

ENHANCED – USE LEASE

**of Certain Real Property and Facilities
at the VA Greater Los Angeles Healthcare System
West LA Campus – Building 209
Los Angeles, California**

DATED MAY 18th, 2017

Enhanced-Use Lease
of Certain Real Property and Facilities
at the VA Greater Los Angeles Healthcare System
West LA Campus
Los Angeles, California

PREAMBLE

This **Enhanced-Use Lease (herein referred to as the “Lease”)** is made and entered into this the 18th day of MAY, 2017, by and between the Secretary of the Veterans Affairs, an officer of the United States on behalf of the Department of Veterans Affairs (hereinafter “Department” or “VA”), and Veterans Housing Partnership, LLC, (hereinafter “Lessee”), a California limited liability company, for the portion of land legally described on Exhibit “A” and depicted on Exhibit “B”, which is more particularly defined as the “Property.”

RECITALS

- A. WHEREAS**, the Department has jurisdiction and control of certain real property and facilities known as the VA Greater Los Angeles Healthcare System, West LA Campus, Los Angeles, California (hereinafter “GLAHS”) that provides health care services to the nation’s Veterans. The VAMC property subject to this Lease is located at 11301 Wilshire Boulevard, Los Angeles, California, and consists of Buildings 209 on approximately two acres of land and improvements, as further described and depicted in Exhibits “A” and “B,” respectively; and
- B. WHEREAS**, 38 U.S.C. Section 8161, et seq. “Enhanced-Use Leases of Real Property”, as amended by the West Los Angeles Leasing Act of 2016, permits the Department to enter into long-term leases of certain property under its jurisdiction and control; and
- C. WHEREAS**, in accordance with the terms and conditions herein, VA desires to lease the Property to Lessee and Lessee desires to Lease the same from VA, so Lessee can finance, design, develop, renovate, construct, operate, and maintain affordable residential housing and associated vehicular parking spaces (collectively, the “Facility”), all for the purpose of providing supportive housing to eligible Veterans and their families and will consist of repurposing Building 209 into permanent supportive housing. The Lessee will provide approximately 55 housing units, comprised of 32 studios and 23 one-bedroom units in Building 209.
- D. WHEREAS**, a long-term use of the Property as the Facility through an Enhanced-Use Lease, as authorized by the provisions of 38 U.S.C. Section 8161, et seq., and as amended by the Los Angeles Leasing Act of 2016, by Lessee, would result in the availability of affordable supportive housing, and would permit more VA resources to be directed toward Veteran care; and
- E. WHEREAS**, the Department and Lessee agree that during the Lease term, the Facility shall be considered a non-VA, privately-owned and operated commercial facility subject to applicable Federal, State, and local laws, codes, ordinances, regulations, and permitting requirements, and at the Facility, eligible Veterans shall receive placement into the Facility and

any services and programs offered therein, and Veteran's eligibility shall be contained in the "Tenant Selection Plan" (attached as Exhibit "F"); and

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED AND ACCEPTED, IT IS HEREBY AGREED THAT subject to the terms and conditions herein, the Department grants to Lessee and Lessee accepts a 50- year initial term, with a right of the parties to exercise up to one, 20-year extension as described in Article 3 below.

ARTICLE 1 – EXHIBITS AND DEFINITIONS

Exhibits: The following constitute the Exhibits to this Lease. Each of the Exhibits is attached to this Lease and is incorporated by this reference:

- A. Exhibit "A": Description of Property
- B. Exhibit "B": Site Plan
- C. Exhibit "C": Reserved
- D. Exhibit "D": Reserved
- E. Exhibit "E": Operations and Maintenance Plan
- F. Exhibit "F": Tenant Selection Plan
- G. Exhibit "G": Memorandum of Lease

Definitions: The following constitute the definitions to this Lease:

"Capital Improvement Obligation" means the mutually agreed upon improvements that are to occur upon a given date as further described in Article 10;

"Certificate of Substantial Completion": means the certificate defined in Article 6.B.14 of this Lease.

"Congress": means the Congress of the United States of America.

"Commencement of Construction": means that date that Lessee, its construction contractor, any subcontractor, or builder associated with the Project commences any reasonable act (i.e., groundbreaking, erection, etc.) on the Property aimed at, or which effectively establishes, builds, erects, constructs, raises, develops, or furthers any portion of the Project's development, including any portion of the Project's subsurface region(s).

"Department": means the United States Department of Veterans Affairs.

“Designated VA Representative” or “DVR”: means the individual of the Department who: (a) is designated by the Secretary to act on matters of Lease administration but (b) is not designated to execute amendments or modifications to the Lease or its exhibits unless the individual has or acquires such authority through a written “Delegation of Authority” from the Secretary.

“Effective Date”: means the date this Lease is executed by both parties; provided that, if the parties execute this Lease on different days, the Effective Date shall mean the later day that this Lease is executed.

“Facility”: means (a) the Facility described in the Recitals section above, which Lessee will finance, design, develop, construct, renovate, operate, and maintain in accordance with this Lease; and (b) all associated structures, improvements, utilities, fixtures, infrastructure, and any other Improvements located on the Property.

“Force Majeure”: means any of the following that directly cause any of Lessee’s obligations hereunder not to be performed in a timely manner: (a) an earthquake, hurricane, tornado, flood, or other similar act of God; (b) fire; (c) strikes or similar labor disputes provided such strike or similar dispute is beyond Lessee’s control and provided Lessee takes all steps reasonably possible to remediate such strike or similar dispute; (d) acts of the public enemy; (e) inability to obtain labor or materials or clear access to the Project by reason of acts or omissions of any governmental body not caused by Lessee’s actions or omissions; (f) rebellions, riots, insurrections or civil unrest; (g) unusually severe weather conditions that actually cause similar construction or development activities in the area of the Project to be suspended; (h) discovery, remediation, and abatement of any unknown environmental hazard or unknown hazardous substance (i.e., a hazardous substance, covered by any environmental law or regulation, whose existence on the Property is unknown to Lessee by the Effective Date) which is affecting the Property; (i) discovery of any ancient, historical, archeological, architectural, or cultural artifacts, relics, or remains on the Property; and (j) any act or omission of a governmental body other than VA not caused by Lessor’s or Lessee’s actions or omissions.

“Hazardous Substances”: means those substances as defined in Article 34 of this Lease.

“Improvements”: means any existing improvements on the Property, and any development, construction, operation, and maintenance activities made on or to the Property or Facility by Lessee, which the Lessee will accomplish in accordance with this Lease, particularly Article 10.

“Lease”: means this Enhanced-Use Lease (“EUL”) between the Department and Lessee.

“Leasehold Mortgage”: means each mortgage as defined in Article 20.B.2 of this Lease.

“Leasehold Mortgagee”: means each leasehold mortgagee as defined in Article 20.B.2 of this Lease.

“Lease-Up Date:” means the date on which the Facility is occupied by its first tenant/occupant.

“Lessee”: means Veterans Housing Partnership, LLC or its majority owned affiliate or assignee.

“Project”: means the financing, design, development, construction, renovation, operation and maintenance of the Facility in accordance with this Lease.

“Property”: means that certain real property consisting of Buildings 209 situated on approximately two acres, as described and depicted in Exhibits “A” and “B,” respectively, and all of the structures, improvements, utilities, fixtures, infrastructure, and any other Improvements that are located, constructed, erected or placed thereon.

“Qualified Party”: means any Person whereby (i) neither such Person nor any of its partners, members, or principal stockholders is debarred or suspended from doing business with the Department or any other Federal government agency, (ii) neither such Person nor any of its partners, members, or principal stockholders is listed on the most current “System for Award Management” published by the United States General Services Administration at www.sam.gov, as updated from time to time, or any replacement thereof, (iii) neither such Person nor any of its partners, members, or principal stockholders is a person who poses a security or safety risk as determined by the Secretary of State, including but not limited to any person who either represents a country, or is a member of or provides political, financial or military support to a group, that is listed in the most current “Patterns of Global Terrorism” report, issued by the Secretary of State in compliance with 22 U.S.C. § 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at http://www.state.gov/global/terrorism/annual_reports.html, and (iv) neither such Person nor any of its partners, members or principal stockholders is subject to a criminal indictment or information for a felony in any court in the United States. For purposes of this Lease, the term “principal stockholder” shall mean any person who is a beneficial owner (as defined for purposes of Rule 13d-3 of the Securities and Exchange Act of 1934, as amended and promulgated by the Securities and Exchange Commission) of ten percent (10%) or more of the outstanding stock or other equity of the Lessee.

“Secretary”: means the Secretary of Veterans Affairs or the individual delegated to act for and on behalf of the Secretary.

“Subtenants”: means a person or entity that is a subtenant or other holder of a right to use and occupy certain space within the Property pursuant to an executed sublease or other agreement with the Lessee.

“Successor”: means any such entity as defined in Article 20.B.3 of this Lease.

“VA Facility Manager”: means the VA employee that the DVR identifies to the Lessee as being available to receive a copy of the “as-built drawings” as set forth in Article 10.F of this Lease.

“VAMC”: means the United States Department of Veterans Affairs Greater Los Angeles Healthcare System, West Los Angeles Campus, California.

“Veteran(s)”: means a Veteran(s) within the meaning of 38 U.S.C. Section 101(2) (e.g., a person(s) who served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable).

ARTICLE 2 – CONSIDERATION FOR LEASE, LESSEE REQUIREMENTS, PAYMENT OF ANCILLARY SERVICES, AND UTILITY INFRASTRUCTURE

A. Consideration:

1. It is the understanding of both parties that Lessee is undertaking this Lease to achieve public interest objectives that are mutually beneficial, namely to, through a community-based effort, improve the availability of affordable, safe, drug free (other than properly prescribed medication) affordable housing for Veterans and their families.

2. Commencing on the first day of the month following the Effective Date, and then on each anniversary date thereafter throughout the Lease term, Lessee shall owe and pay to the Department Base Rent in the amount of \$360 per unit per annum, which equates to \$30 dollars per unit per month. The Lessee shall communicate with the DVR as needed to successively remit each of its rent payments to VA in a timely manner. The Base Rent shall be increased by 3% per year, but shall be adjusted downward to match any allowable escalator of gross rents under the HUD-VASH program.

B. Lessee Requirements:

1. Lessee will finance, design, develop, construct, renovate, operate, and maintain the Property into the Project in accordance with all applicable State and local laws, codes, ordinances, and permitting requirements, and any amendments thereto; the National Fire Protection Association (“NFPA”) 101 Life Safety Code; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.); the National Historic Preservation Act of 1966 (16 U.S.C. § 470, et seq.); the Archaeological Resources Protection Act (16 U.S.C. § 470 et. seq.), all as such laws may be amended from time to time; and as otherwise set forth in this Lease, all in a manner so as at all times not to unreasonably interfere with or disrupt the VAMC’s activities and operations.

2. Lessee has, in consultation with VA, established specific procedures, regulations, rules, and/or standards to ensure that eligible Veterans receive admission into the Facility and receipt of the supportive services offered within the Facility; ensure that Veterans receive such services or any privileges, accommodations, or activities provided on the Property or residing in the Facility; and ensure that such Veteran eligibility criteria are contained in the “Operation and Maintenance Plan” (attached as Exhibit “E”) and the “Tenant Selection Plan” (attached as Exhibit “F”).

C. Utility Infrastructure, Metering, VA Approval of Distribution Systems, Professional Engineer's Report:

The Department and Lessee hereby agree as follows:

1. Lessee shall be solely responsible for any and all costs (i.e., direct costs, insurance, taxes, assessments, etc.) associated with establishing/constructing the infrastructures, distribution lines and systems, connections (including any Lessee reconnections to local utility provider services due to events relating to or stemming from Articles 2.C.5 and/or 2.C.6 below), meters, taps, etc., required for the providing of gas, electricity, water, sewer, oil, fiber optics, telephone, fire alarm service or any other form of utility, communications, power, or fuel to the Property.

2. Lessee shall be solely responsible for transfer meters within one-hundred and twenty (120) calendar days of the Lease-Up Date, and paying the Department (within thirty (30) days of receipt of any bill from the Department detailing) the "at-cost" amounts (including any fees or charges to or assessments against VA that are attributable to VA's provision of utilities to Lessee) for any and all electricity, water, gas, oil, fiber optics, telephone, or any other form of utility, communications, power, or fuel required during construction and/or operation of the Project. Nothing in this Section B requires Lessee to acquire utility services from the Department. In the event meters require more than transferring of services, such as construction or installation of individual meters, the date by which such metering services is to be completed shall be extended to a reasonable date in accordance with the utility company schedules.

3. Commencing on the Effective Date of the Lease, and notwithstanding Article 2.C.6 below, Lessee shall be solely responsible for ensuring at its sole cost and expense and subject to Article 2.C.2 above, that the utilities necessary for the operation and maintenance of the Property are available and operable in accordance with Federal, State, and local codes from VA or a third party utility provider.

4. In conjunction with (1) and (2) above, the Department shall have the right to review and approve any and all connections to VA's distribution systems prior to: (a) final design of such connections and (b) final installation of such connections, and the Department shall issue both such approvals to Lessee in writing. In addition, prior to the Department's approval of any and all connections to VA's distributions systems per this Paragraph 4, Lessee shall provide the Department with a "Professional Engineer's Survey Report" that evaluates the impact of the installation of such utilities on VA's distribution systems; confirms that no adverse impact will result upon VA's distribution systems; and provides for a corrective plan of action to mitigate any potential, foreseeable adverse impacts.

