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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "License") is made as of the Effective Date, by and between San Diego Family Housing, LLC, a California limited liability company ("Licensor"), and Licensee (as defined in Exhibit A attached hereto).

RECITALS:

A. The United States of America, Department of the Navy ("**Prime Landlord**"), as lessor, and Licensor, as lessee, entered into that certain Amended and Restated Real Estate Ground Lease dated as of May 1, 2003 (together with all exhibits, modifications, and amendments thereto, if any, the "**Prime Lease**").

B. Pursuant to the Prime Lease, Prime Landlord leased to Licensor certain Land and Appurtenances (each as defined in the Prime Lease), and conveyed to Licensor for a term of years certain Improvements (as more particularly described in the Prime Lease, collectively, the "**Original Property**"), subject to the terms and conditions set forth in the Prime Lease.

C. Licensor desires to grant and Licensee desires to accept a non-exclusive license to use the Licensed Premises for the Permitted Use (as such terms are defined in Exhibit A attached hereto), subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee, intending to be legally bound, do hereby agree as follows:

1. Definitions. All capitalized terms used in this License and not defined herein will have the definition provided for in Exhibit A attached hereto and made a part hereof.

2. Licensed Premises. Licensor hereby grants to Licensee a non-exclusive license to use, subject to the terms and conditions hereinafter provided, the Licensed Premises. Licensee accepts the Licensed Premises in its "as-is" condition as of the License Commencement Date. This License creates only a license terminable at will and not a lease or other estate in land.

3. Term. Subject to and upon the covenants, agreements and conditions set forth herein, including those set forth on Exhibit A, the term of this License shall be for the License Term, but is revocable at any time with thirty (30) days written notice at the option and discretion of Licensor (with the consent of Prime Landlord).

4. License Fee.

(a) Base Fee. Licensee is granted this License to use the Licensed Premises in consideration of the Base Fee.

(b) Additional Fees. Licensee shall be responsible for the costs of the License Services specified in Paragraph 11 of Exhibit A attached hereto and any other costs and expenses (collectively, "**Additional Fees**") reasonably attributable to the Licensed Premises (e.g., pro rata

share of long-term maintenance costs and expenses). Any Additional Fees shall be paid by Licensee within thirty (30) days after receipt of an invoice from Licensor.

5. Permitted Use. Licensee will use the Licensed Premises solely for the Permitted Use and for no other purpose. Licensee agrees to abide by any Special Provisions set forth on Exhibit A in connection with its use of the Licensed Premises.

6. License Services. Provided Licensee is not in default under this License, Licensor agrees that it will provide (or cause to be provided) the License Services at Licensee's sole cost and expense. Licensee shall be responsible for obtaining, at Licensee's sole cost and expense, any other services relating to the use of the Licensed Premises.

7. Compliance With Laws. Licensee will comply with all applicable laws (including environmental laws), rules, orders, ordinances and regulations, including without limitation, any covenants, conditions and restrictions affecting the Licensed Premises, at any time issued or in force, applicable to the Licensed Premises or Licensee's use thereof.

8. Assignment. Licensee will not assign or otherwise transfer this License, or permit occupancy or use of the Licensed Premises or any part thereof by any other party.

9. Alterations. Licensee shall make no alterations, installations, additions or improvements in or to the Licensed Premises except Permitted Alterations, if any.

10. Licensor's Access to Licensed Premises. Licensor, its officers, agents, members, managers, employees, and contractors may enter upon the Licensed Premises (after reasonable advance notice, except in the event of emergency), for any purposes including, but not limited to, the purpose of inspection. Licensee shall have no claim on account of any entries against Licensor or any of Licensor's officers, agents, members, managers, employees, or contractors.

11. Surrender. Licensee, at Licensee's expense, will keep the Licensed Premises in a clean, safe and sanitary condition, will take good care thereof, and will suffer no waste or injury thereto. At the expiration or earlier termination of the License Term, Licensee will surrender the Licensed Premises in the same order and condition in which they were on the License Commencement Date, ordinary wear and tear excepted. At the expiration or earlier termination of this License, Licensee shall remove its property from the Licensed Premises. If any of Licensee's property remains in the Licensed Premises at the expiration or earlier termination of the License Term, it shall be deemed Licensor's property and Licensee shall be liable to Licensor for all cost and expenses of storage and/or removal of such property.

12. Damage to Licensed Premises. Any and all injury or damage to the Licensed Premises caused by Licensee or its agents, contractors, servants, invitees or employees shall promptly be repaired at the sole expense of Licensee.

13. Indemnity and Insurance. Licensee represents to Licensor that it is a self-insured Municipal Corporation, and shall pay all claims which arise from Licensee's use of the Licensed Premises which would normally be covered by a third party insurance carrier. In addition, Licensee shall extend such insurance to Licensor by indemnifying and saving harmless Licensor and its officers, members, managers, directors, partners, agents and employees from any and all liability, damage, expense, cause of action, suits, claims, judgments and cost of defense, which arise from Licensee's use of the Premises.

14. Liability.

(a) All personal property of Licensee, Licensee's employees, agents, invitees, licensees, customers, clients, family members, guests or trespassers, in and on the Licensed Premises or any part thereof, shall be and remain therein under any and all circumstances at the sole risk of said parties, and Licensor shall in no event be liable to any such person or party for any damage to, or loss thereof.

(b) Licensor shall not be liable for any personal injury to Licensee, Licensee's employees, agents, invitees, licensees, customers, clients, family members, guests or trespassers, arising from the use and condition of the Licensed Premises or any part thereof.

(c) It is expressly agreed by the parties hereto that Licensor shall not be liable to Licensee, or to any of Licensee's employees, agents, invitees, licensees, customers, clients, family members, guests or trespassers for any damage, injury, loss, compensation or claim. Notwithstanding anything to the contrary contained herein, in no event shall Licensor be liable for claims for the interruption of or loss to Licensee's business, based on, arising out of, or resulting from any cause whatsoever, including, without limitation, interruption in the use of the Licensed Premises or any interruption in any utility services or any other License Services.

15. Licensor's Remedies. This License shall, at the option of Licensor (with the consent of Prime Landlord), cease and terminate if Licensee shall violate or fail to perform any of the conditions, covenants or agreements of this License made by Licensee. In such event Licensee shall however remain liable to Licensor for all costs, expenses and other damages arising from such violation or failure and/or otherwise arising prior to the date of such termination. In the event of any dispute between the parties hereunder, Licensee shall immediately reimburse Licensor upon demand for all attorneys' fees, disbursements and costs incurred by Licensor to defend or enforce its rights under this License or applicable law.

16. Hold-Over. If Licensee remains in possession of the Licensed Premises or any part thereof after the expiration of the term hereof, with the expressed written consent of Licensor, such occupancy shall be a tenancy from month-to-month. In such event, Licensor and Licensee shall each be required to give the other thirty (30) days written notice in order to cancel said month-to-month tenancy. In the event Licensee does not vacate and immediately surrender the Licensed Premises at the expiration of such thirty (30) day period, Licensee shall pay immediately to Licensor the Hold-Over Fee. Notwithstanding the foregoing, if Licensor shall desire to regain possession of the Licensed Premises promptly at the expiration of such thirty (30) day period contemplated in this Section, Licensor may re-enter and take possession of the

Licensed Premises by any legal action or process, and Licensors shall have the right to recover all damages suffered by Licensors as a result of Licensee's failure to vacate upon such expiration.

17. Prime Lease Superior. Licensee acknowledges that any rights or remedies it has under the License are derived from the Prime Lease, attached hereto as Exhibit B, and, notwithstanding anything to the contrary contained herein or in the License, Licensee agrees to be bound by all of the terms and conditions of the Prime Lease as fully and completely as if Licensee were the original tenant under the Prime Lease. Notwithstanding anything in the License to the contrary, this License is and shall remain in all respects subject and subordinate to the Prime Lease (as the same may be amended), and any deeds of trusts or mortgages affecting the Original Property. Licensee agrees that it will not, by its act or omission to act, cause a default under the Prime Lease. Licensee shall not act in any manner which is inconsistent with the terms of the Prime Lease.

18. Termination of Prime Lease. If, at any time prior to the expiration or earlier termination of the License Term, the Prime Lease (or Licensors's right to possession) shall expire or be sooner terminated for any reason, then this License shall simultaneously terminate and Licensee shall vacate the Licensed Premises on or before the date of termination. Notice of termination shall be made in writing and allow Licensee thirty (30) days to vacate the Licensed Premises. Notwithstanding the foregoing, in the event Licensee does not vacate and immediately surrender the Licensed Premises at the expiration of such thirty (30) day period, Licensors may immediately pursue against Licensee all rights and remedies available to Licensors under the License, at law or in equity in order to remedy such holdover.

19. Waiver of Jury Trial. INTENTIONALLY DELETED

20. Notices. All notices or other communications hereunder shall be in writing and shall be deemed duly given only when delivered in person (with receipt therefor), two (2) days after being sent by certified mail, return receipt requested, or one (1) business day after delivery to a recognized overnight carrier: (a) if to Licensors, at the following addresses: c/o Clark Realty Capital, L.L.C., 7500 Old Georgetown Road, Bethesda, Maryland 20814, Attn: Managing Director, with copies to: Clark Enterprises, Inc., 7500 Old Georgetown Road, 15th Floor, Bethesda, Maryland 20814, Attn: General Counsel, and Lincoln Property Company, 3300 Lincoln Plaza, 500 North Akard, Suite 3300, Dallas, Texas 75201, Attn: Tim Byrne, and Lincoln Property Company, 4740 Von Karman, Suite 130, Newport Beach, California 92660, Attn: Reggie D. DelPonte, and Lincoln Property Company, 3300 Lincoln Plaza, 500 North Akard, Suite 3300, Dallas, Texas 75201, Attn: Dan M. Jacks, Esq.; and (b) if to Licensee at Licensee's Notice Address. The party to receive notices and the place notices are to be sent for either Licensors or Licensee may be changed by notice given pursuant to the provisions of this section.

21. No Partnership. It is agreed that nothing contained in this License shall be deemed or construed as creating a partnership, joint venture, or a relationship of landlord and tenant between Licensors and Licensee.

22. Brokers. Licensors and Licensee each represent and warrant one to another that neither of them has employed any broker in carrying on the negotiations, or had any dealings

with any broker, relating to this License. Licensors shall indemnify and hold Licensee harmless, and Licensee shall indemnify and hold Licensors harmless, from and against any claim or claims for brokerage or other commission arising from or out of any breach of the foregoing representation and warranty by the respective indemnitor.

23. Estoppel. Licensee shall, without charge, from time to time, within five (5) business days after request therefor, execute, acknowledge and deliver a written estoppel certificate certifying, as of the date of such estoppel certificate, such information as is reasonably requested by Licensors. If Licensee fails to execute, acknowledge and deliver such estoppel within the required time frame, Licensee hereby appoints Licensors as Licensee's attorney-in-fact to execute and deliver such estoppel by and on behalf of Licensee.

24. Entire Agreement. This License, including Exhibit A, Exhibit B and Exhibit C, contains and embodies the entire agreement of the parties hereto, and no representations, inducements, or agreements, oral or otherwise, between the parties not contained and embodied in this License shall be of any force and effect, and the same may not be modified, changed or terminated in whole or in part in any manner other than by an agreement in writing duly signed by all parties hereto. This License shall be governed by the laws of the State of California.

25. Authority of Licensee. Licensee represents and warrants that the person executing this License on behalf of Licensee has the full right, power and authority to execute this License on Licensee's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this License.

26. Confidentiality. Licensee acknowledges and understands that the Prime Lease, attached hereto as Exhibit B, is confidential and must be held in strict confidence by Licensee and its officers, agents, and employees. Licensee covenants and agrees that it will keep the Prime Lease, and all information obtained from the Prime Lease in strict confidence, and shall not reveal the Prime Lease or any information contained therein to any person except upon the prior written consent of Licensors, which consent may be withheld in Licensors's sole discretion, or if required pursuant to any litigation between Licensors and Licensee.

27. Captions. The captions throughout this License are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this License, nor in any way effect this License.

28. Singular and Plural. Wherever appropriate herein, the singular includes the plural and the plural includes the singular.

29. Counterpart. This License may be executed in several counterparts, but all counterparts shall constitute but one and the same instrument.

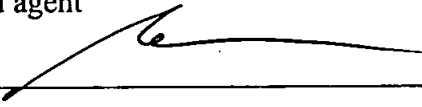
[Signatures Follow On Next Page]

IN WITNESS WHEREOF, Licensors and Licensee have caused this License to be executed and delivered under seal as their act and deed as of the Effective Date, intending to be legally bound by its terms and provisions.

LICENSOR:

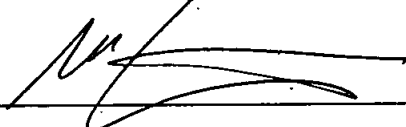
SAN DIEGO FAMILY HOUSING, LLC, a California limited liability company

By: Lincoln BP Management, Inc., a Texas corporation, its authorized agent

By: 

LICENSEE:

CITY OF SAN DIEGO, a California municipal corporation

By: 
Name: _____
Title: Real Estate Assets Director

Approved As to Form and Legality this 15th day of March 2004₅

CASEY GWINN, CITY ATTORNEY

By: 
Name: _____
Title: Deputy City Attorney

Exhibit:

- Exhibit A: Definitions and Additional Terms
- Exhibit B: Prime Lease
- Exhibit C: Area Site Map

EXHIBIT A
DEFINITIONS AND ADDITIONAL TERMS

1. License Commencement Date: March 1, 2005
2. Licensee: City of San Diego
3. Licensee's Notice Address: 1200 Third Avenue, Suite 1700, San Diego, California 92101
4. Licensor's Agents: San Diego Family Housing, LLC
5. Licensed Premises: 4439- 4440 Olney Street, San Diego, California, being with the Navy's Admiral Hartman Housing Complex – 400 feet south of Bluffside Avenue, adjacent to Mission Bay Drive
6. Permitted Use: For the City of San Diego Police Department to use as a police storefront office and storage facility to write reports, conduct minor investigations, hold community meetings, conduct briefings and other forms of daily police work, including the storage of police beach vehicles consisting of bikes, all terrain vehicles, boats.
7. Permitted Alterations: None
8. License Term: From March 1, 2005 to February 28, 2010
9. Hold-Over Fee: None
10. Base Fee: None
 - 10a. Amount: None
 - 10b. Frequency: Not Applicable
 - 10c. First Due Date: Not Applicable
 - 10d. Payments To: 3360 Murray Ridge Road, San Diego, California 92123
11. License Services:
 - 11a. Services to be provided by Licensor: Licensor will provide (or cause to be provided) water, sewer, gas, electricity and rubbish removal services.
 - 11b. Services to be paid by Licensee: Licensee shall be responsible for obtaining, at Licensee's sole cost and expense, any other services relating to the use of the Licensed Premises.
12. Special Provisions: None
13. Licensee's Insurance Requirements: Licensee represents to Licensor that it is a self-insured Municipal Corporation.

EXHIBIT B
PRIME LEASE

EXECUTION COPY

**AMENDED AND RESTATED
REAL ESTATE GROUND LEASE**

**United States of America
Department of the Navy, as Lessor**

and

San Diego Family Housing, LLC, as Lessee

Dated: May 1, 2003

THIS AMENDED AND RESTATED REAL ESTATE GROUND LEASE AND ALL ATTACHED DOCUMENTS ARE FURNISHED TO YOU ON A CONFIDENTIAL BASIS SOLELY FOR THE PURPOSES OF EVALUATING THE INVESTMENT IN SAN DIEGO FAMILY HOUSING, LLC MILITARY HOUSING REVENUE OBLIGATIONS. THE INFORMATION CONTAINED IN THIS REAL ESTATE GROUND LEASE, AND THE DOCUMENTS RELATED HERETO MAY NOT BE REPRODUCED OR USED IN WHOLE OR IN PART FOR ANY OTHER PURPOSE OR MADE AVAILABLE TO ANY OTHER PERSON NOT DIRECTLY CONCERNED WITH THE DECISION REGARDING SUCH INVESTMENT.

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Exhibits:

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Exhibit A-2 -	Phase II Land Legal Description
Exhibit B-1 -	Phase I Surveys
Exhibit B-2 -	Phase II Surveys
Exhibit C -	Existing Licenses and Leases
Exhibit D -	First Mortgage Loan Documents
Exhibit E -	Form of Tenant Lease
Exhibit F -	Furnishings Not Being Conveyed
Exhibit G -	Defined Terms
Exhibit H -	Hazardous Materials Response Plan
Exhibit I-1 -	Memorandum of Real Estate Ground Lease and Deed of Conveyance (Phase I)
Exhibit I-2 -	Form of Phase II Memorandum of Real Estate Ground Lease and Deed of Conveyance
Exhibit J -	Interim Operating Agreement Provisions
Exhibit K -	Declaration Rights
Exhibit L -	Condominium Rights
Exhibit M -	S-POD
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Exhibit O -	Description of Ingress and Egress Easement to Lessee
Exhibit P -	Description of Ingress and Egress Easement to Government
Exhibit Q -	Description of Reciprocal Parking Easement
Exhibit R -	Description of Utility Easement

**AMENDED AND RESTATED
REAL ESTATE GROUND LEASE**

This Amended and Restated Real Estate Ground Lease (this "Lease"), dated as of May 1, 2003, and effective for all purposes as of May 1, 2003 (the "Effective Date"), is by and between the United States of America, Department of the Navy, as lessor (the "Government"), and San Diego Family Housing, LLC, as lessee (the "Lessee") (the Government and the Lessee are sometimes referred to herein collectively as the "Parties" and each separately as a "Party").

