# **GROUND SUBLEASE** (East Campus 328 Apartments)

by and between

CALIFORNIA STATE UNIVERSITY, CHANNEL ISLANDS SITE AUTHORITY, a public body, corporate and politic,

"Landlord"

and

[PRIVATE PA	ARTNER,
a	]
"Tenan	nt"
Dated as of	, 2016

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# **GROUND SUBLEASE** (East Campus 328 Apartments)

This GROUND SUBLEASE (East Campus 328 Apartments)	("Lease") dated as of
, 2016 ("Effective Date") is entered into by and between	CALIFORNIA STATE
UNIVERSITY, CHANNEL ISLANDS SITE AUTHORITY, a public book	dy, corporate and politic
("Landlord" or "Authority"), and [PRIVATE PARTNER, a	] ("Tenant").

#### RECITALS

- A. Landlord is a California public body, corporate and politic, created by the California State University, Channel Islands Site Authority Act, Government Code Section 67470, *et seq*.
- B. Tenant is an experienced owner, manager and operator of multifamily apartment units in California.
- C. Landlord owns a ground leasehold interest in certain real property situated in the County of Ventura, State of California, and legally described in Exhibit A ("Property") pursuant to that certain Third Amended and Completely Restated Ground Lease dated as of March 14, 2007 (the "Underlying Ground Lease") between the Landlord, as lessee thereunder, and The Trustees of the California State University (the "Trustees"), as lessor thereunder.
- D. The Property is improved with 328 multifamily apartment units (the "Units"), parking lots, streets, sidewalks, landscaping and certain other improvements. As of the Effective Date, substantially all of the Units are occupied. A rent roll has been provided to Tenant prior to the Effective Date.
- E. In accordance with Health and Safety Code Section 33498.2, the Units shall be rented in accordance with the Priority System and Household Qualifications described in Sections 8.4 and 8.3, respectively, of this Lease.
  - F. The foregoing Recitals constitute a substantive part of this Lease.
- G. This Lease is in the vital and best interests of the Site Authority, the Trustees, the County of Ventura, California, and the health, safety and welfare of its residents, and in accordance with the public purposes of applicable state and local laws and requirements.
- **NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, Landlord and Tenant agree as follows:

## ARTICLE 1. LEASE OF THE PROPERTY.

1.1 Ground Sublease of the Property; Ownership of Improvements. Landlord hereby subleases the Property to Tenant, and Tenant hereby hires the Property from Landlord, on the terms and conditions set forth in this Lease. Subject to the provisions of Section 5.3 hereof, Tenant will concurrent with the Effective Date of this Lease and thereafter during the Term hereof, hold fee title to all Improvements constructed on the Property during the Term hereof, and shall continue to hold fee title to such Improvements during such Term. Landlord hereby covenants that Tenant may take

possession of the Property and Improvements under this Lease at any time after the Commencement Date.

1.2 Purpose of Ground Sublease. The purpose of this Lease is to provide for the maintenance, management, and operation of the Project (defined below) as a multifamily apartment complex to be made available during the entire Term hereof to tenant households selected in accordance with the Priority System pursuant to this Lease. Tenant shall not occupy or use the Property, nor permit the Property to be occupied or used, nor do or permit anything to be done in or on the Property, in whole or in part, for any other purpose other than multifamily rental housing during the Term of this Lease pursuant to the terms and provisions of this Lease.

1.3	Recorded	l Encumbi	rances.	This	Lease,	the	inter	ests	of Landlo	rd and	Tenant
hereunder, a	nd the Prop	erty, are in	n all resp	ects s	ubject	to a	nd b	ound	by all of	the cov	enants,
conditions, re	estrictions, re	eservations,	rights, rig	hts-of	-way an	ıd ea	seme	nts of	record, in	cluding v	without
limitation thi	s Lease, the	Underlying	Ground I	Lease	and the					date	ed as of
	and	recorded	against	the	Prope	rty	in	the	Official	Record	ds on
		as Instru	ment No.				[.	A pre	liminary	title rep	ort has
been ordered. List any important CC&Rs, encumbrances here.]											

**1.4 Memorandum of Ground Sublease**. A short form Memorandum of Ground Sublease (East Campus 328 Apartments) referring to this Lease, substantially in the form attached hereto as Exhibit D and incorporated herein, shall be executed by Landlord and Tenant concurrently herewith and recorded in the Official Records.

# ARTICLE 2. DEFINITIONS.

Capitalized terms used herein are defined where first used in this Lease and/or as set forth in this Article 2.

"**Additional Rent**" shall mean the additional rent which may be required to be paid by Tenant to Landlord pursuant to Section 4.1.3.

# "Advanced Rent" is defined in Section 4.1.1.

"Affiliate" shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Tenant, which shall include each of the constituent partners or members of Tenant's [limited partnership/limited liability company]. The term "control," as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to exercise, directly or indirectly, at least 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

# "Annual Capital Budget" is defined in Section 4.3.3.

"Annual Financial Statement" shall mean the certified financial statement of Tenant for the Project using generally accepted accounting principles ("GAAP"), as separately accounted for the Project, including Project operating expenses and revenues, prepared at Tenant's expense, by an independent certified public accountant reasonably acceptable to Landlord.

- "Annual Rent" is defined in Section 4.1.2.
- "Award" shall mean any compensation or payment made or paid for the Total, Partial or Temporary Taking of all or any part of or interest in the Property and/or the Improvements, whether pursuant to judgment, agreement or otherwise.
  - "CAM Charge" is defined in Section 10.1.
- "Capital Improvements" shall mean all work and improvements with respect to the Property for which costs and expenses may be capitalized in accordance with GAAP.
- "Capital Replacement Reserve" shall mean a separate interest-bearing reserve fund account to be established and maintained by Tenant separately for the Project, which shall equal not less than \$\_\_\_\_\_\_ per year, increased each calendar year by the corresponding increase in CPI, to be used as the primary resource to fund capital improvements and replacement improvements for the Project that are normally capitalized under generally accepted accounting principles, including capital replacements required by the 5-Year Capital Improvement Plan.
- "Certificate of Continuing Compliance" shall mean the certificate to be delivered by Tenant to Landlord annually during the Term pursuant to Section 8.11, in the form attached hereto as Exhibit C or such other form as may reasonably be required by Landlord.
  - "CI" shall mean the California State University, Channel Islands university.
- "CI Master Plan" means the California State University, Channel Islands Campus Master Plan, as it may be amended and revised from time to time.
- "CI Reuse Plan" means the California State University, Channel Islands Community Development Area Specific Reuse Plan developed by Landlord with respect to the CI campus, including the Property, as it may be amended and revised from time to time.
- "Commencement Date" shall mean the date upon which the Memorandum of Ground Sublease is recorded in the Official Records.
- "Common Area Improvements" shall mean all landscaping, public rights of way and common areas located at the Property, as described in the Scope of Common Area Improvements attached hereto as Exhibit E.
- "CPI" shall mean the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup "All Items," for the Oxnard-Thousand Oaks-Ventura area, 1982 84 = 100, or successor or equivalent index in case such index is no longer published. CPI adjustments under this Lease shall commence in the year following the Commencement Date.
  - "CSU" shall mean the California State University system.
  - "Event of Default" has the meaning set forth in Article 21.
- "Fair Housing Laws" means, collectively, Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of

Title I of the Housing and Community Development Act of 1974, Title II of the Americans with Disabilities Act of 1990, Architectural Barriers Act of 1968, Age Discrimination Act of 1975, the California Fair Employment and Housing Act, California Government Code Sections 12940,12945, and 12945.2), the Unruh Civil Rights Act, California Civil Code section 51, and all other State and Federal laws, rules, regulations and executive orders which address the sale, lease, use, occupancy, management or other provision of housing on a non-discriminatory basis.

"Governmental Requirements" shall mean all applicable laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State of California, the County, CI, CSU, or any other political subdivision in which the Property is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the Site Authority, CI, CSU Tenant or the Property, as may be amended from time to time, including all applicable state and federal labor standards, the CI zoning and development standards, building, plumbing, mechanical and electrical codes, and all other applicable disabled and handicapped access requirements, and further including without limitation, all governmental requirements applicable to public works, including without limitation the payment of prevailing wages in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto, the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Sections 51, et seq.

"Gross Mismanagement" is defined in Section 8.8.2 hereof.

"Lease" shall mean this Ground Sublease (East Campus 328 Apartments).

"Hazardous Material" or "Hazardous Materials" shall mean and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Ventura County Health Care Agency, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls, (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903); (xi) Methyl tert Butyl Ether; (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection,

storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, *et seq.*, specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project, including without limitation alcohol, aspirin, tobacco and saccharine.

"Household Qualifications" shall mean the requirements and standards for qualifying households to rent Units at the Property, as set forth in Section 8.3.

"Impositions" shall mean all taxes (including, without limitation, sales and use taxes); assessments (including, without limitation, all assessments for public improvements or benefits whether or not commenced or completed prior to the Commencement Date and whether or not to be completed within the Term); water, sewer or other rents, rates and charges; excises; levies; license fees; permit fees; inspection fees and other authorization fees and other charges; in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including all interests and penalties thereon), which are attributable or applicable to any portion of the Term and may be assessed, levied, confirmed or imposed on or in respect of, or be a lien upon (a) the Property or the Improvements, or any part thereof, or any estate, right or interest therein, (b) any occupancy, use or possession of or activity conducted on the Property or the Improvements, or any part thereof, or (c) this Lease. The term "Impositions" shall also include any and all increases in the foregoing, whether foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any increase in real property taxes resulting from a sale of the Property by Landlord.

"Improvements" shall mean the apartment complex and any other improvements, including the building fixtures thereon, now located on the Property, if any, or hereafter constructed on the Property as part of the Project; all landscaping, fencing, walls, paving, curbing, drainage facilities, lighting, parking areas, roadways and similar site improvements now located or hereafter placed upon the Property.

"Indemnitees" has the meaning set forth in Section 16.3 of this Lease.

"Insurance Requirements" shall mean all terms of any insurance policy covering or applicable to the Property or the Improvements, or any part thereof, all requirements imposed by the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Property or the Improvements, or any part thereof, or any use or condition of the Property or the Improvements, or any part thereof.

"Joint Use Agreement" shall mean a Joint Use Agreement to be entered into between Landlord and Tenant, which shall provide for Landlord's maintenance and operation of the Shared Facilities, access and use of the Shared Facilities to residents of the Units at the Property, and Tenant's payment of a monthly fee to Landlord for Tenant's fair share of the cost of maintenance and operation of the Shared Facilities.

"**Legal Description**" shall mean the description of the Property attached hereto as Exhibit A and incorporated herein.

"Maintenance Standards" shall mean those standards set forth in Section 10.2 hereof.

"Marketing and Tenant Selection Plan" shall mean the marketing and selection plan pursuant to which Tenant shall select households to rent and occupy Units at the Project, in accordance with Section 8.3. The initial Marketing and Tenant Selection Plan is attached to this Lease as Exhibit F.

"Material Adverse Change" means any event the occurrence of which is reasonably likely to have a material adverse effect on Tenant's ability to fulfill its obligations under this Lease, including without limitation:

- (a) a voluntary or involuntary bankruptcy of Tenant (which is not dismissed within ninety (90) days of institution);
  - (b) a court order placing Tenant under receivership;
  - (c) a sale of all or substantially all of the assets held by Tenant;
- (d) any violation of Tenant or other failure of Tenant to comply at all times with any applicable law, statute, ordinance, code, rule, regulation, judgment, order, ruling, condition or other requirement of a statutory, regulatory, administrative, judicial or quasi-judicial nature or any other legal or governmental requirement of whatever kind or nature related to the Project, which violation is likely to have a material adverse effect on the ability of Tenant to perform its duties and obligations under this Lease; and/or
- (e) Tenant incurs one or more liabilities, contingent or otherwise, or pending or threatened litigation or any asserted or unasserted claim exists against Tenant with respect to the Project, which would have a material adverse effect on its ability to perform its duties and obligations under this Lease.

"Memorandum of Ground Sublease" refers to the Memorandum of Ground Sublease to be recorded against the Property in the Official Records as described in Section 1.4, in the form attached hereto as Exhibit D and incorporated herein.

"Mortgage" shall mean a mortgage or deed of trust encumbering this Lease or a New Lease.

"Mortgagee" has the meaning set forth in Section 18.1 of this Lease.

"New Lease" is defined in Section 18.4.

"Notice of Intended Taking" shall mean any notice or notification on which a reasonably prudent person would rely and which said person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, without limitation, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map of the taking which reasonably defines the extent of the taking.

- "Official Records" shall mean the Official Records of Ventura County, California.
- "Parking Facilities" is defined in Section 14.1.
- "Partial Taking" shall mean any taking of the fee title of the Property and/or the Improvements that is not either a Total, Substantial or Temporary Taking.
  - "Permitted Transfer" is defined in Section 17.1.1.
- "Potential Default" shall mean any condition or event which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default.
  - "President" shall mean the President of CI or his or her designee.
- "**Priority System**" shall mean the order of priority for selecting subtenant households to occupy Units at the Property, described in Section 8.4.
  - "Program Maintenance" is defined in Section 10.3.
- "**Project**" shall mean the maintenance, management and operation of the Property described in Exhibit A and the improvements shown in the Site Map attached as Exhibit B, as such improvements may be modified from time to time in accordance with this Lease.
- "Property" shall mean that certain real property located in the County of Ventura, as more particularly described in the Legal Description and depicted in the Site Map. The Property is developed with thirty-five two- and three-story apartment buildings cumulatively containing 328 one-, two- and three-bedroom apartment units and appurtenant facilities.
- "Property Condition Assessment" shall mean a study or report that evaluates the current condition of the Property and each major component of the Property (i.e., roofs, decks, foundations, building frames, stairs, stucco, trim, doors, ironwork, parking stripes, concrete block walls, mechanical elements such as furnace and air conditioning units, plumbing, sprinklers, fire alarms, lighting, signage, flooring, asphalt/slurry seal coating, fountains and fountain filters, pumps and motors, restrooms, kitchens and laundry equipment, fire extinguishers and other capital items at the Property (each, a "Property Component"). The Property Condition Assessment shall evaluate the typical and remaining useful life of each Property Component, the current cost and annual depreciation of the Property Component, and an evaluation of reserve requirements and the sufficiency of existing reserves. The Property Condition Assessment will also recommend a schedule for replacement of each Property Component over a 30 year period and a funding plan for capital improvements at the Property over such period. The Property Condition Assessment will also include maintenance recommendations to protect and maximize the value and remaining useful life of each Property Component.
- "Property Management Plan" shall mean the plan for the management of the Project, which shall be prepared by Tenant and approved by Landlord and shall comply with Article 8. The initial Property Management Plan is attached to this Lease as Exhibit G. Landlord's President or his or her designee may approve revisions to the Property Management Plan from time to time, in his or her reasonable discretion and subject to compliance with this Lease.

"**Property Manager**" shall mean the individual property manager or property management company contracted by and with Tenant, after obtaining the President's written approval of such individual or company, to perform the operation, maintenance, and management of the Project.

"Proposed Transferee" is defined in Section 17.1.3.

"**Rent**" shall mean the Advanced Rent payable pursuant to Section 4.1.1, the Annual Rent payable pursuant to Section 4.1.2 and Additional Rent provided for in Section 4.1.3.

"Resident Lease" and "Resident Leases" are defined in Section 19.1.

"ROFO" and "Right of First Offer" are defined in Section 24.1.

"**ROFO Period**" is defined in Section 24.1.

"ROFR" and "Right of First Refusal" are defined in Section 24.2.

"**ROFR Period**" is defined in Section 24.2.

"Shared Facilities" shall mean the following facilities that are owned and operated by Landlord (or Landlord's designee) and which shall be made available to the residents of the Units at the Property pursuant to the Joint Use Agreement: a fitness center, two swimming pools, a club house, and tot lot.

"Site Map" means the site map of the Improvements at the Property attached as Exhibit B to this Lease.

"Substantial Taking" shall mean the taking of so much of the Property and/or the Improvements that the portion of the Property and/or the Improvements not taken cannot be repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, so as to constitute a complete, rentable structure, capable of producing a proportionately fair and reasonable net annual income after payment of all Operating Expenses, and all other charges payable under this Lease, and after performance of all covenants and conditions required by Tenant by law and under this Lease.

"Taking" shall mean a taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The taking may occur as a result of a transfer pursuant to the recording of a final order in condemnation, a voluntary transfer or conveyance to the taking authority under threat of condemnation, or a transfer while condemnation proceedings are pending. Unless otherwise provided, the taking shall be deemed to occur as of the earlier of (a) the date actual physical possession is taken by the condemnor, or (b) the date on which the right to compensation and damages accrues under the law applicable to the Property and/or the Improvements. "Taking," as used in this Lease does not include the voluntary dedication of any portion of the Property necessary to obtain building permits or to comply with any other applicable governmental rule, regulation or statute; nor does it include the enactment of any law, ordinance or regulation which may affect the use or value of the Property but which does not involve an actual taking of any portion thereof. Eminent domain actions filed by Landlord against former owners of portions of the Property and pending as of the Commencement Date shall not be deemed, construed or interpreted as a Taking under this Lease.

"Temporary Taking" shall mean a taking of all or any part of the Property and/or the Improvements for a term certain which term is specified at the time of taking. Temporary Taking does not include a taking which is to last for an indefinite period or a taking which will terminate only upon the happening of a specified event unless it can be determined at the time of the taking substantially when such event will occur. If a taking for an indefinite term should take place, it shall be treated as a Total, Substantial or Partial Taking in accordance with the definitions set forth herein.

"**Tenant**" shall mean [Private Partner, a \_\_\_\_\_\_], and its permitted successors and assigns, as Tenant under this Lease.

"**Term**" has the meaning set forth in Article 3 of this Lease.

"Total Taking" shall mean the taking of the fee title to all of the Property.

"**Transfer**" is defined in Section 17.1.

"Unit" and "Units" shall mean, individually and collectively, the three hundred twenty-eight (328) individual apartment units at the Project to be maintained, managed and operated by Tenant on the Property as rental housing throughout the entire Term.

"5-Year Capital Improvement Plan" shall mean the rolling 5-year schedule of capital repair, replacement and maintenance activities that Tenant shall perform to maintain the Units and other Improvements at the Property in the condition required by this Agreement. The 5-Year Capital Improvement Plan shall be updated by Tenant, subject to the review and approval of the Site Authority, every five years in connection with the Annual Capital Budget.

## ARTICLE 3. TERM.

**3.1 Initial Term**. The term of this Lease ("Term") shall commence on the Commencement Date and shall end on June 30, 2098 unless earlier terminated pursuant to this Lease.

# ARTICLE 4. RENT.

#### 4.1 Rent.

- **4.1.1** Advanced Rent. Prior to or concurrently with the Commencement Date, Tenant has paid to Landlord an amount equal to \_\_\_\_\_\_\_ Dollars (\$\_\_\_\_\_\_\_), which amount constitutes a lump-sum advance rental payment ("Advanced Rent") for the period commencing on the Commencement Date and continuing through the [twentieth (20<sup>th</sup>) anniversary] of the Commencement Date.
- **4.1.2 Annual Rent**. Commencing on the [twentieth (20<sup>th</sup>) anniversary] of the Commencement Date and annually thereafter on or before [insert date for rent payments], continuing through the remainder of the Term, Tenant shall pay [insert dollar amount or formula for annual rent payments] to Landlord as additional Rent (collectively, "Annual Rent").
- **4.1.3 Additional Rent**. In addition to the Advanced Rent and Annual Rent required by Section 4.1.1 and 4.1.2 above, respectively, Tenant shall also pay to Landlord as "Additional Rent" under this Lease any amounts required to be paid by Tenant to Landlord pursuant to Section 20.2.

**4.2 Payment of Rent**. All Advanced Rent, Annual Rent and Additional Rent (referred to collectively as "Rent") that becomes due and payable pursuant to this Lease shall be paid to Landlord at the address listed in Section 25.1 or such other place as Landlord may from time to time designate by written notice to Tenant without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction. Except as provided in Section 10.1 with respect to the maintenance of common area improvements, under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or to perform any act or obligation whatsoever or be under any obligation or liability hereunder or with respect to the Property.