5. If Lessee performs or causes the performance of any utility connection work ("Utility Work") on VA property through an easement, permit, or otherwise, then Lessee hereby agrees that: (a) it shall be solely and fully responsible and liable to VA for any and all costs associated with repairing and/or restoring any VA real or personal property damaged or destroyed by, as a result of, or in connection with such Utility Work, and (b) notwithstanding anything in Article 13 to the contrary, Lessee shall indemnify and hold VA harmless for any and all liabilities, fees, costs, and expenses regarding any injuries, deaths, and/or damage to any person's personal property resulting from or in connection with such Utility Work by Lessee, its contractors, builders, sublessees, agents, employees, licensees, affiliates, and/or invitees.

6. Subject to and in accordance with this Article 2.C.6 and Article 10.A, during the Lease term and so long as the Department has jurisdiction and control of the VAMC, the Department will, upon Lessee's request and subject to applicable Federal, State, and local law, use its best

efforts to provide the Property with uninterrupted flow of utilities, but Lessee hereby acknowledges and agrees that VA will not be liable for any damages due to or caused by any interruption, cessation, inadequacy, or defect in the character, quantity, quality, or supply of utilities services to Lessee, except for damages or injuries resulting or arising from the acts of Department personnel properly cognizable under the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680). Lessee further agrees that no such interruption or cessation of utility services shall constitute an event of default by VA under this Lease.

7. Subject to and in accordance with Article 2.C.6 above, in the event a State (or any of its agencies, departments, or commissions) or local public utility challenges, protests, or undertakes legal action against any of Lessee's utility connections and/or servicing from VA utility lines, Lessee shall have the right (subject to the Department's prior written approval, which shall not be unreasonably withheld), to legally contest or defend against such adverse actions. If Lessee elects to do so, however, it shall be solely responsible for all of its fees, costs, and expenses stemming therefrom.

8. During the Lease term, for any direct connections that Lessee makes to VA utility distribution systems, VA may if it deems necessary, contact Lessee and establish a time and place whereby VA can conduct or obtain at its sole cost and expense, an independent "utility consumption assessment" upon any sub-metering installed on the Property, to confirm or ensure proper functionality. Lessee agrees at its sole cost and expense to undertake corrective action as needed regarding any such sub-metering found to be malfunctioning.

D. **Payment to VA for Ancillary Services:** Each month during the Lease term, Lessee shall be responsible for, and shall pay to the Department, the "at-cost" amount(s) for (i.e., the actual cost to the Department for providing) any "ancillary service(s)," (e.g., grounds maintenance, trash pickup, laundry services, housekeeping services, lawn moving, snow removal, security) that Lessee requests in writing and receives from the Department during and throughout the preceding month ("Ancillary Services"). Lessee's payments to the Department for such Ancillary Services shall be paid no later than thirty (30) days after receipt of any bill from the Department for providing such services.

ARTICLE 3 – LEASE TERM

A. **Initial Term.** Unless earlier terminated by Lessee's acquisition of the Property, or by the Department as provided for in Article 23, the initial term of this Lease shall be for fifty (50) years, commencing on the Effective Date.

B. **Extension Term(s).** Subject to the provisions of this Section B, the parties shall have one (1) option to extend the Lease term, each for an additional 20-year period (each such time period is hereafter referred to individually as an "Extension Term").

1. Should Lessee determine that it would like to extend the term of the Lease beyond the Initial Term or the then existing Extension Term, Lessee shall provide written notice to VA requesting an Extension Term ("Extension Term Request"); **however**, each option shall automatically expire (with no notification from either party to the other required) if the Lessee's Extension Term Request is not submitted to the DVR at least three (3) years prior to the last day of

the Initial Term or the-then existing Extension Term, as applicable. If the Initial Term or the-then existing Extension Term expires without a timely Extension Term Request sent from the Lessee to the DVR, then all remaining Extension Terms shall automatically expire.

2. Lessee shall not be permitted to submit an Extension Term Request **(a)** until the date which is four (4) years prior to the expiration of the-then existing Initial Term or the-then existing Extension Term, as the case may be, and **(b)** if and while any outstanding Lessee Event of Default exists under the Lease.

3. Upon delivery of the Extension Term Request to the DVR, VA shall have the sole right and discretion to accept or reject the Lessee's Extension Term Request, by giving written notice to Lessee not less than forty-five (45) days after the DVR's receipt of the Extension Term Request.

4. Lastly, notwithstanding anything in this Lease to the contrary, all of the terms, conditions, covenants, obligations, representations, warranties, and provisions of this Lease shall apply to the Extension Terms.

ARTICLE 4 - PROPERTY TO BE LEASED TO LESSEE

The Property subject to this Lease shall constitute all structures, improvements, utilities, fixtures, infrastructure, and any other Improvements located on the Property described and depicted in Exhibits "A," and "B" respectively.

ARTICLE 5 - SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHT OF WAY

A. This Lease is subject to all existing easements and rights of way, whether or not recorded, for location of any type of facility over, across, in, or upon the Property or any portion thereof; and the right of the Department, upon consultation with Lessee, to grant such additional easements or rights of way over, across, in, or upon the Property; and such approval shall not be unreasonably or arbitrarily withheld or delayed, provided that any such additional easements or rights of way shall not be inconsistent with Lessee's quiet use and enjoyment of the Property under this Lease, and shall be conditioned on the assumption by the grantee thereof of liability to the Department and to Lessee for such damages as the Department and/or Lessee shall suffer for property damaged or destroyed or property rendered uninsurable as a result of grantee's exercise of its rights thereunder. VA represents and Lessee acknowledges that VA has disclosed to Lessee all easements located on the Property of which VA is aware.

B. There is hereby reserved to the holders of such easements and rights of way as presently in existence, whether or not recorded, outstanding or which may hereafter be granted, to any Federal, State, or local officials engaged in the inspection, construction, installation, maintenance, operation, repair, or replacement of facilities located on the Property, such reasonable rights of ingress and egress over the Property as shall be necessary for the performance of their official duties with regard to such facilities.

C. The Department shall have the right to relocate any existing easements (at its sole cost and expense) and grant additional easements and rights of way over, across, in and upon the Property, provided that: (1) any additional easement or right of way shall not be inconsistent with or adversely affect Lessee's actual or intended use of the Property, and the right to non-exclusive use of the Access Roads pursuant to Article 5.E below; (2) the grantee of any such easement or right-of-way agrees in writing to indemnify, hold harmless and defend the Department and Lessee from and against any and all claims, actions, losses, damages or costs and expenses as the Department or Lessee shall suffer or incur for injury to persons, or property destroyed as a result of grantee's exercise of its rights thereunder; (3) the granting of such easement or right-of-way shall not affect the insurability of the Property (i.e., either for title insurance purposes or for purposes of liability and casualty insurance); and (4) Lessee consents in writing to VA's granting of the easement or right-of-way, such consent not to be unreasonably withheld, conditioned, or delayed.

D. **Future Easements and Rights of Way.** Upon Lessee's written request, the Department agrees to consent to and join in the execution of all applications, petitions, and non-exclusive easements and rights-of-way as may be necessary to complete or operate the Project (to the extent such execution by the Department as fee owner of the Property is required); provided that: (1) the underlying application, petition or easement is not inconsistent with the Project and would not materially or adversely affect VA's mission or operations; (2) the grantee of any such application, petition, easement or right-of-way provides VA with prior written assurances to indemnify, hold harmless and defend the Department and Lessee from and against any and all claims, actions, demands, losses, damages, liabilities, judgments, costs, and attorneys' fees, which the Department or Lessee may suffer or incur for injury to persons, or VA property destroyed as a result of grantee's exercise of its rights thereunder; and (3) VA provides its prior written consent to Lessee after reviewing the written assurances referenced in Paragraph (2) above and the final version of each underlying application, petition, easement or right-of-way, which shall not be unreasonably withheld, conditioned, or delayed.

E. VA and Lessee agree that during the Lease term, Lessee, and any of its respective contractors, subcontractors, builders, sublessees, agents, employees, licensees, and invitees shall have a non-exclusive right to use: (1) VAMC roads for general vehicular ingress and egress, and (2) the sidewalks across the VAMC for pedestrian ingress and egress to and from the Property (collectively, the "Access Roads"). However, applicable Federal law shall govern all such uses, and Lessee shall be subject to VA security requirements and other operating procedures and restrictions, including without limitation, designated access road and parking space restrictions.

ARTICLE 6 - REPRESENTATIONS AND COMMITMENTS

A. Lessee and the Department hereby represent, warrant, and covenant that:

1. Each party has complied with all applicable laws and requirements in connection with the execution, delivery, and performance of this Lease.
2. Each party is duly authorized to execute and deliver this Lease.
3. This Lease constitutes a legal, valid, and binding obligation of each party, enforceable in accordance with its terms, subject to equitable principles that could affect specific performance.

4. Upon expiration or termination of this Lease, title to the buildings, structures, and other Improvements constructed or placed on the Property and the fixtures annexed thereto shall immediately vest in and become the property of the Department, as part of the real estate and Property, without any additional compensation therefor and without any instrument of conveyance. Lessee covenants and agrees, upon demand by the Department, on or after termination of the Lease), to execute any instruments requested by the Department to effectuate the conveyance of such buildings, structures, Improvements, utilities, fixtures, and infrastructure constructed or placed on the Property and the fixtures annexed thereto.

5. Each party undertakes to act with reasonable promptness, so that the other party can complete its Lease obligations within agreed timelines.

B. Lessee represents, warrants and covenants to the Department that:

1. Lessee is (a) a limited partnership duly organized, validly existing and in full force effect under the laws of the State of Delaware ; (b) will validly and legally remain as such throughout the Lease term; (c) has and will continue to have throughout the Lease term, full power as a limited partnership to enter into and perform its obligations under this Lease, and (d) has, or will have prior to the time the same are required by law, and will thereafter maintain throughout the remaining Lease term, all licenses or other governmental approvals necessary to perform its obligations hereunder.

2. The Lessee's signing, delivery, and performance of this Lease and its consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary action on the part of the Lessee. To the Lessee's knowledge, neither its signing and delivery of this Lease, nor its consummation of the transactions herein contemplated, nor its compliance with the provisions hereof, will conflict with or result in a breach of, or constitute a default under, (a) any of the provisions of any law, governmental rule, regulation, judgment, decree or order binding on the Lessee or its properties, (b) the constituent documents of the Lessee, or (c) any of the provisions of any indenture, mortgage, contract or other instrument to which the Lessee is a party or by which it or any of its properties is bound, or result in the creation or imposition of any lien, charge or encumbrance upon any of its properties pursuant to the terms of any such indenture, mortgage, contract or other instrument.

3. All actions, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights, and licenses required under applicable law that are necessary in connection with the Lessee's signing and delivery of this Lease or the Lessee's consummation of the transactions contemplated hereby or the Lessee's performance of its obligations hereunder, have been duly taken, given or obtained, as the case may be, are in full force and effect, are not subject to any pending proceedings or appeals (administrative, judicial or otherwise), and either the time within which any appeal therefrom may be taken or review thereof may be obtained has expired, or no review thereof may be obtained or appeal therefrom taken.

4. This Lease has been duly signed and delivered by the Lessee and, assuming due authorization, signing and delivery by the Department, constitutes a valid and binding obligation of the Lessee enforceable against the Lessee in accordance with its terms (except as enforcement

may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of the rights of creditors generally and the application of equitable principles in any proceeding, whether at law or in equity).

5. There is no action, suit, proceeding or investigation pending or, to the Lessee's knowledge, threatened against the Lessee before any court, administrative agency, arbitrator or governmental body that: (a) relates to any of the transactions contemplated by this Lease, or (b) either in any one instance or in the aggregate, if determined against the Lessee, would reasonably be likely (i) to conflict with the terms of this Lease or of any action taken or to be taken in connection with the obligations of the Lessee contemplated herein, (ii) to materially and adversely affect the Lessee's business, assets, operations or condition (financial or otherwise), taken as a whole, or (iii) to materially and adversely affect the ability of the Lessee to perform its obligations under this Lease.

6. The Lessee is not in default with respect to any order or decree of any court or any order, rule, regulation or demand of any Federal, State, municipal, or governmental agency, which default would reasonably be likely to materially and adversely affect the Lessee's ability to perform its obligations under this Lease or the transactions contemplated hereby.

7. All negotiations relative to this Lease and the transactions contemplated hereby have been carried on by the Lessee directly with the Department, and without the intervention of any Person who may or will have a valid claim against the Department for a finder's fee, brokerage commission or other like payment with respect to this Lease or such transactions.

8. The Lessee is, and at all times during the Term will be, a Qualified Party. If at any time the Lessee fails or is reasonably likely or expected to fail to continue to be a Qualified Party, the Lessee will immediately so advise the Department in writing. The Lessee will also immediately notify the Department if and when it becomes aware that a sublessee is no longer a Qualified Party.

9. Lessee has inspected the Property, is fully familiar with the physical condition of the Property, including the underlying environmental conditions (including those set forth in the Environmental Reports), and based on the foregoing, accepts such Property "as is" and with all faults, including those identified on the Environmental Reports, subject to all applicable law, and assumes all risks associated with pursuing the Project in accordance with this Lease and all applicable law.

10. As of the Effective Date, Lessee shall in accordance with and subject to Articles 16 and 34 of this Lease, be responsible for all costs associated with or pertaining to the removal of any and all Hazardous Substances and materials from the Property, including but not limited to, asbestos, mold, lead paint, and renovation, demolition, and construction debris. All such removal activities shall be performed in accordance with applicable Federal, State and local laws, codes, and ordinances.

11. The Department has made no representations or warranties concerning the condition of the Property, the fitness or suitability for any particular use or access to the Property and the Department shall not be liable to Lessee for any latent or patent defects in such Property, nor has it agreed with Lessee to alter, improve or maintain such Property.

