

**GROUND LEASE AGREEMENT**

by and between

Orange Unified School District

a n d

FF Realty LLC

(Peralta Site)

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

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**LEASE AGREEMENT**  
**Peralta Site**

THIS LEASE AGREEMENT (“Lease”) is made and entered into as of the day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”), by and between the ORANGE UNIFIED SCHOOL DISTRICT (“District” or “Lessor”), as lessor, and FF REALTY LLC, a Delaware limited liability company (together with its permitted successors and assigns, “Lessee”), as lessee.

WITNESSETH

WHEREAS, Lessor owns fee title to certain real property in the City of Orange, County of Orange, California, commonly known as the Peralta Site and more particularly described in Exhibit A attached hereto (“Premises”); and

WHEREAS, Lessor and Lessee have entered into that certain Lease Option Agreement dated August 1, 2013 (“Option Agreement”), pursuant to which Lessor has granted Lessee an option (“Option”) to lease the Premises from Lessor on the terms and conditions 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 other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree as follows:

**1. BACKGROUND AND GENERAL**

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

1.1.1 “ACCOUNTING YEAR” shall have the meaning set forth in Section 14.4.

1.1.2 “ACTUAL COST” shall mean the actual, reasonable out-of-pocket costs and expenses incurred by Lessor or Lessee with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors.

1.1.3 “ADA” shall have the meaning set forth in Section 1.3.

1.1.4 “ADDITIONAL STABILIZED ANNUAL MINIMUM RENT= “ shall have the meaning set forth in Section 4.2.1.5.

1.1.5 “ADMINISTRATIVE CHARGE” shall have the meaning set forth in Section 4.6.

1.1.6 “AGGREGATE TRANSFER” shall have the meaning set forth in Section 11.2.

1.1.7 “ANNUAL MINIMUM RENT” shall have the meaning set forth in Section 4.2.1.

1.1.8 “APPLICABLE LAWS” shall have the meaning set forth in Section 1.3.

1.1.9 “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; however, the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the first sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

1.1.10 “ASSIGNMENT STANDARDS” shall have the meaning set forth in Section 11.4.

1.1.11 “AWARD” shall have the meaning set forth in Section 6.1.3.

1.1.12 “BENEFICIAL RESIDUAL INTEREST” shall have the meaning set forth in Section 11.2.

1.1.13 “BOARD” shall mean the Board of Education of the Orange Unified School District.

1.1.14 “BUSINESS DAY” shall have the meaning set forth in Section 16.3.

1.1.15 “CAPITAL RESERVE FUND” shall have the meaning set forth in Section 5.12.

1.1.16 “CHANGE OF OWNERSHIP” shall have the meaning set forth in Section 11.2.

1.1.17 “CHANGE OF CONTROL” shall have the meaning set forth in Section 11.2.

1.1.18 “CITY” shall mean the City of Orange, California.

1.1.19 “CONDEMNATION” shall have the meaning set forth in Section 6.1.1.

1.1.20 “CONDEMNOR” shall have the meaning set forth in Section 6.1.4.

1.1.21 “CONSUMER PRICE INDEX” shall mean the Consumer Price Index-All Urban Consumers for Los Angeles/Riverside/Orange Counties, 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 agreed upon by Lessor and Lessee.

- 1.1.22 “COUNTY” shall mean the County of Orange, California.
- 1.1.23 “DATE OF TAKING” shall have the meaning set forth in Section 6.1.2.
- 1.1.24 “DEVELOPMENT WORK” shall have the meaning set forth in Section 5.1.
- 1.1.25 “DISTRICT” shall have the meaning set forth in the first paragraph of this Lease.
- 1.1.26 “EFFECTIVE DATE” shall mean the date set forth in the first paragraph of this Lease.
- 1.1.27 “ENCUMBRANCE” shall have the meaning set forth in Section 12.1.
- 1.1.28 “ENCUMBRANCE HOLDER” shall have the meaning set forth in Section 12.1.
- 1.1.29 “ENTITLEMENTS” shall mean all discretionary planning, zoning, land use, and other entitlements, permits, and approvals (including, without limitation, licenses, variances, certificates, consents, exemptions, decisions, actions, and/or approvals) of any governmental authorities and/or agencies which Lessee, in good faith, determines are required for Lessee’s performance of the Development Work and use and operation of the Premises as a multi-family residential apartment complex on terms and conditions acceptable to Lessee in Lessee’s sole and subjective discretion, excluding only building permits to be issued upon Lessee’s provision of plans and specifications complying with applicable building codes and payment of statutory building permit fees.
- 1.1.30 “EVENTS OF DEFAULT” shall have the meaning set forth in Section 13.1.
- 1.1.31 “EXCLUDED TRANSFER” shall mean the following transfers: (a) a transfer of a beneficial interest resulting from public offering or trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities is/are traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services; (b) a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership remains the same as immediately prior to the subject transfer, or otherwise does not constitute a Change of Ownership; (c) any transfer resulting from a Condemnation; (d) any assignment or transfer of this Lease by Lessee to a parent, subsidiary or affiliate of Lessee (including, without limitation, an entity controlled by or under common control with Lessee, Brookfield Asset Management, Fairfield Residential Company LLC, a Delaware limited liability company (“FRC”), Fairfield Investment Company LLC, a Delaware limited liability company (“FIC”)); or (e) any Change of Ownership transaction, following which Lessee is owned or controlled by a parent, subsidiary, or affiliate of Lessee (including, without limitation, an entity controlled by or under common control with Lessee or Brookfield Asset Management).



1.1.32 “EXPIRATION DATE” shall have the meaning set forth in Section 2.1.

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

1.1.34 “FISCAL YEAR” shall mean July 1st through June 30th.

1.1.35 “FORCE MAJEURE” shall mean any occurrences or circumstances resulting in unforeseen delays in a party’s ability to perform its obligations under this Lease such as, by way of example but not limitation, delays due to fire, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo or other unforeseeable event reasonably beyond the control of Lessee, or a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the expiration of the Due Diligence Period under the Option Agreement. Furthermore, “Force Majeure” shall also include delays in the commencement, prosecution, and/or completion of construction caused by a third party lawsuit, restraining order, or injunction subject to Lessee’s obligation to diligently pursue the resolution and dismissal, removal, and/or appeal of any such lawsuit, restraining order, or injunction.

1.1.36 “GROSS RECEIPTS” shall have the meaning set forth in Section 4.3.1.

1.1.37 “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.

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

1.1.39 “INSURANCE REASSESSMENT DATE” shall have the meaning set forth in Section 9.6.

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

1.1.41 “LEASE” shall mean this Lease Agreement.

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

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

1.1.44 “LESSOR” shall have the meaning set forth in the first paragraph of this Lease.

11.1.1. 1.1.45 “MAJOR SUBLEASE” shall have the meaning set forth in Section 11.1.1.

1.1.46 “MAJOR SUBLESSEE” shall have the meaning set forth in Section 11.1.1.

1.1.47 “MONTHLY MINIMUM RENT” shall have the meaning set forth in Section 4.2.1.

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

1.1.49 “NOTICE OF COMPLETION” shall have the meaning set forth in Section 5.8.5.

1.1.50 “OPTION” shall have the meaning set forth in the preamble to this Lease.

1.1.51 “OPTION AGREEMENT” shall have the meaning set forth in the preamble to this Lease.

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

1.1.53 “PERCENTAGE RENT” shall have the meaning set forth in Section 4.3.

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

1.1.55 “PREMISES” shall have the meaning set forth in the preamble to this Lease.

1.1.56 “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.

1.1.57 “PROJECT” shall mean the entirety of the apartment complex constructed upon the Premises including, without limitation, the apartment units themselves, parking areas and facilities, and common areas.

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

1.1.59 “SECTION” shall mean a section of this Lease.

1.1.60 “SHALL” and “WILL” are mandatory and the word “MAY” is permissive.

1.1.61 “STABILIZATION DATE” shall have the meaning set forth in Section 4.4.

1.1.62 “STABILIZED LEASE YEAR” shall have the meaning set forth in Section 4.2.1.

1.1.63 “STATE” shall mean the State of California.

1.1.64 “SUBSTANTIAL COMPLETION” shall have the meaning set forth in Section 5.1.

1.1.65 “SUBLESSEE” shall have the meaning set forth in Section 11.1.1.

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

1.1.67 “TRANSFER” shall have the meaning set forth in Section 11.3.

1.1.68 “UNINSURED LOSS” shall have the meaning set forth in Section 10.3.

1.1.69 “UNREASONABLE LESSOR ACT” shall mean: (i) Lessor's failure to provide required joinder, if any, in Lessee's proposals for the Improvements described in the Final Development Work Plans and Specifications before any governmental agency; or (ii) Lessor's failure to take such other actions in its proprietary capacity reasonably requested by Lessee, at no cost or expense to Lessor, which are necessary for Lessee to proceed with the permit/approval process or Lessor's having taken such actions without Lessee's consent which adversely affected Lessee's rights and obligations hereunder, which were unreasonable and which actually delayed the commencement or completion of construction.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, subject to Lessor's express representations and warranties contained in this Lease, Lessor hereby leases to Lessee, and Lessee hereby leases and hires from Lessor, an exclusive right to possess and use, as Lessee, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein.

1.3 As-Is. 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 Effective Date and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises “AS IS WITH ALL FAULTS”. 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 Lessor or any other governmental authority or public agency, or their

respective agents or employees, as to any matters concerning the Premises and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/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, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements and within each space therein, (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/or any 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 and/or any Improvements located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or any Improvements located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of Lessor, City, State, the United States of America and/or any other governmental or quasi-governmental entity (“Applicable Laws”) or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act (“ADA”)), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any Improvements, (ix) subject to Section 1.4 below, the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or any Improvements located thereon.

1.4 Title. Lessor represents that Lessor owns fee title to the Premises and that Lessor has authority to enter into this Lease. Lessee hereby acknowledges the title of Lessor 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 that Lessee may occupy the Premises pursuant to the terms and conditions of this Lease.

1.5 Reaffirmation of Representations and Warranties. Lessor hereby reaffirms and restates that as of the Effective Date the representations and warranties made by Lessor that are set forth in Section 11.1 of the Option Agreement, which representations and warranties are incorporated herein by reference as if fully set forth in this Lease. A copy of such representations and warranties is attached as Exhibit C to this Lease.

## **2. TERM.**

2.1 Term. The term of this Lease (“Term”) shall commence on the Effective Date set forth herein. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on the day immediately preceding the Ninety-Nine (99) year anniversary of the Effective Date (“Expiration Date”). For purposes of this Lease, “Lease Year” shall mean each successive twelve month period which occurs during the Term of this Lease. Notwithstanding the foregoing, in the event that the Effective Date is not the first day of a calendar month, then (i) the first Lease Year shall be the period of time from the Effective Date to the last day of the twelfth (12<sup>th</sup>) full calendar month occurring after the Effective Date, (ii) following the Stabilization Date, as defined in Section 4.4, the Lease Year shall be

concurrent with the Stabilized Lease Year as defined in Section 4.2.1, and (iii) the last Lease Year shall be the period from the day immediately following the penultimate Lease Year and shall continue until the Expiration Date.

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 hereafter constructed by Lessee upon the Premises, and all alterations, additions, or betterments 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, all structures, buildings, Improvements and all alterations, additions, and betterments thereto, and all other Improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in Lessor without compensation therefor 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 receive any and all proceeds which are attributable to the Condemnation of business installations, Improvements, structures and buildings belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment not intended to be permanently affixed to the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and associated Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term.

2.4 Title to Certain Improvements Passes to Lessor; Lessee to Maintain. As between Lessor 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 Lessee upon construction or installation to the extent that they are not owned by a utility company or other third party provider.

### **3. USE OF PREMISES.**

3.1 Specific Primary Use. The Premises shall be used by Lessee for the operation and management of a multi-family residential apartment project, and such other related and incidental uses as are related to the use of the Premises as a multi-family residential apartment project (collectively, the foregoing shall be referred to herein as the "Permitted Uses"). Except as specifically provided herein, the Premises shall be used for no other purpose without the prior written consent of Lessor. Lessor 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.

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1 Nuisance. Lessee shall not conduct or knowingly permit to be conducted any private or public nuisance on or about the Premises, 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 in

appropriate receptacles intended for such purposes, nor shall Lessee knowingly permit any portion of the Premises be maintained so as to render said Premises a fire hazard or an imminent risk to public health and safety. Lessee shall be permitted to perform the Development Work on the Premises pursuant to Article 5 of this Lease.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Premises as set forth in this Lease, the following uses of the Premises are expressly prohibited. To the extent not already specified below, Lessee shall not engage in or cause any of the following prohibited uses to occur on the Premises, and Lessee shall not knowingly permit any third party to engage in the following uses on the Premises, provided that if any resident or other third party engages or causes to occur any of the following prohibited uses on the Premises, Lessee shall not be in default under this Lease so long as Lessee uses commercially reasonable efforts to cause the violating conduct to cease:

3.2.2.1 The Premises shall not be used or developed in any way which is in violation of any Applicable Laws;

3.2.2.2 The Premises 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 Section 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;

3.2.2.4 No condition shall be permitted to exist upon the Premises which shall induce, breed or harbor 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 which create a danger to the health or safety of any persons residing or working at, or persons visiting, the Premises; and

3.2.2.5 No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion thereof; provided, however, that toxic or hazardous substances may be stored or used, so long as such storage and use is (a) ancillary to the ordinary course of business of an otherwise Permitted Use with the intent that such substances will be used in the ordinary course of business, and (b) conducted in compliance with all Applicable Laws.