## 4.3 Reporting Requirements; Audit.

- **4.3.1 Annual Financial Statement**. Tenant shall annually submit to Landlord, on or before each March 1, commencing with March 1, [20\_\_\_\_\_,] Annual Financial Statements as to the Project that have been reviewed by an independent certified public accountant, together with an expressed written opinion of the certified public accountant that such Annual Financial Statement presents the financial position, results of operations, and cash flows fairly and in accordance with GAAP, as to the Project. Each Annual Financial Statement submitted by Tenant shall include an accounting of the Capital Replacement Reserve including all deposits into and expenditures from such reserve accounts. Once every three (3) years or sooner as and when requested by Landlord and/or President, along with and as a part of the Annual Financial Statement, Tenant shall submit true, legible, and complete copies of the source documentation supporting the Annual Financial Statement, including the accounting of the Capital Replacement Reserve.
- **4.3.2 Right to Audit.** Tenant shall keep full and accurate books of account, records and other pertinent data with respect to operations of the Project. Such books of account, records, and other pertinent data shall be kept for a period of seven (7) years after the end of each Tenant's fiscal year, and shall be made available for review or audit by the Landlord or its designees upon providing forty-eight (48) hours' written notification to Tenant. Landlord shall be entitled within seven (7) years after the end of each Tenant fiscal year to inspect and examine all Tenant's books of account, records, and other pertinent data. Tenant shall cooperate fully with Landlord in making the inspection. Landlord shall also be entitled, also within seven (7) years after the end of each Tenant fiscal year, at Landlord's cost and expense, to an independent audit of Tenant's books of account, records, and other pertinent data.
- **4.3.2.1 After Foreclosure**. After the foreclosure of a Mortgage, acceptance by a Mortgage of an assignment or deed in lieu of foreclosure, or appointment of a receiver at the request or demand of a Mortgagee, the Mortgagee shall have no obligation to produce Tenant's books and records for the periods prior to the foreclosure or appointment of the receiver.
- **4.3.3 Annual Capital Budget**. Tenant shall annually submit to Landlord, on or before each September 1, commencing with September 1, [20\_\_\_\_\_,] a budget for the capital repairs and maintenance to be performed during the next upcoming fiscal year, including all capital repairs, replacements and maintenance work required to be performed pursuant to Sections 10.2 and 10.3 and the 5-Year Capital Improvement Plan during the upcoming fiscal year (the "Annual Capital Budget"). Landlord shall have sixty (60) days to review and approve or disapprove the Annual Capital Budget and, if such budget is disapproved by Landlord, Tenant shall revise and resubmit an Annual Capital Budget that conforms to this Lease to Landlord within fifteen (15) days. Tenant shall

cause all capital repairs, replacements and maintenance to be performed in accordance with each approved Annual Capital Budget and the 5-Year Capital Improvement Plan.

**4.4 Utility Services**. Tenant shall pay or cause to be paid all charges for all public or private utility services and all sprinkler systems and security and other protective services at any time rendered to or in connection with the Property or the Improvements, or any part thereof, and shall comply with all contracts existing on the date hereof or subsequently executed by Tenant relating to any such services, and will do all other things required for the maintenance and continuance of all such services throughout the Term of this Lease.

#### 4.5 Taxes and Assessments.

- **4.5.1** Covenant to Pay Taxes and Assessments. Tenant shall pay prior to delinquency all ad valorem real estate taxes, special taxes, assessments and special assessments levied against the Property, subject to Tenant's right to contest any such tax in good faith and any property tax exemptions.
- **4.5.2 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Property**. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord hereby notifies Tenant that by entering into this Lease, a possessory interest subject to assessment and collection of property taxes may be created. Tenant or other party in whom the possessory interest is vested, such as subtenant households occupying Units at the Property, may be subject to the payment of property taxes levied on such interest. If possessory interest taxes are assessed, Tenant agrees it is responsible for payment thereof and Landlord has no obligation or liability of any kind or nature relating to payment of property taxes. Tenant acknowledges that Landlord is a tax-exempt public entity and no property taxes will be or are legally assessable against its ground leasehold interest in the Property.
- **4.5.3 No Exemption from Possessory Interest Tax**. Tenant shall not seek exemption from, or contest the payment of, assessments and the collection of property taxes pursuant to Revenue and Taxation Code Section 214, or any successor statute.
- **4.5.4 Payment of Taxes**. Tenant is responsible for and shall pay any and all real property and/or possessory interest taxes applicable to the Property during the term of this Lease. All such payments shall be made prior to the delinquency date of such payment. Tenant shall promptly furnish Landlord with satisfactory evidence that such taxes have been paid or that an exemption from such taxes has been obtained. If Tenant shall fail to pay any such taxes, Landlord shall have the right to pay the same, in which case Tenant shall repay such amount to Landlord within ten (10) days after demand from Landlord together with interest at the rate set forth in Section 4.6, as Additional Rent.
- 4.5.5 **Definition of Real Property Tax**. As used herein, the term "real property tax" shall include any form of real estate tax or assessment (including, without limitation, on possessory interests), general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, or estate taxes) imposed on the Property or any interest (including, without limitation, possessory interests) therein by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord or Tenant in the Property or in the real property of which the Property is a part, as against Landlord's right to rent or other income

therefrom, and as against Landlord's business of leasing the Property. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed as a result of a transfer, either partial or total, of Landlord's interest in the Property or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (iv) which is imposed by reason of this lease transaction, any modifications or changes hereto, or any transfers hereof.

- **4.5.6 Personal Property**. Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Property or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.
- **4.5.7 Apportionment**. If any of Tenant's said personal property shall be assessed with Landlord's real property, first Tenant shall advise the County of Ventura Tax Assessor and Tax Collector of the same in writing, and Tenant shall pay Landlord the taxes attributable to Tenant not later than the later of (a) ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property or (b) fifteen (15) days prior to the date said taxes are due and payable.
- **4.6 Overdue Interest**. Any amount due to Landlord, if not paid when due and on or before expiration of the period for cure as set forth herein, after Landlord's delivery of notice thereof to Tenant, shall bear interest from the date due until paid at the lower of: (a) the reference or prime rate of Bank of America, N.A., in effect from time to time plus three percent (3%); or (b) the highest rate of interest allowed under applicable usury law.

# ARTICLE 5. POSSESSION OF PROPERTY.

- **5.1** Acceptance of Premises. Tenant hereby accepts the Property in its "as-is" condition. Tenant acknowledges and agrees that Tenant has had sufficient opportunity to inspect the Property and the Improvements and has inspected the Property and the Improvements prior to the Commencement Date.
- **5.2 Ownership of Improvements**. Unless otherwise provided herein, during the Term of this Lease title to all Improvements, now existing, to be constructed, or later made, on the Property are and shall be vested in Tenant as set forth in Article 11 hereof.

# **5.3** Surrender of Property.

**5.3.1 Expiration or Termination**. Tenant agrees that on the expiration or earlier termination of the Term, which in the case of an early termination due to the occurrence of an Event of Default is not timely cured by Tenant in accordance with the provisions of this Lease, the leasehold estate hereby granted to Tenant shall be terminated and forfeited and shall revert to Landlord, its successors and assigns, and all Improvements on the Property shall become the property of Landlord, its successors and assigns, free and clear from any liens or claims whatsoever (other than non-monetary liens previously approved or otherwise accepted in writing by Landlord), in good condition, reasonable wear and tear excepted without further compensation therefor from Landlord to

Tenant or any other person. Following any such expiration or termination, Tenant shall execute, acknowledge and deliver to Landlord a quitclaim deed, or other document required by a reputable title company, conveying all Tenant's right, title, and interest in and to the Property and Improvements to Landlord. In the event Tenant receives a written default notice relating to or arising from any mortgage, deed of trust or security instrument secured by the leasehold interest granted hereunder or Tenant's interest in the Improvements, then Tenant shall provide written notice of such alleged default to the President within five (5) days of receipt thereof. Tenant hereby irrevocably appoints Landlord as Tenant's agent and attorney-in-fact (such agency being coupled with an interest), and as such agent and attorney-in-fact Landlord may, without the obligation to do so, in Tenant's name, or in the name of Landlord, prepare, execute and file or record such statements, applications and other documents necessary to create, perfect or preserve any of Landlord's interests and rights in or to the Property and any of the Improvements, and, upon the earlier expiration or termination of the Term (including termination due to an Event of Default hereunder after expiration of the applicable cure periods as set forth in Article 21 hereof) take any other action required by Tenant hereunder.

- 5.3.2 Condition. On expiration or earlier termination of the Term and in furtherance of the provisions relating to surrender of the Property set forth in Section 5.3.1 above, Tenant shall peaceably and quietly leave and surrender the Property and the Improvements to Landlord in good order, condition and repair, reasonable wear and tear and obsolescence excepted. Tenant shall leave in place and in good order, condition and repair, all fixtures and machinery; except (if Tenant is not then in default under this Lease) Tenant shall have the right to remove only Tenantowned appliances, other unattached equipment, moveable furniture and merchandise that Tenant shall have installed, which removal must be done without damage to the Property or Improvements. Notwithstanding the foregoing, at the end of the Term, Tenant shall cause the furniture, fixtures, equipment and appliances at the Property to be in substantially the same condition as such items are in as of the Commencement Date. Landlord shall have the right to have the Property and the Improvements inspected at Tenant's cost to determine whether the Property and the Improvements have been properly maintained, repaired and restored in accordance with the terms of this Lease and the 5-Year Capital Improvement Plan.
- **5.3.3 Delivery of Documents**. Contemporaneously with the expiration or earlier termination of the Term and subject to the provisions of Sections 5.3.1 and 5.3.2 hereof, Tenant shall immediately deliver to Landlord the following:
- (a) Such documents, instruments and conveyances as Landlord may reasonably request to enable Landlord's ownership of the Property and the Improvements to be reflected of record, including, without limitation, a quitclaim deed in recordable form to the Property and the Improvements.
- (b) A lender's policy of title insurance, surety bond, or other security reasonably acceptable to Landlord insuring against all claims and liens against the Property and the Improvements other than those incurred by Landlord or accepted by Landlord in writing.
- (c) All construction plans, surveys, permits, existing contracts for services, maintenance, operation, and any other documents relating to use, operation, management, and maintenance of the Improvements as may be in effect and/or in the possession of Tenant at the time and from time to time thereafter.

- (d) All documents and instruments required to be delivered by Tenant to Landlord pursuant to this Section shall be complete, legible, originals or true copies, and shall otherwise be in a form reasonably satisfactory to Landlord.
- **5.4 Abandonment**. Tenant shall not abandon or vacate the Property or the Improvements at any time during the Term. If Tenant shall abandon, vacate or otherwise surrender the Property or the Improvements, or be dispossessed (other than dispossession as the result of a Substantial Taking or a Taking) thereof by process of law or otherwise, the same shall constitute a default under this Lease on the part of Tenant and, in addition to any other remedy available on the part of Landlord, any of Tenant's property left in, upon or about the Property or the Improvements (except for underground storage tanks) shall, at Landlord's option, be deemed to be abandoned and shall become the property of Landlord. The appointment of a receiver pursuant to a Mortgagee's exercise of its rights under a Mortgage, or the foreclosure of a Mortgage, shall not be a default under this Section.

# ARTICLE 6. REPRESENTATIONS AND WARRANTIES; MATERIAL ADVERSE CHANGE.

- **6.1 Landlord's Representations**. Landlord represents and warrants to Tenant it holds a ground leasehold interest in the Property pursuant to the Ground Lease and has the power and authority to enter into this Lease and perform all obligations and agreements incidental or pertinent to this Lease. Landlord makes no representation or warranty with respect to the condition of the Property or its fitness or availability for any particular use, and Landlord shall not be liable for any latent or patent defect therein.
- **6.2 Tenant's Representations**. Tenant represents and warrants to Landlord, as of the Commencement Date, as follows:
- **6.2.1** Tenant is a \_\_\_\_\_\_ duly organized, validly existing, formed, and in good standing under the laws of the State of California that has the power and authority to own property and carry on business as is now being conducted.
- **6.2.2** Tenant has full power and authority to execute and deliver this Lease, the Memorandum of Ground Sublease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of all of the above.
- **6.2.3** This Lease and any other documents or instruments which have been executed and delivered pursuant to or in connection with this Lease constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Tenant enforceable against it in accordance with their respective terms, subject to application of laws relating to bankruptcy, insolvency, or other laws affecting the enforcement generally of creditors' rights and remedies.
- **6.2.4** Tenant is not in default under any law or regulation or under any order of any federal, state, or local court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Tenant, threatened against or affecting Tenant or the Property, at law or in equity, before or by any federal, state, or local court, board,

commission or agency whatsoever which might, if determined adversely to Tenant, materially affect Tenant's ability to perform its obligations hereunder.

- **6.2.5** Tenant has examined the Property and acknowledges that it hereby accepts possession of the Property in its "AS IS" condition, with all faults and defects, including, without limitation, any physical condition or environmental condition of the Property.
- **6.2.6** All documents, materials and information provided by Tenant to Landlord relating to Tenant's qualifications, financial strength, and ability to perform its obligations hereunder are true, correct and complete in all material respects as of their respective dates and no Material Adverse Change has occurred or is reasonably likely to occur that would make any such documents, materials or information incorrect, incomplete, or misleading in any material respect.

The representations and warranties set forth in this Section 6.2 shall survive the Commencement Date. During the entire Term of the Lease, within five (5) business days following a written request from Landlord, CI or CSU, Tenant shall either re-affirm in writing the material truth and accuracy of the representations and warranties set forth in this Section 6.2 or identify any material inaccuracies of such representations and warranties. The fact that a representation or warranty contained in this Section 6.2 has become inaccurate or misleading shall not, in and of itself, constitute a breach under this Lease; however, (a) failure to notify Landlord of material inaccuracies in these representations and warranties within ten (10) business days of Landlord's request for such information, subject to delivery of notice and expiration of the cure period provided hereunder, and (b) any overt material misrepresentation by Tenant relating to such representations and warranties (without notice or opportunity to cure having been provided by Landlord) shall each constitute an Event of Default hereunder. The provisions of this paragraph shall be of no further force or effect upon a foreclosure, deed in lieu of foreclosure, or execution of a New Lease.

6.3 Tenant Obligation to Notify re Material Adverse Change. During the entire Term hereof, Tenant shall have the ongoing obligation to promptly (but in no event later than ten (10) business days following a Material Adverse Change) inform Landlord (in writing) of the occurrence of any Material Adverse Change. The provisions of this Section 6.3 shall be of no further force or effect upon a foreclosure, deed in lieu of foreclosure, or execution of a New Lease.

## ARTICLE 7. ALTERATION OF THE IMPROVEMENTS.

7.1 Alterations. Tenant may from time to time, at its sole expense, make improvements and other alterations to the Property (collectively, "Alterations") which Tenant reasonably determines to be beneficial; provided, that such Alterations shall not increase or reduce the number of Units at the Property or otherwise materially change the use or character of the Property. Tenant shall not make any Alteration to the Property, the cost of which exceeds Fifty Thousand Dollars (\$50,000.00), without Landlord's prior written consent (except that no such consent is required if such Alteration is contained in the approved 5-Year Capital Improvement Plan), which consent shall not be unreasonably withheld or delayed. The foregoing dollar amount limitation shall be increased each calendar year by the corresponding increase in CPI. Tenant shall timely pay any obligation incurred by Tenant with respect to any such Alterations that could become a lien against the Property and shall defend, indemnify and hold Landlord harmless in connection therewith. Any and all Alterations in excess of the threshold set forth above shall be subject to review and approval by the President and the planning, building and permitting divisions of CI, as applicable.

- **7.2 Construction Cost**. Tenant shall bear the entire and sole cost of constructing the Alterations, including all fees and mitigation measures.
- **7.3 Diligent Prosecution to Completion**. Once the work is begun, Tenant shall, with reasonable diligence, prosecute the Alterations to completion. All Alterations shall be constructed and completed in a good and workmanlike manner, shall substantially comply with the Development Plans, and shall comply with all applicable governmental permits, laws, ordinances, and regulations.
- Changes; Landlord Consent. If Tenant desires to propose any substantial revisions 7.4 to Alterations that have been approved by Landlord, or any part(s) thereof, Tenant shall submit its revisions or proposed changes thereto to the President, and shall also proceed in accordance with any and all Governmental Requirements regarding such revisions, including design review and approval by CI and issuance of any required permits by CI. Any revision or change to such approved Alterations proposed by Tenant may be disapproved by Landlord through the President in his or her reasonable discretion pursuant to subdivision (a) below. Any and all change orders or revisions required by the Landlord, CI, and its inspectors that are required under the CI Reuse Plan and CI Master Plan and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other Governmental Requirements shall be included by Tenant in its plans for the Alterations and completed during the construction of such Alterations. In the event Tenant requests revisions, alterations, or modifications to approved Alterations, or any part(s) thereof, for any reason including increased construction costs because of unforeseen occurrences or conditions relating to the construction of the Alterations, any revisions, alterations, or modifications shall be subject to the approval of Landlord in its reasonable discretion (and the planning, building and permitting divisions of CI, in its discretion) pursuant to subdivision (a) below. Tenant shall be required to pay any and all increased costs of construction due to any such revisions, alterations, or modifications of the plans for the Alterations, or any part(s) thereof.
- (a) **Approval of Change Orders**. Tenant shall not be required to obtain the President's approval of any change orders or other revisions or modifications to the Construction Drawings, so long as each change order, revision, or modification is consistent with the approved Design Development Drawings, does not cause any value engineering not previously authorized by Landlord and does not affect materially the design, materials, and architectural quality and integrity of the Project, except that Tenant shall be required to obtain the President's approval to the extent such change order, revision, or modification will result in a cost adjustment which, cumulatively with all other change orders, revisions, and modifications, exceeds the amount set forth as the contingency line item in the approved final budget for the Alterations, as set forth in the construction contract. Notwithstanding the immediately preceding sentence, Landlord (acting through its President) shall have the right to review any and all material changes, revisions or modifications to the construction drawings for the Alterations and/or any and all material change orders to the construction contract with the general contractor which are approved by Tenant.
- 7.5 Landlord's Review. Landlord does not have, and by this Lease expressly disclaims, the duty to review the plans for the Alterations for the purpose of determining compliance with building codes, safety features or standards or for the purpose of determining or approving engineering or structural design, sufficiency or integrity. Landlord's approval of a direction or request to change the plans, specifications or drawings submitted by Tenant is not and shall not be a review or approval of the quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. Landlord does not have and expressly disclaims any right of supervision or control over the

architects, designers, engineers or other draft persons and professionals responsible for the drafting and formulation of such plans, or any right of supervision or control of contractors, builders, trades and other persons engaged in constructing and fabricating the improvements pursuant to the plans for the Alterations.

- **7.6 Right of Access**. During normal construction hours, upon at least three (3) business days' prior written notice to Tenant, representatives of Landlord shall have the reasonable right of access to the Property without charges or fees for the purpose of inspecting the work of the Alterations; provided, however, that such representatives shall present and identify themselves at Tenant's construction office, be accompanied by a representative of Tenant while on the Property and obey Tenant's, or its contractor's, safety rules and regulations. Landlord shall deliver written notice of the identity of its representatives to Tenant before such representatives enter the Property. Landlord hereby indemnifies and holds Tenant, and its contractors, subcontractors, agents, representatives and employees, and the Property, harmless from and against any loss, cost, damage or liability, including, without limitation, attorneys' fees, which results from the exercise by Landlord, or any party acting under Landlord's authority, of the rights granted by this Section 7.6.
- 7.7 Governmental Approvals. If requested by Landlord in writing, Tenant covenants and agrees to deliver to Landlord conformed copies (and certified copies of all recorded instruments) of all governmental approvals and permits obtained by Tenant for the construction, alteration or reconstruction of any Alterations upon the Property, including required permits and approvals issued by the planning, building and permitting divisions of CI. In no event shall Tenant commence construction of any Alterations pursuant to the provisions of this Article 7 until such time as Tenant shall have obtained all necessary governmental approvals and permits to so construct such Alterations, including required permits and approvals issued by the planning, building and permitting divisions of CI.
- 7.8 Landlord's Right to Discharge Lien. If Tenant does not cause to be recorded the bond described in California Civil Code Section 3143 or otherwise protect the Property under any alternative or successor statute, and a final judgment has been entered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialmen's, contractor's, or subcontractor's lien claim, and if Tenant fails to stay the execution of the judgment by lawful means or to pay the judgment, Landlord shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Tenant shall reimburse Landlord for all sums paid by Landlord under this Section, together with all Landlord's reasonable attorneys' fees and costs, plus interest on those sums, fees, and costs from the date of payment until the date of reimbursement at the rate set forth in Section 4.6.
- **7.9 Notice of Non-Responsibility**. Tenant shall provide Landlord with prior written notice of not less than fifteen (15) days before commencing construction of any structural alteration of the Alterations, or any non-structural alteration which will cost more than Fifty Thousand Dollars (\$50,000.00), and shall permit Landlord to record and post appropriate notices of non-responsibility on the Property. The foregoing Fifty Thousand Dollar (\$50,000.00) limitation shall be increased each calendar year by the corresponding percentage increase in CPI.
- **7.10 Notice of Completion**. Upon completion of construction of the Alterations, Tenant shall file or cause to be filed a notice of completion. Tenant hereby appoints Landlord as Tenant's attorney-in-fact to file the notice of completion upon Tenant's failure to do so after the work of improvement has been substantially completed.

