

CITY OF SAN DIEGO
PERCENTAGE GROUND LEASE

[Olivewood; APN 477-440-14]

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 Olivewood Housing Partners, LP, 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 3.1 acres of land (the "Premises"), as more particularly described in **Exhibit A: Legal Description of Premises**, attached hereto. Lessee owns and operates the improvements located at 2855-85 55th Street (Assessor's Parcel Number 477-440-14), commonly known as "Olivewood Garden Apartments" (the "Improvements"), which are sited on the Premises.
- B. CITY currently leases the Premises to Lessee, pursuant to that certain LEASE AGREEMENT ("Current Lease") executed December 11, 1980 between CITY and Chollas Gardens Limited, a California limited partnership, with Housing Opportunities, Inc., a nonprofit public benefit California corporation, as its managing general partner, on file with the San Diego City Clerk as Document No. RR-252648, which was assigned to Olivewood Housing Partners, LP, a California limited partnership, with Pacific Housing, Inc., a California nonprofit public benefit corporation as its managing general partner, recorded by the San Diego County Recorder's Office on July 13, 2009 as document 2009-0382364, and guaranteed by The Amerland Group, LLC, a California limited liability company ("GUARANTOR"), with Islas Development, LLC, a California limited liability company as its manager, for the operation of sixty (60) low income senior citizens residential rental units and one (1) non-revenue occupancy manager's unit for a total of sixty-one (61) units.
- C. The Current Lease expires December 31, 2035. LESSEE has requested a new Ground Lease with a lease term long enough to make repairs and upgrades of the Improvements economically feasible. For purposes of this Lease, repairs and upgrades of the Improvements shall include the work set forth in Section 4 below ("Upgrades").
- D. LESSEE will continue to own and operate the Improvements during the term 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 Premises to LESSEE, and LESSEE hereby leases the Premises 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 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.
- 1.3 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 providing sixty (60) low-income rental housing units for senior citizens with incomes at or below sixty percent (60%) of area median income for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area as published by HUD and to restrict the rent for such units so that they are affordable at or below sixty percent (60%) of such area median income as published by the United States Department of Housing and Urban Development, and one (1) non-rent or occupancy restricted manager's unit ("Manager's Unit"). For purposes of this Lease, "senior citizens" shall be defined as persons fifty-five (55) years of age or older. Each rental unit shall be occupied by at least one senior citizen and each other resident in the same rental unit may be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted pursuant to California Civil Code section 51.3, as amended from time to time. The value of the Manager's Unit shall be considered equal to the average rental rate for the remaining 60 units for rent calculation purposes.
 - b. The rent and occupancy restrictions shall be monitored annually by the San Diego Housing Commission (the "Housing Commission"). Prior to the Effective Date of this Lease, or simultaneously herewith, LESSEE shall enter into a reporting and monitoring agreement, using the attached **Exhibit B: Reporting and Monitoring Agreement**, with CITY and the Housing Commission to monitor LESSEE's compliance with the rent and affordable housing. Concurrently with the Commencement Date, LESSEE shall pay to the Housing Commission \$90,000 from the Upgrades Financing as an advance payment of monitoring fees for the first twenty (20) years of the Term of this Lease. Commencing on the first day following the twenty-first (21st) anniversary of the Commencement Date, Lessee shall pay to the Housing Commission an annual monitoring fee in the amount of \$150 for each residential unit of the Improvements. LESSEE will not be required to pay to Housing Commission any other monitoring fee or similar fee. LESSEE shall cooperate with and provide information reasonably required by CITY and/or the

Housing Commission as necessary to monitor the units for compliance with the rent and occupancy restrictions set forth in this Lease.

- c. As of the Effective Date, all rental units are occupied. When a unit becomes available for lease, LESSEE shall notify the Housing Commission and make the unit available to the Housing Commission for Section 8 voucher holders or any other similar program of the federal, state or local government intended to provide rental subsidies for low-income senior citizens ("Qualified Senior Citizens"). If the Housing Commission has no Qualified Senior Citizens awaiting housing, LESSEE shall lease the unit subject to the income restrictions set forth in subsection a, above.
- 1.3.1 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 authorities.
- 1.3.2 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.
- 1.4 Business Objective. 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.
- 1.5 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.
- 1.6 Governmental Approvals.
 - 1.6.1 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, Upgrades, maintenance or restoration of the Premises, the Improvements, or any other improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
 - 1.6.2 LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any Upgrades, 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 Upgrades, the Improvements, 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 Upgrades, the Improvements, or any other improvements thereon.

1.6.2.1 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 Upgrades, the Improvements, or any other improvements thereon.

1.7 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.

1.8 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 damages.

1.9 Reservation of Rights.

1.9.1 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.

1.9.2 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.

1.9.3 Repairs. CITY may at all reasonable times 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) enter upon the Premises for the purpose of making repairs to or developing municipal resources and services.

1.9.4 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.

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

- 1.10 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.
- 1.11 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-one (41) 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 lending institution authorizes the disbursement of the financing for the Upgrades (the "Upgrades Financing") and CITY agrees to the terms of the Upgrades Financing (the "Commencement Date"), but in no event prior to City Council approval of this Lease by resolution. LESSEE shall have 180 calendar days to obtain the Upgrades Financing, commencing on the date of final passage of the resolution approving this Lease (the "Financing Period"). The Commencement Date will be memorialized by a memorandum signed by the parties. If LESSOR does not obtain the Upgrades 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.
- 2.1.1 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.
- 2.1.2 Lease Year. "Lease Year" shall mean each twelve (12)-month period during the Term.
- 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 rent for the Premises, which rent shall be effective as of the first day of the holdover period.

- 2.4 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender them 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, and in a condition reasonably satisfactory to CITY. 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. As additional consideration for this Lease, LESSEE shall pay to CITY a one-time payment from the Upgrades Financing ("One-Time Payment") in an amount of One Hundred Twenty-six Thousand Five Hundred Dollars (\$126,500), payable in cash on the Commencement Date.

- 3.2 Annual Rent. The annual rent ("Annual Rent") payable to CITY shall equal four and one half percent (4.5%) of all Gross Income (defined below in Section 3.2.1). LESSEE shall pay Annual Rent within ten days of the end of the prior Lease Year.

- 3.2.1 "Gross Income" shall mean all gross income actually collected from the Premises and the Improvements, including subsidies, and any other income to LESSEE derived from the Premises and the Improvements, but shall not include sale or refinancing proceeds, insurance or condemnation proceeds, equity contributions to LESSEE made by the partners of LESSEE or security deposits.

- 3.3 Reserve Account. Beginning on the Commencement Date, LESSEE shall be required to deposit Three Hundred Fifty Dollars (\$350) per unit per annum in a reserve account ("Reserve Account"). The Reserve Account shall be maintained in a separate account from any other funds of LESSEE, in anticipation of and as a contingency against unforeseen expenses in the operation and maintenance of the Premises and Improvements. No disbursements from the Reserve Account shall be made without the express written consent of CITY, not to be unreasonably withheld, conditions or delayed.

Notwithstanding the foregoing and for funds in the Reserve Account in excess of Twenty One Thousand Dollars (\$21,000), disbursements from the Reserve Account may be made without prior written consent of CITY for the following, provided that LESSEE shall provide to CITY annual statements of the deposits into the Reserve Account and uses thereof: (1) in accordance with the requirements of any lender holding a beneficial interest in the Premises; or (2) replacement, repair or maintenance work identified in a Physical Needs Assessment, as defined in Section 3.3.1 below. No disbursements from the Reserve Account shall be made for any costs other than as set forth in this Section 3.3.

3.3.1 Every ten (10) years beginning on the tenth anniversary of the Commencement Date, at LESSEE's sole cost and expense, an inspection shall be performed by a qualified independent third-party inspector ("Inspector") that is mutually acceptable to LESSEE and CITY. The Inspector shall provide CITY with a written report detailing the condition of the Premises and the Improvements, and an estimate of its remaining useful life ("Physical Needs Assessment"). LESSEE, at LESSEE's cost and expense, shall (i) promptly make all replacements, repairs and maintenance work identified in the Physical Needs Assessment as being immediately required, and (ii) within a the timeframe set forth in the Physical Needs Assessment to make all replacements, repairs and maintenance work identified in the Physical Needs Assessment as not being immediately required, all at LESSEE's sole cost and expense and to CITY's satisfaction.

3.3.2 "Useful life" is defined as when the improvements can no longer produce annual income or services sufficient to offset maintenance expenses, insurance and taxes to produce returns on the value of the land and either repair or maintenance is not feasible.

3.4 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 statement shall also include calculations of Annual Rent, and any other amounts payable to CITY under this Lease for the Lease Year. 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 LESSEE's use of the Premises.

3.5 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.

- 3.6 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 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.

3.6.1 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term, plus five (5) years. 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 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 LESSEE's use of the Premises.

3.6.2 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 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.

- 3.7 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: Maintenance and Upgrades

- 4.1 Covenant to Maintain the Premises and Improvements. LESSEE, at its sole cost and expense, shall budget for and maintain in good order, repair, operation, and the safety of the Premises and the Improvements, including, but not limited to, the structures, HVAC and electrical components, throughout the Term of this Lease without expense to CITY, and to perform or cause to be performed all repairs and replacements necessary to maintain and preserve the Premises, Improvements, and all landscaping shall be maintained in a safe and healthy condition.
- 4.2 Upgrades. LESSEE shall use not less than Seven Hundred Twenty Thousand Dollars (\$720,000) of the Upgrades Financing to perform the Upgrades to be completed within two years from the Commencement Date, as further set forth in Sections 4.2.1 and 4.2.2 below. The Upgrades shall be completed as follows:
- 4.1.1 Exterior Upgrades. Exterior Upgrades shall be completed within two years from the Commencement Date. Exterior Upgrades shall include repair landings; addition of gutters; repair roofs; replacement of unit windows; miscellaneous drywall repairs; repair of asphalt; and seal coat and stripe asphalt.
- 4.1.2 Interior Upgrades. Interior Upgrades shall be completed on a rolling basis, as units are vacated, but in no event beyond the following: (1) fifty percent (50%) shall be completed within two years of the Commencement Date; and (2) the remaining fifty percent (50%) shall be completed, at LESSEE's sole cost and

expense, within ten years of the Commencement Date. Interior Upgrades shall include installation of vinyl plank flooring; paint; replacement of bathroom cabinets, bars and holders; replacement of kitchen cabinets and counter tops; replacement of all appliances (refrigerators, ranges, garbage disposals and range hoods; installation of horizontal blinds; replacement of water heaters, toilets, kitchen faucets, lavatory faucets; add pedestal sinks; and replacement of light fixtures and bathroom exhaust fans.