3.3 Compliance with Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises.

3.4 Reservations. Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all encumbrances, reservations, licenses, easements and rights of way (a) existing as of the Effective Date, or (b) otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, or (c) consented to by Lessee. Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the right of County or City existing as of the Effective Date or otherwise disclosed to or known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or the City to convey such easements and transfer such rights to others. Notwithstanding the foregoing or anything herein to the contrary, Lessor agrees to cooperate with Lessee, at no out-of-pocket cost or expense to Lessor, in Lessee's efforts to address title matters, if any, which would prevent Lessee from proceeding with the development of the Premises in accordance with the Development Work.

#### **4. PAYMENTS TO LESSOR**

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 Lessor. The rent and other sums to be paid to Lessor hereunder are not subject to any 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.

4.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay, or cause to be paid to the appropriate utility provider, 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 said Premises; provided, however, that the obligations of this Section 4.1.1 shall apply only to utility services which are in Lessee's name or a Major Sublessee's name, and shall not apply to any utility and service charges which are the obligation of any Sublessee of the Premises.

##### **4.1.2 Taxes and Assessments.**

4.1.2.1 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 covered hereby or to 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.

4.1.2.2 Pursuant to Section 107.6 of the California Revenue and Taxation Code (“Code”), Lessor hereby notifies Lessee that: (i) a possessory interest with respect to the Premises is created and/or continued pursuant to the Lease (“Possessory Interest”) and is subject to property taxation under the Code; and (ii) Lessee shall be subject to, and shall bear, the payment of all property taxes and related charges and expenses attributable to all periods during the term of this Lease with respect to the Possessory Interest and Development Work (collectively, “Taxes”). Lessee acknowledges that the foregoing complies with Section 107.6 of the Code. Lessee shall indemnify, defend and hold harmless the Lessor against all Taxes which are payable by Lessee during the Term hereof pursuant to this Section 4.12.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay Lessor (a) the Annual Minimum Rent described in Section 4.2.1 below, and (b) the Percentage Rent described in Section 4.2.2 below. For purposes of this Lease, “Annual Rent” shall mean the aggregate of the Annual Minimum Rent and Percentage Rent payable for a given Lease Year.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent. Lessee shall pay to Lessor the minimum rent described in this Section 4.2.1 during each Lease Year of the Term (“Annual Minimum Rent”). Any Annual Minimum Rent owing hereunder which is applicable to a partial calendar month shall be prorated based upon a thirty (30) day month.

4.2.1.1 First Lease Year Annual Minimum Rent. For the First Lease Year, Lessee shall pay to Lessor Annual Minimum Rent in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to the below provisions, the “First Lease Year Annual Minimum Rent”). The First Lease Year Annual Minimum Rent shall be subject to adjustment pursuant to Section 4.2.1.4 below, and shall be reduced by the prorated amount of the Option Fee (as defined in Section 5 of the Option Agreement) paid pursuant to the Option Agreement for the twelve (12) month period in which the Option is exercised which is attributable to the portion of such twelve (12) month period following Effective Date. For example purposes only, if the Effective Date of this Lease were to occur 270 days after the “Year Two Option Payment” was due and payable by Lessee under the Option Agreement (“Option Payment Due Date”), then the Year Two Option Payment shall be multiplied by a fraction, the numerator of which shall be the number of days between the Effective Date and the day immediately preceding the one-year anniversary of the Option Payment Due Date, and the denominator of which shall be 365, and the resulting amount would be credited toward the First Lease Year Annual Minimum Rent otherwise owing hereunder. The First Lease Year Annual Minimum Rent shall be payable by Lessee to Lessor on a monthly basis in equal installments of one-twelfth (1/12th) of the First Lease Year Annual Minimum Rent (“Monthly First Lease Year Annual Minimum Rent”).

4.2.1.2 Construction Period Annual Minimum Rent. Commencing on the first day of the second Lease Year, and continuing until the



Stabilization Date (as defined in Section 4.4 below), Lessee shall pay to Lessor Annual Minimum Rent in the amount of Five Hundred Thousand Dollars (\$500,000) per annum, subject to adjustment pursuant to Section 4.2.1.4 below (“Construction Period Annual Minimum Rent”). The Construction Period Annual Minimum Rent shall be payable by Lessee to Lessor on a monthly basis in equal installments of one-twelfth (1/12th) of the Construction Period Annual Minimum Rent (“Monthly Construction Period Annual Minimum Rent”).

4.2.1.3 Stabilized Annual Minimum Rent. Commencing on the Stabilization Date, and continuing for the balance of the Term of this Lease, Lessee shall pay to Lessor a Stabilized Annual Minimum Rent of Nine Hundred Thousand Dollars (\$900,000) per annum, subject to adjustment pursuant to Section 4.2.1.4 below, and thereafter, subject to further adjustment pursuant to Section 4.2.1.5 below. In the event that the Stabilization Date is not the first day of July, then the first Stabilized Lease Year shall commence on the Stabilization Date and shall end on the next June 30<sup>th</sup> and shall be prorated accordingly based on a 365-day year; thereafter, each Lease Year shall be from July 1<sup>st</sup> through June 30<sup>th</sup> and shall be referred to herein as a “Stabilized Lease Year.” The Stabilized Annual Minimum Rent shall be paid on the first day of each month in advance. Stabilized Annual Minimum Rent shall be payable by Lessee to Lessor on a monthly basis in equal installments of one-twelfth (1/12th) of the Stabilized Annual Minimum Rent (“Monthly Minimum Rent”).

4.2.1.4 Stabilized Annual Minimum Rent Adjustment Due to Final Development Work Density. Should the final Project Approvals received by the Lessee result in a final density of the Development Work that is greater than or less than 340 separate apartment units, then the number of separate apartment units above or below 340 shall be referred to herein as the “Density Variance,” and the Stabilized Annual Minimum Rent shall be adjusted upward or downward, as applicable, by an amount equal to:

First Lease Year Annual Minimum Rent:	\$700 per unit of Density Variance per year
Construction Period Annual Minimum Rent:	\$1,500 per unit of Density Variance per year
Stabilized Annual Minimum Rent:	\$2,650 per unit of Density Variance per year

However, in no event shall the Stabilized Annual Minimum Rent be less than Six Hundred Thousand Dollars (\$600,000). For example purposes only, if the Project Approvals allowed 345 separate apartment units to be constructed on the Premises, then the Density Variance would be five (5) units, the First Lease Year Annual Minimum Rent would be increased by \$3,500, the Construction Period Annual Minimum Rent would be increased by \$7,500 per annum, and the Stabilized Annual Minimum Rent would be increased by \$13,250 per annum.

4.2.1.5 Stabilized Minimum Rent Adjustments Due to Average Annual Minimum Rent. Commencing upon the first day of each of the Twenty-first (21<sup>st</sup>) Stabilized Lease Year, the Forty-First (41<sup>st</sup>) Stabilized Lease Year, the Sixty-First (61<sup>st</sup>)

Stabilized Lease Year, and the Eighty-First (81<sup>st</sup>) Stabilized Lease Year (each a “Stabilized Annual Minimum Rent Adjustment Date”), the Stabilized Annual Minimum Rent shall be adjusted to equal the greater of (i) the Stabilized Annual Minimum Rent payable immediately prior to the subject Stabilized Annual Minimum Rent Adjustment Date, or (ii) sixty-seven percent (67%) of the average Annual Rent payable by Lessee under this Lease for the three (3) full Lease Years immediately preceding the subject Stabilized Annual Minimum Rent Adjustment Date. The amount, if any, by which the Stabilized Annual Minimum Rent as adjusted pursuant to the immediately preceding sentence exceeds the Stabilized Annual Minimum Rent payable as of the Stabilization Date shall be referred to here as the “Additional Stabilized Annual Minimum Rent.”

4.3 Percentage Rent. For the purposes of this Lease, “Percentage Rent” for any given month or year shall be defined as Five percent (5%) of Gross Receipts actually collected by Lessee in connection with the operation of the Project on the Premises in a given Lease Year; provided, however, that from and after the first Stabilized Annual Minimum Rent Adjustment Date, the amount of Percentage Rent payable annually hereunder for any given Lease year shall be reduced by the Additional Stabilized Annual Minimum Rent payable for the subject Lease Year. Lessee agrees to comply with the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to Lessor, set forth in Article 14 of this Lease. Lessee’s obligation to calculate and pay Percentage Rent shall not be applicable to any periods prior to the one (1) year anniversary of the Stabilization Date. Thereafter, within fifteen (15) days following the close of each calendar month following the one (1) year anniversary of the Project Stabilization Date, Lessee shall provide Lessor with written notice of the Gross Receipts received by Lessee for the immediately preceding calendar month, along with a payment of the Percentage Rent owing by Lessee hereunder for such calendar month. Each such monthly payment of Percentage Rent shall be reduced by one-twelfth (1/12) of the Additional Stabilized Annual Minimum Rent Adjustment applicable to the subject Lease Year.

4.3.1 Gross Receipts. Except as herein otherwise provided herein, “Gross Receipts” shall mean the total amount of all money, cash receipts, or other legal tender actually received by Lessee, calculated in accordance with the accounting method described in the last sentence of Section 14.1, for (1) monthly rental for the occupancy of apartments within the Project, (2) the rental or use of meeting rooms, (3) amounts paid to or received by Lessee from the installation and/or operation of coin-operated vending or service machines, including pay telephones, (4) parking fees and valet parking charges, and (5) the rental or use of land 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.

4.3.2 Exclusions from Gross Receipts. Notwithstanding the foregoing, in no event shall Gross Receipts include any of the following:

4.3.2.1 Amounts deposited into the Capital Reserve Fund by Lessee in accordance with Section 5.12 below for the applicable period.

4.3.2.2 Amounts received by Lessee from Sublessees in the form of taxes or governmentally mandated fees, such as, without limitation, sales taxes, excise taxes,

rental taxes, City fees, registration fees, rent control or rent stabilization fees, or other amounts collected by Lessee but payable to a governmental agency.

4.3.2.3 Security deposits, cleaning deposits, and the like received by Lessee, except that at such time as any security deposit, or any portion thereof, is applied by Lessee to compensate Lessor for amounts that, if timely paid by Sublessees of the Project, would be included in Gross Receipts pursuant to the foregoing (e.g., unpaid rental, unpaid parking fees), provided the retention of cleaning and/or security deposits for the express purpose of paying for expenses incurred due to a Sublessee's failure to surrender its premises in the condition required by its Sublease shall not be included in Gross Receipts;

4.3.2.4 Settlements or payments in satisfaction of claims for damage to property, injury or death to persons, faulty construction or maintenance, or other claims or actions (e.g., antitrust, defamation, malicious prosecution) (except for amounts received by Lessee in connection with a Sublessee's failure to pay rent or any other amounts which would otherwise be included in Gross Receipts, subject to the limitation set forth in Section 4.3.2.13 below);

4.3.2.5 Amounts refunded by Lessee to Sublessees of the Project, such as, by way of example but not limitation, refunds of monthly rent or other deposits. Gross Receipts shall be reduced by any refunds to Sublessees of amounts previously paid to Lessee and included in Gross Receipts;

4.3.2.6 Amounts received from the sales of personal property, fixtures, equipment including, without limitation, equipment, furniture, appliances, etc.;

4.3.2.7 Amounts received from insurance claims, other than rental interruption insurance received by Lessee for the specific purpose of replacing rental amounts which are otherwise included within Gross Receipts;

4.3.2.8 Condemnation proceeds, financing proceeds, and proceeds earned from any assignment of Lessee's interest in this Lease or in the Premises or from entering into a Major Sublease of the Premises or a portion thereof;

4.3.2.9 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;

4.3.2.10 Late Charges or reimbursements for non-sufficient fund charges by banks or other financial institutions resulting from attempted payments by Subtenants;

4.3.2.11 Amounts received by Lessee as reimbursement for electricity or other utility charges which Lessee pays or is obligated to pay to the applicable utility provider, provided (1) 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, and (2) the reimbursed sum is in an amount equal to the amount which Lessee is obligated to pay to the applicable utility provider;

4.3.2.12 Real and/or personal property tax refunds and other vendor rebates or adjustments;

4.3.2.13 Judgment awards and settlement payments received by Lessee in connection with a Sublessee's failure to pay rent or any other amounts which would otherwise be included in Gross Receipts, but only to the extent required to reimburse Lessee for its attorney's fees and collection costs;

4.3.2.14 Amounts received for providing access to the Premises and/or Subtenants by service providers including, without limitation, telephone and/or cable or satellite television and internet service providers;

4.3.2.15 Amounts received for services rendered by a Sublessee of an individual apartment unit in connection with the operation by such Sublessee of an in-home business in such apartment unit; and

4.3.2.16 Amounts paid to or refunded to Lessee in connection with its construction of the Development Work (such as, by way of example but not limitation, rebates, refunds, and settlements relating to disputes or claims that may arise in connection with such Development Work).

4.3.3 Excess Payments Credit. If Percentage Rent payments actually made by Lessee in a particular Lease Year exceed the total Percentage Rent actually due for that year as computed on an annual basis as of the end of such Lease Year, Lessee shall be permitted to credit that excess amount ("Excess Percentage Rent Payment") against the succeeding monthly installments of Percentage Rent otherwise due under this Section 4.3.3 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, Lessor shall refund such amount to Lessee within thirty (30) days of its discovery and verification of such overpayment. The provisions of this Section 4.3.3 shall survive the expiration or earlier termination of this Lease.

4.3.4 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, and nothing set forth in this Section 4.3 shall be deemed to expand the Permitted Uses.

