

DUPLICATE

**CITY OF SAN DIEGO
PERCENTAGE GROUND LEASE**

THIS CITY OF SAN DIEGO PERCENTAGE GROUND LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as Lessor, and MG STONEWOOD GARDEN APARTMENTS L.P., a California limited partnership ("LESSEE"), as Lessee, to be effective as of the date signed by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY owns that certain real property consisting of approximately 8.06 acres of land (the "Property"), as more particularly described in **Exhibit A: Legal Description of Property**, attached hereto. LESSEE owns and operates the improvements located at the Property, commonly known as "Stonewood Garden Apartments" (the "Improvements"), which are sited on the Property. The Property and the Improvements together are known as the "Premises".
- B. CITY currently leases the Property to LESSEE, pursuant to that certain LEASE AGREEMENT ("Current Lease") executed on August 2, 1978, between CITY and Gentry & Coles, a general partnership, on file with the San Diego City Clerk as Document No. RR-763729 for the operation of two hundred fifty three (253) apartment units, including twenty percent (20%) of the units (or 51 units) reserved for low income residential rental units. The Current Lease was amended by the terms of that certain First Amendment to Lease Agreement dated January 18, 1980, and that certain Second Amendment to Lease Agreement dated September 12, 1991. The Current Lease was assigned to MG Stonewood Garden Apartments L.P., a California limited partnership, on August 27, 2003.
- C. The Current Lease expires on April 1, 2034. LESSEE has requested a new Ground Lease with a lease term of forty (40) years to refinance LESSEE's existing loan secured by this leasehold and make repairs and upgrades to the Premises.
- D. LESSEE will continue to own the Improvements and operate the Premises during the term of this Lease, subject to LESSEE's right to assign its rights hereunder in accordance with the provisions of this Lease.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

SECTION 1: PREMISES; ALLOWED USES

- 1.1 Leasing. Effective as of the Commencement Date (as defined below in Section 2.2), CITY hereby leases the Property to LESSEE, and LESSEE hereby leases the Property from CITY

under the terms and conditions of this Lease. Prior to the Commencement Date (as defined below in Section 2.2), the Current Lease shall continue in full force and effect.

1.2 Allowed Uses. LESSEE shall use the Premises solely and exclusively for the following purposes (the "Allowed Uses"):

- (a) The Premises shall be used solely and exclusively for operating a residential apartment project consisting of two hundred fifty five (255) multi-family residential rental units and for uses reasonably and customarily related thereto, including related retail leases and agreements which by way of example but not limitation may include laundry leases and cable, and internet services. Fifty one (51) of the rental units at the Property (the "Affordable Units") will be made available to the San Diego Housing Commission or its successor (the "Housing Commission") for occupancy by persons receiving assistance pursuant to Section 8 of the Housing Act of 1937 or another similar federal, state or local government program intended to provide rental subsidies for low-income households ("Eligible Resident(s)") during the entire term of this Lease. The Affordable Units shall be allocated throughout the Improvements according to bedroom size (i.e. twenty percent (20%) of the total number of one bedroom, two bedroom and three bedroom units shall be Affordable Units), as follows:

Type of Unit	Total Number	Affordable Units
1 Bedroom	129	26
2 Bedroom	62	12
3 Bedroom	<u>64</u>	<u>13</u>
Total	255	51

The above allocation may be modified by amendment to this Lease, approved by the Mayor of San Diego pursuant to Section 1.5, whenever CITY and LESSEE reach agreement upon a mutually satisfactory reallocation.

- (b) The rent and occupancy restrictions of the Affordable Units shall be monitored annually by the Housing Commission. Prior to the Effective Date of this Lease, or simultaneously herewith, LESSEE shall enter into a compliance monitoring agreement with the Housing Commission. LESSEE shall cooperate with and provide information reasonably required by the Housing Commission as necessary to monitor the Affordable Units for compliance with the rent and occupancy restrictions set forth in this Lease.
- (c) LESSEE will pay the Housing Commission an annual monitoring fee based on the Housing Commission's cost for monitoring the Affordable Units (the "Annual Monitoring Fee"). The Annual Monitoring Fee shall be determined in accordance with the Housing Commission's current Compliance Monitoring Fee Schedule, attached as Exhibit B hereto, which Exhibit is subject to revision annually. The

initial Annual Monitoring Fee shall be paid on or before the Commencement Date (as defined below in section 2.2).

- (d) When an Affordable Unit becomes available for lease, LESSEE shall notify the Housing Commission and make the Affordable Unit available to an Eligible Resident approved by the Housing Commission, subject to LESSEE's approval, which shall not be unreasonably withheld. In the event LESSEE withholds approval of an Eligible Resident, the Housing Commission shall designate another Eligible Resident for each non-approved or withheld acceptance of tenants supplied.
- 1.2.2 LESSEE shall not use the Premises for any purpose other than the Allowed Uses without CITY's written consent in each instance. Each and all Allowed Uses shall be conducted in compliance with all laws, rules and regulations of competent governmental authority.
- 1.2.3 CITY makes no representation or warranty regarding the lawfulness of any of the Allowed Uses, including without limitation whether any or all of the Allowed Uses are permitted under the land use laws applicable to the Premises.
- 1.2.4 LESSEE shall diligently conduct its business on the Premises, using commercially reasonable best efforts to obtain and maintain full occupancy of all rentable space on the Premises and to collect all rent owing to LESSEE.
- 1.3 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest.
- 1.4 Governmental Approvals.
 - 1.4.1 By entering into this Lease, neither CITY nor the CITY's City Council (the "City Council") is obligating itself to LESSEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
 - 1.4.2 LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any development, rehabilitation, maintenance or restoration of the Premises, the Improvements, or any other improvements thereon, any aspect thereof, or issues or matters related thereto. Furthermore, CITY does not represent, warrant or guarantee any future approval of any development, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon, or any aspect thereof by the CITY, in its governmental capacity, or the City Council, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval.

CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of CITY's or the City Council's failure to approve any construction, alteration, rehabilitation, or improvement of the Premises or the Improvements, or any other improvements thereon.

1.4.2.1 LESSEE's Waiver. LESSEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of CITY's failure to approve any development, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon.

1.5 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided in this Lease or as required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided in this Lease.

1.6 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage.

1.7 Reservation of Rights.

1.7.1 Mineral Rights. CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the Premises.

1.7.2 Easements. CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good, without provision of consideration to LESSEE or any reduction in rent due under this Lease.

1.7.3 Repairs. CITY may at all reasonable times upon not less than ten (10) days written notice to the LESSEE (except in the event of an emergency, in which case no prior notice shall be required) enter upon the Premises for the purpose of making repairs to the Premises as otherwise required under this Lease or by law.

1.7.4 Noninterference. In the exercise of the rights reserved under this section, CITY shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.

1.7.5 Costs. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.8 Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the

management and operation of activities substantially similar to the Allowed Uses and in compliance with all laws, rules and regulations of competent governmental authority, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

- 1.9 Supersedes Prior Agreements. As of the Commencement Date (as defined below in Section 2.2), this Lease shall supersede any and all prior agreements between the parties and related to all or any portion of the Premises, including without limitation the Current Lease.
- 1.10 Termination of Current Lease. Effective as of the Commencement Date (as defined below in Section 2.2), CITY and LESSEE hereby terminate the Current Lease. The Current Lease shall be of no further force or effect except as to any rentals and fees that may have accrued thereunder, and any rights and remedies accrued or granted thereunder and which by their nature or by agreement survive such termination.