- 4.3 CITY's Approval of Upgrades. The CITY hereby consents to the performance of the Upgrades. No further review or consent by CITY, in its capacity as lessor under this Lease, shall be required in connection with the performance of the Upgrades.

SECTION 5: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 5.1 Right of First Refusal. LESSEE agrees to notify CITY of its intent to sell or assign this Lease or any interest therein and allow CITY first right of refusal to acquire said interest. If LESSEE wishes to accept a *bonafide* written offer for the purchase of the Improvements from a third party independent buyer ("Third Party Offer"), and if LESSEE is not at such time in default or breach of its obligations under this Lease beyond the applicable period for cure (including the period for cure available to a Mortgagee), then CITY shall have the right of first refusal to meet any such offer on the same terms and conditions thereof. Within five (5) business days after receipt of the Third Party Offer, LESSEE shall notify CITY in writing of the Third Party Offer and its terms and conditions. CITY shall, within five (5) business days after receipt of LESSEE's notification, notify LESSEE whether or not CITY agrees to purchase the Improvements on the same terms and conditions as contained in the Third Party Offer.
- 5.2 Leasehold Encumbrances. Subject to CITY's written consent, LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts, upon the express condition that the proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of rehabilitating, improving, repairing or maintaining the Premises and the Improvements. Each such encumbrance shall be subject to all of the terms, covenants and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants or conditions of this Lease, and shall be subordinate to CITY's fee interest in the Premises and any and all CITY encumbrances on that fee interest.
- 5.3 Assignment, Subletting, Refinancing or Tax Credit Financing. LESSEE shall not assign this Lease or any interest in this Lease to anyone without CITY's written consent in each instance.
- 5.3.1 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, except with respect to laundry leases.

- 5.3.2 LESSEE shall not grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, guests and subtenants, to use or occupy the Premises or any part of the Premises without CITY's written consent in each instance, except with respect to laundry leases. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent in each instance. As used in this Lease "assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals or controlling shareholders.
- 5.3.3 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.
- 5.3.4 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 the gross amount paid for the leasehold.
- 5.3.5 In the event of a refinancing that encumbers the leasehold, LESSEE shall pay to CITY an amount equal to two percent (2%) of the amount of any new loan over and above the sum of the balance of the old loan.
- 5.3.6 The amount upon which such two-percent 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.
- 5.3.7 LESSEE shall not refinance the Improvements without CITY's consent. If the Improvements are refinanced using tax credits or other forms of financing, additional consideration in the form of cash will be due to CITY, calculated based on the appraised value of the land.
- 5.3.8 Consent Conditions. 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.
- 5.3.9 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its assignees shall make a full and complete disclosure of the name and identity of each and every person/entity 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/entity proposed to have

an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.

5.3.10 Additional Consideration to CITY. If this Lease is assigned to anyone other than the Housing Commission or an entity controlled by the Housing Commission, or if LESSEE subleases a majority of the Premises to other than residential subtenants, or in the event of a refinancing that encumbers the leasehold, LESSEE shall pay to CITY an amount equal to: (a) for assignments, two percent (2%) of the gross amount paid for the leasehold; (b) for majority subleases to other than residential subtenants, two percent (2%) of all amounts paid to LESSEE in consideration of such sublease; and (c) in the case of a refinancing, two percent (2%) of the amount of any new loan over and above the sum of the balance of the old loan plus, if applicable, the cost of rehabilitating existing improvements or constructing new permanent improvements on the Premises as required or allowed under this Lease. The amount upon which such two-percent 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, majority 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 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 reasonable 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.

SECTION 6: LENDER PROVISIONS

Notwithstanding anything to the contrary in this Lease, in the event of a CITY-approved financing-related encumbrance of the Premises and Improvements with an approved lender ("Lender"), the following provisions shall apply, on condition that all such terms and conditions are provided for in the applicable loan agreement between LESSEE and its Lender ("Loan") and that the exercise of such rights is in accordance with all such terms and conditions and all applicable laws:

- 6.1. Acceptance of Lender. No additional consent of CITY is required for Lender, any entity in which Lender holds a direct or indirect controlling interest, or any nominee of the foregoing acting in its own name or in Lender's name solely as an agent of the foregoing (each, a "Lender Affiliate"), or any "Qualified Regulated Financial Institution," to acquire any interest in the Loan, Lease or in the Property; however, Lender, any Lender Affiliate, and/or any Qualified Regulated Financial Institution, as applicable, shall notify CITY of the event of any such acquisition.

The term "Qualified Regulated Financial Institution" ("QRFI") means:

- a. an insurance company subject to regulation by the insurance commissioner (or similar agency) of any state of the United States; a bank, savings bank, or savings and loan association chartered by the United States of America, any state thereof or any foreign nation or political subdivision thereof; or the Federal Home Loan Mortgage Corporation; or Fannie Mae; or a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof or any agency of the United States or any state thereof; or an investment fund or other institution with substantial experience in financial markets (including but not limited to national brokerage companies) having assets equal to the greater of One Hundred Million Dollars (\$100,000,000) or three (3) times the amount of the Loan or portion thereof held by such lender; or a special purpose entity established by one of the foregoing; or any affiliate, subsidiary or nominee of any of the foregoing that is controlled by any of the foregoing; in each case, in good standing under the laws of the jurisdiction of its incorporation; or
- b. the United States of America, or any state thereof, or any agency of the United States or any state thereof.

In each of the foregoing cases, such entity shall constitute a Qualified Regulated Financial Institution regardless of whether it holds the Loan, or any interest therein, for itself or as a trustee.

- 6.2. Need for Lender's Consent.

- a. Other than a termination following a default that remains uncured or waived following all appropriate notice (including to Lender) as required herein, CITY

acknowledges and agrees that, during the term of the Loan, as it may be extended, LESSEE may not surrender, abandon, cancel, modify, amend, restate or voluntarily terminate the Lease or all or any part of the leasehold estate, without prior written consent of Lender. CITY agrees that, upon actual knowledge of such, it shall give notice to Lender of any abandonment or action by LESSEE to terminate the Lease, and Lender shall thereupon be entitled to exercise its rights and remedies under the terms and conditions of the Loan and the provisions stated herein.

- b. Without Lender's prior written consent, which may be given, conditioned or withheld in its sole discretion (other than as expressly provided below), CITY shall not assign the Lease or sublet the Premises or any part thereof except as permitted herein; provided, that Lender's consent to amendments to the Lease that do not affect the principal economic terms of the Lease shall not be unreasonably withheld, conditioned or delayed.

6.3. Casualty and Condemnation.

- a. In the event of any damage to or destruction of the Premises, any proceeds of LESSEE-procured insurance shall be paid directly to Lender for application in accordance with the provisions of the Loan, until the indebtedness and obligations under the Loan have been paid and satisfied in full, and thereafter shall be paid to or apportioned between CITY and/or LESSEE as provided under the other provisions of the Lease.
- b. In the event of any condemnation affecting the Premises, notwithstanding anything to the contrary in the Lease, that part of any award or other compensation attributable to the value of LESSEE's interest in the leasehold estate created by the Lease, that part of the award attributable to value of LESSEE's interest in the operating business at the Premises, and that part of any award attributable to the value of LESSEE's interest in the Premises' improvements for the then-remaining term of the Lease, shall be paid to Lender for application in accordance with the provisions of the Loan. Notwithstanding the foregoing, any portion of any award or other compensation attributable (i) solely to the taking of the land, the fee estate, and any easement(s) thereon, and (ii) to any loss of value of CITY's interest as lessor under the Lease (including any reversionary interest in Premises' improvements), shall be paid directly to CITY. In any such condemnation proceeding, to the extent not prohibited by law, CITY and LESSEE agree to request that the court make or approve separate, apportioned condemnation awards to CITY and LESSEE, and that the court take such matters in account in rendering or approving separate awards.
- c. In the event legal or other proceedings shall be instituted: (i) for the exercise of the power of eminent domain, or (ii) as a result of any damage to or destruction of the Premises, the CITY will provide reasonable prior notice to Lender of any such proceedings and will not oppose Lender participation therein as an interested party. CITY will provide reasonable prior notice to the Lender and Lender shall have the

right to participate in any settlement, stipulation or agreement to sell or transfer all or any portion of the leasehold estate in lieu of condemnation. Lender shall also have the right (but not the obligation) to participate in any settlement, discussion, and/or arbitration proceeding between CITY and LESSEE.

6.4 No Merger. Without the written consent of Lender, there shall be no merger of the leasehold estate created under the Lease with the fee estate in the Premises by reason of the fact that such leasehold estate may be held directly or indirectly by or for the benefit of any person who owns the fee estate in all or part of the Premises.

6.5 Default by LESSEE Under Lease.

- a. For so long as Lender encumbers the leasehold estate of the LESSEE under the Lease, if either CITY or LESSEE asserts a claim that the other of them or the holder of the other's interest under the Lease has failed to perform an obligation under the terms of the Lease or is otherwise in default under the Lease in any respect, then the party asserting said claim shall immediately deliver written notice thereof (the "Default Notice") to Lender. Such Default Notice shall state in LARGE BOLD TYPE on the envelope, as well as on the top of the notice:

"LEASE DEFAULT NOTICE REGARDING _____. ACTION IS NECESSARY TO PREVENT LOSS OF YOUR COLLATERAL."