12. During the Lease term, Lessee will finance, design, develop, construct, renovate, operate, and maintain the Property into the Project in accordance with the terms and conditions of this Lease, notably Article 2.A.1.

13. During the Lease term, Lessee will: (a) obtain at its own expense all pertinent Federal, State, and local permits, licenses, and approvals (including those approvals of VA) necessary for construction, renovation and operation of the Facility; (b) assure that all applicable Federal, State, and local requirements are met during construction and operation of the Facility (including but not limited to, the latest version of the National Fire Protection Association (NFPA) 101 Life Safety Code; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.); the National Historic Preservation Act of 1966 (16 U.S.C. § 470, et seq.); and the Archaeological Resources Protection Act (16 U.S.C. § 470 et. seq.), all as such laws may be amended from time to time); (c) assure that the operation of the Facility in accordance with the preceding Clause “(b)” do not negatively affect VA’s activities and operations; and (d) assure that the Facility is operated as a drug free (other than properly prescribed medication) environment and take action promptly when this requirement is not met by occupants, and (e) restrict the consumption of alcohol in the Facility’s common areas.

14. Prior to occupancy of the Facility by Lessee, and any other improvements placed on the Property after the Effective Date which are made available for occupancy, Lessee shall at its sole cost and expense, hire a City inspector or an independent inspector licensed by the State of California to conduct an inspection of the Facility and certify in writing that it has been completed in compliance with the applicable State and local building codes and standards, including the NFPA 101 Life Safety Code (the “Certificate of Substantial Completion”). The Department must receive the Certificate of Substantial Completion before Lessee may occupy or receive occupants into the Facility, and will promptly notify Lessee of its receipt of the Certificate of Substantial Completion from Lessee.

15. Lessee will at all times, during the Lease term and its development, construction, renovation, operation, and maintenance of the Facility, use all reasonable and commercial best efforts to act so as to avoid the occurrence of any action(s) contained in Article 22 which constitute events of default.

16. Lessee will be responsible for maintaining and securing all necessary access to the Property for development, construction, operation, and maintenance of the Facility and the Project. Access that requires utilization of VA property other than the Property that is the subject of this Lease shall require advance coordination with and approval of the DVR.

17. Lessee will ensure Building 209 is ready for occupancy by no later than thirty (30) days after the Effective Date. Notwithstanding anything to the contrary in this Lease, if local building authorities require certifications for occupancy beyond that which the Facility currently has, then the Lessee shall be granted additional time as the DVR and Lessee deems necessary, for the Lessee to obtain the necessary certifications to enable such occupancy.

18. Lessee will be solely responsible for any and all costs associated with the repair and maintenance of the Facility, the grounds, as well as any other structures on the Property in accordance with Articles 10 and 11 of this Lease.

19. Lessee will assure that its development, construction, operation and maintenance activities do not negatively affect VA's activities or operations, and use all reasonable and commercial efforts to conduct any of its construction activities involving noise, dirt, or other emissions that could negatively affect the VAMC's activities or operations to times falling within normal VA business hours.

20. At its sole cost and expense and in accordance with Article 10.A of the Lease and Exhibits "C" and "D" thereof, Lessee will take all necessary measures to: (a) control soil erosion during the design, development, construction, operation, and maintenance of the Facility through a detailed sediment control plan, with specifications to include necessary preventive measures to protect all water sheds, watercourses, and surface-water drainage from sedimentation, siltation, and pollution; (b) mitigate the long-term impacts relating to changes in surface water drainage patterns through the use of filtration and sediment ponds in accordance with State and local requirements; (c) expeditiously establish the necessary landscaping to minimize erosion; and (d) ensure that all established sediment ponds continue to empty surface water in the same respective directions and locations off of the Property following any development, construction, and maintenance activities of the Facility.

21. Lessee shall at all times comply with the provisions of the National Historic Preservation Act and the Archaeological Resources Protection Act, 16 U.S.C. § 470, et seq., and any Programmatic Agreements executed with the State Historic Preservation Office ("SHPO"), and shall coordinate and work with the Department and the SHPO as needed.

22. Lessee shall not knowingly remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Property, Lessee shall immediately notify the DVR and protect the site and items from further disturbance until the DVR gives clearance to proceed.

23. Lessee shall ensure that police, fire protection and inspection, and emergency services are provided on the Property during the Lease term.

24. (a) Lessee will, within sixty (60) days after the completion of the yearly audit for each of its annual fiscal years on which it operates, provide the Department with a copy of its audited financial statements for the Facility, along with a statement of revenues and expenditures, annual reports, and any related financial disclosure documents for such fiscal year (collectively, the "Lessee Financials"). For purposes of this section, "audit" shall mean financial statements prepared by a certified public accountant, with a level of assurance of at least a "review" (i.e., higher level of assurance than a "compilation"), and may be on a tax accounting basis, and will be conducted in accordance with attestation standards of the American Institute of Certified Public Accountants, as appropriate for a master leased property. Additionally, Lessee will immediately notify the Department telephonically and in writing of the occurrence of any material adverse change to its financial condition or circumstance that may affect its ability to perform its obligations under this Lease.

(b) Upon receiving the Lessee Financials referenced in the preceding Subparagraph (a) of this Paragraph 24, VA shall be entitled to review them to ensure that Lessee is not undergoing, or about to undergo, an adverse financial condition or circumstance that would negatively impact Lessee's ability to timely and adequately meet its Lease obligations.

(c) With respect to Lessee's obligations under this Paragraph 24, the parties agree that if and to the extent that the highest court or other adjudicative body of competent jurisdiction to which the matter may be presented determines that any Lessee Financials submitted to VA (which were not duly corrected or supplemented within a reasonable time period) are materially misleading, VA to extent of any damages directly sustained thereby, shall be entitled to pursue any and all remedies available to it under this Lease, Federal, State, and local law, and at equity.

ARTICLE 7 - USE

A. **Property Use In General.** Except as provided for in Section B of this Article, Lessee may use the Property during the Lease term only for the Project, which shall not include any political, gambling, obscene, or pornographic uses, or the implementation of any research activities or other programs illegal under or conflicting with or applicable Federal, State, and local law.

B. **Prior Consent Required For Any Other Uses.** Consistent with Section A above and except as VA and Lessee may otherwise agree in writing, no other uses of the Property shall be permitted on the Property during the Lease term.

C. Consistent with Sections A and B of this Article, and subject to the terms and conditions of this Lease, Lessee shall and may peacefully and quietly have, hold, and enjoy the Property for the Lease term, without disturbance from VA, and free from any encumbrance created or suffered by VA, except to which this Lease is made subject in accordance with Articles 5 and 20.

ARTICLE 8 – Intentionally deleted

ARTICLE 9 - COMPLIANCE WITH APPLICABLE LAWS, RULES, AND REGULATIONS

A. Lessee agrees that it will be responsible for and will obtain at its sole cost and expense, all applicable Federal, State, and local planning approvals, and other licenses and permits which are necessary to design, develop, construct, operate, and maintain the Property as contemplated in this Lease, including Article 7. Additionally, during the Lease term, Lessee at its sole cost and expense shall comply with all applicable Federal, State, and local laws, codes, and ordinances regarding the operation and maintenance of the Property.

B. Lessee agrees that at or prior to submission of any plats, plans, specifications, or applications for any approval, license, or permit with respect to compliance with applicable Federal, State, and local laws, codes, and ordinances, Lessee shall provide VA with a copy of each such proposed submission for review and approval (which shall not be unreasonably withheld, conditioned, or delayed). VA's comments on any submittal from Lessee will be provided to Lessee within thirty (30) days of its receiving the submitted material. VA's review and approval

shall be limited to ensuring that **(a)** there are no material conflicts involving the contents of the documents submitted to VA for review and the contents of Exhibits “C”, “D”, and “E”; **(b)** the proposed development and/or activities as reflected in the documents submitted to VA for review are architecturally compatible with the VAMC, are consistent with the Property uses identified in Article 7, and would not adversely affect VA’s use and occupancy of the VAMC. In the event that VA disapproves of any proposed submission and design from Lessee (based upon the foregoing Clauses (a) and/or (b)), VA shall, along with a written objection, provide Lessee with a written explanation of the reasons for rejection of the proposed submittal and design. Unless the Department objects to the submitted material within thirty (30) days, its approval shall be presumed. Lastly, Lessee shall provide VA with a complete copy of all approved plats, plans, specifications, and applications.

ARTICLE 10 - IMPROVEMENTS OR CONSTRUCTION ON THE PROPERTY

A. **Improvements:** All development, construction, and renovation activities, including but not limited to those relating to the use of roadways or pedestrian walkways, or connections with electricity, water, steam, sewer services, or other utilities, shall be coordinated in advance with the DVR. The repair of any damage to existing structures, systems, or facilities resulting from development, construction, or renovation activities relating to the Project, shall be the sole responsibility of Lessee, and any affected structures, systems, and facilities shall be immediately repaired or replaced by (or on behalf of) Lessee in a manner acceptable to VA.

Lessee shall not enter into any contract or agreement with any city, county, or governmental agency or body or public utility with reference to sewer lines or connections, water lines, or connections, street improvements, including but not limited to curbs, gutters, parkways, and street lighting, utility connections, lines or easements, without the prior written consent of the Department, which consent shall not be unreasonably withheld. The Department shall consent to or disapprove any proposed contract or agreement within sixty (60) days after the date of submission thereof by Lessee. Unless the parties otherwise agree, the Department’s failure to respond within such sixty (60) days shall be a deemed approval.

B. **Lessee's Contracts For Construction:** Lessee agrees that any and all general construction contracts for the development, construction, and renovation of the Project and Facility, as well as any subsequent activities of this nature on the Property, shall contain clauses indemnifying and holding the Department harmless for any causes of action or damages arising as a result of any acts or omissions of the contractor(s).

C. **Construction Documents:** Lessee agrees that prior to undertaking development, construction, or renovation of the Facility, it will provide the DVR with a complete copy of all development, construction, and renovation documents at least sixty (60) days prior to undertaking any such activities.

D. **Design Review and Approval:** The Department’s comments on any submittal, to include development, construction, and renovation documents; and any supplements thereto, will be returned to Lessee within thirty (30) days of receiving the submittal. The Department shall have the right to reject such submittals. In any such instance, the Department shall, along with its objection, provide a detailed, written explanation of the reasons for rejecting the submittal. Unless

the Department objects to the submitted material within such time period, approval shall be presumed. Upon receipt of any VA rejection, Lessee shall respond to the Department within ten (10) business days and identify specifically how it proposes to address each of the Department's objections. The Department shall then respond to the Lessee within ten (10) business days, and if the Department shall continue to have objections, the Department shall again specify those objections, and the parties shall work together to expeditiously reach an agreed set of plans and specifications.

E. **Access to Project Site:** Upon reasonable advance notice, Lessee agrees to permit the Department's representatives, agents and employees with access to and right of entry onto the Property before, during, and after any development, construction, or renovation undertaken pursuant to this Article for the purpose of monitoring, observing, and making inquiries in order for the Department to determine compliance with the Lease. It is understood by the parties that such activity does not relieve the Lessee of its responsibility for managing any and all on-site development, construction, and renovation activities.

F. **As-Built Drawings:** Upon completion of any Project-related development, construction, or renovation activities, Lessee shall provide the DVR with one complete set of reproducible drawings (all disciplines) illustrating each and all stages of changes made to the Facility. The as-built drawings will incorporate all significant changes made over the life of the Facility. The title block shall be dated and entitled "As-Built Drawings." One electronic copy of the As-Built Drawings on CD, "AUTOCAD 2016" (read only format) or later edition if the DVR agrees in writing shall also be transmitted to the VA Facility Manager at the time of the reproducible drawings. The Department shall have the right to review the As-Built Drawings for accuracy and completeness, and request that Lessee make any and all necessary revisions, additions, and/or modifications to them if the Department reasonably finds and accurately deems them to be incomplete or inaccurate.

G. **Mechanics and Labor Liens:** Lessee agrees that it will not permit any claim or lien made by a mechanic, material man, laborer, or other similar liens to stand against the Property for work or materials furnished to Lessee or Lessee's subleases in connection with any development, construction, renovations, improvements, maintenance, or repairs made upon the Property by Lessee or any contractors, subcontractors, builders, agents, employees, licensees, or invitees. Lessee shall cause any such claim of lien to be fully discharged within thirty (30) days after the date of filing thereof. However, in the event Lessee, in good faith, disputes the validity or amount of any such claim of lien, and if Lessee shall give to Department such security as the Department may reasonably require to insure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment, Lessee shall not be deemed to be in breach of this requirement so long as Lessee is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute or, if litigation or arbitration results therefrom, discharges said lien within thirty (30) days after the date such judgment is rendered or filed.

H. **Capital Improvement Obligation.** The Lessee shall submit a proposal to the DVR for capital improvements (i.e., significant renovation) by the end of year 15 of the Lease for the Capital Improvement Obligation to be completed by end of year 18 of the Lease (Capital Improvement Proposal). The Capital Improvement Proposal shall be at the mutual agreement of

the Lessee and the DVR and shall use as a budgetary guide the financeable cash flows of the property assuming leverage of the same at 50% of the net present value of future cash flows and subject to a debt coverage ratio of at least 1.2.

I. **Capital Fund Account.** The Capital Improvement Obligation pursuant to Article 10.H shall be funded as follows:

1. **Funding.** Commencing on the first day of "Lease Up," Lessee shall establish and maintain a Capital Fund Account in an interest-bearing account in a financial institution approved by the Department. The Capital Fund Account shall be funded to the amount of \$2,400 per Facility unit per annum (which equates to \$200 per Facility unit per month) escalating at 3.0% per annum starting in the second full year of operation. The financial institution holding such account shall include the Department as a recipient of all account statements. The Capital Fund Account shall remain separate from the Funded Maintenance Account addressed in Article 12.