SECTION 2: TERM AND COMMENCEMENT

- 2.1 Term. The term of this Lease ("Term") shall be forty (40) years commencing on the Commencement Date, as defined below in Section 2.2.
- 2.2 Commencement Date. The Term shall commence on the date (the "Commencement Date") a lending institution records a lien securing a leasehold mortgage against the LESSEE's interest in the Premises following the Effective Date, but in no event prior to City Council approval of this Lease by resolution. LESSEE shall have two hundred forty (240) calendar days to obtain the financing, commencing on the date of final passage of the CITY resolution approving this Lease (the "Financing Period"). The Financing Period shall be extended by the period of any Unavoidable Delay. The Commencement Date will be memorialized by a memorandum signed by the parties. If LESSEE does not obtain the financing within the Financing Period, this Lease shall be void and have no further force and effect and the Current Lease shall continue in full force and effect.
- 2.2.2 First Month. If the Commencement Date is other than the first day of a calendar month, the partial month after the Commencement Date shall be included in the following full calendar month to compose the first month of the Term so that the second month of the Term will start on the first day of a calendar month.
- 2.2.3 Lease Year. "Lease Year" shall mean each twelve (12)-month period during the Term beginning on January 1st and ending on December 31st of each year of the Term; however, the first Lease Year shall be that period of time between the Commencement Date and the first December 31st following the Commencement Date.
- 2.3 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. LESSEE's occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall

continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to two (2) times the then market rent for the Premises, as determined by competent City staff, which rent shall be effective as of the first day of the holdover period.

- 2.4 Surrender of the Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender the Premises to CITY free and clear of all liens and encumbrances caused by LESSEE or arising in whole or in part from the Current Lease or this Lease. Upon surrender of the Premises, LESSEE shall deliver the Premises to CITY in good order, condition and state or repair, but shall not be responsible for damages or to make additional capital expenditures resulting from ordinary wear and tear. LESSEE shall be responsible for completing all work, at its sole cost and expense, or reimbursing CITY (including all costs and expenses, including attorneys' fees, incurred to ensure the completion of the work) for all work, necessary to bring the Premises back to good order, condition and state or repair (excepting ordinary wear and tear) upon the surrender of the Premises to CITY, provided that LESSEE is not responsible for making capital expenditures or replacements to enhance or extend the useful life of any Improvements otherwise in good working order, condition, and repair upon surrender of the Premises. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

SECTION 3: RENT

- 3.1 One-Time Payment. In consideration for this Lease, LESSEE shall pay to CITY a one-time payment in an amount of **Two Million Nine Hundred Fifty Two Thousand and No/100 Dollars (\$2,952,000)**, payable in cash to the City Treasurer on the Commencement Date.
- 3.2 Gross Income. "Gross Income" shall mean all income collected from all operations conducted on the Premises, including subsidies and any other income to LESSEE derived from the Premises, but shall not include sale or refinancing proceeds, insurance or condemnation proceeds, capital or debt contributions to LESSEE made by any partners or affiliates of LESSEE or by any third party, or security deposits.
- 3.3 Rent. Rent payable under this Lease shall be the greater of: (a) the Percentage Rent (as defined below); or (b) the Minimum Monthly Rent (as defined below). Within thirty (30) days after the end of each month during the Term, LESSEE shall deliver to CITY a schedule of LESSEE's Gross Income, for the month, together with a statement of the Percentage Rent payable for that month, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source and deductions categorized by type. If the Percentage Rent calculated for any given month is greater than the Minimum Monthly Rent, LESSEE shall pay to CITY the Percentage Rent, otherwise LESSEE shall pay the Minimum Monthly Rent concurrently with the delivery of such schedule and statement.

- 3.3.1 Percentage Rent. The Percentage Rent ("Percentage Rent") payable to CITY shall be equal to eight and 4/10th percent (8.4%) of all Gross Income.
- 3.3.2 Minimum Monthly Rent. The Minimum Monthly Rent for the first five (5) Lease Years shall be Twenty Two Thousand Four Hundred Eighty Seven Dollars and Seven Cents (\$22,487.07).
- 3.3.3 Minimum Monthly Rent Adjustment. Effective as of the first day of the sixth (6th) Lease Year, and as of the first day of each sixth (6th) Lease Year thereafter, the Minimum Monthly Rent shall be recalculated to be equal to one twelfth (1/12th) of eighty percent (80%) of the annual average of the all rents paid and accrued during the three (3) Lease Years preceding the adjustment date, including without limitation the Percentage Rent and Minimum Monthly Rent. In no event shall any such adjustment result in a decrease in the Minimum Monthly Rent in effect immediately prior to the recalculation. LESSEE acknowledges that such adjustments shall be calculated by CITY after receipt of all applicable Gross Income schedules and Percentage Rent statements. LESSEE further acknowledges that any adjustment shall apply retroactively and shall be payable by LESSEE as in effect of the first day of the Lease Year in which the adjustment is made. Until such calculations are completed, LESSEE shall continue paying the most recent Minimum Monthly Rent. Within thirty (30) days after CITY notifies LESSEE of the new Minimum Monthly Rent, LESSEE shall pay to CITY any and all rent deficiencies between the previous Minimum Monthly Rent and the retroactive, adjusted Minimum Monthly Rent.
- 3.4 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. No unauthorized use charges shall satisfy or credit against any other rent obligations of LESSEE under this Lease. The unauthorized use charge shall otherwise be considered "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.
- 3.5 Annual Statements. Within thirty (30) days after the end of each Lease Year, LESSEE shall deliver to CITY a statement of Gross Income for the Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source and expenses categorized by type. Each such annual statement shall also include calculations of a summary of the Percentage Rent for each month of the Lease Year and any other amounts payable to CITY under this Lease for the Lease Year. LESSEE shall furnish to CITY, if requested by CITY in writing prior to the end of the applicable Lease Year and not more frequently than annually, a copy of an audit for the requested Lease Year conducted by a licensed Certified Public Accountant. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the

operation of LESSEE's operations and all other business activities conducted on the Premises, and all financial transactions resulting from and related to LESSEE's use of the Premises.

3.6 Time and Place of Payment. All rent payments shall be made payable to "City Treasurer" and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

3.7 Records. LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from and related to LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Income.

3.7.1 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term and for five (5) years thereafter. LESSEE shall make such books, records and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from and related to LESSEE's use of the Premises as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to LESSEE's operations and activities conducted on the Premises, and all financial transactions resulting from and related to LESSEE's use of the Premises.

3.7.2 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all reasonable costs of the audit:

- (a) For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- (b) LESSEE failed to maintain materially true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

3.8 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

SECTION 4: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

4.1 Right of First Offer. LESSEE hereby grants to CITY a "right of first offer" to purchase LESSEE's interest in this Lease and in the Premises. Provided that LESSEE is not in default of the Lease, and if LESSEE decides to sell LESSEE's interest in this Lease and in the Premises, LESSEE shall provide CITY with written notice of such intent ("LESSEE's Notice"), together with an itemization of the terms and conditions upon which LESSEE is willing to sell LESSEE's interest in this Lease and in the Premises. If CITY, within thirty (30) days after receipt of LESSEE's Notice, indicates in writing an agreement to purchase

LESSEE's interest in this Lease and in the Premises on the terms and conditions stated in LESSEE's notice, LESSEE shall sell and convey LESSEE's interest in this Lease and in the Premises to CITY on the terms stated in LESSEE's Notice, or at such terms and conditions as LESSEE and CITY may agree upon. If CITY does not indicate its agreement within thirty (30) days of receipt of LESSEE's Notice, LESSEE thereafter shall have the right to sell and convey LESSEE's interest in this Lease and in the Premises to a third party on the same terms and conditions stated in LESSEE's Notice (or terms less favorable to the third party than offered to the City in LESSEE's Notice), subject to CITY's written consent as provided in Section 4.4. The purchaser at such sale shall assume LESSEE's interest in this Lease and in the Premises subject to all of the terms and conditions of this Lease. If LESSEE does not sell and convey LESSEE's interest in this Lease and in the Premises within two hundred seventy (270) days after the date of LESSEE's Notice, any further transaction shall be deemed a new determination by LESSEE to sell and convey LESSEE's interest in this Lease and in the Premises and the provisions of this Section 4.1 shall be applicable.

If CITY purchases LESSEE's interest in this Lease and in the Premises, this Lease shall terminate on the date CITY assumes in writing LESSEE's interest in the Lease and in the Premises, and CITY shall remit to LESSEE all prepaid and unearned rent. Notwithstanding the forgoing CITY agrees that if CITY purchases LESSEE's interest as provided under Section 4.1, the Lease shall not terminate unless (i) any leasehold mortgage encumbering the Premises is paid in full, or (ii) CITY and Lender agree otherwise in writing.