This Lease amends and restates, in full, as of the Effective Date, that certain Real Estate Ground Lease dated as of August 1, 2001 (the "Original Lease") between the Government and the Lessee (as successor-in-interest to Lincoln/Clark San Diego, LLC ("Lincoln/Clark") pursuant to an Omnibus Assignment, Assumption, Consent and Release Agreement dated as of August 1, 2001). It is understood and agreed by the parties hereto that any rights or obligations that accrued under or in connection with the Original Lease prior to the Effective Date shall be governed by the Original Lease, and any rights or obligations that accrue under or in connection with this Lease from and after the Effective Date shall be governed by this Lease.

WITNESSETH:

WHEREAS, pursuant to the Original Lease, the Lessee has, among other things, a leasehold interest in the Phase I Land (as defined below) and a fee interest in the Phase I Improvements (as defined below);

WHEREAS, the Government entered into the Original Lease for the purpose of providing sufficient real estate interests to the Lessee in order to carry out the requirements of a Department of the Navy Public/Private Venture as described in Request for Proposals N68711-99-R-P09P23 dated August 3, 1999, and Amendments 0001 through 0005 (the "Phase I RFP"), and the Lessee's offer in response to the Phase I RFP dated May 26, 2000 (the "Phase I Offer"), including the construction, renovation and operation of rental housing units and associated improvements on the Phase I Land; and

WHEREAS, the Government under the authority contained in 10 U.S.C. §2878 has determined that the leasing of additional property identified in this Lease as the Phase II Premises on the terms set forth herein and entering into the Amended and Restated Operating Agreement (as defined in Exhibit G attached hereto) will be in the public interest; and

WHEREAS, the Government enters into this Lease for the purpose of continuing to provide the Phase I Property and to provide sufficient additional real estate interests to the Lessee in order to carry out the requirements of a Department of the Navy Public/Private Venture as described in a Request for Proposal No. N68711-02-R-P02M01 dated September 20, 2002, as amended (the "Phase II RFP," and together with the Phase I RFP, collectively referred to herein as the "RFP"), and the Lessee's offer in response to the Phase II RFP dated December 9, 2002 (the "Phase II Offer," and together with the Phase I Offer, collectively referred to herein as the "Offer"), including the construction, renovation and operation of rental housing units and associated improvements on the Phase II Land; and

WHEREAS, the Government and the Lessee acknowledge that the Development (as defined below) of the Phase I Premises (as defined herein) was financed by the Lessee's issuance of taxable bonds, notes or other obligations (the "Phase I Obligations") pursuant to that certain Indenture of Trust dated as of August 1, 2001 (the "Original Indenture"), among the Lessee, Lincoln/Clark, and Union Bank of California, N.A., as indenture trustee (the "Trustee") for the registered owners of the Phase I Obligations (together with all related financial obligations, the "Initial First Mortgage Loan"); and

WHEREAS, the Government and the Lessee acknowledge that the Development of the Phase II Premises (as defined herein) will be financed by the Lessee's issuance of additional taxable bonds, notes or other obligations (the "Phase II Obligations," and together with the Phase I Obligations, collectively referred to herein as the "Obligations") under the Original Indenture, which Original Indenture shall be amended and restated in its entirety in connection with the issuance of such Phase II Obligations (as amended and restated, the "Amended and Restated Indenture");

WHEREAS, the Government and the Lessee acknowledge that certain payments on the Obligations and on one or more related interest rate swap agreements (collectively, the "Swap Agreements") will be insured by MBIA Insurance Corporation, as the credit provider (the "Credit Provider") under the Amended and Restated Indenture and as the insurer of the Lessee's obligations under the Swap Agreements; and

WHEREAS, pursuant to this Lease and the Amended and Restated Operating Agreement, the Lessee will, among other things, design, finance, construct, own, manage, acquire, lease, sell, rehabilitate, operate and maintain residential units and related improvements on the Premises (as defined below) (the "Development"); and

NOW, THEREFORE, for the consideration set forth below and subject to the terms, conditions, covenants and agreements set forth in this Lease, the Parties agree as follows:

1. LEASE OF LAND AND CONVEYANCE OF IMPROVEMENTS/CERTAIN DEFINITIONS

- 1.1 Land and Appurtenances. The Government hereby leases to the Lessee for Lessee's exclusive use and possession, on the terms and conditions set forth herein, (i) that certain land (the "Phase I Land"), as more particularly described in Exhibit A-1 to this Lease and depicted upon the surveys referenced in Exhibit B-1 to this Lease (the "Phase I Surveys"), together with all and singular appurtenances, rights, privileges and easements unto the aforesaid Phase I Land belonging or in anyway thereto appertaining, including the right of access to and use of the streets, roads, electric, gas, telephone, water and sewer facilities now or in the future appurtenant to the Phase I Land (collectively, the "Phase I Appurtenances"); and (ii) that certain land (the "Phase II Land," and together with the Phase I Land, collectively referred to herein as the "Land"), as more particularly described in Exhibit A-2 to this Lease and depicted upon the surveys referenced in Exhibit B-2 to this Lease (the "Phase II Surveys," and together with the Phase I Surveys, collectively referred to herein as the "Surveys"),

together with all and singular appurtenances, rights, privileges and easements unto the aforesaid Phase II Land belonging or in anyway thereto appertaining, including the right of access to and use of the streets, roads, electric, gas, telephone, water and sewer facilities now or in the future appurtenant to the Phase II Land (collectively, the "Phase II Appurtenances," and together with the Phase I Appurtenances, collectively referred to herein as the "Appurtenances").

1.2 Improvements. The Government hereby grants and conveys to the Lessee, subject to Section 1.3, the following:

(a) all facilities, personal property and improvements now or hereafter located on or used in connection with the operation of the Phase I Land (collectively, the "Phase I Improvements"), and all facilities (including, subject to Section 18.2.2 hereof, utility lines and related equipment owned by the Government and currently operated by the Public Works Center), personal property and improvements now or hereafter located on or used in connection with the operation of the Phase II Land (collectively, the "Phase II Improvements," and together with the Phase I Improvements, collectively referred to herein as the "Improvements"), including, without limitation, all structures, buildings, residential units, alterations, additions and fixtures located on the Land, and the furnishings located therein except those furnishings described in Exhibit F attached hereto;

(b) all of the Government's right, title and interest as Declarant under the declarations described on Exhibit K attached hereto and by this reference made a part hereof (the "Declaration Rights"); and

(c) all of the Government's right, title and interest in the condominium plans or regimes described on Exhibit L attached hereto and by this reference made a part hereof (the "Condominium Rights").

1.3 Fee Simple Title to Land; Title to Improvements. Fee simple title to the Land shall continue to vest with the Government during the term of this Lease. Title to the Improvements, the Declaration Rights and the Condominium Rights that are conveyed by the Government to the Lessee and title to the Improvements that are hereafter constructed by the Lessee shall belong to the Lessee subject to the terms of this Lease and shall revert to the Government on the Expiration Date, as defined below in Section 2.1, or earlier termination of this Lease.

1.4 Easements.

1.4.1 Ingress and Egress Easement to Lessee. The Government hereby grants and conveys to Lessee a non-exclusive ingress and egress easement over certain real property owned by the Government (in and around the Navy Exchange at Murphy Canyon), as more particularly described on Exhibit Q attached hereto and made a part hereof. Such easement shall

automatically terminate upon the expiration or earlier termination of this Lease.

1.4.2 Ingress and Egress Easement to Government. The Government hereby reserves for itself a non-exclusive ingress and egress easement over certain real property on the Phase II Land (in and around the Navy Exchange at Murphy Canyon), as more particularly described on Exhibit P attached hereto and made a part hereof. Such easement shall automatically terminate upon the expiration or earlier termination of this Lease.

1.4.3 Reciprocal Parking Easement. The Government hereby grants and conveys to Lessee a non-exclusive parking easement over certain real property owned by the Government (in and around the Navy Exchange at Murphy Canyon), as more particularly described as "Lessee Parking Easement Area" on Exhibit Q attached hereto and made a part hereof and hereby reserves for itself a non-exclusive parking easement over certain real property on the Phase II Land, as more particularly described as "Government Parking Easement Area" on Exhibit Q. Such easements shall automatically terminate upon the expiration or earlier termination of this Lease.

1.4.4 Utility Easement. The Government hereby grants and conveys to Lessee a non-exclusive utility easement on, over and under certain real property owned by the Government (in and around the Navy Exchange at Murphy Canyon and the elementary schools at Murphy Canyon), as more particularly described on Exhibit R attached hereto and made a part hereof, for the installation, maintenance, replacement and operation of all utilities located on such real property.

1.4.5 Easement Rights. With respect to the easements described above, (a) Lessee may temporarily close and may relocate or otherwise change the easement areas, so long as such closure, relocation or change does not materially and adversely affect the Government's use and enjoyment of the land benefited by such easements and (b) the Government's use of the easement areas shall not interfere with Lessee's design, construction, development, use or enjoyment of the Premises.

1.5 Existing Encumbrances. This Lease is subject to all encumbrances disclosed on Schedule B to that certain Owner's Title Insurance Policy issued by Commonwealth Land Title Insurance, Policy No. 32A0014 (collectively, the "Existing Encumbrances"). The Government has no knowledge of any encumbrances other than the Existing Encumbrances.

1.6 Certain Definitions. An index of certain defined terms is attached hereto as Exhibit G.

2. TERM AND DELIVERY OF POSSESSION

- 2.1 Lease Term. The parties hereto acknowledge and agree that the term of this Lease (a) with respect to the Phase I Premises commenced on August 1, 2001 (the "Phase I Commencement Date") pursuant to the Original Lease, and (b) with respect to the Phase II Premises, shall commence on the Effective Date (the "Phase II Commencement Date"), and shall end, with respect to both Phases, on July 31, 2051 (the "Expiration Date"), unless sooner terminated in accordance with the provisions of this Lease. The Phase I Commencement Date and the Phase II Commencement Date are sometimes referred to herein as a "Commencement Date." The period between the Phase I Commencement Date and the Expiration Date shall be referred to herein as the "Phase I Term," and the period between the Phase II Commencement Date and the Expiration Date shall be referred to herein as the "Phase II Term." As used herein, the term "Term" shall mean the Phase I Term and the Phase II Term; it being understood and agreed that, with respect to the Phase II Premises, in no event shall the term "Term" include any period of time prior to the Phase II Commencement Date.
- 2.2 Possession. The Lessee and the Government acknowledge and agree that the Lessee is currently in possession of the Phase I Premises. Except as otherwise expressly provided herein, the Government shall terminate all existing leases, occupancy agreements and licenses of the Phase II Premises and shall give the Lessee exclusive possession thereof as of the Phase II Commencement Date. Effective as of the Phase II Commencement Date, with respect to the Phase II Premises, the Lessee shall enter into subleases, in the form of the tenant lease attached hereto as Exhibit E, with any military personnel occupying the Phase II Premises for residential purposes immediately prior to the Phase II Commencement Date who elect to continue their occupancy of the Phase II Premises. The Government shall cooperate and assist Lessee with such efforts. The Government and the Lessee hereby acknowledge that certain third parties and other Government related entities are in possession of, and/or have the right to use and/or occupy, certain portions of the Premises for non-residential purposes ("Non-Residential Uses"), as further provided on Exhibit C. Lessee shall have the right, and the Government hereby authorizes the Lessee, to enter into subleases, licenses or similar use and/or occupancy agreements for such existing Non-Residential Uses and for any other similar uses.

3. EASEMENTS AND RIGHTS-OF-WAY

3.1 Existing and Additional Encumbrances.

- 3.1.1 The leasehold interest in the Premises is subject to the Existing Encumbrances. The Government shall have the further right to create and grant additional easements and rights-of-way over, across and through the Premises, including, without limitation, the right to modify and relocate any of the existing easements and rights of way that are Existing Encumbrances (the "Additional Encumbrances"); provided, however,

the Additional Encumbrances (a) shall be either for the benefit of the Premises or (with the consent of Lessee) other property owned by the Government, (b) shall be subject to Lessee's prior written approval (not to be unreasonably withheld), if such Additional Encumbrance is solely for the benefit of the Premises, (c) shall not be inconsistent with or materially impair the Lessee's ability to use, lease or operate the Premises, (d) shall not be inconsistent with or materially impair (i) the rights or obligations of the Lessee under this Lease, the Amended and Restated Indenture or any Leasehold Mortgages, (ii) the rights of Leasehold Mortgagees under any Leasehold Mortgages, and (iii), so long as San Diego Family Housing, LLC is the Lessee, the rights and obligations of San Diego Family Housing, LLC under the Amended and Restated Operating Agreement, with respect to the design, financing, construction, ownership, management, acquisition, leasing, sale, rehabilitation, operation or maintenance of the Development, and (e) shall not adversely affect the value or marketability of the Improvements within the Development. The Government agrees to coordinate the grant or creation of any of the Additional Encumbrances and the modification or relocation of any of the Existing Encumbrances with the Lessee and each Leasehold Mortgagee so as to provide for and protect the mutual needs of the Government, the Lessee and the Leasehold Mortgagee. The Lessee agrees to accept and use the Premises subject to and in compliance with the Existing Encumbrances and Additional Encumbrances (collectively, the "Encumbrances").

3.1.2 The Lessee agrees to reasonably cooperate with the Government to accommodate placement of two cellular telecommunications antennas on the portion of the premises known as Murphy Canyon and Admiral Hartman, in a location reasonably acceptable to the Government and the Lessee, pursuant to the Government's agreement with Nextel Communications. Such cooperation shall include reasonable documentation to reflect any supporting real estate encumbrances relating to such antennas and shall occur after the Effective Date. The installation of the antennas shall constitute an Additional Encumbrance and shall be deemed to have satisfied the requirements for Additional Encumbrances set forth in Section 3.1.1 hereof.

3.2 Easements and Rights of Way. The Government agrees, at the request of the Lessee, to grant and create such additional easements and rights-of-way as shall be reasonably required to enable the Lessee to, among other things, develop, own and operate the Development including, without limitation, rights of ingress, egress and access and utility service for the Development, which easements and rights-of-way shall be set forth in documentation (in recordable form) mutually acceptable to the Government and the Lessee and the Leasehold Mortgagee and recorded against Government-owned property (including, without limitation, the properties on which the two elementary schools are located at the Murphy Canyon Site) or the Government's interest in property. Any easements and rights-of-way

over property which is not owned by the Government shall be the responsibility of the Lessee to obtain or procure at the Lessee's sole cost and expense as part of the Development, provided the Government shall cooperate with the Lessee if and to the extent the involvement of the fee owner of the Land is necessary in connection with such easement or right of way. In addition, the Government agrees to reasonably cooperate with the Lessee's efforts to implement the Infrastructure Operation Plan (as defined in the Amended and Restated Operating Agreement).

- 3.3 Special Considerations for the Orion Court Units. Beneficiaries of all Encumbrances, present or future, shall have the reasonable, non-exclusive right of ingress to and egress from and over the Orion Court Units in order to carry out the terms and purpose of the Encumbrances. Failure to comply with any provision of this Lease as a consequence of Lessee's inability to obtain sufficient access to the Orion Court Units as a result of the Government rules and security procedures shall not constitute a default under this Lease. This Section 3.3 shall be subject to the access provisions of Section 14.5 hereof.

4. **CONDITION OF PREMISES**

- 4.1 "As-Is" Condition of Premises. Except as otherwise expressly provided herein, the Lessee, for itself and its successors and assigns, agrees and acknowledges that it has inspected, knows and accepts the condition and state of repair of the Premises. It is understood and agreed that the Premises are leased in an "as is" condition without any representation or warranty by the Government concerning their condition and without obligation on the part of the Government to make any alterations, repairs or additions except as expressly provided herein. The Government shall not be liable for any latent or patent defects in the Premises except as expressly provided herein. The Lessee, for itself and its successors and assigns, acknowledges that, except as expressly set forth herein or in the Amended and Restated Operating Agreement, the Government has made no representation or warranty concerning the condition and state of repair of the Premises nor any agreement or promise to alter, improve, adapt or repair the Premises except as provided herein.