2. **Purpose of Capital Fund Account.** The funds of the Capital Fund Account shall be available for use by Lessee to implement the agreed upon Capital Improvement Obligation.

3. **Conditions for Withdrawing Funds From the Capital Fund Account.** Prior to withdrawing any funds of the Capital Fund Account, Lessee shall provide the DVR with not less than ten (10) days advance written request to withdraw funds, identifying the costs for and types of significant renovations or other extraordinary capital expenses for which the Lessee is seeking to withdraw funds out of the Capital Fund Account. The Lessee shall not withdraw any funds until the DVR's written consent is received. Lastly, within ten (10) business days of VA's written request, Lessee shall provide VA with written, detailed receipts of the contractor(s) that are paid from funds of the Capital Fund Account.

4. **Close Out of the Capital Fund Account.** At the end of year 18 of the Lease Term, any funds remaining in the Capital Fund Account shall revert to the Department, or, at the Department's sole discretion, remain available in the Capital Fund Account for the duration of the Lease term, at which time as the Lease term ends, the funds shall revert to the Department.

ARTICLE 11 - OCCUPANCY AND MAINTENANCE PROVISIONS

A. Subject to the terms and conditions of this Lease, including Article 2.C, Lessee at its own expense, shall at all times protect, preserve, maintain, and repair the Property and Facility, and shall keep same in good order and condition. All grounds, sidewalks, lawns, shrubbery, and structures, both interior and exterior, shall be maintained to a standard that is comparable to and consistent with the maintenance provided for the surrounding VA facilities and property. Lessee shall at all times exercise due diligence in the protection of the Property against damage or destruction by fire or other causes. The Property shall at all times be maintained in a tenantable, safe, and sanitary condition.

B. In accordance with Article 11.A above, Lessee shall: (1) maintain all equipment and systems to provide reliable services without unusual interruption, disturbing noises, exposure to fire and safety hazards, and without emissions of dirt; (2) ensure that all maintenance work is performed in accordance with applicable codes, and display inspection certificates as appropriate;

(3) provide labor, materials, and supervision to adequately maintain the Facility's structure, roof, interior and exterior walls, windows, doors, and any other necessary building appurtenances to provide watertight integrity, structural soundness, acceptable appearance, and continuing usability; (4) make all capital repairs, alterations, and replacements as necessary to maintain the usable condition of Property and Facility throughout the Lease term; and (5) notify and obtain written approval from the DVR at least thirty (30) days prior to commencing any "significant non-emergency repair" on the Property (e.g., any repair that individually or in the aggregate would exceed \$25,000 escalating at 3.0% per annum starting in the second full year of operations; and notify the DVR at least ten (10) working days prior to commencing any "significant non-emergency repair" on the Property that would exceed \$10,000 escalating at 3.0% per annum starting in the second full year of operations. Any and all contemplated "significant non-emergency repair" exceeding \$25,000 escalating at 3.0% per annum starting in the second full year of operations shall be considered construction as covered by Article 10 of this Lease, and thus will be subject to the requirements of such Article 10.

C. The Department reserves the right to unilaterally amend any provisions of the Operations and Maintenance Plan (Exhibit "E") which it deems to be in violation of 38 U.S.C. § 8161, et seq., or which is contrary to the Department's mission, activities, land use plans at the VAMC, or which it reasonably deems to be outside of the intended scope of this Lease. In the event that the Department intends to unilaterally amend provisions of the Operations and Maintenance Plan, the Department shall provide Lessee with prompt written notice and if appropriate, as much time as is necessary to implement the operational and/or maintenance changes required by VA's amendment. Should Lessee object to the proposed unilateral amendment, the Department will work with Lessee to attempt to find a mutually acceptable resolution to the concerns raised by Lessee. Upon the Department's final acceptance, subsequent changes to such Operations and Maintenance Plan shall only be made by a written modification approved and executed by both the Department, and Lessee or its assignee pursuant to Article 19 of this Lease.

ARTICLE 12 - FUNDED MAINTENANCE ACCOUNT

A. **Funded Maintenance Account.** Commencing on the first day of "Lease Up," Lessee shall establish and maintain a Funded Maintenance Account in an interest-bearing account in a financial institution approved by the Department. The Funded Maintenance Account shall be funded to the amount of \$960 per each Facility unit per annum (which equates to \$80 per Facility unit per month) escalating at 3.0% per annum starting in the second full year of operation, except that Lessee shall not be required to increase the Funded Maintenance Account to an amount in excess of \$5000.00 for each Facility unit developed as part of the Project, escalating at 2.0% per annum starting in the second full year of operation. The financial institution holding such account shall include the Department as a recipient of all account statements.

B. **Purpose of the Account.** The funds of the Funded Maintenance Account shall be available for use by Lessee only for non-routine, capital repairs and replacements (including without limitation, roofing, HVAC systems, carpeting, elevators, security, and fire safety systems) to the Facility and any other improvements duly located on the Property that are made available for use and occupancy.

C. **Conditions for Withdrawing Funds From the Account.** Prior to withdrawing any funds of the Funded Maintenance Account, Lessee shall: (a) per Article 6.B.14, provide VA with a copy of the Certificate of Substantial Completion pertinent to the Facility (and/or any other facility or improvement(s) located on the Property) for which such funds are to be used; (b) provide the DVR with not less than ten (10) days advance written notice of a proposed withdrawal along with detailed, written receipts identifying the costs for and types of “non-routine, capital repairs and replacement activities for which Lessee is seeking to withdraw funds out of the Funded Maintenance Account. Lastly, within ten (10) business days of VA’s written request, Lessee shall provide VA with written, detailed receipts of the contractor(s) that are paid from funds of the Funded Maintenance Account.

D. **Prohibition on Using the Fund for Collateral Purposes or to Limit Lessee Obligations.** Lessee shall use the funds in the Funded Maintenance Account as described in Article 12.B and for no other purpose, and agrees that it shall not pledge or use any monies therein as collateral. In addition, the establishment of the Funded Maintenance Account or its use does not in any manner limit Lessee’s responsibilities under this Lease and Lessee remains responsible for any costs in excess of the Funded Maintenance Account.

E. **Close Out of the Funded Maintenance Account.** Within thirty (30) days following the expiration or termination of the Lease term, Lessee and the Department shall retain an architect mutually acceptable to the parties (the “Architect”) to inspect the Facility, and any other improvements on the Property that are made available for use and occupancy. The Architect shall prepare a report based upon the physical inspection of each such Improvement, within which it shall identify any damaged items that pursuant to this Article and in the ordinary course of business, should be repaired or replaced using proceeds from the Funded Maintenance Account. Within thirty (30) days following the issuance of the inspection report, at VA’s discretion either: (a) VA will receive a distribution of funds from the Funded Maintenance Account equal to the cost of repairing or replacing the items identified in the inspection report, or (b) Lessee shall after VA’s prior consultation as to the selection(s), hire one or more contractors to repair and correct such damaged items and remit the necessary funds in the Funded Maintenance Account to compensate each contractor for its work performed. Upon the earlier completion of either event described in Clauses (a) and (b) of this Paragraph E, the balance of the funds in the Funded Maintenance Account, with VA’s cooperation as may be necessary, will be disbursed by the financial institution to the Lessee. For purposes of this Paragraph E only, notwithstanding the inspection report results, Lessee shall not be liable to the Department for any amount in excess of the amount of funds then existing in the Funded Maintenance Account.

ARTICLE 13 - INDEMNIFICATION BY LESSEE, GOVERNMENT NON-LIABILITY

A. Except for damages or injuries resulting or arising from the acts of its officers, agents or its employees properly cognizable under the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680), as it may be amended, neither the United States nor the Department shall be responsible for damages to the Property or for injuries to persons that may arise on the Property exclusive of those areas under the exclusive and direct control of the Department.

B. Lessee, to the extent such is consistent with applicable Federal and State laws, policies and regulations, agrees to indemnify, save, hold harmless, and defend the United States and the Department and its respective officers, agents and employees, from and against all claims, actions, demands, losses, damages, liabilities, judgments, costs, and attorneys' fees, arising out of, claimed on account of, or in any manner predicated upon: (1) personal injury, death or property damage resulting from, related to, caused by or arising out of the construction (or defective construction), possession, and/or use of the Property; or (2) any activities, omissions, or services furnished by Lessee or any contractors, subcontractors, builders, sublessees, agents, employees, licensees, or invitees undertaking any activities on the Property or that relate to the Project, which fail to comply with the terms, conditions, reservations, restrictions, and requirements of this Lease and pertinent documents referenced herein.

C. The Department shall promptly notify Lessee of the existence of any claim, action, demand, or other matter to which Lessee's indemnification obligations to VA would apply, and shall give Lessee a reasonable opportunity to defend the same at its own expense and with counsel of its selection; provided that, the Department (including the United States) shall at all times also have the right to fully participate in the defense at its own expense. The Department shall cooperate with Lessee to the extent reasonably necessary in any such defense. If Lessee shall, within a reasonable time after notice to Lessee, fail to defend, the Department shall have the right, but not the obligation, to undertake the defense of, and (while exercising reasonable business judgment in its discretion) to compromise or settle the claim or other matter on behalf, for the account, and at the risk, of Lessee. If the claim is one that cannot by its nature be defended solely by Lessee, then the Department shall make available all information and assistance that Lessee may reasonably request (in VA's discretion).

D. NOTHING IN THIS LEASE SHALL BE DEEMED TO WAIVE OR IMPAIR THE IMMUNITIES OR LIMITATIONS OF LIABILITY OF LESSEE OR THE DEPARTMENT AS TO THIRD PARTIES, DIRECTLY OR INDIRECTLY, AND NOTHING IN THIS LEASE SHALL BE DEEMED TO PROVIDE A RIGHT OF ACTION IN FAVOR OF A THIRD PARTY AGAINST THE DEPARTMENT OR AGAINST LESSEE WHICH WOULD NOT OTHERWISE EXIST.

ARTICLE 14 - RISK OF LOSS AND INSURANCE

A. **All Risk:** Lessee shall, in any event and without prejudice to any other rights of the Department, bear all risk of loss or damage to the Property arising from any causes whatsoever with or without fault, including but not limited to, fire; lightning; storm; tempest; explosion; impact; aircraft; vehicles; smoke; riot; civil commotion; bursting or overflowing of water tanks, apparatus or pipes; loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed; flood; labor disturbances; earthquake; malicious damage; or any other casualty or act of God to the fullest extent permitted by law. Lessee, and to the extent that this Lease is conveyed, transferred, assigned or sub-leased, shall maintain, at its own expense, an "All Risk" insurance policy against the risks enumerated above with a reputable insurance company of recognized responsibility. Such insurance shall be maintained at all times in an amount as specified in this Article. Provided always, however, that Lessee shall bear all risk of loss of or damage to such property for the entire Lease term for any work or other responsibilities

required to be performed under the provisions of this Lease, except as otherwise provided for by the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680).

In addition, Lessee shall maintain at its sole expense, all that insurance further required in accordance with this Article. Maintenance of insurance required in accordance with this Article must include acts resulting from the willful misconduct, lack of good faith, or negligence of Lessee or any of its officers, agents, servants, employees, subtenants, licensees or invitees or by any failure on the part of Lessee to fully perform its obligations under this Lease. Maintenance of insurance required in accordance with this Article shall effect no limitation on Lessee's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of Lessee or any of its officers, agents, servants, employees, subtenants, licensees, or invitees or by any failure on the part of Lessee to fully perform its obligations under the Lease.

B. **Insurance:**

1. **The Lessee's Insurance:** Lessee, at its expense from Project funds, shall carry and maintain with regard to the Property, the following insurance during the Lease term:

(a) All-risk property and casualty insurance against the risks enumerated in Section "A" of this Article in an amount at all times equal to at least 100% of the full replacement value of the Improvements to the Property, to include the Facility;

(b) Public liability and property damage insurance, including but not limited to, insurance against assumed or contractual liability under this Lease, with respect to the Property as specified above, to afford protection with limits of liability in amounts approved from time to time by the Department, but not less than \$1,000,000 in the event of bodily injury and death to any number of persons in any one accident, and not less than \$1,000,000 for property damage;

(c) Workers' compensation or similar insurance in form and amounts required by law;

(d) All other types of insurance imposed by applicable legal requirements or customarily carried and maintained by owners and operators of similar properties, and as the Department may reasonably require for its protection;

(e) All amounts of insurance required by this Article shall be adjusted annually, to reflect increases in 100% of the full replacement value of the Property. Lessee agrees that it will not subrogate to its insurance carrier any right or action that it has or may have against the Department for any loss covered by insurance, nor will Lessee, if it is suffering (or about to suffer) such loss, prosecute any suit against the Department by reason of such loss for which it is covered by insurance. Lessee agrees to notify its insurance carrier(s) of the provisions of this Article.

2. **The Lessee's Contractor's Insurance:** During the Lease term, Lessee shall require any contractor performing work on the Property to carry and maintain at no expense to the Department the following insurance:

- (a) Comprehensive general liability insurance, including but not limited to, contractor's liability coverage and contractual liability coverage of at least \$1,000,000 with respect to personal injury or death, and one million dollars (\$1,000,000.00) with respect to property damage;
- (b) Workers' compensation or similar insurance in form and amounts required by law; and
- (c) Any other insurance as the Department may reasonably require in order to protect itself and its personnel in the discharge of its duties and obligations hereunder.

Lessee and/or Lessee's contractors shall be obligated to correct any damage caused by or attributable to such contractor or subcontractors for the work or materials performed by or on behalf of Lessee.