CITY's right of first offer shall apply only to voluntary transfers to third party transferees and shall not apply where the Property is taken by eminent domain or sold under threat of condemnation. Further such right of first offer shall not apply to a transfer between any of those persons who constitute the LESSEE herein, and the blood relatives of any of those individuals, either outright or in trust, to any intra-family or intra-ownership transfer or to a legal entity (i.e., partnership, corporation, trust or like entity) in which the majority interest is owned by all or some of those persons who constitute LESSEE herein.

- 4.2 Mortgage of Leasehold. Subject to CITY's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts. During the last twenty (20) years of the Term, the proceeds of any such loan or loans must be devoted exclusively to debt repayment, purchase, payment of additional consideration to CITY (as set forth in Section 3.1 and Section 4.5 of this Lease), and capital expenditures for the purpose of rehabilitating, improving, repairing or maintaining the Premises and the Improvements. The principal amount of all encumbrances of the leasehold estate shall not exceed seventy-five percent (75%) of the value of the leasehold, as determined by an independent MAI appraiser, reasonably approved by the CITY (which may be the same as the Lender's appraiser), which appraisal shall be prepared at LESSEE's sole cost and expense; and the Debt Service Coverage Ratio upon origination of the leasehold mortgage shall not be less than 1.25:1. For such purposes, "Debt Service Coverage Ratio" has the meaning defined in any loan from any Lender or if not so defined, then means the ratio of net operating income from the Property divided by the total debt service for all mortgage loans encumbering the Property. During the term of

any approved leasehold mortgage to secure repayment of any loan and associated obligations to LESSEE from an Institutional Lender, as defined in Rider 1 attached hereto, the rights and obligations of the parties with respect to encumbrance of this Lease are set forth in Rider 1.

- 4.3 Nonsubordination. CITY shall not be required to subject its fee estate and interest in the Premises to the lien of any leasehold financing or mortgage sought or obtained by LESSEE.
- 4.4 Assignment and Subletting. Provided that Lessee is not in default of the Lease, LESSEE may assign this Lease and its interest in this Lease only with CITY's written consent (in accordance with Section 1.5 above) in each instance, which consent shall not be unreasonably withheld, conditioned or delayed.

Subject to notice to CITY and CITY's receipt of the disclosures required by San Diego Charter section 225 as set forth in Section 4.6 of this Lease, which disclosure shall be to the CITY's satisfaction in its sole discretion, CITY's consent shall not be required and the provisions of this Section 4.4 shall not be applicable to or in connection with: (a) any transfer of equity interest in LESSEE or any parent of LESSEE; (b) any assignment to (i) any entity that controls, is controlled by, or is under common control with LESSEE; or (ii) any subsidiary or parent of LESSEE or to any subsidiary of any parent of LESSEE; or (c) a transfer between any of those individuals who constitute the owners of LESSEE and the spouse or children of any of those individuals, either outright or in trust, to any intra-family or intra-ownership transfer, or to a legal entity (i.e., partnership, corporation, trust or like entity) in which all interest is owned by all of those persons who constitute LESSEE herein. For purposes of this section, "control" means the ability, directly or indirectly, to direct management and policies of another person or entity, whether through the ownership of voting securities, by contract, or otherwise.

LESSEE shall not sublet the Premises or any part of the Premises to anyone other than residential tenants without CITY's written consent in each instance. LESSEE may sublet a portion of the Premises to retail tenants reasonably related to the Allowed Uses of the Premises (i.e. laundry leases and cable, telecommunications, and internet services) provided that LESSEE has given CITY the disclosures required by San Diego Charter section 225, as set forth in Section 4.6, for each such subtenant at the beginning of the subtenancy.

- 4.5 Additional Consideration to CITY. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.
- 4.5.1 If this Lease is assigned to anyone other than the Housing Commission or an entity controlled by the Housing Commission, LESSEE shall pay to CITY an amount equal to two percent (2%) of (i) the gross sale price for the Lease, less (ii) the principal amount of all mortgage indebtedness encumbering the leasehold at the time of the sale.

4.5.2 In the event of a refinancing (which shall be deemed to occur on the date of recordation of the applicable new leasehold mortgage) that occurs after four years following the Commencement Date and encumbers the leasehold, LESSEE shall pay to CITY an amount equal to two percent (2%) of the principal amount of any such new mortgage loan to the extent such new principal amount exceeds (if at all) the sum of: (i) the principal balance of any loan existing at that time, and (ii) the cost of any improvements to be made to the Premises with proceeds from the refinancing. The amount upon which such two percent (2%) payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, subletting to other than residential subtenants, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee or the source of the refinancing as to the amount due CITY. The additional consideration payable to CITY for each assignment, sublease to other than residential subtenants, and/or refinancing shall be paid concurrently with the closing of the proposed transaction. The additional consideration due CITY pursuant to this section shall be payable to CITY when accrued regardless of actual receipt by LESSEE. The applicable two-percent (2%) payments required by this section shall not apply to:

- a) an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants of the individual who is LESSEE or the owner of a controlling interest in LESSEE; or
- b) an assignment deemed by CITY, in its sole discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby; or
- c) any assignment, sale or transfer of any limited partnership interest in LESSEE; or
- d) a transfer between any of those persons who constitute the LESSEE herein, and the blood relatives of any of those individuals, either outright or in trust, to any intra-family or intra-ownership transfer or to a legal entity (i.e., partnership, corporation, trust or like entity) in which the majority interest is owned by all or some of those persons who constitute LESSEE herein.

4.6 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its assignees and majority subtenants shall make a full and complete disclosure of the name and identity of all persons and/or entities directly or indirectly involved in this Lease

and the precise nature of all interests of all such persons. Other than LESSEE's residential subtenants, each and every person and/or entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.

SECTION 5: DEFAULT AND REMEDIES

5.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

5.1.1 LESSEE fails to make any payment required under this Lease when due;

5.1.2 LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;

5.1.3 LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;

5.1.4 LESSEE is adjudicated a bankrupt; or

5.1.5 LESSEE makes a general assignment for the benefit of creditors.

5.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written "Three Day Notice to Pay or Quit," for failures to make required payments, or (2) a "Notice of Termination" for defaults not requiring payment to CITY, in order that CITY may seek to terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

5.2.1 the worth at the time of any unpaid rent that was due at the time of termination;

5.2.2 the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;

5.2.3 the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;

5.2.4 any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and

5.2.5 all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 5.2.1 and 5.2.2, above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 5.2.3, above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

5.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest that is not subject to the provisions set forth in Rider 1 to this Lease, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- 5.3.1 CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- 5.3.2 CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and,
- 5.3.3 CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- 5.4 Abandonment by LESSEE. If LESSEE abandons the Premises and subject to the rights hereunder of any Lender (as defined in the attached Rider 1), this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.
- 5.5 Waiver. Any waiver by either party of a breach or default by the other party shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by the waiving party. Such party's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that in the event of any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 6: EMINENT DOMAIN; DAMAGE & DESTRUCTION

- 6.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY, LESSEE and Lender shall be as follows:
- 6.1.1 Full Taking. If the entire Premises are taken, or a portion of the Premises is taken which is greater than a Partial Taking (defined below) ("Total Taking"), this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 6.1.2 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs and, in the reasonable opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation for the Allowed Use ("Partial Taking"), this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- 6.1.3 LESSEE's Award. Subject to the rights of Lender as set forth in Rider 1 when applicable, LESSEE shall receive the fair market value of its leasehold interest under this Lease for the remaining Term and the value of its loss of goodwill, if any, awarded by the taking authority. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

6.1.4 Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any LESSEE-owned improvements on the Premises in accordance with this Lease.

6.1.5 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

6.2 Waste, Damage or Destructions.

6.2.1 LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY.

6.2.2 If any identifiable earthquake, flood, fire, tsunami, act of God, act of terrorism, or event of a sudden, unexpected or unusual nature ("Casualty Event") causes damage or destruction of the Premises, LESSEE shall restore the Premises to a decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction or at CITY's option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Improvements in accordance with plans and specifications submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the Casualty Event, using for either purpose the insurance proceeds as set forth in this Lease. LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Improvements shall be commenced by LESSEE within thirty (30) days of any Casualty Event (subject to Unavoidable Delay) and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter.

