

**GROUND LEASE AGREEMENT  
(Arrowhead Grove)**

THIS GROUND LEASE AGREEMENT ("Lease"), dated for reference purposes as of August \_\_, 2019, is entered by and between the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body, corporate and politic ("Lessor"), and WATERMAN GARDENS PARTNERS 2, L.P., a California limited partnership ("Lessee").

**RECITALS**

A. Lessor owns that certain real property bounded by Baseline Street to the North and Crestview Avenue to the East, located in San Bernardino, California, more specifically described on Exhibit A attached hereto (the "Property").

B. The Property is comprised of two parcels, one shown as Parcel B on the Lot Line Adjustment and one shown as Parcel A on the Lot Line Adjustment, and is part of the larger redevelopment of the former Waterman Gardens public housing development (the "Redevelopment").

C. Lessor desires to lease the Property to Lessee for a period of ninety (90) years pursuant to the terms of this Lease.

D. The Property is improved with an existing school building (the "Existing Improvements"). Concurrently with the execution of this Lease, Lessor intends to transfer ownership of the Existing Improvements located on the Property to Lessee in connection with the conveyance of the leasehold interest as set forth in this Lease. Lessee intends to demolish the Existing Improvements and construct a one hundred eighty-four (184) unit development on Parcel B of the Property. For purposes ancillary to Parcel B, and otherwise to benefit the public and residents of the Redevelopment, Lessee has agreed to construct certain parking and public open space improvements on Parcel A of the Property.

E. Lessor was selected to participate in the Rental Assistance Demonstration program (the "RAD Program") authorized under the Consolidated and Further Continuing Appropriations Act of 2012, as further described in Notice PIH-2012-32 (HA), REV-1 issued July 2, 2013, and as further revised in Notice PIH-2012-32 (HA), REV-2, issued on June 15, 2015 and as further revised in Notice PIH-2012-32 (HA), H-2017-03, REV-3 issued on January 12, 2017, and administered by the United States Department of Housing and Urban Development ("HUD"). Pursuant to the RAD Program the Development must be developed and operated in accordance with the RAD Requirements.

F. Capitalized terms which are referred to and utilized throughout this Lease are defined in Article 1 of this Lease.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants, representations, warranties and agreements set forth in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1.  
DEFINITIONS

Section 1.1    Definitions.

For the purposes of this Lease, the following defined terms shall have the meanings ascribed to them in this Article 1:

(a)    Acquisition Closing: The date on which the Memorandum of Lease is recorded against the Property and financing necessary for the construction of the Development is provided to Lessee, and any deeds of trust related to such financing, are recorded against the Development.

(b)    Appraisal: That certain appraisal dated as of June 27, 2019, prepared by Kinetic Valuation Group, Inc., which, among other things, establishes the appraised value of the Leased Premises.

(c)    Approved Development Plans: As defined in Section 3.2(a) of this Lease.

(d)    Approved Financing: In addition to the Ground Lease Loan, the following loans, grants and equity obtained by Lessee and approved by Lessor for the purpose of financing the construction of the Development:

(1)    Housing Authority of the County of San Bernardino Multifamily Housing Revenue Bonds (Arrowhead Grove Apartments Phase II), 2019 Series A-1 and 2019 Series A-2, issued by Lessor in the approximate amount of Fifty-Five Million Dollars (\$55,000,000), that are purchased by Bank of America, N.A. and the sale proceeds of which are loaned to Lessee which will convert to a permanent loan from J.P. Morgan Chase Bank, N.A. in the approximate amount of Nineteen Million Dollars (\$19,000,000);

(2)    A loan from the Housing Authority of the County of San Bernardino in the approximate amount of Three Million Four Hundred Twelve Thousand Dollars (\$3,412,000);

(3)    A loan from the County of San Bernardino in the approximate amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000);

(4)    A loan from the City of San Bernardino in the approximate amount of One Million Five Hundred Thousand Dollars (\$1,500,000);

(5)    A loan from the City of San Bernardino in the approximate amount of Eight Hundred Thirty Thousand Dollars (\$830,000);

(6)    General Partner capital contribution in the approximate amount of Six Million Four Hundred Thousand Dollars (\$6,400,000);

(7) Low Income Housing Tax Credit investor equity funds in the approximate amount of Twenty-Five Million Dollars (\$25,000,000) (the "Tax Credit Investor Equity");

(8) A loan from National Community Renaissance of California of funds received from Dignity Health in the approximate amount of One Million Two Hundred Thousand Dollars (\$1,200,000); and

(9) An Affordable Housing Sustainable Communities (Affordable Housing Development) permanent loan from HCD in the approximate amount of Seventeen Million Four Hundred Twenty-Two Thousand Seven Hundred Fourteen Dollars (\$17,422,714).

(e) Casualty: As defined in Article 11 of this Lease.

(f) City: City of San Bernardino.

(g) Commencement Date: The date of the Acquisition Closing.

(h) Development: The Improvements and Lessee's Estate.

(i) Development Agreement: As defined in Section 3.6 of this Lease.

(j) Event of Default: As described in Article 12 of this Lease.

(k) Existing Improvements: All improvements existing on the Property at the Acquisition Closing as described in Recital D.

(l) Governmental Authorities: Any applicable federal, state or local governmental or quasi-governmental entities, subdivisions, agencies, authorities or instrumentalities having jurisdiction over the Leased Premises, the Improvements, Lessor or Lessee.

(m) Ground Lease Loan: That certain loan in the amount of Nine Hundred Seventy Thousand Dollars (\$970,000) provided by Lessor to Lessee to finance this Lease, evidenced by the Ground Lease Note, a deed of trust, and a regulatory agreement.

(n) Ground Lease Note: The promissory note evidencing Lessee's obligation to repay the Ground Lease Loan.

(o) Hazardous Materials or Hazardous Substances: Any oil or any fraction thereof or petroleum products or "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14) or Section 25281(h) or 25316 of the California Health and Safety Code at such time; any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water

Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.), at such time; and any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Leased Premises, but excluding any substances or materials used in the construction, development, maintenance or operation of the Improvements, so long as the same are used in accordance with all applicable laws.

(p) Hazardous Materials Law: All federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Leased Premises or any portion of the Leased Premises.

(q) Housing Improvements: The one hundred eighty-four (184) multifamily housing units including two (2) manager units to be constructed on Parcel B of Lessee's Estate in sixteen (16) buildings, and related ancillary facilities including but not limited to parking and common spaces.

(r) HUD: As defined in Recital E.

(s) Impositions: All taxes including property taxes, assessments, water and sewer charges, charges for public utilities, excises, levies, license and permit fees and other charges that shall or may be assessed, levied or imposed during the Term by any Governmental Authorities upon the Leased Premises or any part of the Leased Premises, including the buildings or improvements now or later located on the Leased Premises; provided, however, that the term "Impositions" shall not include any income tax, capital levy, estate, succession, inheritance, transfer or similar taxes of Lessor, or any franchise tax imposed upon any owner of the fee of the Leased Premises, or any income, profits or revenue tax, assessment or charge imposed upon the rent or other benefit received by Lessor under this Lease by any Governmental Authorities.

(t) Improvements: The Housing Improvements, the Parcel A Improvements, and any other improvements constructed by Lessee on the Leased Premises during the Term together with any and all replacements or substitutions or modifications to them.

(u) Investor: The limited partner investor of Lessee providing the Tax Credit Investor Equity to the Development, and its successors and assigns.

(v) Leased Premises: That certain leasehold interest in the Property, together with all rights, easements, licenses, privileges and appurtenances attaching or in any way belonging to the Property.

(w) Lease Year: The initial Lease Year shall begin on the Commencement Date and shall end of December 31 of the calendar year in which the Commencement Date occurs. All subsequent Lease Years begin on January 1 and end on December 31.

- (x) Legal Requirements: The Regulatory Agreements, the RAD Requirements, and all laws, statutes, codes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities and the appropriate agencies, officers, departments, boards and commissions, whether now or later in force, applicable to Lessor, Lessee, the Leased Premises, the Improvements, or any portion of them, to the extent so applicable.
- (y) Lessee's Estate: Lessee's interest in the Leased Premises acquired pursuant to this Lease and any other interest in the Leased Premises later acquired by Lessee.
- (z) Lessor's Estate: Lessor's fee estate in the Property.
- (aa) Lot Line Adjustment: The Lot Line Adjustment dated July\_\_\_\_, 2019 and recorded on July\_\_\_\_,2019 as Instrument No.\_\_\_\_\_ creating Parcel A and Parcel B.
- (bb) Maintenance Notice: As defined in Section 7.2(b) of this Lease.
- (cc) Management Agent: The Person designated from time to time as "Management Agent" of all or any portion of the Improvements under any management agreement entered into from time to time with Lessee.
- (dd) Memorandum of Lease. The memorandum of the Lease to be recorded against the Leased Premises in the form attached hereto as Exhibit B.
- (ee) Mortgage: Any mortgage, deed of trust, security agreement or collateral assignment executed in connection with Approved Financing for the Development, encumbering Lessee's Estate.
- (ff) Mortgagee: The holder, mortgagee, grantee or secured party under any Mortgage and its successors and assigns.
- (gg) Net Condemnation Award: The net amounts owed or paid to the Parties or to which either of the Parties may be or become entitled by reason of any Taking or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by the Parties in collecting such award or payment.
- (hh) Official Records: The official land records of the County of San Bernardino.
- (ii) Offsite Improvements: As defined in 3.6 of this Lease.
- (jj) Option: The purchase option and right of first refusal anticipated to be set forth in a Purchase Option Agreement and Right of First Refusal Agreement between Lessor or an affiliate of Lessor, and Lessee, with respect to the Development.
- (kk) Parcel A Improvements: The parking and open space improvements to be constructed on Parcel A of Lessee's Estate.

(ll) Partnership Agreement: The agreement among Lessee's general partner, the Investor, and other limited partners that governs the operation and organization of Lessee as a California limited partnership.

(mm) Party: Lessor or Lessee, as applicable. Lessor and Lessee shall be referred to collectively as the "Parties."