- b. Notwithstanding anything to the contrary herein, Lender shall have sixty (60) days from such notice to cure the default(s) or, if any such default is not curable within sixty (60) days, to commence to cure the default(s) and diligently pursue such cure to completion. Provided no monetary default exists at the time, and Lender is diligently pursuing curing the default and Lender reasonably requires additional time to cure the default as determined by CITY in its commercially reasonable judgment, then the sixty (60) day period shall be extended so that Lender will have additional time necessary to gain the legal right to enter the Premises and to cure any such outstanding default, provided that such additional time shall not exceed an additional one hundred fifty (150) days. The commencement of a Foreclosure Event (as defined below) shall be deemed the commencement of a cure, so long as Lender thereafter diligently prosecutes the same to completion. CITY agrees to not exercise any rights that it might otherwise have on account of any breach or default, during the foregoing curative periods extended to Lender.
- c. Notwithstanding anything to the contrary in this Lease, whether before or after default, Lender and any Lender Affiliate may do any act or thing required of LESSEE under the Lease, and any such act or thing done and performed by Lender or such Lender Affiliate shall be as effective to prevent a forfeiture of LESSEE's rights under the Lease as if done by the LESSEE itself.
- d. So long as Lender or any Lender Affiliate is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court

having jurisdiction of any bankruptcy or insolvency proceeding involving LESSEE, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, Lender and/or Lender Affiliate, as applicable, shall not be deemed for that reason to have failed to take or diligently prosecute the proceedings necessary to gain the legal right to enter the Premises or to cure the non-monetary default, provided that Lender and/or such Lender Affiliate use reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction. The time permitted Lender and/or such Lender Affiliate to cure shall accordingly toll for such additional time.

e. Foreclosure Transfers.

- i. If Lender, any Lender Affiliate, or any QRFI acquires the Lease pursuant to foreclosure of the Loan (each, a "Foreclosure Event"), such transfer is called herein a "Foreclosure Transfer." Subject to the condition (below) regarding additional financial consideration to Lender, a Foreclosure Transfer to any Lender Affiliate or any QRFI will not be deemed to be an assignment under this Lease, or a sale, and shall not require any further CITY consent or any transferee agreement, opinion requirements, assumption fees, transfer fees, penalties or the like set forth in this Lease; however, Lender shall notify CITY in advance of the event of any such Foreclosure Transfer.
- ii. In the event of any potential Foreclosure Transfer to a transferee other than Lender, or any Lender Affiliate or QRFI, then CITY shall be notified and given identifying information pursuant to CITY's Charter, and CITY reserves the right, prior to consent to such transferee, to determine whether such transferee has a favorable business reputation and is financially capable and qualified to conduct the business for which the Lease was granted, in CITY's reasonable discretion in accordance with CITY's Charter (a "CITY-approved transferee"). For purposes of this determination, the following shall apply, and shall be referred to collectively as the "Charter Criteria": (i) "a favorable business reputation" shall mean a reputation determined by CITY on a non-discriminatory basis to be consistent with the public trust in which the Premises is held, including without limitation the absence of a reputation for dishonesty, criminal conduct, or association with criminal elements; and (ii) the determination as to whether a person is "financially capable and qualified to conduct the business for which the Lease was granted" shall be according to the standards for such characteristics applied generally by CITY for new or renewal CITY tenants, the proposed transferee's credit history and experience (which experience may be evidenced by the management ability of the proposed transferee, the proposed transferee's principal or a third-party professional property manager).
- iii. On condition that any Foreclosure Transfer does not result in Lender receiving additional financial consideration in excess of the amounts outstanding under the Loan at the time of such Foreclosure Transfer and any costs and expenses

incurred in connection with such foreclosure and Foreclosure Transfer, CITY shall not be entitled to additional compensation or rent or to any change to any Lease terms including, without limitation, any economic terms, in connection with any Foreclosure Transfer, or any directly related subsequent transfer by Lender, or any Lender Affiliate or QRFI, following a Foreclosure Event.

- iv. Upon any Foreclosure Transfer, CITY will recognize Lender, and any Lender Affiliate, QRFI, CITY-approved transferee, or CITY-approved designee of Lender (as defined below) on the same terms and provisions and with all of the rights and privileges of LESSEE, provided that such entity agrees to assume and be bound by all of the terms, covenants and conditions of this Lease.
- v. In the event of LESSEE default(s), if Lender, or any Lender Affiliate, QRFI, CITY-approved transferee, or CITY-approved designee of Lender (as defined below), acquires the Lease pursuant to a Foreclosure Transfer, and has cured all monetary defaults and all non-monetary defaults that are capable of being cured by such person (i.e., not personal to LESSEE, or any prior owner of the leasehold interest created under the Lease), then the default(s) by LESSEE shall be deemed cured, and CITY shall not terminate the Lease due to such default.

6.6 **Premature Termination.** If the Lease is terminated prior to its stated expiration as a result of any actual or deemed rejection of the Lease under any provisions of Title 11 of the U.S. Code or by operation of law or otherwise (except with Lender's consent or because of a substantial condemnation), then CITY will give written notice to Lender of such termination (the "Termination Notice") and Lender shall have the option, to obtain a new lease from CITY upon the following terms and conditions:

- a. Upon written request received within ninety (90) days after service of the Termination Notice, CITY shall enter into a new lease (the "New Lease") with Lender, any Lender Affiliate, any QRFI or any CITY-approved designee of Lender; provided, that in the case of a Lender's designee other than a Lender Affiliate or a QRFI, Lender's designee shall have a favorable business reputation and shall be financially capable and qualified to conduct the business for which the Lease was granted, in CITY's reasonable discretion prior to consent to any such designee in accordance with CITY's Charter and the Charter Criteria (a "CITY-approved designee of Lender").
- b. The New Lease shall be effective as of the date of termination of the Lease and shall be for the remainder of the term of the Lease (including rights to all extension or renewal options, if any, that have not been exercised) and at the same rent and other charges therein provided and otherwise upon the same agreements, terms, covenants and conditions contained herein (except requirements that are no longer applicable or that were performed previously), for the same relative priority in time and right as the Lease and having the benefit of, and vesting in the

new LESSEE, all of the same rights, title, interest, powers and privileges of LESSEE hereunder. Concurrently with the execution of the New Lease, CITY shall assign its interest in and to all then-existing Premises-related subleases (including any security deposits held by CITY, if any), service contracts, and premises operations related to the Premises, and any offset rights which LESSEE was entitled to under the Lease prior to the termination thereof shall automatically be transferred to new LESSEE and CITY shall cause any mortgagee on the fee estate to subordinate unconditionally to the New Lease. In the event of a New Lease scenario, the new LESSEE under the New Lease shall be liable for any operating expenses or other costs of operating and maintaining the Premises during the period of time commencing on the termination of the Lease and terminating on the commencement of the New Lease.

- c. If CITY is prohibited by state or federal law from entering into a New Lease with the same terms and conditions as the Lease, then CITY shall enter into a New Lease with Lender, Lender Affiliate, QRFI or CITY-approved designee of Lender that shall contain all of the terms and conditions of the Lease that are not prohibited by such state or federal law.
- d. In connection with any such New Lease, CITY shall, by grant deed, convey, for the term of the New Lease only, to Lender, any Lender Affiliate, any Qualified Regulated Financial Institute or CITY-approved designee of Lender title to all buildings, structures and the improvements, trade fixtures, installations or additions to the Premises, if any, which become vested in CITY as a result of termination of the Lease.

- 6.7 Conditions to Subsequent Encumbrances. Subject to all other financial and encumbrance conditions of this Lease, CITY shall permit encumbrances of the Lease for the purpose of refinancing any loan provided that the lender is Lender, a Lender Affiliate or a QRFI. CITY further agrees that upon any Foreclosure Transfer and resulting transfer of the leasehold estate, or any directly related subsequent transfer of the leasehold estate by Lender, any Lender Affiliate, any QRFI or any CITY-approved designee of Lender following a Foreclosure Event, Lender, any Lender Affiliate, any QRFI, any CITY-approved designee of Lender or any CITY-approved transferee, shall have the right to encumber the leasehold estate with a mortgage or deed of trust on the same terms and conditions, and with the same first lien priority as the Loan. CITY shall not be entitled to any additional rent, any Additional Consideration, or any change to Lease terms, including without limitation any economic terms, in connection with such financing; provided that, in the event the principal amount of such financing is greater than the then-outstanding indebtedness plus amounts otherwise due under the Loan (including all past due interest and other fees and costs), CITY will be entitled to collect the Additional Consideration amounts provided for in this Lease.
- 6.8 Subleases. Upon any termination of the Lease, or any situation in which the LESSEE is in default, so long as Lender is acting to preserve the leasehold estate pursuant to Loan and the provisions of this Lease, CITY shall not disturb the possession of any sublessee

of the Premises so long as such sublessee is not in default under its sublease, which is subordinate to the Lease.

6.9 Assignment of Lease by Lender.

- a. Notwithstanding anything to the contrary in the Lease, if Lender, or any Lender Affiliate, QRFI or CITY-approved designee of Lender, acquires any leasehold estate in the Premises (whether pursuant to a Foreclosure Transfer or under any New Lease as described above), and Lender, or such Lender Affiliate, QRFI or CITY-approved designee of Lender, thereafter desires to transfer its title to such leasehold estate, then any such transfer will not be deemed to be an assignment under the Lease, and shall not require further CITY consent; however, such entity shall notify CITY of the transfer event. However, if the transferee is any person other than Lender, a Lender Affiliate, or a QRFI, then CITY shall approve the transfer to such transferee, if (a) the transferee expressly assumes all obligations of the LESSEE under the Lease arising after such transfer, and (b) the transferee has a favorable business reputation and is financially capable and qualified to conduct the business for which the Lease was granted, in CITY's reasonable discretion in accordance with CITY's Charter, and the Charter Criteria stated above.
- b. Such transfer will not be deemed to be an assignment under the Lease and shall not require any other consent. On condition that said transfer does not result in Lender or LESSEE receiving additional financial consideration in excess of the amounts outstanding under the Loan at the time of such transfer or New Lease, as applicable, plus any costs and expenses incurred in connection with any Foreclosure Transfer, New Lease and/or such transfer, CITY shall not be entitled to any additional compensation or rent or any change to any Lease terms, including, without limitation, any economic terms, in connection with any such transfer.
- c. For proposed transferees that are companies whose shares are traded on a public exchange or that are subject to state or federal oversight (for example, but without limitation, a bank or other financial institution), such approval by CITY shall be of the company or institution as an entity and there shall be no obligation to disclose the names of the shareholders or other equity holders.
- d. Such CITY-approved transferee thereafter shall be entitled to operate the project on the Premises, in accordance with and as contemplated by the Lease.