6.2.3 In the event the Improvements are damaged or destroyed by a Casualty Event insured against under the insurance described in this Lease, the proceeds shall be deposited with a depository reasonably acceptable to CITY, LESSEE and any Institutional Lender (as defined in Rider 1), if applicable (Depository). If the proceeds are insufficient to cover the anticipated cost of reconstruction, LESSEE shall deposit with the Depository before commencement of reconstruction, funds in the amount of such deficiency or provide evidence to CITY, to CITY's reasonable satisfaction, that funds will be available to cover such deficiency when needed. The Depository shall disburse the funds during the course of reconstruction in accordance with customary construction disbursements. If, after the reconstruction has been completed in accordance with the terms of this Lease, there are remaining funds held by the Depository, then such funds (after first deducting from such funds the fees and expenses of the Depository) shall be delivered to LESSEE. If there are not sufficient funds remaining to pay for the Depository's fees and expenses, LESSEE shall be responsible for the payment of same. The

provisions of this Section are subject to the provisions of a Leasehold Mortgage as defined in to Rider 1. Any Institutional Lender shall have the right to participate in the adjustment of losses as to any casualty proceeds.

- 6.2.4 Destruction Not a Release. Except as expressly provided for in this Lease, no destruction of or damage to the Improvements or any part thereof by a Casualty Event shall permit LESSEE to terminate this Lease or shall relieve LESSEE from its obligation to pay full rent under this Lease or from any of its other obligations under this Lease, and except as otherwise expressly set forth herein. LESSEE waives any rights now or hereafter conferred on it by statute or otherwise to quit or surrender this Lease or the Premises or any suspension, diminution, abatement, or reduction of rent on account of any such destruction or damage. Notwithstanding anything contained in this Section 6.2 to the contrary, in the event that the Improvements are substantially damaged or destroyed by a Casualty Event that occurs during the last five (5) years of the Term and the cost to repair such damage or destruction exceeds the estimated proceeds from insurance, LESSEE may within three (3) months from the date of such Casualty Event, terminate the Lease by stating such intent in a written notice to CITY, provided that LESSEE has obtained the written consent of any Lender. Such option may be exercised by serving notice on the CITY, without any liability on the part of either party except for the payment of all rent and all additional sums required to be paid by LESSEE under the terms of this Lease up to the date of such termination and full performance by LESSEE, at its sole cost and expense, of the work of demolition and removal of the remaining portions of the Improvements located on the Property so damaged or destroyed and removal of all debris from the Property, to CITY's satisfaction. Any available insurance proceeds shall be applied, to the extent such proceeds are available for demolition and removal after payment of all mortgage loans encumbering the Property, to payment of the cost of such demolition and removal. In the event that this Lease is terminated pursuant to this Section 6.2.4, LESSEE shall contribute to the Depository a sum equal to the amount, if any, deducted from insurance proceeds under any deductible provisions by law or otherwise. All funds in the Depository (after deducting all reasonable expenses incurred by LESSEE in connection with the adjustment or collection of such loss and the costs of demolition and removal of the Improvements as provided herein) shall be distributed first to satisfy the indebtedness secured by any Leasehold Mortgage, and any remaining proceeds shall be distributed to CITY.

SECTION 7: INDEMNITY; HOLD HARMLESS; INSURANCE

- 7.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its rights and obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to

indemnify and hold CITY harmless shall not include any established liability arising from the negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

- 7.2 Insurance. Prior to the Commencement Date, LESSEE shall not begin operating under the Lease until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required in below; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under the Lease, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of the Lease may be treated as a material breach of contract by CITY.

Further, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of the Lease.

- 7.2.1 Types of Insurance. At all times during the term of the Lease, the LESSEE shall maintain insurance coverage as follows:

7.2.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$3 million per occurrence and subject to an annual aggregate of \$5 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

7.2.1.2 Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

7.2.1.3 Workers' Compensation. For all of LESSEE's employees who are subject to the Lease and to the extent required by the applicable state or federal law, LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

7.2.1.4 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses under this Lease or the Premises in an amount to cover one hundred percent (100%) of the replacement cost.

7.2.2 Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

7.2.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by the Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.2.4 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY prior to the Commencement Date.

7.2.4.1 Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include, as an Additional Insured, CITY and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEE's products, (c) LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on its behalf, or (d) premises owned, leased, controlled or used by LESSEE.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of CITY and its elected officials, officers, employees,

agents and representatives as respects operations of the Named Insured. Any insurance maintained by CITY and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.2.4.2 Automobile Liability Insurance Endorsements. **ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include, as an Additional Insured, CITY and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of LESSEE.

7.2.4.3 Worker's Compensation Insurance Endorsements. **WAIVER OF SUBROGATION.** The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.

7.2.5 Reservation of Rights and Modification. CITY reserves the right, from time to time, to review LESSEE's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to CITY. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and/or coverage of any insurance required under this Lease at any time, by giving LESSEE thirty (30) days prior written notice but only if the insurance provided by LESSEE is less than provided by comparable operators of comparable properties in the San Diego area. LESSEE shall also obtain any additional insurance reasonably required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses but only if the insurance provided by LESSEE is less than provided by comparable operators of comparable properties in the San Diego area.

7.2.6 Additional Insurance. LESSEE may obtain additional insurance not required by the Lease.

7.2.7 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.

- 7.2.8 LESSEE Waiver of Subrogation. Notwithstanding any other provision of this Lease to the contrary, LESSEE, for itself and for its respective insurers, does hereby release from any and all claims, demands, actions and causes of action that LESSEE may have or claim to have against the CITY (including, but not in limitation of the foregoing, all rights of subrogation accruing to any insurers of the LESSEE) for loss of or damage to the property of the CITY whether real or personal, caused by or resulting from any casualty of the type covered by fire or extended coverage insurance, based on coverage for one hundred percent (100%) replacement cost, without regard for whether such insurance is then in effect, and notwithstanding that any such loss or damage may be due to or result from the negligence of CITY or their respective officers, employees, or agents. All insurance policies required under this Lease, shall provide that the insurer waives all rights of subrogation an insurer might have against the City, its officers, directors, employees or agents through the inclusion in, or an endorsement on, all insurance policies.
- 7.2.9 Accident Reports. LESSEE shall promptly report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

SECTION 8: IMPROVEMENTS; ALTERATIONS; MAINTENANCE

- 8.1 Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
- 8.2 Improvements/Alterations. Subject to Section 8.3, LESSEE shall not construct or install any buildings or structures on the Premises or otherwise improve or alter the Premises in any manner except in accordance with plans and specifications previously submitted to and approved by the CITY. LESSEE shall not make any structural or major architectural design alterations to any of the approved improvements, structures or installations on the Premises without CITY's written approval, but capital expenditures and renovations conducted in the LESSEE's ordinary course of business that are routinely made in preparing vacant units for new tenants otherwise made in accordance with applicable law and the terms of this Lease shall not require CITY's written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
- 8.3 General Development Plan. Notwithstanding anything to the contrary contained herein, LESSEE shall make certain improvements to the Premises as set forth in **Exhibit "D"** General Development Plan attached hereto and made a part hereof. CITY and LESSEE understand, acknowledge and agree that reasonable modifications of the General Development Plan may be necessary in connection with the processing of building

permits and other approvals from the City of San Diego acting in its regulatory capacity. The General Development Plan may be modified by amendment to this Lease, approved by the Mayor of San Diego pursuant to Section 1.5.

- 8.4 Construction Bond. If LESSEE constructs improvements on the Premises and the improvements are not funded with proceeds held and disbursed by a Lender, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
- 8.5 Liens. LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, upgrades, construction or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations, upgrades, construction or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and, within thirty (30) days after the filing, either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 8.6 Ownership of Improvements and Personal Property. CITY shall not own any improvements, fixtures, structures or installations on the Premises during the Term, unless such ownership is evidenced by a separate writing. LESSEE shall not remove any improvements, fixtures, structures or installations during the Term without CITY's written consent in each instance (and as such consent may be provided by CITY pursuant to Section 8.2 and Section 8.3 above). Upon expiration or termination of this Lease, all improvements, fixtures, structures and installations then on the Premises shall be deemed a part of the Premises and owned by CITY, at no cost to CITY. Notwithstanding the foregoing sentence, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures and installations or additions removed by LESSEE upon the termination or expiration of this Lease. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required in this section, CITY may, at its option, remove them at LESSEE's sole cost and expense. All such ownership rights are subject to any rights of a Lender as set forth in Rider 1.