# ARTICLE 8. USE OF THE PROPERTY.

- **8.1** Covenants re Use. Tenant covenants and agrees for itself, its successors, assigns, and every successor in interest to Tenant's interest in the Property or any part thereof, that Tenant shall devote the Property to the uses specified in this Lease until the expiration or earlier termination of the Term hereof. All uses conducted on the Property, including, without limitation, all activities undertaken by Tenant pursuant to this Lease, shall conform to all Governmental Requirements. The foregoing covenants shall run with the land.
- **8.2** Covenant Regarding Specific Uses. Tenant covenants and agrees for itself, its successors, assigns, and every successor in interest to Tenant's interest in the Property or any part thereof, that Tenant shall use the Property to operate the rental housing project called the Project until the expiration of the Term.
- 8.3 Selection of Tenants; Household Qualifications. Tenant shall be responsible for the selection of subtenants for the Units in compliance with this Lease. Tenant shall establish and maintain a chronological waiting list system for selection of subtenants in accordance with the Priority System set forth in Section 8.4, the Marketing and Tenant Selection Plan and the Property Management Plan, which plans [have been submitted by Tenant and approved by Landlord and are attached as Exhibits F and G]. The Marketing and Tenant Selection Plan and Property Management Plan may be amended from time to time with the approval of the President; however, in the event of a conflict between this Lease and an approved Marketing and Tenant Selection Plan or Property Management Plan, this Lease shall control.
- **8.3.1** Subject to compliance with Fair Housing Laws, Tenant shall qualify all of the following criteria and standards in the selection of tenant households for rental and occupancy of each Unit at the Property (collectively, the "Household Qualifications"):
- (a) Each prospective household shall pass a credit check with an acceptable score of at least 180; scores between 189 and 210 may require an additional deposit (credit score numbers based on Experian scores).
- (b) Each prospective household must demonstrate gross annual income of at least two and one half times the amount of the rent to be charged for the applicable Unit.
- (c) Each prospective household must provide proof of income in the form of pay stubs, bank statements or other source documentation.
- (d) Each prospective household must have been employed at the current workplace for not fewer than two (2) months prior to the effective date of the Resident Lease. This requirement shall be waived for faculty or staff of CI.
- (e) The prospective household must certify in writing that the Unit is intended to be the household's primary residence. As used in this Section 8.3.1(e), "primary residence" means the household intends to live at the Unit for at least ten (10) months of each calendar year. This certification shall be required upon each renewal of the Resident Lease.
- (f) All co-signers must certify in writing that the Unit is intended to be the household's primary residence.

- (g) Each prospective household must provide two years' of residence history, with no prior evictions.
- (h) If any prospective household has filed for bankruptcy, the bankruptcy must have been discharged prior to the effective date of the Resident Lease.
- (i) Each prospective household must disclose any prior criminal convictions and agree to a criminal background check. No household will be eligible if the application or a criminal background check discloses a criminal history, whether felony or misdemeanor (i) relating to the harming of people, (ii) relating to the harming of property, or (iii) relating to an individual's honesty or veracity or involving fraud.
- (j) In connection with the consideration of prospective households for occupancy of Units at the Property, Tenant shall take into consideration any stipend or other financial assistance to be provided to prospective households by Landlord through Landlord's policies and programs to provide housing incentives to CI faculty and staff.
- **8.3.2** Landlord Right to Audit Household Qualifications. Tenant shall maintain full and complete records evidencing Tenant's compliance with the Household Qualifications requirements set forth above, in accordance with Section 8.7. Landlord shall have the right to inspect and audit such records on an annual basis, upon providing the notice required by Section 8.7.

# 8.4 Priority System.

- **8.4.1** Subleasing Units based on Priority System. Subject to applicable Fair Housing Laws, Tenant's waiting list of prospective, eligible subtenants for Units at the Project shall include and follow the following order of priority for selection of subtenants, referred to in this Lease as the "Priority System," and Tenant will follow such order of priority in its selection and approval of subtenants to occupy Units:
- (a) <u>Category 1</u>: CSU employees commencing service during the summer or fall of 2002 selected by the CI President to be a priority purchaser, or the CI President for the purpose of assigning the Purchase Contract to CI employees who are hired after the sales program commences for service at CI commencing in the summer or fall of 2002.
- (b) <u>Category 2</u>: Tenured and Tenure-Track Faculty and CI Management Level III Personnel or Management Level IV Personnel .
  - (c) Category 3: Full-Time Staff of CI.
- (d)  $\underline{\text{Category 4}}$ : Employees of Educational Allies , Educational Partners , and officers of Military Partners , who are covered by an agreement between such entities and CI.
- (e) <u>Category 5</u>: Tenured and Tenure-Track Faculty and Full-Time Staff of any other CSU campus.
  - (f) <u>Category 6</u>: Graduates from any CSU campus.
  - (g) Category 7: Members of the General Public.

- **8.4.2 Monthly Reporting Re Priority System**. On or before the [fifteenth (15<sup>th</sup>)] day of each month during the Term, Tenant shall provide a written report to Landlord which includes at least the following information:
  - (a) Number of Units leased during the prior calendar month;
- (b) Number of vacant Units as of the last day of the prior calendar month and number of days each such Unit has been vacant;
- (c) Priority System Category occupying each of the Units leased during the prior calendar month;
- (d) Cumulative number of Units at the Project leased to households within each Priority System Category; and
- (e) Number of visits to the Property by prospective resident households to obtain information regarding the Units and the Property and/or to view one or more vacant Units at the Property.
- 8.5 Resident Leases. Tenant shall submit a standard lease form for use at the Project to the President for approval, which lease form shall comply with applicable requirements of this Lease and all Governmental Requirements. Landlord shall reasonably approve such Resident Lease form upon finding that such lease form is consistent with this Lease and applicable Governmental Requirements (provided, Landlord's approval of the Resident Lease form shall not be construed as a representation or warranty that such Resident Lease form complies with Governmental Requirements; Landlord's review of any lease form submitted by Tenant is solely for Landlord's benefit and may not be relied upon by Tenant). Tenant shall enter into a written lease, in the form of the Resident Lease approved by Landlord, with each subtenant household to occupy a Unit at the Project. During the entire Term, any material changes to the Resident Lease form are subject to the reasonable review and approval of the President. [Prospective Tenant/Investor will be required as part of the RFQP to provide a plan for increasing rents to market levels, using moderate periodic rent increases so as to minimize the economic hardship on resident households. Landlord and Tenant will enter into a separate agreement limiting the periodic increases in rents for the Units that are currently rented at below-market rates.]
- 8.6 Monitoring and Record Keeping. Throughout the Term, Tenant shall annually complete and submit to Landlord a Certification of Continuing Compliance in the form attached as Exhibit C, or such other form as may reasonably be required by Landlord. Representatives of Landlord, CI and CSU shall be entitled to enter the Property upon at least forty-eight (48) hours' notice, to monitor compliance with this Lease, to inspect the records of the Property, and to conduct an independent audit or inspection of such records. Tenant agrees to cooperate with Landlord in making all of its records for the Project and making the Property and all Units thereon available for inspection or audit. Records shall be made available for review and inspection and/or audit in Ventura County, California. Tenant agrees to maintain all records relating to the Project in a businesslike manner, and to maintain such records for the term of this Lease. Concurrently with Tenant's annual delivery of the Certificate of Continuing Compliance to Landlord, Tenant shall deliver a report setting forth the qualification category under the Priority System, household size and rent payable by each of the resident households occupying Units at the Project, as well as a summary of the number and duration of vacant Units, number of new leases and number of visits per month by

prospective resident households during the prior fiscal year, all in a form acceptable to and approved by the President.

# 8.7 Management of the Project.

Property Manager. Tenant shall manage or cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and business-like manner, consistent with good property management standards for other comparable high quality, well-managed multifamily rental housing projects in the County. Tenant may contract with a property management company or property manager, to operate and maintain the Project in accordance with the terms of this Section 8.8.1 ("Property Manager"); provided, however, the selection and hiring of the Property Manager (and each successor or assignee), including any Affiliate, is and shall be subject to prior written approval of the President (or designee) in his or her \_("\_\_\_\_"), is hereby approved sole and reasonable discretion. to act as the Property Manager, subject to the President's review of the scope of services, itemized fees, and fee contract for property management between Tenant and \_\_\_\_\_\_. The Property Manager shall manage the Project in accordance with the subtenant selection requirements contained in Section 8.4, the Marketing and Tenant Selection Plan, the Property Management Plan and this Lease. Except for , Tenant shall conduct due diligence and background evaluation of any potential third party property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager. Any proposed property manager shall have significant and relevant prior experience with multifamily housing projects and properties comparable to the Project and the references and credit record of such property manager/company shall be investigated (or caused to be investigated) by Tenant prior to submitting the name and qualifications of such proposed property manager to the President for review and approval. A complete and true copy of the results of such background evaluation shall be provided to the President. Approval of a Property Manager by the President shall not be unreasonably delayed but shall be in her sole reasonable discretion, and the President shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing property management of the Project by one qualified Property Manager. The replacement of \_\_\_\_\_ by Tenant and/or the selection by Tenant of any new or different Property Manager during the Term of this Lease shall also be subject to the foregoing requirements.

8.7.2 Gross Mismanagement. During the Term of this Lease, and in the event of "Gross Mismanagement" (as defined below) of the Project, the President and/or Landlord shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct and require the immediate removal of the Property Manager and replacement with a new qualified and approved Property Manager, if such condition(s) is/are not ceased and/or corrected after expiration of thirty (30) days from the date of written notice from the President. If Tenant or Property Manager has commenced to cure such Gross Mismanagement condition(s) on or before the 20th day from the date of written notice (with evidence of such submitted to the President), but has failed to complete such cure by the 30th day (or such longer period as may be agreed to in Landlord's sole and absolute discretion if the cure cannot reasonably be accomplished in thirty (30) days), then the President shall have the sole and absolute right to immediately and without further notice to Tenant (or to Property Manager or any other person/entity) to remove the Property Manager and Tenant shall contract with a replacement Property Manager reasonably acceptable to Landlord (in accordance with Section 8.8.1) within thirty (30) days following Landlord's removal of the defaulting Property Manager. If Tenant takes steps to select a new Property Manager that selection is subject to the requirements set forth above for selection of a Property Manager.

For purposes of this Lease, the term "Gross Mismanagement" shall mean management of the Project in a manner which violates the terms and/or intention of this Lease to operate a first quality, "Class A" multifamily housing complex, and shall include, but is not limited to, any one or more of the following:

- (a) Habitually leasing to subtenants without complying with the Priority System;
- (b) Habitually allowing subtenants to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;
  - (c) Under-funding required reserve accounts;
- (d) Failing to timely maintain the Project in accordance with the Capital Maintenance and Replacement Plan, the Property Management Plan and the Maintenance Standards and Program Maintenance required by Article 10;
- (e) Fraud or embezzlement of Project funds, including without limitation funds in the reserve accounts;
- (f) Failing to fully cooperate with the CI Police Department or other local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime-free environment within the Project;
- (g) Failing to fully cooperate with the Ventura County Fire Department and the California Office of the State Fire Marshall or other local or state public safety agency(ies) with jurisdiction over the Project, in maintaining a safe and accessible environment within the Project;
- (h) Failing to fully cooperate with the planning, building, code enforcement and permitting divisions of Landlord and CI, as applicable, or other local health and safety enforcement agency(ies) with jurisdiction over the Project, in maintaining a decent, safe and sanitary environment within the Project; and
- (i) Spending funds from the Capital Replacement Reserve account for items that are not defined as eligible costs, including eligible capital and/or replacement costs, under the standards imposed by GAAP (and/or, as applicable, generally accepted auditing principles).

Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Tenant is obligated and shall use its best efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Property Manager as provided above. Tenant shall include advisement and provisions of the foregoing requirements and requirements of this Lease within any contract between Tenant and its Property Manager for the Project.

**8.7.3** Code Enforcement. Tenant acknowledges and agrees that Landlord, University Glen, CI, and their employees and authorized agents, shall have the right to conduct code

compliance and/or code enforcement inspections of the Project and the individual Units for the Project, both exterior and interior, at reasonable times and upon reasonable notice (not less than 48 hours prior notice, except in an emergency) to Tenant and/or an individual subtenant. If such notice is provided by Landlord, University Glen, or CI, representative(s) to Tenant, then Tenant (or its Property Manager) shall immediately and directly advise any affected subtenant of such upcoming inspection and cause access to the area(s) and/or Units at the Project to be made available and open for inspection. Tenant shall include express advisement of such inspection rights within the Resident Lease for each Unit in the Project in order for each and every subtenant and subtenant household to be aware of this inspection right and such inspection(s) shall not unreasonably interfere with use and enjoyment of the site.

- **8.7.4** Occupancy Limits. The maximum occupancy of the Units in the Project shall not exceed more than such number of persons as is equal to two persons per bedroom, plus one. Thus, for the one (1) bedroom Units, the maximum occupancy shall not exceed three (3) persons. For the two (2) bedroom Units, the maximum occupancy shall not exceed five (5) persons. For the three (3) bedroom Units, the maximum occupancy shall not exceed seven (7) persons.
- **8.8 Obligation to Refrain from Discrimination**. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Units, the Improvements, or any portion of the Property, nor shall Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof.
- 8.9 Capital Replacement Reserve. Commencing upon the Commencement Date, Tenant shall annually set aside not less than \$\_\_\_\_\_ per year, increased each calendar year by the corresponding increase in CPI, into a separate interest bearing trust account defined as the Capital Replacement Reserve. Funds in the Capital Replacement Reserve shall be used only for capital repairs, improvements and replacements to the Project, including fixtures and equipment, which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve or lessen Tenant's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein for the Project. Not less than once per year, Tenant, at its expense, shall submit to the President an accounting for the Capital Replacement Reserve for the Project. Capital improvements and repairs to, and replacements at the Project shall include only those items with a long useful life, including without limitation the following: carpet and drapery replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line replacement; lighting fixture replacement; miscellaneous motors and blowers; common area furniture replacement; and common area repainting. From time to time, the President may evaluate the cumulative amount on deposit in the Capital Replacement Reserve account and exercise his or her sole, reasonable discretion to determine if existing balance(s) in, proposed deposits to, shortfalls, if any, and/or a cumulative unexpended/unencumbered account balance in such Capital Replacement Reserve account are adequate to provide for necessary capital repairs and improvement for the Project (provided that

required annual deposits thereto are not required to exceed the amount set forth above in this Section).

**8.10** Certificate of Continuing Compliance. Annually on or before each March 1 commencing March 1, [20\_\_\_\_,] until the expiration of the Term of this Lease, Tenant shall deliver to Landlord a Certificate of Continuing Compliance in the form attached hereto as Exhibit C or such other form as may reasonably be required by Landlord.

## ARTICLE 9. INSURANCE AND INDEMNIFICATION.

- **9.1 Landlord Not Liable**. Except as the result of any grossly negligent or willful/intentional acts or omissions by Landlord or its representatives, employees or agents, or as otherwise expressly set forth herein, Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant, or to Tenant's sublessees of each and all of the Units at the Project, or to Tenant's agents, employees, servants, contractors, subtenants, licensees, concessionaires, customers or business invitees or any other person which occurs on the Property during the Term.
- 9.2 **Indemnification**. Except with respect to any grossly negligent or willful/intentional acts or omissions of Landlord or its representatives, employees or agents, Tenant shall indemnify, defend, pay for, and hold harmless the Indemnitees from and against all liability, loss, damage, cost or expense (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person caused by Tenant's performance of its obligations under this Lease or any actions, inactions, errors, or omissions of Tenant, whether such performance, errors or omissions of Tenant be made by Tenant, its contractors or subcontractors, or anyone directly or indirectly employed by Tenant, and whether such damage shall accrue or be discovered before or after the termination of this Lease. This indemnification provision supplements and in no way limits the scope of the indemnifications in Article 13. The indemnity obligation of Tenant under this Article shall survive the expiration or termination, for any reason, of this Lease. This Section notwithstanding, indemnification with respect to Hazardous Materials shall be governed by Section 16.3 hereof.
- 9.3 Insurance. Tenant shall secure from a company or companies licensed to conduct insurance business in the State of California, pay for, and maintain in full force and effect from and after the Closing, and continuing for the Term of this Lease, insurance for the Project as required herein, issued by an "A:VII" or better rated insurance carrier as rated by A.M. Best Company. Tenant shall furnish certificates of insurance and endorsements to Landlord not fewer than fifteen (15) days prior to the Closing and shall furnish complete copies of such policy or policies upon request by Landlord or CI.
- **9.3.1 Minimum Coverage/Endorsements**. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection afforded by these policies shall be written on an occurrence basis in which Landlord, CSU, CI, and their respective elected and appointed officials, officers, employees, agents and representatives (together, "Additional Insureds") are named as additional insureds on all coverage, except for Workers' Compensation coverage, but including Employers Liability coverage, and shall:

- (a) Name the Additional Insureds (from above) as additional insureds on a Commercial General Liability ("CGL") policy;
- (b) Include an endorsement to the CGL policy naming the Additional Insureds as additional insureds, and said endorsement shall be delivered to the President prior to and as a Condition Precedent to the Closing (and maintained as required herein); provided, however, that an individual endorsement specifically naming the Additional Insureds shall not be required if Tenant provides documentation which, in the sole discretion of Landlord, demonstrates that the Additional Insureds are otherwise automatically covered under some sort of blanket policy language that clearly establishes the Additional Insureds' status as additional insureds under the policy, without the need for a separate endorsement in favor of the Additional Insureds;
- (c) Provide a broad form commercial general liability insurance in the amount of Twenty Million Dollars (\$20,000,000) per occurrence, which will be considered equivalent to the required minimum limits, and such insurance shall (i) be written on an occurrence form, (ii) be written with a primary policy form with limits of not less than \$1,000,000 per occurrence; (iii) be written with one or more excess layers to bring the total of primary and excess coverage limits to not less than \$20,000,000 per occurrence, (iv) not be written with a deductible greater than \$20,000 per occurrence (without prior written approval by Landlord, which approval shall be granted or denied in Landlord's sole and absolute discretion), (v) not be written with a self-insured retention (without prior written approval by Landlord, which approval shall be granted or denied in Landlord's sole and absolute discretion), and (vi) contain a waiver of subrogation in favor of the Landlord, CI, and CSU. Such insurance shall include independent contractor coverage and shall cover the acts, errors, omissions, or works of any of Tenant's subcontractors and any other person(s) acting on behalf of Tenant, as respects any liability that may occur to Tenant and/or any Additional Insureds from such acts, errors, omissions or work;
- (d) Provide primary Automobile Liability insurance for owned, non-owned, and hired vehicles, as applicable to, or for any use related to, the Project, in an amount not less than One Million Dollars (\$1,000,000) combined single limit, with excess insurance coverage to bring the total amount of Automobile Liability insurance coverage to an amount not less than Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage;
- (e) Bear an endorsement or shall have attached a rider providing that Landlord shall be notified not less than thirty (30) days before any expiration, cancellation, non-renewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium (collectively, "Cancellation Notice"), provided, however, that an individual endorsement specifically naming the Landlord shall not be required if Tenant provides documentation which, in the sole discretion of Landlord, demonstrates that the Landlord will automatically receive such Cancellation Notice under some sort of blanket policy language, without the need for a separate endorsement in favor of the Landlord; and
  - (f) Tenant shall also file with Landlord the following signed certification:

"I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work."