4.4 Stabilization Date. The "Stabilization Date" shall mean the first day of the calendar month following that calendar month in which at least ninety percent (90%) of the apartment units constructed in accordance with Section 5.1 below are physically occupied by Sublessees, but in no event later than the first day of the calendar month following the eighteen (18) month anniversary of occupancy of the first apartment unit within the Premises.

4.5 Payment and Late Fees. Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Monthly Minimum Rent shall be received by Lessor on or before the first day of each calendar month of the Term. Following the one (1) year anniversary of the Stabilization Date, Percentage Rent due, if any, for a given month of the Term shall be received

by Lessor on or before the fifteenth day of the calendar month following the month for which it is calculated. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Section 4.33. Payment may be made by check or draft issued and payable to Orange Unified School District, and mailed or otherwise delivered to the 1401 N. Handy Street, Orange, California 92867, or such other address as may be provided to Lessee by written notice from Lessor. Lessee acknowledges that Lessor 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 Lessor within ten (10) business days following receipt by Lessee of written notice from Lessor that the subject amount is past due, Lessee acknowledges that Lessor will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee (“Late Fee”) of five percent (5%) of the unpaid amount shall be added to any amount unpaid when due and payable; provided that the Late Fee shall be waived with respect to the first occurrence of a late payment of the subject Monthly Minimum Rent or Percentage Rent, as applicable, during any Lease Year if such payment is received by Lessor within three (3) business days following Lessee’s receipt of written notice from Lessor that the unpaid amount was not paid by the date due. 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, provided Lessee receives notice of its obligation to pay such Late Fee and/or interest within one (1) year from the date on which the same first accrued.

4.6 Proposed Transfers. Except as otherwise provided in this Lease, each time Lessee proposes a Proposed Transfer (that is not an Excluded Transfer), Lessor shall be paid an Administrative Charge equal to the Actual Cost incurred by Lessor in connection with its review and processing of said Proposed Transfer (“Administrative Charge”). Proposed Transfers are further subject to Lessor approval as provided in Article 11 of this Lease.

4.7 Calculation and Payment. If the Proposed Transfer is approved, an Administrative Charge shall be due and payable concurrently with the consummation of the transaction constituting the Proposed Transfer 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 Lessor disapproves the Proposed Transfer, then within thirty (30) days after notice of its disapproval, Lessor shall deliver to Lessee a written notice setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), and Lessee shall pay Lessor the Administrative Charge within thirty (30) days after receipt of the notice from Lessor setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. An Administrative Charge not paid when due hereunder shall bear interest at the Prime Rate plus three percent (3%).

## **5. CONSTRUCTION OF IMPROVEMENTS**

5.1 Development Work. It is anticipated that, following the date on which Lessee receives such building permits and other governmental permits and approvals to construct the Improvements upon the Premises, Lessee shall proceed to demolish the existing improvements on the Premises and construct no more than such number of new luxury apartment units on the Premises as are permitted under the Entitlements. The construction of such new apartments, along with all associated improvements, parking facilities, hardscape, landscape and other approved site work and to be performed in connection with the construction of such new apartments, are herein collectively referred to as the “Development Work.”

The scope, design, density, site coverage, layout and open space, view corridors, building height, and other improvement specifications pertaining to the Development Work shall be in accordance with the Entitlements. The design and quality standards for the Development Work shall be at least commensurate with those of “Class-A” garden style apartments in the multi-family residential industry in the central area of Orange County, California.

Lessee shall be responsible for the acquisition and compliance with all required governmental planning and entitlement approvals for the Development Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Development Work.

Within a reasonable period of time following the Effective Date, Lessee shall commence to prepare plans and specifications for the construction of the Development Work, consistent with the Entitlements, and shall submit the same and diligently proceed to attempt to obtain the approval by the applicable divisions of the City of Orange and the issuance of building permits for the performance of the Development Work (“Building Permits”). The plans and specifications which are approved by the City of Orange in connection with the issuance of the Building Permits, as the same may be modified by mutual agreement of Lessee and the City, shall be referred to herein as the “Final Development Work Plans and Specifications.”

Within a reasonable time period following the issuance of the Building Permits, Lessee shall commence to construct the Development Work and diligently proceed to cause the substantial completion of the Development Work in accordance with the Final Development Work Plans and Specifications. Notwithstanding anything to the contrary set forth in this Lease, if Lessee fails to pursue and/or procure the Building Permits, or fails to commence to construct and to Substantially Complete the Development Work as required under this Lease, Lessor’s sole remedy shall be as set forth in Section 13.6.

For purposes of this Lease, the terms “Substantial Completion” or “Substantially Complete” shall mean the completion of the Development Work in accordance with the Final Development Work Plans and Specifications, subject to minor so-called punch list items that do not interfere with the use and occupancy of the Development Work. Without limitation of any other requirements for Substantial Completion, the Development Work shall not be considered Substantially Completed until Lessee has received a temporary certificate of occupancy or equivalent approval required for the legal occupancy and use of the Development Work. Lessee shall cause the Substantial Completion of the Development Work to

occur on or before that date (the “Required Construction Completion Date”) that is the forty-eight (48) month anniversary of the Effective Date.

5.2 Lessor Review. Lessor acknowledges that, pursuant to Section 6.3 of the Option Agreement, Lessor has reviewed and provided its comments, concerns, and input as to the conceptual plans for the Development Work, but that Lessor has no further approval rights under the Option Agreement or this Lease relating to the Development Work, whether at the planning stage or the construction stage. Lessor shall have no liability with respect to any errors, omissions, or inadequacy of the Final Development Plans and Specifications, or the legality and/or utility thereof, and Lessee acknowledges and agrees that Lessee is relying on its own review, consultants and experts on all matters. In no event shall Lessor be responsible for any costs or expenses relating to Lessee’s preparation of the Final Development Work Plans and Specifications.

5.3 Alterations. For purposes of this Lease, “Alterations” means any and all alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements on the Premises, other than the Development Work. Following the Substantial Completion of the Development Work, Lessee shall have the right to make Alterations to the Improvements located on the Premises without the prior written approval by District of such Alterations, provided that Lessee obtains such approvals as are required from the City of Orange for such Alterations and are consistent with the Permitted Uses set forth in Article 3 of this Lease.

5.4 Conditions Precedent to the Commencement of Construction. No Development Work or Alterations shall be commenced until Lessee shall have complied with the provisions off this Section 5.4.

5.4.1 Required Permits. Lessee shall have received copies of all permits, licenses and other governmental approvals necessary for commencement of the Development Work or Alterations, as the case may be.

5.4.2 Security. Lessee shall provide a completion guaranty, in form and substance reasonably acceptable to Lessor, made by an individual or entity with a sufficient net worth and liquidity, in the reasonable discretion of Lessor, to comply with the terms of such guaranty in view of the potential financial responsibility involved. Lessor shall have the authority, in its reasonable discretion, to modify, waive or reduce the security required hereunder.

5.4.3 Evidence of Financing. Lessee shall have provided evidence reasonably satisfactory to Lessor of its having sufficient financial resources, as reasonably determined by Lessor, to complete the Development Work. Such evidence may include, without limitation, copies of relevant portions of final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, and documents evidencing equity contributions.

5.5 Work Schedule. Upon written request from Lessor, Lessee shall provide Lessor with (i) Lessee’s proposed construction schedule which, if adhered to, will result in the completion of the Development Work on or before the Required Construction Completion Date, and (ii) any then-applicable updates or modifications of such construction schedule.

5.6 Lessor Cooperation. Lessor 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 procurement of the Entitlements and the performance of the Development Work described in Section 5.1. Such cooperative efforts may include the Lessor's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Lessor is required; provided, however, that Lessee shall reimburse Lessor for the Actual Cost incurred by the Lessor in connection with such joinder or cooperative efforts.

5.7 Extension of Required Construction Completion Date.

5.7.1 Injunction by Third Party, Nonregulatory Body. Without limiting any other provisions of this Lease (including, without limitation, so-called "Force Majeure" delays), the Required Construction Completion Date shall be extended if construction of the Development Work has been enjoined or restrained by any court, judicial, or other governmental action. In such case, the Required Construction Completion Date shall be extended by such amount of time as is equivalent to the length of delay resulting from the subject injunction, restraining order, or other governmental action but in no event longer than two (2) years after the Required Construction Completion Date as defined in Section 5.1.

5.7.2 Delay Caused by Unreasonable Lessor Acts. The Required Construction Commencement Date shall be extended if Lessee has been delayed in the obtaining of any permits or other approvals necessary for the commencement of construction due to Unreasonable Lessor Acts.

5.8 Manner of Construction.

5.8.1 General Construction Standards. Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold Lessor 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 Lessor.

5.8.2 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 reasonably necessary safeguards for the protection of workers and the public.

5.8.3 Compliance with Construction Documents and Laws; Issuance of Permits. All Development Work or Alterations on the Premises shall be completed in substantial compliance with all construction documents and all applicable local, state and federal laws and regulations. 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.

5.8.4 Rights of Access. Representatives of the Lessor shall, upon reasonable notice and at reasonable times during normal business hours, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, but at no cost or expense to



Lessee, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Lessee's construction and/or operations, and Lessor shall comply with industry safety standards in connection with any such access. Lessee shall have the right to have a representative present to accompany the representatives of the Lessor in connection with such access.

5.8.5 Notice of Completion. Upon completion of the Development Work, Lessee shall file or cause to be filed in the Official Records of the County of Orange a Notice of Completion ("Notice of Completion") with respect to the Development Work. Upon written request from Lessor, delivered within two (2) years of the date on which Substantial Completion of the Development Work occurs, Lessee shall deliver to Lessor, at no cost to Lessor, two (2) sets of reproducible final as-built plans and specifications of the relevant Improvements.

5.9 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with Development Work or Alterations shall provide, in form and content reasonably satisfactory to Lessor, for the assignment thereof to Lessor upon any termination of this Lease. If this Lease is terminated by Lessor due to Lessee's default, Lessor may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. Lessor's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trademarks, trade names or logos of Lessee or any such architect, design professional or contractor. The assignment to Lessor described in this Section 5.9 shall be subordinate to the security interest, if any, of Lessee's construction lender or any other Encumbrance Holder (as defined in Article 12) in the assigned contract, which subordination shall be in a form reasonably acceptable to Lessee's construction lender or any other Encumbrance Holder.

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

5.10.1 Posting Notices. Lessor shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which Lessor may deem necessary for the protection of Lessor's interest in the Premises from mechanics' liens or other claims. Lessee shall give Lessor at least ten (10) business days' prior written notice of the commencement of the Development Work to be done on the Premises under this Article 5, in order to enable Lessor timely to post such notices.

5.10.2 Prompt Payment. Lessee shall make, or cause to be made, prompt payment 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 Development

Work or any Alterations or other Improvements on the Premises. 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.

5.11 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 Lessor 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 mechanic's lien or other lien arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee is recorded against the Premises, Lessee shall, within the later of (a) thirty (30) days after the recording of such lien, or (b) five (5) business days after written demand from Lessor is delivered to Lessee, furnish any one of the following, as determined by Lessee: (i) the bond described in California Civil Code Section 8450, or successor statute, which results in the removal of such lien from the Premises, (ii) a Set Aside Letter from Lessee's construction lender, in form and substance reasonably satisfactory to Lessor, setting aside sufficient funds from Lessee's construction loan for the satisfaction of such lien, or (iii) a title insurance policy or endorsement insuring Lessor against any loss or liability arising out of such lien, together with any other evidence requested by Lessor to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or Lessor.

#### 5.12 Capital Reserve Fund.

5.12.1 Establishment of Fund. During the period from the eleventh (11th) Stabilized Lease Year following the Effective Date through the eighty-ninth (89th) Stabilized Lease Year following the Effective Date, Lessee shall establish and maintain a reserve fund (the "Capital Reserve Fund") in accordance with the provisions of this Section 5.12 for the cost of capital repairs and renovations to the Improvements as described in this Section 5.12. The funds in the Capital Reserve Fund shall be utilized by Lessee to pay the cost 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), and such other renovations, capital repairs, capital improvements, and upgrades to the Improvements as Lessee reasonably deems necessary in order to keep and maintain the Improvements in a condition and appearance consistent with that of other first class residential apartment complexes of similar type and size located in central Orange County, California ("Capital Expenditures"). Capital Expenditures shall not include the cost of ordinary expenditures, repairs or replacements that keep the Improvements in a good, operating condition, but shall be used for improvements, repairs, and/or replacements which, under standard accounting practices for assets similar to the Improvements, are capitalized. Funds from the Capital Reserve Fund shall be withdrawn by Lessee at such times and intervals as Lessee reasonably deems necessary to perform capital repairs, replacements, and improvements necessary to maintain the Premises in the condition required hereunder. The Capital Reserve Fund shall be an account established with a reputable financial institution (including Lessee's Encumbrance Holder) into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.12. The

amounts to be added to the Capital Reserve Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.12. Lessee shall not be required to make further contributions to the Capital Reserve Fund after the month of June of the eighty-ninth (89th) Stabilized Lease Year following the Effective Date. All amounts contained in the Capital Reserve Fund shall in all events remain the sole property of Lessee, and upon the expiration or ninety-fourth (94<sup>th</sup>) Lease Year following the Effective Date, or upon the earlier termination of this Lease, all amounts contained in the Capital Reserve Fund, except for any that are necessary to pay for outstanding Capital Expenditures that Lessee has already incurred, shall be immediately disbursed to Lessee.