5. **CONSIDERATION/RENT**

- 5.1 In consideration of the agreement of the Government to lease the Land and to convey the Improvements to the Lessee, the Lessee shall design, develop, construct, rehabilitate, renovate, operate, and maintain the Development on the Land in accordance with, and otherwise perform its obligations under, this Lease and the Amended and Restated Operating Agreement.
- 5.2 In addition to performing all of its other obligations under this Lease and the Amended and Restated Operating Agreement, the Lessee shall pay, subject to the provisions of the First Mortgage Loan Documents, without any set-off or deduction whatsoever, all amounts required to be paid to the Government or any

other party pursuant to this Lease with respect to the Premises and all other amounts due and payable with respect to the Development during the Term of this Lease including, without limitation, amounts due and payable under applicable Federal, State and local laws with respect to the construction and ownership of the Improvements, to include the new and renovated housing or new replacement housing and any associated infrastructure on the Premises and operation of the Development and any utilities and services supplied by the Government to the Premises and Improvements thereon in accordance with the Amended and Restated Operating Agreement and this Lease.

6. OPERATION OF THE PREMISES

- 6.1 Operation of the Premises. The Amended and Restated Operating Agreement sets forth detailed procedures and requirements that Lessee shall be required to follow in the design, financing, construction, rehabilitation, ownership, management, acquisition, leasing, sale, operation and maintenance of the Development.
- 6.2 Interpretation of Amended and Restated Operating Agreement and this Lease. Each of the Government and the Lessee, for themselves and their successors and assigns, acknowledges and agrees that, only for so long as San Diego Family Housing, LLC is the Lessee hereunder, in the event of any conflict or inconsistency between any provisions of the Amended and Restated Operating Agreement and any provisions of this Lease, the provisions of the Amended and Restated Operating Agreement shall control, except that this Lease shall control any matter affecting allocation of risk or responsibility for environmental matters.
- 6.3 Applicability of Amended and Restated Operating Agreement. The parties acknowledge that the Amended and Restated Operating Agreement contains material terms and conditions relating to the Lessee's design, financing, construction, rehabilitation, ownership, management, acquisition, leasing, sale, operation and maintenance of the Development.
- 6.4 Intentionally Deleted.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 7.1 The Lessee's Representations, Warranties and Covenants. The Lessee hereby makes the following representations, warranties and covenants, solely for the benefit of the Government and each Leasehold Mortgagee as of the Phase II Commencement Date; provided, however, that solely with respect to, and as such representations, warranties and covenants relate to, the Phase I Premises, the Lessee shall be deemed to have originally made such representations, warranties and covenants as of the Phase I Commencement Date and shall be deemed to have remade such representations, warranties and covenants as of the Phase II Commencement Date:

- 7.1.1 Use of Premises. During the Term of this Lease, the Lessee covenants that it shall use the Premises solely for the development, construction, operation and maintenance of the Development, or for any other lawful purpose agreed to by the Lessee and the Government.
- 7.1.2 Organization. The Lessee represents and warrants that it is a duly organized and validly existing limited liability company in good standing under the laws of the State of California.
- 7.1.3 Power and Authority. The Lessee represents and warrants that the persons executing this Lease on behalf of the Lessee have the full right, power and authority to execute and deliver this Lease as the Lessee's act and deed and to bind the Lessee hereto. The Lessee has the full right, power and authority, and has obtained all necessary authorizations and consents, to enter into and perform its obligations under this Lease.
- 7.1.4 Valid and Binding. The Lease is a legal, valid and binding obligation of the Lessee, enforceable against the Lessee in accordance with its terms, except to the extent such enforcement may be limited by (i) the effect of applicable bankruptcy, fraudulent transfer, moratorium, insolvency, reorganization, or other similar laws affecting the rights of creditors generally; and (ii) the effect of general principles of equity, whether applied by a court of equity or law.
- 7.1.5 No Conflict. The execution and delivery of this Lease by the Lessee will not result in a breach of the terms or provisions of, or constitute a default (or a condition that, upon notice or lapse of time, or both, would constitute a default) under its organizational documents or any indenture, agreement or obligation by which the Lessee is bound, and will not constitute a violation of any applicable laws.
- 7.1.6 Brokers. The Lessee represents and warrants to the Government that the Lessee has not incurred, directly or indirectly, any obligation to pay any real estate commission, brokerage commission or finder's fee to any agent, broker, salesperson or finder in connection with this transaction.
- 7.2 The Government's Representations, Warranties and Covenants. The Government hereby makes the following representations, warranties and covenants, solely for the benefit of the Lessee and each Leasehold Mortgagee as of the Phase II Commencement Date; provided, however, that solely with respect to, and as such representations, warranties and covenants relate to, the Phase I Premises, the Government shall be deemed to have originally made such representations, warranties and covenants as of the Phase I Commencement Date and shall be deemed to have remade such representations, warranties and covenants as of the Phase II Commencement Date:

- 7.2.1 Documents. The Government has not intentionally withheld any documents, notices, plans, specifications, reports, surveys, estimates or models relating to the Premises for the purpose of misleading the Lessee with regard to the physical condition of the Premises.
- 7.2.2 Authority. The Government represents and warrants that (i) the Government has full right, power and lawful authority to enter into this Lease on behalf of the United States of America in accordance with the terms hereof and to grant the estate demised hereby, (ii) the person(s) executing this Lease on behalf of the Government have the full right, power and authority to execute and deliver this Lease as the Government's act and deed and to bind the Government hereto, and (iii) the Government has obtained all necessary authorizations and consents, to enter into and perform its obligations under this Lease.
- 7.2.3 Valid and Binding. The Lease is a legal, valid and binding obligation of the Government, enforceable against the Government in accordance with its terms.
- 7.2.4 No Conflict. The execution and delivery of this Lease by the Government will not result in a breach of the terms or provisions of, or constitute a default (or a condition that, upon notice or lapse of time, or both, would constitute a default) under its authorizing or other legislation or regulations, or any agreement or obligation by which the Government is bound, and will not constitute a violation of any applicable laws.
- 7.2.5 Quiet Enjoyment. The Government in its proprietary capacity covenants and agrees with the Lessee that so long as no Lessee Event of Default has occurred and is continuing hereunder, the Lessee shall and may, at all times during the Term hereby granted, peaceably and quietly have, hold, and enjoy the Premises and all rights, appurtenances, and privileges belonging or in any way appertaining thereto without hindrance or molestation by the Government or any other person, subject to this Lease, the Amended and Restated Operating Agreement and the Existing Encumbrances and Additional Encumbrances.
- 7.2.6 No Lessee Default. The Lessee is not in default of its obligations under the Original Lease and no event has occurred and no condition exists that would constitute a Lessee Event of Default under the Original Lease or which, with the passage of time or the giving of notice or both, would constitute a Lessee Event of Default under the Original Lease.
- 7.2.7 Brokers. The Government represents and warrants to the Lessee that the Government has not incurred, directly or indirectly, any obligation to pay any real estate commission, brokerage commission or finder's fee to any agent, broker, salesperson or finder in connection with this transaction.

- 7.2.8 Compliance. The Government will, at the request of the Lessee, cooperate and assist the Lessee in complying with all present and future laws, regulations, orders and notices which are applicable to the Government as an owner of the Land.

8. DEFAULT AND TERMINATION

8.1 Lessee Event of Default

- 8.1.1 Lessee's failure to comply with any material provision of this Lease, where such failure is not cured by Lessee within thirty (30) days (or by a Leasehold Mortgagee as provided in Article 21 below) after delivery of written notice thereof by the Government to the Lessee and each Leasehold Mortgagee, shall constitute a "Lessee Event of Default" hereunder, subject to the provisions of this Article 8. If the default, however, is of such a nature that it cannot be cured within the applicable cure period, the Lessee Event of Default shall not be deemed to have occurred if: (a) the Lessee shall begin the actions necessary to cure the default within such thirty (30) day period (or a Leasehold Mortgagee shall begin the actions necessary to cure the default within a Reasonable Time (as such term is defined in Article 21 below)), and (b) the Lessee or Leasehold Mortgagee, as the case may be, diligently continues to pursue such cure to completion. A Lessee Event of Default under this Section 8.1.1 shall be deemed to have been cured and otherwise satisfied upon performance of the applicable covenant, without regard to the original deadline for performance.
- 8.1.2 Subject to the relevant provisions of the Amended and Restated Operating Agreement and the First Mortgage Loan Documents, so long as San Diego Family Housing, LLC is the Lessee, upon the occurrence of a Lessee Event of Default, and so long as the Lessee Event of Default remains uncured, the Government shall have the right (but not the obligation), as a condition to its agreement not to terminate the Lease due to the relevant Lessee Event of Default, to require that Lincoln/Clark (or any successor-in-interest thereto), sell and assign Lincoln/Clark's membership interest in San Diego Family Housing, LLC to the Government or to a third party (the "Substitute Member") approved by the Leasehold Mortgagees pursuant to the applicable provisions of the Amended and Restated Operating Agreement. In such event, the Government shall consent to the purchase and assumption by the Substitute Member of all of the Lessee's interest and obligations under the Amended and Restated Operating Agreement, and such transfer shall not constitute a Lessee Event of Default. Provided that Lessee promptly commences and diligently and in good-faith pursues consummation of the transfer of membership interest from Lincoln/Clark to the Substitute Member following a Lessee Event of Default, then: (i) the Lessee's (or Leasehold Mortgagee's, as provided in Article 21 below) period for cure shall not begin until the day after the

consummation of the transfer of membership interest from Lincoln/Clark to the Substitute Member; and (ii) Lessee (or Leasehold Mortgagee, as provided in Article 21 below) shall be afforded a commercially reasonable period of time within which to cure the relevant Lessee Event of Default provided that Lessee promptly commences and thereafter diligently pursues such cure.

8.2 Performance by Third Party.

8.2.1 The Government acknowledges that the Amended and Restated Indenture and/or the Leasehold Mortgages may contain a power of attorney from the Lessee in favor of the Trustee (and for the benefit of the Credit Provider) pursuant to which the Trustee, the Credit Provider and/or the Leasehold Mortgagees shall have the right, upon the occurrence of an "Event of Default" under the Indenture, to exercise certain of the Lessee's rights as tenant under this Lease. The Government agrees to recognize such power of attorney and any similar power of attorney granted to a future Leasehold Mortgagee, and to accept the performance by a Leasehold Mortgagee (or its assignee) as tenant under this Lease pursuant to such power of attorney; provided, however, the Leasehold Mortgagee or its assignee shall not be deemed to have assumed the Lessee's obligations as tenant under this Lease by virtue of the Leasehold Mortgagee or its assignee exercising its rights under such power of attorney unless and until such party has completed a foreclosure of the Leasehold Mortgage or accepted an assignment of this Lease and Lessee's rights and obligations hereunder in lieu of foreclosure.

8.2.2 The Government shall afford each Leasehold Mortgagee (including the Trustee and the Credit Provider) of whom it receives notice an opportunity to cure a Lessee Event of Default, as set forth in Article 21 below.

8.3 Tolling of Period During Dispute Resolution. Notwithstanding anything to the contrary herein or in the Amended and Restated Operating Agreement, no breach or default shall be deemed to have occurred for any period of time during which the Parties are attempting in good faith to resolve a dispute, pursuant to the procedures provided for in Section 22 of this Lease in relation to the acts or omissions which are the subject of the alleged default or breach. If, pursuant to dispute resolution, the breach or default is determined to have occurred, then the applicable Party's period for cure shall not begin until the day after the final decision on the dispute is issued.

8.4 Force Majeure.

8.4.1 Neither Party shall be in default under this Lease if the Party's performance (or the performance of the Lessee's obligations by a Leasehold Mortgagee) is delayed or prevented by or due to events of Force Majeure.

8.4.2 The term "Force Majeure" shall mean, any delay in completing the work or performing any subject obligation which arises from causes beyond the control and without the fault or negligence of the delayed Party and/or Affiliates. Examples of such causes include—

- (i) Acts of God or of the public enemy,
- (ii) Acts of any Governmental Authority in either its sovereign or contractual capacity,
- (iii) Fires,
- (iv) Floods,
- (v) Epidemics,
- (vi) Quarantine restrictions,
- (vii) Strikes,
- (viii) Freight embargoes,
- (ix) Unusually severe weather, or
- (x) Delays of subcontractors or suppliers at any tier arising from causes beyond the control and without the fault or negligence of the delayed Party and/or its Affiliates and the subcontractors or suppliers.

8.4.3 In the case of delay due to Force Majeure, the time within which the Party must comply with any of the terms, covenants and conditions of this Lease shall be extended by a period of time equal to the period of time that performance by the Party is delayed or prevented by the causes specified above, provided that within thirty (30) days of the commencement of the cause of delay the Party shall have notified the other Party of the existence of such cause of delay.

8.5 Limitation on Termination/Remedies.

8.5.1 Upon the occurrence of a Lessee Event of Default, the Government shall have the right to terminate this Lease only in strict accordance with the provisions of this Lease. The Government shall have no right to terminate this Lease for convenience or otherwise, except as set forth herein.

8.5.2 Regardless of whether a default has occurred hereunder, the Lessee and the Government may, with the prior written consent of the Leasehold Mortgagees, elect to terminate this Lease at any time by written agreement signed by the Lessee and the Government.

8.5.3 In addition to any other rights or remedies set forth herein, upon the occurrence of a Lessee Event of Default or a breach of this Lease by the Government, the non defaulting Party shall have all of its rights and remedies at law or in equity, except (a) as between the Government and San Diego Family Housing, LLC to the extent such rights and remedies

are limited in the Amended and Restated Operating Agreement, and (b) this Lease shall not be terminated without complying with the provisions of Section 8.7 and Article 21 below.

- 8.6 No Waiver. No failure by either Party to insist upon the strict performance of any covenant, agreement, term or condition of this Lease by the other Party to be performed, or to exercise any permitted right or remedy consequent upon a default therein, and no acceptance of partial performance during the continuance of any such default shall constitute a waiver by the non-defaulting Party of such default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either Party, and no default therein, shall be waived, altered, modified or terminated except by written instrument executed by the non-defaulting Party. No waiver of any default shall otherwise affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default therein.
- 8.7 New Lease. If this Lease is terminated then, upon the request of the Leasehold Mortgagee within thirty (30) days following such termination, Government shall promptly enter into a new lease with such Leasehold Mortgagee or its assignee (subject to the provisions of Section 21.4.1 below regarding multiple Leasehold Mortgagees), which new lease (1) shall be effective as of the date of the termination of this Lease, (2) shall be for a term expiring as of the last day of the term of this Lease in effect at the time of such termination, and (3) except as otherwise set forth herein, shall be on the same terms and conditions as this Lease (including any provisions for renewal or extension of the term of this Lease); provided, the foregoing thirty (30) day time period for the Leasehold Mortgagee to request a new ground lease shall be extended at the Leasehold Mortgagee's election (exercised by delivering notice to the Government prior to the end of such thirty (30) day period) to one hundred twenty (120) days provided the Leasehold Mortgagee or its assignee shall be responsible for the payment of all rent and perform all other obligations which would have accrued under this Lease during such one hundred twenty (120) day period had this Lease remained in effect during such one hundred twenty (120) day period. The parties intend that such new lease shall have the same priority relative to other rights or interests to or in the Premises, or any portion thereof, as this Lease, and the Government shall discharge or cause to be subordinated to such new lease any lien or encumbrance created by the Government which is specifically required by the terms hereof to be subordinated to this Lease or enter into a subordination and nondisturbance agreement with respect thereto. Notwithstanding anything to the contrary herein, this Section 8.7 shall not be available to, or enforced by any Leasehold Mortgagee who is the Lessee (or the parent of the Lessee), whose action or inaction gave rise to the Lease termination.

9. TAXES

- 9.1 Responsibility for Taxes. During the Term, the Lessee shall be responsible for the payment of all taxes, assessments and similar charges on the Premises attributable to the Term of this Lease, prior to such amounts becoming delinquent.
- 9.2 Intentionally deleted.
- 9.3 Payment in Installments. If, by law, any taxes, assessments and similar charges payable by Lessee hereunder may be paid in installments at the option of the taxpayer, then Lessee may exercise such option to pay the same in installments as they may become due during the Term, so long as all such installment payments are required to be made prior to the expiration of the Term.
- 9.4 Right to Contest. The Government and the Lessee shall each have the right, at its own cost and expense, to seek to contest or have reviewed, reduced, equalized, or abated any assessment related to taxes payable by the contesting Party. The contesting Party shall post security (with the Trustee and/or the Leasehold Mortgagee if any of the Obligations remain outstanding) in the amount of such contested taxes or assessments, plus estimated costs, penalties and interest, or post a bond of a responsible corporate surety in such amount or such higher amount as is required to stay the obligation to pay such taxes and prevent any penalty. Notwithstanding anything to the contrary contained in this Section 9.4, the contesting Party shall be deemed to have satisfied the requirement of posting the security required under this Section 9.4 if such security is posted with the non-contesting Party, the Trustee or the taxing authority, as the case may be. Upon the termination of such proceedings, the contesting Party shall pay the amount of such taxes or part thereof as finally determined in such proceedings, together with any costs, fees (including attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, the contesting Party may cause the release of any bond or other security given in connection with such contest. If at any time payment of the whole or any part of such tax or assessment shall become necessary in order to prevent the termination by sale or otherwise of the right of redemption of the Premises, or to prevent eviction of the Lessee because of nonpayment, then the contesting Party shall timely pay to the taxing authority the amount necessary to prevent such termination or eviction and deliver to the non-contesting Party within ten (10) days thereafter receipted bills or receipts endorsed by the tax collecting authority, and failing such delivery the non-contesting Party shall have the right so to pay the taxing authority. Any such payment, and any costs or expenses incurred by the non-contesting Party in connection therewith (including reasonable attorneys' fees, but not amounts that such non-contesting Party is otherwise responsible to pay hereunder) shall be promptly paid by the contesting Party to the non-contesting Party within twenty (20) days after demand by the non-contesting Party.