Tenant shall comply with Sections 3700 and 3800 of the Labor Code by securing, paying for and maintaining in full force and effect from and after the Closing of Escrow, and continuing for the Term of this Lease, complete Workers' Compensation insurance, to statutory limits, with Employers Liability limits not less than One Million Dollars (\$1,000,000) per occurrence, and shall furnish a Certificate of Insurance to Landlord before the commencement of construction. Every Workers' Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, Landlord shall be notified, giving Tenant a sufficient time to comply with applicable law, but in no event less than thirty (30) days before such expiration, cancellation, or reduction in coverage is effective or ten (10) days in the event of nonpayment of premium.

- (g) All Additional Insureds shall not be responsible for any claims in law or equity occasioned by the failure of Tenant to comply with this Section 9.3.1. Landlord shall have the right, but not the obligation, to pay a premium on behalf of Tenant and be reimbursed by Tenant as Additional Rent.
- (h) Should any of the insurance coverage required herein be written with an annual aggregate: (i) such aggregate shall be disclosed in writing to Landlord, (ii) should total incurred claims (paid plus reserves) against such insurance exceed fifty percent (50%) of the applicable aggregate, Tenant shall prompt notify Landlord in writing, and (iii) should total incurred claims (paid plus reserves) against such insurance exceed seventy-five percent (75%) of the applicable aggregate, Tenant shall promptly notify Landlord in writing and promptly take whatever action is necessary to have the aggregate reinstated to an amount not less than fifty percent (50%) of the original aggregate amount.
- (i) For all insurance required under this Section 9.3.1, Landlord shall have the right, at every five (5) year period of this Lease, to review the types and limits of insurance coverage required herein and to make reasonable adjustments, provided that such types and limits shall not exceed that typically carried by the owner and operator of a first quality, "Class A" apartment complex, of approximately the same size, in Ventura County, California, based on reasonable research and investigation by Landlord.
- **9.3.2 Property Insurance**. Commencing upon the Closing and continuing until the expiration or earlier termination of the Term of this Lease, Tenant shall secure, maintain, and pay for the following all risk Property Insurance for the Project and the Property; provided, however, in the case of Builder's Risk insurance where Tenant is not the General Contractor, Tenant may cause the required Builder's Risk insurance to be secured, maintained, and paid for by the General Contractor:
- (a) Prior to the start of construction and continuing until the completion of construction of any capital project budgeted to cost \$\_\_\_\_\_\_ or more (the later of final acceptance of the Project or issuance of the final certificate of occupancy for the Project): all-risk Builder's Risk (course of construction) insurance coverage but excluding the perils of earthquake (land movement) and flood, in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall be written on an all risk form, and shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as it is accepted by the Landlord and CI; and storage and transportation risks; and such coverage shall not be terminated until permanent Property Insurance is

in place, as required in Section 9.3.2(b). Such insurance shall protect/insure the interests of Tenant/owner and the General Contractor, and other contractor(s), and all subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. Such insurance shall include an insurer's waiver of subrogation in favor of each protected/insured party thereunder and the Landlord, CSU, and CI. Landlord, CSU and CI shall each be named as an additional loss payee, as its interests may appear, with a Lenders Loss Payable endorsement, which shall be delivered to Landlord prior to the start of construction.

- (b) Commencing upon the Commencement Date, except during periods of construction of capital projects covered by subsection (a) above, through the expiration or earlier termination of the Term of this Lease: (a) all-risk physical damage insurance coverage ("Property Insurance"), on an all-risk basis, covering all insurable structures and equipment, including coverage for building code changes, but excluding the perils of earthquake (land movement) and flood, in an amount not less than 100% of the replacement cost of the total values at risk, which shall be adjusted for increased costs of construction and replacement on an annual basis, to protect against loss of, damage to, or destruction of the Project; such insurance shall not contain a coinsurance clause; (b) business interruption and extra expense insurance to protect Tenant and all additional loss payees covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project, or any portion thereof, caused by loss or damage to or destruction of any part of the insurable real property structures or equipment as a result of the perils insured against under such Property Insurance, covering a period of suspension, delay or interruption of at least eighteen (18) calendar months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during any such period; such insurance shall not contain a deductible in an amount in excess of a thirty (30) day period; and (c) as applicable, boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance. On the coverage required under this Section 9.3.2(b), Landlord, CI and CSU shall each be named as an additional loss payee, as its interests may appear, with a Lenders Loss Payable endorsement whenever possible, and if not attainable for Additional Insured other than Landlord, then a loss payable endorsement may be utilized, which shall be delivered to Landlord at the completion of construction and prior to the expiration of the Builders Risk insurance coverage required herein.
- (c) For all insurance required under this Section 9.3.2, said polices shall provide, by endorsement, that they will not be cancelled, non-renewed or reduced in scope or coverage, without at least thirty (30) days prior written notice to Landlord, except in the event of non-payment of premium which shall provide for at least ten (10) days prior written notice to Landlord.
- (d) Notwithstanding any other provision of this Lease, any policy of property insurance procured pursuant to Section 9.3.2 of this Lease shall contain a mortgage loss payable clauses and any proceeds of a claim thereunder shall be paid over to Mortgagee, (and if there is more than one Mortgagee, in the order of priority of their liens), to be applied against the indebtedness which Mortgagee's security instruments on the interest of Tenant in the Property secures. But, if required by Section 9.3.4, or at the option of Tenant, such insurance proceeds shall be utilized by Tenant for the replacement of the destroyed improvements, provided, however, during the last five (5) years of the Term of this Agreement, the option to use insurance proceeds for the replacement of the destroyed improvements may be exercised by either Tenant or Landlord.

**9.3.3** Reduction in Requirements. Landlord's Risk Manager is hereby authorized to reduce the requirements set forth herein, on a temporary or permanent basis, in the event he determines, in his sole discretion, that such reduction is in Landlord's best interest.

9.3.4 Obligation to Repair and Restore Damage Due to Casualty Covered by **Insurance**. Subject to Section 9.3.5 below, if the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Tenant, Tenant shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as the Project is required to be constructed pursuant to this Lease, if and to the extent the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Tenant shall complete the same as soon as possible thereafter so that the Project can be occupied in accordance with this Lease. Subject to force majeure delays pursuant to Article 23 hereof, in no event shall the repair, replacement, or restoration period exceed twenty-four (24) months from the date Tenant obtains insurance proceeds unless the President, in his or her reasonable discretion, approves a longer period of time. Landlord shall cooperate with Tenant, at no expense to Landlord, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then existing laws of any other governmental agencies with jurisdiction over the Property do not permit the repair, replacement, or restoration, Tenant may elect not to repair, replace, or restore the Project by giving notice to Landlord (in which event Tenant will be entitled to all insurance proceeds but Tenant shall be required to remove all debris from the applicable portion of the Property) or Tenant may reconstruct such other improvements on the Property as are consistent with applicable land use regulations and approved by Landlord, CI and CSU and the other governmental agency or agencies with jurisdiction.

Insurance. If the Project is completely destroyed or suffers Substantial Damage (as hereinafter defined) caused by a casualty for which Tenant is not required to (and has not) insured against, or if insurance proceeds are insufficient to rebuild then Tenant shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing Landlord with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, this Lease shall be automatically terminated and Tenant shall immediately tender possession of the Property to Landlord. As used in this Section 9.3.5, "Substantial Damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Project. In the event Tenant does not timely elect not to repair, replace, or restore the Project as set forth in the first sentence of this Section 9.3.5, Tenant shall be conclusively deemed to have waived its right not to repair, replace, or restore the Project and thereafter Tenant shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Project in accordance with Section 9.3.4 above.

**9.4 Other Insurance**. Tenant shall also obtain and maintain such other insurance in forms and amounts reasonably required from time to time by Landlord or the Landlord's Risk Manager for protection against the same or other insurable hazards which are then typically insured against by similar properties in Ventura County, California, provided that such coverage is available at commercially reasonable rates.

- **9.5 Contractors.** All contractors employed by Tenant with contracts of Fifty Thousand Dollars (\$50,000.00) or more shall be required to furnish evidence of Comprehensive General Liability insurance subject to all the requirements stated herein with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit each occurrence. The Indemnitees shall have the right to receive evidence of compliance with the foregoing by contractors at any time upon written request therefor.
- 9.6 Waiver of Subrogation. Each policy of insurance procured pursuant to Article 9 shall contain, if obtainable upon commercially reasonable terms, either (i) a waiver by the insurer of the right of subrogation against either party hereto for negligence of such party, or (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy. Each of the parties hereto waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of such other party, for loss or damage to such waiving party or its property or the property of others under its control, arising from any cause insured against under the form of insurance policies required to be carried pursuant to Article 9 of this Lease or under any other policy of insurance carried by such waiving party.
- **9.7 Insurance Submissions**. Tenant shall deliver to Landlord (i) insurance certificates confirming the existence of the insurance required by this Lease, and including the applicable clauses referenced above and (ii) endorsements to the above-required policies, which add to these policies the applicable clauses and provisions referenced above. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title.

## ARTICLE 10. MAINTENANCE OF THE PROPERTY.

- 10.1 Grounds Maintenance by Authority; CAM Charge. Maintenance of the Common Area Improvements shall be performed by the Authority or its designee. Tenant shall pay an [annual/monthly] common area maintenance charge to Authority in the amount of \$\_\_\_\_\_\_ (the "CAM Charge"), which amount shall be increased each calendar year by the corresponding increase in CPI. [Periodic CAM Charge or formula to be inserted.]
- 10.1.1 Shared Facilities; Joint Use Agreement. In addition to the Common Area Improvements and the CAM Charge associated with the maintenance thereof, Tenant shall enter into a Joint Use Agreement for certain Shared Facilities owned by Landlord and shall pay a monthly charge to Landlord or Landlord's designee for such facilities. Pursuant to the Joint Use Agreement, the Shared Facilities shall be made available to the residents of the Units on the same basis as such Shared Facilities are available to the residents of the nearby single family homes and CI students, faculty and staff, as applicable.
- 10.2 General Maintenance by Tenant. With the exception of the Common Area Improvements for which Authority is responsible pursuant to Section 10.1, Tenant shall maintain the Property and all improvements thereon in good condition, free of debris, waste and graffiti, and in compliance with all applicable land use requirements and Governmental Requirements, including without limitation the CI Reuse Plan and CI Master Plan and all applicable regulations and ordinances promulgated from time to time by the State of California, CSU, CI and/or Landlord. Except as provided in Section 10.1, Tenant shall maintain in accordance with the Maintenance Standards (as hereinafter defined) the improvements and landscaping on the Property. Such

Maintenance Standards shall apply to all buildings and Improvements at the Property with the exception of the Common Area Improvements to be maintained by Landlord pursuant to Section 10.1. To accomplish the maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Lease.

Tenant and its maintenance staff, contractors or subcontractors shall comply with the following standards as to the Project (collectively, "Maintenance Standards"):

- (a) At a minimum, the Property and Improvements shall be maintained to a standard consistent with the status of the Property and Improvements as of the Commencement Date, as reflected in that certain Property Condition Assessment dated as of April 2016 and prepared by \_\_\_\_\_\_\_, a copy of which has been provided by Landlord to Tenant prior to the Commencement Date.
- (b) The Property and Improvements shall be maintained in conformance and in compliance with reasonable maintenance standards which comply with the industry standard for comparable first quality, "Class A" multifamily housing projects in the County, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline, except to the extent such improvements are maintained by Landlord pursuant to Section 10.1 above. The Property shall be maintained in good condition and in accordance with the industry custom and practice generally applicable to comparable first quality, "Class A" multifamily housing projects in the County.
- (c) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all debris is properly disposed of by maintenance workers.

Landlord agrees to notify Tenant in writing if the condition of the Property does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Tenant to cure the deficiencies. Upon notification of any maintenance deficiency, Tenant shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety, then Tenant shall have forty-eight (48) hours to rectify the problem. The Tenant shall immediately isolate the area and ensure safety of persons until all needed repairs are made. In the event Tenant does not maintain the Property in the manner set forth herein and in accordance with the Maintenance Standards, Landlord shall have, in addition to any other rights and remedies hereunder, the right to maintain the Property, or to contract for the correction of such deficiencies, after written notice to Tenant, and Tenant shall be responsible for the payment of all such costs incurred by Landlord.

10.3 5-Year Capital Improvement Plan. The parties acknowledge and agree that the condition and character of the Property and the Improvements thereon as a first quality, "Class A" multifamily apartment community is of utmost concern and highest priority to the Landlord. [Prior to the Commencement Date, a Property Condition Assessment dated April 2016 was prepared

commencement of this Lease.] On or before June 30, 2021, and every five years thereafter during the Term this Lease, Tenant shall cause a Property Condition Assessment to be prepared for the Property by Marx Okubo or another consultant of similar skill and qualifications approved by the President. Tenant shall submit the Property Condition Assessment to President for review and approval, and shall reasonably consider any comments or revisions to the Property Condition Assessment submitted by the President. Tenant shall annually prepare and update a rolling 5-Year Capital Improvement Plan, which shall provide for the construction of improvements and performance of repair and maintenance work at the Property in implementation of the approved Property Condition Assessment; each annual update to the 5-Year Capital Improvement Plan shall be submitted to the President for review and approval, and shall serve as the basis for the Annual Capital Budget prepared by Tenant and approved by the President.

- **10.3.1** Any failure to perform maintenance, repairs or other improvements set forth in the 5-Year Capital Improvement Plan during the applicable year shall constitute a Default under this Lease.
- 10.3.2 In the event Landlord disagrees with the scope of a Property Condition Assessment and Tenant does not agree to make changes or additions to the Property Condition Assessment or any annual update to the 5-Year Capital Improvement Plan, Landlord shall have the right to have a new Property Condition Assessment prepared by a consultant selected by Landlord. The Property Condition Assessment submitted by Landlord shall be presented to Tenant for review and consideration. If Tenant disagrees with increased or additional proposed repair, maintenance or other improvements recommended in Landlord's Property Condition Assessment, Landlord and Tenant shall mutually agree on a third consultant to prepare a third Property Condition Assessment (or, in the absence of an agreement, Landlord shall select the third consultant to prepare the third Property Condition Assessment). Landlord and Tenant shall each select two of the Property Condition Assessments prepared for the applicable 5-year period and the Property Condition Assessment selected by both parties shall control. Tenant shall revise the applicable 5-Year Capital Improvement Plan and Annual Capital Budget in accordance with the controlling Property Condition Assessment. In the event the controlling Property Condition Assessment recommends additional repair, maintenance or other improvement over those set forth in the 5-Year Capital Improvement Plan originally presented to Landlord for the applicable year, then Tenant shall reimburse Landlord for all costs incurred by Landlord in connection with the preparation of any additional Property Condition Assessments pursuant to this Section.
- 10.3.3 Tenant's obligation to fund improvements pursuant to an approved 5-Year Capital Improvement Plan and the approved Annual Capital Budget implementing such plan shall not be limited to moneys on deposit in the Capital Replacement Reserve; the Capital Replacement Reserve reflects a minimum reserve requirement and is not anticipated to be adequate to fund all capital repairs, maintenance and other improvements that will be needed at the Property during the Term of this Lease.
- 10.3.4 Failure to include an improvement in a 5-year Capital Improvement Plan shall not excuse any failure of the Tenant to remedy a condition at the Property that constitutes a threat to the health or safety of any person. Any such condition that threatens the health or safety of any person shall be remedied by Tenant as soon as possible and in accordance with all Governmental Requirements.

10.4 Inspections of the Property. Landlord shall have the right (but no obligation) to conduct annual inspections of the Property to confirm Tenant's compliance with Sections 10.2 and 10.3 and the Capital Replacement and Maintenance Plan. Landlord shall additionally have the right, at Landlord's sole cost and expense, to conduct an evaluation of the condition of the Property and Improvements, on at least an annual basis, to determine whether the condition of the Property complies with the Capital Replacement and Maintenance Plan and the terms of this Lease. Landlord shall provide at least forty-eight hours' written notice prior to entering onto the Property to conduct such inspection and/or evaluation.

#### ARTICLE 11. OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS.

# 11.1 Ownership During Term.

- 11.1.1 Improvements. Subject to the provisions of Sections 5.3.1 and 5.3.2 hereof, all Improvements on the Property as permitted or required by this Lease shall, during the Term, be and remain the property of Tenant, and Landlord shall not have title thereto. Tenant shall not, however, demolish, remove, sell, encumber, lease, assign or otherwise convey any Improvements from the Property except as permitted herein.
- 11.1.2 Personal Property. All personal property, furnishings, fixtures and equipment, including, without limitation, Tenant-owned appliances, which are not so affixed to the Property or the buildings thereon as to require substantial damage to the buildings upon removal thereof shall constitute personal property including, but not limited to: (a) functional items related to the everyday operations of the Property; (b) personal property furnishings, fixtures and equipment of the nature or type deemed by law as permanently resting upon or attached to the buildings or land by any means, including, without limitation, cement, plaster, nails, bolts or screws, or essential to the ordinary and convenient use of the Property and the Improvements. If Tenant is not then in default under this Lease (after expiration of any applicable cure period), at any time during the Term and at termination thereof, Tenant shall have the right to remove any and all personal property, furnishings, fixtures and equipment that was originally delivered to or installed at the Property by Tenant after the Commencement Date; provided that Tenant shall repair any damage to the Property or the Improvements caused by such removal. Notwithstanding the foregoing, at the end of the Term, Tenant shall cause the furniture, fixtures, equipment and appliances at the Property to be in substantially the same condition as such items are in as of the Commencement Date.
- 11.1.3 Basic Building Systems. For purposes of this Lease, the personal property, furnishings, fixtures and equipment described in this Section 11.1 shall not include those major building components or fixtures necessary for operation of the basic building systems such as, but not limited to, the elevators, plumbing, sanitary fixtures, heating and central air-cooling system.

# 11.2 Ownership at Expiration or Termination.

11.2.1 Property of Landlord. In accordance with provisions of Sections 5.3.1 and 5.3.2 hereof, and except as provided in Section 11.2.2, all Improvements which constitute or are a part of the Property shall become (without the payment of any compensation whatsoever to Tenant or to others) the property of Landlord free and clear of all liens, claims and encumbrances on such Improvements by Tenant, and anyone claiming under or through Tenant, except for such title exceptions permitted or required during the Term with Landlord's prior written consent. Tenant shall then quitclaim to Landlord any and all rights, interests and claims to the Improvements. Tenant

agrees to and shall defend, indemnify and hold Landlord harmless from and against all liability and loss which may arise from the assertion of any such liens, claims and any encumbrances on such Improvements (except claims arising due to Landlord's actions) and except for such title exceptions permitted or required during the Term, so long as upon expiration or earlier termination of the Term of this Lease, no exception to title to the Property exists other than exceptions specifically approved by Landlord in writing.

- 11.2.2 Removal by Tenant. Tenant shall not be required or permitted to remove the Improvements, or any of them, at the expiration or earlier termination of the Term; provided, however, that, subject to the provisions of Section 5.3.2 hereof, within thirty (30) days following the expiration or earlier termination of the Term, Tenant may remove all personal property, furniture, and equipment.
- 11.2.3 Unremoved Property. Any personal property, furnishings or equipment not removed by Tenant pursuant to Section 11.2.2 hereof, shall, without compensation to Tenant, become Landlords' property, free and clear of all claims to or against them by Tenant or any third person, firm or entity arising by, through or under Tenant.
- 11.2.4 Maintenance and Repair of Improvements. Subject to the provisions of this Lease concerning condemnation, alterations and damage and destruction, Tenant agrees to assume full responsibility for the operation and maintenance of the Property and the Improvements and all fixtures and furnishings thereon or therein throughout the Term hereof without expense to Landlord, and to perform all repairs and replacements necessary to maintain and preserve the Property, the Improvements, fixtures and furnishings in a decent, safe and sanitary condition consistent with good practices and in compliance with all applicable laws. At a minimum, Tenant shall perform all capital replacement, repair and maintenance work set forth in the Capital Replacement and Maintenance Plan, within the times set forth therein. Tenant agrees that Landlord shall not be required to perform any maintenance, repairs or services, or to assume any expense not specifically assumed herein in connection with the Property and the Improvements thereon unless specifically required under the terms of this Lease.