3. **Policy Provisions:** All insurance, which this Lease requires Lessee to carry and maintain or cause to be carried or maintained pursuant to this Section B shall be in such forms, for such amounts, for such periods of time, and with such insurers as the Secretary shall approve. All policies or certificates issued by the respective insurers for public liability and all-risk property insurance will name the Department and Lessee as insured or joint loss payees as their respective interests appear, shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Lessee or the Department or any other person, and provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt of notice by the Department in all such instances. In no circumstance will Lessee be entitled to assign to any third party rights of action that Lessee may have against the Department. Further, each such policy shall provide that the insurer shall furnish written notice to the Department thirty (30) days in advance of the effective dates of any reduction or cancellation of such policies.

4. **Delivery of Policies:** Lessee shall deliver promptly to the Department a certificate of insurance or a certified copy of each policy of insurance required by this Lease and shall also deliver no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance or a certified copy of each renewal policy covering the same risks, together with appropriate evidence of payment of the premiums.

C. **Loss or Damage:**

1. In the event that the Property or any part thereof, is damaged by fire or by other casualty, whether or not such casualty is the fault of, or results from negligence of Lessee, other than the results of negligence of Department personnel cognizable under the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680), Lessee shall: (a) within thirty (30) days of such damage file an insurance claim seeking sufficient proceeds to cover such damage; and (b) within one hundred twenty (120) days of receiving such proceeds, repair, restore, or rebuild the Property to its original condition by applying all such monies towards that result. Any repairs or reconstruction shall be performed in accordance with plans and specifications approved by the Department, provided that if the repairs or reconstruction diligently pursued cannot be reasonably completed within one hundred twenty

(120) days, Lessee shall have such time as is reasonably required and agreed to by the parties to complete, as applicable, the repair or construction.

2. If Lessee refuses, or fails to repair, restore, rebuild, or demolish the Property or any part thereof so damaged or destroyed, to the satisfaction of the Department in accordance with Article 14.C.1 above, the Department may terminate this Lease by providing written notification to Lessee. In such event, title to the Facility and any other improvements placed on the Property shall vest in the Department without notice or further action being required on the Department's part, and the Department may undertake the repair, restoration, rebuilding, or demolishing of the Facility and any other Improvements placed on the property or the damaged or destroyed portion thereof, and may complete it, by contract or otherwise, and may take possession of and use any materials on the work site necessary for completing the work. Lessee and its sureties shall be liable for any damages or costs incurred by the Department to repair, restore, rebuild, or demolish the Facility and any other Improvements placed on the Property, or the damaged or destroyed portion thereof. This liability includes costs incurred by the Department in completing the work.

D. **Effect of Condemnation**

If all or a substantial portion of the Lessee's right, title, and interest hereunder shall be condemned, appropriated, or taken under the power of eminent domain by a taking authority, or conveyed in lieu of condemnation (each such event shall hereinafter be referred to as a "Taking"), and if, in Lessee's reasonable judgment, the remainder of the Property is not sufficient to permit Lessee to operate the Property under this Lease in a manner that is economically viable and Lessee so notifies the Department in writing, then the Lease term shall terminate at the time title to the Property vests in the Federal Government or other taking authority (hereafter referred to individually or collectively if applicable as the "Taking Authority") via the Taking; provided, however, that Lessee's rights under this Section shall be subject to the rights of the holder of any Leasehold Mortgage. Any award monies paid or payable by the taking authority in connection with the Taking shall be payable to Lessee and/or to the Leasehold Mortgagee, as their interests appear, but such monies shall be subject to any appropriate offset(s) if applicable law so allows and the Lessee is determined to owe outstanding monies to the Taking Authority in connection with this Lease, any other Government contract(s), or any other contracts or legal obligations with such Taking Authority.

ARTICLE 15 - DELIVERY, RESTORATION, AND SURRENDER

A. **Delivery of the Property to Lessee.** Upon the Effective Date, the Department shall deliver physical possession of the Property to Lessee, free and clear of any tenancy or occupancy by third parties, except as permitted in Article 5 above.

B. **Reversion of Leasehold Title and Vesting of Improvements.** Upon the expiration or termination of this Lease, all right, title and interest of Lessee (and anyone claiming by, under, or through Lessee) in and to the Property, Improvements, and all machinery, equipment, fixtures, and personal property attached or used in connection with the Property, whether or not the same become fixtures, shall immediately revert to and/or vest in the Department without compensation therefor, and without any further action by the parties. However, should any further action be necessary to accomplish such reversion and vesting, Lessee agrees to cooperate with VA and take all actions reasonably necessary to accomplish the same. No claim for damages against VA or its

officers or agents shall be created or made on account of such expiration or termination of this Lease.

C. **Surrender of the Property by Lessee.** Lessee shall at its sole cost and expense and on or before the expiration or earlier termination of this Lease, vacate and deliver physical possession of the Property, together with the Improvements located thereon, to the Department. At that time, the Property shall be in good order, condition and repair and free and clear of any tenancy or occupancy by third persons and/or sublessees. If Lessee shall fail, refuse, or neglect to vacate the Property and remove its and its Subtenant's personal property, then upon expiration or termination of this Lease, such personal property shall be considered abandoned and, at the option of the Department, either become the property of VA without compensation therefor, or the Department may cause it to be removed and/or destroyed at the expense of Lessee, and no claim for damages against the Department, its officers, or agents shall be created or made by or on account of such removal and/or destruction.

ARTICLE 16 - ENVIRONMENTAL PROVISIONS

A. To the extent the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"), the Resource Conservation Recovery Act, as amended, 42 USC 6901, et seq. ("RCRA"), or other applicable environmental law properly imposes liability, loss, expense, damage, or cost upon VA for any matter relating to any hazardous material or otherwise of an environmental nature on or affecting the Property due to (1) the United States' status as Federal owner of the Property, (2) acts of VA and/or former owners on or affecting the Property, or (3) acts or omissions of government contractors on or affecting Property that occurred while VA had jurisdiction and control of the Property, VA shall indemnify Lessee, its directors, partners, officers, trustees, members, employees, agents, successors, and assigns ("Indemnitees") for any liability, loss, expense, damage, or cost incurred or suffered by the Indemnitees and arising from any of the foregoing acts set forth in Clauses (1), (2), and/or (3) and properly assessable against VA under CERCLA, RCRA, or other applicable environmental law. Lessee shall immediately notify VA upon receipt of any notices, claims, or other information that identifies any environmental problems on or related to the Property which may require Lessee and/or VA action and/or expenditure of funds.

Consistent with the Anti-Deficiency Act (codified as amended in 31 U.S.C. 1341, 1342, 1351, and 1517), the payments of VA with respect to this indemnification shall not exceed appropriations available to VA which can be lawfully expended for such purposes at the time of the claim; and nothing in this Lease may be construed as implying that Congress will at a later date appropriate funds to meet any deficiencies.

B. Notwithstanding Article 16.A above, to the extent Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation Recovery Act, as amended ("RCRA"), or other applicable environmental law properly imposes liability, loss, expense, or damage, or cost upon VA for any matter relating to any hazardous material or otherwise of an environmental nature on or affecting the Property due to acts of Lessee, its contractors, builders, sublessees, agents, employees, and/or licensees relating to the Development, including any environmental remediation, which occur after the Effective Date, Lessee shall indemnify VA for any liability, loss, expense, damage, or cost incurred or suffered by

VA and properly assessable against Lessee under CERCLA, RCRA, or other applicable environmental law. Lessee shall immediately notify VA upon receipt of any notices, claims, or other information that identifies any environmental problems on or related to the Property which may require Lessee and/or VA action and/or expenditure of funds.

C. In accordance with Article 16.B above, if and to the extent that VA during the Lease term is held, by a final decision of the highest court or other adjudicative body of competent jurisdiction to which the matter has been presented, liable for costs and/or damages associated with the improper treatment, disposal, and/or release of one or more "Hazardous Substances" (as defined in Article 34 below) on or affecting the Property, VA at its sole and absolute discretion, may seek to initiate good-faith discussions and negotiations with Lessee, for Lessee on VA's behalf and upon the parties' consummation of a separate written agreement, to undertake and complete any and all required environmental remediation and abatement activities in accordance with all applicable Federal, State, and local law.

D. Should additional environmental studies under the National Environmental Policy Act, 42 U.S.C §§ 4321-4370d, as amended ("NEPA"), CERCLA, or other applicable environmental law become necessary during the Lease term due to proposed development activities beyond the scope of the Project development as described in this Lease, then unless the parties otherwise agree in writing, the fees, costs, and expenses necessary to perform such studies shall be the sole responsibility of Lessee.

ARTICLE 17 - BONDS OF SECURITY

If during the Lease term the Lessee proposes to undertake construction that would be in excess of \$100,00.00, or other dollar threshold as may later be stipulated in the Miller Act (40 U.S.C. § 3131), then VA and Lessee agree that , not less than thirty (30) days prior to undertaking any renovation or construction, Lessee shall furnish evidence of a "Payment and Performance Bond" between Lessee and the construction contractor, with a sum equal to one hundred percent (100%) of Lessee's total costs of construction, development, and renovation. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety of Federal bonds will be accepted. The United States of America, acting through the Secretary, shall be named as co-beneficiary on each "Payment and Performance Bond" (including subcontract bonds) obtained by Lessee. The Department shall have the right to approve or reject any and all terms and conditions of any and all bonds obtained by Lessee pursuant to this Lease. In addition, the terms and conditions of each "Payment and Performance Bond" shall be subject to the prior approval of the Department.

ARTICLE 18 - NOTICES

A. All notices, or other correspondence required under or arising from the terms of this Lease from the Department to Lessee shall be served on or mailed to Lessee's designated representative, who shall notify the DVR in writing of any change in Lessee's designated representative, and/or the address or office to be notified. All notices or other correspondence required or arising from the terms of this Lease from Lessee to the Department shall be served on or mailed to the DVR

who shall notify Lessee's designated representative in writing of any change in the DVR, and/or the address or office to be notified.

B. All notices, reviews, approvals and other communications required or permitted under this Lease shall be in writing and will only be deemed properly given and received (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one (1) business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt; or (c) three (3) business days after deposit in the United States mails, certified or registered mail with return receipt requested and postage prepaid; it being understood and agreed that the period for any approval to be given hereunder shall run from the party's receipt of the documentation required for such approval as described herein with a formal written request for such approval shown thereon. The designated representatives shall be:

Department: U.S. Department of Veterans Affairs
Office of Asset Enterprise Management (044)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Phone: (202) 461-7778
FAX: (202) 273-5585
Attn: DVR

With copies to: West Los Angeles Medical Center
11301 Wilshire Blvd.
Los Angeles, CA 90073
Phone: (310) 268-3132
Attn: GLAHS Director

U. S. Department of Veterans Affairs
Office of Asset Enterprise Management (044)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Phone: (202) 461-8153
Fax: (202) 273-9374
Attn: Post Transaction Team Leader

U. S. Department of Veterans Affairs
Office of General Counsel (025)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Phone: (202) 461-7612
Fax: (202) 273-9384
Attn: Chief Counsel

Lessee: Veterans Housing Partnership, LLC
c/o Shangri-La Construction, LP
550 S. Hope Street, #700
Los Angeles, CA 90071
Phone: 213-797-4240
Attention; Ben Wahab

With Copies To: Judson C. Leibee, Esq.
27762 Antonio Parkway, L1-543
Ladera Ranch, CA 92694
Phone: (949) 226-2858

ARTICLE 19 - ASSIGNMENT AND SUBLETTING

A. **The Lease Is Binding Upon Lessee's Successors and Assigns.** Subject to and in accordance with Article 19.F below, Lessee hereby agrees that all of the covenants, conditions, obligations and liabilities contained in this Lease shall be binding upon and inure to the benefit of any successors and assigns of Lessee (including, without limitation, a Leasehold Mortgagee or a purchaser/assignee in foreclosure, but only during or arising from the period of their respective possession or ownership of the Property) to the same extent as if the successors and assigns were in each case named as a party to this Lease.

B. Subject to the provisions of Article 20 and except as set forth in Section D of this Article 19, Lessee may not sell, convey, transfer or assign this Lease or any interest therein, or in the Property, or grant an interest, privilege or license in connection with this Lease, without the prior written consent of the Department, which consent shall not be unreasonably or arbitrarily withheld or delayed, so long as the Department determines that the assignment or sale is not inconsistent with the terms and conditions of this Lease and that such assignee or purchaser is a responsible party ("Responsibility Determination"). Factors to be considered by the Department in making a Responsibility Determination include, but are not limited to, a determination that the proposed successor or assignee: **(1)** expressly agrees to at all times use the Property in accordance with the terms and conditions of the Lease; **(2)** has provided the Department with the certification described in Article 19.F; **(3)** expressly agrees and understands that the proposed assignment or sale is subject to the rights, title and interests of the United States and VA under the Lease; **(4)** is a Qualified Party, and a responsible party as more fully described in Article 20.F.1; **(5)** has an adequate record of successfully operating and maintaining prior projects similar to that of the Project; and **(6)** has an adequate financial history and profile (net worth, cash flow, and credit support) to successfully meet the financial commitments of the Project and the Lease's terms and conditions.

C. When making any Responsibility Determination, the Department shall have fifteen (15) business days following written notice from Lessee to object to the proposed assignee or transferee. In the event that the Department based on the criteria in Section B above "rejects" the proposed assignee or transferee, the Department shall disclose the nature and scope of the conflict

to Lessee and shall provide Lessee fifteen (15) days thereafter within which to provide additional information and request in writing that the Department reconsider its determination. The Department, under reconsideration, may grant or deny approval of the proposed assignee or transferee in accordance with the "factors" identified in items (1) through (7) of Section B above, and shall so notify Lessee of its determination in writing within fifteen (15) days of the reconsideration request. Alternatively, if the Department fails to object within said fifteen (15) day period, it shall be deemed to have waived any objection. However, if upon reconsideration, the Department continues to object based upon the aforementioned "factors," and timely advises Lessee of the same, the parties will continue working together in good faith to resolve the issue(s), subject to the parties' rights in Article 25 below.