6.10 Assignment of Loan. Lender may assign all or any interest in the Loan to any Lender Affiliate, any QRFI, or a Lender designee without further consent of CITY, provided Lender gives CITY 30-days prior notice thereof and provided further, however, that, in the case of Lender's designee other than a Lender Affiliate or a QRFI, Lender's designee shall have a favorable business reputation, shall be financially capable, and shall be qualified to conduct the business for which the Lease was granted, as determined by CITY in CITY's reasonable discretion prior to consent to any such designee in accordance with CITY's Charter, and the Charter Criteria set forth above. On condition

that said assignment does not result in Lender or LESSEE receiving additional financial consideration in excess of the amounts outstanding under the Loan at the time of such transfer and any costs and expenses incurred in connection with such assignment, CITY shall not be entitled to any payment or to change any terms or conditions of the Lease in connection with any such assignment.

- 6.11 Restoration. Notwithstanding any contrary provision in the Lease, LESSEE shall have no obligation to restore or repair the Premises following the occurrence of any casualty for which insurance is not required under the Lease. Neither Lender nor any Lender Affiliate, QRFI, CITY-approved designee of Lender or CITY-approved transferee acquiring all or a portion of the leasehold estate pursuant to a Foreclosure Event, nor the new lessee under a New Lease pursuant to the Premature Termination provisions above, nor any successive owner of a portion of the leasehold estate after such foreclosure or New Lease, shall have any obligation under the Lease to restore or repair damage to the Premises that cost in excess of available insurance proceeds or the casualty was not required to be insured pursuant to the Lease.
- 6.12 Limitation on Liability. Lender, and any Lender Affiliate, QRFI, or CITY-approved designee or transferee of Lender acquiring the Loan, shall not be liable to perform LESSEE's obligations under the Lease, unless and until such entity acquires the Lease, including pursuant to a Foreclosure Transfer or a New Lease pursuant to the Premature Termination provisions above, and such entity shall not be liable for any events associated with this Lease which occurred prior to such entity acquiring the Lease, including pursuant to a Foreclosure Transfer or a New Lease pursuant to the Premature Termination provisions above. The liability of Lender, and any Lender Affiliate, QRFI, or CITY-approved designee or transferee of Lender acquiring the Loan, shall be limited to such entity's interest in the Lease. Any interest in a leasehold deed of trust securing any unpaid part of the purchase price for the Lease shall not be considered retention of an interest in the Lease for purposes of this section. Furthermore, Lender's commencement of any Foreclosure Transfer or any efforts to cure any default under the Lease shall be for its own protection and shall not by itself constitute an assumption of the Lease nor obligate Lender to complete any such proceedings or cure.
- 6.13 Priority and Notice. If CITY encumbers its fee interest in the Premises, then LESSEE shall not be required to subordinate the Lease, and any extensions, renewals or replacements thereof, or any sublease entered into by LESSEE as sublessor, and any Deed of Trust or other encumbrance recorded by Lender to any mortgages, deeds of trust or similar encumbrances placed by CITY on the Premises or to any lien right or other right, title or interest, if any, of CITY in or to the buildings, and any furniture, fixtures, equipment or other personal property of LESSEE upon the Premises. Said encumbrance will be subordinate to the Lender mortgage loan and security instrument. All potential future fee mortgagees or other lienholders shall execute, acknowledge and deliver a commercially reasonable nondisturbance agreement for the benefit of LESSEE and Lender.

CITY will notify the Lender when CITY encumbers all or a portion of the CITY's interest in the Lease or Premises.

6.14 Estoppel Certificate. Within thirty (30) calendar days after written request by LESSEE or Lender, CITY shall execute and deliver a statement certifying as follows:

- a. The existence and effect of the Lease (or New Lease, if applicable), and all amendments to it, if any;
- b. The last date CITY received rent under the Lease, the date such rent was due and the amount thereof;
- c. Whether there are any events of default under the Lease (or New Lease) (and, whether there is or has been any event, act, or omission which would constitute an event of default with notice or lapse of time or both) to the best knowledge of CITY as of the date of the certificate;
- d. Acknowledging Lender and receipt of Lender's name and address for purpose of notices to be given and received pursuant to the provisions of the Lease;
- e. That Lender may exercise against CITY all of Lender's rights in the Lease (or the New Lease) and this Agreement;
- f. Confirming the commencement and termination dates of the Lease (or the New Lease), whether any options to renew or extend the Lease (or the New Lease) or to purchase the CITY's interests in the Premises have been exercised or have lapsed, and other factual matters or assurances as reasonably requested; and
- g. That CITY understands the recipient will rely on the certificate.

6.15 No Automatic Rejection of the Lease. Unless Lender otherwise consents in writing, CITY hereby waives, and agrees not to assert or otherwise take the benefit of, Section 365(d) for or any other applicable provisions of the United States Bankruptcy Code (11 U.S.C. §101 et seq.), which may cause the termination of the Lease, or otherwise render it unenforceable in accordance with its terms, whether automatically by operation of law, or otherwise (so long as LESSEE or Lender is (a) keeping rent current; (b) complying with the terms of Lease to the extent reasonably possible (other than payment of rent) prior to possession of the Premises by Lender, and (c) exercising its rights to cure any default as provided for herein and in the Loan). If any court of competent jurisdiction shall determine that, notwithstanding the terms of the preceding sentences, the Lease shall have been terminated as a result of a rejection by LESSEE, the trustee in the bankruptcy, or such other party to such proceeding, as applicable, CITY shall, on Lender's written election, promptly enter into the New Lease pursuant to the Premature Termination provisions above, it being the intention of the parties to preserve the Lease and the leasehold estate created by the Lease without interruption, for all intents and purposes as allowed by law.

- 6.16 Insurance. Any insurance proceeds payable to LESSEE from any policy of insurance (other than liability insurance) required by the Lease shall be paid to Lender. Lender shall have the right to participate in all adjustments, settlements, negotiations, or actions with the insurance company regarding the amount and allocation of any such insurance proceeds. Any insurance policies permitted or required by the Lease shall name Lender as an additional insured or loss payee, as appropriate. Nothing in this section shall preclude CITY from requiring that it be named as an additional insured and loss payee, as its interest may appear, under all policies of insurance maintained by LESSEE with respect to the Premises. CITY shall not procure separate insurance concurrent in form or contributing in the event of a loss that specifically is required to be furnished by LESSEE to the Lender. CITY may at its own expense, however, take out separate insurance which is not concurrent in form or contributing in the event of loss with that specifically required to be furnished by LESSEE to Lender.
- 6.17 Payment and Performance Bonds. Lender shall have approval, consent and oversight rights in connection with any payment and performance bonds (or a letter of credit in lieu of such bonds) relating to any future construction of improvements on the Premises, in accordance with the Loan.
- 6.18 Personal Property. All personal property now or hereafter on the Premises in which Lender now or hereafter has a security interest is severable and may be removed without further consent from CITY if LESSEE defaults under the Loan or the Lease.
- 6.19 Notice. Unless otherwise specified, all notice(s) to Lender shall be sent to the last properly-noticed address for Lender and any applicable agents thereof, and shall be subject to the terms and conditions stated in the separate Notice section herein.
- 6.20 Miscellaneous. Except where this Lease states otherwise, Lender may (a) exercise its rights through a Lender Affiliate, assignee, designee, including a nominee, subsidiary, QRFI or any other entity acting in its own name or in Lender's name, on condition that Lender control all such entities (and anyone strictly acting as Lender's agent under this clause "a" shall automatically have the same protections, rights, and limitations of liability as Lender) (b) refrain from curing any default; or (c) abandon such cure at any time. To the extent any Lender's or any third party beneficiary's rights under the Lease apply after the Lease terminates, they shall survive such termination.
- 6.21 Mayor's Ability to Supplement and Administer. To facilitate any appropriate encumbrance under this Lease, the Mayor, and his/her designee, may agree to such other provisions and provide such further instruments as reasonably needed to supplement and/or clarify the lender-related financing provisions of this Lease, on condition that all such actions otherwise comply with all laws and CITY regulations and policies.

SECTION 7: DEFAULT AND REMEDIES

7.1 Default. LESSEE shall be in default of this Lease ("Default") if any of the following occurs:

- (a) LESSEE fails to make any payment required under this Lease when due;
- (b) 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;
- (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law, and such proceeding is not dismissed within sixty (60) days thereafter;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) LESSEE makes a general assignment for the benefit of creditors.

7.2 Remedies. Upon LESSEE's Default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a thirty (30)-day written Notice of Intent to Terminate the Lease. If LESSEE does not cure the Default within the thirty-day period, CITY may 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:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) 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;
- (c) 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;
- (d) 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

- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted at law or in equity.

As used in clauses (a) and (b), 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 (c), 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 and all other amounts payable by LESSEE under this Lease.

7.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, 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:

7.3.1 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;

7.3.2 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

7.3.3 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 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.

- 7.4 Abandonment by LESSEE. If LESSEE abandons the Premises, 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.
- 7.5 Guaranty. GUARANTOR agrees to guarantee this Lease, the LESSEE and the LESSEE's obligations under this Lease pursuant to the Guaranty of Lease attached hereto as **Exhibit C: Guaranty of Lease**. In the event of any default of LESSEE, or GUARANTOR in place of the LESSEE, under this Lease, CITY may proceed directly against GUARANTOR, LESSEE, any other guarantors, or anyone else liable under this Lease without first exhausting CITY's remedies against any other person or entity under this Lease to CITY.
- 7.6 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY'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 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 8: EMINENT DOMAIN

- 8.1 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 and LESSEE (or beneficiary or mortgagee) shall be as follows:
- 8.1.1 Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 8.1.2 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, 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.

- 8.1.3 LESSEE's Award. Subject to the rights of mortgagees, 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.
- 8.1.4 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.
- 8.1.5 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.

SECTION 9: INDEMNITY; HOLD HARMLESS; INSURANCE

- 9.1 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 gross 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.
- 9.2 Insurance. 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.