(nn) Person: An individual, partnership, corporation, limited liability company, trust, unincorporated association, or other entity or association.

(oo) Property: That certain tract of real property located in the City, upon which the Development is to be located and which is being leased to Lessee pursuant to this Lease, as described in the attached Exhibit A.

(pp) RAD Conversion Commitment: The Rental Assistance Demonstration Conversion Commitment among HUD, Lessor and Lessee dated as of July\_\_\_\_, 2019, as amended.

(qq) RAD Delayed Conversion Agreement: means the RAD Delayed Conversion Agreement dated August \_\_, 2019 by and among Lessor as Contract Administrator and Lessee.

(rr) RAD Documents: Collectively, the RAD Conversion Commitment, the RAD Use Agreement, the RAD Delayed Conversion Agreement, the RAD HAP Contract, and any other documents applicable to the Development under the RAD Program.

(ss) RAD HAP Contract: The contract to be entered into between the Lessee and the Lessor upon completion of the construction of the Housing Improvements, that sets forth the rights and duties of Lessee and Lessor with respect to the Development and the payments under the contract. For the purpose of this Lease the term means collectively, the following documents: Rental Assistance Demonstration for the Conversion of Public Housing to the Section 8 Project-Based Voucher Program- Parts I &II (HUD Form 52530A) and Addendum to HAP Contract – Labor Standards, in the form attached to the RAD Delayed Conversion Agreement.

(tt) RAD Program: As defined in Recital E.

(uu) RAD Requirements: All requirements of the RAD Program applicable to Lessee as set forth in the RAD Documents and any other rules or regulations promulgated by HUD for the RAD Program.

(vv) RAD Use Agreement: The Rental Assistance Demonstration Use Agreement entered into among Lessor, Lessee, and HUD specifying the affordability and use restrictions governing the Development under the RAD Program.

(ww) Redevelopment: As defined in Recital B.

(xx) Reciprocal Easement Agreement: As described in Section 3.7 of this Lease.

(yy) Regulatory Agreements: Any recorded restrictions related to Approved Financing, and any regulatory or use agreement with HUD and the California Tax Credit Allocation Committee, setting forth certain terms and conditions under which the Development will be operated.

(zz) Rent: As described in Section 4.1 of this Lease.

(aaa) Taking: A taking during the Term of all or any part of the Leased Premises and/or the Improvements, or any interest in the Leased Premises and/or the Improvements or right accruing to the Leased Premises and/or the Improvements as a result of the exercise of the right of condemnation or eminent domain materially affecting the Leased Premises or any part of the Leased Premises. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking.

(bbb) TCAC Lease Rider Agreement: The TCAC Lease Rider Agreement dated August\_\_\_\_, 2019, by and among Lessor, Lessee and the California Tax Credit Allocation Committee.

(ccc) Tenant(s): Any tenant, sublessee or licensee of Lessee under any Tenant Lease(s).

(ddd) Tenant Lease(s): Any lease or license agreement entered into by Lessee with residents of the Units.

(eee) Term: The period of time described in Section 2.3 of this Lease.

(fff) Transfer: Any sale, assignment, transfer, conveyance, encumbrance, mortgage, or hypothecation, in any manner or form or any agreement to do any of the foregoing.

(ggg) Unit(s): The one hundred eighty-four (184) residential units including two (2) manager units to be constructed on Parcel B of the Leased Premises.

Section 1.2 Exhibits. The Exhibits referred to in this Agreement and attached to and incorporated in this Lease are:

Exhibit A: Legal description of the Property

Exhibit B: Memorandum of Lease

ARTICLE 2.  
LEASE OF THE LEASED PREMISES

Section 2.1 Leased Premises. Subject to the terms of this Lease and in consideration of the covenants of payment and performance stipulated in this Lease, beginning on the Commencement Date, Lessor does lease the Leased Premises to Lessee, and in consideration thereof, Lessee does take, hire and lease the Leased Premises from Lessor pursuant to the terms of this Lease.

Section 2.2 Possession. Lessor agrees to and shall provide possession of the Leased Premises to Lessee on the Commencement Date.

Section 2.3 Term. Unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a term ("Term"), commencing on the Commencement Date and expiring on the ninetieth (90<sup>th</sup>) anniversary of the Commencement Date.

Section 2.4 Memorandum of Lease. The Parties shall execute and acknowledge the Memorandum of Lease, in the form attached hereto as Exhibit B, which Lessee shall cause to be immediately recorded in the Official Records at Lessee's expense.

Section 2.5 Use of Development.

(a) Housing Improvements. Lessee shall, throughout the Term, continuously use Parcel B of the Development only for the construction, development, operation, marketing for lease and leasing of the Housing Improvements, and such other uses as are reasonably and customarily attendant to such uses, subject to the Legal Requirements, the RAD Documents, and this Lease. Further, Lessee agrees:

(1) not to use, or permit the use of, the Development for any improper, immoral, unlawful or objectionable or offensive purpose, nor shall Lessee cause, maintain or suffer or permit any nuisance in, on or about the Development;

(2) at its sole cost and expense, to comply, and use commercially reasonable efforts to cause all Tenants to comply, in all material respects with all Legal Requirements, all Hazardous Materials Laws, this Lease and all insurance requirements, to the extent applicable, in their use and occupation of the Development;

(3) upon reasonable prior notice from Lessor, to take reasonable action, if necessary, to abate any action by any Tenant that would cause Lessee to violate this Lease; and

(4) subject to the rights of Tenants, to permit Lessor and its agents upon not less than forty-eight (48) hours' prior written notice to inspect the Leased Premises or any part of the Leased Premises at any reasonable time during the Term.



(b) Parcel A Improvements. Lessee shall, throughout the Term, continuously use Parcel A of the Development only for the construction, development, operation and maintenance of the Parcel A Improvements, and such other uses as are reasonably and customarily attendant to such uses, subject to the Legal Requirements and this Lease. The Parcel A Improvements include a Detention Basin that is required to be open to the public in the daytime hours by pedestrian access, and thirty-six (36) parking spaces for use by tenants of the Redevelopment, including Tenants.

(c) Operating Budget. At or prior to the beginning of each year of the Term, Lessee shall provide to Lessor an annual budget for the maintenance and operation of the Property and the Improvements, which shall include the cost of insurance required to be maintained by this Lease. Unless rejected by Lessor in writing within thirty (30) days after receipt of the budget, the budget will be deemed accepted. If rejected by Lessor in whole or in part, Lessee shall submit a new or corrected budget within thirty (30) calendar days after notification of Lessor's rejection and the reasons therefor. Unless rejected by Lessor in writing within fifteen (15) days after receipt of the budget, the revised budget will be deemed accepted. During any period in which no approved budget is in effect, Lessee shall operate in accordance with the prior year's budget adjusted for inflation, except for non-discretionary matters such as taxes or insurance.

#### Section 2.6 Non-Discrimination.

(a) Lessee shall not discriminate against, or segregate any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, disability, medical condition, age, familial status, or source of income in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Leased Premises nor shall Lessee, or any person claiming under or through Lessee, 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 Leased Premises. Lessee shall otherwise comply with all applicable local, state, and federal laws concerning discrimination. The foregoing covenant shall run with the land.

(b) Lessor shall be entitled to invoke any remedies available at law or in equity to redress any breach of Subsection (a) or to compel compliance therewith by Lessee.

### ARTICLE 3. THE IMPROVEMENTS

#### Section 3.1 Title to Improvements.

(a) Transfer of Existing Improvements. Concurrently with the commencement of the Lease, Lessor shall transfer to Lessee, pursuant to this Lease, without warranty express or implied, fee title to the Existing Improvements.

(b) Title to Improvements During the Term. As of the Commencement Date, Lessor grants to Lessee, without warranty express or implied, any right, title, or interest that Lessor has or may have in the Improvements now or later located on the Leased Premises

which Improvements are and shall remain real property. Notwithstanding any provision in this Lease to the contrary, the Improvements and all alterations, additions, equipment and fixtures built, made or installed by Lessee in, on, under or to the Leased Premises or Improvements shall be the sole property of Lessee until the expiration of the Term or other termination of this Lease; provided, however, that Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease or as approved in writing by Lessor. Lessor acknowledges that Lessee intends to demolish the Existing Improvements and approves such demolition. It is the intent of the parties hereto that this Lease shall create a constructive notice of severance of the Improvements from the Leased Premises without the necessity of a deed from Lessor after the Improvements have been constructed.

(c) Title to Improvements After the termination of Lease. Upon the expiration of the Term or other termination of the Lease, the Improvements and all alterations, additions, equipment and fixtures shall be deemed to be and shall automatically become the property of Lessor, without cost or charge to Lessor. Lessor agrees that Lessee, at any time prior to the sixtieth (60th) day after the expiration or other termination of this Lease, may remove from the Leased Premises any and all equipment which Lessee has furnished for maintenance purposes or for the use of the Management Agent, provided that Lessee shall repair any physical damage to the Leased Premises caused by the removal of such equipment and property. Lessee agrees to execute, at the request of Lessor at the end of the Term, a quitclaim deed of the Improvements to Lessor to be recorded at Lessor's option and expense and any other documents that may be reasonably required by Lessor or Lessor's title company to provide Lessor title to the Leased Premises and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by Lessor.

### Section 3.2 Construction of the Improvements.

(a) The Improvements consist of the Housing Improvements and the Parcel A Improvements. The construction plans and specifications dated [REDACTED], 2019 and that have been approved by Lessor (the "Approved Development Plans"), set out the requirements for the Improvements. Lessee shall pay all costs of construction of the Improvements.

(b) Lessee shall cause the commencement of construction of the Improvements on or before [REDACTED], 2019. Lessee shall cause the Improvements to be constructed in substantial compliance with the Approved Development Plans. Lessee shall cause construction of the Improvements to be completed by [REDACTED] which date will be reasonably extended for casualty or other force majeure events beyond the reasonable control of Tenant, or if an extension of the completion date is given pursuant to the terms of a Mortgage pursuant to Approved Financing, in which event the date described here shall be extended by the same period. Lessee shall take no action to effectuate any material amendments, modifications or alterations to the Approved Development Plans or undertake any demolition, construction or rehabilitation work not called out in the Approved Development Plans unless Lessor has approved such, in writing and in advance.