D. Notwithstanding Articles 19.B and C, but subject to Article 7, the subleasing of any part of the Facility, and any other Improvements located on the Property and made available for use and occupancy, is freely permitted without the prior consent of the Department, provided that in the case of a sublease (or other agreement) to a tenant other than a natural person residing in any of the aforementioned improvements (a "Space Tenant"), Lessee shall notify the Department in writing of the name, and address of such Space Tenant and the nature of its business; identify the property and premises being subleased; and notify VA in writing that to the best of Lessee's knowledge and belief: (1) the proposed sublease to the Space Tenant does not violate any terms, covenants or conditions of this Lease; (2) based upon Lessee's internet website search of <https://www.sam.gov/portal/public/SAM/> (as said website and/or its underlying list may change or be updated from time to time) within the immediately preceding thirty (30) days, the prospective Space Tenant does not appear listed on the most current "System for Award Management"; and (3) based upon Lessee's internet website search of <http://www.state.gov/j/ct/rls/crt/> (as said website and/or its underlying list may change or be updated from time to time) within the past thirty (30) days, the prospective Space Tenant does not appear in the latest edition of the publication entitled "Country Reports on Terrorism."

E. The Department agrees that during the Lease term and subject to the terms and conditions of this Lease, any approved assignee or transferee shall have the right to attorn to the Department, and the Department will accept such attornment and not disturb the occupancy or rights of such assignee or transferee pursuant to its transfer, assignment, grant, purchase, or sublease agreement with Lessee. The Department agrees to execute any non-disturbance agreement as may be reasonably requested by Subtenant, and which the Department reasonably finds to be reasonable, to memorialize and effectuate the provisions of this Article.

F. Any succession or assignment permitted and carried out pursuant to this Article is contingent upon the execution of a written certification by the proposed assignee or transferee stating that such entity agrees to comply with all terms, covenants, obligations and liabilities contained in this Lease. The assignee or transferee shall be deemed to have assumed all of the obligations of Lessee under this Lease, but such shall not relieve Lessee of any of its obligations under this Lease as provided in Section A above, except upon the express release therefrom, if any, by VA in its sole and absolute discretion.

ARTICLE 20 - ENCUMBRANCE OF THE PROPERTY

A. Prohibition Against Encumbrance of the Property:

1. Nothing contained in this Lease authorizes Lessee to encumber in any manner, during the Lease term, the United States' (i.e., the Department's) fee interest in the Property. Such fee interest in the Property may not be subordinated or otherwise made subject to any deed of trust, mortgage, or other lien, or other encumbrance granted, suffered, or permitted by Lessee.

2. Lessee covenants that it shall not create or cause to be created a mortgage, lien, or other encumbrance to be placed upon the Property, other than such mortgage, lien, or encumbrance to be placed on Lessee's leasehold interest therein pursuant to Section B of this Article. Subject to Lessee's rights in Article 20.A.3 below, the creation of any mortgage, lien, or encumbrance, other than permitted by Paragraph B of this Article, shall be deemed a Lessee Event of Default on the date of its execution or filing of record in accordance with the provisions of Articles 22 and 23 of this Lease.

3. Lessee may in good faith and at Lessee's own expense contest the validity of any asserted lien, claim, or demand not permitted under this Article; provided Lessee has furnished a bond or cash deposit freeing the Property from the effect of such a lien claim, and provided the Department with written evidence thereof. If such lien is not promptly discharged by Lessee: (1) within thirty (30) days after a judgment is rendered following any unsuccessful challenge of Lessee as to the validity of the asserted lien or (2) if no such challenge is made, within such thirty (30) days after Lessee receives a written request from VA to discharge or free the Property from the effect of such a lien, the Department may, but shall not be obligated to, discharge such lien. Any amount so paid by the Department for any such purpose, with interest thereon at the prevailing rate of interest for "90-day U.S. Treasury Bills" or its successor from the date of any such payment, shall be repaid by Lessee to the Department not later than thirty (30) days following Lessee's receipt of written notice from the Department.

B. Encumbering Lessee's Leasehold Interest:

1. Lessee may encumber its leasehold interest to the extent necessary to provide financing for the costs of development, construction, renovation, operation, and maintenance of the Property as specified in this Lease. However, any loan involving a security interest in the leasehold may not be closed until the Department has consented to the financing.

2. Promptly after assigning this Lease or encumbering the Property as provided herein (i.e., Article 20.A.1 and 20.A.2 above), Lessee shall furnish the Department a true and verified copy of any leasehold mortgage ("Leasehold Mortgage") and other documents creating or securing the indebtedness thereby secured, and written notice setting forth the name and business address of the Leasehold Mortgagee ("Leasehold Mortgagee"). During the Lease term, Lessee also shall provide the Department with a copy of any amendments or modifications to the Leasehold Mortgage (and any other documents creating or securing the indebtedness), and written notice of any changes to the name and/or business address of the Leasehold Mortgagee.

3. During the Lease term, the making of any Leasehold Mortgage shall not be deemed to constitute an assignment, nor shall any Leasehold Mortgagee not in possession of Lessee's leasehold estate be deemed an assignee of the leasehold estate so as to require such Leasehold Mortgagee to assume the obligations of Lessee hereunder; however, as further provided in this Article 20.B.3, any Leasehold Mortgagee in possession, purchaser at a foreclosure sale of the leasehold estate, or assignee pursuant to an assignment in lieu of foreclosure shall be deemed to be an assignee of Lessee and shall be deemed the successor to (but only for the period of its leasehold ownership) the obligations of Lessee hereunder from and after the date of such purchase or assignment ("Successor"). Such Successor shall be fully bound by the provisions of this Lease, except to the extent that any unperformed obligations of Lessee at the time of, as applicable, such possession, foreclosure, or assignment in lieu of foreclosure, are personal in nature and incapable of being performed by the Successor.

4. Lessee agrees to make all payments and perform all obligations required or secured by any Leasehold Mortgage as and when the same are required to be made or performed thereunder.

5. In no event shall Lessee commence any development, construction, or renovation activities regarding the Facility, or any other Improvements on the Property after the Effective Date that are made available for occupancy, until Lessee provides VA with documentary evidence that Lessee has adequate financial resources to undertake and complete that respective aspect of the Project.

C. Notices to Leasehold Mortgagees:

1. If a true and verified copy of a Leasehold Mortgage shall have been delivered to the Department together with a written notice of the name and address of the Leasehold Mortgagee then, notwithstanding anything to the contrary set forth in this Lease:

2. The Department shall mail to each such Leasehold Mortgagee a duplicate copy of any and all notices that the Department may be required from time to time to serve upon Lessee pursuant to the provisions of this Lease; and no notice by the Department to Lessee hereunder shall be deemed to have been given unless and until a copy thereof has been mailed to the Leasehold Mortgagee.

3. The Department shall provide each Leasehold Mortgagee that is properly identified to VA pursuant to 20.B above with a duplicate copy of any notice sent to the Lessee (or any of its successors or assigns) advising of any change in the proper representative and/or office to be notified when sending notices or correspondence to the Department.

D. Lease Termination Protection:

1. Subject to Lessee's covenant to advise VA of each and every Leasehold Mortgagee pursuant to Article 20.B, the Department shall not agree to any mutual termination nor accept any surrender of this Lease (except upon the expiration of the Term) nor shall the Department consent to any material amendment or modification of this Lease which affects the Lease terms and/or the Leasehold Mortgagee's rights, without the prior review and written consent of the Leasehold Mortgagee.

2. Notwithstanding any default by Lessee in the performance or observance of any covenant, condition or agreement of this Lease on the part of Lessee to be performed or observed, all rights of the Department to terminate this Lease for such Lessee default shall be subject to and conditioned upon (a) the Department having first given the Leasehold Mortgagee written notice of, and an opportunity to cure such default per Section E below, and (b) the Lessee's and Leasehold Mortgagee's having failed to remedy such default as set forth in, and within the applicable time period specified by Section E of this Article.

3. Each Leasehold Mortgagee who is properly identified to VA pursuant to Article 20.B above shall have the right, but not the obligation (except as otherwise may be provided herein as to a Leasehold Mortgagee in possession of the Property), at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to provide any insurance, to pay any taxes and make any other payments, to make any repairs and improvements and do any other act or thing required of Lessee hereunder, and to do any act or thing which may be necessary and proper in the performance and observance of the covenants, conditions and agreements hereof to prevent the termination of this Lease. All payments so made and all things so done and performed by the Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Lessee instead of by the Leasehold Mortgagee.

E. **Leasehold Mortgagee Cure Rights:**

1. A Leasehold Mortgagee who undertakes to remedy an uncured event of default by Lessee shall, except as provided in Paragraph 2 below, have sixty (60) days after receipt of notice from the Department setting forth the nature of such default within which to remedy the default.

2. If the Lessee default is such that possession of the Property is reasonably necessary to remedy the default, Leasehold Mortgagee shall have a reasonable time, not to exceed one-hundred twenty (120) days (unless VA, by prior written consent in its sole discretion, approves a longer period), after the expiration of such initial sixty (60) day cure period within which to remedy such default; provided that: (a) the Leasehold Mortgagee shall have acquired Lessee's leasehold estate created hereby or commenced foreclosure proceedings, an action for the appointment of a receiver, or other appropriate proceedings in the nature thereof within such sixty (60) day period or prior thereto, and shall be diligently and continuously prosecuting any such proceedings to completion; (b) notwithstanding anything in this Lease to the contrary, the Leasehold Mortgagee shall have fully cured any uncured default in the payment of any monetary obligations of Lessee under this Lease within such sixty (60) day period and thereafter shall continue to faithfully perform all such monetary obligations that do not require possession of the Property; and (c) after gaining possession of the Property, the Leasehold Mortgagee or the receiver, as the case may be, shall perform all of the covenants of Lessee reasonably capable of performance by the Leasehold Mortgagee or the receiver during the period of foreclosure or receivership, as the case may be, as and when the same are due, and shall immediately proceed with all due diligence either to assign the Property or enter into a Replacement Lease with VA for the Property, as described in Article 20.F.2 below.

3. If the Leasehold Mortgagee establishes to VA's satisfaction that a Lessee default is personal in nature or otherwise is not susceptible of cure by the Leasehold Mortgagee, then,

provided the Leasehold Mortgagee fully complies with and meets all requirements of clauses (a) through (c) of Section E.2 above, the default shall be deemed remedied as between VA and the Leasehold Mortgagee.

4. Notwithstanding anything in this Lease to the contrary except for the provisions of Article 20.F.2 below and Lessee's obligation to inform VA of each Leasehold Mortgagee pursuant to Article 20.B.2 above, should the Leasehold Mortgagee(s) fail to remedy an uncured Lessee default pursuant to and within the applicable time period specified in this Section E, the Department shall immediately thereafter be permitted to terminate the Lease by issuing written notice thereof to the Lessee, and each Leasehold Mortgagee identified per Article 20.B.2 of this Lease.

F. **Foreclosure of Leasehold Mortgage:**

1. Subject to Article 20.B.2, and pursuant to and in conjunction with an assignment or foreclosure under this Article, the Leasehold Mortgagee and its successors and assigns may assign or sell the leasehold estate subject to and consistent with Subparagraphs (i) through (iv) below, provided that the Leasehold Mortgagee or assignee provides the Department with not less than thirty (30) days advance notice or the maximum period of advance notice allowed under applicable law of any such assignment or sale, and based upon its review determines that the Successor to the Property is a "responsible" party. Factors to be considered by the Leasehold Mortgagee or assignee in making this responsibility determination shall include, but are not limited to:

(a) the Leasehold Mortgagee's receipt of a written certification ("Certification") from the Successor (which the Leasehold Mortgagee shall copy and forward to the Department not less than five (5) days before such assignment or sale) confirming that the Successor: (1) expressly agrees to at all times use the Property in accordance with the terms and conditions of the Lease; (2) expressly agrees to observe and perform all of the Lessee covenants and comply with the terms and conditions contained in the Lease, (3) expressly agrees and understands that the proposed assignment or sale is subject to the rights, title and interests of the United States and VA under the Lease; (4) is not, and to the best of its knowledge any of its principals are not, presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency and have not, within a three (3) year period preceding the date of certification, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with commission of any of these offenses; and (5) does not pose a safety or security risk as determined by the Secretary of State, including but not limited to any person who either represents a country that, or is a member of or provides political, financial, or military support to a group that is listed in the most current "Patterns of Global Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at <http://www.state.gov/j/ct/rls/crt/>;

(b) the Leasehold Mortgagee's determination that the Successor has at least three (3) years of prior relevant experience successfully operating and maintaining projects similar to that of the Project;

(c) the Leasehold Mortgagee's determination that the Successor has an adequate financial history and profile (net worth, cash flow, and credit support) to successfully meet the financial commitments of the Project and the Lease's terms and conditions; and

(d) the Leasehold Mortgagee's providing of a written certification to VA within five (5) days before such assignment or sale confirming that the Successor is not on any of the procurement, non-procurement, or reciprocal lists provided at the "System for Award Management" website located at <https://www.sam.gov/portal/public/SAM/>.