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

9.2.1.1 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 \$2 million per occurrence and subject to an annual aggregate of \$4 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.

9.2.1.2 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).

9.2.1.3 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.

9.2.1.4 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 of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of said insurance to CITY's Real Estate Assets Department.

9.2.2 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.

9.2.3 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.

9.2.4 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under the Lease.

9.2.4.1 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 you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

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.

9.2.4.2 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 of San Diego 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.

9.2.4.3 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.

- 9.2.5 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 coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

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

- 9.2.7 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.

- 9.2.8 Accident Reports. LESSEE shall immediately 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 10: IMPROVEMENTS; ALTERATIONS; MAINTENANCE

- 10.1 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.
- 10.2 Improvements/Alterations. No improvements shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's written approval, which shall not be unreasonably withheld. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without 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.
- 10.3 Construction Bond. If LESSEE constructs improvements on the Premises, 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. Notwithstanding the foregoing, LESSEE shall not be required to deposit any such bond, cash security or other security related to upgrades of appliances or the Upgrades.
- 10.4 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.

10.5 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 maintain the Improvements in good condition, reasonable wear and tear excepted. LESSEE shall not remove any such improvements, fixtures, structures or installations during the Term without CITY's written consent in each instance. Upon expiration or termination of this Lease, all improvements, fixtures, structures and installations on the Premises shall be deemed a part of the Premises and owned by 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.

10.5.1 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.

10.5.2 Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements, fixtures, structures or installations or personal property as required, whether by CITY or by LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by a qualified appraiser, who may be CITY staff.

10.5.3 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.

10.6 Waste, Damage, or Destruction. 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. If the Premises are put into a condition which is not decent, safe, healthy and sanitary, LESSEE shall restore the Premises to a decent, safe,

healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction.

- 10.7 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.
- 10.8 Maintenance. LESSEE shall maintain the Premises, the Improvements, and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY. 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.
- 10.9 Utilities. LESSEE shall order, obtain and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground.
- 10.10 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.
- 10.11 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. 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.
- 10.12 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or 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.
- 10.13 Hazardous Substances.

- 10.13.1 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.
- 10.13.2 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.
- 10.13.3 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.
- 10.13.4 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.
- 10.13.5 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.

10.13.6 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.

10.13.7 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 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 11: GENERAL PROVISIONS

11.1 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises and Improvements have not been inspected by a Certified Access Specialist (CAsp).

11.2 Methane Gas Monitoring. LESSEE agrees that LESSEE's responsibilities shall include LESSEE monitoring the gas control system placed on the Premises by City every six months during the entire term of the Lease and to notify CITY should there be a need to take further measures to protect the development and its occupants. LESSEE's obligations hereunder shall be limited to notify CITY of needs for repair and LESSEE shall not be obligated to perform any such repairs.

11.3 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, postage prepaid and addressed as follows:

If to LESSEE:

Mark A. Wiese
Pacific Housing, Inc.
2115 J Street, Suite 201
Sacramento, CA 95816

With copies to:

Jules Arthur
Logan Capital Advisors
P.O. Box 880367
San Diego, CA 92168

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

11.4 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. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE fire-suppression equipment).

11.5 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 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.

11.5.1 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.

11.5.2 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.

11.6 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, 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.

11.7 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 shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.

11.8 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the 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:

11.8.1 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.

11.8.2 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.

11.8.3 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.

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

11.8.5 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.

11.8.6 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.

11.9 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:

11.9.1 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
- 11.9.2 Establish a drug-free awareness program to inform employees about all of the following:
- 11.9.3 The dangers of drug abuse in the workplace;
- 11.9.4 LESSEE's policy of maintaining a drug-free workplace;
- 11.9.5 Any available drug counseling, rehabilitation, and employee assistance programs; and
- 11.9.6 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each of its sublicenses and contracts 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.

- 11.10 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 of San Diego 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.
- 11.11 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.
- 11.12 Water Quality Assurances. LESSEE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time.
- 11.12.1 NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Commencement Date of this Lease (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.
- 11.12.2 Stormwater Management. LESSEE shall comply with all applicable

requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by the City of San Diego, in its governmental capacity, under its Stormwater Management Program.

- 11.13 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, 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.
- 11.14 Prevailing Wage. By signing this Lease, LESSEE certifies that it is aware of the wage provisions described herein and shall comply with such provisions before commencing any and all work on the Premises.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For any construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

- 11.14.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
- 11.14.2 Copies of such prevailing rate of per diem wages are on file at the CITY and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
- 11.14.3 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for

the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.

- 11.14.4 Penalties for Violations. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.
- 11.14.5 Payroll Records. LESSEE, its contractors and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City.
 - 11.14.5.1 In addition to submitting weekly certified payroll records to the City, for contracts entered into on or after April 1, 2015, Contractor and their subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
- 11.14.6 Apprentices. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 11.14.7 Working Hours. LESSEE and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify

penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

- 11.14.8 Required Provisions for Subcontracts. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor and subcontractor: California Labor Code sections 1771, 177.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 11.14.9 Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."
- 11.14.10 Labor Compliance Program. CITY has its own Labor Compliance Program as authorized in August 2011 by the DIR. CITY will withhold contract payments when payroll records are delinquent or deemed inadequate by CITY or other governmental entity, or it has been established after an investigation by CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- 11.14.11 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the CITY, LESSEE is certifying that it has verified that all contractors and subcontractors used on this publicworks project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of subcontractor registration to the CITY upon request.
 - 11.14.11.1 A LESSEE's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours

after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

11.14.12 DIR Determination of Coverage. Notwithstanding the foregoing prevailing wage determination and provisions, prior to any design or preconstruction activities (as defined and covered by California Labor Code section 1720(a)(1)) or issuance of the first development permit (for purposes of this section, "development permit" is defined as the permit(s) required under the San Diego Municipal Code for purposes of the grading of the Premises and/or construction of the first improvements on the leasehold) for development activities on the leasehold, LESSEE may seek "a request to determine coverage" (Title 8 Cal. Code of Regs. section 16001) from the State's Department of Industrial Relations ("DIR") as to whether LESSEE's proposed development activity(ies) is/are subject to prevailing wage provisions of the California Labor Code. Prior to seeking said determination, LESSEE shall have received CITY's prior written approval of the request to be sent to the DIR; said prior written approval by CITY is required in order to ensure the CITY's agreement as to the correctness and completeness of the request; to ensure that the CITY is involved in the process should the CITY be asked to, or want to, supply supplemental information to the DIR; and to ensure receipt of all applicable correspondence during the DIR's determination period. In the event the DIR determines that prevailing wages do not apply to the specific activity(ies) for which a DIR determination was sought, then, subject to the LESSEE agreeing to be bound by the below indemnification provision – which agreement shall be evidenced by the LESSEE's execution of this Lease, CITY shall agree to amend this Lease to remove the requirement of prevailing wages requirements for that/those activity(ies) for which the DIR has determined that prevailing wages do not apply.

11.14.13 Indemnification by LESSEE Should Prevailing Wages Not Be Paid. 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 by any person, including, but not limited to any damages, fees, and penalties claimed or assessed by the State of California - Director of Industrial Relations, which arise out of or are in any manner directly or indirectly connected with LESSEE's, its contractors', subcontractors' or other applicable parties' decision(s) to not pay prevailing wages for activities performed under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs.

11.15 Waiver. The property constituting the Premises is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of

LESSEE's obligations under this Lease, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Lease, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

- 11.16 Memorandum of Lease. A Memorandum of Lease, substantially in the form of **Exhibit D: Memorandum of Lease** attached hereto, shall be executed and recorded in the Office of the County Recorder of the County of San Diego, State of California.
- 11.18 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.
- 11.19 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 11.20 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.
- 11.21 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.
- 11.22 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.
- 11.23 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.
- 11.24 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

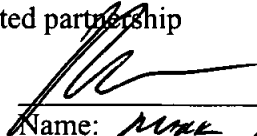
Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Lease is binding upon such person 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.

*****SIGNATURES ON FOLLOWING PAGE*****

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

Date: 7/23/15

Olivewood Housing Partners, LP, a California
limited partnership

BY: 

Name: MARK A WICKS

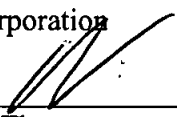
Title: PRESIDENT

PRIMIC HOUSING INC

GENERAL PARTNER

Date: 8/19/15

THE CITY OF SAN DIEGO, a California
municipal corporation

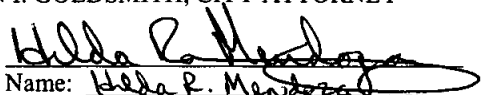
BY: 

Cybele Thompson

Director, Real Estate Assets Department

Approved as to form:

JAN I. GOLDSMITH, CITY ATTORNEY

By: 

Name: Hilda R. Mendez

Title: Deputy City Attorney

August 19, 2015

Exhibit A: Legal Description of Premises

Exhibit B: Reporting & Monitoring Agreement

Exhibit C: Guaranty of Lease

Exhibit D: Memorandum of Lease

Exhibit A: Legal Description of Premises

All that certain real property located in the City of San Diego, County of San Diego more particularly described as follows:

Parcel 1 of Parcel Map No. 10701, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County on November 13, 1980.

EXCLUDING ALL BUILDINGS AND IMPROVEMENTS THEREON.

REPORTING AND MONITORING AGREEMENT**Rental Units****2855-85 55th Street, San Diego CA 92105**

This Reporting and Monitoring Agreement ("Agreement") is entered into as of Oct 9, 2015, 2015, by and among the CITY OF SAN DIEGO, a California municipal corporation (the "City"), the San Diego Housing Commission, a public agency ("Administrator"), and Olivewood Housing Partners, LP, a California limited partnership ("Participant"), which shall collectively be referred to as the "Parties," when signed by the Parties and the San Diego City Attorney.