10. SURRENDER OF PREMISES

- 10.1 Upon expiration of this Lease, or any extended term, or upon any termination of this Lease (subject to the provisions of Section 8.7 above), the Lessee shall discontinue its operations on the Premises and vacate the Premises.
- 10.2 On or before the date on which the Term of this Lease expires, Lessee shall (a) promptly surrender to the Government possession of the Premises, including the Improvements, in good, clean order and repair (ordinary wear and tear excepted), (b) remove from the Improvements all of Lessee's personal property, and (c) repair and restore the Premises after any such removal.

11. ENVIRONMENTAL PROTECTION

- 11.1 Compliance with Laws. The Government and Lessee shall comply with all applicable Environmental Laws.

- 11.1.1 The term "Environmental Laws" means any past, present or future federal, state, or local statutory or common law or any regulation, ordinance, code, plan, order, permit, grant, restriction or agreement issued, entered, promulgated or approved thereunder, relating to (a) the use, generation, manufacture, installation, release, discharge, storage or disposal of Hazardous Materials, (b) wetlands, (c) environmental protection, (d) human health or safety or (e) endangered species.

- 11.1.2 Except as otherwise provided below in this Section 11.1.2, the term "Hazardous Materials" means, collectively, any hazardous or toxic materials, substances or wastes as now or hereafter designated or regulated under any law, statute, ordinance, rule, regulation, order or ruling of any agency or the State, or any local governmental authority, including, without limitation, (a) petroleum, (b) asbestos, (c) polychlorinated biphenyls, (d) radioactive materials, (e) radon gas or (f) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste" or "toxic substances" or words of similar impact under any Applicable Environmental Laws, including but not limited to, Federal Water Pollution Act, as amended, 33 U.S.C. § 1251 *et seq.*, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, and the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 *et seq.* The term "Hazardous Materials" expressly excludes any material referenced at 40 CFR Section 261.4(b)(1), the "household waste" exclusion under RCRA.

11.2 Environmental Permits. Lessee shall be responsible for obtaining any environmental permits necessary for the Development at its cost and expense, whether or not there are any existing permits issued to the Government.

11.3 Indemnity and Remediation.

11.3.1 The term "Environmental Spill" shall mean a release, threatened release, discharge, emission, spill, storage, handling, use or disposal of Hazardous Materials in violation of Environmental Laws or otherwise resulting in an obligation to remediate or an action for damages during the Term of this Lease.

11.3.2 Lessee shall indemnify, save, and hold the Government and the Leasehold Mortgagees harmless from, any claims for damages or other costs, expenses, liabilities, fines, or penalties suffered by or claimed against the Government, resulting in any way from any Environmental Spill resulting from any act or omission of Lessee, its officers, agents, employees, contractors, subcontractors or any sublessees or licensees, or the invitees of any of them.

11.3.3 If any Environmental Spill results from any act or omission of Lessee, its officers, agents, employees, contractors, subcontractors or any sublessees or licensees, or the invitees of any of them, or if an Environmental Spill first occurs, (a) with respect to the Phase I Premises, at any time during the Phase I Term, and (b) with respect to the Phase II Premises, at any time during the Phase II Term, then Lessee shall remediate such Environmental Spill in accordance with Environmental Laws and, in any event, to the satisfaction of the appropriate environmental regulatory agency.

11.3.4 The term "Ordnance Materials" shall mean anything related to ordnance designed to cause damage to persons or material through explosive force, incendiary action or toxic effects, including, but not limited to ordnance, explosives, munitions, munitions fragments or other devices, whether such devices are unexploded (i.e., primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, persons, or material and remain unexploded by either malfunction, design or other cause), or exploded. The term "Ordnance Condition" shall mean any presence, explosion, threatened explosion, discharge, threatened discharge, emission, spill, storage, handling, use, removal or disposal of any Ordnance Materials.

11.3.5 The indemnity contained in this Section 11.3 shall survive the expiration or sooner termination of this Lease.

11.3.6 The Lessee, except as otherwise provided herein, does not assume any liability or responsibility for environmental impacts, claims, liabilities or

damages caused by any Environmental Spill or Ordnance Condition occurring prior to, and that may continue throughout, the Phase I Term on or arising from the Phase I Premises, and prior to, and that may continue throughout, the Phase II Term on or arising from the Phase II Premises (collectively, "Pre-existing Conditions"), and has no obligation under this Lease to undertake the defense with respect to any claim or action, whether in existence now or brought in the future, alleging environmental impacts, claims, liabilities or damages arising solely out of any Pre-existing Conditions, or to undertake any remediation relating to any such Pre-existing Conditions. Except for the obligations of the Lessee under Sections 11.5, 11.6 and 11.7 relating to ACM and LBP, the Government is and shall remain responsible for all Pre-existing Conditions, including, without limitation, remediation obligations and all costs, expenses, damages, liabilities or claims arising from or relating to any such Pre-existing Conditions.

11.3.6.1 The Government shall retain liability for damages or exposure and responsibility for remediation which is caused by or arises from any past or future activity of the Government, including but not limited to Ordnance Conditions, which occurred, (a) with respect to the Phase I Premises prior to the Phase I Commencement Date, and (b) with respect to the Phase II Premises prior to the Phase II Commencement Date.

11.3.6.2 Pursuant to its delegated authority to conduct remedial response activities under CERCLA, the Government agrees to continue ongoing remedial efforts including those related to remediation of unexploded ordnance at the Murphy Canyon premises, including investigation, removal, and site monitoring activities. Such undertaking will be performed using appropriate Department of Defense/Department of Navy authorities and resources upon notification by the Lessee or local authorities having jurisdiction over the Murphy Canyon premises. Regarding any remedial response activities to be conducted at the Murphy Canyon premises, the Government will attempt to perform the work in the least intrusive manner, with due regard for the dangers associated with such undertaking.

11.3.7 The Lessee's agreements contained in this Article 11 do not extend to claims for damages to the extent caused by the gross negligence or willful misconduct of any officers, agents or employees of the Government or the Government. The Government and the Lessee will give each other notice of any claim against it covered by this Article 11 as soon after learning of it as practicable.

11.4 Inspection. The Government's rights under this Lease specifically include the right of Government officials to inspect the Premises, as provided in Article 14, upon reasonable notice and without unreasonable interference with Lessee or Lessee's tenants, for compliance with environmental, safety, and occupational

health laws, rules, regulations, and standards, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections.

- 11.5 Asbestos Containing Material. The Government shall not be responsible for any handling, removal, disposal or containment of asbestos or asbestos containing material (collectively, the "ACM"). Provided, however, the Government shall be responsible for any claims or liability based upon or relating to the presence of ACM introduced to the Phase I Premises on or before the Phase I Commencement Date and the Phase II Premises on or before the Phase II Commencement Date, or after the expiration or earlier termination of this Lease brought by third parties against the Government or Lessee, Lessee's partners, members, officers, directors, employees, agents, grantees, successors and assigns and the Leasehold Mortgagees (the "Indemnified Parties") (but expressly excluding any claims or liability to the extent resulting from Lessee's failure to properly dispose of all ACM in the Improvements). The Lessee shall be responsible for: (i) removal and disposal of all ACM in the Improvements (including residential housing) on the Premises; and (ii) any claims or liability to the extent resulting from Lessee's failure to properly remove and dispose of all ACM in the Improvements. Lessee shall incorporate an ACM removal, disposal and abatement plan into Lessee's plans for renovation and/or demolition of improvements submitted to the Government for approval. The asbestos disposal plan shall, among other things, identify the proposed disposal site for the ACM. Removal and disposal of ACM must be carried out in strict compliance with all applicable Federal, State and local laws, rules, regulations, and standards.
- 11.6 Lead Based Paint. The Lessee recognizes and acknowledges that lead-based paint materials ("LBP") may be present on facilities within the Premises. The Lessee further acknowledges the required disclosure in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C.A. 4852d (Title X) of the presence of any known LBP and/or LBP hazards in housing constructed prior to 1978 on the Premises and shall sign Title X Lead-Based Paint Disclosure Statement. As used here, "housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing).
- 11.7 Responsibility for Lead Based Paint. The Government shall not be responsible for any removal or disposal of LBP in the Improvements. Provided, however, the Government shall be responsible for any claims or liability based upon or relating to the presence of LBP introduced to the Phase I Premises on or before the Phase I Commencement Date and the Phase II Premises on or before the Phase II Commencement Date, or after the expiration or earlier termination of this Lease brought by third parties against the Government or the Indemnified Parties (but expressly excluding any claims or liability to the extent resulting from Lessee's failure to properly dispose of all LBP in the Improvements). The Lessee shall be responsible at its cost and expense for: (i) removal and disposal of all LBP in the Improvements (including residential housing) on the Premises; and (ii) any claims

or liability to the extent resulting from Lessee's failure to properly remove and dispose of all LBP in the Improvements. Lessee shall incorporate a LBP removal, disposal and abatement plan into Lessee's plans for renovation of improvements submitted to the Government for approval. The LBP removal, disposal and abatement plan shall, among other things, identify the proposed disposal site for the LBP. Such removal and disposal must be carried out in strict compliance with all applicable Federal, State and local laws, rules and regulations.

11.8 Compliance with Laws. The Lessee shall strictly comply with all applicable Federal (including 10 U.S.C. § 2692), State, and local laws, ordinances, rules, regulations, and other requirements relating to occupational safety and health, the handling and storage of Hazardous Materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of Hazardous Materials, as it relates to the Premises, including residential housing.

11.9 Compliance with RCRA. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act, as amended ("RCRA") or its State equivalent and any other applicable laws, ordinances, rules, and regulations, as it relates to the Premises, including residential housing. The Lessee will not accomplish any treatment, storage or disposal of hazardous waste requiring a permit under RCRA unless the Lessee is in possession of a valid permit issued to it under RCRA. The Lessee shall not treat, store, or dispose of any hazardous waste under, pursuant to, or in reliance upon any permit issued to the Government. The Lessee shall be liable for any violations of these requirements during the Term by any tenants, and shall be liable for the cost of proper disposal of any hazardous waste generated by any tenants (other than military tenants) during the Term in the event of failure by the tenants to dispose properly of such wastes. Nothing herein shall preclude Lessee's pursuit of all available remedies and recourse against any sublessee, including military tenants.

11.9.1 The Lessee shall provide, at its own expense, such Hazardous Material storage facilities as may be necessary relating to the Lessee's use or release of any toxic or hazardous waste, substance or materials, which storage facilities shall comply with all applicable laws and regulations. Government Hazardous Materials storage facilities will not be available to the Lessee without approval by the Government. Any storage of Hazardous Materials by Lessee must be in accordance with 10 U.S.C. § 2692 or other applicable laws and regulations, and Lessee shall be responsible for obtaining any permit required, without regard for ownership of the facilities.

11.9.2 Government accumulation points for Hazardous Materials and other materials and wastes will not be used by the Lessee without approval of the Government. Neither will the Lessee permit its Hazardous Materials to be commingled with Hazardous Materials of the Government without approval of the Government.

11.9.3 Any violation of the requirements of this Section 11.9 shall constitute a material breach of a material provision of this Lease.

- 11.10 Lessee's Records. The Lessee shall maintain and, during Lessee's normal business hours, make available to the Government all records, inspection logs, and manifests that track the Lessee's generation, handling, storage, treatment and disposal of Hazardous Materials, as well as all other records required by applicable laws relating to the Lessee's environmental clean-up and remediation of the Premises. The Government will promptly, upon receipt, supply similar information to the Lessee with regard to any clean-up and remediation by the Government with respect to the Premises or adjoining property. The Government reserves the right to inspect any Hazardous Materials storage facility of the Lessee and the Lessee's records for compliance with all applicable laws relating to the generation, handling, storage, treatment and disposal of Hazardous Materials, as well as to the discharge or release of Hazardous Materials. Violations will be reported by the Government to appropriate regulatory agencies, as required by applicable laws. The Lessee will be liable for the payment of any fines and penalties that may accrue as a result of the actions of the Lessee. The Government will be liable for the payment of any fines and penalties that may accrue as a result of the actions of the Government.
- 11.11 Hazardous Material Response Plan. A plan for responding to Hazardous Material spills on or relating to the Premises is attached hereto as Exhibit H (the "**Hazardous Materials Response Plan**"). The Hazardous Materials Response Plan shall be updated from time to time as may be necessary to comply with changes in site conditions or applicable laws and such updates shall be approved by the Government and, to the extent required, all agencies having regulatory jurisdiction over such plan. The Hazardous Materials Response Plan shall be independent of the Government's spill prevention and response plans. Except for initial fire response and/or spill containment, the Lessee shall not rely on the use of Government personnel or equipment in execution of its Hazardous Materials Response Plan. The Lessee has filed a copy of the initial approved Hazardous Materials Response Plan with the Government and shall promptly file any approved amendments thereto with the Government. If the Government provides any personnel or equipment, whether for initial fire response and/or spill containment or otherwise on request of the Lessee or because the Lessee was not, in the reasonable opinion of the Government, conducting timely response, containment and cleanup actions, then the Lessee agrees to reimburse the Government for its reasonable cost in connection with such assistance in accordance with all applicable laws. Further, to the extent required by applicable laws, the Lessee agrees to comply with the requirements of the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001-11050) and the Pollution Prevention Act (42 U.S.C. § 13101-13109).
- 11.12 Pesticide Management Plan. Prior to the storage, mixing, or application of any pesticide (as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA")) by Lessee (as opposed to a third party contractor),

the Lessee shall prepare a plan for storage, mixing and application of pesticides ("Pesticide Management Plan"). The Pesticide Management Plan shall be sufficient to meet all applicable laws. The Lessee shall store, mix, and apply all pesticides within the Premises only in substantial compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.

- 11.13 Pollution Control. The Lessee shall comply with all requirements of the Federal Water Pollution Control Act ("FWPCA"), the National Pollutant Discharge Elimination System ("NPDES"), and any applicable State or local water pollution control requirements. If the Lessee discharges wastewater to a publicly-owned treatment works, the Lessee must submit an application for its discharge ("Pretreatment Permit Application") prior to the commencement of such discharge. The Lessee will be responsible for meeting all applicable wastewater discharge permit standards. Any wastewater discharge by the Lessee under the authority of any NPDES permit, pretreatment permit or any other permit issued to the Lessee must be in accordance with such permit. The Lessee or its tenants shall make no use of any septic tank installed on the Premises. The Lessee agrees to inform and coordinate with the Government regarding all wastewater discharge activities.
- 11.14 Atomic Energy Act. The Lessee shall notify the Government of the Lessee's intent (a) to possess, store, or use any licensed or licensable source or by-product materials, as those terms are defined under the Atomic Energy Act and its implementing regulations; (b) to possess, use, or store radium; and (c) to possess or use any equipment producing ionizing radiation, subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment upon the Premises. Upon notification, the Government may impose such reasonable requirements, including prohibition of possession, use, or storage of such materials, as deemed reasonably necessary to adequately protect human health and the environment. Thereafter, the Lessee must notify the Government of the presence of all licensed or licensable source or by-product materials, of the presence of all radium, and the presence of all equipment producing ionizing radiation, subject to specific licensing requirements or other individual regulation; provided, however, that the Lessee need not make either of the above notifications to the Government with respect to source and by-product material which is exempt from regulation under the Atomic Energy Act.
- 11.15 Protection of Environment. The Lessee and the Government will use all reasonable means available to protect the environment and natural resources in accordance with all Environmental Laws and if a violation of any Environmental Law occurs arising from the Lessee's or the Government's activities, the Party performing such activity shall be fully liable under applicable Environmental Law for any such damage caused by such Party.

11.16 Mutual Covenants.

- 11.16.1 If the actual or suspected release, disposal, placement or existence of Hazardous Materials on, about, under or in the Premises in violation of applicable laws comes to the knowledge of the Lessee or the Government, then the Party with such knowledge shall promptly notify the other party (with a copy to each Leasehold Mortgagee) of same.
- 11.16.2 Neither the Government nor the Lessee, nor their respective agents, employees, tenants, contractors or subcontractors, shall cause or permit Hazardous Materials to be brought upon, kept or used in, on, or about the Premises except as permitted under and in full compliance with all applicable laws.
- 11.16.3 The Government and the Lessee shall promptly notify the other party (with a copy to each Leasehold Mortgagee) of any inquiry, test, investigation or enforcement proceeding by or against the Government or the Lessee involving the Premises and Hazardous Materials.
- 11.16.4 The Government and the Lessee shall promptly provide to the other party upon receipt the results of any inquiry, test or investigation conducted by the Government or the Lessee or the tenants, employees, agents, contractors, or subcontractors to determine the presence of Hazardous Materials on, in, under or about the Premises.
- 11.16.5 Each party hereto hereby covenants that it shall not take any remedial action related to Hazardous Materials located in or about the Premises (except in an emergency) and shall not enter into a settlement, consent decree or compromise in response to any claim related to Hazardous Materials without first notifying the other party hereto in writing of the remediating party's proposed action and affording the other party a reasonable opportunity to appear, intervene or otherwise participate in any discussion or proceeding for the purposes of protecting such other party's interest in the Premises.