2. Within thirty (30) days after any foreclosure of this Lease by reason of any uncured event of default by the Lessee hereunder (including, if permissible given applicable Federal, State, and local laws, regulations, and proceedings, any termination of this Lease in connection with any bankruptcy or similar proceeding), VA agrees to amend this Lease or execute a Replacement Lease upon the same terms and conditions hereof ("Replacement Lease") with a Successor who requests such Replacement Lease and complies with the provisions of this Paragraph 2, including subparagraphs "a" through "b" immediately below. Should two or more Leasehold Mortgagees request to enter into a Replacement Lease pursuant to this Paragraph, the most senior Leasehold Mortgagee in possession will have the first right to enter into the Replacement Lease with the Department.

(a) The Replacement Lease shall be for the remaining Lease term effective as of the effective date of the termination of this Lease, but with the same right of extension as provided in the Lease, and at the same rent, and additional rent or consideration, if any, and upon the same terms, covenants and conditions (including all options to renew but excluding such terms, covenants and conditions that shall have already been fulfilled) of this Lease.

(b) In the event that the Successor enters into the Replacement Lease, the Successor shall pay or cause to be paid to the Department any and all sums which at the time of execution and delivery thereof are due it under this Lease and in addition, all reasonable expenses, including reasonable attorneys' fees which the Department shall have incurred by reason of the actual or deemed termination of this Lease and the preparation, execution and delivery of the Replacement Lease.

G. Any loan document and security instrument used to establish a security interest in the leasehold that does not include (or incorporate without modification) the foregoing provisions recited in this Article shall constitute an event of default by Lessee.

ARTICLE 21 - TAXES

A. The Department's interest in this Lease, and the United States' fee interest in the Property shall not be subject, directly or indirectly, to any State or local laws relative to taxation, fees, assessment(s) or special assessments.

B. In addition, Lessee shall pay and discharge, at least thirty (30) days prior to delinquency, all taxes, general and special assessments, charges, and fees of every description that during the Lease term may be levied or assessed against the Property and all interests therein, whether belonging to the Department or Lessee, or to which either of them may become liable in relation thereto prior to the delinquency date thereof. Lessee agrees to protect and hold harmless the Department and the Property and all improvements in, on, or about the same from all liability for any and all such taxes, assessments, charges, and fees, together with any interest, penalties, or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof. During the Lease term and at its sole cost and if the Department so requests, Lessee shall cause all taxes, assessments, charges, and fees levied or imposed upon any personal property situated in, on, or about the Property to be taxed or assessed separately from the Property and not as a lien thereon.

C. It is understood that it is the intent of the parties that this be an absolute net Lease, and that the Department shall not be obligated to pay any charges, impositions, or assessments directly or indirectly made against the Property during the term hereof.

D. In the event that Lessee is not required to make deposits on account of real estate taxes with the holder of any mortgage permitted by Article 20 of the Lease, and in the event that Lessee fails at any time during the Lease term to pay real estate taxes when due, then the Department shall have the right upon written notice to the Lessee, to require that Lessee deposit negotiable securities or other collateral to guarantee the payment of such taxes, so that there shall be sufficient sums available to pay same at least thirty (30) days prior to the due date of such taxes.

E. VA represents and warrants that the Lessee is hereby exempt from all State and local taxes, if any, which were assessed on the Leasehold prior to the Effective Date of this Lease.

ARTICLE 22 - EVENTS OF DEFAULT BY LESSEE

A. Each of the following actions or omissions by Lessee shall be considered an event of default by Lessee:

1. Lessee fails to use its leasehold interest obtained pursuant to this Lease and the Property in a manner consistent with Article 7, and such failure remains uncured following ninety (90) days written notice from the Department.

2. Reserved

3. Lessee will ensure Building 209 is ready for occupancy by no later than thirty (30) days after the Effective Date. Notwithstanding anything to the contrary in this Lease, if local building authorities require certifications for occupancy beyond that which the Facility currently has, then the Lessee shall be granted additional time as the DVR and Lessee deems necessary, for the Lessee to obtain the necessary certifications to enable such occupancy.

4. Lessee fails to pay any monetary obligation due under the provisions of this Lease and such failure continues for a period of forty-five (45) days after the Department gives written notice to Lessee that the same is due and payable.

5. Except for all other Lessee Events of Default expressly covered in the other Paragraphs of this Article 22, Lessee (or any permitted assignee or transferee in accordance with Articles 19 and 20) fails to perform any non-monetary obligation, representation, consideration, covenant or condition, to be performed under this Lease, and such failure is not cured within a period of ninety (90) days after Lessee's receipt of written notice from the Department describing the default, or if such default cannot reasonably be cured within ninety (90) days (as determined by VA in its reasonable discretion), Lessee has not commenced the remedying thereof within such ninety (90) day period or Lessee is not thereafter proceeding with due diligence to remedy such failure (it being understood that for any event of a default that is not susceptible of being cured by Lessee within ninety (90) days then the time within which Lessee may remedy such default shall be extended by VA for such period time, not to exceed one hundred twenty (120) days, as is reasonably necessary to complete a cure with continual due diligence).
6. The failure or refusal of Lessee to discharge any lien, claim, demand, or encumbrance, or to initiate appropriate action, to quiet any such claim within the time specified in Article 20.A, whether or not the Department exercises its right of discharge, or the failure or refusal of Lessee to make timely repayment to the Department of those sums expended to effectuate such discharge.
7. Lessee is (or becomes) insolvent or files a voluntary petition under any Federal or State Bankruptcy Code, or an involuntary case is filed hereunder against Lessee and the case is not dismissed within one hundred eighty (180) days. The filing of a voluntary or involuntary petition in bankruptcy shall result in the automatic termination of the Lease.
8. Lessee fails to comply with Article 6.B.24 of this Lease.

ARTICLE 23 - REMEDIES FOR DEFAULT BY LESSEE

- A. Subject to Articles 20 and 25, upon the occurrence of an event of default by Lessee, the Department may exercise any right, remedy or privilege, which may be available to it under this Lease or under applicable local, State or Federal law. All remedies shall be cumulative and the election of one shall not preclude the exercise of another, at the same time or subsequently. Failure to exercise a remedy shall not constitute a waiver thereof. Lessee shall remain liable to the extent permitted by law with respect to all covenants and indemnities of this Lease. Additionally, upon default by Lessee of this Lease, and Lessee's failure to cure or to commence to cure, within any applicable cure period, the Department may, subject to and in accordance with Articles 15, 20, and 25, immediately seek to terminate this Lease and recover its damages. Upon the Department's successful termination of the Lease, Lessee shall be immediately required pursuant to Article 15, to surrender possession of the Property, together with all Improvements located thereon, to the Department, and cooperate fully and in good faith to effect an orderly and efficient transition of the Property.
- B. **No Termination for Convenience.** The Department shall have no right to unilaterally terminate this Lease for convenience.

ARTICLE 24 - EVENTS OF AND REMEDIES FOR DEFAULT BY THE DEPARTMENT

A. An event of default by the Department shall occur upon its failure to perform or observe any covenant or condition required by this Lease to be performed or observed, and such failure is not cured within ninety (90) days after the Department's receipt of written notice thereof, provided that such cure period shall be extended by Lessee for an additional thirty (30) days if such default cannot be reasonably cured within ninety (90) days and the Department is diligently attempting to cure the default.

B. Upon default by the Department, and the Department's failure to cure or to commence to cure, within the applicable cure period, Lessee may immediately seek to terminate this Lease and recover its damages in accordance with Article 25 hereto, and/or may exercise any other right, remedy, or privilege that may be available to it under this Lease or applicable Federal, State, or local law.

ARTICLE 25 – DISPUTES

A. Lessee and the Department acknowledge and agree that disputes under this Lease shall be resolved under the Contract Disputes Act of 1978 (41 U.S.C. Sec. 601-613) (the "Disputes Act"), and that both Lessee and the Department will utilize Alternative Dispute Resolution procedures on all matters appealed by Lessee to the Civilian Board of Contract Appeals, and any successor authority thereto), to the extent permitted under the Disputes Act, unless the parties then should otherwise agree.

B. In the event that the Disputes Act is not available or permissible under applicable law to resolve a dispute under this Lease, Lessee and the Department shall, to the extent permitted by applicable law and regulation, resolve the dispute by arbitration. In that regard, the arbitration shall take place in Washington, D.C. unless the Department and Lessee otherwise agree in writing.

C. Interest Payable. Regardless of whether the dispute is resolved under the Disputes Act or otherwise, if the claim is resolved in favor of Lessee the Department shall pay interest in accordance with the Prompt Payment Act, 31 U.S.C. Section 3901, et seq.

D. Unless and until the Department otherwise agrees in writing, Lessee shall proceed diligently with performance of this Lease pending final resolution of any request for relief, claim, appeal or action arising under or relating to the Lease.


ARTICLE 26 -LEASE SUBJECT TO GENERAL PROVISIONS

This Lease and Lessee's occupancy of this Property shall be subject to the terms and conditions of the General Provisions attached hereto and by the reference made part of this Lease.

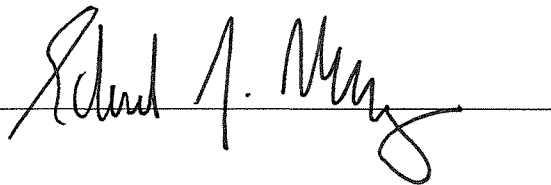
(The Balance of This Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

By: VETERANS HOUSING PARTNERSHIP, LLC
a California limited liability company

By: 
ANDREW MEYERS ABDULWAHAB
Its: Manager

THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS
Enhanced-Use Lessor

By: 

Name: Edward J. Murray

Title: Interim Assistant Secretary for Management and Interim Chief Financial Officer

[General Provisions to follow]

GENERAL PROVISIONS

ARTICLE 27 - ASSIGNMENT OF CLAIMS

A. Lessee, under the Assignment of Claims Act, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 15, 48 C.F.R. § 32.800, and all applicable regulations promulgated thereunder (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this Lease in accordance with the Act.

B. Any assignment or reassignment authorized under the Act and this Article shall cover all unpaid amounts payable under this Lease and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Lease.

ARTICLE 28 - EQUAL OPPORTUNITY CLAUSE

A. If, during any twelve (12) month period (including the twelve (12) months preceding the award of this Lease), Lessee has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, Lessee shall comply with subparagraphs B(1) through (8) below. Upon request, Lessee shall provide information necessary to determine the applicability of this clause.

B. During performance of this Lease, Lessee agrees as follows:

1. Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

2. Lessee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. This shall include but not be limited to: (a) employment; (b) upgrading; (c) demotion; (d) transfer; (e) recruitment or recruitment advertising; (f) layoff or termination; (g) rates of pay or other forms of compensation; and (h) selection for training, including apprenticeship.

3. Lessee shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Secretary that explain this clause.

4. Lessee shall, in all solicitations or advertisement for employees placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

5. Lessee shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, notice to be provided by the Secretary advising the labor union or workers’ representative of Lessee’s commitments under this clause and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. Lessee shall comply with Executive Order 11246, as amended, and the rules, regulations and orders of the Secretary of Labor.

7. Lessee shall furnish to the Secretary all information required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within thirty (30) days following the award, unless filed within twelve (12) months preceding the date of award.

8. Lessee shall permit access to its books, records and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of investigation to ascertain Lessee's compliance with the applicable rules, regulations and orders.

C. If the OFCCP determines that Lessee is not in compliance with this clause or any rule, regulation or order of the Secretary of Labor, this Lease may be canceled, terminated or suspended in whole or in part, and Lessee may be declared ineligible for further Department contracts, under the procedures authorized in Executive Order 11246, as amended, the rules regulations and orders of the Secretary of Labor, or as otherwise provided by law.

D. Lessee shall include the terms and conditions of Section 28.B.1-8 in every subcontract or purchase order that is not exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

E. Lessee shall take such actions with respect to any subcontract or purchase order as the Department may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if Lessee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, Lessee may request the Department to enter into the litigation to protect the interests of the United States.

F. Notwithstanding any other clause in this Lease, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.

ARTICLE 29 - FACILITIES NONDISCRIMINATION

A. **Facility Defined.** As used in this Article, the term "facility" means stores, shops, restaurants, cafeterias, restrooms and any other facility of a public nature in the building in which the space covered by this Lease is located.

B. **Non-Discrimination by Lessee.** Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by Lessee solely to occupants, their employees, customers, patients, clients, guests and invitees.

C. **Remedies for Non-Compliance.** It is agreed that upon Lessee's noncompliance, the Department may take appropriate action to enforce compliance, may terminate this Lease or may pursue such other remedies as may be provided by law.

D. **Inclusion of Article In Other Contracts.** It is further agreed that from and after the date hereof Lessee will, at such time as any agreement is to be entered into or a concessions is to be permitted to operate, include or require the inclusion of the foregoing provisions of this Article in every such agreement or concession pursuant to which any person other than Lessee operates or has the right to operate any facility. Nothing herein contained, however, shall be deemed to require Lessee to include or require the inclusion of the foregoing provisions of this Article in any existing agreement or concession arrangement or one in which the leasing party other than Lessee has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and unilateral right to renew or extend. Lessee also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as the Department may direct, as a means of enforcing the intent of this Article, including but not limited to termination of the agreement or concession and institution of court action.

ARTICLE 30 - GRATUITIES

A. The rights of Lessee under this Lease may be terminated by written notice if, after notice and a hearing, the Secretary determines that Lessee, its agent or another representative:

1. Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of the Department; and
2. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

B. If this Lease is terminated under Article 30.A above, the Department is entitled to pursue the same remedies as in a breach of this Lease. The rights and remedies of the Department provided in this Section 30.B shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

ARTICLE 31 - COVENANT AGAINST CONTINGENT FEES

Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding, for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide agency as defined in 48 C.F.R. § 3.401. For breach or violation of this warranty, the Department shall have the right to cancel this Lease without liability or, in its discretion, to deduct from the rental or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

1. "Contingent fee," as used in this clause, means any commission, percentage, brokerage or other fee that is contingent upon the success that a person or concern has in securing a Department contract.