5.12.2 Deposits to Capital Reserve Fund. On or before the fifteenth (15th) day of each calendar month commencing with the month of July of the eleventh (11th) Stabilized Lease Year following the Effective Date and continuing through the month of June of the eighty-ninth (89th) Stabilized Lease Year following the Effective Date, Lessee shall make a deposit to the Capital Reserve Fund on a monthly basis in an amount equal to the greater of (A) one and one-half percent (1.5%) of Gross Receipts received during the preceding month, or (B) such amount as is required pursuant to the terms of any Encumbrance upon the Premises. All interest and earnings on the Capital Reserve Fund shall be added to the Capital Reserve Fund, but shall not be treated as a credit against, or otherwise reduce, the deposits required to be made by Lessee to the Capital Reserve Fund. Disbursements shall be made from the Capital Reserve Fund only for costs which satisfy the requirements of this Section 5.12, or as otherwise permitted under Section 5.12.

5.12.3 Alternative to Capital Reserve Fund. In lieu of the periodic Capital Reserve Fund contributions described in this Section 5.12, Lessee agrees that Lessor shall have the authority, in the exercise of the Lessor's discretion, to consider the delivery by Lessee of substitute security acceptable to Lessor (e.g., a corporate guaranty, letter of credit or other set aside of funds) to ensure that sufficient funds are available to cover the cost of Capital Expenditures to be made by Lessee pursuant to this Section 5.12.

## **6. CONDEMNATION.**

### **6.1 Definitions.**

6.1.1 Condemnation. "Condemnation" or "Taking" 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 first to occur of (i) the date the Condemnor has the right to possession of the Premises being condemned, or (ii) the date the Condemnor takes title to the Premises being condemned.

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 Taking of all or any part of the Premises, any Improvements on the Premises or any interest in this Lease by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 6.

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

6.4 Effect of Partial Taking; Lessee’s Termination Right. If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Premises are, in Lessee’s reasonable judgment, rendered unsuitable (as defined herein) for Lessee’s continued use for the purposes contemplated by this Lease. Lessee must exercise its right to terminate by giving Lessor written notice of its election within ninety (90) days after (i) the nature and extent of the Taking has been determined, and (ii) if Lessee reasonably deems it necessary to determine the continued suitability of the Premises for Lessee’s continued use, the probable amount of compensation has been determined. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease’s continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5 below.

6.4.2 Restoration Following Partial Taking. In the event that Lessee does not elect to terminate this Lease as provided in Section 6.4.1 above, then Lessee shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Premises as nearly as possible to its value, condition and character immediately prior to such Taking, taking into account, however, any necessary reduction in size or other change resulting from the Taking; provided, however, that (i) in no event shall Lessee, in performing its restoration of the Premises following the Condemnation, be obligated to expend more than the amount of the Award actually received by Lessee, net of Lessee’s Actual Cost incurred in procuring such Award, and (ii) in case of a Taking for temporary use, Lessee shall not be required to effect restoration until such Taking 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. Any determinations of fair market value made pursuant to this Section 6.5 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

(“Income Approach”). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

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

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

6.8 Partial Taking Without Termination. Net Awards and Payments received on account of a Taking (other than a total Taking or a Partial Taking which results in termination hereof or a Taking for temporary use) shall be paid out to Lessee or Lessee's designee(s) to pay the cost of restoration of the Premises. The balance, if any, shall be divided between Lessor and Lessee as follows: (1) to Lessor, the then value of Lessor's reversionary interest in the portion of the Premises which is the subject of the Taking, plus the value of Lessor's right to receive Annual Minimum Rent and Percentage Rent pursuant to this Lease which was lost as a result of such Taking, and (2) the then value of Lessee's interest in the remainder of the Term of this Lease, including any so-called “bonus value” (for purposes of this Section 6.8, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.8 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if Lessor is the condemning authority and the Taking pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments.

6.9 Taking For Temporary Use. Net Awards and Payments received on account of a Taking for temporary use shall be paid to Lessee.

6.10 Total Taking and Partial Taking with Termination. Net Awards and Payments received on account of a Total Taking or a Partial Taking which results in the termination of this Lease shall be allocated between Lessor and Lessee in proportion to the amount that “Lessor's Premises Interest” and “Lessee's Premises Interest,” respectively, each bears to the total Net Awards and Payments.

6.10.1 Lessor's Premises Interest shall be an amount equal to the sum of (1) the present value of all Annual Minimum Rent, Percentage 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 residual value of the Premises (excluding any residual value attributable to the Improvements thereon) subject to the Taking from and after the expiration of the Term.

6.10.2 Lessee's Premises Interest shall be an amount equal to the sum of (1) value of the ownership interest in and use of the Improvements constructed on the Premises, determined as of the date of such Taking, plus (2) an amount equal to the market value of Lessee's

leasehold estate for the remainder of the term of this Lease (including any so-called “bonus value”), disregarding the value of the Improvements.

6.10.3 Any amounts due and owing to any Encumbrance Holder of and Encumbrance upon Lessee’s interest in this Lease shall be out of Net Awards and Payments otherwise payable to Lessee hereunder.

6.11 Lessor as Condemning Authority. If Lessor is the condemning authority in connection with a Total Taking or a partial Taking that results in the termination of the Lease, and the Taking pertains to only Lessee's interest, then Lessee shall be entitled to the entire amount of any Net Awards and Payments.

**7. INTENTIONALLY OMITTED.**

**8. INDEMNITY.**

8.1 Lessee 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 Lessor 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 Lessor, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of Lessor 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 of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation. The obligation of Lessee to so relieve, indemnify, protect, and save harmless Lessor 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. This provision shall survive the expiration or earlier termination of the Lease.

8.2 Lessor Indemnity. Lessor shall defend, indemnify and hold Lessee free and harmless from any and all liability, claims, loss, damages, or expenses resulting from the death or injury of any person, including Lessor or any person who is an employee or agent of Lessor, or damage to or destruction of any property, including property owned by Lessor or by any person who is an employee or agent of Lessor, caused in whole or in part by the gross negligence or willful misconduct of Lessor or its employees, agents or contractors.

**9. INSURANCE.**

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of Lessor, 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 Lessor as an additional insured, with limits of not less than the following:

- General Aggregate: \$10,000,000
- Products/Completed Operations Aggregate: \$5,000,000
- Personal and Advertising Injury: \$5,000,000
- Each Occurrence: \$5,000,000

Lessee may satisfy the above coverage limits with a combination of primary coverage (“Primary Coverage”) and excess liability coverage (“Umbrella Coverage”) (as long as (a) Lessee’s Primary Coverage is at least One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides Lessor with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Section 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 Two Million Dollars (\$2,000,000) 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 or other applicable form), 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, whichever is less, and also including business

interruption, including loss of rent equal to twelve (12) months of rent, with proceeds payable to Lessee and Lessor as their interests may appear and utilized for repair and restoration of the Premises and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Premises or all of the existing Improvements are being demolished in connection with the construction of Development Work, the obligation to provide insurance under this Section 9.1.4 shall not be applicable so long as the insurance coverage described in Section 9.1.5 below is carried.

9.1.5 Construction Insurance. For construction projects, including the Development Work, or any Alterations or restoration on the Premises, Lessee or Lessee's engineer, architect, contractor, or subcontractor (as applicable) will provide the following insurance:

9.1.5.1 Builder's Risk. 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, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including Lessor furnished materials and equipment, 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 Lessor for the Development Work or Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (a) in the case of the Development Work, three (3) years after the date the Development Work is completed and accepted by the Lessee, or (b) in the case of Alterations after the completion of the Development Work, a reasonable period after the date such Alterations are completed and accepted by Lessee, taking into consideration the nature and scope of the Alterations, 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 of not less than One Million Dollars (\$1,000,000) per occurrence and aggregate, for the Development Work or 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 three-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this Section 9.1.5.4 shall be (a) Three Million Dollars (\$3,000,000) with respect to the prime architect for the Development Work (or such lesser amount as is commercially reasonable 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 Development Work or subsequent Alterations, provided that Lessor shall have the discretion to reduce the coverage limits under this clause (b) if appropriate in the judgment of Lessor based on the nature and scope of the services being provided.

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

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Sections 9.1.4 and 9.1.5.1 shall name the Lessor as an additional insured and any Encumbrance Holder as loss payee. Subject to the terms of any Encumbrance permitted pursuant to Article 12 below, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall disbursed to Lessee on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if required by the terms of any Encumbrance, the Encumbrance Holder shall have the right to hold and disburse the insurance proceeds received with respect to a loss to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, Lessee shall be obligated 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 11 hereof. Subject to the terms of any Encumbrance permitted pursuant to Article 12 below, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to Lessor, shall be filed with Lessor no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Development Work or 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 \$50,000 or such greater commercially reasonable amount as approved by the Lessor; 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 Lessor 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 Lessor.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to Lessor 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 Lessor 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 additionally provide:

- (a) that Lessor and its 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, if not paid to Lessee, 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 Lessor and its 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, Lessor 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 Lessor 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 Lessor, in addition to the other rights and remedies provided hereunder, Lessor may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by Lessor shall be repaid by Lessee, with interest thereon at the Applicable Rate, to Lessor 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 Section 9.1.1, 9.1.2 and 9.1.3 shall be subject to reassessment and, if applicable, increase, as of each fifth (5th) anniversary of the Effective Date (each, an "Insurance Reassessment Date"), as agreed upon by Lessor and Lessee in order to maintain levels of liability insurance that are consistent with good practices in the real estate industry in Orange, California, for projects of similar type and size to that contained on the Premises. In no event shall the amounts of liability insurance be decreased as a result of such reassessment. Following such reassessment, the parties shall execute an amendment to this Lease setting forth the revised insurance provisions.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify Lessor of any accident or incident on or about the Premises which involves injury or property damage over Five Hundred Thousand Dollars (\$500,000.00) in the aggregate and pursuant to which a claim against Lessee and/or Lessor is made or threatened. Such notification shall be made in writing within ten (10) business days 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, in a manner consistent with commercially reasonable maintenance standards applicable to other comparable luxury residential apartment buildings in central Orange County ("Maintenance Standard"). 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 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, reasonable wear and tear excepted, and except as otherwise provided in this Article 10. Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, the Maintenance Standard and the terms and provisions of this Article 10. Lessee shall maintain all Improvements on the Premises in a safe and clean condition, and in compliance with all Applicable Laws.

10.2 Deficiency Notices. If Lessor 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 this Article 10, then Lessee shall promptly commence the cure thereof and shall complete such cure within thirty (30) days of Lessee's receipt of Lessor's notice of the subject deficiency or breach; provided, however, that if more than thirty (30) days is reasonably required in order for Lessee to effectuate such cure, then Lessee shall be in compliance hereof if it commences to cure such deficiency or breach within said thirty (30) day period and thereafter diligently pursues such cure to completion.

10.3 Repair of Improvements; 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 10.3, 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. Lessee's obligation to repair and restore the Improvements as described in this Section 10.3 shall be limited to the greater of the amount of insurance proceeds received by Lessee to cover the subject repair and restoration, or the amount of insurance proceeds that Lessee would have received had Lessee carried the commercial property insurance required of Lessee pursuant to Section 9.1.4 above, and otherwise complied with the insurance requirements of Section 9.2 above. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises where all or substantially all of the Improvements on the Premises are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "Uninsured Loss"), and where all of the following occur:

10.3.1 No more than one hundred eighty (180) days following the Uninsured Loss, Lessee shall notify Lessor 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 that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this Section 10.3.1. Lessor 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.

10.3.2 No more than sixty (60) days following the giving of the notice required by Section 10.3.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all loose debris and other rubble from the Premises; and secure the Premises against trespassers (whether by boarding, fencing, or otherwise).

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

10.3.4 Within thirty (30) days following the Lessor's receipt of the notice referred to in Section 10.3.1, Lessor has not received both written notice from the Encumbrance Holder, if

any, objecting to such termination and an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.4 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 where the damage or destruction results from a cause required to be insured against by this Lease, except that, during the last ten (10) Lease Years of the Term, if the cost to repair or restore the damage to the Improvements exceeds ten percent (10%) of the full replacement cost of the Improvements, Lessee shall have the right, by written notice to Lessor delivered within one hundred eighty(180) days of the date of the subject damage or destruction.

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

10.6 Notice of Damage. Lessee shall give prompt notice to Lessor of any fire or material damage affecting the Premises from any cause whatsoever.

10.7 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 pursuant to which Lessee conveys or grants to third party a right to use or occupy (i) an apartment unit within the Premises, or (ii) a portion of the Premises. "Sublessee" shall be the person or entity to which such right to use is conveyed by a Sublease. A Sublease which grants or conveys to a sublessee the right to possess or use fifty percent (50%) or more of the units within 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 No Approval Required. Lessee shall have the right, in its sole discretion and without the necessity of notice to or approval from Lessor, to enter into any Subleases relating to the Premises which are not Major Subleases, so long as the term of any such Sublease does not extend beyond the Term of this Lease, and so long as such Sublease is subject to the terms and provisions of this Lease.

### **11.2 Change of Ownership and Control.**

11.2.1 Change of Ownership. "Change of Ownership" shall mean (a) any transfer by Lessee of a fifty percent (50%) or greater direct ownership interest in this Lease, (b) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a fifty percent (50%) or greater direct ownership interest in such Major

Sublease, (c) any transaction or series of related transactions not described in the immediately preceding clauses (a) or (b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the Beneficial Residual Interests in Lessee or a Major Sublessee, or (d) a Change of Control (as defined below) of Lessee or a Major Sublessee.

11.2.2 Change of Control. “Change of Control” shall refer to a transaction whereby the transferee acquires a Beneficial Residual Interest in Lessee or a Major Sublessee which brings its cumulative Beneficial Residual Interest in Lessee or a Major Sublessee, as appropriate, to over fifty percent (50%).