- 11.17 Natural and Cultural Resources Protection. The National Historic Preservation Act, 16 U.S.C. 470a ("NHPA"), and the Archaeological Resources Protection Act, 16 U.S.C. 470 et seq. ("ARPA"), impose certain obligations on the Government to preserve historic and/or archaeological properties. The Lessee shall at all times comply with the Management Plan (as amended, the "Management Plan") referenced in that certain Amended and Restated Property Management Agreement executed as of May 1, 2003, by and between the Lessee and Lincoln BP Management, Inc., with respect to natural and cultural resource protection and historic tree preservation, and shall not knowingly and intentionally remove or disturb or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity in violation of NHPA or ARPA. In the event such items are

discovered on the Premises, the Lessee shall immediately notify the Government and protect the site and the material from further disturbance until the Government gives clearance to proceed, which clearance shall not be unreasonably withheld, conditioned or delayed. The Government shall cooperate with the Lessee to avoid material interference or delay with respect to the Lessee's development of the Premises.

- 11.18 Categorical Exclusions. The Lessee recognizes that the Categorical Exclusion Statements that were prepared on behalf of the Government for the development of the Phase II Land pursuant to the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.), set forth certain requirements regarding any future development of the Phase II Land that is outside of the original scope of work provided for in this Lease, the Amended and Restated Operating Agreement and the Leasehold Mortgage. Accordingly, as further provided in Section 17.4 below, the Lessee shall coordinate future material modifications, outside such original scope of work, with the Government in Lessee's effort to comply with all applicable laws and regulations.

12. OPERATION AND MAINTENANCE OF PREMISES

- 12.1 General Operation and Maintenance. The Lessee shall operate and maintain the Premises as detailed in this Lease and the Leasehold Mortgages. The Lessee shall, at all times during the Term and at no expense to the Government, except as otherwise expressly provided herein, protect, preserve, maintain and repair the Premises, and keep them in good order and condition (reasonable wear and tear and damage by casualty excepted); provided that, if any portion of the Premises is not in good order and condition on the applicable Commencement Date, such portion of the Premises shall be improved as provided in this Lease and, after completion of such improvement, be kept in good order and condition. The Lessee shall at all times exercise commercially reasonable due diligence in protecting the Premises against damage or destruction, except in connection with demolition of that portion of the Improvements that is to be performed in order to complete the Development.
- 12.2 Operating Expenses and Taxes. Except as otherwise provided in Article 9, the Lessee shall pay or cause to be paid, the bills and obligations of the Development, including taxes as described in Article 9 above, prior to the same becoming delinquent, so as to keep the Development solvent and free from liens, other than those incurred in the ordinary course of business or as expressly permitted by (a) the Government (such permission not to be unreasonably withheld, conditioned or delayed), (b) this Lease, or (c) so long as San Diego Family Housing, LLC is the Lessee hereunder, the Amended and Restated Operating Agreement.
- 12.3 Additional Maintenance Obligations. In addition to Lessee's general maintenance obligations set forth in Section 12.1 above, except as otherwise provided herein, the Lessee shall at all times maintain all roads, streets, curbing, sidewalks, parking areas, access drives and drainage appurtenant thereto and within the Premises in

good condition (reasonable wear and tear and damage by casualty excepted) and keep them free of debris and obstructions of any kind; provided that any portion of such appurtenances that is not in good condition or free from debris or obstructions on the applicable Commencement Date shall be improved as provided in the Amended and Restated Operating Agreement and, after completion of such improvement, be kept in good condition and free of debris and obstructions (reasonable wear and tear and damage by casualty excepted).

12.4 Pest and Rodent Prevention Program. The Lessee will establish a preventative program against pests and rodents and will take prompt corrective steps upon discovery of insect or rodent infestation.

12.5 ANY REAL OR PERSONAL PROPERTY OF THE GOVERNMENT DAMAGED OR DESTROYED BY THE LESSEE INCIDENT TO THE LESSEE'S USE AND OCCUPATION OF THE PREMISES SHALL BE PROMPTLY REPAIRED OR REPLACED BY THE LESSEE TO THE REASONABLE SATISFACTION OF THE GOVERNMENT. IN LIEU OF SUCH REPAIR OR REPLACEMENT, THE LESSEE SHALL, IF SO REQUIRED BY THE GOVERNMENT, PAY TO THE GOVERNMENT MONEY IN AN AMOUNT SUFFICIENT TO COMPENSATE FOR THE ACTUAL COSTS INCURRED BY THE GOVERNMENT BY REASON OF DAMAGE OR DESTRUCTION OF GOVERNMENT PROPERTY, INCLUDING NATURAL RESOURCES. THIS CLAUSE EXCLUDES PROPERTY SPECIFICALLY IDENTIFIED BY THE GOVERNMENT FOR DEMOLITION AND PROPERTY TRANSFERRED TO THE LESSEE PURSUANT TO SECTION 1 HEREOF.

13. COMPLIANCE WITH APPLICABLE LAWS

13.1 Compliance with Applicable Laws. The Lessee and the Government shall at all times during the term of this Lease faithfully observe and comply with, at their sole cost and expense, the provisions of all applicable laws, particularly those provisions concerning the protection of the environment and pollution control and abatement and occupational safety and health, whether such provisions are now in force or may, at any time in the future, be enacted or directed and, by law, become applicable to and enforceable against the Premises.

13.2 Right to Contest. The Lessee shall have the right to contest, by appropriate proceedings in the name of the Lessee or the Government, or in the names of both of them, without cost or expense to the Government, the validity or application of any law, ordinance, certificate, order, rule, regulation or requirement, provided that the delay in conformance to, compliance with, observance of, or avoidance or elimination of violation of the same, attendant upon and pending the prosecution of such proceedings, shall not subject the Government to any fine, penalty or criminal liability. If any lien, charge or civil liability, but not criminal liability, is incurred by reason of non-compliance, the Lessee may nevertheless make the contest aforesaid and delay compliance as aforesaid, provided that the Lessee furnishes to the Government security reasonably satisfactory to the Government,

against any loss or injury by reason of such non-compliance or delay therein and prosecutes the contest aforesaid with due diligence and dispatch. Upon request by the Lessee, the Government shall execute and deliver any and all such documents or instruments and shall take any and all such other action as shall be necessary or proper to permit the Lessee to so contest the validity or application of any such law, ordinance, order, rule, regulation or requirement, or to facilitate the conduct of such contest by the Lessee.

14. ACCESS AND INSPECTION

- 14.1 Right to Enter Premises. Any agency of the United States, its officers, agents, employees, and contractors may enter upon the Premises and the Development at all times and for any purposes not inconsistent with Lessee's quiet use and enjoyment of them under this Lease, including, but not limited to, the purpose of inspection. Except with respect to the real estate officer in charge of construction (the "ROICC") or officers, agents, employees or contractors of the Government or any agency of the United States providing security, emergency, fire, police, or other similar services to the Premises, such entry will be made during regular business hours and with at least twenty-four (24) hours' prior written notice of the Government's intention to do so, unless the Government reasonably determines that entry without prior notice is required due to an imminent threat of injury to person or property. The Lessee shall have no claim solely on account of any such entry on the Premises against the Government, United States or any officer, agent, employee, or contractor.
- 14.2 Emergency Access. Notwithstanding the foregoing, the Government's right of access under Section 14.1 shall not be limited to regular business hours and the Government shall not be required to give prior notice to Lessee in the event of an emergency situation in which entry during such hours and prior notice is not reasonably practical.
- 14.3 Testing. Any entry, investigations and surveys, drilling, test pitting, test soil borings and other activities taken by the Government under this Lease on lands utilized for residential purposes shall be conducted in a manner that is as inconspicuous as possible and with the least disruption to the tenants as practicable. Any monitoring wells, pumping wells and treatment facilities required by the Government under this Lease on lands utilized for residential purposes shall be designed and installed to be as inconspicuous as practicable.
- 14.4 Repair/Disruption. When exercising its rights under this Article 14, the Government and its officers, employees, agents, contractors (other than Lessee or any Affiliate of Lessee) and consultants shall (a) promptly repair any damage caused by the exercise of such rights, (b) not exercise such rights with unreasonable frequency, (c) avoid, to the extent practical, any interference with the Lessee's or its tenant's use of the Premises, and (d) permit the Lessee or its designee to accompany the Government on the Premises while the Government is present thereon.

- 14.5 MCAS Miramar Access. The Lessee shall have unrestricted right, subject to the rules and security procedures established by the Government which are applicable to nonmilitary third party contractors uniformly applied at the Marine Corps Air Station, Miramar ("MCAS Miramar"), of access to and use of the streets, roads, easements and all electric, telephone, gas, water and sewer facilities now or in the future serving, adjoining and/or appurtenant to the land, existing improvements or additional improvements relating to the four (4) housing units located on Orion Court at MCAS Miramar (the "Orion Court Units"), which units are located on a portion of the Phase II Land described on Exhibit A-2 attached hereto and made a part hereof.

15. GENERAL INDEMNIFICATION BY LESSEE

- 15.1 Definition of Damage. For purposes of this Article 15, the term "Damage" shall mean any claim, loss, personal injury, death or property damage that arises from or relates to (a) the condition or state of repair of the Premises during the Term, (b) the Lessee's possession and/or use of the Premises during the Term, or (c) any activities conducted or services furnished by Lessee in connection with or pursuant to this Lease during the Term. Notwithstanding anything in the foregoing to the contrary, the term "Damage" shall not mean any claim, loss, personal injury, death or property damage that arises from or relates to any Pre-existing Conditions.
- 15.2 Liability. Except as otherwise expressly provided in this Lease and except to the extent any Damage arises from or relates to the negligence or misconduct of the Government or its contractors (other than Lessee or any Affiliate of Lessee) or the Leasehold Mortgagees, or the breach of duty or breach of applicable laws by the Government or the Leasehold Mortgagees:
- 15.2.1 the Government shall not be responsible for any Damage;
- 15.2.2 the Lessee agrees to assume all risks of Damage;
- 15.2.3 the Lessee expressly waives all claims against the Government for any such Damage; and
- 15.2.4 the Lessee further agrees to indemnify, save, and hold harmless the Government, its officers, agents and employees and the Leasehold Mortgagees from and against all suits, claims, demands or actions, liabilities, judgments, costs and reasonable attorneys' fees arising out of or related to any Damage.
- 15.3 Survival. This Article 15 shall apply only to the Lessee responsible for operation of the Premises when such Damage occurs and shall not apply to any successor of the Lessee except with respect to the obligations arising during the successor's operation of the Premises.

16. RISK OF LOSS/INSURANCE/CONDEMNATION

16.1 Risk of Loss. During the Term, the Lessee shall, without prejudice to any other rights of the Government, bear all risk of loss or damage or destruction to the Premises, including damage to any building(s), improvements, fixtures or other property, arising from any causes whatsoever, provided, however, that any loss, damage or destruction caused by or relating to the acts of the Government shall be the responsibility of the Government to the extent not required to be insured against by the Lessee under (a) this Lease or (b) the Amended and Restated Operating Agreement.

16.2 Insurance.

16.2.1 Commercial General Liability. During the Term of this Lease, the Lessee shall maintain commercial general liability insurance on an "occurrence basis" (provided such coverage is reasonably obtainable) against claims for "personal injury," including without limitation, bodily injury, death or property damage, occurring upon, in or about the Premises, including any buildings thereon and adjoining sidewalks, streets, and passageways. Such insurance shall afford immediate protection in the minimum amounts stated herein on the applicable Commencement Date, and at all times during the Term of this Lease, with limits of liability in amounts approved from time to time by the Government, which approval shall not be unreasonably withheld, conditioned or delayed, but not less than the amounts required under the First Mortgage Loan Documents. Such insurance shall also include coverage against liability for bodily injury or property damage arising out of the acts or omissions by or on behalf of any person or organization, or involving any owned, non-owned, leased or hired automotive equipment in connection with the Lessee's activities. The insurance carried and maintained by the Lessee pursuant to this Section shall name the Government as an additional insured, and provide coverage to protect the Government from any damage and liability for which the Lessee is liable or responsible or agrees to hold harmless and indemnify the Government under this Lease. Proceeds under all policies of insurance carried and maintained to provide the coverage required by this Section 16.2.1 shall be available only for that purpose.

16.2.2 Worker's Compensation. During the Term of this Lease, the Lessee shall maintain and shall cause its contractors to maintain, if and to the extent required by law, workers' compensation and employer's liability or similar insurance in form and amounts required by law.

16.2.3 Requirements. All policies of insurance which this Lease requires the Lessee to carry and maintain or cause to be carried or maintained pursuant to this Section 16.2 shall be effected under valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this Lease, issued by insurers of recognized responsibility. All policies

issued by the respective insurers for commercial general liability insurance and for the broad form of extended coverage insurance provided for above in this Section shall be for the mutual benefit of the Government, the Lessee and each Leasehold Mortgagee, and will name the Government and each Leasehold Mortgagee as an additional insured. Each such policy shall provide that any losses shall (a) be payable notwithstanding any act or failure to act or negligence of the Lessee, the Government or any other person; (b) provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the Government and each Leasehold Mortgagee of written notice thereof; (c) provide that the insurer shall have no right of subrogation against the Government or any Leasehold Mortgagee; and (d) be reasonably satisfactory to the Government and each Leasehold Mortgagee in all material respects. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall only be effective upon at least ten (10) days' written notice to the Government and each Leasehold Mortgagee. The Lessee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by the Lessee under this Section 16 will constitute a failure to comply in a material respect with a material provision of this Lease, and therefore shall constitute a Lessee Event of Default hereunder, subject to the provisions of Article 8.

16.2.4 Certificate of Insurance. The Lessee shall deliver or cause to be delivered to the Government and each Leasehold Mortgagee upon execution of this Lease (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Article 16), a certificate of insurance evidencing the insurance required by this Lease.

16.2.5 Blanket Policies. The Lessee shall have the right to include any of the foregoing required insurance coverages in blanket policies regularly obtained by the Lessee covering its other properties, subject to the Government's and each Leasehold Mortgagee's approval of the form and coverage under such blanket policies, which approval shall not be unreasonably withheld, conditioned or delayed.

16.3 Notice of Damage. In the event that any part of the Premises (including the improvements thereon) shall be damaged (except *de minimis* damage) or destroyed (other than portions of the Premises identified for demolition in connection with the completion of the Development), the risk of which is assumed by the Lessee under Section 16.1 above, the Lessee shall promptly give notice thereof to the Government.

16.4 Restoration/Termination.

16.4.1 Restoration. The Lessee shall, as soon as reasonably practicable after the casualty and receipt of adequate insurance proceeds, restore the damaged

or destroyed property as nearly as possible to the condition which existed immediately prior to such loss or damage, subject to Section 16.4.2 below and the applicable provisions of the First Mortgage Loan Documents.

16.4.2 Termination. The term "Material Damage" shall mean damage or destruction that is so extensive, as determined by the Lessee in its reasonable discretion, that (a) the Premises are incapable of use by the Lessee for its operations or (b) the repairs, rebuilding, or replacement of the damaged or destroyed property cannot be reasonably expected to be substantially completed within nine (9) months after the occurrence of the casualty. In the event of Material Damage, the Lessee may terminate this Lease, with the written consent of each Leasehold Mortgagee, by written notice of termination to the Government. Such termination notice shall be effective as of the date specified therein, which shall be at least thirty (30), but not more than forty-five (45), days after its receipt by the Government.

16.5 Insurance Proceeds.

16.5.1 Termination of Lease. If the Lessee terminates this Lease pursuant to Section 16.4, the Lessee shall apply all available insurance proceeds (a) as set forth in the Leasehold Mortgage (if there is more than one leasehold mortgage, then the terms of Section 21.4.1 below shall determine which Leasehold Mortgage shall apply), or (b) if there is no Leasehold Mortgage, then Lessee shall retain all such proceeds.

16.5.2 No Termination of Lease. If the Lessee does not terminate this Lease pursuant to Section 16.4, the proceeds of any award with respect to fire or casualty insurance (but not any award with respect to business interruption or similar insurance, which shall be retained by the Lessee) shall be deposited with an account controlled by the appropriate Leasehold Mortgagee (as set forth in Section 21.4.1 below) in accordance with the terms of the applicable Leasehold Mortgage (or, if there is no Leasehold Mortgage, then a separate account shall be established by the Lessee) and applied solely to pay the cost of repair or restoration, as the work progresses and provided that a Leasehold Mortgagee may require that such proceeds shall not be disbursed unless there are sufficient sums available to complete the repair and restoration pursuant to this Lease. Upon completion of such work, any remaining fire and casualty insurance proceeds shall be payable to the Lessee, subject to the terms of the First Mortgage Loan Documents.