ARTICLE 32 - EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

A. Rights of the Comptroller General and Its Authorized Representatives

1. The Comptroller General of the United States or a duly authorized representative from the Government Accountability Office shall, until three (3) years after final payment under this Lease, have access to and the right to examine any of Lessee's directly pertinent books, documents, papers or other records involving transactions related to this Lease, provided that such records are then in existence. This paragraph may not be construed to require Lessee or its subcontractors to create or maintain any record that the Lessee or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
2. Lessee agrees to include in its first-tier subcontracts regarding the Project a clause to the effect that the Comptroller General or a duly authorized representative from the Government Accountability Office shall, until three (3) years after final payment under the subcontract, have access to and the right to examine any of the subcontractor's existing directly pertinent books, documents, papers or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes: (i) purchase orders not exceeding \$100,000; and (ii) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
3. The periods of access and examination in Paragraphs 1 and 2 above for records relating to: (i) appeals under the Disputes clause, (ii) litigation or settlement of claims arising from the performance of this Lease, or (iii) costs and expenses of this Lease to which the Comptroller General or a duly authorized representative from the Government Accountability Office has taken exception, shall continue until such appeals, litigation, claims or exceptions are disposed of.

B. Rights of the Department of Veterans Affairs

1. Upon receipt of a written request from the Department, Lessee shall grant to the Department access to Lessee's pertinent books, documents, papers or other records involving transactions directly related to this Lease (collectively "Business Documents") for purposes of examination and audit. Such access by the Department for purposes of examination and audit shall be limited to Business Documents dated within three (3) years prior to the date of Lessee's receipt of the Department's written request. The Department shall control and safeguard all information obtained during such examination and audit in accordance with the Freedom of Information Act, 5 U.S.C. Section 552 and the Privacy Act, 5 U.S.C. Section 552a. Lessee shall grant all other access for examination and audit to pertinent Lessee or sublessee Business Documents in accordance with applicable law.
2. Lessee agrees to include in any subleases under this Lease a clause to the effect that the Department shall have access to and the right to examine any of the sublessee's Business Documents to the same extent as provided in Paragraph 1 of this Article with respect to Lessee.
3. The right of the Department to examine Lessee's Business Documents shall be limited to the following matters in which VA is a party or has an interest hereunder: (i) payment, performance, and/or provision of the monetary and/or in-kind consideration, as applicable, which

is to be provided to, on behalf of, or for the benefit of, the Department, and/or claims or disputes under the "Disputes" clause of this Lease; (ii) litigation or settlement of claims or disputes arising from the performance of this Lease in which VA is a party, or (iii) costs and expenses of this Lease to which the Comptroller General or a duly authorized representative of the General Accounting Office has taken exception, and shall continue until such appeals, litigation, claims or exceptions are disposed of.

4. The parties understand and agree that nothing in this Section B is intended or may be construed as a qualification, waiver, bar, limitation or restriction of any nature, kind, or effect on the legal authority otherwise granted the United States or any agency thereof to access, examine, review, copy, or seize such books, documents, papers or other records.

ARTICLE 33 LABOR PROVISIONS

Unless the Lessee can demonstrate to the satisfaction of the Department that the Lease or the Project is exempt therefrom, Lessee shall comply with the requirements of the Davis-Bacon Act, as amended, 40 U.S.C. Section 3141, et seq. and the relevant rules, regulations and orders of the Secretary of Labor applicable thereto.

ARTICLE 34 - HAZARDOUS SUBSTANCES

A. **Presence and Use of Hazardous Substances.** Lessee shall not, without the Department's prior written consent, keep on or around the Property, for use, disposal, treatment, generation, storage, or sale, any substance designated as, or containing components designated as, hazardous, dangerous, toxic, or harmful under Federal, state or local law (hereafter collectively referred to as "Hazardous Substances"), and/or that is subject to regulation, by Federal, state or local law, regulation statute or ordinance except as may be customary in projects similar to the Property and in compliance with all applicable laws. With respect to any such Hazardous Substance, Lessee shall:

1. Comply promptly, timely, and completely with all governmental requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers with respect to any Hazardous Substances first brought upon the Property from and after the date hereof;

2. Submit to the Department true and correct copies of all reports, manifests, and identification numbers with respect to any Hazardous Substances first brought upon the Property from and after the date hereof at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;

3. Within sixty (60) days of the Department's request, submit written reports to the Department regarding Lessee's use, storage, treatment, transportation, generation, disposal, or sale of Hazardous Substances first brought upon the Property from and after the date hereof and provide evidence satisfactory to the Department of Lessee's compliance with the applicable governmental regulations with respect to any Hazardous Substances first brought upon the Property from and after the date hereof;

4. Allow the Department or the Department's agent or representative to come on the Property at all reasonable times with reasonable prior notice to check Lessee's compliance with all applicable governmental regulations regarding Hazardous Substances for which Lessee is responsible under the terms of this Lease;
5. Comply with minimum levels, standards or other performance standards or requirements that may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Property, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease);
6. Comply with all applicable governmental rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances; and
7. The Department shall have the right upon reasonable prior written notice and at reasonable times to enter upon the Property in order to inspect or monitor same if the Department has a reasonable belief that Hazardous Substances are present on the Property in violation of applicable law. If such inspection or monitoring by the Department confirms that Hazardous Substances are present and are in violation of applicable law, any and all reasonable costs incurred by the Department and associated with the Department's inspection of the Property and the Department's monitoring of Lessee's compliance with this Article, including the Department's reasonable attorney's fees and costs, shall be additional rent and shall be due and payable to the Department immediately upon demand by the Department.

B. **Cleanup Costs, Default, and Indemnification.** During the Lease term, Lessee shall be fully and completely liable to the Department for any and all cleanup costs, and any and all other charges, fees, and penalties (civil and criminal) imposed upon the Department by any governmental authority with respect to any use(s) of the Property after the Effective Date of this Lease related to disposal, transportation, generation, and/or sale of Hazardous Materials; provided, that liability and obligation by Lessee shall apply only to Hazardous Materials first brought upon the Property from and after the date hereof. Lessee shall indemnify, defend, and save the Department harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon the Department (as well as the Department's reasonable attorney's fees and costs) as a result of Lessee's use, disposal, transportation, generation, and/or sale of Hazardous Substances at the Property as described herein. Upon Lessee's default under this Article and the expiration of the applicable notice and cure periods set forth in Article 22 above, in addition to the rights and remedies set forth elsewhere in this Lease, the Department shall be entitled to the following rights and remedies:

1. At the Department's option, to terminate this Lease immediately; and/or
2. To recover any and all damages associated with the default, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by tenants of the Property, any and all damages and claims asserted by third parties and the Department's reasonable attorney's fees and costs.

ARTICLE 35 - MISCELLANEOUS PROVISIONS

- A. Complete Agreement and Conflicts. This Lease and the Exhibits hereto contain the entire agreement between the parties with respect to the transactions contemplated by this Lease, and supersede all previous oral and written and all contemporaneous oral negotiations, commitments, writings and understandings. To the extent any wording or interpretation conflicts exist between the body of the Lease and its Exhibits, the Lease shall control.
- B. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same instrument.
- C. Amendment; Waiver. This Lease may not be amended or modified except in a writing signed by Lessee and the Department, nor may any rights hereunder be waived except by a writing signed by the party waiving such rights.
- D. Article Headings. The headings contained in this Lease are for reference purposes only and shall not affect in any way the meaning or interpretation of this Lease. When a provision, article, section or other provision of this Lease is referred to by number, the reference shall be deemed to be the correspondingly-numbered provision, article, section, or provision of this Lease unless another agreement, instrument or document is expressly identified, or unless the context otherwise clearly refers to another agreement, instrument or document.
- E. Severability. Any provision of this Lease which is invalid, illegal or unenforceable in any applicable jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Lease invalid, illegal or unenforceable in any other jurisdiction.
- F. Third Party Beneficiaries. No Person, firm or corporation that is not a party to this Lease shall be entitled to rely on or be deemed to be accorded any rights under any provision of or statement in this Lease.
- G. Governing Law. This Lease shall be governed by and enforced in accordance with the laws of the United States and, to the extent such laws do not apply, then by the laws of the State of California without regard to its principles of conflicts of law.
- H. Interpretation. Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The Department and Lessee have negotiated this Lease, have had an opportunity to be advised by legal counsel respecting the provisions contained herein and have had the right to approve each and every provision hereof. Therefore, this Lease shall not be construed against either the Department or Lessee as a result of the preparation of this Lease by or on behalf of either party.
- I. Survival. All monetary obligations (together with any late payment interest payable under the Prompt Payment Act – 31 U.S.C. § 3901, et seq.) accruing before expiration of the Lease term shall survive the expiration or other termination of this Lease.

J. No Merger. There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate or interest in the Property by reason of the fact that the same person or entity may acquire, hold or own directly or indirectly: (a) this Lease, the leasehold interest created by this Lease or any interest therein; and (b) any such other estate or interest in the Property, or any portion thereof. No merger shall occur unless and until all persons and entities having an interest (including a security interest) in this Lease or the leasehold estate created thereby and any such other estate or interest in the Property, or any portion thereof, shall join in a written instrument expressly effecting such merger and shall duly record the same.

K. Relationship of the Parties. This Lease does not create the relationship of principal and agent, partnership, joint venture, association or any other relationship between the Department and Lessee.

L. Recording. This Lease shall not be recorded. The Department and Lessee, however, shall execute the Memorandum of Lease attached hereto as Exhibit "G," and Lessee at its sole cost and expense is hereby permitted to record such memorandum in the official land records of the County of Los Angeles (or other appropriate land recording office).

M. Signage. No signage shall be installed or constructed on or over the Property except to the extent identified in a signage plan to be included as part of the Operations and Maintenance Plan (Exhibit "E") and approved by VA in accordance with Article 10, or otherwise approved by VA in writing. Such approvals shall not be unreasonably withheld, conditioned, or delayed.

N. Lease Supersedes. This Lease supersedes any and all prior negotiations, agreements or understandings between the Department and Lessee related to the subject matter hereof. None of the provisions of this Lease may be altered or modified except through an instrument in writing signed by both parties.

O. Force Majeure. Neither of the parties to this Lease, i.e., the Department nor Lessee, shall be required to perform any of its obligations under this Lease, nor be liable for loss or damage for failure to do so, with the exception of the obligation for payment of Rent or other sums due and owing under this Lease, where such failure arises from Force Majeure, but only to the extent and for the duration that the Department or Lessee, as the case may be, is so prevented from performing such obligations by Force Majeure. Further, and without limiting the generality of the foregoing, any period afforded to a party or within which a party is required under the terms and conditions of the Lease to perform an obligation of this Lease shall be extended by (1) the actual applicable period of Force Majeure; and (2) any period during which a party was prevented from performing any such obligation as a direct result of failure by the other party to commence or complete a specific activity or activities that the Lease requires be commenced or completed as a condition precedent to such performance of such obligation.

P. Non-Recourse. The parties agree that VA's and Lessee's respective recourse against each other under this Lease shall be limited by and to the extent of applicable Federal, State, and local law.

Q. Anti-Deficiency Act. Consistent with the Anti-Deficiency Act (codified as amended in 31 U.S.C. 1341, 1342, 1351, and 1517), any payments of VA with respect to this Lease shall not exceed appropriations available to VA which can be lawfully expended for such purposes at the time of the claim; and nothing in this Lease may be construed as implying that Congress will at a later date appropriate funds to meet any deficiencies.

R. Confidential Data.

1. Lessee hereby agrees that the creation, maintenance, use, disclosure, and disposal of any and all drawings, documents, records, data, and written information provided by VA to Lessee during the Term, if any, (collectively, the "VA Data"), shall be governed solely by all applicable Federal law, Executive Orders, and regulations. Lessee further agrees that the VA Data shall at all times constitute and remain the sole and absolute property of VA, and shall not be disclosed to any person (aside from the Lessee's permitted contractors under this Lease, if any, where necessary to perform the Lease) without the prior written authorization of VA. Furthermore, Lessee agrees to and shall immediately contact VA telephonically and in writing should any request be made by a third party (aside from Lessee's permitted contractors and subcontractors under this Lease) for copies of or to review or receive any VA Data in the Lessee's (and/or any of its contractors') possession and control. Under all circumstances, VA shall be responsible for and permitted to independently and unilaterally address any such requests as it deems appropriate. Lessee shall ensure that all agreements with its contractors (and any agreements such contractors may have with any subcontractors) incorporate this Clause (1) and make it applicable to such contractors and subcontractors.

2. VA hereby agrees that any drawings, documents, records, data, and written information provided by Lessee to VA during the Term, if any (collectively, the "Lessee Data"), shall be kept, maintained, and handled by VA as such according and subject to all applicable Federal law, Executive Orders, and regulations. Furthermore, VA agrees to and shall contact Lessee telephonically and in writing should any request be made by a third party outside of VA ("Third Party") for copies of or to review or receive any Lessee Data in VA's possession and control, unless such Third Party making the request is officially doing so on behalf of the Executive branch; the United States Congress; the General Accountability Office; the Federal Bureau of Investigations; the VA Office of Inspector General; or a Federal court.

3. The parties hereby agree that the understandings and obligations set forth in this Section R shall control during and shall survive the Term, notwithstanding any contrary confidential obligations, statements, or representations that may be contained in VA Data or Lessee Data submitted, as applicable, by VA to Lessee or vice versa.