11.2.3 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 Residual Interests in Lessee or a Major Sublessee, as appropriate) transferred or assigned in one transaction or a series of related transactions (other than those enumerated in Section 1.1.32 above ) occurring after the later of (a) the Effective Date, (b) the execution by Lessee of this Lease or a Major Sublease, as appropriate, or (c) the most recent Change of Ownership upon which an Administrative Charge was paid to Lessor; 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.

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

11.2.5 Interests Held By Entities. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as appropriate, 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 Residual Interests in Lessee, a Major Sublessee, this Lease, or a Major Sublease, as appropriate, and any transfers thereof.

11.3 Transfer. “Transfer” shall mean any assignment, , or conveyance to a third party of Lessee’s interest in this Lease, a Change of Ownership of Lessee, a Change of Control of Lessee, or a Major Sublease, whether in a single transaction or as part of an Aggregate Transfer, which is not an Excluded Transfer and requires the consent of Lessor pursuant to this Lease. The recipient of Lessee’s interest in this Lease pursuant to a Transfer shall be referred to herein as the “Transferee.” A Transfer that is proposed by Lessee shall be referred to herein as a “Proposed Transfer,” and the transferee under such Proposed Transfer shall be referred to herein as the “Proposed Transferee.”

#### 11.4 Approval of Assignment Major Subleases, and Changes of Ownership.

11.4.1 Except as specifically provided in this Article 11, Lessee shall not, without the prior written consent of Lessor, which shall not be unreasonably withheld, conditioned, or delayed but shall be based upon factors described in Exhibit B hereto, which is incorporated herein by this reference (“Assignment Standards”), and applied in a commercially reasonable manner, either directly or indirectly cause a Transfer to occur. Notwithstanding the foregoing, Lessor’s review, consent, and/or approval shall not be required for any Excluded Transfer. Lessee shall provide Lessor with any information reasonably requested by Lessor in order to determine whether or not to grant approval of a Proposed Transfer. 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. With respect to any Proposed Transfer, Lessee shall deliver to Lessor a copy of the instrument intending to effectuate the Proposed Transfer (whether an assignment, Major Sublease, Change of Ownership, or otherwise), not less than thirty (30) days prior to the proposed effective date of such Proposed Transfer for Lessor's review and approval pursuant to the procedures and requirements specified in this Section 11.4.

11.4.2 Without limiting the provisions of Section 11.4.1 above, it shall be deemed unreasonable for Lessor to withhold its consent to a Proposed Transfer if the Proposed Transferee meets the Assignment Standards. To assist Lessor in determining whether or not the Proposed Transferee meets the Assignment Standards, Lessee shall furnish to Lessor at no expense to Lessor, detailed and complete financial statements of the Proposed Transferee, audited by a reputable certified public accountant, (if the proposed transferee causes its statements to be so audited in its normal course of business), together with detailed and complete information about the business of the Proposed Transferee, including its experience in operating apartments, the use to be made of the Premises and Improvements by the Proposed Transferee, projections by the proposed assignee of the sources of funds to be used to repay any indebtedness of Lessee that the Proposed Transferee will assume or take subject to, or agree to pay to Lessee, and other claims on and requirements for those funds, together with any other information as Lessor may reasonably require to assist Lessor in determining whether or not the Proposed Transferee meets the Assignment Standards. Lessor shall have 30 days after receipt of the information described above to notify Lessee of whether it consents or does not consent to the Proposed Transfer. Absent any such notification by Lessor during the 30-day period, Lessor shall be deemed to have disapproved of such Proposed Transfer. Notwithstanding the foregoing, Lessee shall have the right to provide Lessor with a second notice requesting Lessor’s consent to the subject Proposed Transfer, and provided such second notice complies with the requirements of the following sentence, if Lessor fails to provide Lessee with written notice disapproving the Proposed Transfer within ten (10) business days of receipt of such second notice, Lessor shall be deemed to have approved of the Proposed Transfer. To be valid, the second notice shall state on its face, in at least 12-point type, all in capital letters, language substantially conforming to the following: LEASE AGREEMENT BETWEEN ORANGE UNIFIED SCHOOL DISTRICT, AS LESSOR, AND [LESSEE’S NAME], AS LESSEE, DATED [EFFECTIVE DATE OF LEASE]; SECOND REQUEST FOR LESSOR’S CONSENT TO PROPOSED TRANSFER. FAILURE TO DISAPPROVE SUCH PROPOSED TRANSFER IN ACCORDANCE WITH ARTICLE 11 OF SUCH LEASE AGREEMENT WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE SHALL CONCLUSIVELY BE DEEMED LESSOR’S CONSENT TO SUCH PROPOSED TRANSFER. To be valid, any disapproval notice issued by Lessor pursuant to this Section 11.4.2, whether given

after receipt of a first notice requesting Lessor's consent, or a second notice requesting Lessor's consent, must contain a detailed explanation of the grounds for Lessor's denial of consent consistent with the terms of this Lease. All notices provided to Lessor under this Section shall be sent to all three notice addresses for Lessor set forth in Section 15.10 (including, without limitation, that for the Superintendent and Assistant Superintendent of Business Services).

11.4.3 A consent by Lessor to one Proposed Transfer shall not be deemed to be a consent to any subsequent Proposed Transfer. Any Proposed Transfer made contrary to the terms of this Section 11.4 shall be null and void unless otherwise permitted by this Article. In the event that Lessor does consent or is deemed to have consented to a Proposed Transfer that is a Major Sublease, provided that said Proposed Transferee does not default under this Lease beyond applicable notice and cure periods, Lessor agrees that said Proposed Transferee's leasehold interest in the Major Sublease shall not be disturbed or terminated in the event of a default, or termination of the unassigned portion of the Lease. Following any Proposed Transfer, Lessor shall be provided with a copy of the subject assignment or Major Sublease, as applicable. Lessee shall be required to reimburse Lessor for its Actual Costs incurred in connection with the proposed assignment, whether or not Lessor ultimately grants its approval to the proposed assignment (without duplication with any Administrative Charge payable under Section 4.6)

11.5 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any of the Lessee's interest in this Lease (as opposed to ownership interests in Lessee itself) shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.6 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 or permitted 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 to Lessor the Percentage Rent and any other amounts attributable to the period prior to the assignment, including, without limitation, payment of the Administrative Charge which arise upon such assignment as provided herein.

11.7 Property Management. Notwithstanding any contrary provision of this Article 11, Lessee shall be permitted to hire one or more management companies of its choosing for property management of the Premises and/or may conduct such property management activities using its own staff. Any management company hired by Lessee to perform property management of the Premises shall, with respect to the original Lessee under this Lease, be an



entity which controls, is controlled by, or is under common control with, such original Lessee, or, at the time of such engagement (a) have at least five (5) years' of experience in the operation and management of rental apartments similar in type and size to the Project constructed upon the Premises pursuant hereto, without material violations of law or discrimination, and (b) to the extent required under applicable law, have a valid license to manage residential dwelling units issued by the California Department of Real Estate (or its successor).

11.8 Lessor's Transfer of Fee Interest in Premises. Nothing in this Lease shall prohibit or limit Lessor's right to transfer its fee interest in the Premises to any third party, provided that (1) such transferee takes the Premises subject to and agrees to be bound by all terms and provisions of this Lease, and (2) such transferee does not pledge, assign, convey, delegate, or otherwise transfer its rights and obligations under this Lease (including, without limitation, any approval rights of Lessor provided hereunder) separate and apart from such transfer of its fee interest in the Premises to a third party.

## **12. ENCUMBRANCES.**

12.1 Lessee's Right to Encumber. Lessee shall have the right, with the prior consent of Lessor, which shall not be unreasonably withheld, conditioned, or delayed (provided that it shall be deemed unreasonable for Lessor to withhold its consent if the proposed Encumbrance Holder and Encumbrance meet the "Approval Criteria" set forth in this Section 12.1 below), to encumber to one or more institutional or other lender, investor, mortgage broker, securities dealer or other person or entity then making or arranging loans (referred to in this Lease as "Encumbrance Holder"), by deed of trust or mortgage or other security instrument, all of Lessee's interest under this Lease and the leasehold estate hereby created in Lessee (referred to in this Lease as an "Encumbrance"). The term "Institutional Lender" shall consist of any one or combination of (a) any of the following entities having at least Five Hundred Million Dollars (\$500,000,000.00) in gross assets: (i) a national or state bank, (ii) a federal or state savings and loan association, (ii) an insurance company, (iv) a credit union, (v) a trust company, (vi) a pension, retirement, profit-sharing or welfare fund, (vii) a foreign bank or agency of a foreign bank licensed in California, (viii) a reputable and accredited college or university, (ix) a corporation or real estate investment trust whose shares are traded on a national stock exchange or (x) an agency of the United State Government or the State of California, or (b) any other Person having a net worth of Five Hundred Million Dollars (\$500,000,000.00) or more whether or not an entity described above. However, no Encumbrance incurred by Lessee in accordance with this Article 12 shall, and Lessee shall not have power to incur any Encumbrance that shall, constitute in any way a lien or encumbrance on Lessor's fee interest in the Premises. Any Encumbrance shall be subject to all covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor, except as is otherwise provided in this Lease. The "Approval Criteria" shall mean the following: (1) the proposed Encumbrance Holder is an Institutional Lender; and (2) the proposed Encumbrance will provide for a minimum "debt service coverage ratio" (based on net operating income, before debt service) of 1.2 (provided that this clause (2) shall only apply to so-called "permanent" financing including, without limitation, a "permanent financing" component of a construction loan, and not for so-called "construction financing" or the "construction financing" component of a combined construction/permanent financing loan). Lessee shall, prior to entering into any Encumbrance, provide Lessor with a "Preliminary Loan Package" which shall include such information as is reasonably necessary in order for Lessor to confirm that the proposed Encumbrance and/or

Encumbrance Holder complies with the requirements of this Section 12.1, including, without limitation, (i) the identity of the proposed Encumbrance Holder, and (ii) the proposed material economic terms of the proposed Encumbrance, which shall include the amount, term, interest rate, whether any so-called “lock box” provision is included in such terms, and payment schedule of the proposed Encumbrance. Notwithstanding the foregoing, Lessor acknowledges that Lessee may be assessing the suitability of multiple proposed Encumbrances and/or Encumbrance Holders at the same time, and thus, shall have the right to request Lessor’s approval of one or more specified proposed Encumbrances and/or Encumbrance Holders each such request from Lessee in accordance with the terms of this Section 12.1. The parties acknowledge that, for purposes of this Section 12.1, references to Lessor’s “approval” or “disapproval” of a proposed Encumbrance Holder shall include the acknowledgement or failure to acknowledge that such proposed Encumbrance Holder qualifies as an “Institutional Lender” as provided above. Lessor shall notify Lessee in writing of its approval or disapproval of a proposed Encumbrance or Encumbrance Holder within fifteen (15) days of receipt of the Lessee’s written request; any such disapproval notice shall set forth the specific reasonable grounds for such disapproval or lack of acknowledgement as permitted under this Article 12. Failure of Lessor to respond by written notice to Lessee within said fifteen (15) day period shall be deemed Lessor’s disapproval of the proposed Encumbrance or Encumbrance Holder. In the event of any deemed disapproval of a proposed Encumbrance or Encumbrance Holder, Lessee shall have the right to provide Lessor with a second notice requesting Lessor’s consent to the subject proposed Encumbrance or Encumbrance Holder, and provided such second notice complies with the requirements of the following sentence, if Lessor fails to provide Lessee with written notice disapproving the proposed Encumbrance and/or proposed Encumbrance Holder within ten (10) business days of receipt of such second notice, Lessor shall be deemed to have approved of the proposed Encumbrance or proposed Encumbrance Holder. To be valid, the second notice shall state on its face, in at least 12-point type, all in capital letters, language substantially conforming to the following: LEASE AGREEMENT BETWEEN ORANGE UNIFIED SCHOOL DISTRICT, AS LESSOR, AND [LESSEE’S NAME], AS LESSEE, DATED [EFFECTIVE DATE OF LEASE]; SECOND REQUEST FOR LESSOR’S CONSENT TO PROPOSED ENCUMBRANCE AND/OR PROPOSED ENCUMBRANCE HOLDER. FAILURE TO DISAPPROVE SUCH PROPOSED ENCUMBRANCE AND/OR PROPOSED ENCUMBRANCE HOLDER IN ACCORDANCE WITH ARTICLE 12 OF SUCH LEASE AGREEMENT WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE SHALL CONCLUSIVELY BE DEEMED LESSOR’S CONSENT TO SUCH PROPOSED ENCUMBRANCE AND/OR PROPOSED ENCUMBRANCE HOLDER. To be valid, any disapproval notice issued by Lessor pursuant to this Section 12.1, whether given after receipt of a first notice requesting Lessor’s consent, or a second notice requesting Lessor’s consent, must contain a detailed explanation of the grounds for Lessor’s denial of consent consistent with the terms of this Lease. All notices provided to Lessor under this Section shall be sent to all three notice addresses for Lessor set forth in Section 15.10 (including, without limitation, that for the Superintendent and Assistant Superintendent of Business Services). Lessee shall reimburse Lessor for Lessor’s actual, reasonable, out-of-pocket costs incurred in connection with its review of the Preliminary Loan Package and any and all documents, agreements, or instruments related to Lessor’s review of the proposed Encumbrance and/or proposed Encumbrance Holder. One copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved or deemed approved

Encumbrance shall be delivered to the Lessor not later than thirty (30) days after the recording date of the Encumbrance..

12.2 No Subordination. Lessor's rights in the Premises and this Lease, including, without limitation Lessor's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder.