(c) Lessee shall construct the Improvements pursuant to the construction contract between Lessee and National Community Renaissance of California as the general contractor that has been reviewed and approved by Lessor. Lessee shall not materially amend, modify or alter the responsibilities of the general contractor under the construction contract without Lessor's prior written consent.

(d) Lessee is solely responsible for the quality and suitability of the Approved Development Plans, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants in the construction of the Improvements. Lessor shall have the right to inspect the construction of the Improvements. Lessee shall promptly correct any work identified by Lessor as not in compliance with the terms of this Lease. Any review or inspection undertaken by Lessor is solely for the purpose of determining whether Lessee is properly discharging its obligations to Lessor, and may not be relied upon by Lessee or by any third parties as a warranty or representation by Lessee as to the quality of the design or construction of the Improvements. Lessor owes no duty of care to protect Lessee or any other party against, or to inform Lessee or any other party of, any negligent or defective design or construction of the Improvements.

(e) Any and all Improvements constructed by or on behalf of Lessee shall be constructed in a good and worker-like manner, in compliance with all applicable Legal Requirements, including, without limitation, Chapters 11A and 11B of Title 24 of the California Code of Regulations which relate to disabled persons access, the requirements of the Approved Financing and any mitigation measures imposed under environmental reviews conducted under state or federal law. Lessee acknowledges that the RAD Requirements require the Improvements to be constructed in compliance with the laws, regulations and administrative requirements governing the RAD Program including (but not limited to) the following:

(1) The prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c); the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708); and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

(2) The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project.

(3) The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.); and the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35.

(4) The requirements of the Fair Housing Act (42 U.S.C. 3601 et

seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto; and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto.

(5) The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24.

(f) Lessee shall provide Lessor notice upon substantial completion of construction of the Improvements so that Lessor may inspect the Improvements for compliance with the terms of this Lease. Within thirty (30) days of completion of construction of the Improvements, Lessee shall provide Lessor at Lessee's expense, a set of "As-Built" plans for the Improvements.

(g) If Lessee fails to construct the Improvements in accordance with the terms of this Lease, Lessor may, at its option, enforce the payment and performance bonds, letter of credit, or other form of security provided by Lessee and approved by Lessor in its sole discretion.

Section 3.3 No Liens. Lessee shall not have any right, authority or power to bind Lessor, Lessor's Estate or any other interest of Lessor in the Leased Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto except as set forth in Section 8.1(a). Lessee shall not have any right to encumber Lessee's Estate without the written consent of Lessor, except as set forth in in Section 8.1(a) and for utility easements and other customary easements necessary and incidental to the development, construction and operation of the Improvements, which easements are subject to the approval of Lessor, which shall not be unreasonably withheld.

Lessee shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Lessee and shall keep the Leased Premises free and clear of all mechanics' and materialmen's liens in connection therewith. If any claim of lien is filed against the Leased Premises or a stop notice is served on Lessor or other third party in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto, then Lessee shall, within thirty (30) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Lessor a surety bond in sufficient form and amount, or provide Lessor with other assurance reasonably satisfactory to Lessor that the claim of lien or stop notice will be paid or discharged, provided that Lessor provides written notice of such claim of lien or stop notice to Lessee promptly upon receipt by Lessor.

If Lessee fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, Lessor may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Lessee's expense and, Lessee shall pay to Lessor as Additional Rent any such amounts expended by

Lessor within thirty (30) days after written notice is received from Lessor of the amount expended. Alternately, Lessor may require Lessee to immediately deposit with Lessor the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. Lessor may use such deposit to satisfy any claim or lien that is adversely determined against Lessee.

Lessee shall file a valid notice of cessation or notice of completion upon cessation of construction of the Improvements for a continuous period of thirty (30) days or more, except in the event such cessation of construction is caused by adverse weather conditions, and shall take all other reasonable steps to forestall the assertion of claims of lien against the Leased Premises. The Lessor shall have the right to post or keep posted on the Leased Premises, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Leased Premises by Lessee. Lessee authorizes the Lessor, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the Lessor deems necessary or desirable to protect its interest in the Leased Premises.

Section 3.4 Permits, Licenses and Easements. Lessee shall be responsible for obtaining any and all permits, licenses, easements and other authorizations required by any Governmental Authority with respect to any construction or other work to be performed on the Leased Premises and to grant or cause to be granted all permits, licenses, easements and other governmental authorizations that are necessary or helpful for electric, telephone, gas, cable television, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Lessee shall be entitled, without separate payment to Lessor for tap or connection fees, to tap into the existing lines, facilities and systems of applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Leased Premises, provided Lessee remains responsible for payment of such fees as are required by the City.

Lessor agrees to use Lessor's reasonable efforts to assist Lessee to obtain waiver, reduction or deferral, as applicable, of all fees and other charges otherwise payable in connection with obtaining any permits, licenses, easements and other authorizations required by any Governmental Authority with respect to any construction or other work to be performed on the Leased Premises in connection with the Improvements and also agrees to enter into any grants of easements for utilities and related documents, useful or necessary to construct the Improvements.

Section 3.5 Benefits of Improvements During Term. Lessee shall be deemed the sole owner of the Improvements and the sole party entitled to all of the tax attributes of ownership of the Improvements during the Term. Lessor acknowledges and agrees that any and all depreciation, amortization and tax credits for federal or state tax purposes relating to the Improvements located on the Leased Premises and any and all additions to the Leased Premises, substitutions for the Leased Premises, fixtures on the Leased Premises and other property relating to the Leased Premises shall be deducted or credited exclusively to Lessee during the Term and for the tax years during which the Term begins and ends.

Section 3.6 Offsite Improvements. Lessee acknowledges that the Property is subject to a Development Agreement by and between the City and Lessor dated February 18, 2014, as modified by a Letter Agreement from Lessor dated July [REDACTED], 2019 and agreed to and acknowledged by the City (collectively, the "Development Agreement"). Lessee shall construct the offsite improvements required to be constructed pursuant to the Development Agreement at the sole cost and expense of Lessee (the "Offsite Improvements").

Section 3.7 Reciprocal Easement Agreement. Concurrently with this Lease, Lessor is recording against the Property an Amended and Restated Declaration Providing for Reciprocal Easements (the "Reciprocal Easement Agreement") that governs the use and maintenance of streets, utilities, and public areas of benefit to the Development and other adjacent projects. During the Term Lessee shall comply with the terms of the Reciprocal Easement Agreement as such pertain to the Development.

Section 3.8 Restrictions Applicable to Units. Lessee shall, at all times throughout the Term, comply with all applicable requirements of the Regulatory Agreements that are then encumbering Lessee's Estate. To the extent applicable, in no event will any action be taken which violates Section 42(h)(6)(E)(ii) of the U.S. Internal Revenue Code of 1986, as amended, regarding prohibitions against evicting, terminating tenancy or increasing rent of tenants for a period of three (3) years after acquisition of a building by foreclosure or deed-in-lieu of foreclosure.

Section 3.9 Relocation of Tenants to the Leased Premises. Upon completion of construction of the Housing Improvements and upon satisfaction of the conditions set forth in the RAD Delayed Conversion Agreement, Lessee and Lessor shall execute the RAD HAP Contract. Upon execution of the RAD HAP Contract, Lessee shall relocate to the Development tenants currently residing in other properties owned by Lessor who elect to exercise a RAD right of return, all as identified in and in accordance with a relocation plan adopted by Lessee and approved by HUD and Lessor, and in accordance with the RAD Requirements. Lessee and Lessor, in their respective interaction with any tenants with a right to return to the Development, shall comply with all RAD Requirements regarding right to return, rescreening, income eligibility, or income targeting for returning residents.

#### ARTICLE 4. RENTS

Section 4.1 Ground Rent. Lessee shall pay to Lessor rent in the amount of Nine Hundred Seventy Thousand Dollars (\$970,000) ("Rent") which amount reflects the appraised value of the Leased Premises as set forth in the Appraisal. Lessee shall pay Rent through the execution and delivery of the Ground Lease Note on the Commencement Date. No other base or annual rent shall be payable throughout the Term.

Section 4.2 Additional Rents. In addition to the Rent specified in Section 4.1, any and all of the payments that Lessee is required to make under this Lease to or for the benefit of Lessor shall be deemed to be "Additional Rents." All such Additional Rents shall be

payable in accordance with the provisions of the Sections of this Lease specifying the payment of such Additional Rents. The Rent specified in Section 4.1 and Additional Rents payable under this Lease shall be deemed "Rents" reserved by Lessor, and any remedies now or later given to Lessor under the laws of the State of California for collection of the Rents shall exist in favor of Lessor, in addition to any and all other remedies specified in this Lease.

Section 4.3 Payments. All Rents or other sums, if any, due Lessor under this Lease shall be paid by Lessee to Lessor at the address of Lessor set forth in this Lease for notices, or to such other person and/or at such other address as Lessor may direct by written notice to Lessee, without notice or demand, and without abatement, deduction or set off.

## ARTICLE 5. TAXES AND OTHER IMPOSITIONS; UTILITIES

Section 5.1 Payment of Impositions. Lessee shall be obligated, at all times from and after the Commencement Date, prior to delinquency, to pay all Impositions except that if any Imposition that Lessee is obligated to pay in whole or in part is permitted by law to be paid in installments, Lessee may pay or cause to be paid such Imposition (or its proportionate part of such Imposition) in installments prior to delinquency, and that Lessor shall have no obligation to perform or pay any Imposition with respect to the Development. Upon the written request of Lessor, Lessee shall exhibit and deliver to Lessor evidence satisfactory to Lessor of payment of all Impositions. During the first and last years of the Term, all Impositions that shall become payable during each calendar, fiscal, tax or Lease Year, as applicable, shall be ratably adjusted on a per diem basis between Lessor and Lessee in accordance with the respective portions of such calendar, fiscal, tax, assessment or Lease Year during the Term. If any special assessments or taxes are payable in installments, Lessee shall pay only those installments that are due and for which the delinquency date occurs during the Term for periods occurring during the Term. The parties acknowledge that Lessee intends to apply for an exemption from real property taxes under Section 214(g) of the California Revenue and Taxation Code.