16.6 Condemnation/Eminent Domain.

16.6.1 Appropriation. The term "Appropriation" shall mean the permanent or temporary taking of all or part of the Premises or Lessee's interest in the Premises, by reason of any exercise of the power of eminent domain, whether by a condemnation proceeding or otherwise, or any transfer of all

or any part thereof or any interest therein in avoidance of an exercise of the power of eminent domain.

16.6.2 Material Appropriation/Termination of Lease. The term "Material Appropriation" shall mean (a) an Appropriation of all or substantially all of the Premises or Lessee's interest in the Premises, as determined by Lessee in its reasonable discretion; (b) an Appropriation of a portion of the Premises or Improvements of such magnitude that it is not economically or practically feasible to restore the Premises or to continue operations therein in an economically feasible or financially viable manner, as determined by Lessee in its reasonable discretion; or (c) an Appropriation during the last five (5) years of the Term. In the event of a Material Appropriation, the Lessee shall have the right to terminate this Lease, with the consent of each Leasehold Mortgagee. Such termination right shall be exercised by giving notice of termination to the Government given within thirty (30) days from the earlier of (i) the date of the exercise of the Appropriation or (ii) the date possession of the portion of the Premises is taken, damaged, or appropriated, and such termination shall be effective as of the date of such Material Appropriation.

16.6.3 Non-Material Appropriation/Repair and Restoration By the Lessee. In the event of an Appropriation that is not a Material Appropriation, all expenses and charges hereunder payable by the Lessee for the portion of the Premises remaining shall be equitably reduced for the remainder of the Term based on the extent to which such Appropriation interferes with the efficient and economical use or operation of the Premises by the Lessee, or any person or entity holding under the Lessee. The Lessee shall make all necessary repairs or alterations to the Premises so as to constitute the remaining portion of the Premises as a complete unit, except that (a) the Lessee shall have no obligation to make such repairs when this Lease is terminated under this Article 16, and (b) if the Appropriation is by the Government, the Lessee shall be obligated to perform such work described above in this sentence only to the extent of proceeds available from the award made as a result of the Appropriation.

16.6.4 Allocation of Award. Any award arising from a permanent or temporary Appropriation shall be allocated and distributed in the following order of priority: (a) if the Lease terminates due to the Appropriation, (i) to the Leasehold Mortgagees in the order of their respective priority (as set forth in Section 21.4.1 below), in payment of the indebtedness secured by their respective Leasehold Mortgage and as provided in their respective Leasehold Mortgage, up to, but not exceeding, the portion of the award allocated to the value of the Lessee's interest in the Premises under this Lease; (ii) to the Lessee and to the Government (as landlord, but not as the condemnor), pro rata, for any expenses or disbursements reasonably and necessarily incurred or paid by such Party for or in connection with the Appropriation proceedings; and (iii) to the Government and the

Lessee, the balance of the award, apportioned equitably; or (b) if this Lease does not terminate due to the Appropriation, (i) to the Lessee for the cost of repairing the Premises; (ii) to the Lessee and to the Government (as landlord, but not as the condemnor), pro rata, for any expenses or disbursements reasonably and necessarily incurred or paid by such Party for or in connection with the Appropriation proceedings; and (iii) to the Government and the Lessee, the balance of the award, apportioned equitably. In the event any award or condemnation does not allocate the award as provided in this Section 16.6.4, the parties will petition the appropriate court for such a determination.

- 16.7 Representation. The Government, the Lessee and each Leasehold Mortgagee shall each have the right to represent their respective interest in each proceeding or negotiation relating to an Appropriation or insurance claim and to make full proof of its claims. Except as otherwise permitted in this Section 16.7, the Government and the Lessee agree not to enter into any agreement, settlement, sale or transfer to or with the condemnor or the insurance provider without notice to and the consent of the Government, the Lessee and each Leasehold Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, claims that the Lessee is permitted to settle without the consent of the Trustee or the Credit Provider under the First Mortgage Loan Documents may be settled by the Lessee without the consent of the Government, provided, however, the Lessee shall give the Government notice of any such claim prior to settlement. The Government and the Lessee shall each execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation and insurance claims.

17. CONSTRUCTION OF IMPROVEMENTS, INSTALLATIONS AND ALTERATIONS

- 17.1 Construction Pursuant to Amended and Restated Operating Agreement. The Lessee shall construct the Development substantially in accordance with the terms of the Amended and Restated Operating Agreement and the terms of the Leasehold Mortgages.
- 17.2 Procedures. All matters of ingress, egress, contractor haul routes, construction activity and disposition of excavated material in connection with this Lease (a) shall be reasonably coordinated with base/installation personnel identified in writing by the Government to Lessee, (b) shall be subject to the terms of this Lease, and (c) shall be subject to the terms of the Amended and Restated Operating Agreement.
- 17.3 Machinery, Equipment and Fixtures. During the Term of this Lease, the Lessee shall have the right, at its expense, to install such of its own machinery and equipment and to attach such of its own fixtures in or upon the Premises as may be necessary or desirable for its use of the Premises pursuant to this Lease; and to

remove such machinery, equipment and fixtures at any time prior to the expiration or earlier termination of this Lease. The Lessee shall have a reasonable period of time, as determined by the Government, but in no event less than ninety (90) days, from the effective date of the expiration or termination of the Term to remove such property.

- 17.4 Material Modifications. The Lessee is hereby specifically authorized to perform the demolition, construction, renovation and repairs contemplated under the Leasehold Mortgage, this Lease and the Amended and Restated Operating Agreement in accordance therewith and herewith. Except as set forth in this Lease, Amended and Restated Operating Agreement and the Leasehold Mortgage, the Lessee shall not materially modify the use or character of the Premises and the Development during the Term of this Lease without prior approval of the Government and each Leasehold Mortgagee (which approval shall be provided in accordance with the terms of the applicable Leasehold Mortgage).

17.5 Plans and Specifications.

17.5.1 Any plans and specifications for any such construction, repair, modification, alterations, installations or additions by the Lessee shall be provided to the Government sufficiently in advance of such construction so as to allow the Government time to review and approve or disapprove such plans and specifications.

17.5.2 If San Diego Family Housing, LLC is not the Lessee, any plans and specifications for any such construction, repair, modification, alterations, installations or additions by the Lessee shall be provided to the Government sufficiently in advance of such construction so as to allow the Government reasonable time (taking into account the scope and nature of such work) to review and approve such plans and specifications.

17.5.3 The Government shall respond within twenty-one (21) calendar days of receipt of any plans and specifications. If the Government does not approve the plans and specifications as submitted, the Lessee and the Government shall meet and mutually resolve any discrepancies in a timely manner.

- 17.6 Applicable Laws. All construction, repair, modification, alterations, installations or additions shall be in accordance with applicable laws and, except as otherwise provided herein, without cost or expense to the Government.

- 17.7 Government Cooperation. At any time or times requested by the Lessee, the Government shall promptly execute such applications for permits, licenses, vault rental agreements, and/or other permissions as are sought from public authorities, provided that the Lessee shall bear all expense connected therewith, and provided further that all such applications are in form and substance reasonably satisfactory to the Government. In addition, the Government shall, at the Lessee's request,

execute any appropriate documents or plats which are necessary to cause the Premises to be designated as a separate subdivided record lot in accordance with applicable zoning regulations. Notwithstanding the foregoing, the Government shall have the right to approve any applications for special exceptions, variances or other zoning approvals, which approval shall not be withheld so long as the Government determines in its reasonable discretion that such approvals will not materially diminish the value of the Premises. If the Government fails to disapprove any such application within twenty-one (21) days after receipt thereof, such application shall be deemed approved.

18. UTILITIES AND SERVICES

18.1 The Lessee will be responsible for the cost of utilities and services as described in the Amended and Restated Operating Agreement. Notwithstanding the foregoing, Lessee shall be entitled to pass such costs on to the tenants of the Premises, to the extent such pass through is permitted under the Amended and Restated Operating Agreement and the agreements and exhibits referenced therein.

18.2 Utilities for the Orion Court Units.

18.2.1 Electricity. Until such time as the Lessee arranges for a third party to provide electrical service to the Orion Court Units, the Government shall provide electrical service to the Orion Court Units, and the Government shall deliver to the Lessee each month a bill for electrical usage attributable to the Orion Court units. Such bill shall be based on actual usage, at a rate no greater than the customary rate charged to other tenants purchasing electricity on MCAS Miramar from the Government to the extent that such rate is not less than the actual cost to the Government for providing such service to the Orion Court Units. The Lessee shall pay such bill within thirty (30) days of receipt. The Lessee shall have the right to arrange for the provision of electricity from sources other than the Government, from time to time, to the extent approved by the Government. The Government shall provide the Lessee and such other source provider access to all Government infrastructure necessary for the delivery of such electricity to the Orion Court Units. If the Lessee arranges for the provision of electricity from sources other than the Government, the Government shall cease providing electricity to the Orion Court Units.

18.2.2 Sewer and Water. The Government shall continue to own and maintain all existing sewer lines from the point of connection with the local sewer utility provider to the sewer point of demarcation as described on Exhibit M ("S-POD"). The Lessee shall have no responsibility for the sewer system or maintaining the sewer lines, except the Lessee shall maintain the sewer line from the S-POD to each Orion Court Unit. The Government shall continue to own and maintain all existing water lines from the point of connection with the local water utility provider to the water point of

demarcation ("W-POD"). The W-POD shall be the main isolation valve on or adjacent to each housing unit or community facilities as described on Exhibit N. The Lessee shall have no responsibility for the water system or maintaining the water lines, except the Lessee shall maintain the water line from the W-POD to each Orion Court Unit. The Government shall deliver to the Lessee each month a bill for water and sewer usage. The water bill shall be based on actual water usage, at a rate no greater than the customary rate charged to other tenants purchasing water services on base at MCAS Miramar from the Government to the extent that such rate is not less than the actual cost to the Government for providing such service to the Orion Court Units. The sewer bill shall be calculated each month based on eighty percent (80%) of the actual water usage, at a rate no greater than the customary rate charged to private parties purchasing sewer services on MCAS Miramar from the Government to the extent that such rate is not less than the actual cost to the Government for providing such service to the Orion Court Units. The Lessee shall pay such bill to the Government within thirty (30) days of receipt.

- 18.3 Fire and Security Services for the Orion Court Units. The Government shall provide fire and security services for the Orion Court Units (the "Additional Services") until such time as the Lessee, with the Government's approval, arranges for such Additional Services to be provided by a third-party. As long as such Additional Services are provided by the Government, the Government shall have the right, from time to time, to charge Lessee a fee (the "Service Fee") for providing the Additional Services. If the Government elects to charge a Service Fee, the Lessee shall pay the Service Fee within thirty (30) days after receipt of an invoice therefor. The Service Fee payable by Lessee shall be calculated or allocated on a basis that does not discriminate against or is otherwise less favorable than that used to calculate or allocate similar fees paid by other similar tenants operating on the Miramar installation and such fee shall not be less than the actual cost to the Government for providing such services to the Orion Court Units. If at any time in the future the Government does not provide such Additional Services to the Orion Court Units, the Government shall provide access to the Orion Court Units to Lessee and Lessee's contractors and the local municipal authorities.

19. NOTICES

- 19.1 Whenever the Government, the Lessee or any Leasehold Mortgagee shall desire to give or serve upon the other any notice, demand, order, direction, determination, requirement, consent or approval, request or other communication with respect to this Lease or with respect to the Premises, each such notice, demand, order, or direction shall be in writing and shall be sent by (a) hand delivery (which shall be deemed to have been received when the sender receives a signed receipt therefor), (b) reputable overnight courier (which shall be deemed to have been received one business day after the date sent), (c) United States mail, registered or certified, return receipt requested, postage prepaid (which shall be

deemed to have been received five (5) days after the date sent), or (d) facsimile, with a copy sent by first class mail, postage prepaid (which shall be deemed to have been received when the sender receives a confirmation of successful transmission of the facsimile). Such documents shall be sent to the following address or such other address as may be provided in a written notice sent by one of the forms of delivery set forth above:

If to the Lessee:

San Diego Family Housing, LLC
c/o Clark Realty Capital, LLC
7500 Old Georgetown Road
Bethesda, Maryland 20814
Attn: Managing Director

Phone: (240) 497-6600
Fax: (240) 497-6700

With a copy to:

Clark Enterprises, Inc.
7500 Old Georgetown Road, 15th Floor
Bethesda, Maryland 20814
Attn: General Counsel

Phone: (301) 657-7216
Fax: (301) 654-2564

And With a copy to:

Clark Realty Capital, LLC
7500 Old Georgetown Road
Bethesda, Maryland 20814
Attn: President

Phone: (240) 497-6600
Fax: (240) 497-6700

And With a copy to:

Lincoln/Clark San Diego, LLC
3300 Lincoln Plaza
500 North Akard Street, Suite 3300
Dallas, TX 75201
Attn: Tim Byrne

Phone: (214) 740-3501
Fax: (214) 740-3453

With a copy to:

Lincoln Property Company
4740 Von Karman, Suite 130
Newport Beach, CA 92660
Attn: Reggie D. DelPonte

Phone: (949) 756-2525
Fax: (949) 756-2594

And with a copy to:

Shaw Pittman LLP

2300 N Street, N.W.
Washington, D.C. 20037
Attn: Lee C. Carter, Esq.

Phone: (202) 663-8000
Fax: (202) 663-8007

And with a copy to:
The Government at the addresses set forth below.

If to the Government:

Department of the Navy
Southwest Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego CA, 92132
Attn: Contracting Officer
Reference: San Diego PH I and PH II PPV

Phone: 619-532-2077
Fax: 619-532-4903

And With a copy to:

Naval Facilities Engineering Command
1322 Patterson Avenue SE, Suite 1000
Washington Navy Yard, DC 20374-5065
Attn: Special Venture Acquisitions Department

Phone: 202-685-9162
Fax: 202-685-1569

If to the Trustee (and original Leasehold Mortgagee):

Union Bank of California, N.A.
120 South San Pedro Street, Suite 400
Los Angeles, California 90012
Attn: Corporate Trust Department

Phone: (213) 972-5674
Fax: (213) 972-5694

If to the Credit Provider (and original Leasehold Mortgagee):

MBIA Insurance Company
113 King Street
Armonk, New York 10504
Attn: Insured Portfolio Management-
Structured Finance

Phone: (914) 273-4545
Fax: (914) 765-3799

With a copy to:
Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attn: John Petr

Phone: (402) 346-6000
Fax: (402) 346-1148

20. ASSIGNMENTS, SUBLEASES, LICENSES, RIGHT OF FIRST REFUSAL AND RIGHT OF FIRST OFFER

20.1 [Intentionally Deleted].

20.2 Purchase Options. For so long as Lincoln/Clark is a member of San Diego Family Housing, LLC and San Diego Family Housing, LLC is the Lessee hereunder, Lincoln/Clark or, at Lincoln/Clark's option, an Affiliate of Lincoln/Clark, shall have a right of first offer with respect to the sale, transfer or assignment of the Government's interest in this Lease and/or the Premises in accordance with the procedures set forth in Exhibit T to the Amended and Restated Operating Agreement. No other entity shall have any right of first offer or right of first refusal with respect to the sale, transfer or assignment of the Government's interest in this Lease and/or the Premises.

20.3 Assignment by Lessee. Except as otherwise provided in Section 2.2 above, any assignment, sublease or license by the Lessee of any interest in this Lease shall be subject to Government approval and the provisions of the First Mortgage Loan Documents.

20.4 Successors and Assigns. The covenants and agreements herein contained shall be deemed to be covenants running with the land, and shall inure to the benefit of and be binding upon the successors and assigns of the Government and the successors and assigns of the Lessee; provided, however, that no assignment hereof shall be made by the Government or the Lessee except in accordance with the provisions set forth herein.

20.5 Liability of Transferring Entity. Subject to the transfer and assignment restrictions contained herein and (with regard to the San Diego Family Housing, LLC as Lessee only) in the Amended and Restated Operating Agreement, in the event that the Government or the Lessee sells, encumbers or transfers any of its interest in the Premises or this Lease, then provided the purchaser or transferee assumes the obligations of the transferring Party under this Lease with respect to obligations and liabilities based on or arising out of events or conditions first occurring on or after the date of such sale or transfer, then (a) the transferring Party shall not be liable to the non-transferring Party for any obligations or liabilities based on or arising out of events or conditions first occurring on or after the date of such sale or transfer and (b) the transferee shall be liable to the non-transferring Party for any such obligations or liabilities based on or arising out of events or conditions first occurring on or after the date of such sale or transfer.

20.6 Intentionally deleted.

21. LIENS AND MORTGAGES

21.1 Liens and Mortgages on the Premises. Any lien or mortgage encumbering the Premises or any interest in this Lease shall be made in accordance with the terms

of this Lease, any existing Leasehold Mortgage and (with regard to San Diego Family Housing, LLC as Lessee) the Amended and Restated Operating Agreement.