RECITALS

- A. CITY owns that certain real property consisting of approximately 3.1 acres of land (the "Premises"), as more particularly described in **Exhibit A: Legal Description of Premises**, attached hereto. Lessee owns and operates the improvements located at 2855-85 55th Street (Assessor's Parcel Number 477-440-14), commonly known as "Olivewood Garden Apartments" (the "Improvements"), which are sited on the Premises. The Premises and Improvements shall collectively be referred to as the "Property."
- B. Prior to entering into this Agreement, or simultaneously herewith, Participant will enter into a lease agreement with the City to lease the Property ("City Lease"). During the City Lease term, the Participant will own all Improvements on the Property.
- C. The Improvements are to be leased solely and exclusively for providing sixty (60) low-income rental housing units for senior citizens with incomes at or below sixty percent (60%) of area median income for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area as published by HUD (which renter shall hereinafter be referred to as the "Qualified Renter") and to restrict the rent for such units so that they are affordable at or below sixty percent (60%) of such area median income, and one (1) non-rent or occupancy restricted manager's unit ("Manager's Unit"). The value of the Manager's Unit shall be considered equal to the average rental rate for the remaining 60 units for rent calculation purposes. Participant is obligated by the City Lease to charge rent to the Qualified Renter per the current San Diego Housing Commission Income and Rent Calculation schedule (hereinafter collectively referred to as the "Affordable Housing Requirements").
- D. The City desires to use the staff, skills, and facilities of the Administrator to provide monitoring and reporting on the Property to ensure Participant is complying with the Affordable Housing Requirements.
- E. The Parties represent that they have the capacity and the legal right to enter into this Agreement.

- F. The Parties desire to enter into this Agreement to, among other things, provide that (i) Participant shall pay a fee to the Administrator as consideration for monitoring the Property for compliance with the Affordable Housing Requirements; and (ii) the Administrator shall administer and perform all monitoring and reporting requirements on the Property and provide the reports set forth in Section VII of this Agreement.

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

AGREEMENT

I. Purpose of Agreement

The purpose of this Agreement is to provide for the administration of Participant's Affordable Housing Requirements under the City Lease.

II. Scope of Work

A. Services. In addition to the reporting requirements set forth in Section VII below, the Administrator shall monitor that Participant is in compliance with the Affordable Housing Requirements of the City Lease, including, without limitation: (i) establishing the eligibility criteria for Qualifying Renters in accordance with the income levels published by HUD for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area; and (ii) monitoring ongoing compliance with Affordable Housing Requirements of the City Lease, as applicable, including an annual certification that the Property remains occupied by Qualified Renters. The City will notify the Administrator of any amendments to the City Lease that would affect the Affordable Housing Requirements of the City Lease. Fifty percent of the units shall be monitored annually one year and the remaining fifty percent shall be monitored the following year.

B. Administrator and City Approval of Rents. The maximum amount which Participant may charge as rent for the Property is set forth in the San Diego Housing Commission Income and Rent Calculation schedule, a current copy of which is attached hereto as **Exhibit B**, and incorporated herein by this reference.

C. City Rights and Obligations. All rights, obligations, and/or duties of the City under the City Lease, not otherwise the subject of this Agreement, shall remain the rights, obligations, and/or duties of the City.

III. Parties to Agreement

The Parties to this Agreement are the City, the Administrator, and Participant.

IV. Representatives of the Parties

The representatives of the respective Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

A. The representative of the Administrator shall be:

Rick Gentry, President and Chief Executive Officer
San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, California 92101

B. The representative of Participant shall be:

Colin Rice
Olivewood Housing Partners, LP
P.O. Box 33882
San Diego, CA 92163
(619) 619-750-8580

C. The representative of City shall be:

Director, Real Estate Assets
City of San Diego
1200 Third Ave, Suite 1700
San Diego, California 92101

Any Party may designate another representative by providing written notice to the other Parties.

V. Time of Performance

Reporting and monitoring services pursuant to this Agreement shall commence as of the date of the execution of this Agreement by all of the Parties and the San Diego City Attorney and shall terminate upon the earlier of: (i) expiration or termination of the City Lease; or (ii) termination of this Agreement pursuant to Sections XII or XV below.

VI. Monitoring of the Administrator by the City

The City may monitor the Administrator's performance of its duties under this Agreement. The Administrator shall reasonably cooperate with the City in connection with such monitoring.

VII. Monitoring and Reporting Requirements

Administrator Requirements.

- A. The Administrator shall determine whether proposed applicants are income eligible to qualify as tenants for the Property, i.e., Qualified Renters.
- B. The Administrator shall monitor the following, pursuant to **Exhibit B** attached hereto:
 - (1) Occupancy by Qualified Renters (i.e., low-income senior citizens with incomes at or below sixty percent (60%) of area median income for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area as published by HUD and to restrict the rent for such units so that they are affordable at or below sixty percent (60%) of such area median income).
 - (2) That the rent charged by Participant is in accordance with the current San Diego Housing Commission Income and Rent Calculation schedule, **Exhibit B**.
- C. The Administrator shall submit to the City annual reports of its monitoring activities pursuant to this Agreement.
- D. The Administrator shall re-certify household income annually. If a household's income increases to above 140% of the applicable income limitation, the household will be required to move out. Participant shall be solely responsible for any eviction of tenants; the Administrator shall have no obligation to evict any persons.
- E. Annually, the Administrator shall provide the City with an updated rent chart based upon the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area.

Participant Requirements.

- A. Participant shall provide complete and accurate information required by the Administrator with regard to the Affordable Housing Requirements of the City Lease, within five (5) business days of the request by the Administrator.
- B. Participant shall timely pay all fees to the Administrator as required by this Agreement.

VIII. Books and Records

A. **Complete Books.** The Administrator shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement. Participant shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement.

B. Availability. All records prepared in accordance with this Agreement shall be made available to the City for copying and inspection at any time without notice during normal business hours.

IX. Access to Records

A. The City shall have full and free access to all books, papers, documents, and records of the Administrator and/or Participant that are pertinent to the obligations of all Parties under this Agreement.

B. Excluding those records that may be privileged or otherwise exempt from disclosure under the law, the Administrator shall have full and free access to all books, papers, documents and records of the City and/or Participant that are pertinent to the Administrator's obligations under this Agreement.

X. Ownership, Use and Distribution of Documents

A. All records, reports, books, papers, documents, computer discs or other information prepared or developed by the Administrator or Participant on behalf of the City in connection with services rendered under this Agreement, are, and shall remain the exclusive property of the City.

C. Upon expiration of this Agreement or in the event of termination of this Agreement by the City or the Administrator as provided in Sections XII or XV below, the Administrator agrees to provide to the City and Participant copies of all records, reports, books, papers, documents, computer discs or other information prepared as a result of this Agreement not previously provided to the City or Participant.

XI. Payment of Compensation

A. Amount. In consideration for the services provided by the Administrator with respect to the Property as referenced in this Agreement, the Administrator may establish and collect a fee annually ("Annual Monitoring Fee") from Participant for services rendered pursuant to this Agreement to monitor and enforce the Affordable Housing Requirements of the Property contained in the City Lease.

The amount of the Annual Monitoring Fee charged shall be based upon the current San Diego Housing Commission Annual Occupancy Monitoring Fee Schedule, Exhibit C, attached hereto, which exhibit is subject to revision annually, based on the Administrator's costs for monitoring functions. In no event shall the monitoring fee decrease.

Notwithstanding the foregoing, the annual monitoring fee for the first twenty years of the Lease Term shall be prepaid upon Lease Commencement, as defined in the City Lease, in the amount of Ninety Thousand Dollars (\$90,000) and such prepayment shall be deemed payment in full of

monitoring fees for the monitoring of fifty percent of the units performed each year for the first twenty years following the date of Lease Commencement.

The monitoring fees for the monitoring of fifty percent of the units performed each year for the first twenty years following the date of Lease Commencement shall not be subject to any adjustment with respect to those particular units.

If the Housing Commission elects to monitor more than 50% of the units in any year, then additional monitoring fees shall be payable on a per unit basis based upon the current San Diego Housing Commission Annual Occupancy Monitoring Fee Schedule, Exhibit C, attached hereto, provided however, that no such additional fees shall be payable unless such election is made as a result of a finding of material noncompliance with the Affordable Housing Requirements of the Property contained in the City Lease, where "material noncompliance" means noncompliance of more than ten percent [10%] of units monitored ("Material Noncompliance").

If the Property is in compliance, based upon the reports submitted, the Commission will perform no additional monitoring in the year that the compliant report is submitted. However, in the event that the report shows that more than 10% of the units monitored are out of compliance, the Housing Commission shall be entitled to conduct additional monitoring.

In the event of Material Noncompliance as shown in the report delivered to the Housing Commission, the Housing Commission will randomly monitor up to an additional 20% of the units in any year where the Participant's report shows Material Noncompliance, and will charge Participant \$150 per unit, per year, for each unit monitored other than any unit for which Annual Monitoring Fees are prepaid hereunder. The Commission will deliver a copy of its report, if any, detailing the results of its monitoring (the "Compliance Report") to the City. If the additional random monitoring by the Commission shows evidence of substantial non-compliance (i.e., greater than 10% of the additional 20% of units actually monitored are out of compliance), the Commission may, then, monitor up to the balance of the 60 units, in the same manner as set forth in this paragraph in increments of up to 20% of the units for each showing of Material Noncompliance with respect to each increment of 20% of the Property units, charging \$150.00 per unit monitored, other than any unit for which Annual Monitoring Fees are prepaid hereunder, per year.

The Commission reserves the right to increase the Annual Monitoring Fee, annually, based upon a cost of living increase adjustment in accordance with the published Annual Occupancy Monitoring Fee Schedule, provided that such increase shall not apply to any unit for which Annual Monitoring Fees are prepaid hereunder.

B. Time of Payment. Concurrently with Participant's execution and delivery of this Agreement, Participant shall pay to the Administrator a monitoring fee as referenced in Exhibit C. The Administrator's right to the Annual Monitoring Fee referenced in Exhibit C shall commence concurrent with activities referenced in Section VII above. Participant shall pay to the Administrator the Annual Monitoring Fee in accordance with Exhibit C, and as calculated by, Section XI.A above. Participant shall pay such other fees set forth in Exhibit C as required hereunder. Participant's failure to timely pay the Annual Monitoring Fee or any other fees

required hereunder shall constitute a material default under this Agreement. Such breach shall entitle the Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XII or Section XV, below.