Except as otherwise provided in this Section 11.2 and in Section 11.4, the condition of the Improvements required to be maintained hereunder upon completion of the work of maintenance or repair shall be equal in value, quality and use to the condition of such Improvements before the event giving rise to the work.

11.3 Waste. Subject to the alteration rights of Tenant and damage and destruction or condemnation of the Property or any part thereof, Tenant shall not commit or suffer to be committed any waste of the Property or the Improvements, or any part thereof.

Tenant agrees to keep the Property and the Improvements clean and clear of refuse and obstructions, and to dispose properly of all garbage, trash and rubbish.

11.4 Alteration of Improvements. Except as provided in Section 7.1, Tenant shall not make or permit to be made any material, exterior alteration of, addition to or change in, the Improvements which would affect the exterior elevations (including materials selection and color) or the size, bulk and scale of the Property, other than routine maintenance and repairs, nor demolish all or any part of the Improvements, without the prior written consent of Landlord. Nothing herein shall prohibit interior alterations or decorations, or the removal and replacement of interior improvements

consistent with the specified use of the Property. In requesting consent for such exterior improvements as required by the foregoing, Tenant shall submit to Landlord detailed plans and specifications of the proposed work and an explanation of the need and reasons thereof. Tenant may make such other improvements, alterations, additions or changes to the Improvements which do not affect the exterior elevations (including materials selection and color) or the size, bulk and scale thereof without Landlord's prior written consent.

Notwithstanding the prohibition in this Section 11.4, Tenant may make such changes, repairs, alterations, improvements, renewals or replacements to the exterior elevations, materials, size, bulk or scale of the Improvements as are required (a) by reason of any law, ordinance, regulation or order of a competent government authority, or (b) for the continued safe and orderly operation of the Property.

#### ARTICLE 12. SIGNS AND MARKETING.

Tenant shall not place or suffer to be placed on the Property or upon the roof or any exterior door or wall or on the exterior or interior of any window of the Improvements, any sign, awning, canopy, marquee, advertising matter, decoration, lettering or other thing of any kind without the prior written consent of the President.

#### ARTICLE 13. INDEMNIFICATION.

Tenant shall defend, indemnify, pay for, assume all responsibility for, and hold the Indemnitees, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Lease or the validity, applicability, interpretation or implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any acts or omissions of Tenant under this Lease, whether such activities or performance thereof be by Tenant or by anyone directly or indirectly employed or contracted with by Tenant and whether such damage shall accrue or be discovered before or after termination of this Lease and arising prior to the expiration or earlier termination of the Term of this Lease. Tenant shall not be liable for property damage or bodily injury to the extent occasioned by the gross negligence or willful misconduct of Landlord, CI, or CSU or their agents or employees. Tenant shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Tenant determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Tenant shall compromise or settle such action in a way that fully protects Indemnitees from any liability or obligation. In this regard, Tenant's obligation and right to defend shall include the right to hire (subject to written reasonable approval by Landlord, CI, and CSU) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Indemnitees. If Tenant defends any such action, as set forth above, (i) Tenant shall indemnify and hold harmless Indemnitees from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Landlord shall be entitled to settle any such claim only with the written consent of Tenant and any settlement without Tenant's consent shall release Tenant's obligations under this Article 13 with respect to such settled claim. This Section notwithstanding, indemnification with respect to Hazardous Materials shall be governed by Section 16.3.

#### ARTICLE 14. PARKING.

- 14.1 Parking Facilities. The Improvements at the Property include the following parking facilities: approximately 320 open spaces, 99 carports, 104 rentable garages, approximately 15 open handicapped spaces and 2 handicapped carports (collectively, the "Parking Facilities"). During the entire Term of this Lease, Tenant shall be responsible for maintaining and operating the Parking Facilities in a manner consistent with this Lease, including the Capital Replacement and Maintenance Plan. The Tenant shall have the right to charge for the use of the Parking Facilities if Tenant determines in Tenant's reasonable discretion that such charges are reasonable and consistent with the market for similar parking facilities in Ventura County, California. Landlord shall issue four hundred two (402) parking permits to Tenant for distribution to resident households in connection with the leasing of the Units at the Property.
- 14.2 Easement for Solar Power Facilities. Landlord hereby reserves to itself an air rights easement and right to construct and install, or cause the construction and installation, of solar power facilities above the Parking Facilities. Such solar power facilities shall be constructed, installed, operated and maintained in a manner that does not unreasonably conflict with or interfere with the use, operation and maintenance of the Parking Facilities. The form of the easement required by this Section is set forth in Exhibit H hereto.

#### ARTICLE 15. EMINENT DOMAIN.

- **15.1 Notice**. The party receiving any notice of the kind specified in this Section 15.1 shall promptly give the other party notice of the receipt, contents and date of the notice received. For purposes of this Article 15, the term "Notice" shall include:
  - (a) Notice of Intended Taking;
- (b) Service of any legal process relating to condemnation of the Property or the Improvements;
- (c) Notice in connection with any proceedings or negotiations with respect to such condemnation; or
- (d) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.
- 15.2 Representation in Proceedings or Negotiations. Landlord and Tenant shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of their claims. No agreements or settlement with or sale or transfer to the condemning authority shall be made without the consent of Landlord, but, as to its reversionary interest only, Landlord may enter into such agreement, settlement, sale or transfer without the consent of Tenant. Landlord and Tenant each agree to execute and deliver to the other any instruments which may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

#### 15.3 Total Taking.

**15.3.1** In the event of a Total Taking, this Lease shall terminate as of the date of the Taking.

- **15.3.2** If this Lease is terminated pursuant to this Section 15.3, the Award for such Taking shall be apportioned and distributed as follows:
  - (a) First, to the Mortgagee, if any, to the extent of the Mortgage;
- (b) Second, to Landlord, a sum equal to the fair market value of Landlord's ground leasehold interest in the Property (subject to the remaining Term and the Rent reserved), if Landlord's ground leasehold interest in the Property is acquired in the Total Taking, on the date immediately preceding the Taking or threat of condemnation. The parties shall commence said appraisal by the earlier of ten (10) days after Tenant's receipt of a Notice of Intended Taking or ten (10) days after the date of the Taking;
- (c) Third, to Tenant, a sum equal to the fair market value of any Improvements constructed or replaced by Tenant on the date immediately preceding the Taking as determined by the appraisal method set forth in Section 15.10 and determined as if there were no Taking, nor threat of condemnation; plus the residual value of the Term, subject to the Rent reserved; and
  - (d) Fourth, to Landlord, the remainder, if any.

# 15.4 Substantial Taking.

- 15.4.1 In the event of a Taking which, in Tenant's and Landlord's mutually agreeable judgment is substantial, Tenant may, subject to the rights of the Mortgagee, if any, terminate this Lease. If Tenant elects to terminate this Lease under this provision, Tenant shall give written notice of its election to do so to Landlord within forty-five (45) days after receipt of a copy of a Notice of Intended Taking. In the event Landlord disputes the right of Tenant to terminate this Lease under this provision, Landlord shall give Tenant notice of this fact within forty-five (45) days after receiving the notice of Tenant's election to terminate, and the parties shall either raise this issue in the eminent domain proceeding, if any, as an issue with respect to the apportionment of the Award between Landlord and Tenant or, if there is no eminent domain proceeding, pursue other remedies as permitted by Sections 21.2 and 21.3. In the event it is determined that Tenant does not have the right to terminate this Lease, the apportionment of the Award for such Taking and the obligations of Tenant to restore shall be governed by the terms of Section 15.6 or Section 15.8, whichever is applicable.
- 15.4.2 In the event it is determined that Tenant has the right to terminate this Lease, or in the event Landlord does not dispute Tenant's right to terminate this Lease, such termination shall be as of the time when the Taking entity takes possession of the portion of the Property and the Improvements taken. In such event, the Award for such Substantial Taking (including any award for severance, consequential or other damages which will accrue to the portion of the Property and/or the Improvements not taken) shall be apportioned and distributed as follows:
  - (a) First, to the Mortgagee, if any, to the extent of the Mortgage;
- (b) Second, to Landlord, a sum equal to the fair market value of the Landlord's ground leasehold interest in the Property taken (subject to the remaining Term and the Rent reserved) immediately preceding the date of the Taking as determined by the appraisal process

provided for in Section 15.10, commenced as provided in Section 15.3.2, and as modified by Section 15.6.3:

- (c) Third, to Landlord, an amount equal to the portion of the award for severance, consequential or other damages which accrued to the portion of the Landlord's ground leasehold interest in the Property and/or Improvements not taken;
- (d) Fourth, to Tenant, a sum equal to the fair market value of the Improvements made by Tenant taken immediately preceding the date of the Taking as determined by the appraisal process provided for in Section 15.10, commenced as provided in Section 15.3.2, and as modified by Section 15.6.3; plus the residual value of the Term, subject to the Rent reserved; and
  - (e) Fifth, to Landlord, the remainder, if any.
- 15.5 Tenant's Right to Revoke Notice of Termination. Notwithstanding anything to the contrary contained in Section 15.4, if Tenant has elected to terminate this Lease, and the taking authority abandons or revises the Taking, Tenant shall have forty-five (45) days from receipt of written notice of such abandonment or revision to revoke its notice of termination of this Lease.

# 15.6 Partial Taking.

- **15.6.1** In the event of a Partial Taking, this Lease shall continue in full force and effect and there shall be no abatement in or reduction of any of Tenant's obligations hereunder.
- 15.6.2 The Award for such Partial Taking shall be apportioned and distributed first to the Mortgage, if any, to the extent of the Mortgage, then to Landlord and Tenant in proportion to the fair market value of their respective interests in the Property and Improvements, as such interests existed immediately prior to such Partial Taking. Tenant's only interest in the Property and the Improvements for purposes of this Section 15.6.2 is in those Improvements constructed or replaced by Tenant.
- 15.6.3 The fair market value of the parties' respective interests in the Property and the Improvements shall be determined by the appraisal process provided in Section 15.10, except that the assumptions listed in such Section shall not apply. Rather, the appraisal shall be based on the value of the Property as improved and encumbered by this Lease and on the value of the Improvements as they stand, but without regard to any Taking or threat of condemnation.
- **15.6.4** Any Award for severance, consequential or other damages which accrues by reason of the Partial Taking to the portion of the Property or the Improvements not taken shall be distributed first to the Mortgagee, if any, to the extent of the Mortgage, then shall be apportioned between Landlord and Tenant in accordance with the diminution in value of their respective interests.
- 15.7 Obligation to Repair on Partial Taking. Promptly after any Partial Taking and regardless of the amount of the Award for such Taking, Tenant shall, to the extent of the Award received by Tenant and in the manner specified in the provisions of this Lease, repair, alter, modify or reconstruct the Improvements and/or other improvements on the Property so as to make them usable for the purposes set forth in this Lease and capable of producing a fair and reasonable net income.

# 15.8 Temporary Taking.

- 15.8.1 In the event of a Temporary Taking of the whole or any part of the Property and/or Improvements, the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full any sum or sums of money and charges herein reserved and provided to be paid by Tenant, and, subject to the other provisions of this Section 15.8, Tenant shall be entitled to any Award or payment for the temporary use of the Property and/or Improvements prior to the termination of this Lease, and Landlord shall be entitled to any Award or payment for such use after the termination of this Lease.
- 15.8.2 If, after the occurrence of a temporary taking, possession of the Property and/or Improvements shall revert to Tenant prior to the expiration of the Term, Tenant shall, to the extent of the amount of any award or payment, unless at such time there remains less than five (5) years in the Term, restore the Property and/or Improvements and in all other respects indemnify and hold Landlord harmless from the effects of such Taking so that the Property and/or Improvements in every respect shall upon completion of such restoration be in the same condition as they were prior to the taking thereof.
- 15.8.3 Any Award or payment for damages or cost of restoration made on or after the termination of this Lease shall be paid first to the Mortgagee, if any, to the extent of the Mortgage, then to Landlord absolutely, together with the remaining balance of any other funds paid to Tenant for such damages or cost of restoration and Tenant shall thereupon be excused from any obligation to restore the Property and/or Improvements upon the termination of such Temporary Taking except that any obligation that may have accrued for Tenant to restore the Property and/or Improvements prior to the commencement of said Temporary Taking shall continue to be the obligation of Tenant.
- **15.9** Mortgagee Protection. Notwithstanding anything contained in this Lease to the contrary, any and all condemnation proceeds shall be paid first to the Mortgagee, if any, to be applied in accordance with the Mortgage and other documents that govern the loan secured by the Mortgage to reduce the Mortgage if required by the Mortgage documents.
- **15.10 Appraisal**. Whenever an appraisal of the Property is called for under the terms of this Lease, the parties shall use the following procedure:
- 15.10.1 Appointment of Appraiser. Within ten (10) days after notice from Landlord to Tenant, Landlord and Tenant shall each appoint an MAI appraiser to participate in the appraisal process provided for in this Section 15.10 and shall give written notice thereof to the other party. Upon the failure of either party so to appoint, the nondefaulting party shall have the right to apply to the Superior Court of Ventura County, California, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Landlord and Tenant, or if within ten (10) days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to said Superior Court to appoint such third appraiser.

#### 15.10.2 Determination of Fair Market Value.

- (a) Within thirty (30) days after the appointment of the third appraiser, the appraisers shall determine the fair market value of the Property and the Improvements in accordance with the provisions hereof, and shall execute and acknowledge their determination of fair market value in writing and cause a copy thereof to be delivered to each of the parties hereto.
- (b) The appraisers shall determine the fair market value of the Property and the Improvements as of the date of Landlord's notice referred to in Section 15.10.1 above, based on sales of comparable property in the area in which the Property is located. If, however, in the judgment of a majority of the appraisers, no such comparable sales are available, then the appraisal shall be based on the following assumptions: (i) that the Property is free and clear of this Lease, the Improvements and all other improvements, and all easements and encumbrances; and (ii) that the Property is available for immediate sale and development for the purposes and at the density and intensity of development permitted under the zoning, subdivision and land use planning ordinances and regulations applicable to the Property in effect on the Commencement Date of this Lease, and any changes or amendments thereto or modification or variance from the provisions thereof or conditional use permits which could reasonably be anticipated to have been granted or approved as of the date of this Lease. In the event of an appraisal made with respect to a partial taking pursuant to Section 15.6.3 hereof, the assumptions in that section shall apply in lieu of the foregoing assumptions in this paragraph.
- (c) If a majority of the appraisers are unable to agree on fair market value within thirty (30) days of the appointment of the third appraiser, the three (3) appraisals shall be added together and their total divided by three (3). The resulting quotient shall be the fair market value of the Property and the Improvements. If, however, the low appraisal and/or high appraisal is or are more than ten percent (10%) lower and/or higher than the middle appraisal, the low and/or high appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two (2). The resulting quotient shall be the fair market value of the Property and the Improvements. If both the low and high appraisals are disregarded, the middle appraisal shall be the fair market value of the Property.
- **15.10.3 Payment of Fees**. Each of the parties hereto shall (a) pay for the services of its appointee, (b) pay one-half (1/2) of the fee charged by the appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisal.
- **15.11 Fee Owner's Interest in Award**. Landlord will be responsible for allocating all or a portion of any Award received by Landlord under this Article 15 to CSU in accordance with the Ground Lease.

#### ARTICLE 16. ENVIRONMENTAL.

16.1 No Use of Hazardous Materials on the Property. Tenant covenants and agrees that it shall not, and that it shall not permit any subtenant to, treat, use, store, dispose, release, handle or otherwise manage Hazardous Materials on the Property except in connection with any construction, operation, maintenance or repair of the Improvements or in the ordinary course of its business, and that such conduct shall be done in compliance with all applicable federal, state and local laws, including all Environmental Laws. Tenant's violation of the foregoing prohibition shall constitute a breach hereunder and Tenant shall indemnify, hold harmless and defend Landlord for such violation

as provided below. Except for Hazardous Materials first brought onto the Property by Tenant after the Commencement Date in violation of Environmental Laws, neither the presence of Hazardous Materials on or under the Property as of the Commencement Date nor the presence of Hazardous Materials on or under the Property after the Commencement Date shall constitute a breach by Tenant of any representation, warranty and covenant contained herein and to the extent the presence of such Hazardous Materials requires remediation, the costs of such remediation shall be borne by Landlord, rather than Tenant, pursuant to the provisions of Section 16.3 below.

**16.2 Notice and Remediation by Tenant**. Tenant shall promptly give Landlord, and Landlord shall give Tenant, written notice of any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Materials which may affect the Property.

Environmental Indemnity. Tenant shall save, protect, pay for, defend (with counsel acceptable to Landlord, CI, and/or CSU, as applicable), indemnify and hold harmless Landlord, CI, CSU, and their respective elected and appointed officials, officers, employees, attorneys, representatives, volunteers, contractors and agents (collectively, "Indemnitees") from and against any and all Environmental Claims and any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs and third-party claims or costs) (the foregoing are hereinafter collectively referred to as "Liabilities") that may now or in the future be incurred or suffered by Indemnitees by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of: (i) the presence, use, release, escape, seepage, leakage, spillage, emission, generation, discharge, storage, or disposal of any Hazardous Materials in, on, under, or about, or the transportation of any such Hazardous Materials to or from, the Property; (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, leakage, spillage, emission, escape, discharge, storage, disposal, or transportation of Hazardous Materials in, on, under, or about, or to or from, the Property; (iii) the physical and environmental condition of the Property, (iv) any Liabilities relating to any Environmental Laws and other Governmental Requirements relating to Hazardous Materials and/or the environmental and/or physical condition of the Property, and (v) any Environmental Claims relating to the Project or the Property; provided, however, that the foregoing indemnity shall not apply to any Liabilities arising or occurring (a) prior to the commencement of this Lease, (b) after the expiration or earlier termination of the Term of this Lease or the date Tenant vacates the property, whichever occurs later, or (c) as a result of the grossly negligent or wrongful acts or omissions of Landlord, CI, or CSU. The foregoing indemnification shall continue in full force and effect regardless of whether such condition, liability, loss, damage, cost, penalty, fine, and/or expense shall accrue or be discovered before or after the termination of this Lease. This indemnification supplements and in no way limits the scope of the indemnification set forth in Article 13.

#### ARTICLE 17. ASSIGNMENT.

Because of the importance that Landlord places on Tenant's qualification, expertise and identity, and the reliance Landlord makes upon Tenant's ability to construct, complete, and operate the Project, during the Term of this Lease, Tenant shall not assign or attempt to assign this Lease or any right herein, except to such transferees as approved or permitted pursuant to this Article 17.

Notwithstanding the foregoing, Tenant may sublease the Units at the Project to qualified tenant households as provided herein.

- 17.1 Prohibition Against Transfer: No Sale or Assignment During Term. The identities and qualifications of Tenant, as an Affiliate of The Related Companies of California, LLC, and as an experienced and successful Tenant and operator of first quality, "Class A" multifamily apartment complexes, are of particular concern to Landlord. It is because of this identity and these qualifications that Landlord has entered into this Lease with Tenant. Except as expressly set forth in Sections 17.1.1 and 17.1.2, no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease by assignment, assumption or otherwise, nor shall Tenant make any total or partial transfer, conveyance, encumbrance to secure financing or refinancing, assignment or sublease of the whole or any part of the leasehold interest in the Property, nor shall there be any change in the general or limited partners, managers, or owners of more than 50% shares of Tenant, as applicable (collectively, a "Transfer"), without the prior written approval of the President pursuant to Section 17.1.4 below, which approval shall not be unreasonably withheld or delayed.
- **17.1.1 Permitted Transfers**. Notwithstanding other provisions of this Lease to the contrary, Landlord approval of an assignment or transfer of this Lease or conveyance of Tenant's leasehold interest in the Property, or any part thereof, shall not be required in connection with any of the following ("Permitted Transfers"):
- (a) The granting of temporary easements or permits to facilitate the construction and development of the Project.
- (b) Subject to the restrictions of Section 8.3 and 8.4. of this Lease, the rental or lease for occupancy of each of the Units in the Project to qualified tenant households.
- (c) Assignment for approved financing purposes, subject to such financing being considered and approved by Landlord pursuant to this Lease.
- (d) In the event of a Permitted Transfer by Tenant pursuant to this Section 17.1.1 not requiring Landlord's prior approval, Tenant nevertheless agrees that within thirty (30) days following such pre-approved assignment or transfer it shall give written notice to Landlord of such assignment or transfer along with a true and complete copy of the proposed assignment or transfer document conforming to the requirements of this Lease.
- **17.1.2** Conditions. In addition to the provisions of Section 17.1.1, Tenant's right to make an assignment after the recordation of the Release of Construction Covenants issued pursuant to the Original Agreement shall be governed by Section 17.1.3 below and shall be subject to compliance with the following further conditions:
- (1) <u>No Default</u>. At the time of such assignment, this Lease shall be in full force and effect and either no Event of Default (as defined in Section 21.1) then exists or no Event of Default will exist upon consummation of the assignment.
- (2) <u>Assumption</u>. The assignee shall have executed an express assumption of the obligations and liabilities of Tenant under this Lease from and after the date of delivery and recording of the assignment and there shall have been delivered to Landlord at the time of the request for such assignment a conformed copy of such assumption.

