	All windows and sliding glass doors will receive new window coverings in the form of shade cloth roller units. (Tristar or equal)
<b>c) Doors</b>	
<input type="checkbox"/> <b>Replace all interior wood doors with raised panel doors with new hardware (show finish and brand)</b>	Interior doors will be replaced in most floor plans. At a minimum, all interior doors will receive new and contemporary Quickset Smart Key hardware brushed chrome lever designed. (Masonite or equal)
<input type="checkbox"/> <b>Install mirrored closet doors as required (show finish)</b>	Each closet will be replaced with sliding mirrored doors in locations where bypass doors are used.
<b>d) Ceilings - Remove or cover existing "cottage cheese" , prepare and paint to have a smooth, painted ceiling</b>	All ceilings throughout the project will remove or cover existing "cottage cheese" and drywall will be reconditioned or replaced where needed and will be painted for a smooth finish.

<b><i>Apartment Renovation Template Item</i></b>	<b><i>64 Lessee Proposal</i></b>
<b>e) Moldings</b>	
<input type="checkbox"/> <b>Install new decorative crown moldings in the living rooms and bedrooms</b>	No
<input type="checkbox"/> <b>Install chair rail molding in dining area</b>	No
<input type="checkbox"/> <b>Replace existing moldings as required</b>	Install new 6" Flat new MDF baseboard and 2 ½" Flat stock door casing.
<b>f) Flooring</b>	
<input type="checkbox"/> <b>Replace vinyl and linoleum flooring</b>	Existing vinyl floorings will be removed and replaced with in tile the entry, kitchen and baths..
<input type="checkbox"/> <b>Replace carpeting and padding</b>	Install upgraded Shaw, "Recordbreaker" carpet over a new 5 oz. pad or equivalent

<b><i>Apartment Renovation Template Item</i></b>	<i>64 Lessee Proposal</i>
<b>4) LIGHTING</b>	
<b>a) Lighting fixtures - Replace all lighting fixtures lens covers</b>	All light fixtures will be removed and replaced.
<b>b) Covers – Replace all switch, phone jack and electrical outlet covers</b>	All electrical finish will be removed and new cover plates installed

<b><i>Apartment Renovation Template Item</i></b>	<i>64 Lessee Proposal</i>
<b>5) SUPPLEMENTAL</b>	
	<p><u>Major Systems Replaced</u>  New Roof – All buildings  (3 ply built-up cool roof system – GAF or equal)</p> <p>Add New Air Coolers – New heating and cool all units  with condensers on patios or roofs.  (Split heat pump units – Day &amp; Night or equal)</p> <p>Re-Piping – Complete re-plumb all buildings  (Drain, Waste &amp; Vent – cast iron pipe)  (Water Pipe – Flowguard Gold, flexible Wersbo Pipe or  equal)</p> <p>New boilers installed in all buildings on the roofs.  (Raypack or equal)</p> <p>Electrical- New wiring will be installed throughout from  the panels to the switches and plugs. In addition, new  wiring will be provided from the panels to the meter if  the Los Angeles Building &amp; Safety requires the  replacement due to electrical capacity requirements.</p>

<b><i>Apartment Renovation Template Item</i></b>	<i>64 Lessee Proposal</i>
<b>6) SITEWORK</b>	

## **EXHIBIT C**

### **RENOVATION WORK CONSTRUCTION SCHEDULE**

[Prior to the execution of the Lease, the Required Phase Commencement Date and Required Phase Completion Date for each Phase shall be inserted into this Exhibit C in accordance with the Approved Phasing Schedule referenced in Section 7.4 of the Option Agreement.]

## **EXHIBIT D**

### **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 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 E**  
**TREE TRIMMING POLICY**

[To be attached from Exhibit H to the Term Sheet.]

**AMENDED AND RESTATED LEASE AGREEMENT**

by and between

COUNTY OF LOS ANGELES

and

LYON VILLA VENETIA, LLC,  
LYON VILLA VENETIA II, LLC,  
WOLFF VILLA VENETIA 224, LLC, and  
WOLFF VILLA VENETIA 224 II, LLC,  
each a Delaware limited liability company

(Parcel 64T -- Lease No. \_\_\_\_\_)

Dated as of \_\_\_\_\_, \_\_\_\_\_

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