Section 5.2 Contested Taxes and Other Impositions. Lessee, at its sole cost and expense, in its own name or in the name of Lessor, may contest the validity or amount of any Imposition relating to all or any portion of the Leased Premises, in which event the payment of the Imposition may be deferred during the pendency of such contest, if diligently prosecuted.

(a) As may be necessary or desirable, Lessor or Lessee, as applicable, upon the request of the other party, shall use its best reasonable efforts to assist in any such proceeding to contest the validity or amount of any Imposition.

(b) Nothing contained in this Section 5.2, however, shall be construed to allow any such contested Imposition to remain unpaid for a length of time which shall permit the Leased Premises, or any part of the Leased Premises, to be sold by any Governmental Authorities for the non-payment of such Imposition. Lessee shall promptly furnish Lessor copies of all notices, appeals, pleadings, motions and orders in any proceedings commenced

with respect to such contested Imposition. During such contest, Lessee shall (by the payment of such disputed taxes, assessments, or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting of Lessor's title, reversion or other interest in or to the Leased Premises and the Improvements.

Section 5.3 Valuation Assessment. If applicable, Lessee, at its expense, may attempt to obtain a lowering of the assessed valuation of the Leased Premises for any year for the purpose of reducing taxes on the Leased Premises. In such event, upon Lessee's request, Lessor shall use its reasonable efforts to assist Lessee in such endeavor.

Section 5.4 Failure to Pay Impositions. If Lessee fails to pay any Impositions before the same become delinquent, or as otherwise required pursuant to Section 5.2, Lessor, at its election, may pay such Impositions (but shall not be obligated to pay same), together with any interest and penalties due on them, and the amount so paid by Lessor shall be repayable to Lessor by Lessee within forty-five (45) days after Lessor's demand therefor.

Section 5.5 Utilities. Lessee shall pay all utilities used, rendered or supplied upon or in connection with the Improvements and the construction, maintenance, and operation of the Improvements including, but not limited to, all charges for gas, electricity, light, heat or power, all telephone and other communications services, all water rents and sewer service charges, and all sanitation fees or charges levied or charged against the Leased Premises during the Term; provided, however, that Lessee shall have no responsibility for the payment of utilities supplied by the respective providers directly to Tenants for such Tenants' use in connection with the occupancy of their respective Units. Lessor shall have no responsibility for the payment of utility costs.

## ARTICLE 6. INSURANCE

Section 6.1 Lessee's Insurance. During the Term, Lessee shall keep and maintain in force, at no cost or expense to Lessor, the following insurance, all of which shall be provided by companies and/or agencies licensed to do business in the State of California:

(a) Leased Premises Insurance. "All risk" insurance covering all risks of physical loss or damage to any of the Improvements (other than the Existing Improvements once demolished), with liability limits of not less than one hundred percent (100%) of the "full replacement value" of the Improvements. Such policies shall be broad form and shall include, but shall not be limited to, coverage for fire, extended coverage, vandalism, malicious mischief and storm. Perils customarily excluded from all risk insurance, e.g., earthquake and flood, may be excluded. The term "full replacement value" shall exclude the cost of excavation, foundations and footings. The amount of such insurance shall be adjusted by reappraisal of the Development by the insurer or its designee not more than once every five (5) years during the Term, if requested in writing by Lessor.

(b) General Liability Insurance. Commercial general liability and automobile liability insurance, covering loss or damage resulting from accidents or



occurrences on or about or in connection with the Improvements or any work, matters or things under, or in connection with, or related to this Lease, with personal injury, death and property damage combined single limit liability of not less than Five Million Dollars (\$5,000,000) for general liability and Two Million Dollars (\$2,000,000) for automobile liability for each accident or occurrence and an aggregate limit of not less than Five Million Dollars (\$5,000,000) for general liability. Coverage under any such comprehensive policy shall be broad form and shall include, but shall not be limited to, operations, contractual, elevators, owner's and contractor's protective, products and completed operations, and the use of all owned, non-owned and hired vehicles.

(c) Workers' Compensation Insurance. In the event Lessee has employees, Lessee shall carry or cause to be carried Workers' Compensation insurance with limits as required by the State of California and Employer's Liability limits of One Million Dollars (\$1,000,000) for bodily injury by accident and One Million Dollars (\$1,000,000) per person and in the annual aggregate for bodily injury by disease covering all persons employed by Lessee in connection with the Improvements and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Lessor or Lessee.

(d) Builders' Risk Insurance. During the course of any alteration, construction or reconstruction of the Improvements, the cost of which exceeds Fifty Thousand Dollars (\$50,000) (escalating at three percent (3%) per year), Lessee shall provide builders' risk insurance for not less than the value of the construction contract, combined single limit for bodily injury or property damage insuring the interests of Lessor, Lessee and any contractors and subcontractors.

## Section 6.2 General Requirements.

(a) All policies described in Section 6.1 shall include Lessor and Lessee, together with Mortgagees, as named insureds, as their respective interests may appear.

(b) All policies described in Section 6.1 shall contain: (i) the agreement of the insurer to give Lessor at least ten (10) days' notice prior to cancellation or material change for non-payment of premium, and thirty (30) days' notice prior to cancellation for any other change or cancellation in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by Lessor; (iii) a provision that no act or omission of Lessee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (iv) a waiver by the insurer of all rights of subrogation against Lessor and its authorized parties in connection with any loss or damage insured against; and (v) terms providing that any loss covered by such insurance may be adjusted with Lessor and Lessee, but shall be payable to the holder of a Mortgage, who shall agree to receive and disburse all proceeds of such insurance, subject to the duty of Lessee to repair or restore, as set forth in Sections 11.1 and 11.2.

Section 6.3 Evidence of Insurance. Certificates of insurance for all insurance required to be maintained by Lessee under this Article 6 shall be furnished by Lessee to Lessor on or before the date of this Lease. Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by this Lease at any time.

Section 6.4 Failure to Maintain. If Lessee fails to maintain such insurance, Lessor, at its election, may procure such insurance as may be necessary to comply with the above requirements (but shall not be obligated to procure same), and Lessee agrees to repay to Lessor as Additional Rent the cost of such insurance.

ARTICLE 7.  
MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS

Section 7.1 Management Agent. As of the Acquisition Closing, Lessor has approved National Community Renaissance of California as the initial Management Agent for the Development. Any replacement Management Agent is subject to the consent of Lessor.

Section 7.2 Maintenance of Leased Premises.

(a) During the Term, at Lessee's sole cost and expense, Lessee shall keep and maintain the Leased Premises, all Improvements, and all appurtenances, in good and safe order, condition and repair. In addition, all maintenance and repair of the Improvements shall conform and comply with the Legal Requirements affecting the Leased Premises.

(b) Lessor reserves the right to conduct an annual (or more frequent, if deemed reasonably necessary by Lessor) review of the management and maintenance of the Improvements. The purpose of each periodic review will be to enable Lessor to determine if the Improvements are being operated and managed in accordance with the requirements and standards of this Lease. Lessee shall cooperate with Lessor in such reviews. In the event Lessor submits to Lessee a written notice (the "Maintenance Notice") that the Improvements are not being maintained as required by this Lease, such Maintenance Notice shall specify with particularity the manner in which said maintenance is inadequate including if the Management Agent has failed to operate and maintain the Improvements in accordance with this Lease. Lessee shall comply with all reasonable requests of Lessor contained in said Maintenance Notice. In the event that Lessor reasonably determines Lessee's actions within thirty (30) days of the Maintenance Notice are insufficient in kind or unreasonably delayed, Lessor may (a) direct the performance of the maintenance work on such terms and conditions as it shall reasonably determine and in such event Lessee shall promptly cause the maintenance work to be accomplished at no expense to Lessor, or (b) cause the necessary maintenance to be performed under its own auspices in the name of, for the account of, and at the sole cost and expense of Lessee, in which event Lessee shall fully reimburse Lessor for all reasonably necessary costs and expenses (including, without limitation, reasonable attorneys' fees and costs of litigation) incurred by Lessor in connection with such maintenance work within thirty (30) days after Lessee's receipt of Lessor's written demand for reimbursement.

Section 7.3 Alterations to Leased Premises. Following construction of the Improvements, Lessee may make any additions, alterations or changes (sometimes collectively referred to as "Alterations") in or to the Improvements subject, however, to the following conditions:

(a) No Alterations may be made that are likely to impair the structural soundness of the Improvements;

(b) No Alterations of the Leased Premises may be undertaken which have a cost greater than One Hundred Thousand Dollars (\$100,000), or demolition of any portion thereof, without first presenting to Lessor complete plans and specifications therefor and obtaining Lessor's written consent thereto (which consent shall not unreasonably be withheld so long as, in Lessor's judgment, such Alterations will not violate the Legal Requirements, this Lease, the Regulatory Agreements, or impair the value of the Improvements);

(c) No Alterations may be undertaken until Lessee shall have procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable Governmental Authorities, all required consents of Mortgagees, and the consent of Lessor if required pursuant to subsection (b), above, if applicable. Lessor shall join in the application for such permits or authorizations whenever such action is necessary or helpful and is requested by Lessee, and shall use Lessor's reasonable efforts to obtain such permits or authorizations; and

(d) Any Alterations shall be performed in good and worker-like manner using new materials of the same or better quality as the original Improvements, and in compliance with the Regulatory Agreements, all applicable Legal Requirements and the insurance requirements of this Lease.