12.3 Encumbrance Holder. Lessor shall mail to any Encumbrance Holder who has given Lessor written notice of its name and address, a duplicate copy of any and all notices Lessor may from time to time give to or serve on Lessee in accordance with or relating to this Lease, including but not limited to any notice of default, notice of termination, or notice regarding any matter on which Lessor may predicate or claim a default. Any notices or other communications permitted by this or any other section of this Lease or by law to be served on or given to Encumbrance Holder by Lessor shall be deemed duly served on or given to Encumbrance Holder in the manner provided for under Section 15.10 below at the last mailing address for Encumbrance Holder that was furnished in writing by Lessee, Encumbrance Holder, or their authorized agents (e.g., loan servicer) to Lessor.

12.4 No Modification Without Encumbrance Holder's Consent. For as long as there is any Encumbrance in effect, Lessee and Lessor hereby expressly stipulate and agree that they will not modify this Lease in any way nor cancel this Lease by mutual agreement without the written consent of Encumbrance Holder having that Encumbrance.

12.5 Right of Encumbrance Holder to Realize on Security. An Encumbrance Holder with an Encumbrance shall have the right at any time during the term of this Lease and the existence of the Encumbrance to do the following:

12.5.1 Any act or thing required of Lessee under this Lease, and any such act or thing done and performed by Encumbrance Holder shall be as effective to prevent a forfeiture of Lessee's rights under this Lease as if done by Lessee;

12.5.2 Realize on the security afforded by the leasehold estate by foreclosure proceedings, accepting an assignment in lieu of foreclosure, or other remedy afforded in law or in equity or by the security instrument evidencing the Encumbrance (referred to in this Lease as the "Security Instrument");

12.5.3 To transfer, convey, or assign the title of Lessee to the leasehold estate created by this Lease (or to cause the trustee under any deed of trust to so transfer, convey or assign) to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted under court order or a power of sale contained in the Security Instrument, or to an assignee under an assignment in lieu of foreclosure provided however, that within thirty (30) days of any such transfer, the transferee shall be required to provide Lessor with written notice of such transferee's name and notice address; and

12.5.4 To acquire and succeed to the interest of Lessee under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted under a court order or a power of sale contained in the Security Instrument, or by virtue of an assignment in lieu of foreclosure.

12.5.5 The Encumbrance Holder or any person or entity acquiring the leasehold estate shall be liable to perform Lessee's obligations under this Lease only during the period, if any, in which that entity or person has ownership of the leasehold estate or possession of the Premises.

12.6 Right of Encumbrance Holder to Cure Defaults. For as long as there is in effect any Encumbrance, before Lessor may terminate this Lease because of any default under or breach of this Lease by Lessee, or exercise any other remedy of Lessor under this Lease for such default or breach, Lessor must give written notice of the default or breach to Encumbrance Holder (the copy of the notice of default by Lessee to be provided by Lessor to the Encumbrance Holder pursuant to Section 12.2 above shall satisfy this notice requirement) and afford Encumbrance Holder the opportunity after service of the notice to do one or more of the following:

12.6.1 Cure the breach or default within the latter of thirty (30) days following the delivery of such notice to Encumbrance Holder or thirty (30) days after expiration of the time period granted to Lessee under this Lease for curing a default, when the default can be cured by the payment of money to Lessor or some other person;

12.6.2 Cure the breach or default within the latter of thirty (30) days following the delivery of such notice to Encumbrance Holder or thirty (30) days after expiration of the time period granted to Lessee under this Lease for curing a default, when the breach or default must be cured by something other than the payment of money and can be cured within that time;

12.6.3 Cure the breach or default in any reasonable time that may be required when something other than money is required to cure the breach or default and cannot reasonably be performed within thirty (30) days following the delivery of such notice to Encumbrance Holder and expiration of the time period granted to Lessee under this Lease for curing a default, provided that acts to cure the breach or default (or to obtain possession by way of receiver to permit the cure of a breach or default) are commenced within that time period after service of notice of default on Encumbrance Holder by Lessor, and are thereafter diligently continued by Encumbrance Holder; or

12.6.4 In the case of a breach or default which cannot be cured by Encumbrance Holder without taking title to Lessee's leasehold estate under this Lease, the Encumbrance Holder pursues its foreclosure remedies as provided in Section 12.7 below to completion or acquires title, in its own name or in the name of a nominee, to Lessee's leasehold estate under this Lease by an assignment in lieu of foreclosure, following which Encumbrance Holder shall cure the breach or default within the applicable time periods set forth in Sections 12.6.1, 12.6.2, or 12.6.3 above, based on the nature of the breach or default, with the subject time period to cure such breach or default being deemed to commence upon the date on which Encumbrance Holder takes title to the leasehold estate of Lessee.

12.7 Foreclosure in Lieu of Curing Default. Notwithstanding any other provision of this Lease, an Encumbrance Holder may forestall termination of this Lease by Lessor for a default under or breach of this Lease by Lessee by commencing proceedings to foreclose the Encumbrance. The proceedings so commenced may be for foreclosure of the Encumbrance by order of court or for foreclosure of the Encumbrance under a power of sale contained in the Security Instrument. The proceedings shall not, however, forestall termination of this Lease by Lessor for the default or breach by Lessee unless all of the following conditions are met:

12.7.1.1 The proceedings are commenced within thirty (30) days after expiration of the period granted Lessee under this Lease to cure such default or breach by Lessee;

12.7.1.2 The proceedings are, after having been commenced, diligently pursued in the manner required by law to completion subject to delays in obtaining any required leave of any court (as in the case of a bankruptcy proceeding); and

12.7.1.3 Encumbrance Holder keeps and performs all of the terms, covenants, and conditions of this Lease requiring the payment or expenditure of money by Lessee until the foreclosure proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to Encumbrance Holder; subject, however, to notice and opportunity to cure as provided in this Article 12 and in Article 13 below.

12.8 Assignment Without Consent on Foreclosure. A transfer of Lessee's leasehold interest under this Lease to any of the following shall not require the prior consent of Lessor:

12.8.1 A purchaser at a foreclosure sale of the Encumbrance, whether the foreclosure sale is conducted under court order or a power of sale in the instrument creating the Encumbrance, provided Encumbrance Holder under the Encumbrance gives Lessor written notice of the transfer, including the name and notice address of the purchaser and the effective date of the transfer;

12.8.2 An assignee of the leasehold estate of Lessee under an assignment in lieu of foreclosure, provided Encumbrance Holder under the Encumbrance gives Lessor written notice of the transfer, including the name and notice address of the assignee and the effective date of the assignment; or

12.8.3 A purchaser or assignee of the purchaser at a foreclosure sale of the Encumbrance or of the assignee of the leasehold estate of Lessee acquired under an assignment in lieu of foreclosure, provided the purchaser or assignee delivers to Lessor its written agreement to be bound by all of the provisions of this Lease accruing and to be performed following the date such purchaser or assignee obtains title to the leasehold estate of Lessee under this Lease.

12.9 New Lease to Encumbrance Holder. Notwithstanding any other provision of this Lease, should this Lease terminate because of any default under or breach of this Lease by Lessee, Lessor agrees to enter into a new Lease for the Premises with Encumbrance Holder under an Encumbrance as Lessee, provided all of the following conditions are satisfied:

12.9.1 A written request for the new Lease is served on Lessor by Encumbrance Holder within thirty (30) days after termination of the Lease;

12.9.2 The new Lease:

12.9.2.1 Is for a term ending on the same date the term of this Lease would have ended had this Lease not been terminated;

12.9.2.2 Provides for the payment of rent at the same rate that would have been payable under this Lease during the remaining term of this Lease had this Lease not been terminated; and

12.9.2.3 Contains the same terms, covenants, conditions, and provisions as are contained in this Lease (except those that have already been fulfilled or are no longer applicable);

12.9.3 Encumbrance Holder, on execution of the new Lease by Lessor, shall pay any and all sums that would at the time of the execution of the new Lease be due under this Lease but for its termination and shall otherwise fully remedy, or agree in writing to remedy, any other defaults under or breaches of this Lease committed by Lessee that can be remedied by Encumbrance Holder;

12.9.4 Encumbrance Holder, on execution of the new Lease, shall pay all reasonable costs and expenses, including attorneys' fees and court costs, incurred in terminating this Lease, recovering possession of the Premises from Lessee or the representative of Lessee, and preparing the new Lease;

12.9.5 The new Lease shall be subject to all existing Subleases between Lessee and Sublessees, provided that for any Sublease, the Sublessee agrees in writing to attorn to Encumbrance Holder (or its assignee);

12.9.6 The new Lease shall be assignable by Encumbrance Holder or any of its affiliated companies, without the prior written consent of Lessor for the initial assignment only, subsequent assignments shall require the prior written consent of Lessor which consent shall not be unreasonably withheld, conditioned, or delayed (provided that it shall be deemed unreasonable for Lessor to withhold its consent to a Proposed Transfer of the new Lease if the Proposed Transferee meets the Assignment Standards), and upon any such assignment the assignor shall be released from any and all further liability under the new Lease arising following the date of such assignment; and

12.9.7 Any new Lease shall enjoy the same priority in time and in right as this Lease over any lien, encumbrance or other interest created by Lessor before or after the date of such new Lease, to the extent permitted by law.

12.10 No Merger of Leasehold and Fee Estates. For as long as any Encumbrance is in existence, there shall be no merger of the leasehold estate created by this Lease and the fee estate of Lessor in the Premises merely because both estates have been acquired or become vested in the same person or entity, unless Encumbrance Holder otherwise consents in writing.

12.11 Encumbrance Holder as Assignee of Lease. No Encumbrance Holder under any Encumbrance shall be liable to Lessor as an assignee of this Lease unless and until Encumbrance Holder acquires all rights of Lessee under this Lease through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating the Encumbrance.

12.12 Encumbrance Holder as Including Subsequent Security Holders. The term “Encumbrance Holder” as used in this Lease shall mean not only party that loaned money to Lessee and is named as beneficiary, mortgagee, secured party, or security holder in a Security Instrument creating any Encumbrance, but also successors and assigns of record to the Encumbrance Holder's interest as beneficiary, mortgagee and/or secured party, as applicable, of the Encumbrance.

12.13 Two or More Encumbrance Holders. In the event two or more Encumbrance Holders each exercise their rights under this Lease and there is a conflict that renders it impossible to comply with all requests of Encumbrance Holders, the Encumbrance Holder whose Encumbrance would have senior priority in the event of a foreclosure shall prevail.

12.14 Additional Encumbrance Holder Assurances. In order to facilitate any financing or refinancing by Lessee which involves the hypothecation of Lessee's leasehold estate and rights hereunder, Lessor, if requested so to do by Lessee, agrees to join in executing any instruments which legal counsel for any Encumbrance Holder which is or may become a Encumbrance Holder and the holder of a lien that is an Encumbrance upon the leasehold estate of Lessee may reasonably require in order: (i) to grant to the Encumbrance Holder or prospective Encumbrance Holder the right to act for Lessee in enforcing or exercising any of Lessee's rights, options or remedies under this Lease; (ii) to amend the provisions of this Lease which relate to the application of Lessee's portion of any insurance proceeds or condemnation award as may reasonably be requested by any Mortgagee; and (iii) to otherwise amend or supplement this Lease, provided that in no event shall Lessor be required to incur any personal liability for the repayment of any obligations secured by any such hypothecation of the leasehold estate of Lessee nor to subordinate the Lessor's rights and reversionary interests in and to the Premises to any such hypothecation nor shall any such amendment or supplement to this Lease adversely affect Lessor's rental, Lessee's payment of taxes, assessments, insurance and/or Lessee's payment or performance of other obligations under this Lease or otherwise diminish or reduce Lessor's rights under this Lease (including without limitation, Lessor's rights under this Article) except in a manner which is not material.

### **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 Capital Reserve Fund), within ten (10) business 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, if any, within such ten (10) business day period.

13.1.2 Default in Obligation to Perform Development Work. Lessor's failure to Substantially Complete the Development Work by the Required Construction Completion Date (as the same may be extended pursuant to this Lease).

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, other than those set forth in Sections 13.1.1 and 13.1.2 above, within thirty five (35) days after written notice of Lessee's failure to perform from Lessor; 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, Lessor will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.4 Nonuse of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of one (1) year, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease.

13.2 Effect of Notices. Any notice required to be given by Lessor pursuant to Sections 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.

13.3 Limitation on Events of Default. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.4 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, and subject to the provisions of Section 13.6 below, Lessor shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.4.1 Terminate Lease. Lessor may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Termination under this Section 13.5 shall not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages against Lessee as set forth in Section 13.5.3. Lessor agrees to use reasonable efforts to mitigate damages.

13.4.2 Keep Lease in Effect. Without terminating this Lease, so long as Lessor does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to Lessor's rights set forth herein, Lessor 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 Lessor under this provision shall constitute a termination of this Lease unless Lessor 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.



13.4.3 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Section 13.4.2, thereafter Lessor 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 13.3, hereof. Lessor agrees to use reasonable efforts to mitigate damages resulting from Lessee's default.