- 8.6.1 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination of this Lease. Any such items which LESSEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
- 8.6.2 Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any reasonable period of time after the expiration or termination of this Lease needed to remove improvements, fixtures, structures or installations or personal property as required by Section 8.6 and Section 8.6.1 above, whether by CITY or by LESSEE. Such rent shall be one hundred twenty five percent (125%) of the rent in effect immediately prior to the expiration or termination of this Lease.
- 8.6.3 CITY's Right to Acquire Personal Property. If LESSEE wants to sell or otherwise dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property (in accordance with the terms of Section 4.1 above).
- 8.7 Entry and Inspection. Upon not less than 72 hours written notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, may, during regular business hours enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
- 8.8 Maintenance. LESSEE shall maintain the Premises and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY, ordinary wear and tear excepted. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Premises.
- 8.9 Utilities. LESSEE shall order, obtain and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises.
- 8.10 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

- 8.11 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's written consent in accordance with applicable laws and regulations. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.
- 8.12 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by strike, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, judicial orders, enemy or hostile governmental action, civil commotion, accidents, fire, flood, earthquake, or other casualty, and other causes beyond the reasonable control of the party required to perform the act (excluding financial inability or hardship), that party shall be excused from performing the act for a period equal to the period of the prevention or delay (collectively "Unavoidable Delay"). This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.
- 8.13 Hazardous Substances.
- 8.13.1 LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance in violation of applicable law on the Premises without CITY's written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste in violation of applicable law.
- 8.13.2 Definitions. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of Hazardous Substances. "Hazardous Substances" shall mean any hazardous liquid, solid, gaseous material, or waste substances listed by the Environmental Protection Agency or the State of California as a Hazardous Substance, and any type of petroleum-related substances and their chemical constituents.
- 8.13.3 Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for

unrestricted reuse of the Premises in accordance with all applicable laws, rules and regulations of competent governmental authority.

- 8.13.4 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove, or cause to be removed, all such Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.
- 8.13.5 Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 8.13.6 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- 8.13.7 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not

been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authority, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment of Hazardous Materials caused by LESSEE's Operations such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

SECTION 9: GENERAL PROVISIONS

- 9.1 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CAsp).
- 9.2 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States Postal Service, registered or certified mail, postage prepaid or by nationally recognized overnight courier and addressed as follows:

If to LESSEE:

Mark Gleiberman, President of the General Partner
MG Stonewood Garden Apartments L.P.
10505 Sorrento Valley Road, Suite 300
San Diego, CA 92121

With a copy to:

Procopio, Cory, Hargreaves & Savitch LLP
Attention: Robert J. Brown
525 B Street, Suite 2200
San Diego, CA 92101

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

Either party may change the place to which notices are given by advising the other party in writing.

- 9.3 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules and regulations of competent legal authority, at LESSEE's sole cost and expense. Upon request, LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE. However, LESSEE may, after written notice to CITY, by appropriate proceedings conducted promptly at LESSEE's expenses, and in LESSEE's name, and/or wherever necessary in CITY's name contest in good faith the enforcement of any such law or regulation against LESSEE, and LESSEE may defer compliance with the same during such contest, provided LESSEE diligently prosecutes such contest to a final determination by the authority having jurisdiction thereof, and providing LESSEE shall defend, indemnify and save LESSOR harmless from any fine, penalty or other civil or criminal liability resulting from such contest or deferral.
- 9.4 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the California Public Records Act (CPRA). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY, with such notice, specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- 9.4.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.
- 9.4.2 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
- 9.5 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment

Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

9.6 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease.

9.7 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with California Government Code sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:

9.7.1 LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.

9.7.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.

9.7.3 LESSEE shall include language in each commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.

9.7.4 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

9.7.5 Where required by law, all improvements, fixtures, structures or installations on the Premises shall comply with municipal disabled-access requirements by bringing up

to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at LESSEE's sole cost and expense.

9.7.6 LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Lease.

9.8 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

9.8.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and

9.8.2 Establish a drug-free awareness program to inform employees about all of the following:

9.8.2.1 The dangers of drug abuse in the workplace;

9.8.2.2 LESSEE's policy of maintaining a drug-free workplace;

9.8.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and

9.8.2.4 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each of its sublicenses and contracts (but not any residential sublease) related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

9.9 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

9.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. To the extent legally required under applicable law with respect to any work on the Premises, LESSEE shall use its best efforts to solicit applications for employment and bids

and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

- 9.11 Water Quality Assurances. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312).

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Residential BMPs adopted under the San Diego Municipal Code Section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

- 9.12 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.
- 9.13 Memorandum of Lease. A Memorandum of Lease, substantially in the form of **Exhibit C: Memorandum of Lease** attached hereto, shall be executed, acknowledged and recorded in the Office of the County Recorder of the County of San Diego, State of California immediately after the Commencement Date.
- 9.14 Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 9.15 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 9.16 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 9.17 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.

- 9.18 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms.
- 9.19 Partial Invalidity. If any term, covenant, condition or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 9.20 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
- 9.21 Consents. Unless otherwise specified herein, all consents to be given by either party shall be reasonably and timely given.
- 9.22 Estoppel Certificate. CITY and LESSEE will, at any time, and from time to time, within thirty (30) days of the request of the other party or a Lender, or prospective Lender, execute, acknowledge, deliver to the other party and such Lender, if any, a certificate certifying:
- (a) That this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating such modifications);
 - (b) The dates, if any, to which the Minimum Monthly Rent, Percentage Rent, and any other applicable charges have been paid;
 - (c) Whether there are any existing defaults, or events which through by the passage of time will result in a default, by either the CITY or the LESSEE to the knowledge of the party making such certification specifying the nature of such defaults, if any;
 - (d) Whether the Lease Commencement Date has occurred and, if so, the date;
 - (e) Whether the Lender (or prospective Lender) is entitled to the protection afforded a Lender under Rider 1 to this Lease;

- (f) Whether the Lender or prospective Lender) is permitted to become the lessee under the Lease following a Foreclosure Action pursuant to Rider 1;
- (g) Whether the improvements or repairs required or contemplated by the Lender in connection with the loan are approved by the CITY;
- (h) To the extent of any terms, conditions, rights, remedies, rentals or fees related to the Current Lease survive termination and replacement by this Lease as more particularly described in Section 1.10 (an outline or summary of any material terms); and
- (i) Such other matters as may be reasonably requested.

Any certificate in compliance with Section 9.22 of this Lease may be relied upon by any party to whom the certificate is directed.

[Signature Page Follows]

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

Date: _____

MG Stonewood Garden Apartments L.P.,
a California limited partnership

By: Gleiberman Investments Inc.,
a California corporation,
its General Partner

By: 
Mark Gleiberman, President

Date: 6/7/16

THE CITY OF SAN DIEGO, a California
municipal corporation

By: 
Cybele Thompson, CCIM
Director, Real Estate Assets Department

Approved as to form:

JAN I. GOLDSMITH, CITY ATTORNEY

By: 
Name: Heather Ferbert
Title: Deputy City Attorney

Exhibit A: Legal Description of Premises

Exhibit B: Housing Commission Compliance Monitoring Fee Schedule

Exhibit C: Memorandum of Lease

Exhibit D: General Development Plan

Rider 1: Mortgage of Leasehold

Exhibit A: Legal Description of Premises

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 47 OF BAY CREST, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5334, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 24, 1964.

EXCEPTING THAT PORTION LYING NORTHERLY OF A LINE WHICH BEARS NORTH 65°57'28" EAST FROM A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT DISTANT ALONG SAID SOUTHWESTERLY LINE NORTH 24°02'32" WEST 91.00 FEET FROM THE SOUTHERLY CORNER OF SAID LOT 47.