#### Section 7.4 Indemnifications.

(a) Notwithstanding any other provision of this Lease to the contrary, Lessee agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) Lessor, its commissioners, officers, directors, affiliates, agents and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses (collectively "claims"), arising from or relating to Lessee's obligations under this Lease, and the construction or operations of the Improvements, except to the extent caused by the gross negligence or willful misconduct of Lessor, or any of its commissioners, officers, directors, affiliates, agents or employees.

(b) In addition, if any contractor or subcontractor which performed any construction work for Lessee or Lessee's affiliates on the Improvements shall assert any claim against Lessor on account of any damage alleged to have been caused by reason of acts of negligence or willful misconduct of Lessee or Lessee's affiliates, their members, partners, officers, directors, affiliates, agents or employees, or their construction contractors, Lessee shall defend at its own expense any suit based upon such claim; and if any judgment or claim against Lessor shall be allowed, Lessee shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith.

(c) This indemnity shall survive the termination of this Lease.

ARTICLE 8.  
PERMITTED MORTGAGES AND INVESTOR RIGHTS

Section 8.1     Right to Encumber.

(a)     Lessee's Estate. Lessee shall have the right during the Term to encumber, through a Mortgage pursuant to Approved Financing and the Regulatory Agreements, all of Lessee's right, title and interest in the Leased Premises subject to the provisions of this Lease. Any Mortgage is in all respects subordinate and inferior to the RAD Use Agreement. Other than a Mortgage pursuant to Approved Financing, the Regulatory Agreements, and as set forth in Section 3.3, Lessee shall not encumber Lessee's right, title and interest in the Leased Premises in any manner whatsoever.

(b)     Lessor's Estate. Lessor's Estate shall not be subject to and Lessor shall have no obligation to consent to any subordination agreement required to secure any financing or Mortgage of Lessee. Lessor agrees not to encumber or convey any interest in Lessor's Estate with any deed to secure debt, mortgage, deed of trust or other instrument in the nature of a mortgage as security for any debt which is not expressly subordinate to Lessee's Estate under this Lease. Lessor and Lessee acknowledge that Lessor's Estate will be encumbered by the Reciprocal Easement Agreement, the TCAC Lease Rider Agreement, the Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing for the benefit of the California Department of Housing and Community Development, and the RAD Use Agreement, and this Lease shall at all times remain subordinate to the RAD Use Agreement.

Section 8.2     Notice to Mortgagee. During any period in which a Mortgage is in place, Lessor shall give any such Mortgagee of which Lessor has received notice from Lessee a duplicate copy of all notices of default or other notices that Lessor may give to or serve in writing upon Lessee pursuant to the terms of this Lease. The address of the Mortgagee originally designated in the Mortgage may be changed upon written notice delivered to Lessor in the manner specified in Section 17.12 below. Lessor's failure to give any such notice to any such Mortgagee shall not render such notice ineffective, nor shall any such failure constitute an Event of Default hereunder. Lessor agrees that the Mortgagees listed in Section 17.12 below shall be given the notices required under this Lease to be given to Mortgagees.

Section 8.3     Right of Mortgagee to Cure. Notwithstanding any default by Lessee under this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall have given each Mortgagee written notice of such default and such Mortgagees shall have failed to remedy such default or acquire Lessee's leasehold estate created by this Lease or commence foreclosure, removal, or other appropriate proceedings as set forth in, and within the time specified, by this Section.

Any Mortgagee which has an outstanding Mortgage shall have the right, but not the obligation, at any time to pay any or all of the rental due pursuant to the terms of this Lease, and do any other act or thing required of Lessee by the terms of this Lease, to prevent

termination of this Lease. Each Mortgagee shall have sixty (60) days after receipt of notice from Lessor describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by Lessee instead of by a Mortgagee.

In addition to the cure period provided in this Section 8.3 above, if the default is such that possession of the Leased Premises or removal of the Lessee's general partner may be reasonably necessary to remedy the default, any Mortgagee shall have a reasonable time after the expiration of such sixty (60) day period within which to remedy such default, provided that (i) such Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease within such sixty (60) day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Mortgagee shall have acquired Lessee's leasehold estate hereunder or commenced foreclosure, removal, or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

Any default under this Lease which by its nature cannot be remedied by any Mortgagee shall be deemed to be remedied (and such Mortgagee shall not have liability for any claims Lessor has against Lessee for indemnification or damages) if (i) within sixty (60) days after receiving written notice from Lessor describing the default, or prior thereto, any Mortgagee shall have acquired Lessee's leasehold estate, removed the Lessee's general partner, or commenced foreclosure or other appropriate proceedings, (ii) Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee hereunder which does not require possession of the Leased Premises or removal of the Lessee's general partner, and (iv) after gaining possession of the Leased Premises or removal of the Lessee's general partner, the Mortgagee shall cure all non-monetary defaults of Lessee hereunder capable of cure by Mortgagee.

If any Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Lessee from removing the Lessee's general partner, commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for removal of the Lessee's general partner, commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Mortgagee shall not interfere with Lessor's efforts to seek compliance by Lessee with any non-monetary obligation under this Lease.

**Section 8.4    Limitation on Liability of Mortgagee.** No Mortgagee shall be or become liable to Lessor as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by Lessor and Mortgagee such liability (in which event the Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created by this Lease) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature of a foreclosure or as the result of any other action or remedy provided for by such Mortgage or other instrument or from a conveyance from Lessee pursuant to which the purchaser at foreclosure or grantee

shall acquire the rights and interest of Lessee under the terms of this Lease.

Section 8.5 Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other Party, or upon request from any Mortgagee or Investor or a permitted assignee or other interested party, Lessor or Lessee will execute, acknowledge and deliver to the other Party or to such Mortgagee or Investor a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Lessor or Lessee, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Lessor, Lessee or any Mortgagee or Investor, as the case may be, in this Lease or by any prospective Mortgagee or Investor or permitted assignee of any Mortgagee or Investor.

Section 8.6 Registration of Mortgages. Lessee shall provide written notice to Lessor of the name and address of each Mortgagee under this Lease. Lessor acknowledges the names and addresses of Mortgagees in Section 17.12 below.

Section 8.7 New Lease. In the event of the termination of this Lease prior to the natural expiration of the Term of this Lease due to a default of Lessee, by rejection in bankruptcy, operation of law, or for any other reason, Lessor, upon written request from the holder of a Mortgage, made within sixty (60) days of the Mortgagee receiving notice of termination, shall enter into a new lease with such holder or its designee, as such designee is approved by Lessor in its reasonable discretion, in accordance with and upon the same terms and conditions as set forth herein, for the remainder of the Term. The Mortgagee shall pay all reasonable costs and expenses of Lessor related to entering into the new lease. Notwithstanding anything stated to the contrary herein, if more than one Mortgagee requests a new lease, the Mortgagee who holds the most senior (in lien priority) Mortgage shall be entitled to enter into the new lease. Simultaneous to the execution and delivery of such new lease, Lessor shall convey title to the Improvements to the new lessee and the Mortgagees shall be entitled to encumber the Improvements and the Leased Premises with Mortgages. Any new lease made pursuant to this Section 8.7 shall be prior to any lien, charge or encumbrance on Lessor's Estate and Lessor's interest in the Improvements, except as previously approved in writing by the Mortgagees, provided, however, any new Lease shall be subject to the RAD Use Agreement.

In the event of the filing of a petition in bankruptcy by Lessee, and Lessee rejects this Lease under the then applicable provisions of the Bankruptcy Code, Lessor shall, upon the request of the holder of a Mortgage, affirm this Lease, and Lessor will enter into a new lease on the same terms and conditions set forth herein with such holder or its designee, as such designee is approved by Lessor in its reasonable discretion, immediately upon Lessee's rejection of this Lease. In the event of the filing of a petition in bankruptcy by Lessor, and Lessor rejects this Lease and Lessee does not affirm it, the holder of the Mortgage will have the authority to affirm this Lease on behalf of Lessee and to keep the Lease in full force and effect.

The terms of this Section 8.7 survive termination of this Lease and Mortgagees prior to such

termination shall continue to be considered Mortgagees for purposes of this Section notwithstanding the effect of termination on the Mortgages.

Section 8.8 Consent to Termination of Lease. Lessor shall not voluntarily modify, amend, cancel, terminate or surrender the Lease without the prior written consent of Mortgagees and the Investor which consent shall not be unreasonably withheld or delayed, except in the event of default by Lessee as to which Mortgagees and Investor shall have been provided with written notice and opportunity to cure such default and such Mortgagees and Investor shall have failed to remedy such default as set forth in Section 8.3 above and Section 8.9 below.

Section 8.9 Rights of Investor. The Investor shall have the same notice and cure rights as any Mortgagee for so long as it is a limited partner of Lessee, and any provision requiring the consent or approval of a Mortgagee shall also require the consent or approval of the Investor. The address for any notices to same, as of the date hereof, is provided in Section 17.12 below.

## ARTICLE 9. REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 9.1 Representations, Warranties and Covenants of Lessee. As an inducement to Lessor to enter into and to proceed under this Lease, Lessee warrants and represents to Lessor as follows, which warranties, representations and covenants are true and correct as of the Commencement Date:

(a) Lessee has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease;

(b) The entry by Lessee into this Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which Lessee is a party or by which it is bound;

(c) Lessee (i) shall not cause or permit any Hazardous Materials to be placed, held, located or disposed of on, under or at the Development or any part thereof, except in commercially reasonable amounts used in the construction and operation of the Improvements and in accordance with Legal Requirements, and (ii) shall not cause or permit any Hazardous Materials contamination of the Development or any part thereof; provided, however, that Lessee shall not be in violation of this Subsection 9.1(c) or otherwise be liable or obligated hereunder for any of the foregoing occasioned solely by reason of the existence of soils, water or materials already located on the Development as of the Commencement Date; and

(d) Lessee has and at all times shall have obtained all permits, licenses, and approvals necessary to construct, occupy, operate and maintain the Improvements, and

shall maintain compliance with all governmental requirements applicable to the Property and Improvements.

(e) At all times during the Term, Lessee or its authorized representative shall use, maintain and operate the Leased Premises and the Improvements thereon in accordance with all Legal Requirements and Regulatory Agreements.