21.2 Liens and Mortgages on the Lessee's Interest in the Lease. Subject to the First Mortgage Loan Documents and (only for so long as San Diego Family Housing, LLC is Lessee) to the relevant terms of the Amended and Restated Operating Agreement (which shall in all respects be controlling while San Diego Family Housing, LLC is Lessee), during the Term of this Lease, the Lessee may encumber its interest in the Premises and/or this Lease, in whole or in part, by way of one or more loans secured by a trust indenture, mortgage or deed of trust, to the extent permitted under any Leasehold Mortgage. Any proposed Leasehold Mortgagee must be approved by the Government prior to the execution of such Leasehold Mortgage, which approval shall not be unreasonably withheld, conditioned or delayed. Leasehold Mortgages in place as of the Effective Date are deemed approved. Any loan approved by the Government may be secured by, among other things, a conditional assignment of this Lease to a Leasehold Mortgagee. The Government agrees to execute a consent to the conditional assignment of this Lease for financing purposes in form reasonably acceptable to any approved Leasehold Mortgagee and, from time to time, to execute an estoppel certificate and any other similar documentation as required by the Leasehold Mortgagee to certify as to the status of this Lease and to the performance of the Lessee and the Government hereunder as of the date of such certification.

21.3 Effect on Government's Interest. No mortgage, indenture or deed of trust shall extend to or affect the fee, the remainder interest or the estate of the Government in the Premises, but may extend to or affect the leasehold interest of the Lessee in the Premises. No mortgage, indenture or deed-of-trust shall be binding upon the Government in the enforcement of its rights and remedies under this Lease or under law unless and until a copy thereof shall have been delivered to the Government and such mortgage, indenture or deed of trust is authorized in accordance with the provisions of this Section 21.

21.4 Rights of Leasehold Mortgagees.

21.4.1 Multiple Mortgagees. If more than one Leasehold Mortgagee should exist at any one time, and the rights of such Leasehold Mortgagees are in conflict hereunder, then:

21.4.1.1 the Leasehold Mortgagees shall have the following order of priority in exercising the rights of the Leasehold Mortgagee hereunder: (a) the Trustee (or the Credit Provider, to the extent the Credit Provider is acting through or on behalf of the Trustee), so long as the Obligations remain outstanding and subject to the terms of the Indenture, (b) the Credit Provider, so long as any Obligations remain outstanding, (c) any other

Leasehold Mortgagees in the order of priority of their Leasehold Mortgages; and

- 21.4.1.2 if the most senior Leasehold Mortgagee elects not to exercise the rights set forth herein, the Government shall afford each of the remaining Leasehold Mortgagees (in order of priority) a reasonable opportunity to exercise such rights until such rights are either exercised by one of the Leasehold Mortgagees or waived by all of the Leasehold Mortgagees.

For purposes of clause 21.4.1.1(c) above, the Government may rely on a mortgagee title insurance policy issued by a title insurance company doing business within the State of California in determining the priority of the Leasehold Mortgages and, in doing so, shall be without liability to Lessee or any Leasehold Mortgagee. In addition, any Leasehold Mortgagee hereunder (other than the Trustee and the Credit Provider) shall deliver their name, address and a copy of their Leasehold Mortgage to the Government prior to exercising its rights hereunder.

- 21.4.2 Assignment by a Leasehold Mortgagee. If a Leasehold Mortgagee shall acquire the Lessee's interest in this Lease as a result of a sale under any Leasehold Mortgage, foreclosure sale, trustee's sale, or transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Leasehold Mortgagee shall have the privilege of transferring its interest in this Lease to a nominee or a wholly owned subsidiary corporation without the prior consent of the Government; provided, however, that there shall be delivered to the Government in due form for recording within ten (10) days after the date of such transfer: (a) a duplicate original of the instrument of assignment, and (b) an instrument of assumption by the transferee of all of the Lessee's obligations under this Lease, and said Leasehold Mortgagee shall be relieved of any further liability under this Lease from and after such transfer, except liability resulting from acts or omissions of the Leasehold Mortgagee during its tenure as Lessee.

- 21.4.3 Further Assignments. If a Leasehold Mortgagee, or its nominee or wholly owned subsidiary corporation pursuant to Section 21.4.2 above, shall acquire title (derived from such mortgage as provided under Section 21.4.1) to the Lessee's interest herein, then such Leasehold Mortgagee, nominee or subsidiary corporation may assign this Lease with the prior consent of the Government (not to be unreasonably withheld) to any person, firm or corporation; provided there shall be delivered to the Government in due form for recording within ten (10) days after the date of the assignment: (a) a duplicate original of the instrument of assignment, and (b) an instrument of assumption by the transferee of all of the Lessee's obligations under this Lease, and any such Leasehold Mortgagee, nominee

or subsidiary corporation shall be relieved of any further liability under this Lease from and after such assignment.

21.4.4 Purchaser at a Foreclosure Sale. Any purchaser at a foreclosure sale or transferee from or through a Leasehold Mortgage, shall assume this Lease and the Lessee's obligations hereunder and such purchaser shall have no right in respect to the Premises unless such purchaser so assumes and delivers a duplicate original of the assumption agreement (in recordable form) within thirty (30) days after such purchaser acquires title to the Lessee's interest in this Lease.

21.4.5 Obligation to Enter into New Amended and Restated Operating Agreement. Each person (a "Successor Lessee") who acquires an interest in the leasehold pursuant to foreclosure, deed in lieu of foreclosure or any similar exercise of remedies under a Leasehold Mortgage shall, as soon as reasonably practicable in accordance with and subject to the provisions of this Section 21.4.5, negotiate and enter into a joint venture with the Government (which may take the form of a limited liability company, a limited partnership or such other entity as is acceptable to the Government) on terms substantially similar to those contained in the Amended and Restated Operating Agreement including, specifically, those terms specified in Exhibit J hereto (such joint venture is hereinafter referred to as the "Successor Joint Venture", and the document creating the Successor Joint Venture is hereinafter referred to as the "Successor Operating Agreement"). The Successor Lessee may be, or may for purposes of creating the Successor Joint Venture transfer its rights in the Development to, a wholly-owned subsidiary or affiliate or subsidiary of an affiliate created for the purpose of participating as a member of the Successor Joint Venture. Such wholly-owned subsidiary or affiliate need not have any significant assets other than its interest in the Development. The Successor Lessee shall not be obligated to enter into a Successor Operating Agreement unless: (i) the Successor Operating Agreement clearly provides that the Successor Lessee is not responsible for any actions or inactions of any predecessor lessee of the Land or owner of the Improvements; (ii) the Successor Operating Agreement provides for an allocation of profits and losses from the Development which, in the reasonable opinion of the Successor Lessee, will not result in the Successor Lessee incurring federal income tax obligations additional to those which would apply to it with respect to the Development in its capacity as Successor Lessee or incurring any federal or state income tax liability with respect to which the Successor Joint Venture has not made cash distributions to the Successor Lessee sufficient to pay such liability; (iii) the Successor Operating Agreement does not include any representations or warranties as to the experience or competence of the Successor Lessee or its ability to operate and manage the Development (although it may require the Successor Lessee, in its capacity as a member of the Successor Joint Venture, to hire a competent property manager); (iv) the Successor Lessee is entitled to receive, after payment of Development operating expenses but prior to payment of any amounts to the Government (whether in its capacity as Government or joint venture partner), any amounts owing to the Leasehold Mortgagee exercising its remedies, plus interest thereon and related fees and out-of-pocket expenses through the date on which it fully recovers all amounts due it, as provided in the instruments giving rise to such obligations (which instruments, for this purpose, shall be treated as though still

outstanding and effective until all amounts owing thereunder have been paid in full and as to which no credit shall be given against any amount owing thereunder for amounts (other than cash) received or deemed received as a result of foreclosure, a trustee's sale, deed in lieu of foreclosure or any similar proceeding); (v) any option on the part of Government (in any capacity) to purchase the interest of Successor Lessee in the Successor Joint Venture shall require the payment of a purchase price equal to the greater of (A) the amount set forth in (iv) above or (B) the fair market value of such interest; (vi) the Government (in any capacity) shall not have the right to terminate the Successor Lessee's interest in the joint venture prior to payment in full of the amounts set forth in (iv) above except for the willful misconduct of the Successor Lessee (although nothing in such Successor Operating Agreement shall limit the right of Government to terminate the Lease in accordance with its terms); (vii) the Successor Lessee shall not be required to contribute any capital to the Successor Joint Venture and no party shall be required to guaranty the obligations of the Successor Lessee under the Successor Operating Agreement; (viii) the Government shall provide an opinion of its counsel to the effect that the provisions of the Successor Operating Agreement are legal, valid and binding against the Government (in whatever capacity) in accordance with its terms; and (ix) the Successor Lessee shall not, solely as a result of entering into the Successor Operating Agreement or participating in the Successor Joint Venture, incur materially greater liability than it would by acting as Successor Lessee and not entering into the Successor Operating Agreement. Notwithstanding anything to the contrary herein, the Successor Lessee shall not be required to enter into a Successor Operating Agreement pursuant to this provision if doing so would violate any state or federal law, rule or regulation applicable to Successor Lessee or its parent company. Pending the execution and delivery of a Successor Operating Agreement, the Successor Lessee shall be obligated to operate the Development as required by the provisions of this Lease (including, without limitation, the provisions of the Amended and Restated Operating Agreement made applicable hereto by and pursuant to Exhibit J). The Successor Lessee shall not be in default of its obligations under this Section 21.4.5 (i) so long as it negotiates in good faith to enter into the Successor Operating Agreement described herein, (ii) if the Government fails to tender a Successor Operating Agreement meeting the requirements of this Section 21.4.5 or (iii) if the Successor Lessee is not required to enter into a Successor Operating Agreement pursuant to this Section 21.4.5.

21.4.6 No Merger or Termination By Reason Of Foreclosure, Sale or Surrender.

Subject to the provisions of this Article 21, (a) this Lease shall not be subject to termination by the Government solely by reason of or upon the commencement of judicial or nonjudicial foreclosure of the First Mortgage Loan or any other Leasehold Mortgage, and (b) this Lease shall not be subject to termination by the Government solely by reason of the acquisition of the Premises or an interest in this Lease by a Leasehold Mortgagee through a foreclosure proceeding, or any other remedy for default under or pursuant to a Leasehold Mortgage or conveyance in lieu of foreclosure thereof, provided that upon any such event the entity acquiring such interest agrees to be bound by this Lease. No sale or transfer (whether by corporate merger, consolidation, operation of law, or otherwise) of the Premises, or any portion thereof, to Lessee, and no

purchase or other acquisition of this Lease, or any interest herein by the Government, shall terminate this Lease by merger or otherwise, so long as any Leasehold Mortgage encumbers the Premises. So long as a Leasehold Mortgage is in effect, the Lessee shall not voluntarily surrender and the Government shall not accept a voluntary surrender, cancellation or other voluntary termination of this Lease by the Lessee without the prior written consent of each Leasehold Mortgagee unless such surrender or termination is on account of the Lessee's default hereunder and the Government has first given each Leasehold Mortgagee the opportunity to exercise its rights as provided in this Article 21 and then subject to such Leasehold Mortgagee's rights.

21.4.7 Liability of Leasehold Mortgagee Limited. No Leasehold Mortgagee shall be liable to perform, or be liable in damages for failure to perform, any of the obligations of the Lessee, unless and until such Leasehold Mortgagee actually enters and takes possession of the Premises or is deemed a mortgagee in possession under applicable laws as a result of foreclosure or other Leasehold Mortgagee default proceedings or surrender or assignment in lieu thereof, in which event the Leasehold Mortgagee shall be liable to perform all of the Lessee's obligations under this Lease, after foreclosure or deed in lieu of foreclosure.

21.4.8 Rights of Leasehold Mortgagee.

21.4.8.1 Notice and Cure.

21.4.8.1.1 No act or failure to act on the part of the Lessee which would entitle the Government under the terms of this Lease, or by law, to terminate this Lease, shall result in a termination of this Lease unless:

(a) The Government shall have first given notice ("Notice to Mortgagee") by certified or registered mail of the Lessee's act or failure to act, to each Leasehold Mortgagee (provided that the Government shall have received notice and approved of such Leasehold Mortgagee (other than the Trustee and Credit Provider) pursuant to this Article 21);

(b) The Notice to Mortgagee shall specify the act or failure to act on the part of the Lessee which could or would give basis to the Government's rights; and

(c) No Leasehold Mortgagee has cured the condition complained of within the time permitted hereunder after receipt of such Notice to Mortgagee.

21.4.8.1.2 The date of delivery of the notice to the Leasehold Mortgagee shall be deemed to be the date that commences the Leasehold Mortgagee's cure period. Such notice may be given to the

Leasehold Mortgagees at any time regardless of whether the Lessee's cure period for its breach shall have lapsed.

21.4.8.1.3 The Leasehold Mortgagees shall have "reasonable time" (as defined below) thereafter to cure the default so long as any Leasehold Mortgagee is diligently attempting to obtain possession of the Premises and thereafter diligently attempting to cure the default and subject to the limitations set forth below; provided, however, that nothing contained in this Section shall be deemed to impose any obligation or liability on any such Leasehold Mortgagee to correct or cure any such breach in the event such Leasehold Mortgagee does not obtain possession of the Premises. If there is more than one Leasehold Mortgagee, the Leasehold Mortgagee with the highest priority (as set forth in Section 21.4.1) shall have the right to control the Leasehold Mortgagee(s) efforts to complete the cure.

21.4.8.1.4 As used herein, "reasonable time" shall mean and include both time reasonably necessary to obtain possession of the Premises, if the Leasehold Mortgagee elects to do so, notice of which election shall be provided to the Government by the Leasehold Mortgagee within ninety (90) days of the Government's Notice to Mortgagee and time reasonably necessary to cure the breach. Such election notice shall state the period the Leasehold Mortgagee reasonably expects it will require to obtain possession and thereafter to cure such breach, that the Leasehold Mortgagee intends to diligently obtain possession (by foreclosure or enforcement of its other remedies) and thereafter to diligently cure all such breaches of the Lessee. The Leasehold Mortgagee shall keep the Government reasonably informed in writing, with at least monthly written updates, of its progress in obtaining possession and curing any such breach. "Reasonable time" shall also include any time during which the Leasehold Mortgagee may be prevented from foreclosing and/or obtaining possession of the Premises as a result of bankruptcy proceedings, and time reasonably necessary to correct or cure the breach using due diligence. In no event shall such cure period be less than (i) thirty (30) days after the date the Leasehold Mortgagee first obtains possession of the Premises, or (ii) if the breach of the Lessee is of a nature which cannot be cured within thirty (30) days, then commencement of cure within such thirty (30) day period and the time reasonably necessary diligently thereafter to proceed to complete such cure.

21.4.8.2 No Obligation to Cure Default. Notwithstanding anything to the contrary herein contained, this Section 21.4.8 shall not be deemed to impose any obligation or liability on any Leasehold Mortgagee to correct or cure any default of the Lessee or other condition herein specified in the event such Leasehold Mortgagee does not obtain possession of the Premises, but to the extent that a Leasehold Mortgagee elects to undertake cure of such default or condition pursuant hereto, such Leasehold Mortgagee shall act with diligence in accordance with the terms and conditions herein specified. Notwithstanding the foregoing, a Leasehold Mortgagee shall not be obligated to continue efforts to obtain possession of the Premises or to continue in possession of

the Premises and may abandon such efforts at any time in its sole discretion upon notice to the Government. Abandonment by a Leasehold Mortgagee of efforts to obtain possession or of continued possession of the Premises, or failure of a Leasehold Mortgagee to cure any default under this Lease shall be without any liability to the Government, but immediately upon such abandonment the Government shall be entitled to invoke its rights under this Lease including the Government's right to terminate this Lease in the event of the failure of a Leasehold Mortgagee to cure any default in accordance with the terms of this Article 21.

22. DISPUTES

- 22.1 Disputes under this Lease shall be subject to the Contract Disputes Act of 1978, as amended, 41 U.S.C. 601, et seq. If a dispute should arise, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other alternative dispute resolution technique that the agency selected in accordance with the Administrative Dispute Resolution Act, any claim, regardless of amount, shall be accompanied by the certification required by the Contract Disputes Act, as amended. For the purposes of this provision, correspondence to the United States Member shall be directed as follows:

Department of the Navy
Southwestern Division
Naval Facilities Engineering Command
1220 Pacific Hwy.
San Diego, CA 92132
Attn: Contracting Officer
Reference: San Diego PH I and PH II PPV

Phone: 619-532-2077
Fax: 619-532-4903

23. RENEWAL OF THE LEASE

- 23.1 The Parties agree that any time during the Term of this Lease, the Lessee shall have the right to enter into negotiations with the Government for the renewal of this Lease, provided that there are no uncured defaults under this Lease or (for so long as San Diego Family Housing, LLC is the Lessee hereunder) the Amended and Restated Operating Agreement. The Parties further agree to negotiate the terms of the renewal in good faith, although it is understood and agreed that the Lessee shall have no rights in or to the Premises upon the expiration of this Lease unless and until the Government and the Lessee execute an amendment to this Lease providing for a renewal of this Lease.