PARCEL 2:

THAT PORTION OF PUEBLO LOT 219 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN MAY 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, INCLUDED WITHIN THE FOLLOWING DESCRIBED BOUNDARIES:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID PUEBLO LOT 219; THENCE SOUTH 36°17'20" WEST, ALONG THE SOUTHEASTERLY LINE OF SAID LOT, A DISTANCE OF 35.00 FEET TO AN INTERSECTION WITH THE SOUTHWESTERLY LINE OF MIDWAY DRIVE (INGRAHAM STREET), SAID INTERSECTION BEING THE TRUE POINT OF BEGINNING.

THENCE CONTINUING SOUTH 36°17'30" WEST ALONG THE SOUTHEASTERLY LINE OF SAID LOT, A DISTANCE OF 598.16 FEET TO THE NORTHWESTERLY-SOUTHEASTERLY CENTER LINE OF SAID LOT; THENCE NORTH 53°55'05" WEST ALONG THE NORTHEASTERLY-SOUTHEASTERLY CENTER LINE, A DISTANCE OF 660.11 FEET TO THE NORTHEASTERLY-SOUTHEASTERLY CENTER LINE OF SAID LOT; THENCE NORTH 36°03'30" EAST ALONG THE NORTHEASTERLY-SOUTHEASTERLY CENTER LINE, A DISTANCE OF 327.41 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF WEST POINT LOMA BOULEVARD; SAID INTERSECTION BEING ALSO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH, HAVING A CENTRAL ANGLE OF 20°54'02", A RADIUS OF 2180.00 FEET AND THE CENTER OF WHICH SAID CURVE BEARS SOUTH 10°53'42" EAST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, BEING ALSO THE SOUTHERLY LINE OF SAID WEST POINT LOMA BOULEVARD, A DISTANCE OF 110.36 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHWESTERLY, HAVING A CENTRAL ANGLE OF 44°08' AND A RADIUS OF 683.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, BEING ALSO THE SOUTHERLY LINE OF SAID WEST POINT LOMA BOULEVARD, A DISTANCE OF 526.36 FEET; THENCE PARALLEL WITH THE NORTHEASTERLY LINE OF SAID LOT 219, A DISTANCE OF 107.54 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 8.00 ACRES, MORE OR LESS.

APN: 441-160-04, 441-370-21 AND 760-102-67

EXHIBIT B



SAN DIEGO
HOUSING
COMMISSION

Rental Assistance Department

COMPLIANCE MONITORING FEE SCHEDULE

The monitoring fee is an annual charge to cover costs of monitoring compliance with the affordability requirements of a development. Compliance monitoring includes developing a compliance monitoring plan, computer database program and reporting system for the project, 1-2 trainings per year and technical assistance provided by Commission staff to property owner/manager and/or representatives.

Annual Monitoring Fee

The monitoring fee is \$150 per monitored unit. The number of monitored units is equal to the total number of units being monitored under the developer agreement(s) with the Commission.

"In the event that the Property utilizes a high volume of monitoring (for example, due to repeated trainings and/or frequent contact to address inaccurate or incomplete reports) the Commission, in its sole discretion, may elect to charge an additional fee based on an hourly rate of \$100.

Adjustment of Annual Fee

The Commission reserves the right to revise the Monitoring Fee annually based on the Commission's costs for monitoring functions. In no event shall the monitoring fee decrease.

A fee will not be charged for any of the HOME units unless allowed by HUD per HOME program guidelines.

EXHIBIT C

RECORDING REQUESTED BY AND,
WHEN RECORDED MAIL TO:

City of San Diego
1200 Third Avenue, MS-51A
San Diego, CA 92101
Attention: Real Estate Assets Dept

MAIL TAX STATEMENTS TO:

MG Stonewood Garden Apartments L.P.
11505 Sorrento Valley Road, Suite 300
San Diego, CA 92121
Attention: Mark Gleiberman

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

This Memorandum of Lease (the "Memorandum") is dated as of _____, 2016 between City of San Diego, a California municipal corporation ("City"), and MG Stonewood Garden Apartments L.P., a California limited partnership ("Lessee") who agree as follows:

1. City and Lessee were parties to that certain Lease Agreement executed on August 2, 1978, between City and Gentry & Coles, a general partnership, on file with the San Diego City Clerk as Document No. RR 763729. The Lease Agreement was amended by the terms of that certain First Amendment to Lease Agreement dated January 18, 1980, and that certain Second Amendment to Lease Agreement dated September 12, 1991. The Lease Agreement was assigned to MG Stonewood Garden Apartments L.P., a California limited partnership, on August 27, 2003.

2. The parties have entered into a new lease agreement entitled Percentage Ground Lease ("Lease"), effective on _____. The Commencement Date of the Lease is _____. Pursuant to the Lease, City has leased the Property to Lessee and Lessee has accepted tenancy of the Property from City commencing on the Commencement Date (as defined therein) for the term specified therein consisting of forty (40) years from and after the Commencement Date.

3. The provisions of the Lease to be performed by Lessee, whether affirmative or negative in nature, are intended to and shall bind Lessee and its successors and assigns at any time, and shall inure to the benefit of City and its successors and assigns.

4. The provisions of the Lease to be performed by City, whether affirmative or negative in nature, are intended to and shall bind City and its successors and assigns at any time, and shall inure to the benefit of Lessee and its successors and assigns.

5. This Memorandum is prepared for the purpose of recordation only and it in no way modifies any of the provisions of the Lease.

6. Reference is hereby made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the office of the San Diego City Clerk, 202 C Street, 2nd Floor, San Diego, California 92101, as Document Number RR- 310427

IN WITNESS WHEREOF, the City and the Lessee have executed this Memorandum as of the date first set forth above.

CITY

LESSEE

THE CITY OF SAN DIEGO

MG Stonewood Garden Apartments L.P., a California limited partnership

By: 
Cybele Thompson
Director, Real Estate Assets

By: 
Name: Mark Gleiberman
Title: President

Approved as to form

This ____ day of _____, 2016

JAN I. GOLDSMITH, CITY ATTORNEY

By: _____
Deputy City Attorney

TO MEMORANDUM OF LEASE

Legal Description of Premises

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THAT PORTION OF PUEBLO LOT 219 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN MAY 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, INCLUDED WITHIN THE FOLLOWING DESCRIBED BOUNDARIES:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID PUEBLO LOT 219; THENCE SOUTH 36°17'20" WEST, ALONG THE SOUTHEASTERLY LINE OF SAID LOT, A DISTANCE OF 35.00 FEET TO AN INTERSECTION WITH THE SOUTHWESTERLY LINE OF MIDWAY DRIVE (INGRAHAM STREET), SAID INTERSECTION BEING THE TRUE POINT OF BEGINNING.

THENCE CONTINUING SOUTH 36°17'30" WEST ALONG THE SOUTHEASTERLY LINE OF SAID LOT, A DISTANCE OF 598.16 FEET TO THE NORTHWESTERLY-SOUTHEASTERLY CENTER LINE OF SAID LOT; THENCE NORTH 53°55'05" WEST ALONG THE NORTHEASTERLY-SOUTHEASTERLY CENTER LINE, A DISTANCE OF 660.11 FEET TO THE NORTHEASTERLY-SOUTHEASTERLY CENTER LINE OF SAID LOT; THENCE NORTH 36°03'30" EAST ALONG THE NORTHEASTERLY-SOUTHEASTERLY CENTER LINE, A DISTANCE OF 327.41 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF WEST POINT LOMA BOULEVARD; SAID INTERSECTION BEING ALSO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH, HAVING A CENTRAL ANGLE OF 20°54'02", A RADIUS OF 2180.00 FEET AND THE CENTER OF WHICH SAID CURVE BEARS SOUTH 10°53'42" EAST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, BEING ALSO THE SOUTHERLY LINE OF SAID WEST POINT LOMA BOULEVARD, A DISTANCE OF 110.36 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHWESTERLY, HAVING A CENTRAL ANGLE OF 44°08' AND A RADIUS OF 683.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, BEING ALSO THE SOUTHERLY LINE OF SAID WEST POINT LOMA BOULEVARD, A DISTANCE OF 526.36 FEET; THENCE PARALLEL WITH THE NORTHEASTERLY LINE OF SAID LOT 219, A DISTANCE OF 107.54 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 8.00 ACRES, MORE OR LESS.