Section 9.2 Hazardous Materials.

(a) Certain Covenants and Agreements. Lessee hereby covenants and agrees that:

(1) Lessee shall not knowingly permit the Development or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Development in violation of any Hazardous Materials Laws;

(2) Lessee shall keep and maintain the Development and each portion thereof in compliance with, and shall not cause or permit the Development or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same Lessee shall immediately advise Lessor in writing of:

(A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Lessee or the Development pursuant to any applicable Hazardous Materials Laws;

(B) any and all claims made or threatened by any third party against Lessee or the Development relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); or

(C) the presence of any Hazardous Materials in, on or under the Development in such quantities which require reporting to a government agency.

If Lessor reasonably determines that Lessee is not adequately responding to a Hazardous Material Claim or any condition in Sections 9.2(a)(3)(A) or (B), Lessor shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by Lessee.

(4) Without Lessor's prior written consent, which shall not be unreasonably withheld or delayed, Lessee shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter



into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 7.3 above, Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) Lessor, its commissioners, officers, agents, successors, assigns and employees (the "Indemnitees") from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(1) The failure of Lessee or any other person or entity on or after the Commencement Date to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development;

(2) Any release or discharge of any Hazardous Materials into, on, under or from the Development, arising on or after the Commencement Date, or the presence in, on, or under the Development of any Hazardous Materials that occurs on the Development after the Commencement Date; or

(3) Any activity or omission of activity carried on or undertaken on the Development, on or after the Commencement Date and whether by Lessee or any employees, agents, contractors or subcontractors of Lessee or any successor in title that is related to Lessee occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials located or present on or under the Development.

The provisions of this section shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect. This indemnity obligation shall not extend to any claim arising from Lessor's negligence or willful misconduct.

(c) No Limitation. Lessee hereby acknowledges and agrees that Lessee's duties, obligations and liabilities under this Lease, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information Lessor may have concerning the Development and/or the presence on the Development of any Hazardous Materials, whether Lessor obtained such information from Lessee or from its own investigations.

### Section 9.3 As-Is Conveyance.

(a) Condition of Leased Premises. This Lease is made "AS IS," with no warranties or representations by Lessor concerning the condition of the Leased Premises or Existing Improvements, including the presence or absence of any Hazardous Materials except as expressly set forth in this Lease. Lessee hereby agrees and acknowledges that except in the event of any fraud, misrepresentation, or withholding of information by Lessor: (i) neither Lessor, nor anyone acting for or on behalf of Lessor, has made any representation, statement,

warranty or promise to Lessee concerning the development potential or condition of the Leased Premises or Existing Improvements; (ii) in entering into this Lease, Lessee has not relied on any representation, statement or warranty of Lessor, or anyone acting for or on behalf of Lessor, other than as may expressly be contained in writing in this Lease; (iii) all matters concerning the Leased Premises and Existing Improvements have been or shall be independently verified by Lessee and that Lessee shall purchase or lease the Leased Premises and Existing Improvements on Lessee's own prior examination thereof; and (iv) IN ENTERING INTO THIS LEASE LESSEE IS LEASING THE LEASED PREMISES AND ACQUIRING THE EXISTING IMPROVEMENTS, AS APPLICABLE, IN AN "AS IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR.

(b) General Release. Subject to Section 9.3(a) above, Lessee and its owners, employees, agents, assigns and successors agree that upon the Acquisition Closing, Lessee shall be deemed conclusively to have released and discharged Lessor and its agents, employees, trustees, assigns and successors, from any and all damages, losses, demands, claims, debts, liabilities, obligations, causes of action and rights, whether known or unknown, by Lessee regarding the Leased Premises and Existing Improvements, including, but not limited to, the environmental condition of the Leased Premises and Existing Improvements.

(c) Waiver of Civil Code § 1542. Lessee agrees that, with respect to the General Release contained in Section 9.3(b) above, the General Release extends to all matters regarding the Leased Premises and Existing Improvements, whether or not claimed or suspected, to and including the date of execution hereof, and constitutes a waiver of each and all the provisions of the California Civil Code § 1542, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Lessee herein acknowledges that the effect and import of the provisions of Civil Code § 1542 have been explained to it by its own counsel. Lessee understands and acknowledges the significance and the consequence of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, losses or liabilities that it may hereinafter incur from the waiver of these unknown claims.

Section 9.4 Environmental Work. Lessee shall be responsible for performing the work of any investigation and remediation on the Leased Premises and Existing Improvements which may be required in order to develop the Leased Premises and demolish the Existing Improvements. The determination as to whether any such remediation is needed, and as to the scope and methodology thereof, shall be made by mutual agreement of the governmental agency with responsibility for monitoring such remediation, Lessor and Lessee. Lessee shall notify Lessor promptly upon discovery of any actionable levels of Hazardous Substances, and upon any release thereof, and shall consult with Lessor in order to establish

the extent of remediation to be undertaken and the procedures by which remediation thereof shall take place. Lessee shall comply with, and shall cause its agents and contractors to comply with, all laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Substances. The investigation and remediation work shall be carried out in accordance with all applicable laws (including Hazardous Materials Laws) and such other procedures and processes as may be described in this.

Section 9.5 Notices. Lessee shall promptly notify Lessor in writing of any and all of the following:

- (a) Any litigation known to Lessee materially affecting Lessee, or the Property;
- (b) Any written communication Lessee receives from any governmental, judicial, or legal authority giving notice that the Property or Improvements fail in any respect to comply with any applicable governmental law;
- (c) Any material adverse change in the physical condition of the Property (including any damage suffered as a result of fire, earthquakes, or floods);
- (d) Any material adverse change in Lessee's financial condition, any material adverse change in Lessee's operations, or any change in the management of Lessee;
- (e) Any Event of Default or event which, with the giving of notice or the passage of time or both, would constitute an Event of Default; and
- (f) Any other circumstance, event, or occurrence that results in a material adverse change in Lessee's ability to timely perform any of its obligations under this Lease.

## ARTICLE 10. EMINENT DOMAIN

Section 10.1 Termination of Lease. Lessor and Lessee agree that, in the event of a Taking such that Lessee, with the consent of all Mortgagees and the Investor, reasonably determines that the Leased Premises cannot continue to be operated, at reasonable cost, for its then-current use, then, subject to the rights and with the prior consent of Mortgagees and the Investor, this Lease shall, at Lessee's sole option, terminate as of the date of the Taking.

Section 10.2 Continuation of Lease and Presumption of Restoration. Lessor and Lessee agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to Section 10.1 above, this Lease shall continue in effect as to the remainder of the Leased Premises, and the Net Condemnation Award will be disbursed in accordance with Section 10.4 below to Lessee and/or to any Mortgagee if the terms of the applicable Mortgage so require, and shall be used so as to make the same a complete, unified and efficient operating unit as nearly as reasonably possible to the condition existing prior to the Taking, subject to any applicable requirements of the Mortgagee.

Section 10.3 Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Leased Premises or of Lessee's interest in this Lease, then the Term shall not be reduced and Lessee shall continue to pay all Rents, Impositions, and other charges required in this Lease, without reduction or abatement at the times specified; provided, however, that Lessee shall not be required to perform such obligations that Lessee is prevented from performing by reason of such temporary Taking.

Section 10.4 Award. After the Acquisition Closing, subject to the rights of Mortgagees, if there is a Taking, whether whole or partial, Lessor and Lessee shall be entitled to pursue and receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration the fact that Lessor's interest in the Leased Premises is limited to the Property as encumbered by this Lease, and a reversionary interest in the Leased Premises upon the expiration of the Term. If the Leased Premises is restored as is contemplated in Section 10.2 above, Lessee shall be entitled to recover the costs and expenses incurred in such restoration out of any Net Condemnation Award, subject to a Mortgagee's right to elect to have such Net Condemnation Award paid directly to Mortgagee, as set forth in the applicable financing documents for such Mortgage. Thereafter, if the condemning authority does not make separate awards, and the Parties are unable to agree as to the exact amount to be allocated to the respective interests of each Party, then each Party shall select an independent M.A.I. real estate appraiser (an "Appraiser"). Each Appraiser shall separately determine the amount of the balance of the Net Condemnation Award that is to be allocated to the interests of each Party. If the percentage of the balance of the Net Condemnation Award each Appraiser allocates to Lessor (a) are within ten percent (10%) of each other, the two allocations shall be averaged, and such average shall be the final allocation of the Net Condemnation Award, or (b) are not within ten percent (10%) of each other, the two Appraisers shall then select a third Appraiser, who shall independently allocate the Net Condemnation Award between Lessor and Lessee, and the middle of such three allocations shall be the final allocation of the Net Condemnation Award. Notwithstanding anything to the contrary contained herein, any Net Condemnation Award recovered by or allocated to Lessor shall in no event be greater than the value of Lessor's fee interest in the Property and any Net Condemnation Award recovered by or allocated to Lessee or Mortgagee shall in no event be less than the total Net Condemnation Award minus the value of Lessor's fee interest in the Property.

Section 10.5 Joinder. If a Mortgage exists, the Mortgagees, to the extent permitted by law, shall be made a party to any Taking proceeding.

## ARTICLE 11. DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction to Leased Premises. Lessee shall give prompt written notice to Lessor after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Leased Premises, the Improvements or any portion of them (a "Casualty"). Subject to Section 11.2 below, and the rights of any Mortgagees, if during the Term the Improvements shall be damaged or destroyed by Casualty, Lessee shall

repair or restore the Improvements, so long as Lessee determines, in its sole discretion, that it is feasible to do so and in such event Lessee provides or causes to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration. Upon the occurrence of any such Casualty, Lessee, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty. In the event that Lessee shall determine, subject to the rights and with the consent of the Mortgagees and the Investor, by notice to Lessor given within thirty (30) days after receipt by Lessee of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Leased Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Lessee may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Lessee terminates this Lease pursuant to this Section 11.1 with the consent of all Mortgagees and the Investor, Lessee shall surrender possession of the Leased Premises to Lessor immediately and assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Leased Premises, subject to the prior rights of any Mortgagee.