24. AMENDMENTS

- 24.1 Amendment by Parties. This Lease may be amended at any time by mutual agreement of the parties in writing and signed by a duly authorized representative of the respective parties.
- 24.2 Binding Effect. No alteration, amendment, change or addition to this Lease shall be binding upon the Government or the Lessee unless reduced to writing, signed by them and approved by each Leasehold Mortgagee.

25. MISCELLANEOUS

- 25.1 Third Party Beneficiary. Each Leasehold Mortgagee is hereby designated as a third party beneficiary of this Lease.
- 25.2 Memorandum of Lease. The Parties have recorded a memorandum of the Original Lease in the form of Exhibit I-1 attached hereto. The Parties shall record a memorandum of this Lease and the purchase rights set forth in Section 20.2 in the form of Exhibit I-2 attached hereto. Any tax attendant upon such recordation shall be the expense of the Lessee.
- 25.3 Separate Covenants. Each covenant and agreement contained in this Lease shall for all purposes be construed to be a separate and independent covenant and agreement. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.
- 25.4 Governing Law. This Lease shall be governed by and construed in accordance with the federal laws of the United States of America. In the event that this Lease, or any portion of it, or the operations contemplated by it are found to be inconsistent with or contrary to laws or official orders, rules or regulations of the United States, then the laws of the United States shall control. This Lease then shall be modified accordingly and, as so modified, shall continue in full force and effect. Nothing in this Section shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation before the Armed Services Board of Contract Appeals or the United States Court of Federal Claims pursuant to the Contract Disputes Act of 1978, as amended, 41 U.S.C. §601, et. Seq.
- 25.5 Estoppel Certificates. The Government and the Lessee hereby agree that within twenty (20) days after receipt of a written request from the other party or a Leasehold Mortgagee, it shall execute, acknowledge and deliver an estoppel certificate certifying to the knowledge of the Lessee or, as the case may be, the Government's Contracting Officer, to the extent accurate: (a) that substantial

completion of certain improvements has occurred, (b) that this Lease has not been modified and is in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications); (c) whether or not, to the knowledge of the party executing such certificate, the requesting party under this Lease is in default under this Lease, whether any notice has been received by or delivered to said party of any event of default which has not been cured, except as to defaults specified in the certificate and whether or not any event has occurred which, but for the expiration of the applicable time period, would constitute an event of default under this Lease; and (d) such other matters as may reasonably be requested by the requesting party with respect to the status of this Lease and the performance or non-performance by the other party of its obligations hereunder. The addressee of such certificate shall be entitled to rely thereon.

- 25.6 Headings. The headings of the various Articles and Sections of this Lease have been inserted for convenient reference only and shall not modify, amend or change the express terms and provisions of this Lease.
- 25.7 Relationship of Parties. This Lease creates only a landlord/tenant relationship, and does not, and shall not be deemed to, create a master/servant, agency, partnership, joint venture or other relationship.
- 25.8 No Merger of Title. There shall be no merger of this Lease or the leasehold estate created by this Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation, or other entity may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate and (b) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including each Leasehold Mortgagee, having any interest in (i) this Lease or the leasehold estate created by this Lease and (ii) the fee estate in the Premises or any part thereof shall join in a written instrument effecting such merger and shall duly record the same.
- 25.9 Business Day. If the time period by which any right, option or election provided under this Lease must be exercised, or by which any act required hereunder must be performed, or by which any closing hereunder must be held, expires on a Saturday, Sunday or legal or bank holiday under the laws of the State of California or the United States of America, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.
- 25.10 Exhibits. The exhibits annexed hereto are hereby incorporated by reference as if fully set forth herein.
- 25.11 Entire Agreement. Except as otherwise set forth in this Section 25.11, this Lease, including the exhibits annexed hereto, contains all the representations, promises,

agreements, conditions, inducements and understandings between the Government and the Lessee relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as herein set forth or expressly referenced herein and made a part hereof.

25.12 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original and, when taken together, shall constitute one document.

25.13 References to Amended and Restated Operating Agreement. So long as San Diego Family Housing, LLC is the Lessee hereunder, references herein to the Amended and Restated Operating Agreement shall refer to the Amended and Restated Operating Agreement as defined herein. If San Diego Family Housing, LLC is not the Lessee hereunder, references to the Amended and Restated Operating Agreement shall be deemed references to the Successor Operating Agreement entered into pursuant to Section 21.4.5 hereof. If San Diego Family Housing, LLC is not the Lessee and no Successor Operating Agreement has been entered into, references to the Amended and Restated Operating Agreement herein shall be interpreted as referring only to the provisions of the Amended and Restated Operating Agreement as set forth in Exhibit J, with such modifications, clarifications and revisions as set forth therein. The Parties hereto acknowledge their intent that, subject to the provisions of Section 21.4.5, any Successor Lessee shall enter into a Successor Operating Agreement.

IN WITNESS WHEREOF, the Government and the Lessee have executed this Amended and Restated Real Estate Ground Lease as of the day and year first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures on Following Pages]

WITNESS:

Andrew G. Gubak

GOVERNMENT:

THE UNITED STATES OF AMERICA

By: Scott Forrest
Scott Forrest, Director
Special Venture Acquisition Program
Naval Facilities Engineering Command
Department of the Navy

[Signature Page to Amended and Restated Real Estate Ground Lease (Page 1 of 2)]

[Signatures Continue on Following Page]

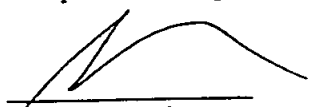
LESSEE:

SAN DIEGO FAMILY HOUSING, LLC, a
California limited liability company

By: Lincoln/Clark San Diego, LLC, a California
limited liability company, one of two members
and the managing member

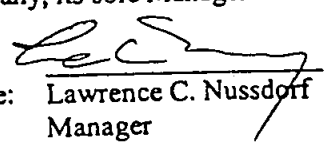
By: Lincoln Property Company No. 2179
Limited Partnership, a California limited
partnership, a Co-Manager

By: Lincoln No. 2179, Inc., a
California corporation, its general
partner

By: 
Name: Reggie D. DelPonte
Title: Vice President

By: Clark San Diego Military Housing LLC,
a Delaware limited liability company, a
Co-Manager

By: Clark Realty Capital, L.L.C., a
Delaware limited liability
company, its sole Manager

By: 
Name: Lawrence C. Nussdorf
Title: Manager

By: 
Name: Douglas R. Sandor
Title: Manager

EXHIBIT C
AREA SITE MAP

GARNET

AVENUE

EXHIBIT "C"

BALBOA

OLNEY STREET

PARKING

DIRT
AREA

BOUNDARY LINE
LICENSED AREA

CULVER

GRAND



6

67

440

439

337

338

339

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335

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RESOLUTION NUMBER R- 300156

ADOPTED ON FEB 28 2005

WHEREAS, the Police Department has operated a storefront office at 4439-4440 Olney Street [Premises] pursuant to a license agreement with the Department of the Navy [Navy], the property owner, since July 1999; and

WHEREAS, the Premises consist of an administrative office building, a storage structure, and a fenced 40-space parking lot/storage yard on an approximate 1-acre parcel; and

WHEREAS, in September 2003, the Navy signed a long-term ground lease with San Diego Family Housing, LLC which included the Premises; and

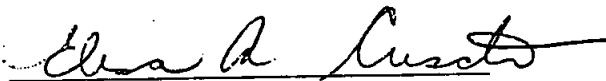
WHEREAS, on September 30, 2003, the Navy terminated the original license agreement with the City so that the City could enter into a new license agreement with San Diego Family Housing, LLC; and

WHEREAS, the City wishes to enter into a rent-free, 5-year license agreement with San Diego Family Housing, LLC for the Premises; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a 5-year license agreement with San Diego Family Housing, LLC, a California limited liability company, for the Premises

located at 4439-4440 Olney for Police Department office space, for no rent, commencing
October 1, 2004, on the terms and conditions substantially as set forth in the License Agreement
on file in the office of the City Clerk as Document No. RR- 300156.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Elisa A. Cusato
Deputy City Attorney

EAC:dm:nda
02/01/05
Or.Dept:REA
J.O.:223183
R-2005-697
MMS#338

Passed and adopted by the Council of The City of San Diego on February 28, 2005, by the following vote:

YEAS: PETERS, ZUCCHET, ATKINS, YOUNG, MAIENSCHIN, FRYE,
MADAFFER, AND MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: INZUNZA.

VACANT: NONE.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

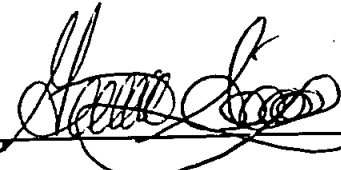
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-300156, passed and adopted by the Council of The City of San
Diego, California on February 28, 2005.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

Consent I-110 2-28-05

READ#116

TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): REAL ESTATE ASSETS DEPARTMENT	1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) N/A
4. SUBJECT: Office Space License - Police Department - 4439-4440 Olney Street		3. DATE: 12/15/2004

5. FOR INFORMATION, CONTACT (NAME & MAIL STA.) GIBSON/Anthony	6. TELEPHONE NO. 66727/36509	7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION HAS BEEN COMPLETED ON PAGE 2: ☒
---	------------------------------	--

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					Cost: \$3120 per year expenses
ORGANIZATION					Fiscal Impact: None.
OBJECT ACCOUNT					Job: 223183
JOB ORDER					cc: Docket Clerk
C.I.P. NUMBER					Thomas Guide Map Page: 1248 B 5
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	[Signature]	12-16-04	8	CITY MANAGER	[Signature]	1-20-05
2	DSD/EAS	[Signature]	12/21/04	9	AUDITOR	[Signature]	1/26/05
3	RISK MGMT.	[Signature]	12/22/04	10	CITY ATTORNEY	[Signature]	2/1/05
4	FINANCIAL MGMT.	[Signature]	1/18/05	11	ORIGINATING DEPARTMENT	[Signature]	2/1/05
5	POLICE DEPT.	[Signature]	1-7-05				
6							
7							

11. PREPARATION OF: ☒ RESOLUTIONS ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

1. Authorize the City Manager to execute a 5-year license agreement with San Diego Family Housing, LLC, a California limited liability company, to occupy the approximately one acre with two buildings licensed premises located at 4439-4440 Olney Street.

11A. MANAGER'S RECOMMENDATIONS:

Adopt the resolution

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 06

COMMUNITY AREA(S): Pacific Beach

CITY CLERK INSTRUCTIONS: License submitted in triplicate for execution by the City Manager

ENVIRONMENTAL IMPACT: This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Sec. 15060 (c) (3).

OTHER ISSUES: DO NOT RECORD. Return documents to Real Estate Assets Department, Attention Jim Anthony, M.S. 51A, for further handling.

CITY ATTORNEY
JAN 28 8 43 AM '05

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE: 12/15/2004

SUBJECT:

Office Space License - Police Department - 4439-4440 Olney Street

BACKGROUND:

The Police Department has operated a storefront office at 4439-4440 Olney Street site since July 1999. On September 30, 2003, the Department of the Navy, the property owner, terminated the original license agreement with the City in order to execute a new license with San Diego Family Housing, LLC (SDFH) to construct, renovate and operate rental housing units in conformance with a Department of the Navy Public/Private Venture. They currently act as agent for the Navy in administration of the Navy's surrounding Admiral Hartman Housing Complex, which includes this facility. The licensed premises consists of an administrative office building, a storage structure, and a fenced 40-space parking lot /storage yard on a 1 acre parcel. The facilities were the former Hartman Recreation Center and Sport Court Building.

The Police Department is proposing to enter into a license for the space with the Navy's contractor under the following terms:

TERM: Five (5) years - October 1, 2004 to September 30, 2009

USE: Police storefront office and storage facility to write reports, conduct minor investigations, hold community meetings, conduct briefings and perform other forms of daily police work, including the storage of police vehicles consisting of bikes, all terrain vehicles, and boats used in beach operations.

SIZE: Office Building (Bldg. 440): 2,572 square feet; Storage Building (Bldg. 439): 2,356 square feet; and a 40 space parking / storage lot on an approximately 1 acre parcel.

RENT: None

SERVICES TO BE PROVIDED BY LICENSOR: Water, sewer, gas, electricity.

SERVICES TO BE PROVIDED BY CITY: Any other services relating to the use of the licensed premises. This includes a pro rata share of janitorial expenses costing \$3,120 annually, which are currently budgeted.

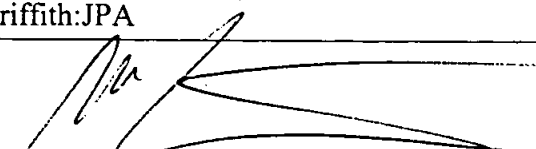
FISCAL IMPACT: None. Police Department's current contract includes costs for janitorial services at subject location.

BY LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

HERRING/Griffith:JPA

Job: 223183

SIGNATURES:


ORIGINATING DEPT. HEAD


CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)

RESOLUTION NUMBER R- 300156

ADOPTED ON FEB 28 2005

WHEREAS, the Police Department has operated a storefront office at 4439-4440 Olney Street [Premises] pursuant to a license agreement with the Department of the Navy [Navy], the property owner, since July 1999; and

WHEREAS, the Premises consist of an administrative office building, a storage structure, and a fenced 40-space parking lot/storage yard on an approximate 1-acre parcel; and

WHEREAS, in September 2003, the Navy signed a long-term ground lease with San Diego Family Housing, LLC which included the Premises; and

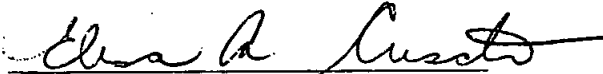
WHEREAS, on September 30, 2003, the Navy terminated the original license agreement with the City so that the City could enter into a new license agreement with San Diego Family Housing, LLC; and

WHEREAS, the City wishes to enter into a rent-free, 5-year license agreement with San Diego Family Housing, LLC for the Premises; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a 5-year license agreement with San Diego Family Housing, LLC, a California limited liability company, for the Premises

located at 4439-4440 Olney for Police Department office space, for no rent, commencing
October 1, 2004, on the terms and conditions substantially as set forth in the License Agreement
on file in the office of the City Clerk as Document No. RR- 300156.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Elisa A. Cusato
Deputy City Attorney

EAC:dm:nda
02/01/05
Or.Dept:REA
J.O.:223183
R-2005-697
MMS#338

Passed and adopted by the Council of The City of San Diego on February 28, 2005, by the following vote:

YEAS: PETERS, ZUCCHET, ATKINS, YOUNG, MAIENSCHIN, FRYE, MADAFFER, AND MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: INZUNZA.

VACANT: NONE.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

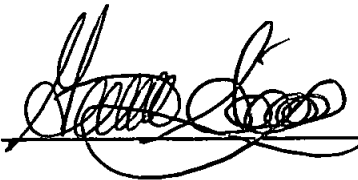
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-300156, passed and adopted by the Council of The City of San
Diego, California on February 28, 2005.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS: (Continued)

- * ITEM-110: License Agreement with San Diego Family Housing, LLC, for Police Department Office Space located at 4439-4440 Olney Street.

(Pacific Beach Community Area. District 6.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-697)

Authorizing the City Manager to execute a 5-year license agreement with San Diego Family Housing, LLC, a California limited liability company, for the Premises located at 4439-4440 Olney for Police Department office space, for no rent, commencing October 1, 2004, on the terms and conditions substantially as set forth in the License Agreement.

CITY MANAGER SUPPORTING INFORMATION:

The Police Department has operated a storefront office at 4439-4440 Olney Street site since July 1999. On September 30, 2003, the Department of the Navy, the property owner, terminated the original license agreement with the City in order to execute a new license with San Diego Family Housing, LLC (SDFH). They currently act as agent for the Navy in administration of the Navy's surrounding Admiral Hartman Housing Complex, which includes this facility. The licensed premises consists of an administrative office building, a storage structure, and a fenced 40-space parking lot/storage yard on a 1 acre parcel. The facilities were the former Hartman Recreation Center and Sport Court Building.

The Police Department is proposing to enter into a license for the space with the Navy's contractor under the following terms:

TERM: Five (5) years - October 1, 2004 to September 30, 2009.

USE: Police storefront office and storage facility to write reports, conduct minor investigations, hold community meetings, conduct briefings and perform other forms of daily police work, including the storage of police vehicles consisting of bikes, all terrain vehicles, and boats used in beach operations.

SIZE: Office Building (Bldg. 440): 2,572 square feet; Storage Building (Bldg. 439): 2,356 square feet; and a 40 space parking/storage lot on an approximately 1 acre parcel.

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS: (Continued)

* ITEM-110: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

RENT: None

SERVICES TO BE PROVIDED BY LICENSOR: Water, sewer, gas, electricity.

SERVICES TO BE PROVIDED BY CITY: Any other services relating to the use of the licensed premises. This includes a pro rata share of janitorial expenses costing \$3,120 annually.

FISCAL IMPACT:

\$3,120 in janitorial expenses per year.

Herring/Griffith/JPA

Staff: Jim Anthony – (619) 533-6509

SAN DIEGO CO.

MAP 1247



BALBOA

CULVER

SUBJECT

OLNEY

ALLEY

GRAND