C. Administrator Entitled to All Fees. Participant also agrees to pay additional fees as necessary to reasonably compensate the Administrator in the event the Administrator's monitoring results in a need to take additional steps to enforce the covenants and conditions contained in the City Lease (see Exhibit C attached hereto). Participant further agrees that failure to pay all such fees within fifteen (15) business days after receipt of a billing statement for such fees shall constitute a material default of the covenants and conditions of this Agreement. Such breach shall entitle the Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XII or Section XV, below. In the event that the City directs the Administrator to take legal steps, including the initiation of litigation, to enforce the City Lease, or both, then the Administrator shall be entitled to the reasonable legal costs and fees and other court costs associated with such enforcement actions, in addition to the fees set forth herein. The City shall compensate the Administrator for such fees and costs as incurred, and the Administrator shall seek reimbursement of such fees and costs in any litigation against the Participant. The City may, in lieu of requesting the Administrator to enforce the terms of the City Lease, enforce the obligations itself.

XII. Default

In the event of any breach or default hereunder, which the defaulting or breaching Party fails to satisfactorily cure within ten (10) calendar days of receiving written notice from a non-defaulting Party specifying the nature of the default or breach, the non-defaulting Party may immediately cancel and/or terminate this Agreement upon written notice to all other Parties and/or maintain any and all legally permissible actions at law or in equity against the defaulting Party to enforce the correction of any such default or breach or to enjoin any such default or breach.

XIII. No Partnership

The Parties hereto are entering into this Agreement independently from one another and shall not be deemed officers, officials, agents, partners or employees of one another.

XIV. Amendment or Assignment of Agreement

All amendments to this Agreement must be in writing and executed with mutual consent of the Administrator, the City and Participant. This Agreement may not be assigned by any Party without the written approval of the remaining Parties, and such approval shall not be unreasonably withheld.

XV. Termination

This Agreement may be terminated with or without cause by the City or the Administrator upon thirty (30) calendar days' written prior notice to all other Parties.

XVI. Complete Agreement

This Agreement contains the full and complete agreement between the parties concerning the matters contained herein. No verbal agreements or conversation with any officer, official, agent or employee of any Party shall affect or modify any of the terms and conditions of this Agreement.

XVII. Limitations on Agreement

The Parties agree that this Agreement is not in any way intended to, and does not, revise, amend or otherwise affect any of the terms, conditions or priority of the City Lease, nor the enforcement thereof, except as specifically set forth herein. The Parties hereby agree that, except as expressly provided herein, the provisions of the City Lease shall be and remain unmodified and in full force and effect.

XVIII. Counterparts

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

XIX. Time of Essence

Time is expressly declared to be of the essence in this Agreement, and of each and every provision in which time is an element.

XX. Captions

Section or paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Agreement.

XXI. Additional Documents

The Parties each agree to sign any additional documents, which are reasonably necessary to carry out this Agreement or to accomplish its intent.

XXII. Benefit and Burden

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns. This Agreement is not intended to benefit any person other than the Parties hereto.

XXIII. Governing Law

This Agreement has been entered into in the State of California and shall be interpreted and enforced under California law.

XXIV. Venue

Any action that may be filed to enforce or interpret the terms of this Agreement shall be filed in a court located within the City of San Diego, California.

XXVI. Waiver

No breach of any provision hereof may be waived unless in writing by all Parties. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

XXVII. Number of Pages and Exhibits

This Agreement includes fourteen (14) pages and three (3) Exhibits.

XXVIII. Signing Authority

The representative signing on behalf of each Party to this Agreement represents that authority has been obtained to sign on behalf of such Party.

XXIX. Exhibits and Recitals Incorporated

All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The recitals to this Agreement are hereby incorporated in this Agreement by this reference.

XXX. Severability of Provisions

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

XXXI. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the dates set opposite their signatures.

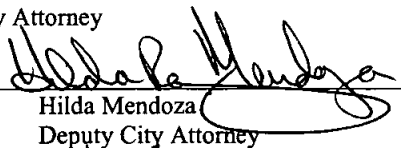
CITY:

CITY OF SAN DIEGO,
a California municipal corporation

Date: 8/14/15

By: 
Cybele Thompson
Director, Real Estate Assets

APPROVED AS TO FORM:
JAN I. GOLDSMITH
City Attorney

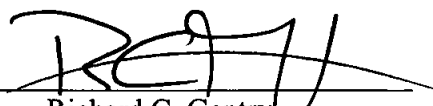
By: 
Hilda Mendoza
Deputy City Attorney

Date: 8/19/15

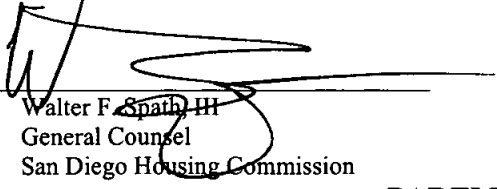
ADMINISTRATOR:

SAN DIEGO HOUSING COMMISSION

Date: 9/16/15

By: 
Richard C. Gentry
President and Chief Executive Officer

APPROVED AS TO FORM:
CHRISTENSEN & SPATH LLP

By: 
Walter F. Spath III
General Counsel
San Diego Housing Commission

PARTICIPANT:

Olivewood Housing Partners, LP, a California limited partnership

Date: _____

By: 
Name: Mark A. White
Title: PRESIDENT
PACIFIC HOUSING, INC.
GENERAL PARTNER

EXHIBIT A
LEGAL DESCRIPTION

All that certain real property located in the City of San Diego, County of San Diego more particularly described as follows:

Parcel 1 of Parcel Map No. 10701, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County on November 13, 1980.

EXCLUDING ALL BUILDINGS AND IMPROVEMENTS THEREON.

EXHIBIT B
QUALIFIED RENTER AND RENT SCHEDULE

A "Qualified Renter" shall be low-income senior citizens with incomes at or below sixty percent (60%) of area median income for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area as published by HUD and to restrict the rent for such units so that they are affordable at or below sixty percent (60%) of such area median income, minus a utility allowance for tenant paid utilities.

See next page for current San Diego Housing Commission Income and Rent calculations.

SAN DIEGO HOUSING COMMISSION INCOME AND RENT CALCULATIONS

U.S. Department of Housing and Urban Development 2015 SAN DIEGO MEDIAN INCOME:

\$73,000

Note: The table contains income limits for 2015 extremely low, very low and low income, as adjusted for family size and other factors adopted and amended from time to time by the U.S. Department of Housing and Urban Development (HUD). HUD adjusted San Diego Very Low Income limits for a "high housing cost area" factor.

Family Size	Unit Size	Extremely Low Income 30% AMI (Adjusted by HUD)			35% AMI (Adjusted by HUD)			40% AMI (Adjusted by HUD)		
		ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³
ONE	STUDIO	\$17,050	\$426	\$425	\$19,850	\$496	\$496	\$22,700	\$568	\$567
TWO	1-BR	\$19,450	\$486	\$455	\$22,700	\$568	\$531	\$25,550	\$649	\$607
THREE	2-BR	\$21,900	\$548	\$545	\$25,550	\$639	\$637	\$29,200	\$730	\$729
FOUR	3-BR	\$24,300	\$608	\$631	\$28,350	\$709	\$737	\$32,400	\$810	\$842
FIVE	4-BR	\$28,410	\$710	\$705	\$31,700	\$793	\$822	\$35,000	\$875	\$940
SIX	5-BR	\$32,570	\$814	\$778	\$35,050	\$876	\$907	\$37,600	\$940	\$1,037
SEVEN	6-BR	\$36,730	\$918		\$38,450	\$961		\$40,200	\$1,005	
EIGHT		\$40,890			\$41,850			\$42,800		

Family Size	Unit Size	Very Low Income 50% AMI (Adjusted by HUD)				60% AMI (Adjusted by HUD)			65% AMI (Adjusted by HUD)		
		ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	"Low HOME" ⁴	ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	ANNUAL INCOME ¹	GROSS RENT ²	"High HOME" ⁴
ONE	STUDIO	\$28,350	\$709	\$708	\$708	\$34,020	\$851	\$850	\$36,650	\$921	\$931
TWO	1-BR	\$32,400	\$810	\$759	\$759	\$38,880	\$972	\$911	\$42,100	\$1,053	\$999
THREE	2-BR	\$36,450	\$911	\$911	\$911	\$43,740	\$1,094	\$1,093	\$47,400	\$1,185	\$1,202
FOUR	3-BR	\$40,500	\$1,013	\$1,053	\$1,053	\$48,600	\$1,215	\$1,253	\$52,650	\$1,315	\$1,379
FIVE	4-BR	\$43,750	\$1,094	\$1,175	\$1,175	\$52,500	\$1,313	\$1,410	\$56,650	\$1,421	\$1,519
SIX	5-BR	\$47,000	\$1,175	\$1,296	\$1,296	\$56,400	\$1,410	\$1,556	\$61,050	\$1,526	\$1,657
SEVEN	6-BR	\$50,250	\$1,256		\$1,417	\$60,300	\$1,508		\$65,300	\$1,633	\$1,796
EIGHT		\$53,500				\$64,200			\$69,500		

Family Size	Unit Size	70% AMI (Adjusted by HUD)		80% AMI (Adjusted by HUD)		100% Area Median Income (No HUD adjustment)		120% AMI (No HUD adjustment)	
		ANNUAL INCOME ¹	GROSS RENT ²	ANNUAL INCOME ¹	GROSS RENT ²	ANNUAL INCOME ¹	GROSS RENT ²	ANNUAL INCOME ¹	GROSS RENT ²
ONE	STUDIO	\$39,700	\$993	\$45,400	\$1,135	\$51,100	\$1,278	\$61,300	\$1,533
TWO	1-BR	\$45,350	\$1,134	\$51,850	\$1,296	\$58,400	\$1,460	\$70,100	\$1,753
THREE	2-BR	\$51,050	\$1,276	\$58,350	\$1,459	\$65,700	\$1,643	\$78,850	\$1,971
FOUR	3-BR	\$56,700	\$1,418	\$64,800	\$1,620	\$73,000	\$1,825	\$87,600	\$2,190
FIVE	4-BR	\$61,250	\$1,531	\$70,000	\$1,750	\$78,850	\$1,971	\$94,600	\$2,365
SIX	5-BR	\$65,750	\$1,644	\$75,200	\$1,880	\$84,700	\$2,118	\$101,600	\$2,540
SEVEN	6-BR	\$70,300	\$1,758	\$80,400	\$2,010	\$90,500	\$2,263	\$108,600	\$2,715
EIGHT		\$74,850		\$85,550		\$96,350		\$115,650	

* TCAC = Tax Credit Allocation Committee

1. Annual Income = Gross annual income adjusted by family size for Area Median Income (AMI) level. May contain additional adjustments as determined annually by HUD.
2. Gross rent minus utility allowance = maximum cash rent. See the "San Diego Housing Commission Utility Allowance Schedule" to calculate the utility; based on the project's actual utility mix.
3. For projects with multiple funding sources, use the lowest rents applicable and/or apply HUD's MTSP "Hold Harmless" policy. "Low HOME" and "High HOME" rents effective June 1, 2015.