Section 11.2 Damage or Destruction Near End of Term. If, during the last seven (7) years of the Term, the Improvements shall be damaged by Casualty, then Lessee shall have the option, to be exercised within one hundred twenty (120) days after such Casualty:

- (a) to repair or restore the Improvements as provided in this Article 11; or
- (b) subject to the rights of Mortgagees, to terminate this Lease by notice to Lessor, which termination shall be deemed to be effective as of the date of the Casualty. If Lessee terminates this Lease pursuant to this Section 11.2, Lessee shall surrender possession of the Leased Premises to Lessor immediately and assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Leased Premises, subject to the prior rights of any Mortgagee therein.

Section 11.3 Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to Sections 11.1 or 11.2 of this Lease, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) first, if a Mortgage is in place to the Mortgagee to the extent of any indebtedness then owed to such Mortgagee; (b) second, the balance, if any, of such insurance proceeds shall be paid to Lessee or, as applicable pursuant to Sections 11.1 and 11.2 above, assigned or paid over to Lessor.

## ARTICLE 12. EVENTS OF DEFAULT

Section 12.1 Events of Default. Each of the following shall be an "Event of Default" by Lessee under this Lease:

- (a) failure by Lessee to pay any Rent when due or to pay or cause to be paid any Impositions, insurance premiums or other liquidated sums of money stipulated to be

paid by Lessee, if such failure shall continue for a period of fifteen (15) days after notice has been given by Lessor to Lessee;

(b) failure by Lessee to perform or observe any of the provisions of this Lease stipulated in this Lease to be observed and performed by Lessee (other than as set forth in subsection (a) above), if such failure shall continue for a period of thirty (30) days after written notice thereof has been given by Lessor to Lessee; provided, however, that if any such failure cannot reasonably be cured within such thirty (30)-day period, then Lessor shall not have the right to terminate this Lease or Lessee's right to possession under this Lease so long as Lessee promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time; provided, however, that such period shall not extend for more than ninety (90) days after the date of Lessor's written notice to Lessee;

(c) the subjection of any right or interest of Lessee in this Lease to attachment, execution or other levy, or to seizure under legal process, if not released within sixty (60) days; provided that the foreclosure of any Mortgage shall not be construed as an Event of Default within the meaning of this Subsection 12.1(c);

(d) the appointment of a receiver, not including receivership pursuant to any Mortgage, to take possession of Lessee's Estate or of Lessee's operations on the Leased Premises for any reason, if such receivership is not terminated, dismissed or vacated within ninety (90) days after the appointment of the receiver;

(e) the filing by Lessee of a petition for voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or Federal, now or hereafter in effect;

(f) the filing against Lessee of any involuntary proceedings under such Bankruptcy Code or similar law, if such proceedings have not been vacated or stayed within ninety (90) days of the date of filing;

(g) the appointment of a trustee or receiver for Lessee or for all or the major part of Lessee's property or the Leased Premises, in any involuntary proceeding, not including pursuant to any Mortgage, or taking of jurisdiction by any court over all or the major part of Lessee's property or the Leased Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Lessee, if such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ninety (90) days; or

(h) a general assignment by Lessee for the benefit of creditors or Lessee's admittance in writing of its insolvency or inability to pay its debts generally as they become due or Lessee's consent to the appointment of a receiver or trustee or liquidator for Lessee, all or the major part of its property, or the Leased Premises.

## Section 12.2 Rights and Remedies.

(a) At any time after the occurrence of an Event of Default, subject in all

respects to the provisions of this Lease with respect to Lessor's rights to cure defaults by Lessee and subject to the rights of any Mortgagees and the Investor as set forth in Article 8, in addition to any other remedies available to Lessor at law or in equity, Lessor may terminate this Lease by giving Lessee written notice thereof (with a copy of such notice to the Mortgagees and to the Investor), setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and Lessee's Estate and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 for the expiration of the Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Leased Premises (including all buildings and other Improvements comprising any part of the Leased Premises) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants; provided that Lessor shall not be entitled to disturb possession of any Tenants or others in possession pursuant to Tenant Leases with Lessee so long as such Tenants or others are not in default under the Tenant Leases, and attorn to Lessor as their lessor.

(b) Upon the exercise of Lessor's remedies pursuant to this Section 12.2, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request in order to accurately set forth of record the then current status of Lessee's Estate and Lessee's rights under this Lease.

### Section 12.3 Default by Lessor.

(a) Events of Default. Lessor shall be in default of this Lease if it fails to perform any provision of this Lease that it is obligated to perform or if any of Lessor's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within thirty (30) days after written notice of the default has been given to Lessor. If the default cannot reasonably be cured within thirty (30) days, Lessor shall not be in default of this Lease if Lessor commences to cure the default within such thirty (30)-day period and diligently and in good faith continues to cure the default until completion.

(b) Right to Cure; Lessee's Remedies. If Lessor shall have failed to cure a default by Lessor after expiration of the applicable time for cure of a particular default, Lessee, at its election, but without obligation (i) may seek specific performance of any obligation of Lessor, after which Lessee shall retain, and may exercise and enforce, any and all rights that Lessee may have against Lessor as a result of such default, (ii) from time to time without releasing Lessor in whole or in part from the obligations to be performed by Lessor under this Lease, may cure the default at Lessor's cost, (iii) may terminate this Lease, and/or (iv) may exercise any other remedy given under this Lease or now or later existing at law or in equity. Any reasonable costs incurred by Lessee in order to cure such a default by Lessor shall be due immediately from Lessor, together with interest, and may be offset against any amounts due from Lessee to Lessor.

Section 12.4 Notices. Notices given by Lessor under Section 12.1 or by Lessee under Section 12.3 shall specify the alleged default and the applicable Lease provisions, and shall demand that Lessee or Lessor, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice.

### ARTICLE 13. QUIET ENJOYMENT AND POSSESSION; INSPECTIONS

Section 13.1 Quiet Enjoyment. Lessor covenants and warrants that Lessee, upon payment of all sums provided in this Lease and upon performance and observance of all of its covenants contained in this Lease, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Leased Premises during the Term, subject only to the provisions of this Lease and all applicable Legal Requirements.

Section 13.2 Lessor's Right of Inspection. Notwithstanding Section 13.1 above, Lessor, in person or through its agents, upon reasonable prior notice to Lessee, shall have the right, subject to the rights of Tenants, to enter upon the Development for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by Lessee with its obligations under this Lease. In addition to the aforementioned inspection rights, Lessee grants a right of access to Lessor, or any of its authorized representatives, with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

### ARTICLE 14. VACATION OF LEASED PREMISES

Section 14.1 Surrender of Leased Premises. Lessee covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained in this Lease, Lessee will peaceably and quietly yield and surrender possession of the Leased Premises to Lessor. The foregoing, however, will be subject to the rights of Tenants or others in possession pursuant to Tenant Leases with Lessee, provided that such Tenants are not in default under such Tenant Leases and attorn to Lessor as their lessor. An action of forcible detainer shall lie if Lessee holds over after a demand for possession is made by Lessor.

Section 14.2 No Right to Possession after Termination. Lessee has no right to retain possession of the Development or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over by Lessee (or any successor-in-interest to Lessee) after the expiration or earlier termination of this Lease shall be construed to be a tenancy at sufferance on all of the terms and conditions set forth herein to the extent not inconsistent with a tenancy at sufferance. Acceptance by Lessor of rent or any other sum payable hereunder after such expiration or earlier termination shall not result in an extension or renewal of this Lease. If Lessee fails to surrender the Development upon the expiration or



earlier termination of this Lease, Lessee shall indemnify, defend and hold harmless Lessor from and against all loss, damage, cost, liability or expense (including, without limitation, attorneys' fees and expenses) resulting from or relating to such failure to surrender the Development including, without limitation, any claim made by any succeeding lessee.

ARTICLE 15.  
NON-MERGER

Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth in this Lease, there shall be no merger of either this Lease or Lessee's Estate created under this Lease with the fee estate of the Property or any part of the Property by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Lease, Lessee's Estate created under this Lease or any interest in this Lease or Lessee's Estate (including the Improvements), and (b) the fee estate in the Property or any part of the Property or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Lessor, having an interest in (i) this Lease or Lessee's Estate created under this Lease, and (ii) the fee estate in the Property or any part of the Property, shall join in a written instrument effecting such merger and shall duly record the same, and shall have obtained the prior written consent of all Mortgagees.

ARTICLE 16.  
ASSIGNMENTS AND TRANSFERS

Section 16.1 Consent Required. Except as expressly provided herein, Lessee shall not, without the prior written consent of Lessor, assign this Lease or any interest therein ("Transfer"). A Transfer shall be deemed to include any attempt by Lessee to (a) demolish all or any portion of the Leased Premises after construction of the Improvements; (b) make or permit any voluntary or involuntary, total or partial, sale, lease, assignment, conveyance, mortgage, pledge, encumbrance, or other transfer of any or all of the Leased Premises, the Improvements; or (c) transfer, convey or assign (i) any interest of a managing member, general partner, or controlling affiliate or stockholder (any such interest being referred to as a "Controlling Interest") in Lessee or (ii) a Controlling Interest in any entity which has a Controlling Interest in Lessee, or (iii) any other interest in Lessee, or in any partner or member thereof. Any person to whom any Transfer is attempted without the consent of Lessor (if applicable) shall have no claim, right or remedy whatsoever hereunder against Lessor, and Lessor shall have no duty to recognize any person claiming under or through the same.