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

13.5.1 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;

13.5.2 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 Lessor; and

13.5.3 Other Amounts. The amounts necessary to compensate Lessor 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.

13.6 Remedy for Failure to Perform Development Work and Nonuse of Premises. Notwithstanding anything to the contrary set forth in this Lease, in the event that Lessee breaches Section 13.1.2 above, or after Stabilization occurs, Lessee breaches Section 13.1.4 above, then Lessor's sole and exclusive remedy shall be as set forth in this Section 13.6. In addition to Lessee's obligation to continue paying Annual Minimum Rent as required under this Lease, Lessee shall be obligated to pay "Additional Minimum Rent" on a monthly basis, at the same time as Lessor would otherwise be obligated to pay Annual Minimum Rent under this Lease. For a breach occurring under Section 13.1.2 above, Lessee's obligation to pay Additional Minimum Rent shall commence on the one-year anniversary of the Required Construction Completion Date, and the "Additional Minimum Rent" owing shall be (i) One Hundred Thousand and No/100 Dollars (\$100,000) for the first year following said one (1) year anniversary of the Required Construction Completion Date, (ii) Two Hundred Thousand and No/100 Dollars (\$200,000) for the second year following said one (1) year anniversary of the Required Construction Completion Date, (iii) Three Hundred Thousand and No/100 Dollars (\$300,000) for the third year following said one (1) year anniversary of the Required Construction Completion Date, and (iv) Four Hundred Thousand and No/100 Dollars (\$400,000) per year for the each year thereafter until the subject breach of Section 13.1.2 is cured or this Lease is terminated. For a breach occurring under Section 13.1.4 above, Lessee's obligation to pay Additional Minimum Rent shall commence as of the date of the breach (i.e., the one-year anniversary of the date on which operation of the project on the Premises was ceased in violation of Section 13.1.4 above), and the "Additional Minimum Rent" owing shall be Four Hundred Thousand and No/100 Dollars (\$400,000) per year for the each year thereafter until the subject breach of Section 13.1.4 is cured or this Lease is terminated. The Additional Minimum Rent payable under this Section 13.6 shall be adjusted upward or downward in

proportion to the applicable adjustment to the Annual Minimum Rent (based upon the number set forth in section 4.2.1.4 with respect to the final density of the Development Work).

13.7 Default by Lessor. Lessor shall be in default in the performance of any obligation required to be performed by Lessor under this Lease if Lessor has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail Lessor's failure to perform; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for its performance, Lessor shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Notwithstanding anything to the contrary in this Lease, Lessor's liability to Lessee for damages arising out of or in connection with Lessor's breach of any provision or provisions of this Lease shall not exceed the value of Lessor's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof. Notwithstanding the foregoing, the aforesaid cure period shall not apply to Lessor's failure to comply with the requirements of Section 15.17 below.

#### **14. ACCOUNTING.**

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Percentage Rent, Lessee and all Major Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, at the Premises or at such Lessee's or Major Sublessee's office in southern California, or shall otherwise deliver to Lessor's offices in southern California, true, accurate, and complete records and books of account for the current and three (3) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions which relate to the determination of Gross Receipts generated from the Premises. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize a cash method.

14.2 Availability of Records for Inspector's Audit. Books of account and records for the then current and three (3) prior Accounting Years as hereinabove required shall be kept or made available at the Premises, and Lessor shall have the right at any reasonable times and on at least ten (10) business days' prior written notice to examine and audit said books and records for the sole 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 14.2 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination. Any auditor retained, assigned, or employed by Lessor to review Lessee's books and records shall be an independent, reputable auditor, with at least five (5) years' experience in reviewing and auditing books and records relating to the calculation of gross income from residential or commercial businesses, and shall be compensated on a fixed fee or hourly basis, and shall not be compensated based upon the amount of discrepancy, error, or recovery in Lessee's books and records identified by such auditor.

14.3 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at a

location within Orange County, Lessee agrees to pay all actual, reasonable, out-of-pocket expenses incurred by Lessor 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 Lessor's favor of greater than five percent (5%) of the revenue due Lessor for the period audited, then Lessee shall pay Lessor audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.4 Accounting Year. The term "Accounting Year" as used herein shall mean each Fiscal Year during the Term.

14.5 Annual Financial Statements. Within one hundred twenty (120) days after the end of each Accounting Year, Lessee shall deliver to Lessor a Gross Receipts and Percentage Rent statement for such Accounting Year, audited and certified by an independent Qualified CPA, which statement shall include a certification and unqualified opinion of such Qualified CPA (1) concerning Lessee's Gross Receipts (including a breakdown by category), and (2) that the correct amount of Percentage Rent has been paid to the Lessor in connection with such Gross Receipts. In addition, on the Form provided by Lessor, Lessee shall annually provide Lessor with (1) an updated list of all beneficial interests in this Lease or a Major Sublease, and (2) a complete accounting of the balance of the Capital Fund and itemization of Capital Expenditures for that year. For purposes of this Article 14, an "unqualified opinion" as defined by American Institute of Certified Public Accountants .

14.6 Accounting Obligations of Sublessees. Lessee shall cause all Major Sublessees to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records and the delivery to Lessor of audited certified financial statements and unqualified opinions as to Gross Receipts. Lessor shall provide written notice to Lessee of the failure of any sublessee, concessionaire or other person to comply with this Section 14.6 after Lessor's discovery of such failure, and in such event Lessor shall permit Lessee to subrogate to any right of Lessor to enforce this provision against such Major Sublessee.

14.7 Inadequacy of Records. In the event that Lessee or its Sublessees, licensees or concessionaires, as appropriate, fails 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 the event that Lessee does not cure such default as permitted under Article 13 above, then in addition to the other remedies available to Lessor at law or equity as a result of such breach, Lessor 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, or the past or present level of Gross Receipts experienced by ground lease tenants of comparable leaseholds in the County of Orange with comparable projects. Within five (5) days after receipt of Lessor's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of five percent (5%) 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 Lessor'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 Lessor Disclosure and Lessee's Waiver.

15.3.1 Disclosures and Waiver.

15.3.1.1 "AS IS". Except as otherwise set forth in Lessor's representations and warranties set forth in Section 1.5 of this Lease, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

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

15.3.1.3 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 Lessor, 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.

15.3.1.4 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER 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 Section 15.3.1.3 above.

15.3.1.5 Notwithstanding anything to the contrary set forth in this Section 15.4.1, including, without limitation, the releases set forth in Sections 15.3.1.3 and 15.3.1.4, nothing herein shall limit Lessor's liability to Lessee in connection with any representation or warranty made by Lessor to Lessee under Section 1.5 of this Lease, the Option Agreement, or any other provision of this Lease.

15.4 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 Lessor and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due Lessor 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 Lessor, 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 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.

Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee, and Lessor expressly reserves the right to require Lessee to surrender possession of the Premises to Lessor 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 Lessor 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 Lessor accruing therefrom, Lessee shall protect, defend, indemnify and hold Lessor 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 Lessee arising from such failure to surrender, and any lost profits to Lessor resulting therefrom, provided that Lessor notifies Lessee that Lessee's failure to timely surrender the Premises will cause Lessor to incur such lost profits.

15.6 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written

agreement of Lessor and Lessee. No delay, failure, or omission of Lessor to reenter 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 Lessor 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 Lessor 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 Lessor 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 Lessor 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 for any persons or property located upon or within the Premises pursuant to any Sublease, and except such property as may be forfeited to Lessor, in storage for the account of and at the expense of Lessee.

Except to the extent arising out of or caused by the gross negligence or willful misconduct of Lessor, Lessee agrees to indemnify, defend and save harmless Lessor from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises in the case of an Event of Default, including the removal of persons and property and storage of such property by Lessor 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 Lessor hereunder shall be delivered to the Lessor. Checks, drafts, letters of credit and money orders shall be made payable to the Orange Unified School District.

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 provide Lessor with a designation of a natural person residing in or located in the County of Orange or the County of Los Angeles, State of California, or a service company 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 Lessor, 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.

All notices delivered to Lessor or Lessee under this Lease shall be to the addresses below-described, or to such other address that Lessor or Lessee may designate by written notice delivered to the other party. Delivery of any such notice shall be deemed sufficient if said notice is delivered (i) personally, (ii) by certified or registered U.S. Mail, (iii) by reputable private courier service (e.g., Federal Express, UPS, Priority US Mail, or DHL), (iv) by telecopy or facsimile transmission, or by electronic mail, provided in all cases there is a return receipt requested (or other similar evidence of delivery by personal delivery or private delivery service), and all postage or other delivery charges shall be prepaid by the party sending the subject notice. 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. pacific time on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent in the case of such registered or certified mail as authorized in this Section 15.10. To be valid, any notice delivered pursuant to clause (iv) of this paragraph above shall be valid only if, within five (5) business days of such delivery, such notice is also delivered by one or more of the methods set forth in clauses (i), (ii), or (iii) above.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or Encumbrance Holder of such Major Sublessee of which Lessor 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 Encumbrance Holder of such Major Sublessee.

As of the date of execution hereof, the persons authorized to receive notice on behalf of Lessor and Lessee are as follows:

LESSOR: Orange Unified School District  
1401 North Handy Street  
Orange, California 92867  
Attention: Joe Sorrera, Assistant Superintendent,  
Business Services  
Phone: (714) 628-4059  
Fax: (714) 628-4046  
Email: [joes@orangeusd.org](mailto:joes@orangeusd.org)

With a Copy to:

Atkinson, Andelson, Loya, Ruud & Romo  
12800 Center Court Drive, Suite 300  
Cerritos, California 90703  
Attention: Constance J. Schwindt, Esq.  
Phone: (562) 653-3200  
Fax: (562) 653-3333  
Email: [cschwindt@aalrr.com](mailto:cschwindt@aalrr.com)

And, with respect to “Second”  
Notices delivered under Sections  
11.4.2 (Transfers), Section 15.17.2  
(Estoppel Certificates), and Section  
15.18 (Nondisturbance  
Agreements), a copy to:

Orange Unified School District  
1401 North Handy Street  
Orange, California 92867  
Attention: Superintendent  
  
Phone: (714) 628-4487  
Fax: (714) 628-4041  
Email: [superintendent@orangeusd.org](mailto:superintendent@orangeusd.org)

LESSEE:

FF Realty, LLC  
5510 Morehouse Drive, Suite 200  
San Diego, California 92121  
Attention: Lawrence Scott  
Phone: (858) 824-6487  
Fax: (858) 625-8828  
Email: [lscott@ffres.com](mailto:lscott@ffres.com)

With a Copy to:

FF Realty, LLC  
5510 Morehouse Drive, Suite 200  
San Diego, California 92121  
Attention: Jon Macdonald  
Phone: (858) 626-8216  
Fax: (858) 457-8082  
Email: [jmacdonald@ffres.com](mailto:jmacdonald@ffres.com)

And a Copy to:

Kennerly Lamishaw & Rossi LLP  
707 Wilshire Blvd., Suite 1400  
Los Angeles, CA 90017  
Attention: Robert L. Madok, Esq.  
Phone: (213) 426-2090  
Fax: (213) 312-1266  
Email: [robertmadok@klrfirm.com](mailto:robertmadok@klrfirm.com)

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 15.11.

15.11 Interest. In any situation where Lessor 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 Lessor on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, Lessor shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

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

15.13 Attorneys' Fees. If either party hereto brings an action against the other by reason of the breach of any covenant, provision or condition hereof, or otherwise arising out of or in connection with this Lease, the parties shall each be responsible for its own attorney's fees and costs.

15.14 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and Lessor. No amendment shall be binding upon an Encumbrance Holder as to which Lessor has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Lessor Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Lessor 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, Lessor 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 Lessor ("Extended Time") and approves such request in writing prior to such Extended Time. If Lessor does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved, except were a different procedure or result is provided under this Lease.

15.16 Time For Lessor Action. Notwithstanding anything to the contrary contained in this Lease, wherever Lessor determines that a Lessor action required hereunder necessitates approval from or a vote of the District's Board of Education, the time period for Lessor performance of such action shall be extended as is reasonably necessary in order to bring the subject matter to a vote before the District's Board of Education, and Lessor shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates; Nondisturbance Agreement.

15.17.1 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 Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease, and the dates to which the rent and any other charges have been paid in advance and shall include such assurances of satisfaction of conditions or other matters provided for in

the Lease as the party seeking the estoppel may reasonably request. The certificate shall be such that it can be relied on by any auditor, creditor, commercial banker, and investment banker of either party and by any prospective purchaser, assignee, Major Sublessee, lender, or Encumbrance Holder of the Premises or Improvements or both or of all or any part or parts of Lessor's or Lessee's interests under this Lease. Notwithstanding the foregoing, in connection with Lessee's request of a certificate as provided in this Section 15.17.1 above, Lessor shall, as a condition to the issuance of such certificate, have the right to require that Lessee notify Lessor of (a) the identity of the party to whom the certificate is being issued, (b) in the case of an Encumbrance Holder or a proposed Encumbrance Holder, the amount of the proposed Encumbrance, the interest rate, whether any so-called "lock box" provisions are contained in the terms of the proposed Encumbrance, and (c) if applicable, the minimum debt service coverage ratio included in such proposed Encumbrance terms. In conjunction with Lessee's request for an estoppel certificate for a proposed Encumbrance Holder pursuant hereto, so long as Lessee requests the same in writing in conjunction with such request by Lessee, and so long as Lessee provides Lessor with sufficient information to verify the same, concurrently with Lessor's delivery of an estoppel certificate to or on behalf of such proposed Encumbrance Holder, Lessor shall provide a letter to such proposed Encumbrance Holder that such proposed Encumbrance Holder qualifies as an Institutional Lender pursuant to Section 12.1 above.