Note: Due to the Housing and Economic Recovery Act of 2008 the data presented in this chart may not be applicable to projects financed with Section 42 Low Income Housing Tax Credits (LIHTC) or section 142 tax exempt private equity bonds (MTSP). If you believe your affordable housing project is affected by this change and have questions regarding the 2014 Rent & Income Limits, please contact Irma Betancourt at Irma@sdhc.org.

This general income and rental rate information is derived from the U.S. Department of Housing and Urban Development very low income figures published March 06, 2015. HOME Rents effective June 1, 2015.

EXHIBIT C

OCCUPANCY MONITORING FEE SCHEDULE – Rental Units

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 Administrator's staff to property owner/manager and/or representatives.

Annual Monitoring Fee

The monitoring fee is \$150 per monitored unit ("Annual Monitoring Fee"). The number of monitored units is equal to the total number of units being monitored under the City Lease.

"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 Administrator, in its sole discretion, may elect to charge an additional fee based on an hourly rate of \$100.

Adjustment of Annual Fee

After the first twenty years of the Lease Term, the Administrator reserves the right to revise the Monitoring Fee annually based on the Administrator's costs for monitoring functions. In no event shall the Annual Monitoring Fee decrease.

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

Maximum Annual Fee

Pursuant to this Agreement and the AARP, the maximum **initial** Annual Monitoring Fee charged by the Administrator shall not exceed **\$150**. After the first twenty years of the Lease Term, this maximum Annual Monitoring Fee amount may be adjusted for changes in the Commission's costs for monitoring functions.

Enforcement Fees

In the event the Administrator, in monitoring compliance, determines that Participant is not in compliance with the covenants and conditions in this Agreement or the AARP, Participant shall pay the Administrator's additional reasonable costs of enforcement. Such costs shall be equal to the Administrator's total documented costs for employee and attorney time expended in securing compliance.

Billing and Payment of Fees

The Administrator shall bill/invoice Participant for the Annual Monitoring Fee at the address of record on an annual basis on each anniversary of lease commencement. Participant shall pay fees to the Administrator within fifteen (15) calendar days of the date of each annual invoice.

Exhibit C
Guaranty of Lease

This Guaranty of Lease ("Guaranty") is entered into as of 7-23, 2015 by THE AMERLAND GROUP, LLC, a California limited liability Company ("Guarantor"), with Islas Development, LLC, a California limited liability company as its manager, for the benefit of the City of San Diego, a California municipal corporation ("CITY" or "Lessor"), with respect to that certain lease between CITY and Olivewood Housing Partners, LP, a California limited partnership ("Lessee") with Pacific Housing Inc, a California nonprofit public benefit corporation as its managing general partner, dated 7-23, 2015 (the "Lease").

1. Guarantor unconditionally guarantees to Lessor the Lessee's assumption of all rights and obligations of the Lease including payment by Lessee of all amounts in the Lease to be paid by Lessee. If Lessee shall at any time default in any of its obligations, including the payment of any of the amounts in the Lease to be paid by Lessee (after notice to Lessee and Guarantor and the expiration of any applicable cure period), Guarantor will pay or perform Lessee's obligations same in the place and stead of Lessee.
2. Guarantor hereby expressly waives notice of acceptance of this Guaranty.
3. This Guaranty shall continue in full force and effect for any renewal or extension of the term of the Lease expressly set forth in the Lease, provided however, this Guaranty shall not apply to any amendment of the Lease or any renewal or extension of the term of the Lease not expressly set forth in the Lease unless Guarantor has consent thereto in writing.
4. This Guaranty may not be modified or amended except by a written agreement executed by Lessor and Guarantor.
5. In the event of any default of Lessee, or Guarantor in place of Lessee, under the Lease (after notice to Lessee and Guarantor and the expiration of any applicable cure period), Lessor may proceed directly against Guarantor, Lessee, and any other guarantors, or anyone else liable under the Lease without first exhausting Lessor's remedies against any other person or entity liable under the Lease to Lessor.
6. Every notice, demand or request (collectively "Notice") required hereunder or by law to be given by either party to the other shall be in writing. Notices shall be given by personal service or by United States Certified or registered mail, postage prepaid, return receipt requested or by same day or overnight private courier, addressed to the party to be served at the address indicated below or such other address as the party to be served may from time to time designate in a Notice to the other party and any Notice shall be deemed given upon the earlier to occur of (i) receipt of (ii) refusal:

Lessor Address for Notices:
The City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attention: Real Estate Assets Director

Guarantors Address for Notices:
The Amerland Group, LLC
PO Box 880367
San Diego, CA 92168
Attention: Ruben Islas

7. This Guaranty shall be governed by and construed in accordance with the laws of the State of California.
8. This Guaranty constitutes the entire agreement with respect to the subject matter hereof, and supersedes all prior agreements, representations, negotiations and understandings with respect thereto.
9. The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.
10. Notwithstanding anything to the contrary contained herein, the liability of Guarantor hereunder shall not exceed the liability of Lessee under the Lease.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

Guarantor

The Amerland Group, LLC, a California
limited liability company

By: Islas Development, LLC, a
California limited liability company

Its: Manager

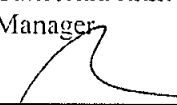
By: 
Ruben Islas,
Its: Sole Member and Manager

Exhibit D

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:

Olivewood Housing Partners, LP
P.O. Box 33882
San Diego, CA 92163
Attention: Colin Rice

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

This Memorandum of Lease (the "Memorandum") is dated as of August 19, 2015 between City of San Diego, a California municipal corporation ("Landlord"), Olivewood Housing Partners, LP, a California limited partnership ("Lessee") who agree as follows:

1. Landlord and Lessee were parties to that certain Lease Agreement executed December 11, 1980 between CITY and Chollas Gardens Limited, a California limited partnership, with Housing Opportunities, Inc., a nonprofit public benefit California corporation, as its managing general partner, on file with the San Diego City Clerk as Document No. RR-252648, which was assigned to Olivewood Housing Partners, LP, a California limited partnership, with Pacific Housing, Inc, a California nonprofit public benefit corporation as its managing general partner, recorded by the San Diego County Recorder's Office on July 13, 2009 as document 2009-0382364.

2. The parties have entered into a new lease agreement, Percentage Ground Lease ("Lease"), effective on August 19, 2015. The Commencement Date of the Lease is Oct 9, 2015. Pursuant to the Lease, Landlord has leased the Property to Lessee and Lessee has accepted tenancy of the Property from Landlord commencing on the Commencement Date (as defined therein) for the term specified therein consisting of forty one (41) 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 Landlord and its successors and assigns.

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

Exhibit D

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- 309910.

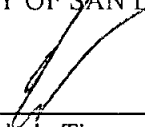
IN WITNESS WHEREOF, the Landlord and the Lessee have executed this Memorandum as of the date first set forth above.

LANDLORD

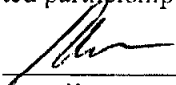
LESSEE

THE CITY OF SAN DIEGO

Olivewood Housing Partners, LP, a California limited partnership

By: 

Cybele Thompson
Director, Real Estate Assets

By: 

Name: MARK A. WIESE

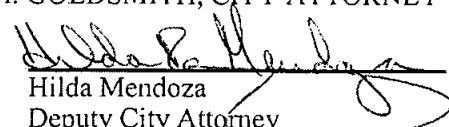
Title: PRESIDENT

PACIFIC HOUSING INC.
GENERAL PARTNER

Approved as to form

This 19th day of August, 2015

JAN I. GOLDSMITH, CITY ATTORNEY

By: 

Hilda Mendoza
Deputy City Attorney

Exhibit D

EXHIBIT A
TO MEMORANDUM OF LEASE
LEGAL DESCRIPTION

All that certain real property located in the City of San Diego, County of San Diego more particularly described as follows:

Parcel 1 of Parcel Map No. 10701, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County on November 13, 1980.

EXCLUDING ALL BUILDINGS AND IMPROVEMENTS THEREON.

APN/Parcel ID(s): 447-440-14 (Land)

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 document.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of Sacramento)

On 07/23/2015 before me Esmeralda Ramirez, public notary
(here insert name and title of the officer)

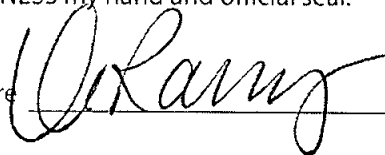
personally appeared Mark A. Wiese

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.

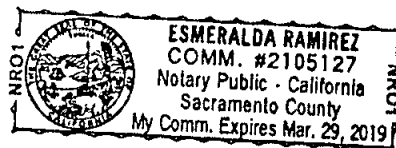
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-Fact
☐ Corporate Officer(s) _____
Title(s) _____

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:
Page # _____ Entry # _____

Notary contact: _____

Other

- ☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)
☐ _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

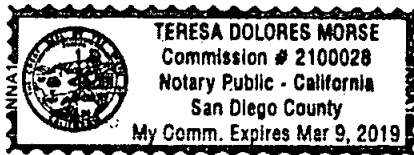
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of San Diego)
 On September 16, 2015 before me, Teresa Dolores Morse, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared Cybele Thompson
 Name(s) of Signer(s)

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 Teresa Dolores Morse
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Memorandum of Lease Document Date: 08/19/15
 Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____