Section 16.2 Limitations on Consent Requirement. Notwithstanding the foregoing, and subject to the limitations set forth in Section 17.19, the consent of Lessor shall not be required for:

(a) a lease of any Unit at the Leased Premises, subject to Lessor's prior approval of the form of Tenant Lease;

(b) mortgage of Lessee's interest in the Leased Premises and Improvements to any approved Mortgagee, and transfer of the Leased Premises and Improvements to such Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or the first transfer of the Leased Premises and the Improvements by such Mortgagee to an unrelated third party following a foreclosure or deed

in lieu of foreclosure so long as such transferee or its third-party property management agent is qualified to manage and operate affordable housing projects similar to the Leased Premises;

(c) transfers of the Investor's limited partner interest in Lessee that are permitted under Lessee's Partnership Agreement;

(d) the removal of the general partner of Lessee by the Investor for cause following default under the Partnership Agreement, and the subsequent transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation selected by the Investor, provided such replacement general partner is approved by Lessor which approval shall not be unreasonably withheld, conditioned or delayed, and (ii) the Investor or an affiliate thereof, but only for a period not to exceed one hundred-twenty (120) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above;

(e) grants and easements for the establishment, operation, and maintenance of utility services; and

(f) the encumbrance of the Leased Premises with the Regulatory Agreements.

Section 16.3 Subsequent Assignment. In cases where Lessor's consent is required, Lessor's consent to one assignment will not waive the requirement of its consent to any subsequent assignment.

Section 16.4 Request for Consent. If Lessee requests Lessor's consent to a specific assignment, Lessee shall provide to Lessor such information as may reasonably be required by Lessor.

Section 16.5 Grant of Purchase Option to Lessor or Affiliate. Notwithstanding anything to the contrary set forth in any other provision of this Lease, nothing shall prohibit (i) the granting of a purchase option and/or right of first refusal to purchase Lessee's Estate as provided in the Option and/or (ii) the exercise of such Option in accordance with the Option.

## ARTICLE 17. MISCELLANEOUS PROVISIONS

Section 17.1 Entire Agreement: Modifications. This Lease supersedes all prior discussions and agreements between the Parties with respect to the leasing of the Leased Premises. This Lease contains the sole and entire understanding between the parties with respect to the leasing of the Leased Premises pursuant to this Lease, and all promises, inducements, offers, solicitations, agreements, representations and warranties made between the Parties, if any, are merged into this Lease. This Lease may be amended by mutual agreement of the Parties provided that any such amendment must be in writing and signed by both Parties.

Section 17.2 Amendments. Lessor shall not unreasonably withhold its consent to any amendments to this Lease that are reasonably requested by a Mortgagee or the Investor; provided, however, Lessor may, in its sole and absolute discretion, refuse to consent to any proposed amendments to the description of the Leased Premises, the Term, Rent or any other amendments which would materially change the rights and/or obligations of Lessor under this Lease.

Section 17.3 Governing Law. This Lease, and the rights and obligations of the Parties under this Lease, shall be governed by and construed in accordance with the substantive laws of the State of California.

Section 17.4 Binding Effect. This Lease shall inure to the benefit of and be binding upon the Parties, their heirs, successors, administrators, executors and permitted assigns.

Section 17.5 Severability. In the event any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder of this Lease, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part of this Lease, except to the extent the rights and obligations of the parties have been materially altered by such unenforceability.

Section 17.6 Further Assurances. From and after the date of this Lease, Lessor and Lessee, at the request of the other Party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Lease.

Section 17.7 Captions. All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions of this Lease. All references to particular articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Lease.

Section 17.8 Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

Section 17.9 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

Section 17.10 References. All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Lease.

Section 17.11 Rights Cumulative. Except as expressly limited by the terms of this

Lease, all rights, powers and privileges conferred under this Lease shall be cumulative and not restrictive of those provided at law or in equity.

Section 17.12 Notices. All notices, requests, demands, or other communications required or permitted to be given under this Lease shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express, or by hand delivery by a recognized, reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Party any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

Lessor: Housing Authority of the County of San Bernardino  
715 East Brier Drive  
San Bernardino, CA 92408-2841  
Attn: Executive Director

Lessee: Waterman Gardens Partners 2, L.P.  
9421 Haven Avenue  
Rancho Cucamonga, CA 91730  
Attn: President/CFO

With a copy to: National Community Renaissance of California  
9421 Haven Avenue  
Rancho Cucamonga, CA 91730  
Attn: General Counsel

Mortgagees: Bank of America, N.A.  
Community Development Banking  
Mail Code: CA4-704-06-06  
2000 Clayton Road, Building D, 6th Floor  
Concord, CA 94520  
Attn: Loan Administration Manager

And

JPMorgan Chase Bank, N.A.  
560 Mission Street, 3rd Floor  
San Francisco, CA 94105

Investor: Bank of America, N.A.

Mail Code: MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110  
Attn: Asset Management

Section 17.13 Counterparts. This lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

Section 17.14 Time of Essence. Time is and shall be of the essence in this Lease.

Section 17.15 Attorneys' Fees. If any collection proceeding (whether or not arising to the level of an action) or if any action is brought by Lessor to recover any Rent or Additional Rent due and unpaid hereunder or to recover possession of the Development, or in the event any action between Lessor and Lessee to enforce or interpret any of the terms of this Lease, including any action or proceeding in a bankruptcy case, the prevailing party shall be entitled to recover costs of suit and expenses including, without limitation, reasonable attorneys' fees, which shall include fees and costs of any appeal.

Section 17.16 Relationship of Parties. It is understood that, subject to the limitations contained in this Lease, Lessee shall have control of the operation of the Improvements. Nothing in this Lease shall create or be construed to create a partnership or joint venture between Lessor, its successors and assigns, on the one hand, and Lessee, its successors and assigns, on the other hand.

Section 17.17 Conflicts with Mortgage. In the event of a default under a Mortgage, such Mortgagee may exercise with respect to the Leased Premises any right, power or remedy under the Mortgage which is not in conflict with the provisions of this Lease.

Section 17.18 TCAC Lease Rider. The TCAC Lease Rider Agreement recorded concurrently herewith shall control in the event of any conflict with the terms of this Lease, but shall be subject to the terms of the RAD Use Agreement.

Section 17.19 RAD Provisions. Notwithstanding any other clause or provision in this Lease and so long as the RAD Use Agreement dated as of substantially even date herewith, as amended from time to time is in effect, the following provisions shall apply:

(a) This Lease shall in all respects be subordinate to the Use Agreement. Subordination continues in effect with respect to any future amendment, extension, renewal, or any other modification of the RAD Use Agreement or the Lease.

(b) If any of the provisions of this Lease conflict with the terms of the Use Agreement, the provisions of the Use Agreement shall control.

(c) The provisions in this Section 17.19 are required to be inserted into this Lease by HUD and may not be amended without HUD's prior written approval.

(d) Violation of the RAD Use Agreement constitutes a default of this Lease.

(e) Notwithstanding any other contract, document or other arrangement, upon termination of this Lease, title to the Property shall remain vested in Lessor and title to the buildings, fixtures, improvements, trade fixtures and equipment that belong to Lessee shall vest in Lessor.

(f) Neither the Lessee nor any of its partners shall have any authority to:

(1) Take any action in violation of the RAD Use Agreement; or

(2) Fail to renew the RAD HAP Contract upon such terms and conditions applicable at the time of renewal when offered for renewal by the Lessor or HUD.

(g) Except to the extent permitted by the RAD HAP Contract or Use Agreement and the normal operation of the Development, neither the Lessee nor any of its partners shall have any authority without the consent of Lessor to sell, transfer, convey, assign, mortgage, pledge, sublease or otherwise dispose of, at any time, the Development or any part thereof.

*[signatures on following page]*

IN WITNESS WHEREOF, this Lease is made and entered into as of Commencement Date.

**LESSOR:**

HOUSING AUTHORITY OF THE COUNTY  
OF SAN BERNARDINO, a public body,  
corporate and politic

By: \_\_\_\_\_  
Maria Razo, Executive Director

**LESSEE:**

WATERMAN GARDENS PARTNERS 2, L.P., a  
California limited partnership

By: WG PARTNERS 2 MGP, LLC, a California  
limited liability company, its general partner

By: National Community Renaissance of  
California, a California nonprofit public  
benefit corporation, its sole member and  
manager

By: \_\_\_\_\_  
Michael Finn  
Chief Financial Officer



## EXHIBIT A

### PROPERTY

All that certain real property situated in the City of San Bernardino, County of San Bernardino, State of California, described as follows:

EXHIBIT B

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Housing Authority of the County of San Bernardino  
715 East Brier Drive  
San Bernardino, CA 92408-2841  
Attn: Executive Director

Mail Tax Statements As Directed Above

---

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is made as of August \_\_, 2019, by and between Housing Authority of the County of San Bernardino, a public body, corporate and politic, ("Lessor"), and Waterman Gardens Partners 2, L.P., a California limited partnership ("Lessee") with respect to that certain Ground Lease dated as of August \_\_, 2019 (the "Lease"), between Lessor and Lessee.

Pursuant to the Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor that certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein, (the "Property") and Lessor grants to Lessee, all the improvements constructed or to be constructed on the Property for the term of the Lease which improvements are and shall remain real property. The Lease commences on the date of recordation of this Memorandum, and shall continue from such date until the ninety-ninth (99th) anniversary of the date of recordation of this Memorandum, unless sooner terminated pursuant to the terms of the Lease.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

This Memorandum shall be subject to that certain RAD Use Agreement by and among Lessor, Lessee and the United States Department of Housing and Urban Development, recorded concurrently herewith.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

**LESSOR:**

HOUSING AUTHORITY OF THE COUNTY  
OF SAN BERNARDINO, a public body,  
corporate and politic

By: \_\_\_\_\_  
Maria Razo, Executive Director

**LESSEE:**

WATERMAN GARDENS PARTNERS 2, L.P., a  
California limited partnership

By: WG PARTNERS 2 MGP, LLC, a California  
limited liability company, its general partner

By: National Community Renaissance of  
California, a California nonprofit public  
benefit corporation, its sole member and  
manager

By: \_\_\_\_\_  
Michael Finn  
Chief Financial Officer

[SIGNATURES MUST BE NOTARIZED]

GROUND LEASE AGREEMENT

Between

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO,  
a public body, corporate and politic ("Lessor")

and

WATERMAN GARDENS PARTNERS 2, L.P.,  
a California limited partnership ("Lessee")

(Arrowhead Grove Apartments)

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