APN: 441-160-04, 441-370-21 AND 760-102-67

GENERAL ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

SS:

On MARCH 31 2016 before me, PERLA M. BARKER, NOTARY PUBLIC
(insert name and title of the officer),

personally appeared MARK GLEIBERMAN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Perla M. Barker



[Seal]

Exhibit D: General Development Plan

CAPITAL IMPROVEMENTS BUDGET SUMMARY

Apartment interiors

Building mechanical systems

Building envelope (siding, roofs, paint, patio/balconies, etc.)

Common area, clubhouse, leasing office and tenant amenities

Property site

Construction planning and permitting (legal, architectural, inspection, etc.)

Construction management fee

Total Budget: \$7,600,000

This Exhibit D may be modified by amendment to this Lease, approved by the Mayor of San Diego pursuant to Section 1.5 of the Lease, whenever CITY and LESSEE reach agreement upon a mutually satisfactory reallocation.

RIDER 1

Mortgage of Leasehold

The provisions of this Rider will apply for the duration of any Leasehold Mortgage from an Institutional Lender to LESSEE that is approved by the CITY in accordance with Section 4.2 of the Lease, to secure repayment of any Loan secured by a Leasehold Mortgage and associated obligations. In the event of any inconsistency between this Rider and the Lease to which it is attached, the provisions of this Rider shall prevail. Defined terms in the Lease and not otherwise defined in this Rider shall have the same meaning in this Rider.

1. Institutional Lender. For purposes of this Rider, "Institutional Lender" shall mean any national or state bank, foreign bank agency licensed in California, federal or state savings and loan association, trust company, insurance company, educational institution, pension, retirement, or welfare fund, charitable foundation, or real estate investment trust, Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), United States Department of Housing & Urban Development (HUD), their respective successors and assigns, and any other entity generally regarded at the time in question and in the financial field as an institutional lender.
2. Leasehold Mortgage. As used in the Lease and this Rider, "Leasehold Mortgage" shall mean any mortgage, deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the Premises, which constitutes a lien by an Institutional Lender on the leasehold estate created by the Lease, and "Lender" shall mean the Institutional Lender that is the owner and holder of the Leasehold Mortgage, and "Loan" shall mean the loan secured by the Leasehold Mortgage from the Institutional Lender. There shall be no limitation or restriction upon: (i) the number of separate Leasehold Mortgages which LESSEE may place on the leasehold estate; or (ii) the principal amount and other sums secured by any Leasehold Mortgage, and such principal amount or other sums which may also be secured by other mortgages, deeds of trust or security agreements. CITY will provide notice as required herein to any Lender provided such Lender or LESSEE shall have notified CITY in writing in accordance with Section 9.2 of the Lease of the name and address of such Lender.
3. Liability of Lender. Lender shall not become personally liable for the performance or observance of any covenants or conditions to be performed or observed by LESSEE unless and until such Lender expressly elects to become the owner of the LESSEE's interest hereunder upon the exercise of any remedy provided for in any Leasehold Mortgage or enters into a New Lease with Lessor pursuant to Section 4 of this Rider, below. Thereafter, such Lender shall be liable for the performance and observance of such covenants and conditions only so long as such Lender owns such interest or is the lessee under such New Lease and then only to the extent of Lender's interest in the Premises.
4. Default/Right to Cure. During the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished and provided LESSEE has delivered to CITY the name, address and telephone number of the Lender:

- 4.1 CITY shall neither agree to any mutual termination nor accept any surrender of the Lease, nor shall CITY consent to any amendment, restatement or modification of the Lease, without the providing prior written notice to Lender.
- 4.2 Notwithstanding any default by LESSEE in the performance or observance of any agreement, covenant or condition of the Lease on the part of LESSEE to be performed or observed, CITY shall have no right to terminate the Lease unless an event of default shall have occurred and be continuing, CITY shall have given Lender written notice of such event of default, and Lender shall have failed to remedy such default within a reasonable time to effect such remedy (which remedy may include acquiring LESSEE's leasehold estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof prior to remedying such default), all as set forth in, and within the time specified by, this Rider.
- 4.3 Lender shall have the right, but not the obligation, at any time prior to termination of the Lease and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of LESSEE hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of the Lease. All payments so made and all things so done and performed by Lender shall be as effective to prevent a termination of the Lease as the same would have been if made, done and performed by LESSEE instead of by Lender.
- 4.4 Should any event of default under the Lease occur, Lender shall have thirty (30) days after receipt of notice from CITY setting forth the nature of such event of default, and, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, a reasonable time after the expiration of such thirty (30) day period, within which to remedy such default, provided that (a) Lender shall have fully cured any default in the payment of any monetary obligations of LESSEE under the Lease within such thirty (30) day period and shall continue to pay currently such monetary obligations as and when the same are due and (b) Lender shall have acquired LESSEE's leasehold estate created hereby or commenced foreclosure or other appropriate proceedings in the nature thereof within such period, or prior thereto, and is diligently prosecuting any such proceedings.
- 4.5 If Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving LESSEE from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Subsection 4.4 of this Rider for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that Lender shall have fully cured any default in the payment of any monetary obligations of LESSEE under the Lease and shall

continue to pay currently such monetary obligations as and when the same fall due.

- 4.6 CITY shall mail or deliver to Lender a duplicate copy of any and all notices, including default notices, which CITY may from time to time give to or serve upon LESSEE pursuant to the provisions of the Lease, and such copy shall be mailed or delivered to Lender simultaneously with the mailing or delivery of the same to LESSEE.
- 4.7 Foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from LESSEE to Lender through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof (collectively, each a "Foreclosure Action"), shall not constitute a breach of any provision of or a default under the Lease if CITY has consented to the encumbrance of the leasehold estate by a Leasehold Mortgage in advance (which consent may be granted to Lender or its title holding entity used to receive title pursuant to a foreclosure). For the avoidance of doubt, CITY's consent to a Foreclosure Action is not required for an approved Leasehold Mortgage. Upon such Foreclosure Action CITY shall recognize Lender, or any other Foreclosure Action purchaser, as LESSEE hereunder provided that Lender or any other Foreclosure Action purchaser makes the disclosures required in Section 4.6 of the Lease, which CITY agrees to exercise in its sole but reasonable discretion. CITY further agrees to pre-approve, in CITY's reasonable discretion, any third party Foreclosure Action purchaser that has at least five (5) years of experience operating a residential project with affordable housing similar to the Improvements and satisfies then current credit, management, and underwriting standards for the making or assumption of a new Fannie Mae or Freddie Mac Leasehold Mortgage, upon Lender providing CITY with not less than ten (10) business days prior written notice to CITY. In the event Lender becomes LESSEE under the Lease, Lender shall be bound to perform and satisfy the obligations of LESSEE under the Lease only for the period of time that Lender remains lessee thereunder. In the event Lender subsequently assigns or transfers its interest under the Lease after acquiring the same by Foreclosure Action or subsequently assigns, and in connection with any such assignment or transfer Lender takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Lender for such assignment or transfer, then such mortgage or deed of trust shall be considered a Leasehold Mortgage as contemplated under this Rider and Lender shall be entitled to receive the benefit of and enforce the provisions of this Rider and any other provisions of the Lease intended for the benefit of the holder of a Leasehold Mortgage.
- 4.8 Without the prior written consent of the Lender, LESSEE shall not exercise any rights to terminate, modify, restate, surrender or cancel the Lease and the exercise by LESSEE of any such actions without Lender consent would be considered void at the option of Lender. If the Lease shall terminate prior to the

expiration of the Term (including rejection or deemed rejection in bankruptcy, Lender's inability to cure a default, or an attempted surrender by LESSEE), CITY shall, upon written request of Lender made at any time within thirty (30) days after the termination of the Lease, enter into a new lease ("New Lease") with Lender or its nominee (approved by both CITY and Lender) on the same terms and conditions set forth in the Lease and with the same priority, within thirty (30) days of Lender's written request. This obligation of CITY shall be conditioned on the Lender: (i) curing all defaults under the Lease requiring payment of money; (ii) agreeing in writing to commence to cure and thereafter completes the curing of all defaults not requiring the payment of money which are susceptible of being cured promptly following the delivery of such New Lease; and (iii) making all disclosures to CITY required in Section 4.6 of the Lease. Such New Lease shall have the same priority as the Lease. Such New Lease shall be effective as of the date of termination of the Lease, and shall be effective for the remainder of the Term of the Lease and at the rent and upon all of the agreements, terms, covenants and conditions hereof. Nothing contained herein shall be deemed to impose any obligation on the part of CITY to deliver physical possession of the Premises to such Lender unless CITY, at the time of execution and delivery of such New Lease, shall have obtained physical possession thereof. A Lender named in any such New Lease may assign its rights thereunder, with CITY's prior written consent and subject to the applicable terms and provisions of the Lease, if the assignee shall deliver to CITY an instrument, in recordable form, whereunder the assignee shall assume all obligations and liabilities of LESSEE thereafter arising under the Lease so assigned.