(3) <u>Hold Property Interests Together</u>. Tenant shall hold the Property, both its leasehold interest under this Lease and the Improvements held hereunder together, and shall not separately sell, lease (except for occupancy of individual Units in accordance with this Lease), assign or transfer all or any part of its leasehold interest in the Property or its fee interest in the Improvements.

17.1.3 Landlord Consideration of Requested Transfer. Landlord agrees that it will not unreasonably withhold approval of a request for an assignment or transfer made pursuant to this Section 17.1, provided (a) Tenant delivers written notice to Landlord requesting such approval, (b) the proposed assignee or transferee (each, a "Proposed Transferee") satisfies the criteria and required qualifications described in Exhibit I to this Lease, (d) such assignment or transfer will not negatively affect the Rent to be paid to Landlord pursuant to Section 4.1, et seq., and (e) the assignee(s) or transferee(s) completely and fully assume(s) the obligations of Tenant under this Lease pursuant to an assignment and assumption agreement(s) in a form which is reasonably acceptable to Landlord and its legal counsel(s). Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable Landlord to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 17.1.3, as described in Exhibit I, and such other criteria as may reasonably be requested by Landlord. Landlord shall approve or disapprove the request within sixty (60) days of its receipt of Tenant's notice and submittal of complete information and materials required herein. Landlord approval shall not be required for transfers or assignments for foreclosure of a Mortgage authorized by this Lease or deed in lieu of foreclosure in favor of a Mortgagee. In no event, however, shall Landlord be obligated to approve the assignment or transfer of this Lease requiring Landlord's approval, pursuant to this Section 17.1.3, except to an approved transferee or assignee of Tenant's rights in and to the Property and the Project, based on Landlord's reasonable determination that such transferee or assignee has the experience, financial strength, knowledge, and overall capability to own, operate and manage the Project in accordance with the terms, conditions, and restrictions contained in this Lease. In addition, Landlord shall not be required to grant its approval of any proposed transfer or assignment unless all information reasonably requested by Landlord relating to the proposed transferee or assignee entity and all general and limited partners and/or managers of such entity, including true and correct copies of an executed Partnership Agreement, if the proposed assignee/transferee is a partnership, true and correct copies of articles of incorporation if the proposed assignee/transferee is a corporation, true and correct copies of an executed operating agreement, if the proposed assignee/transferee is a limited liability company, etc., plus current certified financial statements of the entity and financial statements relating to other multifamily rental housing projects developed and/or operated by such entity(ies) and reporting and compliance documentation for such projects submitted for public entities providing funding to such projects, etc., as applicable.

17.1.4 Assignment Agreement. No assignment of any interest in this Lease made with Landlord's consent or as herein otherwise permitted shall be effective unless and until there shall have been delivered to Landlord an executed counterpart of such assignment or other transfer document containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes due performance of the obligations on the assignor's part to be performed under this Lease from the effective date of the assignment to the end of the Term.

- 17.1.5 Further Assignments. The consent by Landlord to an assignment shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment if required by the terms of this Lease.
- 17.1.6 Other Rights of Mortgagees. Landlord agrees that none of the restrictions or limitations on assignment or transfer by Tenant set forth in this Article 17 shall be construed to limit or abrogate the rights of a Mortgagee to (a) seek the appointment of a receiver, or (b) delegate or assign its rights under this Lease to any third party in connection with the exercise of said Mortgagee's rights and remedies under its Mortgage.

#### ARTICLE 18. ENCUMBRANCES BY TENANT.

- 18.1 Leasehold Mortgage. Landlord agrees and consents that Tenant may mortgage, encumber and hypothecate all right, title and interest of Tenant in the leasehold estate created by this Lease to any lender with net assets in excess of Five Hundred Million and No/100 Dollars (\$500,000,000) ("Mortgagee"), which term means a commercial or savings bank, savings or building and loan association, life or casualty insurance company, public or private employee pension trust, investment bank, mortgage conduit lender, mortgage banker, opportunity fund (including loan service correspondent companies designated by any of the foregoing institutions), or other institutional lender imposing a first lien on the Property, provided the total principal amount of such first mortgage loan does not exceed eighty-five percent (85%) of the fair market value of the completed project as such fair market value is determined at the time such first mortgage loan is made. Tenant shall give Landlord notice of any such mortgage, encumbrance or hypothecation, and shall accompany the notice with a true copy of the note and mortgage, together with the recording date and instrument number of the recorded mortgage, within ten (10) days after recordation thereof.
- 18.1.1 Except as hereinafter otherwise provided, said mortgage, encumbrance or hypothecation and all rights thereunder, shall be subject to each and every of the covenants, conditions and restrictions of this Lease, and the same shall be subject to all rights and interests of Landlord hereunder. Upon the request of Landlord, any Mortgagee shall expressly agree, in a writing satisfactory to Landlord, that upon foreclosure of or a trustee's sale under a mortgage or deed of trust or a deed in lieu thereof, the purchaser at the foreclosure sale or the grantee of the deed lieu of foreclosure, as the case may be, shall be bound by and subject to each and every of the covenants, conditions and restrictions of this Lease as to themselves and their respective successors and assigns. In the event of any conflict between the provisions of this Lease and the provisions of any mortgage, encumbrance or hypothecation, the terms of this Lease shall prevail.
- **18.1.2** Mortgagee may transfer all or any part of its interest in said mortgage to another person or entity, and in addition, or in the alternative, may collaterally assign its interest in the Property and in said mortgage to another person or entity and such other person or entity shall be deemed a Mortgagee, and such person or entity shall be entitled to the benefits afforded to "Holders" under this Lease and to a Mortgagee hereunder; provided however, each such person or entity described in this paragraph shall meet the qualifications of a Mortgagee set forth in the first paragraph of Section 18.1 above.

# 18.2 Cure by Mortgagee.

**18.2.1** Any Mortgagee shall have the right, at any time during the Term, while this Lease is in full force and effect:

- (a) to do any act required by Tenant hereunder, and all such acts done or performed shall be effective as to prevent a forfeiture of Tenant's rights hereunder as if the same had been done or performed by Tenant;
- to rely on the security afforded by the leasehold estate, and to acquire (b) and to succeed to the interest of Tenant hereunder by foreclosure, whether by judicial sale, by power of sale contained in any security instrument, or by deed given in lieu of foreclosure. If the Mortgagee or Tenant shall have furnished, in writing, to Landlord a request for notice, in the event of any default or breach hereunder on the part of Tenant, then Landlord will not terminate this Lease by reason of such default or breach if the Mortgagee shall, within sixty (60) days after the expiration of the applicable cure periods set forth in Section 21.1 hereof and service on Mortgagee of written notice from Landlord of Landlord's intention to terminate this Lease (i) cure such default if the same can be cured by the payment of money and (ii) comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary covenants of this Lease capable of performance by Mortgagee. Mortgagee shall be deemed to have cured such non-monetary default if Mortgagee proceeds in a timely and diligent manner to accomplish said cure; provided, however, that if in order to accomplish such cure, Mortgagee must foreclose on its security interest or obtain leave of the court as in the case of bankruptcy proceedings, such default shall be deemed cured, nevertheless, if Mortgagee shall have made every reasonable effort to obtain such leave in a timely and diligent manner or shall have commenced foreclosure proceedings and diligently pursues to completion all appropriate steps and proceedings for judicial foreclosure, the exercise of the power of sale under and pursuant to a trust deed in the manner provided by law, or the obtaining from Tenant of an assignment of this Lease in lieu of foreclosure (collectively "foreclosure remedies"). Provided that Mortgagee cures any additional defaults in the manner and within the time herein specified, the inability of Mortgagee to cure a default based upon Tenant's bankruptcy or insolvency or other noncurable default shall not permit Landlord to terminate this Lease on account of such default. Further, this section shall not be deemed to obligate Mortgagee to undertake to cure any default based upon Tenant's bankruptcy or insolvency, or other non-curable default. No notice of default by Landlord to Tenant under this Lease shall be deemed to have been given unless and until a copy thereof shall have been mailed or delivered to Mortgagee.

**18.2.2** Any provisions contained in this Lease to the contrary notwithstanding, any Mortgagee of the Property or its assignee (provided such assignee has been approved pursuant to Section 17.1), may enforce such mortgage and acquire title to the leasehold estate in any lawful manner; and, pending foreclosure of any such mortgage, may take possession of the Property, provided following such foreclosure the transferee of the leasehold shall thereupon and thereby assume the performance of and be bound by each and all of the covenants, conditions, obligations restrictions and provision herein provided to be kept and performed by Tenant, and Landlord shall recognize such Mortgagee or its assignee (provided such assignee has been approved pursuant to Section 17.1) as the Tenant under this Lease and shall not disturb its use and enjoyment of the Property, provided that such Mortgagee cures any default or event of default by Tenant which may be satisfied by the payment of money, and performs all of the obligations of Tenant set forth in this Lease which accrue thereafter. Mortgagee shall not be liable for any of Tenant's obligations under this Lease unless and until Mortgagee shall acquire Tenant's interest in this Lease. During such time as a mortgage encumbers the leasehold estate, if Landlord or Tenant shall acquire the interest of the other in the demised premises or any portion thereof (except for any acquisition by Landlord following a default by Tenant hereunder), there shall be no merger of the leasehold estate into (a) the fee simple estate in the Property, (b) the subreversion interest held by Landlord or (c) any leasehold estate superior to that of Tenant. The obligation of Mortgagee for the performance of the terms of this Lease shall terminate upon the sale, transfer or assignment of the right, title and interest of Mortgagee in the leasehold estate to any other person, firm or corporation in accordance with the provisions of this Article 4.

- **18.3** No Subordination. The foregoing provisions do not give any person whatsoever the right to mortgage, hypothecate or otherwise encumber or to cause any liens to be placed upon the freehold estate of Landlord, nor shall the foregoing provisions in any event be construed as resulting in a subordination in whole or in part of the freehold estate of Landlord to any indebtedness of Tenant.
- New Lease on Termination of this Lease. In the event this Lease is terminated for any reason, a Mortgagee shall have the right within sixty (60) days after receipt of notice of such termination to demand that Landlord execute a new lease of the Property with Mortgagee as Tenant hereunder (a "New Lease"). In such event Mortgagee shall immediately execute a New Lease which shall be for the unexpired term of this Lease and shall otherwise be identical with the terms of this Lease. Such New Lease shall be executed and delivered by the Landlord to the Mortgagee within sixty (60) days after receipt by the Landlord of written notice from the Mortgagee of such election to obtain a New Lease and upon payment by the Mortgagee of all sums owing by Tenant under the provisions of this Lease (less the rent and other income actually collected by Landlord in the meantime from any subtenants or other occupants of the Property) and upon performance by the Mortgagee of all other obligations of Tenant under the provisions of this Lease with respect to which performance is then due and which are susceptible of being cured by Mortgagee. After such termination of this Lease and prior to the expiration of the period within which Mortgagee may elect to obtain such New Lease from the Landlord, Landlord shall refrain from executing any new subleases or amending, canceling or terminating any existing subleases without the prior written consent of Mortgagee. Any such New Lease shall have the same priority of title as this Lease. Landlord shall execute and return to Mortgagee any and all documents reasonably requested by Mortgagee to secure or evidence such priority of title, and Mortgagee's title to the improvements on the Property, within twenty (20) days after request therefor.
- 18.5 Consent of Mortgagee. Notwithstanding the provisions of this Lease to the contrary, until such time as the indebtedness of Tenant to Mortgagee shall have been fully paid, this Lease shall not be modified, terminated, cancelled or surrendered, and the Landlord shall not, without the prior written consent of Mortgagee first had and obtained, (i) accept rent that is more than thirty (30) days in advance, (ii) accept any termination, cancellation or surrender of this Lease, or (iii) consent to any modification hereof or consent to the assignment hereof, or of any part or portion of the term created thereby, or of any interest therein.
- 18.6 Rights Under Bankruptcy Code. Landlord and Tenant agree, for the benefit of Mortgagee, that so long as a mortgage shall encumber Tenant's interest in the Property, the right of election arising under Section 365(h)(1) of the United States Bankruptcy Code may be exercised solely by Mortgagee and not by Tenant. Any exercise or attempted exercise of such right of election by Tenant shall be void.
- **18.7 Estoppel Certificate**. Landlord shall execute, acknowledge and deliver to Mortgagee, Tenant, proposed assignees and subtenants, promptly upon request, and in any event not later than ten (10) business days following receipt of such request, a certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating that modifications), (b) the dates, if any, to which

all rental due thereunder has been paid, (c) whether, to the best of Landlord's knowledge, there are then existing any charges, offsets or defenses against the enforcement by Landlord of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed (and, if so, specifying the same), (d) whether, to the best of Landlord's knowledge, there are then existing any defaults or events of default by Tenant in the performance or observance by Tenant of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed under this Lease and whether any notice has been given to Tenant of any default or event of default which has not been cured (and, if so, specifying the same), and (e) such other matters as Mortgagee shall reasonably request."

18.8 Cost of Loans to be Paid by Tenant. The Tenant affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Mortgage loans, (ii) the delivery of any instruments and documents and their filing and recording, if required, (iii) all taxes and charges payable in connection with the Mortgage loans, and (iv) all costs reasonably incurred by Landlord in providing any estoppel certificates and/or in making any amendments of this Lease requested by Tenant or Lenders.

#### ARTICLE 19. SUBLEASING.

- 19.1 Subleasing of Property. All subleases made by Tenant to residents of the Units at the Project (each, a "Resident Lease"; collectively, "Resident Leases") shall be in compliance with this Lease and shall be subject to the following provisions and restrictions:
- 19.1.1 Each Resident Lease shall contain a provision, satisfactory to Landlord, requiring the subtenant to attorn to Landlord upon (a) an Event of Default by Tenant under this Lease, and (b) receipt by such subtenant of written notice of such Event of Default and instructions to make such subtenant's rental payments to Landlord.
- 19.1.2 On any termination of this Lease prior to the expiration of the Term, all of Tenant's interest as sublessor under any and all existing valid and enforceable Resident Leases for which Landlord has issued a non-disturbance agreement shall be deemed automatically assigned, transferred and conveyed to Landlord and subtenants under such Resident Leases shall be deemed to have attorned to Landlord. Landlord shall thereafter be bound on such Resident Leases to the same extent Tenant, as sublessor, was bound thereunder and Landlord shall have all the rights under such Resident Leases that Tenant, as sublessor, had under such Resident Leases; provided, however, that any amendments to any such Resident Lease made after the issuance of a non-disturbance agreement to a subtenant shall not be binding on Landlord.
- **19.1.3** Each Resident Lease shall expressly provide that it is subject to each and all of the covenants, conditions, restrictions and provisions of this Lease, including references to Landlord's inspection rights as set forth in Section 25.5.
- 19.2 Nondisturbance Agreements. Landlord shall execute nondisturbance agreements with any subtenant, which nondisturbance agreement shall provide that (a) so long as such subtenant has not defaulted under the terms of the Resident Lease, such subtenant's rights will not be terminated by Landlord on Landlord's exercise of Landlord's right to terminate this Lease for Tenant's breach, and (b) Landlord shall not be bound by prepayments of more than one month's rent or security deposits in excess of one month's rent under such nondisturbance agreement unless such excess prepayment and/or deposit has, in fact, been transferred to Landlord.

#### ARTICLE 20. PERFORMANCE OF TENANT'S COVENANTS.

# **20.1** Right of Performance.

- **20.1.1 Rights of Landlord**. If Tenant shall at any time fail to pay any Imposition or other charge in accordance with Article 4 hereof, within the time period therein permitted, or shall fail to pay for or maintain any of the insurance policies provided for in Article 9 hereof, within the time therein permitted, or to make any other payment or perform any other act on its part to be made or performed hereunder, within the time permitted by this Lease, then Landlord, after thirty (30) days' written notice to Tenant (or, in case of an emergency, on such notice, or without notice, as may be reasonable under the circumstances) and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to):
- (a) pay such Imposition or other charge payable by Tenant pursuant to the provisions of Article 4 hereof, or
- (b) pay for and maintain such insurance policies provided for in Article 9 hereof, or
- (c) make such other payment or perform such other act on Tenant's part to be made or performed as in this Lease provided.
- 20.2 Reimbursement and Damages. All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the rate provided in Section 4.6 from the respective dates of Landlord's making of each such payment or incurring of each such cost or expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including reasonable attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Improvements, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid.

# ARTICLE 21. EVENTS OF DEFAULT; REMEDIES.

- **21.1 Events of Default**. Any one or all of the following events shall constitute an "Event of Default" hereunder:
- **21.1.1** If Tenant shall default in the payment of any Rent or Additional Rent when and as the same become due and payable and such default shall continue for more than ten (10) days after Landlord shall have given written notice thereof to Tenant; or
- **21.1.2** The abandonment or vacation of the Property by Tenant for a period of thirty (30) days or more; or
- **21.1.3** The entry of any decree or order for relief by any court with respect to Tenant, or any assignee or transferee of Tenant (hereinafter "Assignee"), in any involuntary case

under the Federal Bankruptcy Code or any other applicable federal or state law; or the appointment of or taking possession by any receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any Assignee, or of any substantial part of the property of Tenant or such Assignee, or the ordering or winding up or liquidating of the affairs of Tenant or any Assignee and the continuance of such decree or order unstayed and in effect for a period of ninety (90) days or more (whether or not consecutive); or the commencement by Tenant or any such Assignee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law or consent by Tenant or any such Assignee to the entry of any order for relief in an involuntary case under any such law, or consent by Tenant or any such Assignee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any such Assignee, or of any substantial property of any of the foregoing, or the making by Tenant or any such Assignee of any general assignment for the benefit of creditors; or Tenant or any such Assignee takes any other voluntary action related to the business of Tenant or any such Assignee or the winding up of the affairs of any of the foregoing.

21.1.4 If Tenant shall default in the performance of or compliance with any other term, covenant or condition of this Lease (other than as set forth in Sections 21.1.1 and 21.1.2) and such default shall continue for more than thirty (30) days after Landlord shall have given written notice thereof to Tenant, provided, however, if cure of such default reasonably requires more than thirty (30) days, then, provided that Tenant commences to cure within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure to completion (within no more than one hundred eighty (180) days following Landlord's written notice to Tenant), Tenant shall not be in default during the cure period.

# 21.2 Termination By Landlord in Event of Default.

- **21.2.1** If an Event of Default shall occur and continue as aforesaid, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and bring suit against Tenant and recover as an award in such suit the following:
- (a) the worth at the time of award of the unpaid Rent and all other sums due hereunder which had been earned at the time of termination:
- (b) the worth at the time of award of the amount by which the unpaid Rent and all other sums due hereunder which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided:
- (c) the worth at the time of award of the amount by which the unpaid Rent and all other sums due hereunder for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;
- (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things could be likely to result therefrom; and
- (e) such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

- **21.2.2** The "worth at the time of the award" of the amounts referred to in Sections 21.2.1(a) and 21.2.1(b) above shall be computed by allowing interest at the rate provided in Section 4.6 as of the date of the award. The "worth at the time of award" of the amount referred to in Section 21.2.1(c) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).
- 21.2.3 If an Event of Default occurs, Landlord shall also have the right, with or without terminating this Lease, but subject to any nondisturbance agreements entered into with subtenants, to reenter the Property and remove all persons and property from the Property; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.
- 21.2.4 If an Event of Default occurs, Landlord shall also have the right, with or without terminating this Lease, to relet the Property. If Landlord so elects to exercise its right to relet the Property but without terminating this Lease, then rentals received by Landlord from such reletting shall be applied: First, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; Second, to the payment of any cost of such reletting; Third, to the payment of the cost of any alterations and repairs to the Property; Fourth, to the payment of Rent due and unpaid hereunder; and Fifth, the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable hereunder. Should the amount of rental received from such reletting during any month which is applied to the payment of Rent hereunder be less than that agreed to be paid during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making alterations and repairs not covered by the rentals received from such reletting.
- **21.2.5** No reentry or taking possession of the Property by Landlord pursuant to Sections 21.2.3 or 21.2.4 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such default.

#### 21.3 Landlord's Additional Remedies.

21.3.1 Buy-Sell Option in Event of Default. If an Event of Default occurs, Landlord shall have the right (the "Buy-Sell Option") upon Notice to Tenant to require Tenant to assign Tenant's entire interest in the Property pursuant to this Lease to an unrelated third party entity (the "Buy-Sell Transferee"). The Buy-Sell Transferee shall be subject to approval by Landlord in accordance with Section 17.1.3 and shall provide all documentation and satisfy all criteria and qualifications set forth in Exhibit I. Tenant shall have ninety (90) days following delivery of Notice that Landlord is electing the Buy-Sell Option to market Tenant's interest in this Lease to a proposed Buy-Sell Transferee and to deliver all documentation required by Section 17.1.3 and Exhibit I to Landlord. Landlord shall have sixty (60) days to approve or reject the proposed Buy-Sell Transferee in writing, and if the proposed Buy-Sell Transferee is rejected, to provide written explanation for the rejection. Landlord's sixty (60) day review period does not commence until Landlord has received a complete submittal from Tenant. Tenant shall have forty-five (45) additional days to either (a) address all concerns stated in Landlord's explanation for the rejection of the proposed Buy-Sell

Transferee or (b) propose another Buy-Sell Transferee for Landlord's consideration, including a complete submittal to Landlord of all documentation required by Section 17.1.3 and Exhibit I. Landlord shall have sixty (60) days following Tenant's complete submittal to approve or reject (with written explanation) the proposed Buy-Sell Transferee in writing. Any assignment of the Lease pursuant to this Section shall be subject to Article 17, including the requirement for an assignment and assumption agreement in form and content satisfactory to Landlord pursuant to Section 17.1.4.

- **21.3.2 Specific Performance**. If an Event of Default occurs, Landlord shall, in addition to any other rights of Landlord under this Lease, have the right to pursue the remedy of specific performance to require Tenant to perform Tenant's obligations and comply with covenants of Tenant under this Lease.
- Receipt of Rent, No Waiver of Default. The receipt by Landlord of the rents or any other charges due to Landlord, with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. No acceptance by Landlord of a lesser sum than the rents or any other charges then due shall be deemed to be other than on account of the earliest installment of the rents or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent or charges due be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease. The receipt by Landlord of any rent or any other sum of money or any other consideration paid by Tenant after the termination of this Lease, or after giving by Landlord of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Lease, reinstate, continue, or extend the term of this Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Property or the Improvements, excepting only an agreement in writing signed by Landlord accepting or agreeing to accept such a surrender.
- **21.5 Effect on Indemnification**. Notwithstanding the foregoing, nothing contained in this Article 21 shall be construed to limit the Indemnitees' right to indemnification as otherwise provided in this Lease.

#### ARTICLE 22. PERMITTED CONTESTS.

Tenant, at no cost or expense to Landlord, may contest (after prior written notice to Landlord), by appropriate legal proceedings conducted with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien or any Governmental Requirements or Insurance Requirements, provided that (a) in the case of liens of mechanics, materialmen, suppliers or vendors, or Impositions or liens therefor, such proceedings shall suspend the collection thereof from Landlord, and shall suspend a foreclosure against the Property and/or the Improvements, or any interest therein, or any Rent, if any, (b) neither the Property nor the Improvements, nor any part thereof or interest therein, nor the Rent, if any, nor any portion thereof, would be in any danger of being sold, forfeited or lost by reason of such proceedings, (c) in the case of Governmental Requirements, Landlord would not be in any danger of any criminal liability or, unless Tenant shall have furnished a bond or other security therefor satisfactory to Landlord, any additional civil liability

for failure to comply therewith and the Property and the Improvements would not be subject to the imposition of any lien as a result of such failure, and (d) Tenant shall have furnished to Landlord, if requested, a bond or other security, satisfactory to Landlord. If Tenant shall fail to contest any such matters, or to give Landlord security as hereinabove provided, Landlord may, but shall not be obligated to, contest the matter or settle or compromise the same without inquiring into the validity or the reasonableness thereof. Landlord, at the sole cost and expense of Tenant, will cooperate with Tenant and execute any documents or pleadings legally required for any such contest.

#### ARTICLE 23. FORCE MAJEURE.

- **23.1 Delay of Performance**. Subject to Section 23.2 below, any prevention, delay, nonperformance or stoppage by Tenant or Landlord due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof (except that action or inaction of the Landlord, CI or CSU shall not excuse timely performance by Landlord), or civil or military authority; acts of God; acts or omissions of the other party or its agents or employees; fire, explosion or floods; strikes, walkouts or inability to obtain materials; war, terrorism, riots, sabotage or civil insurrection; or any other causes beyond the reasonable control of the party claiming the enforced delay.
- **23.2 Notice and Cure Requirements**. No prevention, delay, or stoppage of performance shall be excused unless:
- (a) The party claiming the enforced delay notifies the other party within thirty (30) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Article 23; and
- (b) The party claiming the enforced delay diligently proceeds within thirty (30) days of the conclusion of such prevention, delay or stoppage to cure the condition causing the prevention, delay or stoppage; and
- (c) The party claiming the enforced delay effects such cure within a reasonable time.

#### ARTICLE 24. LANDLORD'S RIGHTS RELATING TO TRANSFERS OF THE LEASE.

**24.1 Landlord's Right of First Offer**. Beginning upon the Commencement Date and continuing until the fortieth (40<sup>th</sup>) anniversary of the Commencement Date (the "ROFO Period"), Landlord shall have the Right of First Offer described in this Section 24.1. Tenant, on behalf of itself and all its successors in interest to the Property (referred to in this Section 24.1, et seq., collectively, as "Tenant"), hereby irrevocably grants to Landlord a right of first offer ("ROFO" or "Right of First Offer") to purchase Tenant's interest in the Property and the Project located thereon (all land, Improvements and intangibles, all of which are collectively referred to in this Section 24.1, et seq., as the "Property") from Tenant pursuant to the terms and conditions set forth below in this Section 24.1, et seq. Except as provided below in this Section 24.1, Tenant shall not, during the ROFO Period, enter into any Sale (defined below) without first complying with Landlord's ROFO.

# 24.1.1 Notice; Revised Notice.

- (a) In the event Tenant desires to enter into any Sale, Tenant shall so notify Landlord in writing (as used in this Section 24.1, the "Notice"), including a copy of the following terms and conditions of the proposed Sale: (i) the purchase price, (ii) the maximum length of time for the due diligence period, (iii) the minimum deposit, and (iv) the maximum escrow period. Landlord shall have a period of six (6) months from delivery of the Notice within which to advise Tenant, in writing, of Landlord's potential interest in acquiring the Property on the terms and conditions specified in the Notice. If Landlord rejects the acquisition of the Property on the terms and conditions specified in the Notice, or fails to respond, in writing, to the Notice within six (6) months, then Tenant shall be entitled to proceed with a Sale, subject to the terms of subdivision (c) of this Section 24.1.1.
- (b) If Landlord advises Tenant, in writing, that Landlord is potentially interested in acquiring the Property on the terms and conditions specified in the Notice, then Landlord shall have an additional period of sixty (60) days from the expiration of the 6-month period referenced above within which to negotiate and execute a letter of intent to purchase the Property consistent with the Notice ("Letter of Intent"). The parties intend that the Letter of Intent will include sufficient terms and conditions to enable the Landlord Executive Director to enter into a PSA as described in Section 24.1.2 below. If the parties are unable to reach agreement on a Letter of Intent within such additional 60-day period provided in this subdivision (b), Tenant shall be entitled to proceed with a Sale based on the terms set forth in the Notice, subject to the terms of subdivision (c) of this Section 24.1.1.
- (c) If (i) Tenant has not closed escrow for the Sale within twelve (12) months from the date of the earliest to occur of (A) Landlord's rejection of the acquisition of the Property or (B) thirty (30) days following the Notice if Landlord fails to respond to the Notice or (C) sixty (60) days following the Notice if Landlord responds to the Notice stating Landlord's potential interest in acquiring the Property but the parties fail to execute a Letter of Intent within such time period, or (ii) Tenant wishes to enter into a Sale for a price less than ninety-five percent (95%) of the sales price specified in the Notice, or on terms and conditions materially more favorable to a buyer than those specified in such Notice, Tenant shall be required to notify Landlord in writing, specifying such modified terms ("Revised Notice") and Landlord shall have the opportunity to respond to the Revised Notice in accordance with the process outlined above in this Section 24.1.1.
- (d) At any time after Landlord has rejected acquisition of the Property or failed to timely respond, in writing, to a Notice or Revised Notice, Landlord will confirm its rejection of the terms of the Notice or Revised Notice, as applicable, in writing to the Tenant upon request by the Tenant; provided, Landlord's written confirmation to Tenant pursuant to this Sentence shall not waive Landlord's right to respond to a Revised Notice as provided above.
- 24.1.2 Escrow and Completion of Sale. If Landlord has timely elected to exercise the ROFO pursuant to the process set forth in Section 24.1.1, the Parties shall endeavor to negotiate the terms of a purchase and sale agreement (a "PSA") on the terms and conditions specified in the Notice or Revised Notice (as applicable). Upon execution of the PSA, the Parties shall promptly open an escrow with the Escrow Holder and shall provide the Escrow Holder with a copy of the PSA, and the Parties shall endeavor to close the escrow in accordance with the terms of the PSA. The PSA shall require, in addition to other customary provisions including, without limitation, the provisions set forth below in this Section 24.1.2, that Landlord deliver funds into the escrow sufficient for payment of the purchase price not later than one (1) business day prior to the anticipated close of escrow date. The obligation of Landlord to close escrow shall be subject to Landlord's reasonable

approval during the due diligence period set forth in the PSA of a then-current preliminary title report and, at the option of Landlord, inspections, studies, tests and investigations of the physical and environmental condition of the Property and other site testing. The PSA shall provide for distribution of closing, escrow and title costs equally between the Landlord and Tenant, unless otherwise specifically stated in the Notice or Revised Notice. If the Parties are unable to reasonably agree to the terms of a PSA within sixty (60) days following the date the Letter of Intent is executed by the Landlord and the Tenant, then Tenant shall be entitled to proceed with a Sale, subject to the terms of subdivision (c) of Section 24.1.1.

**24.1.3** Termination of Landlord's Right of First Offer. Notwithstanding the foregoing or anything in this Agreement to the contrary, Landlord's Right of First Offer shall continue in full force and effect throughout the ROFO Period and shall apply to each Sale contemplated by any Tenant under this Lease during the ROFO Period. Upon the expiration of the ROFO Period, Landlord shall execute a termination or quitclaim document reasonably requested by Tenant and/or a reputable title company to remove Landlord's Right of First Offer as a cloud on title as to the Property.

#### 24.1.4 Definitions.

- (a) For purposes of this Agreement, "Sale" means each of the following, unless excluded below: (a) any sale or transfer of legal title to the fee simple interest in all or any portion of the Property; or (b) any sale or transfer of direct or indirect ownership interests in Tenant that, taken alone or together with prior transfers of direct or indirect ownership interests in Tenant, effects a change in Control (as defined below) of Tenant, or (c) marketing or offering the Property for Sale. "Sale" excludes any Transfer permitted pursuant to Section 17.1.1.
- (b) As used herein, "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.
- **24.1.5 Purchase Price Offset**. Notwithstanding anything to the contrary set forth in this Agreement, the purchase price to be paid by Landlord for the Property pursuant to the ROFO shall be offset by all amounts, if any, that remain due and owing from Tenant to Landlord under the Lease, if any, including for example unpaid Rent.
- **24.1.6 Assignment of Right of First Offer**. Landlord may assign the ROFO to CI or CSU without obtaining Tenant's approval or consent to such assignment. No other assignment of the ROFO shall be permitted without Tenant's prior written approval or consent.
- **24.2 Landlord's Right of First Refusal**. Commencing upon the expiration of the ROFO Period and continuing through the remaining Term of this Lease (the "ROFR Period"), Landlord shall have the Right of First Refusal described in this Section 24.2. Tenant, on behalf of itself and all its successors in interest (referred to in this Section 24.2, et seq., collectively, as "Tenant"), hereby irrevocably grants to Landlord a right of first refusal ("Right of First Refusal" or "ROFR") to purchase Tenant's interest in the Property and the Project located thereon (all land, Improvements and intangibles, all of which are collectively referred to in this Section 24.2, et seq., as the "Property") from Tenant pursuant to the terms and conditions set forth below in this Section 24.2, et seq.

24.2.1 Exercise of Right of First Refusal. Throughout the entire ROFR Period, Landlord shall have the right, but not the obligation, to purchase the Property on terms consistent with the terms under which the Property (or any portion thereof) are offered for Sale by Tenant. The Right of First Refusal shall be exercisable as follows: (i) Tenant shall not, at any time during the ROFR Period, make any Transfer (as defined in Section 17.1) which is subject to this Agreement (other than a Transfer permitted pursuant to Section 17.1.1), without first giving written notice thereof to Landlord, which notice is referred to in this Section 24.2 as a "Notice of Transfer"; (ii) the Notice of Transfer shall include the exact and complete terms of the proposed Transfer (which may be in the form of a letter of intent with the agreed-upon business terms) including terms for transfer of assets or stock of the business operated thereon, if applicable, and shall have attached thereto a photocopy of bona fide offer and counteroffer, if any, duly executed by both Tenant and the prospective transferee; (iii) for a period of sixty (60) days after receipt by Landlord of the Notice of Transfer, Landlord shall have the right to give written notice to Tenant of Landlord's exercise of Landlord's right to purchase the interest proposed to be sold or otherwise transferred on the same terms, price and conditions as set forth in the Notice of Transfer. In the event Tenant does not receive written notice of Landlord's exercise of the Right of First Refusal herein granted within said sixty (60) day period, there shall be a conclusive presumption that Landlord has elected not to exercise the Right of First Refusal hereunder, and Tenant may transfer the interest proposed to be transferred on the same terms set forth in the Notice of Transfer (subject to Minor Modifications, as defined below); (iv) in the event Landlord declines to exercise its Right of First Refusal after receipt of the Notice of Transfer and thereafter, (A) Tenant and the prospective transferee purchaser (1) modify by more than five percent (5%): (a) the sales price, (b) the amount of down payment, (c) the interest charged, or (2) otherwise materially modify the terms of the prospective transfer; or (B) in the event the Sale is not consummated within thirty (30) days after the time period set forth in the Notice of Transfer, then Landlord's Right of First Refusal shall reapply to said transaction as of the occurrence of any of the aforementioned events (any modifications that do not satisfy the criteria of the events described in this subdivision (iv) may be referred to herein as "Minor Modifications"); and (v) the failure by Landlord to exercise its Right of First Refusal as to one Transfer shall not eliminate, modify, or reduce Landlord's Right of First Refusal in the event of future Transfers that may be proposed during the Right of First Refusal Period. If Landlord exercises its Right of First Refusal but then fails to purchase the Property in accordance with the terms set forth in the Notice of Transfer, Tenant may enter into an agreement to transfer the interest on substantially the same terms set forth in the original Notice of Transfer (subject to Minor Modifications), and Landlord shall not have a Right of First Refusal with respect to such agreement. If the Right of First Refusal has not been exercised during the Right of First Refusal Period, it shall automatically expire at the end of said term. Upon such expiration, Landlord will, upon receipt of request therefor by Tenant, provide written confirmation in recordable form that such Right of First Refusal no longer remains in effect. At any time Landlord has waived or elected not to exercise its Right of First Refusal, Landlord will, upon receipt of request therefor by Tenant, provide written confirmation in recordable form of such waiver or election. Notwithstanding anything to the contrary set forth in this Section 24.2, et seq., the purchase price to be paid by Landlord for the Property pursuant to Landlord's Right of First Refusal shall be offset by all amounts, if any, that remain due and owing from Tenant to Landlord under the Lease, if any, including for example unpaid Rent.

**24.2.2 Title Report**. Within five (5) business days after delivery of the Notice of Transfer to Landlord, Tenant shall provide Landlord with a current preliminary title report covering the property that is subject to the proposed Transfer.

**24.2.3** Escrow and Completion of Sale. Within five (5) days after Landlord has exercised the Right of First Refusal, or as soon thereafter as reasonably practicable, Tenant and Landlord shall enter into a purchase agreement upon the terms and conditions set forth in the Notice of Transfer and an escrow shall be opened with an escrow company mutually acceptable to Landlord and Tenant for the conveyance of the Property to Landlord. Landlord shall deliver funds sufficient for payment of the purchase price into such escrow not later than one (1) business day prior to the anticipated close of escrow date. The obligation of Landlord to close escrow shall be subject to Landlord's approval during the applicable due diligence period of a then-current preliminary title report and, at the option of Landlord, inspections, studies, tests, and investigations of the physical and environmental condition of the Property and other site testing. Any exceptions shown on such preliminary title report created on or after Tenant's acquisition of the Property and timely objected to by Landlord and approved by Tenant to be removed shall be removed by Tenant at its sole expense prior to the close of escrow unless such exception(s) is (are) accepted by Landlord in its reasonable discretion; provided, however, that Landlord shall accept the following exceptions to title: (i) current taxes not yet delinquent, (ii) matters affecting title existing on the date of Tenant's acquisition of the Property, and (iii) liens and encumbrances in favor of Landlord or previously approved by Landlord. Unless otherwise provided in the Notice of Transfer, Landlord shall pay all of the escrow fees, documentary transfer taxes, recording fees, the cost of any owner's policy of title insurance desired by Landlord, and any other costs and expenses of the escrow. Landlord shall have the amount of time set forth in the Notice of Transfer after exercise of the Right of First Refusal to enter upon the Property to conduct any tests, inspections, investigations, or studies of the condition of the Property. Tenant shall permit Landlord to access the Property for such purposes. Landlord shall indemnify, defend, and hold harmless Tenant and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims, liabilities, or damages, including expert witness fees and reasonable attorney's fees and costs, caused by activities of the Landlord with respect to or arising out of such testing, inspection, or investigatory activity on the Property. Escrow shall close promptly after the earlier of the expiration of such due diligence period or acceptance by Landlord of the condition of title and the physical and environmental condition of the Property.

**24.2.4** Termination of Landlord's Right of First Refusal. Notwithstanding the foregoing or anything in this Agreement to the contrary, Landlord's Right of First Refusal shall continue in full force and effect throughout the ROFR Period and shall apply to each Sale contemplated by any Tenant under this Lease during the ROFR Period.

**24.2.5 Assignment of Right of First Refusal**. Landlord may assign the Right of First Refusal to CI or CSU without obtaining Tenant's approval or consent to such assignment.

#### ARTICLE 25. GENERAL PROVISIONS.

25.1 Notices. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Lease must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) by facsimile transmission or (iv) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice. Service shall be deemed conclusively made at the time of service if personally served; upon confirmation of receipt if sent by facsimile transmission; the next business day if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the party served; the next business day after deposit in the United States mail, properly

addressed and postage prepaid, return receipt requested, if served by express mail; and three (3) days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

# **25.1.1** Any notice to Landlord shall be given to:

University Glen Corporation Attn: Senior Director 45 Rincon Drive, Suite 104-A Camarillo, CA 93010

# With Copies To:

California State University, Channel Islands Attn: Ysabel Trinidad, Vice President for Business and Financial
Affairs
One University Drive
Camarillo, CA 93010
California State University Office of the Chancellor c/o
Long Beach, California
Attention:
Fax No.:
Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr., Special Counsel to Landlord
Fax No.: (949) 823-5140
otice to Tenant shall be given to:
[Private Partner]
, California
Attention:
Fax No.:
o <b>:</b>
, California
Attention:
Fax No.:

Any party may, by virtue of written Notice in compliance with this Section 25.1, alter or change the address or the identity of the person to whom any notice, or copy thereof, is to be sent.

- 25.2 No Merger of Title. There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate in the Property or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly: (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate, and (b) any other estate in the Property and the Improvements or any part thereof or any interest in such estate, and no such merger shall occur unless and until all persons, corporations, firms and other entities, including any leasehold Mortgagee or leasehold Mortgagees, having any interest (including a security interest) in (i) this Lease or the leasehold estate created by this Lease, and (ii) any other estate in the Property or the Improvements or any part thereof shall join in a written instrument effecting such merger and shall duly record the same.
- **25.3 Quiet Enjoyment**. Tenant, upon paying the Rent and other charges herein provided for and upon performing and complying with all covenants, agreements, terms and conditions of this Lease to be performed or complied with by it, shall lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation by Landlord, or any person or persons claiming through Landlord.
- **25.4 No Claims Against Landlord.** Nothing contained in this Lease shall constitute any consent or request by Landlord, express or implied, for the performance of any labor or services or the furnishing of any materials or other property with respect to the Property or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord or its interest in the Property in respect thereof.
- 25.5 Inspections. Landlord and its authorized representatives may enter the Property or any part thereof at all reasonable times for the purpose of inspecting, servicing or posting notices, protecting the Property or the Improvements, or for any other lawful purposes. Notwithstanding the immediately preceding sentence, except in the event of an emergency, Landlord may only enter the Units after giving Tenant forty-eight (48) hours' prior written notice. Tenant shall include in each Resident Lease notice of Landlord's right to inspect the interior and exterior of each Unit pursuant to this Lease, including without limitation Sections 7.6, 8.9.3, 10.4 and 24, and each Resident Lease shall require the tenant household to provide Landlord with access to the Unit upon 48 hours' prior notice.
- **25.6** No Waiver by Landlord. To the extent permitted by applicable law, no failure by Landlord to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a default under this Lease, and no acceptance of rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. No waiver of any default shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Landlord with respect to any other then existing or subsequent default.
- **25.7 Holding Over**. In the event Tenant shall hold over or remain in possession of the Property or the Improvements with the consent of Landlord after the expiration of the Term, such holding over or continued possession shall create a tenancy for month to month only, upon the same terms and conditions as are herein set forth so far as the same are applicable.
- **25.8 No Partnership**. Anything contained herein to the contrary notwithstanding, Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or member of a joint enterprise with Tenant hereunder.

- **25.9 Remedies Cumulative**. The various rights, options, elections and remedies of Landlord and Tenant, respectively, contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.
- **25.10** [Attorneys' Fees. In the event of a dispute between the parties arising out of or in connection with this Lease, whether or not such dispute results in litigation, the prevailing party (whether resulting from settlement before or after litigation is commenced) shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit incurred by the prevailing party.]
- **25.11 Time Is of the Essence**. Time is of the essence of this Lease and all of the terms, provisions, covenants and conditions hereof.
- **25.12 Construction of Lease**. This Lease shall be construed in accordance with the substantive laws of the State of California, without regard to the choice of law rules thereof. The rule of construction that a document be construed strictly against its drafter shall have no application to this Lease. Whenever the singular number is used in this Lease and required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.
- **25.13 Severability**. If one or more of the provisions of this Lease shall be held to be illegal or otherwise void or invalid, the remainder of this Lease shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted under applicable laws and regulations.
- **25.14 Entire Agreement; Modification**. This Lease and the Exhibits attached hereto, each of which is incorporated by this reference, contain the entire agreement of the parties with respect to the matters discussed herein. This Lease may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.
- 25.15 Binding Effect and Benefits. This Lease shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns. Except as otherwise set forth herein, nothing in this Lease, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Lease.
- **25.16 Further Assurances**. Each party hereto will promptly execute and deliver without further consideration such additional agreement, assignments, endorsements and other documents as the other party hereto may reasonably request to carry out the purposes of this Lease.
- **25.17** Counterparts. This Lease may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease.

[Signatures to Ground Sublease (East Campus 328 Apartments) appear on following pages]

IN WITNESS WHEREOF, the undersigned have executed this Lease as of the date first above written.

"TENAN	NT"	
[PRIVA	TE PARTNER, a	]
Ву: _		
Its:		
Name: _		
Ву: _		
Its:		
Name:		

[Signatures to Ground Sublease (East Campus 328 Apartments) continue on following page]

# [Signatures to Ground Sublease (East Campus 328 Apartments) continue from previous page]

"LANDLORD"

	CALIFORNIA STATE UNIVERSITY, CHANNEL ISLANDS SITE AUTHORITY, a public body, corporate and politic
	By:Chairperson of the Board, Jim Considine
APPROVED AS TO FORM:	
CALIFORNIA STATE UNIVERSI	TY GENERAL COUNSEL
Christopher Fowler,	<u> </u>
University Counsel and Counsel to Sin	te Authority
APPROVED AS TO FORM:	
Stradling Yocca Carlson & Rauth	
Special Counsel to Landlord	

# **EXHIBIT A**

# LEGAL DESCRIPTION OF THE PROPERTY

Real property in the County of Ventura, State of California, described as follows: [To be inserted]

EXHIBIT A TO GROUND SUBLEASE LEGAL DESCRIPTION OF THE PROPERTY

# **EXHIBIT B**

# **SITE MAP**



#### **EXHIBIT C**

# CERTIFICATE OF CONTINUING COMPLIANCE

1. He/she has read and is thoroughly familiar with the provisions of the <b>Ground Sublease</b> ( <b>East Campus 328 Apartments</b> ) ("Lease") by and between the <b>California State University</b> , <b>Channel Islands Site Authority</b> ("Landlord") and [Private Partner, a], to which this certification is an attachment. As of the date of this certification, the Owner/Operator is in compliance with all material terms of the Lease.					
2. As of the date of this certification, each Unit at the Property (i) is currently occupied by tenants qualified by Owner/Operator pursuant to the Priority System (as such terms are defined in the Lease) and the credit and other qualification restrictions set forth in the Lease; or (ii) is currently vacant and being held available for occupancy by such tenants in accordance with the Lease and has been so held continuously since the date the previous qualifying tenant vacated such Unit, as indicated: [describe number of vacant Units and length of time each such Unit has remained vacant].					
3. As of the date of this certification, the Units at the Property (excluding vacant Units) rented to the tenants who initially qualified under the following Priority System Categories:					
Priority System Category Number of Units					
1					
2					
3					
4					
5					
6					
7					
4. The unit size, the rental amount charged and collected by Owner/Operator, and the					

4. The unit size, the rental amount charged and collected by Owner/Operator, and the number of occupants of each Unit at the Property as of the date of this certification is set forth below: [Add attachment if needed]

5. The number and duration of vacant Units, number of new leases and number of visits per month by prospective resident households during the prior fiscal year is set forth below: [Add attachment if needed]

EXHIBIT C TO GROUND SUBLEASE CERTIFICATE OF CONTINUING COMPLIANCE

significant (above a threshold of \$) m Owner/Operator during the prior fiscal year. Of Five-Year Capital Improvement Plan approved shall certify below that the Owner/Operator I	a summary of the capital improvements, repairs and naintenance activities performed at the Property by Owner/Operator shall specify any deviations from the d by Landlord, if any, below or in the attachment, or has complied in full with and completed all capital plated in the Five-Year Capital Improvement Plan and rd for the prior fiscal year.		
and completed all capital rep contemplated in the Five-Year (	not (circle one) complied in full with placements, repairs, and maintenance Capital Improvement Plan and Annual Landlord for the prior fiscal year.		
Owner/Operator Initials			
Landlord to determine compliance with the Lea	e with the knowledge that it will be relied upon by ase. Owner/Operator warrants that all information set mplete and based upon information Owner/Operator on as Owner/Operator deemed necessary.		
misrepresentation or misstatement in this affida	vner/Operator has been advised that the making of any avit will constitute a material breach of the Lease with and pursue all applicable legal and equitable remedies		
	ler penalty of perjury that the foregoing statements are xecuted on, 20 at,		
"Owner/Operator"			
[PRIVA	<b>TE PARTNER,</b> a]		
By:			
Its: _			
Name: _			
By:			
Its: _			
Name: _			

# EXHIBIT C TO GROUND SUBLEASE CERTIFICATE OF CONTINUING COMPLIANCE

# **EXHIBIT D**

# MEMORANDUM OF GROUND SUBLEASE

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	
California State University, Channel Islands Site Authority	
County of Ventura, California Attention:	
	This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.
	GROUND SUBLEASE 328 Apartments)
This MEMORANDUM OF GROUND ("Memorandum") is executed as of STATE UNIVERSITY, CHANNEL ISLANDS and politic ("Landlord"), and [PRIVATE PARTN	S SITE AUTHORITY, a public body, corporate
RECI	TALS
A. Landlord and Tenant have entered 328 Apartments) ("Lease") dated concurrently her ground subleasehold interest in that certain parc Attachment No. 1 attached hereto and incorporate Tenant has agreed to operate, manage and main complex thereon. In no event shall Landlord's grouse entitlements for the Project be subordinated to financing.	el of real property, which is legally described in ed herein by reference ("Property") to Tenant and ntain a first-quality, multifamily rental apartmen ound leasehold interest in the Property or any land
B. Copies of the Lease are availab, California.	le for public inspection at Landlord's office a
C. [The Rent payable under the Lease Section 4.1.1 of the Lease, the Annual Rent pay Additional Rent provided for in Section 4.1.3 of the	•

EXHIBIT D TO GROUND SUBLEASE
MEMORANDUM OF GROUND SUBLEASE (East Campus 328 Apartments)

and recorded in the Official Records of Ventura County, California.

The Lease provides that a short form memorandum of the Lease shall be executed

# **NOW, THEREFORE,** the parties hereto certify as follows:

Pursuant to the Lease, Landlord has conveyed a leasehold interest in the Property to Tenant for a term commencing on the Commencement Date and ending on June 30, 2098 unless earlier terminated or extended as provided by the Lease. The Lease further provides Landlord with a Right of First Offer and Right of First Refusal regarding assignments of the Lease, as more particularly specified in the Lease.

This Memorandum is not a complete summary of the Lease, and shall not be used to interpret the provisions of the Lease.

[Signatures to Memorandum of Ground Sublease appear on the following pages]

# "LANDLORD"

# CALIFORNIA STATE UNIVERSITY, CHANNEL ISLANDS SITE AUTHORITY,

a public body, corporate and politic

	By:Chairperson of the Board, Jim Considine
ADDROVED AGEO FORM	Champerson of the Board, Jim Considine
APPROVED AS TO FORM:	
CALIFORNIA STATE UNIVERSIT	Y GENERAL COUNSEL
Christopher Fowler,	
University Counsel and Counsel to Site	e Authority
APPROVED AS TO FORM:	
Stradling Yocca Carlson & Rauth	<del></del>
Special Counsel to Landlord	

[Signatures to Memorandum of Ground Sublease continue on following page]

# [Signatures to Memorandum of Ground Sublease continue from previous page]

"TENANT"		
[PRIVATE ]	PARTNER, a	
Ву:		
Its:		
Name:		
By:		
Its:		
Name:		

# ATTACHMENT NO. 1 TO EXHIBIT D

# LEGAL DESCRIPTION OF THE PROPERTY

Real property in the County of Ventura, State of California, described as follows:

[To be inserted]

ATTACHMENT NO. 1 TO EXHIBIT D LEGAL DESCRIPTION

#### **EXHIBIT E**

#### SCOPE OF COMMON AREA IMPROVEMENTS

Water distribution system up to water meter (including backflow preventer maintenance and testing). Maintain domestic and recycled water lines to building water meters repair any leaking or damaged portions of piping. Exercising of street valves and fire hydrants on monthly and yearly PM schedule. Annual testing and certification of backflow preventers.

**Sidewalk and walkway, pathway repair**. Eliminate trip hazards and repair concrete sidewalks. Fill any cracks that are more than <sup>1</sup>/<sub>4</sub>" wide or elevated that creates trip hazard. Grind or cut out and replace portions. Repair Decomposed granite walkways and borders. Repair play park area and keep concrete basketball court free of hazards. Re-coat basketball court approx. every 5 years.

**Asphalt street repair**. Maintain streets to acceptable levels between slurry sealing. Filling crack and grinding raised portions as they appear.

Sanitary Sewer and Storm Drain maintenance and inspection. Maintain storm water and street drains for proper clearance for water flow. Remove any tree root intrusions and any other similar maintenance repairs to clear blockages and annual cleaning for Sanitary Sewer System.

**V** ditch clearing and maintenance. Keep free of debris and repair of concrete swale, repair block work on hillsides to keep swale clear of hillside debris flow.

**Slurry seal streets**. Slurry seal perimeter streets, approx. every 5 years, will have to rotate streets due to funding and traffic requirements. Channel Islands Dr. is in need of sealing now.

**Re-striping streets**. Re-striping stop limit lines, sidewalks, or directional arrows as needed based on usage, roughly every 3 to 4 years.

Annual hydro jetting of storm drain system.

**Street Lights (Pole and Fixture Maintenance and Repairs)**. Provide regular weekly surveys for lights out and or damages and make necessary repairs.

**Planting, irrigation and maintenance of common area landscaping.** Includes annual fertilization, replanting as needed, tree and bush trimming, lawn mowing and irrigation at least three times per week, unless limited by any Governmental Requirements.

[Maintenance of signage, including directory boards.]

# **EXHIBIT F**

# MARKETING AND TENANT SELECTION

[To come from Private Partner prior to finalizing Sublease]

EXHIBIT F TO GROUND SUBLEASE MARKETING AND TENANT SELECTION PLAN

Page 1 of 1

# **EXHIBIT G**

# PROPERTY MANAGEMENT PLAN

[To come from Private Partner prior to finalizing Sublease]

# EXHIBIT H FORM OF SOLAR FACILITIES EASEMENT

[To come]

#### **EXHIBIT I**

# TRANSFEREE CRITERIA AND QUALIFICATIONS

Proposed Transferees shall provide the following information to Landlord and shall satisfy all of the criteria described below:

- I. Minimum Requirements for Proposed Transferee. The Proposed Transferee shall designate the proposed entity that will serve as the Property owner and the proposed entity that will serve as the operator of the Project. The proposed owner and operator shall each demonstrate experience owning and operating multifamily housing projects of similar type within the last ten (10) years. The owner and operator do not have to be the same entity, but the team must demonstrate experience both owning and operating multifamily housing projects.
  - A. The proposed Owner must demonstrate specific experience with:
- 1. At least five (5) projects where the owner was primarily responsible for the acquisition and financing of Class-A multifamily apartment projects;
- 2. At least two (3) of the five (5) projects listed in Section I.A.1 above, the multifamily housing units must be in excess of 150 units.
- 3. At least two (2) of the five (5) projects listed in Section I.A.1 above, the total project value must be in excess of \$20 million
  - B. The proposed Operator/Manager must demonstrate specific experience with:
- 1. At least five (5) projects where the operator was primarily responsible for the management and operation of a Class A multifamily housing apartment project.
- 2. At least three (3) of the five (5) projects listed in Section I.B.1. above, the multifamily housing units must be in excess of 150 units.
  - 3. Managing multifamily housing with rent restriction or priority systems.

# II. Project Related Experience

The Proposed Transferee must demonstrate experience in the past ten (10) years specifically related to projects and properties similar to the Project. Project related examples shall include the award date and completion date for each project. For each listing include the name(s) and telephone number(s) of the referenced project's project manager. Proposed Transferees must provide at least three examples in which the Proposed Transferee is the owner of Class A multifamily housing with 150 or more units. Two of the examples described in the prior two sentences shall be of projects with values in excess of \$20 million. In addition, the Proposed Transferee must provide at least three examples in which the Proposed Transferee is the operator of Class A multifamily housing with 150 or more units. Examples where team members have collaborated on the same project are encouraged.

# **III.** Project Personnel

In its submittal to Landlord, the Proposed Transferee shall identify the contact person with primary responsibility for the Project, the personnel proposed to work on the Project, and Joint Venture partners and consultant key personnel. The persons listed will be considered committed to the Project with no substitutions without prior agreement by the Landlord. The Proposed Transferee shall submit a resume or bio for each professional and technical person assigned to the Project, including partners and consultants. At a minimum the key personnel shall include:

- 1. Project Executive with at least ten (10) years of experience as a project executive and having worked on a minimum of two (2) Class A apartment projects, with at least 150 units, in the past ten (10) years. The Project Executive shall be an individual with the authority to make binding decisions on behalf of the team through the deal structuring, financing, closing and post-closing. At least one project shall be a project listed in the respondent's list of qualifying project examples.
- 2. Project/Asset Manager with at least ten (10)] years of experience as a project/asset manager and having worked on a minimum of two (2) Class A apartment projects, with at least 150 multifamily housing units, in the past ten (10) years. The Project/Asset Manager shall be an individual with authority to make decisions on behalf of the team through the deal structuring, financing, closing and post-closing. At least one project shall be a project listed in the respondent's list of qualifying project examples.
- 3. Regional/District Property Manager with at least five (5) years of experience managing multifamily housing and having worked on a minimum of two (2) Class A apartment projects, with at least 150 multifamily housing units, in the past five (5) years. At least one project shall be a project listed in the respondent's list of qualifying project examples.
- 4. Other Key Personnel of the respondent team not listed above that are listed in the organization chart at an equal or higher level than those Key Personnel listed above.

# IV. Organization Chart

The Proposed Transferee shall submit an organization chart containing the names of all key personnel, Joint Venture partners and consultants with titles and their specific task assigned for this project.

The Proposed Transferee shall submit true, correct and complete copies of the governing documents for each entity forming a part of the Proposed Transferee entity, such as limited partnership agreements, operating agreements, articles of incorporation, by-laws, etc., and (prior to execution of the required assignment and assumption agreement relating to the transfer of the Tenant's interest in the Lease to the Proposed Transferee), resolutions or other documentation evidencing the authority of the individual(s) signing such assignment and assumption agreement.

# V. Team References

For each team member included as part of the Project Personnel above, the Proposed Transferee shall provide at least three professional references (e.g., lenders, investors, major

accounts), with full names, relationships to the team member, address, telephone number and e-mail address.

# VI. Financial Information

The Proposed Transferee shall provide the financial information for the team including the prime, any joint venture partners, and letters of interest or commitment from potential lenders. If requested by Landlord, the Proposed Transferee shall provide the required financial information in the format requested by Landlord. Required information includes:

- a. Most current unaudited financial statement on a year to date ("YTD") basis including balance sheet, income statement and cash flow statements;
- b. Last three (3) years of audit financial statement prepared by an independent certified public accounting firm which includes a balance sheet, income statement, cash flow statement and associated notes to the financial statements. If audited financial statements are not available then the respondent shall include the last three (3) years of tax returns submitted to the IRS. Respondent may be asked clarifying questions regarding the financial statements or tax returns. If a respondent is a sole proprietor or a wholly owned corporation owned by a single individual, and the team will rely on the financial assets of the sole proprietor or single owner of the corporation, then the individual's tax returns and financial information must also be disclosed;
- c. Listing of projects financed in the last ten (10) years. The listing shall include the total project cost, amount of equity placed, the source of the equity, the amount financed, and the source of the financing. The listing of projects should include any projects identified under section II. Project Related Experience, above, but in not limited to those projects described under section II. Project Related Experience; and
  - d. Any letters of interest or commitment letters from potential lenders or equity partners.

# VII. Litigation and Bankruptcy History

Any Proposed Transferee shall disclose any litigation and/or bankruptcy information that may be relevant to the Proposed Transferee's ability to satisfy the obligations of the Tenant under the Lease or otherwise materially impact the financial condition of the Proposed Transferee. Property Transferee shall answer the following question. During the past 10 years, has the any member of the team, or joint venture partner, including their parent corporation or subsidiary or affiliated corporation as well as any of the development team's officers, principal members, shareholders or investors been adjudged bankrupt, either voluntary or involuntary, or have been involved in litigation relating to a development project either voluntary or involuntary.