15.17.2 Any party's failure to execute, acknowledge, and deliver, on request, the certificate described above within the specified time shall not constitute a default by such party under this Lease unless the party requesting the subject certificate provides a second notice to other party complying with the requirements set forth below, and such other party fails to deliver the requested certificate within ten (10) calendar days from receipt of such second notice. To be valid, the second notice shall state on its face, in at least 12-point type, all in capital letters, language substantially conforming to the following: LEASE AGREEMENT BETWEEN ORANGE UNIFIED SCHOOL DISTRICT, AS LESSOR, AND [LESSEE'S NAME], AS LESSEE, DATED [EFFECTIVE DATE OF LEASE]; SECOND REQUEST FOR ESTOPPEL CERTIFICATE FROM [LESSOR/LESSEE]; FAILURE TO PROVIDE SUCH ESTOPPEL CERTIFICATE PURSUANT TO SECTION 15.17 OF SUCH LEASE AGREEMENT WITHIN TEN (10) CALENDAR DAYS OF RECEIPT OF THIS LETTER SHALL CONSTITUTE A NONCURABLE DEFAULT UNDER SUCH LEASE.

15.18 Nondisturbance. Within ten (10) business days of Lessee's written request, Lessor shall execute and have acknowledged, and deliver to Lessee, a nondisturbance, attornment, and/or recognition Agreement ("Nondisturbance Agreement") on a commercially reasonable form providing in substance that, in the event of a termination of this Lease due to Lessee's default, the rights of such Major Sublessee under its Major Sublease shall not be disturbed or diminished, but shall continue in full force and effect as a direct lease between Lessor and such Major Sublessee, so long as such Major Sublessee attorns to Lessor and recognized Lessor as the "sublessor" under the Major Sublease. Notwithstanding the foregoing, failure by Lessor to provide a Nondisturbance Agreement within the time period specified above shall not constitute a default by Lessor under this Lease unless Lessee provides a second notice to Lessor substantially complying with the requirements of the second notice referenced in Section 15.17.2 above, but requesting delivery to Lessee or its designee a Nondisturbance Agreement (instead of an estoppel

certificate), and Lessor fails to deliver the requested Nondisturbance Agreement to Lessee (or its designee) within ten (10) calendar days from receipt of such second notice.

15.19 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.

## **16. DEFINITION OF TERMS; INTERPRETATION.**

16.1 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.

16.2 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.

16.3 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.

16.4 Parties Represented by Consultants, Counsel. Both Lessor 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.

16.5 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

16.6 Reasonableness Standard. Except where a different standard is specifically provided otherwise herein, whenever the consent of Lessor or Lessee is required under this Lease, such consent shall not be unreasonably withheld and whenever this Lease grants Lessor or Lessee the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, Lessor and Lessee shall act reasonably and in good faith. These provisions shall only apply to Lessor acting in its proprietary capacity.

16.7 Venue. The venue for any legal proceedings, including arbitration, shall be in Orange County, California.

16.8 Memorandum of Lease. The parties hereto shall execute and acknowledge a Memorandum of Lease, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

16.9 Force Majeure. Except for the payment of sums of money due from one party to the other, if either party hereto shall be delayed or prevented from the performance of obligations under this Lease due to any "Force Majeure Events," the performance of such obligations shall be excused for the period of the delay resulting from such Force Majeure Event.

16.10 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

ORANGE UNIFIED SCHOOL DISTRICT

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

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

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

FF REALTY LLC,  
a Delaware limited liability company

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

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

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

APPROVED ON \_\_\_\_\_, 2013 (Board Minutes dated \_\_\_\_\_ 2013)

**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

**All that certain real property situated in the County of Orange, State of California, described as follows:**

**That portion of Lots 20 and 21 of the Fletcher Tract, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Page(s) 320 of Miscellaneous Records of Los Angeles County, California, described as follows:**

**Parcel 1:**

**Beginning at a point on the South line of said Lot distant East 7.52 chains from the Southwest corner of said Lot, said point being the Southeast corner of land described in the Deed to Lloyd L. Smith, recorded in Book 441, Page(s) 370, Official Records;  
Thence Northerly at the Easterly line of said Lloyd L. Smith's Land, 10 chains to the Northeast corner thereof;  
Thence Easterly along a line parallel to the South line of said Lot 21 to the Northwest corner of land described in the Deed to W. H. Smith recorded in Book 168, Page(s) 298 of Deeds, said Northwest corner being 10 chains North of the South line of said Lot 21;  
Thence South along the West line of said W. H. Smith's Land to the Southwest corner thereof, said Southwest corner being East 15.04 chains from the Southwest corner of said Lot 21;  
Thence West along the South line of said Lot 21 to the point of beginning.**

**Parcel 2:**

**Beginning at a point on the South line of Lot 21 of the Fletcher Tract, as per Map recorded in Book 3, Page(s) 320 of Miscellaneous Records of Los Angeles County, California, 15.04 chains East from the Southwest corner of said Lot; running thence North parallel to the West line of said Lot, 10 chains;  
Thence East parallel to the South line of Lot 21 and of Lot 20 of the said Fletcher Tract to the centerline of the Santa Ana Valley Irrigation Company's pipe line, as described in a certain deed dated May 22, 1941 and shown on a map attached thereto, executed by Thomas J. Hight and others in favor of the County of Orange;  
Thence Southerly along the centerline of said Santa Ana Valley Irrigation Company's pipe line to an intersection with the South line of Lot 20 of the said Fletcher Tract; and  
Thence West along the South line of Lots 20 and 21 of the said Fletcher Tract to the point of beginning.**

**Parcel 3:**

**That portion of Lot 21 of the Fletcher Tract, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Page(s) 320 of Miscellaneous Records of Los Angeles County, California, described as follows:**

**Beginning at the Southwest corner of said Lot 21;  
Thence North 660.00 feet along the West line of said Lot;  
Thence East 496.32 feet parallel with the South line of said Lot;  
Thence South 515.00 feet parallel with said West line;  
Thence West 256.32 feet parallel with said South line;  
Thence South 145.00 feet parallel with said West line;  
Thence West 240.00 feet to the point of beginning.**

Assessor's Parcel Number:       **374-161-01**

## EXHIBIT B

### ASSIGNMENT STANDARDS

These standards are to apply to Proposed Transfers of Lessee's interest in this Lease and/or the Premises and to any Major Sublease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an encumbrance holder approved by Lessor, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved lender, 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 liquid net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to Lessor 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 or similar security satisfactory to the Lessor may be substituted for the net worth requirement.

2. The Proposed Transferee must have significant experience in the construction (if prior to Substantial Completion of the Development Work, or if significant restoration resulting from a casualty is required as of the date of the request for Lessor's consent to the Proposed Transfer), operation and management of similar size and type(s) of Improvements in California existing on or to be constructed on the Premises, or provide lessor with reasonable evidence of contractual arrangements for any of these services with providers of such services reasonably approved by Lessor or which meet the requirements of Section 11.7 of this Lease have similar experience in the operation and management of multi-family residential project of similar size and type(s) of in California existing on or to be constructed on the Premises, sufficient to perform all the agreements, undertakings, and covenants of this Lease and all other agreements entered into by Lessee which relate to the management, operation, maintenance, construction and restoration (if applicable) of the Improvements and the Premises. To the extent that the Proposed Transferee meets the foregoing requirements by contracting for them with a service provider approved by Lessor pursuant to the foregoing, any changes in such service providers shall be subject to Lessor's prior approval. All approvals of Lessor pursuant hereto shall 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 own the entity which will so acquire Lessee's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation. In determining whether a proposed transferee meets the requirements of this Section 3, factors which Lessor may take into account for possible disapproval shall include, without limitation, the following:

a. The existence of pending litigation against the assignee with a potential cost of the greater of \$15,000,000 or 10% of the market value of the company if

publicly traded, or the net worth of the company if not publicly traded.

b. The existence of current or pending prosecution or civil suit against the company or its senior officers by financial regulators or criminal prosecutors.

c. Whether beneficial ownership of 25% or more of the proposed Transferee is held by an offshore entity which does not disclose the identity of the individuals holding such beneficial ownership interests, provided that this clause "c" shall not apply to so-called offshore pension funds, sovereign wealth funds, and similar entities.

4. The price to be paid for the Proposed Transfer shall not result in a financing obligation of the proposed transferee which jeopardizes its ability to meet rental obligations to the Lessor. Market debt service coverage ratios (not to exceed 120%) and leasehold financial performance, at the time of the Proposed Transfer, will be used by Lessor in making this analysis.



## EXHIBIT C

### **REPRESENTATIONS AND WARRANTIES FROM OPTION AGREEMENT**

#### **11. REPRESENTATIONS AND WARRANTIES.**

11.1 Lessor's Representations, Warranties, and Covenants. Lessor warrants and represents to Lessee as follows as of the date of this Agreement, the Conditions Satisfaction Date (or, if applicable, the Outside Option Exercise Date), and the Lease Effective Date, and where indicated covenants and agrees as follows:

11.1.1 Due Authorization; Valid Formation. Lessor is the fee owner of all of the Premises. Lessor is duly organized, validly existing, and in good standing under the laws of the state of its formation. This Agreement has been duly and validly executed and delivered by Lessor and is enforceable against Lessor in accordance with its terms and all agreements, instruments and documents contemplated hereby to be executed by Lessor will be as of the Closing duly authorized, executed and delivered and enforceable against Lessor in accordance with their terms. Neither the execution and delivery of this Agreement by Lessor nor the consummation by Lessor of the transaction contemplated hereby (a) requires any further consent or approval, (b) conflicts with or constitutes a default under any of Lessor's organizational documents or any other agreement, contract, instrument or document to which Lessor is a party or which binds Lessor, the Premises or any of Lessor's assets, or (c) violates any governmental requirement.

11.1.2 Sale Agreements; Leases; Service Contracts; Lessor Documents. The Premises is not subject to any outstanding agreement(s) of sale, option(s), or other right(s) of third parties to acquire any interest therein entered into by Lessor, except for this Agreement. Except as may be permitted under or through the Current Lease, there are no leases or other agreements permitting persons to occupy or use any portion of the Premises, either oral or written. True, correct and complete copies of the Current Lease, each Lessor Document have been delivered to Lessee, including, but not limited to, all amendments and modifications thereto. Lessor has no actual knowledge of any default under the Current Lease on the part the Current Tenant, and Lessor has received no notice from the Current Tenant that Lessor is in default under the Current Lease, nor does Lessor have any knowledge of the existence of any facts or circumstances which, with the giving of notice and the passage of time, will constitute in default by either the Current Lessee or Lessor under the Current Lease. Except to the extent that the Current Lease is still in effect as of the Lease Effective Date, Lessor is not a party to any service contracts or other contracts or agreements affecting the Premises, oral or written, which will extend beyond the Lease Effective Date, and which would bind Lessee or encumber all or part of the Premises after the Lease Effective Date.

11.1.3 Litigation; Condemnation. Lessor has no actual knowledge of, and Lessor has received no written notice of the pendency of, any litigation or proceeding pending, or to the best of Lessor's knowledge, threatened against Lessor relating to the Premises. Lessor has received no written notice that either the whole or any part of the Premises, including any access thereto or any easement benefiting the Premises, is subject to temporary requisition of use

by any governmental authority or has been condemned, nor that there is now any pending or planned condemnation, requisition or similar proceeding against the whole or any part of the Premises, including any access thereto or any easement benefiting the Premises.

11.1.4 Assessments; Zoning; Governmental Notices. To the best of Lessor's knowledge without any duty to investigate, all impact fees, taxes, assessments, and other charges affecting or relating to the Premises have been paid, and Lessor has received no written notice of any new assessments which affect the Premises. To the best of Lessor's knowledge without any duty to investigate, all taxes and assessments that are liens against the Premises are shown in the Official Records of the County; no improvements (site or area) have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against any part of the Premises in the future; and Lessor has not been notified of any possible future improvements that might create an assessment against any part of the Premises. Lessor has not entered into any commitments or agreements with any governmental authorities or agencies affecting the Premises that have not been disclosed in writing to Lessee nor received any notice from any governmental authorities or agencies of uncured violations at the Premises of building, fire, air pollution or zoning codes, rules, ordinances or regulations, environmental and hazardous substances laws, or other rules, ordinances or regulations relating to the Premises.

11.1.5 Environmental Matters. To the best of Lessor's knowledge without any duty to investigate, there has been no release or disposal of any Hazardous Material at the Premises and Lessor has not used any Hazardous Material at the Premises and has no knowledge of any other person doing so. To the best of Lessor's knowledge without any duty to investigate, the Premises does not contain any: (a) underground storage tank; (b) material amounts of asbestos-containing material; (c) landfills or dumps; (d) hazardous waste management facility as defined under RCRA or any comparable state law; or (e) site on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list relating to any comparable state law; and to the best of Lessor's knowledge the Premises has not at any time contained any of the items referenced in clauses (b), (c), (d), or (e) of this Section 11.1.5.

11.1.6 Full Disclosure. No Untrue Statement; Certification. Without creating any independent duty or obligation on the part of Lessor to investigate, all matters materially and adversely impacting all or any part of the Premises, the ownership, operation, use or development of all or any part of the Premises, or with the potential of having such impact, which are known to Lessor have been disclosed to Lessee in writing. To the best of Lessor's knowledge without any duty to investigate, neither this Agreement, any Exhibit, any written statement nor any documents or instruments furnished or to be furnished by Lessor to Lessee in connection with this transaction contain any untrue statement of material fact or omit any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. Lessor is not a "foreign person" within the meaning of Sections 1445 or 897 of the Internal Revenue Code or a "non-resident Lessor" under Sections 18805 and 26131 of the California Revenue and Taxation Code, and upon written request of Lessee or Escrow Holder, will execute and deliver to Lessee such certificates as are customary to evidence the foregoing.

11.1.7 Commissions. Lessor has neither dealt with nor has any knowledge of any broker or other party who has or may have any claim against Lessor for a brokerage commission or finder's fee or like payment arising out of or in connection with the transaction contemplated hereby.