- 4.9 The termination of the Lease for any cause shall not act as a merger and shall, at the option of the CITY, terminate all or any existing subleases or subtenancies, or operate as an assignment to CITY of any or all such subleases or subtenancies. There shall be no merger of title under any circumstance which would result in a termination of the Lease or extinguishment of the Leasehold Mortgage because of conveyance of Lessee's interest to CITY or of CITY's interest to Lessee.
- 4.10 For so long as the Lender's Loan is outstanding, LESSEE shall have the right to alter, improve and modify improvements as requested by Lender and as required pursuant to the loan documents evidencing the Leasehold Mortgage to the extent approved by CITY as set forth in the Lease.

5. Allocation of Award on Condemnation.

- 5.1 Apportionment, Distribution of Award for Total Taking. On a Total Taking, all sums awarded for the CITY's remainder fee interest in the Premises for the Total Taking shall be deposited promptly with the CITY. All sums awarded for the Improvements and all other property secured by the Leasehold Mortgage for the Total Taking shall be deposited promptly with the Lender holding the first Leasehold Mortgage, in trust, and shall be distributed and disbursed in the following order of priority:

- (a) First, all real and personal property taxes constituting a lien on the Premises or Improvements;
- (b) Second, the balance due under any note and Leasehold Mortgage until paid in full;
- (c) Third, to CITY any expenses or disbursements reasonably paid or incurred by or on behalf of CITY for or in connection with the condemnation proceedings;
- (d) Fourth, to CITY the value of the reversionary interest in the Improvements.
- (e) Fifth, to LESSEE the balance of the award.

5.2 Apportionment, Distribution of Award for Partial Taking. On a Partial Taking all sums awarded for the Partial Taking shall be deposited promptly with the Lender holding the first Leasehold Mortgage on the Improvements or a neutral escrow depository, in trust, and shall be distributed and disbursed in the following order of priority:

- (a) First, to the cost of restoring the Improvements, plus any amount specifically awarded and so designated in the award for detriment to the subtenants;
- (b) Second, to Lender a sum equal to any decrease in its security resulting from the Partial Taking, if any, and Lender's expenses reasonably and necessarily incurred or paid by or on behalf of Lender for or in connection with the condemnation proceeding;
- (c) Third, to CITY and LESSEE for any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of CITY and LESSEE for or in connection with the condemnation proceedings;
- (d) Fourth, to CITY a sum equal to the value of the reversionary interest in the portion of the Property taken;
- (e) Fifth, to Lender in reduction of the balance of the Loan, unless Lender otherwise consents to distribution to LESSEE; and
- (f) Thereafter, to LESSEE the balance of the award.

Notwithstanding the foregoing, Lender shall have the right to require that the foregoing disbursements be first allocated to any decrease in Lender's security resulting from the Partial Taking (i.e. priority of clause (b) prior to any other disbursements).

5.3 Lender Participation. Subject to the loan documents evidencing the first Leasehold Mortgage, Lender shall have the right to participate in any condemnation proceedings and related settlement discussions and to control the

receipt and disbursement of condemnation proceeds awarded for the Improvements and all other property secured by the Leasehold Mortgage.

6. Damage/Destruction. Unless the Lender's Leasehold Mortgage is paid in full, the Lease shall not terminate in the event of any damage or destruction and the Premises shall be restored to the satisfaction of Lender. In the event of a damage or destruction: (a) the Lender has the right to participate in adjustment of any losses, (b) payment of any casualty insurance proceeds shall be held by Lender or an independent trustee acceptable to Lender, and (c) insurance proceeds that remain after restoration is completed to the satisfaction of Lender shall go to Lessee rather than the CITY.

RESOLUTION NUMBER R- 310427

DATE OF FINAL PASSAGE MAY 27 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING AND DIRECTING THE
EXECUTION OF A NEW PERCENTAGE GROUND LEASE
WITH MG STONEWOOD GARDEN APARTMENTS L.P. FOR
8.06 ACRES OF REAL PROPERTY COMMONLY KNOWN AS
STONEWOOD GARDEN APARTMENTS.

WHEREAS, the City of San Diego (City) owns that certain real property consisting of approximately 8.06 acres commonly known as Stonewood Garden Apartments in San Diego, California (Property), in the Point Loma/Loma Portal community; and

WHEREAS, in 1977, the City entered into a ground lease agreement (Ground Lease) with Gentry & Coles, a general partnership, to construct and operate 253 apartment units and two managers' units on the Property. The Ground Lease requires 51 apartment units be reserved for low-income households receiving assistance pursuant to Section 8 of the Housing Act of 1937. The Ground Lease expires April 1, 2034; and

WHEREAS, the Ground Lease was assigned to MG Stonewood Garden Apartments L.P., a California limited partnership (Stonewood) in 2003; and

WHEREAS, Stonewood has requested a new percentage ground lease (New Lease) with a forty-year lease term to refinance an existing loan and complete approximately \$7,600,000 in capital improvements; and

WHEREAS, as consideration of the New Lease, Stonewood will pay the City a one-time negotiated amount of \$2,952,000 upon the commencement date as defined in the New Lease; and

WHEREAS, the annual rent payable to the City will be equal to 8.4% of all gross income collected from Stonewood's operations on the Property, with a required minimum monthly rent

in the amount of \$22,487.07 during the first five years of the lease term and subject to adjustment thereafter, as described in the New Lease; and

WHEREAS, the New Lease requires 51 apartment units be reserved for low-income households receiving assistance pursuant to Section 8 of the Housing Act of 1937 or another similar government program intended to provide rental subsidies for low-income households during the lease term; and

WHEREAS, as appraised by an independent fee appraiser, the market value of the Property is \$19,000,000; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain Percentage Ground Lease with MG Stonewood Garden Apartments L.P., a California limited partnership, on file in the Office of the City Clerk as Document No. RR- 310427, for 8.06 acres of real property described in the Percentage Ground Lease.

BE IT FURTHER RESOLVED, that the Mayor, or his designee, is authorized to execute and deliver all such agreements and all other instruments necessary to effect and complete the transaction contemplated by this Resolution.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to deposit rent revenue and the one-time negotiated amount of \$2,952,000 into General Fund 100000.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Heather M. Ferbert
Deputy City Attorney

HMF:nja
04/15/16
Or.Dept: READ
Doc. No.: 1267589

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 17 2016.

ELIZABETH S. MALAND
City Clerk

By Hay Moad
Deputy City Clerk

Approved: 5/27/16
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 17 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☐	☐	☒	☐

Date of final passage MAY 27 2016

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Atg Beach, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 310427

Passed by the Council of The City of San Diego on May 17, 2016, by the following vote:

YEAS: LIGHTNER, ZAPF, GLORIA, COLE, KERSEY, CATE,
SHERMAN, ALVAREZ.

NAYS: NONE.

NOT PRESENT: EMERALD.

RECUSED: NONE.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Jeannette I. Santos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-310427, approved on May 27, 2016. The date of final passage is
May 27, 2016.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy