

STATE OF GEORGIA

REQUEST FOR A REVOCABLE LICENSE FOR THE USE OF TIDAL WATERBOTTOMS

APPLICANT NAME(S): Jekyll Seaside Retreat, LLC
MAILING ADDRESS: 4 Denny Road Wilmington DE 19809
(Street) (City) (State) (Zip)
PROJECT ADDRESS/LOCATION: 150 S. Beachview Dr., Jekyll Island, GA 31527
COUNTY: Glynn WATERWAY: Atlantic Ocean
LOT, BLOCK & SUBDIVISION NAME FROM DEED: TRACT 1A OF BLKS 251 A,B,C JEKYLL

Georgia Department of Natural Resources
Coastal Resources Division
One Conservation Way
Brunswick, Georgia 31520-8687

I am requesting that I be granted a revocable license from the State of Georgia to encroach on the beds of tidewaters, which are state owned property. Attached hereto and made a part of this request is a copy of the plans and description of the project that will be the subject of such a license. I certify that all information submitted is true and correct to the best of my knowledge and understand that willful misrepresentation or falsification is punishable by law.

I understand that if permission from the State is granted, it will be a revocable license and will not constitute a license coupled with an interest. I acknowledge that this revocable license does not resolve any actual or potential disputes regarding the ownership of, or rights in, or over the property upon which the subject project is proposed, and shall not be construed as recognizing or denying any such rights or interests. I acknowledge that such a license would relate only to the property interests of the State and would not obviate the necessity of obtaining any other State license, permit, or authorization required by State law. I recognize that I waive my right of expectation of privacy and I do not have the permission of the State of Georgia to proceed with such project until the Commissioner of DNR or his/her designee has executed a revocable license in accordance with this request.

Sincerely,

By: 
Signature of Applicant

Date: 11.16.24

MANAGING PARTNER
Title, if applicable

By: _____
Signature of Applicant

Date: _____

Title, if applicable

Attachments

Shore Protection Act Permit Application
O.C.G.A. 12-5-230

Date: 11/1/24 -----

Mailing Address:

Jekyll Seaside Retreat, LLC

4 Denny Road

Wilmington, DE 19809

Project Location:

150 S Beachview Dr.

Jekyll Island, GA 31527

Telephone: _____

Fax: -----

Name, address, and title of authorized agent for application coordination (if desired):

Jeff Homans, Landscape Architect

120 Travellers Way

Saint Simons Island, GA 31522

Telephone: 912-571-1137

Fax: JeffHomans@gmail.com

Names and addresses of adjoining property owners (attach additional sheets as needed):

State of Georgia

2 Martin Luther King Jr. Dr. SE

Unit 1454E

Atlanta, GA 30334

State of Georgia

2 Martin Luther King Jr. Dr. SE

Unit 1454E

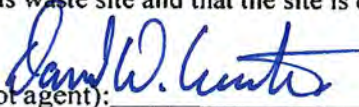
Atlanta, GA 30334

Describe the proposed activity (attach additional sheets as needed):

Jekyll Seaside Retreat, LLC, located at 150 South Beachview Drive, Jekyll Island, GA 31527 (LAT: 31.040319, LONG: -81.414283) is applying for an SPA Permit to remove an existing dune crossover, renovate another existing and serviceable dune crossover, and construct new steps and upland connection for the renovated existing and serviceable dune crossover.

Statement: I have made inquiry to the appropriate authorities that the proposed project is not over landfill or hazardous waste site and that the site is otherwise suitable for the proposed project.

Signature of Applicant (not agent):



Date: 11.16.24

Jekyll Seaside Retreat LLC
4 Denny Rd, Wilmington DE 19809

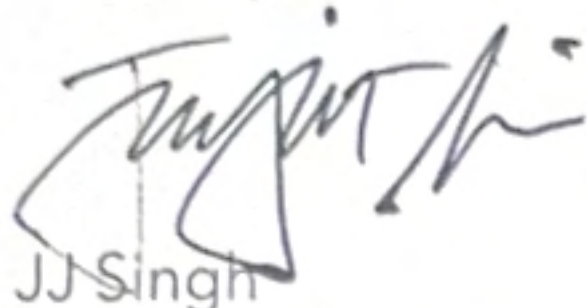
January 14, 2025

Dear Mr. Clayton,

As Vice President of Jekyll Seaside Retreat LLC (the "Company"), I confirm that David W. Curtis is authorized to represent, speak for, and sign legal documents for the Company.

If you have any questions, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'JJ Singh', with a stylized flourish at the end.

JJ Singh

Vice President

Jekyll Seaside Retreat LLC

jsingh@retreathotels.com

mobile: 703-343-0326

**JEKYLL ISLAND-STATE PARK AUTHORITY
THIRD REVISED AND RESTATED GROUND LEASE**

SEASIDE RETREAT

BY AND BETWEEN

JEKYLL ISLAND-STATE PARK AUTHORITY

AND

JEKYLL SEASIDE RETREAT LLC

**EFFECTIVE
September 1, 2024**

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THIRD REVISED AND RESTATED GROUND LEASE

THIS THIRD REVISED AND RESTATED GROUND LEASE AGREEMENT (hereinafter the "Lease") is made and entered into as of the 1st day of September, 2024, (hereinafter the "Commencement Date"), by and between the **JEKYLL ISLAND-STATE PARK AUTHORITY**, a public authority created by the General Assembly of the State of Georgia and deemed an instrumentality of the State of Georgia and a public corporation, (hereinafter referred to as "Lessor" or "JIA"), whose address for purposes of this Lease is 100 James Road, Jekyll Island, Georgia 31527, and **JEKYLL SEASIDE RETREAT LLC**, a Delaware limited liability company (hereinafter referred to as "Lessee"), whose address is One Fox Point Centre, 4 Denny Road, Wilmington, Delaware 19809.

WITNESSETH:

WHEREAS, Lessor, as lessor, did enter into that certain Second Revised and Restated Ground Lease [Development Land] with LNWA Developers LLC, a Delaware limited liability company ("LNWA") effective as of January 17, 2017 (the "2017 Lease"), which 2017 Lease as amended by that certain First Amendment to the Second Revised and Restated Ground Lease [Development Land] made and entered into November 19th, 2019 (the "First Amendment"), and that certain Second Amendment to the Second Revised and Restated Ground Lease and Third Revised and Restated Memorandum of Lease [Development Land] dated February 18th, 2020 (the "Second Amendment"), pursuant to which Lessor leased to LNWA that certain parcel of land on Jekyll Island, Glynn County, State of Georgia, which parcel has an area of 6.892 acres more or less, as more specifically described on Exhibit "A" attached hereto and by reference made a part hereof, and is defined as the "Land" in Section 1.1 below.

WHEREAS, Lessor and LNWA entered into a certain Project Development Agreement effective as of July 8th, 2022 (the "Development Agreement") for the terms of establishing criteria for approval of the plans and development deadlines for the development of the Land, including improvements to be erected thereon into the "Project" (as hereinafter defined); and

WHEREAS, the 2017 Lease, as amended, was subsequently sold, assigned, transferred, conveyed and set over by that certain Lease Sale, Assignment and Assumption Agreement effective June 30, 2023, from LNWA, as lessee under the Lease to Lessee (the "Assignment"). The 2017 Lease, as amended by the First Amendment and the Second Amendment and as assigned by LNWA to Lessee pursuant to the Assignment is defined as the ("Lease"),

WHEREAS the parties desire to enter into this Third Revised and Restated Lease Agreement to amend, revise and restate the Lease to confirm, approve, affirm and ratify, as of the effective date of the Assignment, the sale, assignment, transfer, conveyance and setting over of the Lease from LNWA to Lessee pursuant to the Assignment, to add provisions regarding the development and operation of the Project on the Land and to otherwise govern the relationship between Lessor and Lessee with respect to the Land, for the Term and pursuant to the conditions and provisions set forth herein.

NOW, THEREFORE, for and in consideration of the premises recited above, the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee do hereby covenant and agree that: (i) the sale, assignment, transfer, conveyance and setting over of the Lease from LNWA to Lessee pursuant to the Assignment is hereby acknowledged, approved, confirmed, affirmed and ratified as of the effective date of the Assignment, and (ii) as follows:

A. All Capitalized Terms contained herein shall have the definitions provided in **Exhibit B**, unless the contexts in which they are used clearly provide a different definition.

B. All Exhibits attached hereto are incorporated in the Lease by reference.

SECTION 1: PREMISES; TERM; CONDITIONS AND USE OF PREMISES

1.1 Premises.

For and in consideration of Lessee's covenant to pay the Rent and Other sums provided for herein, and the performance of the other obligations of Lessee hereunder, Lessor leases to Lessee, and Lessee continues to lease from Lessor, who continues to lease to Lessee that certain parcel comprising approximately 6.892 acres more or

less acres of land (the "Land"), situated on Jekyll Island, County of Glynn, State of Georgia, which is particularly described on Exhibit A (the "Legal Description") attached hereto and made a specific part hereof. Lessor and Lessee hereby agree that the provisions of the Development Agreement are expressly incorporated into the provisions of this Lease as if such provisions are expressly set forth herein. The Land, together with any Buildings (as defined below) and other Improvements (as defined below) currently located and/or hereafter constructed thereon shall hereinafter be referred to, collectively, as the "Premises".

(a) **Term.** The term of this Lease ("Term") shall commence on the Commencement Date and shall expire at midnight on the 7th day of January, 2089 (the "Expiration Date"), unless terminated earlier as provided herein.

(b) **Expiration of Term.** Lessee shall vacate the Premises promptly on the Expiration Date. Any holding over of the Premises by Lessee after the Expiration Date without written consent from Lessor shall cause Lessee to be a tenant-at-sufferance and not a tenant-at-will. In such event, Lessee shall remain liable for payment of all Rent as specified in *Section 2* herein for the period of time Lessee holds over, but there shall be no renewal of this Lease by operation of law.

1.2 Lessor's Warranties. Lessor represents, warrants and covenants that:

(a) **Title.** Fee simple title to the Land is vested in the State of Georgia and is further vested by law to Lessor pursuant to O.C.G.A. § 12-3-241 and subject to such encumbrances as may be of record in the real property records of the Clerk of the Superior Court of Glynn County as of the Commencement Date. Lessor, if requested, shall execute and deliver to Lessee an Owner's affidavit confirming the absence of parties in possession (other than Lessee) and the absence for the preceding six (6) months of mechanics' or materialmen's liens on account of Lessor affecting the Premises, and any other matters reasonably required by any title insurance company to enable Lessee to obtain a leasehold policy of title insurance insuring Lessee's interest in this Lease.

(b) **Power and Authority.** Lessor has full authority and power to enter into this Lease and to consummate the transaction provided for herein, pursuant to law. This Lease and all other documents executed and delivered by Lessor have been duly authorized, executed and delivered by Lessor and constitute legal, valid, binding and enforceable obligations of Lessor, except as may be limited by the effect of any bankruptcy proceeding and laws impacting creditors' rights generally. Lessor has no defenses or offsets whatsoever to the enforceability or validity of this Lease.

(c) **Quiet Enjoyment.** As long as Lessee complies with its obligations set forth in this Lease, including but not limited to making the required payments of Rent, Lessee shall have the right to peacefully and quietly have, hold, occupy and enjoy the Premises, subject to the terms of this Lease, without hindrance or molestation from Lessor or any person or entity claiming by, through or under Lessor.

1.3 Lessee's Warranties. Lessee represents, warrants and covenants that:

(a) Lessee is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware, and qualified to do business and in good standing under the laws of the State of Georgia;

(b) This Lease and all other documents executed and delivered by Lessee have been duly authorized, executed and delivered by Lessee and constitute legal, valid, binding and enforceable obligations of Lessee, except as may be limited by any bankruptcy proceeding and laws impacting creditors' rights generally.

(c) To the best of Lessee's knowledge, there currently exist no prohibitions to the issuance to Lessee of all governmental approvals necessary for the construction, operation, use and maintenance of the Project, as and when Lessee complies with all governmental requirements for such approvals.

(d) This is a "triple-net" ground lease wherein Lessee, in addition to the payment of Rent, shall be directly responsible for the payment of any and all taxes, insurance, expenses, utility connection fees, utility usage charges, and the construction, maintenance, operation and repair with respect to the Premises and the Project, and that Lessor shall have no obligation of any nature with respect to the Premises or the Project, except as specifically provided otherwise in this Lease and the Development Agreement.

1.4 Permitted Use.

(a) The Land is leased to Lessee for the construction and operation of a residential community to be named "Seaside Retreat at Jekyll Island," which will consist of twenty-five (25) single family residential homes (the

"Buildings"), together with support facilities, including internal streets, roads and driveways, bicycle and/or walking paths, parking facilities, sales center and offices, maintenance facilities, beach crossover and other beach access facilities and other associated and/or ancillary amenities and facilities such as swimming pool, swimming pool pavilion and other swimming pool amenities and facilities (such pool facilities and amenities being referred to collectively as "Pool Facilities"), gardens, playgrounds, and other structures, appurtenant fixtures, machinery and equipment and all alterations and additions thereto (collectively, with the Buildings, the "Improvements"). Each Building that is a single-family residential home shall constitute, contain and be referred to as one "Residential Unit" and each lot or parcel of ground on which such Building is located shall be referred to as a "Building Lot". The design, construction and operation of the Buildings (including the Residential Units contained therein) and other current and future Improvements shall be defined as the "Project" and is governed by this Lease. Neither the foregoing nor any other provision of this Lease shall constitute or be deemed a covenant by Lessor to construct any Improvements or to operate the Project or any business on the Land, except as provided in the Development Agreement.

(b) Lessee shall not use the Premises for any use other than the Permitted Use. "Permitted Use" includes, without limitation, the design, construction, maintenance, repair and operation of the Improvements for single family residential purposes, including such activities, amenities, facilities, operations, services, and other uses as are commonly and customarily incident to or not inconsistent with the design, construction, maintenance, repair and operation of the Improvements for single family residential purposes, such as but not limited to internal streets, roads and driveways, bicycle and/or walking paths, Pool Facilities, parking facilities, playgrounds, beach crossovers and other beach access facilities, gardens, sales center and offices, maintenance facilities, trash compactors, temporary construction trailers, temporary construction dumpsters and other accessory uses approved by Lessor and added to this Lease by amendment, which approval shall be in Lessor's sole discretion. Permitted Use also includes, with regard to the beach crossovers and other beach access facilities, the reasonable rights of access, ingress and egress on, in, through, over and under any land or other property owned by Lessor (as a fee or leasehold owner) that abuts or adjoins the Land (the "Lessor Beach Access Land"): (i) by Lessee, its employees, agents, contractors, subcontractors for the purpose of constructing, installing, repairing, and maintaining such beach crossovers and other beach access facilities; and (ii) by Lessee, the Residential Unit Owners and their respective employees, agents, contractors, subcontractors, visitors, guests and other invitees for their use, enjoyment and benefit of such beach crossover facilities and other beach access facilities.

(c) From the Commencement Date through the Expiration Date, Lessee shall operate the Project continuously and shall not desert, abandon or cease operation of the Project; provided, however, that the Building Lots, Residential Units contained in the Buildings (or portions thereof) and such Buildings (or portions thereof) are intended to be subleased to Residential Unit Owners, and Lessee's obligation under this provision shall apply to the initial development and construction of such Buildings but only until such time as the Building Lots, the Residential Units contained in such Buildings (or portions thereof) and such Buildings (or portions thereof) are so subleased, at which time the obligation to operate, maintain such Building Lots, Residential Units and the Buildings in which they are contained shall be governed by the Subleases between Lessee and the Residential Unit Owners of the Residential Units contained in such Buildings (or portions thereof). Subject to the foregoing: (i) consistent with *Section 6* and *Section 8* below, in the event of damage or destruction by casualty, or condemnation, Lessee's obligation to continuously operate the Project shall apply only to the extent that the portion of the Premises, if any, is reasonably operable, (ii) Lessee shall have the right to temporarily cease operation of the Project or portions thereof, during the Term for remodeling, renovation, repair, and/or reconstruction; and (iii) Lessee may temporarily close off areas of the Premises to avoid the public acquiring any prescriptive easements or other proprietary rights therein.

1.5 Recordation of Lease.

Lessor agrees to execute and acknowledge an appropriate memorandum of this Lease which shall be recorded in Glynn County, Georgia promptly after the Commencement Date, so that public notice of the Term of this Lease and the existence of certain the rights and any other information required by the relevant provisions of Georgia law be given, in the alternative, Lessee may record, at its sole expense, the entire Lease and any other document related to the Lease that is recordable under Georgia law and customarily recorded in connection with similar real property transactions in Georgia.

1.6 Reservation of Subterranean Rights.

Lessor reserves unto itself, its successors and assigns, all subterranean gas, oil and mineral rights of any nature whatsoever, but Lessor shall have no rights of surface entry from the Land to drill for or otherwise extract

any such gas, oil or minerals. Lessee may not drill or dig any well for any purpose without Lessor's prior written consent, which consent may be conditioned or withheld in Lessor's sole discretion.

SECTION 2: RENT

2.1 Definition of Rent.

"Rent" means, collectively, Annual Base Rent, Percentage Rent and Additional Rent.

2.2 Rent.

(a) **Annual Base Rent.** The Annual Base Rent shall be as set forth in this *Section 2.2(a)* as follows:

(i) **Commencement Date through Five Years After Operations Commencement Date.** Beginning on the Commencement Date to the first day of the sixty first (61st) month after the Operations Commencement Date, the Annual Base Rent shall be Two Hundred Twenty Thousand Five Hundred Forty-Four and 28/100 Dollars (\$220,544.28), or Eighteen Thousand Three Hundred Seventy-Eight and 69/100 Dollars (\$18,378.69) per month calculated at \$2,666.67 per acre per month multiplied by 6.892 acres (based upon the legal description from the current survey of the Land, more particularly described in Exhibit "A", provided such description may be amended in accordance with current survey then in effect) payable in equal monthly installments in advance on the first day of the month. Subject to Section 2.2(a)(ii) below, said Annual Base Rent shall be calculated in this manner from the first day of the month following the Commencement Date to the first day of the sixty first (61st) month after the Operations Commencement Date.

(ii) **Annual Base Rent Offset by Sales of Interests in Building Lots/ Residential Units.** The parties agree that calculation of Annual Base Rent for Lessee is unique and intended to promote development of the Project. Upon the sale, transfer, assignment, conveyance or other disposition of a leasehold or ownership interest in each Building Lot, the Building (or portion thereof) located thereon containing a Residential Unit and such Residential Unit, the total property acreage that is subject to the Lessee's Annual Base Rent shall be reduced by: 100% of the acreage of such Building Lot. Further, upon the sale, transfer, assignment, conveyance or other disposition of a leasehold or ownership interest in each Building Lot, the Building (or portion thereof) located thereon containing a Residential Unit and such Residential Unit, the Residential Unit Owner to whom such Building Lot, Building (or portion thereof) and Residential Unit is sold, transferred, assigned, transferred, or conveyed shall become responsible for an Annual Base Rent as calculated in the Sublease of such Building Lot, Building (or portion thereof) and Residential Unit. The Lessee shall continue to collect all Rents due from Residential Unit Owners under the terms of the Subleases and shall maintain and tender them to Lessor, provided, however, Lessee shall have no obligation or liability to pay to Lessor any deficiency in Rents collected as a result of the failure of Residential Unit Owners to pay same to Lessee and, further Lessee shall have no obligation or liability to pursue Residential Unit Owners for such failure to pay Rents due under their respective Subleases; provided further, however, Lessee will indemnify and hold Lessor harmless from all costs of collection (including without limitation reasonable attorneys' fees) incurred by Lessor in the pursuit and collection of such Rents due from Residential Unit Owners. Upon the sale, transfer, assignment, conveyance or other disposition of leasehold or ownership interests in all the Building Lots, Buildings (or portions thereof) located thereon containing Residential Units and such Residential Units, Lessee shall be responsible for payment of Annual Base Rent on the total acreage of the Land, other than such Building Lots, Buildings (or portions thereof) and Residential Units in Buildings sold, transferred, assigned, conveyed or disposed of, provided that Lessee may assign these obligations to the Association having jurisdiction over the Premises.

(iii) **CPI Adjustment.** On the first day of the sixty first (61st) month after the Operations Commencement Date, and again on every fifth (5th) anniversary thereof during the Term (each, an "Adjustment Date"), the Annual Base Rent shall be increased by a "Cost of Living Adjustment." Such Cost of Living Adjustment shall be calculated by multiplying the then current amount of Annual Base Rent by a fraction, the numerator of which shall be the CPI (defined below) for the month which is three (3) months prior to the applicable Adjustment Date (a "CPI Month"), and the denominator of which shall be the CPI for the same month that is five (5) years prior to the CPI Month. As used in this Lease, the term "CPI" shall mean the Consumer Price Index for All Urban Consumers, All Items (1982-1984=100), as published by the United States Department of Labor, Bureau of Labor Statistics. Notwithstanding anything herein to the

contrary, the Cost-of-Living Adjustments shall be limited to a maximum increase (for each five (5) year period) of fifteen percent (15%). The Annual Base Rent, as so adjusted on each Adjustment Date, shall be the Annual Base Rent payable under this Lease until the next Adjustment Date. If the CPI is no longer published on an Adjustment Date, Lessor shall substitute, in its reasonable business judgment, an index which is published by the Bureau of Labor Statistics or similar agency and which is most nearly equivalent to the CPI.

(iv) **Residential Unit Owner Rents.** A Residential Unit Owner, by entering into a Sublease with the Lessee for a Building Lot, Building (or portion thereof) located thereon containing a Residential Unit and such Residential Unit, shall assume and agree to pay the Annual Base Rent, Percentage Rent and Additional Rent for said Building Lot, Building (or portion thereof) and Residential Unit in accordance with the terms of such Sublease. For purposes of calculation of the Rents due upon individually leased Building Lots, Buildings (or portions thereof) located thereon containing Residential Units and such Residential Units, the following means of calculating Rents shall apply and shall be contained in the Subleases:

A. *Residential Unit Owner Annual Base Rent, Adjusted Rent Schedule.* Annual Base Rent for each Sublease Year shall be the amount calculated at four tenths of one percent (0.4%) of: (I) the Initial Stipulated Land Value for the Building Lot which, along with the Building (or portion thereof) and Residential Unit contained therein, is the subject of such Sublease, prior to the time period the Glynn County Tax Assessor issues, publishes or discloses the Assessor's Current Year Land Value of or for such Building Lot; and, thereafter, (II) the Assessor's Current Year Land Value of or for such Building Lot (or, in the event and only in the event specified in the definition of "Alternate Current Year Land Value" on Exhibit B – Definitions, of the Alternate Current Year Land Value of such Building Lot) in effect for the tax year ending on December 31 of the year immediately preceding each Sublease Year. Lessee shall provide Subtenant the amount of the Annual Base Rent to be paid not later than December 1 of the year immediately preceding the Sublease Year for which the Annual Base Rent under the Sublease is due.

B. *Payment of Annual Base Rent.* Subtenant shall agree to pay Annual Base Rent to the Lessee, at its offices on Jekyll Island, Georgia, or at such other place as the Lessee may direct, payable in advance, in annual installments on or before January 1st of each successive Sublease Year, until the expiration or sooner termination of the Sublease.

C. *Percentage Rent; Adjusted Rate Schedule.* Percentage Rent shall be collected on all Rent and other payments received by a Residential Unit Owner for and in connection with the rental or sublease of his, her or its Residential Unit, Building (or portion thereof) in which such Residential Unit is contained and Building Lot on which such Building (or portion thereof) is located and shall consist of three percent (3%) of Gross Revenue from such rental or sublease activity.

D. *Payment of Percentage Rent.* Each Residential Unit Owner will agree to pay to Lessee Percentage Rent due for rental or sublease activity of a Residential Unit, Building (or portion thereof) in which such Residential Unit is contained and Building Lot on which such Building (or portion thereof) is located together with the submission of such accounting forms as Lessee shall prescribe, at its offices on Jekyll Island, Georgia, or at such other place as the Lessee may direct, beginning on the first calendar month for which Percentage Rent is collected, to be paid not later than the 15th day of the following month and thereafter on or before the 15th day of each successive month, until the expiration or sooner termination of the Sublease of such Residential Unit, Building (or portion thereof) in which such Residential Unit is contained and Building Lot on which such Building (or portion thereof) is located. Percentage Rent shall be paid in addition to, and not in lieu of, Georgia Hotel Motel Tax payments required of Subtenant under Georgia law.

E. *Additional Rent.* Each Residential Unit Owner will be obligated to pay as Additional Rent those costs, expenses, taxes, assessments, fees, payments, deposits, fines, impositions, and other items set forth or listed in Section 2.5 below that are allocable or otherwise attributable to such Residential Unit Owner's Residential Unit, Building (or portion thereof) in which such Residential Unit is contained and Building Lot on which such Building (or portion thereof) is located. Such Additional Rent shall be due and payable as and when required in such Residential Unit Owner's Sublease.

2.3 Residential Unit Sale Participations upon Sale of Building Lots containing Residential Units

(a) Lessee agrees to pay Lessor a "**Residential Unit Sale Participation Fee**" to Lessor, as Additional Rent upon the initial sale transfer, assignment, conveyance or other disposition of a leasehold or ownership interest in a Building Lot on which a Building (or portion thereof) containing a Residential Unit is located as follows:

(i) Upon each initial sale, transfer, assignment, conveyance or other disposition of a leasehold or ownership interest in a Building Lot on which a Building (or portion thereof) containing a Residential Unit is located a Residential Unit, the Lessee shall pay Two percent (2%) of the gross purchase price of such initial sale, transfer, assignment, conveyance or other disposition.

(ii) For purposes of this section 2.3, "gross purchase price" shall be the gross sales price or contract sales price for the sale of a leasehold or ownership interest in such Building Lot and Residential Unit, including the price of contents and personal property within such Building Lot and Residential Unit if itemized separately, but excluding broker commissions, transfer taxes and/or title fees imposed by Glynn County and/or the State of Georgia and reasonable closing costs as evidenced by the purchase and sale agreement, settlement statement, closing disclosure or other closing document for such sale.

(b) Upon each and all sales, assignments, conveyances, or transfers of a Sublease by a Residential Unit Owner to a successor Residential Unit Owner, a "**Residential Unit Transfer Fee**" shall be collected by Lessee and paid to Lessor. The Residential Unit Transfer Fee shall be calculated at one percent (1%) of the gross purchase price of such sale, transfer, assignment, conveyance or other disposition of a Sublease by a Residential Unit Owner to a successor Residential Unit Owner.

(c) Any Building Lot, Building (or portion thereof) and Residential Unit assignment, conveyance or transfer wholly between legally married individuals, or to and from married individuals and a living trust or instrument of similar effect which has one or both of the same legally married individuals as its only beneficiaries, shall be exempt from payment of such Residential Unit Transfer Fee.

(d) Notwithstanding the foregoing, in lieu of a Residential Unit Transfer Fee, a Special Residential Unit Transfer Fee of Five Hundred Dollars (\$500.00), which Special Residential Unit Transfer Fee will be subject to CPI Adjustment as provided in Section 2.2(a)(iii), shall be assessed on the following types of assignments, conveyances or transfers:

- (1) Transfers for the sole purpose of securing debt that are required to complete the debt transaction;
- (2) Transfers that are *bona fide* gifts for which IRS Form 709 is filed and gift tax is paid or IRS Form 8283 with accompanying appraisal is filed;
- (3) Transfers between husband and wife in connection with a divorce property settlement;
- (4) Transfers without consideration by reason of death of a Subtenant.
- (5) Transfers without consideration either directly among a Subtenant's immediate family or involving a living trust or instrument of similar effect for the benefit of members of a Subtenant's immediate family (e.g., parents and children); or,
- (6) Transfers in lieu of foreclosure or to the first transferee at a foreclosure sale.

(e) Within sixty (60) days after the end of each Lease Year, Lessee shall prepare and cause a schedule of the Residential Unit Sale Participation Fees generated by Lessee and the Residential Unit Transfer Fees due from Residential Unit Owners for the immediately preceding Lease Year to be prepared and certified by a financial officer of Lessee, and a copy of such certified statement shall be delivered by Lessee to Lessor within such sixty (60) day period.

(f) Lessee shall keep and preserve Lessee's books and records relating to the Residential Unit Sale Participation Fees generated by Lessee and Residential Unit Transfer Fees due from Residential Unit Owners for a period of not less than forty-eight (48) months after submitting to Lessor each certified statement with respect thereto required above. A failure by Lessee to file a certified statement with Lessor after Lessee's receipt of written notice of such failure from Lessor and the expiration of thirty (30) days from Lessee's receipt of such written notice, shall be treated as a failure to make payment of the Residential Unit Sales Participation Fees due from Lessee under this Lease. Lessor shall have the right to examine Lessee's books and records with respect to the Residential Unit Sale Participation Fees generated by Lessee and, at the option, cost and expense of Lessor, to have an immediate and complete audit of Lessee's said books and records with respect to the Residential Unit Sale Participation Fees generated by Lessee conducted. Lessee covenants and agrees that if any such audit shall disclose a shortage in excess of five percent (5%) of the Residential Sale Participation Fees generated by Lessee so reported by Lessee for the period covered by such certified statement, the cost and expense of such audit (as well, as the amount of the corresponding shortage in Residential Unit Sale Participation Fees generated by Lessee) shall be paid by Lessee within thirty (30) days after Lessee's receipt of a copy of the audit report and written demand for such amounts from Lessor. It is expressly agreed that if Lessor shall fail to notify Lessee in writing within the aforesaid forty-eight (48) month period of any claims of demands for any Residential Unit Sale Participation Fees generated by Lessee or reimbursement for the reasonable cost and expense of any audit, either or both as the case may be, such failure shall constitute and be an automatic waiver and release by Lessor of such claims or demands.

(g) A Residential Unit Owner by accepting a deed, sublease, assignment, transfer or conveyance of a leasehold or ownership interest in or to a Building Lot, Building (or portion thereof) containing a Residential Unit and such Residential Unit, shall assume and agree to pay the obligation to pay the Residential Unit Transfer Fee for any subsequent sale, transfer, assignment, conveyance or other disposition of the leasehold or ownership interest in such Building Lot, Building (or portion thereof) containing a Residential Unit and such Residential Unit. Lessee shall include language in its Subleases to accomplish this intent.

2.4 Percentage Rent.

(a) Percentage Rent for each Lease Year during the Term shall be as follows:

Three percent (3%) of Gross Revenue generated by any retail operation or by any and all rental of commercial or retail units held by, or operated under the control of the Lessee, and Gross Revenue from the sale of food and beverages as defined herein.

(b) Calculation of Percentage Rent.

Lessee shall calculate and report to Lessor Percentage Rent, the form of such report shall be agreed to by Lessor in its reasonable discretion. Each such report shall be provided to Lessor, prior to the fifteenth (15th), day following the last day of each month during such Lease Year (each such date being a "Percentage Rent Calculation Date") and shall be for all the months in such Lease Year ending with the last day of the immediately preceding month.

2.5 Additional Rent.

(a) Wherever it is provided in this Lease that Lessee is required to make any payment to Lessor or any third party or instrumentality of government, the payment shall be deemed to be Additional Rent and all remedies applicable to the non-payment of Rent shall be applicable. Lessor shall not be required to advance any such amounts owed to any third party or instrumentality of government on the account of Lessee in order to demand payment and declare default under Section 8.1 hereof.

(b) Additional Rent includes all required taxes (including the Hotel-Motel Tax, to the extent applicable), charges, fees or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Premises including, but not limited to, water and sewer fees, advertising fee, fire fees, EMT services fees, and the like that are payable to the Lessor but not including fees for services, such as utility fees, that are payable to private services suppliers.

(c) Additional Rent includes all required costs, payments and deposits, including but not limited to costs, of required insurance policies and the premiums therefore.

(d) Additional Rent includes the Hotel-Motel Tax, to the extent applicable, and the Residential Unit Sale Participation Fees and Residential Unit Transfer Fees, if any owed by Lessee, as set forth in Sections 2.2 and 2.3 above.

(e) Additional Rent includes, but is not limited to, all late payment fees, interest charges, fines or impositions authorized by law or ordinances or assessed to enforce law or ordinances, and costs of land disturbance permit compliance or of remediating the Land pursuant to Sections 1.4(c), Section 3, Section 5 and Section 6; and the costs and expenses to remedy any other breach of the Lessee's covenants or obligations under the Lease.

2.6 Rent Payments.

(a) **Annual Base Rent and Percentage Rent.** Annual Base Rent and Percentage Rent (if any) shall be payable in lawful money of the United States of America at the times provided in *Section 2.2*. All payments of Rent and other sums shall be made by Lessee to Lessor at the place provided in *Section 15.10* below, or such other place as Lessor directs by notice to Lessee. Lessee shall not delay or withhold payment of Rent or any other charge to be paid by Lessee under this Lease because of any dispute as to the amount or computation of the amount Lessee shall pay the amount in full and, if Lessee is found to be correct, Lessor shall credit Lessee with the amount of any overpayment upon the resolution of the dispute.

(b) **Additional Rent.** All Additional Rent shall be due within fifteen (15) days of the date upon which Lessor gives Lessee an invoice for such Additional Rent. In the event the invoice for Additional Rent is for reimbursement of a bill which has been paid by Lessor, Lessor shall furnish a copy of such bill to Lessee.

2.7 Late Payment Fees.

Lessee acknowledges that late payment of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Rent is not received by Lessor on or before the tenth (10th) day after the due date, Lessee shall pay a late charge equal to five percent (5%) of the overdue amount. Notwithstanding the foregoing, if Lessee fails to pay any Rent at the time set forth in this Lease and Lessor has given notice of same either (A) two (2) or more times within the preceding twelve (12) months, or (B) ten (10) or more times during the entire Term of the Lease, then Lessee shall pay a late charge equal to fifteen percent (15%) of the overdue amount for each occurrence in excess of the foregoing limits. Lessee shall also be responsible for a service fee of no less than fifty dollars (\$50.00) for any check returned for insufficient funds together with such other costs and expenses as may be imposed by Lessor's bank. The payment to and acceptance by Lessor of such late charge shall in no event constitute a waiver by Lessor of Lessee's Default with respect to such overdue amounts, nor prevent Lessor from exercising any of the other rights and remedies granted at law or equity or pursuant to this Lease. The parties stipulate and agree that the amounts set forth in this Section 2.7 are reasonable estimates of damages that may be difficult or impossible to estimate accurately and therefore said amounts are reasonable pre-estimates of the probable loss and constitute liquidated damages rather than a penalty.

2.8 Pro Rata Portions of a Month or Year.

If the date upon which an obligation to make payments of Rent hereunder commences or terminates, or there is to be an adjustment of Rent pursuant hereto, or an end to such adjustment, effective on a date other than at the end or start of a month or a Year, as applicable, the Rent for such partial month or Year shall be prorated for the month or year involved on the basis of the actual days in such month or Year.

2.9 Payment on Account

No payment by Lessee, or receipt by Lessor of a lesser amount than the Rent actually due hereunder shall be deemed to be other than a payment on account. No restrictive endorsement or statement on any check or any letter accompanying any check or payment shall be deemed to affect an accord and satisfaction or have any effect whatsoever. Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance or pursue any other remedy in this Lease or at law or in equity provided.

2.10 Holding Over.

Should Lessee hold over and remain in possession of the Premises after the expiration of this Lease, without the written consent of Lessor, such possession shall be a tenancy-at-sufferance. Unless Lessor agrees otherwise in writing, the monthly installments of Annual Base Rent during the hold-over period shall be payable in an amount equal to one hundred twenty-five percent (125%) of the Annual Base Rent for the first three (3) months of the hold-over period and thereafter shall be one hundred-fifty percent (150%) of the Annual Base Rent until Lessee delivers possession of the Premises to Lessor. Such tenancy-at-sufferance may continue only so long as Lessor has not given notice of termination to Lessee. All other terms and conditions of this Lease shall continue in full force and effect during such tenancy-at-sufferance.

2.11 Records.

Lessee shall keep, in accordance with generally accepted accounting principles, full and accurate accounts, books and records of Gross Revenue and other information necessary or pertinent to determine the amount of Percentage Rent payable hereunder, including, but not limited to, executed originals or counterparts of all subleases, concession or license agreements, certifications for payment, ledgers, cash receipts and disbursement journals, bank deposit slips, bank books, and records prepared for electronic data procession and all records prepared as a result of such processing (hereinafter the "Records"), all of which shall be kept by Lessee at its primary office for not less than six (6) years after the end of each Lease Year. All Records are subject to inspection at reasonable times upon reasonable written advance, notice by Lessor, but not more frequently than once each Lease Year, provided, however, that if Percentage Rent is confirmed to have been underpaid in the previous two Lease Years, such inspections may be performed up to three (3) times each Lease Year.

SECTION 3: UTILITIES, TAXES; PERMITTED CONTESTS

3.1 Utilities.

Lessee shall pay or cause to be paid prior to delinquency, and shall indemnify, defend and hold harmless Lessor and the Premises from all charges for public or private utility services to or for the Premises, during the Term, including without limiting the generality of the foregoing, all charges for HVAC, light, electricity, water, gas, telephone service, cable, satellite and internet service, garbage collection, sewage, drainage service utility tap in or connection charges and other services and utilities used or contracted for by Lessee. Lessor shall not be liable for any interruption or failure in the supply of utility services to the Premises unless the interruption or failure occurs as a result of or arises out of the gross negligence or Willful Misconduct of Lessor or its employees or agents.

3.2 Utility Easements.

Lessee shall have the right to enter into license agreements over the leasehold estate with utility companies in favor of such companies as are required in order to service the Improvements on the Premises; provided, however, that any such license which impacts the fee interest in the Premises shall be approved by Lessor, and in a location, which will not unreasonably interfere with existing easements or licenses. The agreements shall also be in a form reasonably acceptable to Lessor. Lessor's consent is not required for Lessee to enter into any proposed utility license so long as the easement does not purport to affect the fee interest in the Premises. Lessee shall have the right, at its expense, to utilize existing utility easements in favor of Lessor on the Premises, so long as Lessee's use does not unreasonably interfere with the existing uses. In the event such use by Lessee of Lessor's easement is reasonably required to be relocated, such relocation shall be at Lessee's expense.

3.3 Taxes.

Lessee shall pay prior to delinquency each and every one of the following arising and accruing during the Term (collectively, "Impositions"):

(a) Taxes, which include, without limitation, all general real property taxes and general and special assessments, occupancy taxes, commercial rental taxes, charges, fees or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Premises or the Buildings, service payments in lieu of taxes, and any tax, fee or excise on the act of entering into any lease for space in the Buildings, or on the use or occupancy of the Buildings or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Buildings that are now or hereafter levied or assessed against Lessor or Lessee by the United States of America, the State of Georgia, or any political subdivision, public corporation, district or

other political or public entity, whether due to increased rate and/or valuation, additional improvements, change of ownership, or any other events or circumstances, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for or as an addition to, as a whole or in part, any other taxes whether or not now customary or in the contemplation of the parties on the date of this Lease. Additionally, in the event that at any time this Lease is determined to be, in lieu of real property taxes, a taxable instrument, or represent a taxable transaction by the State of Georgia under provisions relating to documentary stamp tax, or intangible tax, then in such event any such tax or taxes shall be paid by Lessee;

(b) All taxes imposed on or with respect to Lessee's personal property, inventory and intangibles located on or used in connection with the Premises;

(c) All assessments for public improvements or benefits which are assessed or payable with respect to the Premises;

(d) All other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges (including interest and penalties thereon), which may be assessed, levied, confirmed or imposed on or in respect of or right or interest in the Premises, or any occupancy, use or possession of or activity conducted thereon or any part thereof, expressly excluding, however, any such items arising directly or indirectly out of any act or omission of Lessor, any of Lessor's predecessors in title or any other person occurring prior to the Commencement Date;

(e) All legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce taxes instituted by Lessee.

(f) Notwithstanding the foregoing, the term "Impositions" shall not include any federal, state, or local tax: (i) assessed against: (i) any Residential Unit Owner, Building Lot, Building (or portion thereof) or Residential Unit located in such Building after the initial sale, assignment, transfer, conveyance or other disposition to a Residential Unit Owner; or (ii) measured by net or gross income, estate, succession, inheritance or transfer tax, gross receipts tax, business and occupation tax, withholding, profit or revenue tax or charge levied upon the Rent payable to Lessor under the terms of this Lease (except to the extent such tax is imposed on Lessor in lieu of real property ad valorem taxes on the Premises), any franchise, capital or doing business tax or license fee that may be levied upon or against Lessor or any successor to Lessor or any similar obligations assessed against or imposed on Lessor by any governmental body unless they are substituted for any or all Impositions Lessee is required to pay pursuant to this Lease.

(g) If by law any Imposition may at the option of the taxpayer be paid in installments, Lessee may exercise such option, and shall pay all such installments (and interest, if any) becoming due during the Term. Notwithstanding anything in this Lease to the contrary, if Lessee elects to pay Impositions in installments, all installments due and payable after the Expiration Date (which are payable by Lessee) shall be paid by Lessee prior to the Expiration Date and Lessee shall at the end of the Term deposit with Lessor an amount sufficient to pay the remainder of such installments. This provision shall survive the natural expiration of the Term or any early termination of the Term of this Lease.

(h) **Proof of Payment Promptly after written request by Lessor.** Promptly after request by Lessor, Lessee will furnish to Lessor receipts of the appropriate taxing authority or other proof reasonably satisfactory to Lessor evidencing the payment of Impositions.

3.4 Permitted Contests.

(a) Lessee, at its sole cost and expense, may by appropriate legal proceedings conducted in good faith and with reasonable diligence, contest the amount, validity, or application, in whole or in part, of any Imposition or lien therefore, or any other lien, encumbrance or charge against the Premises arising from work done or materials provided to or for Lessee, if:

- (i) Such proceedings suspend the collection thereof from Lessor, Lessee and the Premises; or
- (ii) Lessee shall have furnished such security as may be required in the proceedings or may reasonably be required by Lessor to protect Lessor's fee interest in the Premises; and
- (iii) Lessee shall give Lessor reasonable notice of, and information pertaining to, such contest and

regular progress reports with respect thereto and upon request Lessor shall cooperate and join in any such contest to the extent joinder is required by applicable law, at no expense to Lessor.

(b) Lessee shall indemnify, defend (by an attorney of Lessee's choice, reasonably acceptable to Lessor), reimburse, protect and hold harmless Lessor from and against all claims, liability, and/or damages, including but not limited to loss of the Premises, arising from or related to the any permitted contest undertaken by Lessee.

SECTION 4: LEASEHOLD FINANCING

4.1 No Lessor Mortgages.

Lessor represents that the fee interest in the Premises is not subject to any existing Mortgages (as defined below) or any other encumbrances which would materially and detrimentally interfere with Lessee's contemplated development and operation of the Project on the Premises. Lessor will not subject the fee interest in the Premises to any future mortgages, deeds of trust, security interests or liens in favor of private parties (collectively, "Mortgages").

4.2 Leasehold Mortgage Authorized.

Subject to the requirements of this *Section 4*, Lessee shall have the absolute and unconditional right, without Lessor's consent, from time to time, to mortgage, finance and refinance its interest in this Lease and/or its leasehold interest in the Premises, or any part or parts thereof, without limitation as to amount and without limitation as to what the mortgage secures, under one or more Leasehold Mortgage, and the right to assign unconditionally, collaterally or otherwise, this Lease and any subleases as collateral security for such Leasehold Mortgage. In connection therewith, Lessee may grant and convey Lessee's interest in this Lease in such form as the holder of the Leasehold Mortgage ("Leasehold Mortgagee") requires as long as Lessor is not liable for the repayment of the indebtedness and the fee interest in the Premises is not security for the repayment of the indebtedness. All proceeds of any loan secured by a Leasehold Mortgage shall belong to Lessee. Each Leasehold Mortgage and all instruments evidencing the property encumbered shall contain the following statement of limitation:

This Leasehold Mortgage makes no claim of interest in, nor shall it have any effect upon, the fee simple title and ownership of the real property interest owned by the State of Georgia and vested in the Jekyll Island- State Park Authority by virtue of O.C.G.A. § 12-3-241, which property is public property of the State of Georgia and the Jekyll Island-State Park Authority.

4.3 Procedures and Criteria Affecting Leasehold Mortgages.

The following shall apply in connection with any Leasehold Mortgages:

(a) Lessor shall, upon serving Lessee with any notice of Default, simultaneously serve a copy of such notice upon the Leasehold Mortgagee, if Lessor shall have been apprised in writing of the name and address of such Leasehold Mortgagee. The Leasehold Mortgagee shall thereupon have the right to remedy or cause to be remedied the Defaults complained of, including reimbursement to Lessor for any costs or expenses incurred (including reasonable attorneys' fees), and Lessor shall accept such performance by or at the instigation of the Leasehold Mortgagee as if the same had been done by Lessee; provided, however, that the Leasehold Mortgagee shall never be obligated to cure any Default by Lessee.

(b) In the event of any Default by Lessee under this Lease, Lessor shall take no action to effect a termination of this Lease without first giving to the Leasehold Mortgagee an opportunity, within the time frames set forth in this *Section 4.3(b)*, either (i) to cure such Default, in the case of a Default which can be cured by the Leasehold Mortgagee without the commencement of foreclosure proceedings or obtaining possession of the Premises; (ii) to obtain possession of the Premises (including possession by a receiver), and thereafter to cure such Default, in the case of a Default which cannot be cured unless and until the Leasehold Mortgagee has obtained possession of the Premises; or (iii) to institute foreclosure proceedings, as expeditiously as is reasonable and prudent under the circumstances, subject to such delays as are beyond the Leasehold Mortgagee's reasonable control, and thereafter to cure such Default; provided, however, that (A) in the case of a Default in the payment of money, the Leasehold Mortgagee shall cure the same within thirty (30) days following receipt of written notice of the expiration of any cure period for Lessee; (B) in the case of a Default not involving the payment of money (which can be cured by the Leasehold Mortgagee without the commencement of foreclosure proceedings or obtaining possession of the Premises), the Leasehold Mortgagee shall cure the same within thirty (30) days following receipt of written notice of the expiration of any cure period for Lessee; (C) the Leasehold Mortgagee shall not be required to continue such

possession or such foreclosure proceedings which may theretofore have been instituted following a curing of any such Default by the Lessee; and (D) nothing herein shall preclude the Lessor from exercising any rights or remedies under this Lease, other than the right of termination which is to be governed by this *Section 4.3(b)*, with respect to any other Default by the Lessee during any period of such forbearance. If any such Default is cured within the time hereinbefore provided, the Lessor shall not effect a termination of this Lease by reason of any such Default so cured.

(c) Lessor agrees that the Leasehold Mortgagee may be added as a loss payee and/or additional insured (as the case may be) under any and all insurance policies required to be carried by Lessee hereunder and may participate in the adjustment of any losses and settlement under any such policy. The proceeds from any insurance policies carried by Lessee or its subtenants (but not from insurance carried by Lessor) may be collected by any Leasehold Mortgagee and distributed pursuant to the provisions of the Leasehold Mortgage, with any excess distributed pursuant to the provisions of this Lease.

(d) Lessor hereby recognizes the right of a Leasehold Mortgagee to foreclose a Leasehold Mortgage and to sell or assign the Lessee's interest in this Lease (subject to all of the terms and provisions of this Lease); subject to the provisions of *Section 4.3(e)* below.

(e) Notwithstanding the provisions of *Section 4.3(d)* above, if the Leasehold Mortgagee is the successful bidder at a foreclosure sale or by a direct assignment from Lessee, then the Leasehold Mortgagee may sell or assign the Lessee's interest in this Lease without Lessor's consent if all of the following conditions are satisfied, provided however, that the Lessor shall be given a minimum of thirty (30) days written notice prior to any such sale or assignment, along with sufficient data for Lessor to perform a due diligence inquiry into the purchaser's or assignee's qualifications:

(i) The purchaser or assignee must demonstrate, to the reasonable satisfaction of Lessor, that it will have sufficient funds (from either its own assets or a firm commitment for a loan from a nationally recognized financial institution) to complete construction of the Project, if such construction has not yet been completed at the time of sale or assignment. Without regard to the completion of the Project, any proposed purchaser or assignee, other than purchasers or assignees of individual units within the Project, shall demonstrate to Lessor's reasonable satisfaction, that such purchaser or assignee, its principals, employees, or affiliates possess both the financial capability of completing and operating the Project and collectively have demonstrated at least five (5) years' experience in owning and operating projects similar to the Project.

(ii) The Leasehold Mortgagee or purchaser or assignee shall cure all outstanding Defaults under this Lease that are susceptible to cure prior to the effectiveness of such sale or assignment and shall cure all other outstanding Defaults within a reasonable period of time after the assignment established by the Lessor, with due consideration of the type or quantum of such outstanding Defaults.

(iii) The Leasehold Mortgagee and the purchaser or assignee shall deliver a fully executed counterpart of an assignment and assumption agreement, reasonably acceptable to Lessor, in which the purchaser or assignee (A) assumes all of Lessee's obligations, liabilities and responsibilities (including indemnification obligations) set forth in this Lease from and after the date of purchase or assignment; and (B) agrees to recognize Lessor's rights set forth in this Lease.

(f) The Leasehold Mortgagee shall have no personal liability under this Lease unless and until it forecloses on its interests under its Leasehold Mortgage under *Section 4.3(e)* above, and then the Leasehold Mortgagee shall only have liability under this Lease during the period that it remains as the Lessee; upon any subsequent assignment of this Lease (subject to any required consent of the Lessor thereto), the Leasehold Mortgagee shall be automatically released from all further liability hereunder.

(g) Subsequent sale, assignment, transfer, conveyance or other disposition of a Residential Unit, Building (or portion thereof) or Building Lot by a Leasehold Mortgagee shall be pursuant to the terms of the Sublease attached hereto as Exhibit C, after which execution by the Leasehold Mortgagee and Subtenant, the Leasehold Mortgagee shall assign its interests in the Sublease to Declarant or the Association, as the case may be.

(h) The Lessor, Lessee and Leasehold Mortgagee shall have the following rights upon the filing of any

bankruptcy petition involving the Leasehold Estate:

- (i) If a bankruptcy proceeding is filed by or against the Lessee or Lessor, the Leasehold Mortgagee will be immediately notified by the party who files or against which the filing is made, and the Lessor, Lessee and Leasehold Mortgagee will be entitled to receive copies of all notices, pleadings, schedules, and similar materials in the bankruptcy proceeding;
- (ii) The Leasehold Mortgagee will be entitled to file all pleadings, claims, notices, proofs, objections, acceptances, rejections, etc., on behalf of the Lessee in any such bankruptcy proceeding, and the Lessee will neither take action therein contrary to the directions of the Leasehold Mortgagee, nor contest any of the Leasehold Mortgagee's directions to the Lessee. This also includes documents or pleadings filed on the Lessee's or its own behalf in any such bankruptcy proceeding;
- (iii) The Lessee, or the Leasehold Mortgagee on behalf the Lessee, may object to any attempt by the Lessor (if a bankruptcy proceeding is filed by or on behalf of the Lessor) to sell the Premises free and clear of the Lessee's interest under this Lease and may affirmatively assert and pursue its right to adequate protection under *Section 363(e)* of the Bankruptcy Code in such event; and
- (iv) The Leasehold Mortgagee is authorized on behalf of the Lessee to vote, participate in, or consent to any proceeding concerning this Lease; provided however, that if the Lease is in monetary Default, such authorization can be exercised by Lessor only until such monetary Default is cured.

4.4 Additional Provisions Concerning Leasehold Mortgages.

As long as the Premises are encumbered by a Leasehold Mortgage, Lessor and Lessee are bound as follows:

- (a) This Lease may be amended or modified by the Lessee and Lessor; provided, however, that Lessee shall notify the Leasehold Mortgagee in writing, with a copy of such notice to Lessor, a minimum of fifteen (15) calendar days prior to such amendment or modification; and further provided, a failure of the Leasehold Mortgagee to object in writing prior to the expiration of such fifteen (15) days shall be considered as Leasehold Mortgagee's consent to such amendment or modification, and such amendment or modification shall become effective upon execution by Lessor and Lessee. Such amendment or modification shall be unenforceable without the Leasehold Mortgagee's express or constructive consent as set forth in this subsection.
- (b) The Lessor, may accept a voluntary surrender of the Lessee's interest from Lessee under the terms and provisions this Lease; provided, however, that Lessee shall notify the Leasehold Mortgagee in writing, with a copy of such notice to Lessor, a minimum of fifteen (15) calendar days prior to such acceptance; and further provided, a failure of the Leasehold Mortgagee to object in writing prior to the expiration of such fifteen (15) days shall be considered as Leasehold Mortgagee's consent to such voluntary surrender, and such amendment or modification shall become effective upon execution by Lessor and Lessee. Such amendment of voluntary surrender shall be unenforceable without the Leasehold Mortgagee's express or constructive consent as set forth in this subsection. Lessor and Lessee acknowledge that Lessor by law, has no power to convey its interest to Lessee.
- (c) The provisions of (a) and (b) above shall be modified to the extent that a Leasehold Mortgagee reasonably objects thereto.

4.5 Execution of Instruments.

Lessor will, upon request of Lessee, execute, acknowledge and deliver any instruments, including subordination and non-disturbance agreements and estoppel certificates, reasonably required by any Leasehold Mortgagee to effectuate the provisions of this *Section 4*, including Lessor's agreement that the provisions of this *Section 4* have been met, but nothing herein contained shall require or permit Lessor to be or become liable on any promissory note. Lessee shall reimburse all expenses (but not including attorneys' fees) reasonably incurred by Lessor in connection with any request that Lessor execute, acknowledge, seal and deliver any such instruments.

SECTION 5: DESIGN AND CONSTRUCTION; OPERATIONS; MAINTENANCE AND QUALITY STANDARDS

5.1 Acceptance of Premises.

(a) Lessee has inspected the Premises and accepts the same on the Commencement Date in their present condition, subject to the representations, warranties and covenants of Lessor in this Lease.

5.2 Design and Construction of Improvements.

(a) Lessee agrees to diligently and expeditiously undertake the design and construction of the Project and related Improvements. Lessee shall proceed with and cause the completion and satisfaction of the development milestones ("Development Milestones"), subject to *Force Majeure*, and subject to waiver and/or extension of all or any of same by Lessor, in accordance with the provisions of the Development Agreement. The "Construction Completion Deadline" as that term is used in the Development Agreement will be deemed to be January 13, 2028.

(b) Lessee agrees that the Buildings containing the Residential Units shall be constructed in accordance with plans and specifications prepared by Lessee and approved by JIA (the "Plans and Specifications"). The Plans and Specifications shall be stamped and sealed for such purpose by a registered Architect, and compliant with the applicable ordinances of the JIA and the JIA Design Guidelines.

(c) From time to time during the Term of this Lease, Lessee shall have the right, but shall not be obligated, to design and construct or cause to be designed and constructed new Buildings and other Improvements on all or any part of the Premises and to demolish, remove, replace, alter, relocate, reconstruct, or add to or renovate any Buildings and other Improvements now and hereafter constituting part of the Premises in whole or in part, and to modify or change the contour or grade, or both, of the Land, provided that Lessee shall first seek and obtain Lessor's review and approval of the same, which approval will not be unreasonably conditioned, delayed or withheld, and then remediate the Land after completion of contouring or grading with appropriate grasses or groundcover and shall meet all soil erosion and storm water control requirements of Jekyll Island Ordinances, or in the absence of applicable Jekyll Island Ordinances, those of Glynn County. All salvage shall belong to Lessee. Notwithstanding the foregoing, except as necessary to comply with Lessee's obligation to maintain the Premises in compliance with this Lease and all requirements of law, Lessee shall not have the right to commence any work under this Section if there is then a continuing Event of Default on the part of Lessee hereunder as to which Lessor has given the required notices and all applicable periods of grace and periods for cure by Lessee and any Leasehold Mortgagees have expired without cure or commencement of cure as provided herein.

(d) During any construction work (as described in this *Section 5* and in the Development Agreement) including demolition, removal, construction, reconstruction, alteration or repair in or on the Premises, Lessee shall maintain and shall deliver to Lessor prior to the commencement of any such work, insurance certificates evidencing the insurance coverages set forth in *Section 7.1(d)* below. However, nothing in the preceding sentence shall obligate Lessee to undertake any work of construction, alteration or repair or, except as expressly set forth herein, affect the rights of Lessee to demolish, remove, alter or replace the Improvements from time to time during the Term of this Lease. Lessee shall, at Lessor's request in each case, provide Lessor with copies of "as built" plans as soon as practicable (but no more than one hundred eighty (180) days) after the completion of any major work of construction, alteration or repair in or on the Premises. "Major work of construction, alteration or repair" shall mean work having an estimated cost exceeding twenty-five percent (25%) of the then value of the Improvements.

(e) Neither party shall permit to be enforced against the other's interest in the Premises any mechanic's, materialman's, contractor's, or subcontractor's lien arising from any work in or on the Premises, in the case of Lessee, or in or on the fee interest in the land of which the Premises are a part, in the case of Lessor, however such lien may arise. However, each party may in good faith and at its own expense contest the validity of any such asserted lien, provided it has furnished any bond required under applicable lien laws or has otherwise discharged any lien of record. If the responsible party shall fail, within thirty (30) days after notice from the other, to bond off any such asserted lien, the other may cure such failure by arranging for such bond and the cost of such bond, plus interest, shall be paid by the responsible party upon demand.

(f) Lessee is hereby notified that the real property interests of the State of Georgia and Lessor is that of public property of the State and as such is not subject to lien or levy. See *Neal-Millard Co. v. Trustees of Chatham Academy*, 121 Ga. 208, 213-215 (1904); *B&B Elec. Supply Co. v. H.J. Russell Constr. Co.*, 166 Ga. App. 499, 503 (1983).

5.3 Permits; Compliance with Codes.

Lessee shall obtain, at its sole cost, all environmental, construction, and building and occupancy permits required by the federal, state and county governments having jurisdiction over the Project.

(a) The design and construction of the Project must materially comply with all building requirements and restrictions imposed by the Jekyll Island Ordinances, as amended. All land disturbing activities shall be completed with appropriate grasses and groundcovers and shall meet all applicable soil erosion and storm water control requirements of Jekyll Island Ordinances, or in the absence of applicable Jekyll Island Ordinances, those of Glynn County. All construction shall meet or exceed State of Georgia building codes and life safety codes as specified and supplemented by the Georgia Department of Community Affairs, and for areas not covered by the State codes, by applicable Jekyll Island Ordinances, or in the absence of applicable Jekyll Island Ordinances, Glynn County codes; and shall meet or exceed FEMA coastal area building requirements and Jekyll Island ordinances, including Chapter IX, Flood Damage Prevention.

(b) Lessee shall cause all new Buildings and Improvements to be designed and constructed in compliance with the Jekyll Island Ordinances and JIA Design Guidelines, as amended. Lessee agrees that the design and construction of the Project shall be certified by the design professional as having a probable useful life of not less than thirty (30) years.

(c) Lessor agrees to cooperate with, support and assist, in good faith, Lessee and all governmental authorities having jurisdiction, at Lessee's sole cost and expense, to facilitate the Project and Lessee's construction, maintenance and operation of the Buildings and other Improvements on the Premises, including, without limitation, Lessor's joinder in documents relating to the granting of entitlements, easements and similar matters concerning the leasehold estate. Notwithstanding anything in this Lease to the contrary, Lessee shall not agree with any governmental authority or any other third party, to change, relocate or close any of the access points from the public roads and/or streets adjacent to the Premises without the prior written consent of the Lessor, which may be granted or denied in Lessor's sole and absolute discretion.

5.4 Ownership of Buildings and Other Improvements.

During the Term of this Lease, as between Lessor and Lessee: (a) prior to the initial sale, transfer, assignment, conveyance or other disposition of any Building Lots, Buildings (or portions thereof) and Residential Units contained therein, all Buildings and other Improvements constructed by Lessee, including, without limitation, any additions, alterations and improvements thereto or replacements thereof and any appurtenant fixtures, machinery and equipment installed therein shall be the property of Lessee; and (b) as Building Lots, Buildings (or portions thereof) located thereon containing Residential Units and such Residential Units, are initially sold, assigned, transferred, conveyed or otherwise disposed of to Residential Unit Owners, such Building Lots, Buildings (or portions thereof) and Residential Units shall become the property of such Residential Unit Owners to whom they are so sold, assigned, transferred, conveyed or otherwise disposed of.

5.5 Control of Improvements.

Notwithstanding anything to the contrary in this Lease, during the Term of this Lease (a) Lessee, or Lessee's assigns, shall have exclusive control and possession of the Premises, and (b) Lessor shall have no duties or responsibilities for repairs, maintenance or operation of the Premises, except as expressly set forth herein.

5.6 Lessee's, or Assignee's Duty to Remove.

No earlier than twenty-four (24) months, and no later than twelve (12) months prior to the expiration of the Term, Lessee, or the Association in the event Lessee has assigned its rights hereunder shall deliver to Lessor a report prepared by a construction and demolition expert approved by Lessor, such approval not to be unreasonably withheld or delayed, which report evaluates the remaining useful life of all Improvements and fully details and estimates the cost of removing each of the Improvements on the Premises at the expiration of the Term. Lessor may give written notice (the "Lessor Removal Notice") at any time, not later than six (6) months prior to the expiration of the Term, or concurrently upon any earlier termination, of Lessor's election, to require Lessee, or any of the then Residential Unit Owners, to remove, at the sole cost and expense of Lessee or such Residential Unit Owners, not later than one hundred fifty (150) days after the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade structures (to a reasonable depth, but including any underground storage tanks regardless of depth), Buildings and Improvements of any kind whatsoever placed or constructed or utilized on the Premises by Lessee for such Residential Unit Owners, including, but not limited to, concrete foundations, pilings, structures and Buildings; and Lessor requires Lessee, or such Residential Unit Owners to remove such, then Lessee, or such Residential Unit Owners, shall, upon the expiration or termination of this Lease, surrender possession of the Premises to Lessor with a level, graded pad with no significant excavations,

hollows, hills or humps, and in compliance with all demolition, soil and erosion control, and storm water control requirements and permits of Jekyll Island Ordinances, or in the absence of applicable Jekyll Island Ordinances, those of Glynn County. Lessee, or such Residential Unit Owners shall, no later than the date which is ninety (90) days after Lessee's receipt of the Lessor Removal Notice, provide Lessor with a written plan which sets forth Lessee's proposed method and schedule for discharge of Lessee's removal and restoration obligations pursuant to this subsection. If Lessor does not give a Lessor Removal Notice within the time period provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee, or Lessee's individual assignees, shall turn over the Premises to Lessor with all Buildings and other Improvements in place, in the condition consistent with Lessee's, or such Residential Unit Owners, maintenance and repair obligations under this Lease.

5.7 Maintenance and Repair of the Project.

(a) Lessee, or the Residential Unit Owners, shall, during the Term of this Lease, at their own cost and expense, keep and maintain the portions of the Premises owned or leased by them in good order and repair (to the quality standards described in *Section 5.9* below) and shall promptly make all necessary repairs and replacements thereto, including, but not limited to maintenance of the parking areas, roadways, driveways and walkways (including resurfacing and restriping), landscaping, mowing and weed removal, and general grounds maintenance, trash removal and security, all equipment and facilities and components thereof within the Premises, fixtures, walls (interior and exterior), finish work, ceilings, floors, lighting fixtures, bulbs and ballasts, utility connections and facilities within the Premises, windows, glass, doors, and plate glass, roofing, drainage facilities, downspouts, gutters, air conditioning and heating systems, truck doors, dock levelers, bumpers, seals and enclosures, cranes, rail systems (if any), plumbing and electrical systems, termite and pest extermination, and damage caused by Lessee or such Residential Unit Owners and their respective guests or subtenants. Lessee and such Residential Unit Owners, in keeping the Premises in good order, condition and repair, shall exercise and perform commercially reasonable maintenance practices. Lessee's and such Residential Unit Owners' obligations shall include restorations, replacements or renewals when necessary to keep the Premises in good order, condition and state of repair. Lessee and such Residential Unit Owners shall be solely responsible for providing adequate security for the respective portions of the Premises they own, lease or use. Lessor shall have no responsibility to prevent, and shall not be liable to Lessee or such Residential Unit Owners, their respective assigns, agents, employees, contractors, visitors or invitees, for losses due to theft burglary or other criminal activity, or for damages or injuries to persons or property resulting from Lessee's or such Residential Unit Owners' occupancy of the Premises, or from persons gaining access to the Premises, and Lessee hereby releases Lessor and its agents and employees from all liabilities for such losses, damages or injury, regardless of the cause thereof, except for acts of sole negligence or Willful Misconduct of the Lessor.

5.8 Environmental Compliance/Hazardous Materials.

(a) **Definitions.** "Hazardous Materials" means any (i) material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive, mutagenic or corrosive, including, without limitation, petroleum, or any petroleum derivative, solvents, heavy metals, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive problems and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the State of Georgia or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; all environmental laws of the state where the Premises is located; and any other environmental law, regulation or ordinance now existing or hereinafter enacted; (ii) any other substance or matter which results in liability to any person or entity from exposure to such substance or matter under any statutory or common law theory; and (iii) any substance or matter which is in excess of relevant and appropriate levels set forth in any applicable federal, state or local law or regulation pertaining to any hazardous or toxic substance, material or waste, or for which any applicable federal, state or local agency orders or otherwise requires removal, remediation or treatment. "Hazardous Materials Laws" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

(b) Use of Hazardous Materials on Premises by Lessee. Lessee hereby agrees that Lessee and Lessee's officers, employees, representatives, agents, consultants, contractors, subcontractors, successors, assigns, subtenants, concessionaires, and any other lawful occupants of the Premises but specifically excluding Lessor and anyone acting under the authority of Lessor (for purposes of this *Section 5.8*, referred to collectively herein as "Lessee Representatives") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or the Buildings or transported to or from the Premises or the Buildings without the express prior written consent of Lessor. Lessor may, in its sole discretion, place such reasonable conditions with respect to such Hazardous Materials, including without limitation rules, regulations and safeguards as may be required by any insurance carrier, any environmental consultant of Lessor, or any environmental consultant retained by any lender of Lessor, and may further require that Lessee demonstrates to Lessor that such Hazardous Materials are necessary or useful to Lessee's business and will be generated, stored, used and disposed of in a manner that complies with all Hazardous Materials Laws regulating such Hazardous Materials and with good business practices. Lessee understands that Lessor may (at Lessor's expense) utilize an environmental consultant to assist in determining conditions of approval and monitoring in connection with the presence, storage, generation or use of Hazardous Materials on or about the Premises by Lessee. Unless approved in writing by Lessor (or otherwise expressly permitted hereunder), Lessee shall not be entitled to utilize any Hazardous Materials in the Premises or the Buildings. In connection therewith, Lessee shall at its own expense procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Lessee or any Lessee representative of Hazardous Materials on the Premises, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises with all required permits. Notwithstanding the foregoing: (i) Lessee, its subtenants and Residential Unit Owners shall be entitled to use and store on the Premises common cleaning solutions, lubricants and fuels and similar products used by them in their ordinary operations, so long as the same are stored in appropriate containers in compliance with all Hazardous Materials Laws; and (ii) Lessor agrees that Lessee may install propane tanks (including underground) for Residential Unit Owners who opt for the installation of appliances (such as stoves/ranges/ovens) and/or fireplaces in their Residential Units that will use propane gas, and that such Residential Unit Owners may use such appliances (such as stoves/ranges/ovens) and/or fireplaces; provided, however, that any tank must be shown on the Plans and Specifications or other subsequent plans approved by Lessor.

(c) Remediation. If at any time during the Term any contamination of the Premises by Hazardous Materials shall occur where such contamination is caused by the act or omission or operations of Lessee or any Lessee Representative ("Lessee's Contamination"), then Lessee, at Lessee's sole cost and expense, shall promptly and diligently remove such Hazardous Materials from the Premises, the Buildings or the groundwater underlying the Premises to the extent required to comply with applicable Hazardous Materials Laws to restore the Premises or the Buildings to the condition required by the applicable governmental authorities. Lessee shall not take any required remedial action in response to any Lessee's Contamination in or about the Premises or the Buildings, or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Lessee's Contamination, without first obtaining the prior written consent of Lessor, which may be subject to conditions imposed by Lessor as determined in Lessor's reasonable discretion; provided, however, Lessor's prior written consent shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Premises or the Buildings (i) poses an immediate threat to the health, safety or welfare of any individual or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Lessor's consent before taking such action. Lessee and Lessor shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Lease. In addition to all other rights and remedies of Lessor hereunder, if Lessee does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any of Lessee's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Lessee's Contamination within thirty (30) days after all necessary approvals and consents have been obtained and thereafter continue to prosecute such remediation to completion in accordance with an approved remediation plan, then Lessor, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Lessee shall reimburse Lessor within fifteen (15) business days after Lessor's demand for reimbursement of all amounts reasonably paid by Lessor (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by reasonable proof of payment by Lessor of the amounts demanded. Lessee shall promptly deliver to Lessor, legible copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises or the Buildings as part of Lessee's remediation of any Lessee's Contamination.

(d) Disposition of Hazardous Materials. Except as discharged in strict accordance and conformity with *Section 5.8(b)* above and all applicable Hazardous Materials Laws, Lessee shall cause any and all Hazardous Materials which result from Lessee's Contamination removed from the Premises to be removed and transported solely by duly licensed haulers to duly licensed facilities for recycling or final disposal of such materials and wastes. Lessee is and shall be deemed to be the "operator" "in charge" of Lessee's "facility" and the "Owner," as such terms are used in the Hazardous Materials Laws, of all Hazardous Materials and any wastes generated or resulting therefrom which result from Lessee's Contamination. Lessee shall be designated as the "generator," as such terms are used in the Hazardous Materials Laws, on all manifests relating to such Hazardous Materials or wastes.

(e) Notice of Hazardous Materials Matters. Lessee shall immediately notify Lessor in writing of: (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Premises pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any person against Lessee or the Premises relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials on or about the Premises; (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Premises including any complaints, notices, warnings or asserted violations in connection therewith, all upon receipt by Lessee of actual knowledge of any of the foregoing matters; and (iv) any spill, release, discharge or disposal of any Hazardous Materials in, on or under the Premises, or any portion thereof. Lessee shall also supply to Lessor as promptly as possible, and in any event within five (5) business days after Lessee first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the environmental condition of the Premises.

(f) Environmental Indemnification by Lessee. Subject to the existing conditions of the Land, as set forth in a current Phase I Environmental Survey, which shall not be the responsibility of Lessee, Lessee shall otherwise indemnify, defend (by counsel reasonably acceptable to Lessor), protect, and hold Lessor, and each of Lessor's employees, representatives, agents, attorneys, successors and assigns, and its directors, officers, partners, representatives, and any entity or person named or required to be named as an additional insured in *Section 7* below, free and harmless from and against any and all claims, actions (including, without limitation, cost of investigation and testing, consultants' and attorneys' fees, remedial and enforcement actions of any kind, administrative (informal or otherwise) or judicial proceedings and orders or judgments arising therefrom), causes of action, liabilities, penalties, forfeitures, damages, diminution in the value of the Premises, fines, injunctive relief, losses or expenses (including, without limitation, reasonable attorneys' fees and costs) or death of or injury to any person or any damage to the Premises whatsoever, to the extent arising from or caused in whole or in part, directly or indirectly by (i) any Lessee's Contamination, (ii) Lessee's or any Lessee Representative's failure to comply with any Hazardous Materials Laws with respect to the Premises or the Buildings, to the extent that such failure involves Lessee's Contamination or (iii) offsite disposal or transportation of Hazardous Materials which are Lessee's Contamination on, from, under or about the Premises or the Buildings by Lessee or any Lessee Representative. Lessee's obligations hereunder shall include without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. For purposes of the indemnity provisions hereof, any acts or omissions of Lessee or of any Lessee Representative (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Lessee. Notwithstanding any provision in this Lease, Lessee shall have no responsibility or indemnity obligations, for any environmental condition existing on the Premises at or prior to the Commencement Date, and to the extent allowable under Georgia law, Lessor shall indemnify, defend (by counsel reasonably acceptable to Lessee), protect, and hold Lessee, and each of Lessee's employees, representatives, agents, attorneys, successors and assigns, and its directors, officers, partners, representatives, free and harmless from and against any and all claims, actions (including, without limitation, cost of investigation and testing, consultants' and attorneys' fees, remedial and enforcement actions of any kind, administrative (informal or otherwise) or judicial proceedings and orders or judgments arising therefrom), causes of action, liabilities, penalties, forfeitures, damages, diminution in the value of the Premises, fines, injunctive relief, losses or expenses (including, without limitation, reasonable attorneys' fees and costs) or death of or injury to any person or any damages to the Premises whatsoever, to the extent arising from or caused in whole or in part, directly or indirectly by Hazardous Materials in, on, under or about the Premises which existed at or prior to the Commencement Date. Lessor's obligations hereunder shall include without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. In addition, notwithstanding any provision in this Lease, Lessee shall have no responsibility or indemnity obligations for any environmental condition on the Premises caused by the act or omission of any Residential Unit Owner.

(g) Compliance with Environmental Laws. Lessee shall at all times and in all respects comply with all Hazardous Materials Laws, but nothing herein shall require Lessee to clean] up or remediate any Hazardous Materials which do not result from Lessee's Contamination. All reporting obligations imposed by Hazardous Materials Laws are strictly the responsibility of Lessee. Lessee and Lessor have been informed that certain judicial decisions have held that, notwithstanding the specific language of a lease, courts may impose the responsibility for complying with legal requirements and for performing improvements, maintenance and repairs on a landlord or tenant based on the court's assessment of the parties' intent in light of certain equitable factors. Lessee and Lessor have each been advised by their respective legal counsel about the provisions of this Lease allocating responsibility for compliance with laws and for performing improvements, maintenance and repairs between Lessee and Lessor. Lessee and Lessor expressly agree that the allocation of responsibility for compliance with laws and for performing improvements, maintenance and repairs set forth in this Lease represents Lessee's and Lessor's intent with respect to this issue.

(h) Survival and Duration of Obligations. All covenants, representations, warranties, obligations and indemnities made or given under this *Section 5.8* shall survive the expiration or earlier termination of this Lease.

5.9 Signs and Appurtenances.

Upon the receipt of written approval from Lessor, which approval shall not be unreasonably withheld, delayed or conditioned, Lessee may erect or install or cause to be erected or installed, any signs, placards, displays, advertising media or decorations, or any television antenna, sound amplifiers or similar devices, lighting or plumbing fixtures, shades or awnings, or any other appurtenances, upon the outside walls or roofs of the facilities or upon any exterior open spaces of the Premises, subject to compliance with all applicable laws, ordinances, and the JIA Design Guidelines, as amended.

5.10 Ordinances and Regulations.

Lessee covenants and agrees to comply with all existing and future ordinances and regulations lawfully promulgated by Lessor, including the JIA Design Guidelines as amended (but only with respect to the initial construction of the Project as provided in *Section 5.2(b)*) and any JIA Conservation Guidelines governing the operation of the Premises, provided that such ordinances and regulations also generally apply to similarly situated structures on Jekyll Island.

SECTION 6: DAMAGE AND DESTRUCTION

6.1 Repairs, Alterations and Further improvements. In the event of damage to or destruction of the Buildings or any other Improvements on the Premises, which are covered by the insurance described in *Section 7* below, the procedures for application of insurance proceeds are set forth in *Sections 6.2 and 7.7* below.

(a) Lessee's Duty to Restore.

If, at any time during the Term, any Buildings or other Improvements now or hereafter on the Premises that are then owned by Lessee are damaged and/or destroyed in whole or in part by storm, fire, earthquake, hurricane, the elements, or any other casualty, this Lease shall continue in full force and effect, and Lessee, at its sole cost and expense, shall repair and restore the damaged or destroyed Buildings or other Improvements to substantially the same or better condition as existed prior to the damage or destruction, and according to such modified plans as shall be reasonably approved in writing by Lessor, whether or not there are sufficient insurance proceeds to cover the repair and restoration expenses. The work of repair and restoration shall be commenced by Lessee as soon as possible, but in no event later than two hundred forty (240) days after the date of the occurrence and shall be prosecuted and completed with all due diligence subject to Force Majeure and delays in settling any insurance claim. In all respects, the work of repair and restoration shall be done in accordance with, and meet or exceed, the criteria for original construction work and the then current permit requirements and code requirements set forth in *Section 5.2 and 5.3* above.

(b) Notwithstanding anything to the contrary, if at any time during the Term, any undeveloped land surrounding or adjacent to the Premises that is then owned or controlled by Lessor is damaged and/or destroyed in whole or in part by storm, fire, earthquake, hurricane, the elements, or any other casualty, in such a manner that adversely

affects the Premises or any Buildings or other Improvements now or hereafter on the Premises, this Lease shall continue in full force and effect, and Lessee, at its sole cost and expense, may repair and restore the damaged or destroyed undeveloped land to substantially the same or better condition as existed prior to the damage or destruction, and according to such plans as shall be reasonably approved in writing by Lessor, whether or not there are sufficient insurance proceeds to cover the repair and restoration expenses. Lessor shall have no obligation to repair, restore, or otherwise address the damaged or destroyed undeveloped land. The work of repair and restoration shall be commenced by Lessee as soon as possible after the date of occurrence and shall be prosecuted and completed with all due diligence subject to Force Majeure and delays in settling any insurance claim. In all respects, the work of repair and restoration shall be done in accordance with and meet or exceed the criteria for original construction work and the then current permit requirements and code requirements set forth in *Section 5.2* and *5.3* above.

(c) Prompt Repair.

If Lessee, pursuant to the terms hereof, is obligated or elects to repair, replace, reconstruct or rebuild the Buildings and other Improvements owned by them as hereinabove provided, the same shall be effected at Lessee's cost and expense (including all insurance proceeds which shall be made available as herein provided), and Lessee shall diligently commence and continuously carry out such repair, replacement, reconstruction or rebuilding to full completion as soon as possible, subject to *Force Majeure* and any delays in settling any insurance claim, or other causes beyond the reasonable control of Lessee after the exercise of due diligence, including diligence in contracting, and the exercise of rights under contracts with contractors and suppliers.

6.2 Application of Insurance Proceeds. Subject to the provisions in any Leasehold Mortgage, any and all fire or other insurance proceeds from insurance carried by Lessee that become payable at any time during the Term because of damage to or destruction of any Buildings and/or other improvements on the Premises shall be applied toward the cost of repairing and restoring the damaged or destroyed Buildings and/or other Improvements in the manner required in *Section 7.7* below; provided, however, that should Lessee exercise the option granted in *Section 6.1(b)* above, to terminate this Lease then, in that event, any and all such insurance proceeds shall be distributed as follows:

- (a)** First toward the reduction of the unpaid principal balance of any Leasehold Mortgage;
- (b)** Then, toward the costs of removing all debris and remains of the damaged Buildings or other Improvements then owned by Lessee from the Premises and to curing any then existing monetary Defaults of Lessee under the Lease; and,
- (c)** Then the balance of the proceeds, if any, shall be equitably allocated between Lessor and Lessee in accordance with the values of their respective interests in the Premises immediately prior to the damage or destruction. The value of Lessee's interest in the Premises immediately prior to the damage or destruction shall include, but shall not be limited to, the then fair market value of the Buildings then owned by Lessee and other Improvements upon the Premises. The value of Lessor's interest in the Premises immediately prior to the damage or destruction shall include but shall not be limited to the actual residual value of the Building(s) and other Improvements then owned by Lessee as of the end of the Term of this Lease. Lessee and Lessor shall endeavor to agree on the division of such insurance proceeds. If they cannot agree on the division of such proceeds within thirty (30) days after the date of termination of the Lease, either party may cause the division of such proceeds to be submitted to binding arbitration as set forth in *Section 16*.

6.3 Rent Adjustment. The Rent shall abate as a result of damage to or destruction of any Buildings or other improvements on the Premises in same proportion and for the time period that such Buildings or other Improvements cannot be utilized or operated for the same purpose and in the same manner as they were being used or operated prior to such damage or destruction, except to the extent of any rent loss insurance proceeds actually collected by or paid to Lessor. In such case, the threshold for calculating Percentage Rent shall be adjusted proportionally.

SECTION 7: INSURANCE AND GENERAL INDEMNITY

7.1 Insurance Requirements.

(a) Requirements for Insurers.

Lessee during the time and to the extent it has a leasehold or ownership interest in a portion of the Premises shall procure the insurance coverages identified below, if applicable, at the Lessee's expense and promptly after request by Lessor, shall furnish the Lessor an insurance certificate listing the Lessor as the certificate holder and as an additional insured. Evidence of insurance coverages shall be provided in form reasonably acceptable to Lessor. The insurance certificate must have the required additional insured endorsements attached and provide the following:

- (i) Name and address of authorized agent
- (ii) Name and address of insured
- (iii) Name of insurance company(ies)
- (iv) Description of policies
- (v) Policy Number(s)
- (vi) Policy Period(s)
- (vii) Limits of liability
- (viii) Name and address of Lessor as certificate holder
- (ix) Project Name and Number
- (x) Signature of authorized agent
- (xi) Telephone number of authorized agent
- (xii) Notice of cancellation or non-renewal in line with industry standard policy terms and conditions

(b) Insurer Qualifications, Insurance Requirements.

Each of the insurance coverages required below (i) shall be issued by a company licensed by the Georgia Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions (if reasonably available from the insurance carriers and in line with industry standard policy terms and conditions):

(i) The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire until thirty (30) days (ten (10) days for nonpayment) after the Lessee, receives written notice thereof, as evidenced by return receipt of certified mail or statutory mail. If the insurance company refuses to agree, then Lessee will promptly give Lessor notice of any receipt by Lessee of such notice of cancellation, changes or lapse in the insurance policies.

(ii) The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("separation of insureds").

(iii) Each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnitees (as defined below) remains in full force and effect and is not waived by issuance of any policy of insurance. In the event of litigation, any settlement on behalf of the Indemnitees must be expressly approved by the Attorney General. The Lessee and its insurance carriers may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnities, in which case there will be mutual cooperation between the Attorney General and such counsel. See O.C.G.A. § 45-15-12.

(iv) All deductibles shall be paid for by the Lessee.

(v) Self-insured retention, except for qualified self-insurers or group self-insurers, in any policy shall not exceed One Hundred Thousand Dollars (\$100,000), with higher retentions allowed according to industry standards for certain higher hazard risks under a property policy.

(c) Basic Insurance Coverages. Lessee shall provide or cause to be provided by the Association for any portion of the Land, throughout the Term the following liability insurance coverages (additional coverages are required for construction activities):

(i) Builders Risk Insurance/Commercial General Liability Insurance. Lessee shall provide Builders Risk Insurance during the construction of the Project, and thereafter Commercial General Liability Insurance (2001 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability and shall be specially endorsed as set forth in *Section 7.1 (c)(iv)* below. The CGL policy shall provide at a minimum the following limits:

	<i>Coverage</i>	<i>Limit</i>
A	Premises and Operations	\$ 1,000,000.00 per Occurrence
B	Products and Completed Operations	\$ 1,000,000.00 per Occurrence
C	Personal Injury	\$ 1,000,000.00 per Occurrence
D	Contractual	\$ 1,000,000.00 per Occurrence
E	General Aggregate	\$ 2,000,000.00 per Project

Additional Requirements for Commercial General Liability Insurance are shown below at *Section 7.1(c)(iv)*.

(ii) Commercial Business Automobile Liability Insurance.

If applicable, Lessee shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than One Million Dollars (\$1,000,000) combined single limits for each accident. Additional requirements for Commercial Business Automobile Liability Insurance are shown below at *Section 7.1(c)(iv)*.

(iii) Commercial Umbrella Liability Insurance. Lessee shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form with the Umbrella limits required as follows:

- A. \$ 2,000,000 per Occurrence
- B. \$ 4,000,000 Aggregate

Additional Requirements for Commercial Umbrella Liability Insurance are shown below at *Section 7(c)(iv)*.

(iv) Additional Requirements for Commercial Policies in Section 7.1 (c)(i)-(iii) above.

A. The policy shall name as additional Insureds the officers, members, and employees of Lessor, with the additional injured Endorsement on ISO Form CG 20 10 11 85 ("Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization") or equivalent, attached to the certificate of insurance.

- B. The policy must be on an “occurrence” basis,
- C. Lessee shall provide a certificate of insurance to JIA as certificate holder, in form reasonably acceptable to Lessor.
- D. The policy shall have its insured contract definition specially endorsed in form reasonably acceptable to Lessor and the endorsement attached to the certificate of insurance.
- E. Lessee's insurance shall provide primary coverage to Lessor when any coverage issued to Lessor provides duplicate or similar coverage and in such circumstances Lessor's policy will be in excess over Lessee's policy.

(v) Workers' Compensation Insurance. If applicable, Lessee agrees to provide at minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the Lessee qualifies to pay its own workers' compensation claims.

(vi) Employers' Liability Insurance. Lessee shall also maintain Employers' Liability Insurance coverage with limits of at least:

- A. Bodily Injury by Accident \$1,000,000 each accident;
- B. Bodily Injury by Disease \$1,000,000 each employee; and
- C. Bodily Injury/Disease Aggregate \$1,000,000 each accident.

(vii) Property Insurance. Lessee during the construction period, and Lessee's assignees thereafter, shall procure throughout the Term, all-risk property insurance, including fire and extended coverage covering the full replacement value of Lessee's (or Lessee's assignees) Buildings, Improvements, and personal property, and including the property of others.

(d) Insurance Coverages for Renovations and Construction. Lessee shall provide or cause to be provided throughout the Term the following additional insurance coverages during any period in which design, construction or renovation activities by Lessee are being conducted:

(i) Builder's Risk Insurance. Lessee shall provide a Builder's Risk Policy to be made payable to the Lessor and Lessee, as their interests may appear. The policy amount should be equal to 100% of the Contract Sum, written on a Builder's Risk “All Risk”, or its equivalent

The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy:

- A. Furniture and equipment may be delivered to the insured premises and installed in place ready for use; and,
- B. Partial or complete occupancy by Lessor; and
- C. Performance of work in connection with construction operations insured by the Lessor, by agents or lessees or other Lessees of the Lessor or Using Agency.

In the event that the Contract is for renovation, addition or modification of an existing structure and

Builders Risk Insurance is not available, the Lessor will accept an installation Floater Insurance Policy with the above endorsements in lieu of the Builders' Risk Insurance Policy. Such floater must insure loss to materials and equipment prior to acceptance by Lessor and must be on an all risk basis with the policy written on a specific job site.

(ii) **Professional Liability (Errors and Omissions) Insurance.** Limits shall not be less than the following:

(A) For Projects with a budgeted construction cost of more than \$30,000,000:

I. For Design Professionals - \$3,000,000 per claim and \$4,000,000 in aggregate coverage;

II. For Subconsultant Engineers and Architects - \$2,000,000 per claim and \$3,000,000 in aggregate coverage;

III. For Other Consultants - \$1,000,000 per claim and \$2,000,000 in aggregate coverage.

(B) For Projects with a budgeted construction cost of \$20,000,000 up to \$30,000,000:

I. For Design Professionals - \$2,000,000 per claim and \$3,000,000 in aggregate coverage;

II. For Subconsultant Engineers and Architects - \$1,000,000 per claim and \$2,000,000 in aggregate coverage;

III. For Other Consultants - \$1,000,000 per claim and \$1,000,000 in aggregate coverage.

(C) The design professional shall maintain professional liability insurance that shall be either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage, for services performed by the design professional for this Project. If project-specific coverage is used, these requirements shall be continued in effect for two (2) years following the issuance of the certificate of final completion for the Project.

(iii) **Workers' Compensation Insurance.** Lessee shall require the contractor performing work under this Lease to obtain an insurance certificate showing Proof of Workers' Compensation Coverage in the amounts set forth in *Section 7.1 I(v)* above and shall submit a certificate on the letterhead of the contractor in the following language:

This is to certify that all subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the Contractor's workers' compensation insurance.

(iv) **Employers' Liability Insurance.** Lessee shall require the contractor performing work under this Lease to obtain Employers' Liability coverage in the amounts set forth in *Section 7.11 (vi)* above and an insurance certificate showing proof of Employers' Liability Insurance Coverage and shall submit a certificate on the letterhead of the contractor in the following language:

This is to certify that all subcontractors performing work on this Project are covered by their own Employers' Liability Insurance Coverage or are covered by the Contractor's Employers' Liability Insurance Coverage.

7.2. General Indemnity.

(a) **Indemnity.** Lessee hereby agrees to indemnify and hold harmless the Lessor, the State of

Georgia and its departments, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including reasonable attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of Lessee's performance of this Lease or resulting from any act or omission on the part of (i) the Lessee, its agents, employees or others working at the direction of Lessee or on its behalf, or (ii) due to any breach of this Lease by the Lessee, or (ii) due to the violation by Lessee of any pertinent federal, state or local law, rule or regulation. This indemnification obligation survives the termination of the Lease and the dissolution or, to the extent allowed by law, the bankruptcy of the Lessee. This indemnification does not extend beyond the scope of this Lease and the activities undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred directly by the Indemnitees due to the sole negligence or Willful Misconduct of any Indemnatee.

(b) DOAS Role. DOAS Risk Management Division will endeavor to notify affected insurers of claims made against the State or Lessor that fall within this indemnity. In the event of litigation, the Attorney General of the State of Georgia will endeavor to keep the Lessee and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement.

(c) Suits or Claims for Infringement. Lessee shall indemnify and hold Lessor harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems used by Lessee.

7.3 Lessee's or Subtenant's Insurance. Lessee shall itself take out and keep in force the insurance coverages set forth in *Section 7.1 above*, with carriers licensed to do business in the state of Georgia, without expense to Lessor, including in its Commercial Liability Insurance Policy, and shall include in the Subleases provisions requiring Residential Unit Owners to take out and keep in force during the term of their respective Subleases, with carriers licensed to do business in the state of Georgia, without expense to Lessor, commercially reasonable insurance coverages. All such policies shall name Lessor and any designee of Lessor as additional named insureds.

7.4 Exculpation. Lessee, as a material part of the consideration to be rendered to Lessor under this Lease, hereby waives, to the fullest extent permitted by law, all claims against Lessor for loss, theft or damages to goods, wares, merchandise or other Premises (whether tangible or intangible) in and about the Premises, for loss or damage to Lessee's business or other economic loss (whether direct or consequential), and for the injury or death to any persons in, on or about the Premises, except for damage or loss directly caused by the sole negligence or Willful Misconduct of Lessor.

7.5 Survival and Duration. All indemnities made or given under this *Section 7* shall survive the expiration or earlier termination of this Lease.

7.6 Insurance Money and Other Funds. Except as set forth in *Section 6.2 above* and subject to any contrary provisions in a Leasehold Mortgage, all insurance proceeds received in connection with any damage or destruction to the Buildings or other Improvements on the Premises shall be held by Lessee (or by Leasehold Mortgagee if the Premises are then encumbered with a Leasehold Mortgage and the Leasehold Mortgagee so requests) and shall be applied as follows:

(a) First, for the purpose of repairing, restoring, replacing, rebuilding and/or removing any Buildings or other Improvements on or in the Premises, subject to *Section 7.7 below*.

(b) The balance, if any shall be paid in accordance with *Section 6.2 above* (exclusive of clauses (b) and (c) thereof).

7.7 Application of Proceeds of Physical Damage Insurance.

(a) Application to Repair.

In the event of any repair, replacement restoration or rebuilding of the Premises pursuant to *Sections 6.1 or 6.2 above*, Lessee shall apply the proceeds of the insurance to the cost of such work upon

certificate of satisfactory progress and/or completion in form satisfactory to Lessor and/or Lessee's Leasehold Mortgagee by the licensed architect or engineer in charge of the work. Any amounts payable to Lessee or any Affiliate of Lessee for work or services performed on materials provided as part of any such repair, replacement, restoration or rebuilding shall not exceed competitive rates for such services or materials and Lessee shall, upon request of Lessor, make available to Lessor and its representatives all books and records of Lessee relating to such work, services and materials. Upon completion of such repair, replacement, restoration or rebuilding in accordance with the provisions of this Lease, and the full payment of the costs therefor, any insurance proceeds received by Lessee with respect to such damage or destruction and not so used, shall remain the property of Lessee.

(b) Application upon Termination of This Lease. If Lessee so elects to terminate this Lease on account of damage or destruction pursuant to a right to do so, or this Lease shall otherwise terminate without repair of the damage or destruction, any such insurance proceeds received and held by Lessee (or by the Leasehold Mortgagee if the Premises are then encumbered by a Leasehold Mortgage), shall be disposed of as provided in *Section 6.2(a)-(c) above*

7.8 Waiver.

Without affecting any other rights or remedies, but only to the extent of insurance proceeds made available by the property insurance required by *Section 7.1(c)(vii)* above, Lessor hereby waives its right to recover damages against Lessee, for loss of or damage to the Buildings or other Improvements on the Premises arising out of or incident to the perils required to be insured against herein Lessee shall have its property damage insurance carrier waive any right to subrogation that such carrier may have against Lessee, so long as the insurance is not invalidated thereby.

SECTION 8: CONDEMNATION

8.1 Total Taking. In the event of the taking by any governmental or quasigovernmental authority, by the exercise of police power, eminent domain or condemnation (each a "Taking") of all of the Premises, or so much thereof so as to materially and adversely affect the operations of the Project (including the Building Lots and Buildings (or portions thereof) in which Residential Units are contained and the Residential Units themselves) thereon (specifically excluding a Temporary Taking or a Partial Taking, as defined below) at any time during the Term:

(a) Termination of Lease. The Lease Term shall terminate as of the date of the Taking and all Rent shall be apportioned as of the date of termination.

(b) Lessor's and Lessee's Shares. Lessor and Lessee shall allocate any condemnation award for the Taking according to their respective interests in the Premises. Lessee's interest in the Premises shall include, without limitation, the value of its lost business, goodwill, the value of the Buildings and other Improvements on the Premises and costs of relocation. The values of Lessor's and Lessee's respective interests in the Premises shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award, but if such court of law or other trier of fact is not willing to so determine Lessor's and Lessee's respective interests in the Premises, and the parties cannot reach mutual agreement with respect thereto within thirty (30) days after the amount of the award is established, then those interests shall be determined by arbitration pursuant to *Section 16* below. The value of the respective interests of the Lessor and Lessee in the Premises shall be determined without regard to any early termination of this Lease due to any taking or condemnation and shall assume that all Renewal Terms have been exercised.

8.2 Partial Taking. In the event of a Taking which is not a Taking described in *Section 8.1* above or a Temporary Taking, as defined below (a "Partial Taking"):

(a) The Term of this Lease (except as hereinafter provided) shall continue but the Annual Base Rent to be paid by Lessee hereunder shall thereafter be reduced in the ratio that the rental value of the portion of the Premises which is subject to the Taking bears to the rental value of the entire Premises at the time of the Taking, and the threshold for determining Percentage Rent shall be adjusted proportionally.

(b) The condemnation award for any Partial Taking shall be divided and shared by Lessor and Lessee as provided in *Section 8.1 (b)* above.

(c) After a Partial Taking Lessee shall proceed diligently, to the extent the portion of the condemnation award paid to Lessee is sufficient for such purpose, to make an adequate restoration, repair or reconstruction of the part of the Building or Improvements not taken so as to restore, repair or reconstruct the Premises, to the extent practicable, to a functional unit of substantially the same usefulness, design, construction and quality prior to such Partial Taking.

8.3 Successive Takings. In case of a second or any other additional Partial Taking from time to time, the provisions hereinabove contained shall apply to each Partial Taking.

8.4 Temporary Taking.

If the whole or any part of the Premises or Lessee's interest under this Lease is taken or condemned by any competent authority for its temporary use or occupancy (i.e., a Taking for less than one hundred eighty (180) days), the Rent shall abate in same proportion and for the time period that the Premises (or portion thereof) cannot be utilized or operated for the same purpose and in the same manner as they were being used or operated prior to such taking or condemnation, except to the extent of any rent loss insurance proceeds actually collected by or paid to Lessor. In such case, the Annual Base Rent threshold for calculating Percentage Rent shall be adjusted proportionally.

Subject to the foregoing, to the extent that Lessee may be prevented from so using or occupying the Premises pursuant to the terms of the order of the condemning authority, Lessee shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Lessee to be performed and observed, as though such Taking had not occurred. In the event of any such Temporary Taking, Lessee shall be entitled to receive the entire amount of any condemnation award made for such Taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the Expiration Date of this Lease, in which case such award shall be apportioned between Lessor and Lessee as of such date of expiration of the Term.

8.5 Voluntary Conveyance.

A voluntary conveyance by Lessor under threat of a Taking, a Partial (Taking or a Temporary Taking in lieu of formal proceedings shall be deemed a Taking, or a Partial Taking, or Temporary Taking, as the case may be, within the meanings of this Section 8.

SECTION 9: LESSEE TO COMPLY WITH LAWS

Lessee shall at all times during the Term of this Lease, at Lessee's sole cost and expense perform and comply in all material respects with laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated which are applicable to the Premises and the business of Lessee conducted with respect thereto. Upon request of Lessee, Lessor shall reasonably cooperate, at Lessee's sole cost and expense, to facilitate such performance and compliance, but nothing herein shall be interpreted to expand Lessee's obligations with respect to the clean up or remediation of Hazardous Materials (which obligations are set forth elsewhere in this Lease), and if Lessee is required by any governmental authority to clean up or remediate Hazardous Materials which are the primary responsibility of Lessor, then Lessee shall have contribution rights against Lessor.

SECTION 10: INSPECTION BY LESSOR

10.1 Inspection of Premises.

Lessor hereby retains the right to enter upon and inspect the Premises (other than inside the occupied Residential Units and secured areas) at reasonable times and upon reasonable written notice, and each Sublease shall contain a provision as to this reserved right. Lessor further reserves the right to enter upon the Premises, without prior notice in the event of an emergency condition or situation, as reasonably determined by Lessor. In addition, and notwithstanding the other provisions of this Lease, in the event of an emergency, Lessor, at its option, may without notice enter the Premises to effect repairs needed as a result of the emergency. The cost and expense of such emergency repairs shall be due and paid by Lessee or the applicable Residential Unit Owner to Lessor on demand as Additional Rent. Lessor shall assume no duty or liability with respect to the Premises or their maintenance as a result of such inspection.

10.2 Prospective Tenants and Prospective Purchasers.

During the last twelve (12) months of the Term, Lessee shall permit inspection of the Premises (other than inside the occupied Residential Units) at reasonable times upon reasonable advance notice and for reasonable periods by or on behalf of prospective tenants and prospective purchasers.

SECTION 11: ASSIGNMENT AND SUBLETTING

11.1 Assignment

(a) Lessor's Right to Approve Assignee. Except as provided in *Section 4*, *Section 11.1* and *Section 15*, Lessee shall have no right to assign or transfer this Lease, or any interest therein, or any right or privilege appurtenant thereto, without the prior consent of Lessor, which shall not be unreasonably withheld or delayed. Lessor may refuse to approve the assignment or transfer unless the Lessee establishes to the satisfaction of the Lessor, exercising its reasonable business judgment, that the assignee or transferee (A) is an Experienced Property Management Company (or has contracted with an Experienced Property Management Company to manage the Residential Units), and (B) has the financial capability to perform Lessee's obligations under the Lease, and (C) will assume all obligations of the Lessee under the Lease. Without regard to other provisions herein, any proposed assignee, other than assignees of Building Lots, Buildings (or portions thereof) located thereon containing Residential Units and such Residential Units within the Project, shall demonstrate to Lessor's reasonable satisfaction, that such assignee, its principals, employees, or affiliates possess both the financial capability of completing and operating the Project, and collectively have demonstrated at least five (5) years' experience in owning and operating projects similar to the Project

(b) Exceptions. Notwithstanding the foregoing, Lessee may, without Lessor's consent but only after written notice to Lessor, assign or transfer this Lease or Lessee's interest in the Premises (i) to any Affiliate of Lessee, or (ii) to an entity which acquires all or substantially all of Lessee's equity or assets: provided, however, that any such assignee or transferee, as a condition of such assignment or transfer, must assume all of Lessor's obligations under the Lease, and must be an Experienced Property Management Company, or must contract with an Experienced Property Management Company to manage the Residential Units. An "Affiliate of Lessee" means an entity that, directly or indirectly, (i) owns or controls Lessee, (ii) is owned or controlled by Lessee, or (iii) is under common ownership or control with Lessee. For purposes of the foregoing sentence only, an entity will be deemed to "control" another entity if such entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other entity, whether through the ownership of voting interest, by contract, or otherwise. Such assignment or transfer shall not release Lessee or any Guarantor from its obligations under this Lease.

(c) Other than an assignment or transfer pursuant to *Section 11.1(b)(ii)* no assignment or transfer shall result in the release of Lessee or any Guarantor from its obligations under the Lease or any Guaranty without Lessor's written approval of such release. Upon an assignment or transfer pursuant to *Section 11.1(b)*, Lessee and any Guarantor shall be unconditionally released from all further obligations under this Lease and any Guaranty. No consent to an assignment or transfer shall waive Lessor's right to approve or deny any subsequent assignment or transfer.

11.2 Subletting.

Lessee may, without Lessor's consent, enter into one or more subleases for any part or parts of the Premises for any portion of the Term, including the Subleases, provided that (i) any Residential Unit Owner or other subtenant must use the subleased portion of the Premises for a Permitted Use, and (ii) any sublease, including the Subleases, shall be subordinate to this Lease; *provided however*, that any sublease for substantially all of the Premises shall be deemed to be an assignment, which is subject to *Section 11.1* above. Except as otherwise provided in the Subleases, no sublease by Lessee shall relieve Lessee of any obligation to be performed by Lessee under this Lease, whether arising before or after the Sublease.

11.3 Assignment to Property Owners' Association.

Apart from *Section 11.1* above, at any time after the recording of the Declaration, without Lessor's

consent, Lessee, as "Declarant" under the Declaration, may assign all or any portion of its right, title and interest in the Lease to the Association that is formed pursuant to a Declaration under O.C.G.A. § 44-3-220, *et seq.*, and, no later than the final sale, transfer, assignment, conveyance or other disposition of a leasehold or ownership interest in the Building Lot and Building (or portion thereof) located thereon containing a Residential Unit in the final phase of this Project, Lessee shall assign all of its then remaining right, title and interest in the Lease to the Association. Upon assignment by the Lessee of all of its then remaining right, title and interest in the Lease to the Association (the "Remaining Assignment"), the Association shall be deemed to have assumed all duties, obligations, responsibilities and liabilities of "Lessee" hereunder attributable to the time period from and after the effective date of such Remaining Assignment, including the obligation and liability to pay to the Lessor all Rent under the Lease, which includes Annual Base Rent, Percentage Rent, and Additional Rent, and Lessee shall be deemed released and discharged from any and all duties, obligations, responsibilities and liabilities of "Lessee" hereunder, except for those applicable to the time period prior to the effective date of the Remaining Assignment, all without the necessity of any further agreement, instrument or other document, other than the Remaining Assignment.

SECTION 12: ESTOPPEL CERTIFICATES

12.1 Lessor's Estoppel. Lessor, within ten (10) business days after written request to Lessor from Lessee, or any Leasehold Mortgagee (or prospective Leasehold Mortgagee), will furnish a written estoppel certificate, in the form reasonably acceptable to Lessor, and also including the following items:

- (a) The amount of the Rent payable under this Lease, and the date to which Rent has been paid;
- (b) The Commencement Date, the Construction Commencement Date, Date and the Expiration Date of this Lease;
- (c) Whether or not the Lease is unmodified and in full force and modifications, whether or not the same are in full force and effect as modified the Operations Commencement effect (or, if there have been and identifying the modifications);
- (d) Whether or not to Lessor's actual knowledge Lessee is in Default and specifying the nature of any such Default; and,
- (e) Such other matters as Lessee or the Leasehold Mortgagee may reasonably request to the extent that pertaining to the Lease such matters are within the actual knowledge of Lessor.

12.2 Lessee's Estoppel. Lessee, within ten (10) business days after written request of Lessor, will furnish a written estoppel, duly acknowledged, as to:

- (a) The Commencement Date, the Construction Commencement Date, Operations Commencement Date and the Expiration Date of this Lease;
- (b) Whether this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except to the extent such writings are set forth);
- (c) Whether all conditions to the effectiveness of this Lease required to be satisfied by Lessor have been satisfied (or stating those that have not been satisfied);
- (d) That there are no defenses or offsets against the enforcement of this Lease by Lessor (or stating those claimed by Lessee);
- (e) The amount of advance Rent, if any, paid by Lessee and the date through which such advance Rent has been paid;
- (f) Whether Lessee's interest in this Lease has been assigned, pledged, mortgaged and/or hypothecated and if it has been, then the name and notice address for the person or entity holding such interest;

(g) Whether the Premises have been sublet in whole or in part, and if it has been, then the name and notice address of the subtenant(s); and

(h) Such other matters as Lessor may reasonably request to the extent that such matters are within the actual knowledge of Lessee.

12.2 Failure to Furnish. Upon the failure of Lessor or Lessee, as the case may be, to furnish such statements within the said ten (10) business day period after written request therefor, it shall be conclusively presumed that the Lease is in full force and effect and that there are no Defaults hereunder by the party making such request.

SECTION 13: DEFAULT AND REMEDIES

13.1 Default by Lessee.

(a) The following events are Defaults by Lessee, and if not cured within the applicable time periods are Events of Default by Lessee:

(i) Lessee fails to pay any Rent at the time set forth] in this Lease, and such failure continues for ten (10) days after Lessor gives written notice of such failure to Lessor, or Lessee fails to perform any other covenant to be performed by Lessee under this Lease and continues to fail to perform the same for a period of thirty (30) days after Lessor gives written notice of such failure to Lessee; provided that if such covenant cannot reasonably be performed within such period but is reasonably capable of being cured, the time for cure shall be extended for the reasonable time necessary to perform such covenant, and if Lessee makes diligent and continuous efforts to cure the default, and gives Lessor reports at least once a month outlining its efforts to cure then such default shall be deemed cured for as long as Lessee diligently and expeditiously pursues the cure, or

(ii) Lessee is adjudicated bankrupt; or if a permanent receiver is appointed for Lessee's interest in the Premises and such receiver is not removed within sixty (60) days after written notice from Lessor to Lessee to obtain such removal; or if Lessee voluntarily or involuntarily takes advantage of any debtor relief proceedings under any present or future law, whereby the Rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred; or if Lessee makes a general assignment for benefit of creditors; or if the premises or Lessee's effects or interests therein should be levied upon or attached under process against Lessee, not satisfied or dissolved within ninety (90) days after notice from Lessor to Lessee to obtain satisfaction thereof, or if any such proceeding shall have been commenced against it, in which an order for relief is entered or which remains undismissed for a period of ninety (90) days or more; or Lessee by any act or omission indicating its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties, or suffering any such custodianship, receivership or trusteeship to continue undischarged for a period of ninety (90) days or more, or

(iii) Any warranty or representation of the Lessee contained herein or in any document provided by Lessee to Lessor hereunder is untrue or misleading, in any material respect at the time made.

(b) Intentionally Omitted.

(c) Lessee's cure of any Default hereunder shall not relieve it of the obligation to pay any Late Fee or charge provided in the Lease.

13.2 Lessor's Remedies.

If an Event of Default by Lessee occurs, Lessor may exercise any or all of the following remedies:

(a) Without terminating the Lease, pursue any action at law or equity to collect any amount due to the Lessor, or to compel performance by Lessee or any other party obligated under the Lease, of any covenant

or other obligation of Lessee under the Lease.

(b) Subject to the limitations contained in *Section 13.2(d)*, terminate Lessee's right to possession of any portion of the Premises not subleased by Lessee, or designated as a common area or amenity of the Project, thereby terminating this Lease as to the remaining portion of the Land, and recover the following sums from Lessee:

(i) The unpaid Rent which had been earned up to and including the date of termination of this Lease;

(ii) The amount by which the unpaid rent which would have been earned after termination of this Lease until the time of award exceeds the amount of rental loss that Lessee proves could have been reasonably avoided;

(iii) The worth at the time of award (discounted at the then applicable Federal Discount Rate in the district in which the Premises are located plus one percent (1%)) of the amount by which the unpaid rent for the balance of the Term after the time of award Exceeds the amount of rental loss that Lessee proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform its obligations under this Lease.

(c) In lieu of, or in addition to, bringing an action for any or all of the recoveries described in this *Section 13.1(b)* above, bring an action to recover and regain possession of the Premises by dispossessory proceeding in the Magistrate Court, State Court, or Superior Court of Glynn County, Georgia.

(d) Lessor agrees it shall not terminate Lessee's right of possession or terminate the Lease in the event the Leasehold Mortgagee provides notice to Lessor of the foreclosure of the Leasehold Mortgage and Leasehold Mortgagee diligently prosecutes such foreclosure in compliance with the provisions of *Section 4* herein.

13.3 Lessor Default and Lessee's Remedies.

(a) Lessor shall be in default of this Lease in the event Lessor fails to perform any covenant to be performed by Lessor under this Lease and continues to fail to perform the same for a period of thirty (30) days after Lessee gives notice of such failure to Lessor; provided that if such covenant cannot reasonably be performed within such period, the time for cure shall be extended for the reasonable time necessary to perform such covenant, if Lessor makes diligent and continuous efforts to cure the default, and gives Lessee reports at least once a month outlining its efforts to cure.

(b) In the event of a Lessor default, Lessee may, in its discretion, terminate the Lease and/or pursue any action at law or equity to collect any amount due to the Lessee, or to compel performance by Lessor or any other party obligated under of any covenant or other obligation of Lessor under the Lease.

13.4 Force Majeure.

In the event either of the parties is unable to perform, or is delayed in its performance of a non-monetary obligation hereunder as a result of *Force Majeure*, the time within such obligation shall be performed shall be extended for a period equal to the amount of time that the *Force Majeure* event delayed performance, provided that such party makes diligent and continuous efforts to perform, and gives the other party reports at least once a month outlining its efforts to perform.

13.5 No Consequential or Punitive Damages.

Notwithstanding any other provisions of this Lease, under no circumstances shall Lessor or Lessee be liable to the other for any consequential, punitive, exemplary, incidental, indirect, or special damages arising out of acts or omissions of Lessor or Lessee, or a breach of this Lease by either party, including without limitation, damages for loss of profits, whether based upon contract, tort (including without limitation,

negligence, duty to warn and strict liability), breach of warranty or any other legal or equitable grounds.

13.6 Notice and Cure Periods.

Lessor and Lessee acknowledge and agree that no Event of Default shall be deemed to have occurred under this Lease unless and until any and all applicable grace, cure, and notice periods shall have expired.

13.7 Effect of Termination.

Subject to the provisions of *Section 4* above (relating to the rights of Leasehold Mortgagees), upon termination of this Lease under this *Section 13*, all rights and privileges of Lessee and all duties and obligation of Lessor hereunder shall terminate. Immediately upon such termination of the Lease, and without further notice to any other party, but subject to the provisions of *Section 4* above, Lessor shall have the right to assert, perfect, establish and confirm all rights reverting to Lessor by reason of such termination by any means permitted by law, including the right to take possession of the Premises together with all Improvements thereto, subject to Lessee's rights to remove its property as provided herein, and to remove all persons occupying the same and to use all necessary lawful force therefor and in all respects to take the actual, full and exclusive possession of the Premises and every part thereof as Lessor's original estate, thereby wholly terminating any right, title, interest or claim of or through Lessee as to the Premises or the Improvements or fixtures and alterations to the Improvements, and all personal property located on the Premises, all without incurring any liability to Lessee or to any person occupying or using the Premises for any damage caused or sustained by reason of such entry or such removal, except for damage resulting from Lessor's negligence or Willful Misconduct in effecting such removal.

13.8 No Waivers.

No failure by any party hereto to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach or Default thereof, and no acceptance of full or partial Rent during the continuance thereof, shall constitute a waiver of any such breach or of any such Default. No waiver of any breach or Default shall affect or alter this Lease (except to the extent of such waiver), which shall continue in full force and effect, or the rights of any party hereto with respect to any other then existing or subsequent breach or Default.

SECTION 14:

SALE OF RESIDENTIAL UNITS; MARKETING

14.1 Lessee's Rights with Regard to the Residential Units, Buildings and Building Lots.

Notwithstanding anything to the contrary in this Lease, if Lessee shall submit the Premises, or portions thereof, to the Property Association form of ownership, in accordance with the Property Owners' Association Act as provided in *Section 15* herein, Lessee shall have the right to market, sell, transfer, assign, convey and otherwise dispose of leasehold and/or ownership interests in individual Residential Units, Buildings (or portions thereof) and Building Lots pursuant to the Association Instruments for terms expiring no later than the Term of this Lease. Such rights of Lessee to market, sell, transfer, assign, convey and otherwise dispose of leasehold and/or ownership interests in individual Residential Units, Buildings (or portions thereof) and Building Lots shall not derogate from or relieve Lessee of its obligations to Lessor under this Lease in whole or in part, except as otherwise expressly set forth herein. References to a "Purchaser" or "Owner" of a Residential Unit, Building (or portion thereof) or Building Lot as used in this Lease, shall be construed to be references to the purchaser of the leasehold and/or ownership right, title and interest of Lessee in and to such a Residential Unit, Building (or portion thereof) and/or Building Lot created pursuant to the Declaration and other Association Instruments, and to such Purchaser's successors and assigns, in each instance during the period in which such person or entity holds such right, title and interest in and to such Residential Unit, Building (or portion thereof) and/or Building Lot and is synonymous with the term "Grantee/Subtenant" as set forth in the Subleases. The term "Lessee" shall mean and refer, from and after the date of Lessee's assignment or transfer of this Lease to the Property Owners Association created to acquire all right, title and interest of Lessee in and to the Premises, or its successors or assigns (the "Association"), the "Declarant" as described in the Declaration.

14.2 Effect of Lease on Purchasers/Subtenants of Residential Units, Buildings and Building Lots.

The rights, title and interests of each Purchaser, and any mortgagee of a Residential Unit, Building (or portion thereof) and/or Building Lot owned by or leased to a Purchaser in and to a particular Residential Unit, Building (or portion thereof) and/or Building Lot (a "Purchaser Mortgage") shall be and remain subordinate and inferior to the rights, title and interests of: (a) Lessee in and to this Lease and the leasehold estate conveyed to Lessee hereunder, to the extent the same has not been assigned to the Association, and (b) Lessor, such that, without limitation, no such Purchaser, or Purchaser Mortgagee, shall have any rights, title or interests in or to the Premises, or any portion thereof, which continue beyond the termination or expiration of this Lease.

14.3 Use of Residential Units, Buildings and Building Lots. Notwithstanding the sale, transfer, assignment, conveyance or other disposition of individual Residential Units, Buildings (or portions thereof) and/or Building Lots, it is understood and agreed by Lessor, Lessee, all Residential Unit Owners, all assignees, all Owners, all Purchasers, the Association, and any rental manager, that Purchasers may elect to rent their Units in accordance with their Subleases and the Association Instruments and applicable laws, including without limitation, Jekyll Island Ordinances. In any and all cases, the Purchaser must comply with all of the Annual Base Rent, Percentage Rent, Additional Rent, Residential Unit Transfer Fees and Special Residential Unit Transfer Fees and Taxes described elsewhere in this Lease, which shall be included in their respective Subleases.

14.4 Budget, Books and Accounts. Lessee agrees to maintain budgets and books of account for marketing, sale, transfer, assignment, conveyance or other disposition of individual Residential Units, Buildings (or portions thereof) and/or Building Lots.

SECTION 15:

PROPERTY OWNERS' ASSOCIATION; LESSOR'S RIGHTS AND POWERS; PURCHASER'S RIGHTS AND POWERS; LIENS; AND PERFORMANCE OF COVENANTS

15.1 Limitation on Lessor's Right to Terminate the Property Owners' Association. Notwithstanding anything in this Lease to the contrary, in accordance with O.C.G.A. § 44-3-220 *et seq.* of the Property Owners' Associations Act:

(a) Subject to the terms and conditions of this *Section 15*, after the recordation of the Declaration, neither Lessor, nor any successor in interest to Lessor, shall have any right or power to terminate, modify or disturb all or any part of the leasehold interest of any Residential Unit Owner for so long as the Residential Unit acquired by such Residential Unit Owner and Building (or portion thereof) and Building Lot in which such Residential Unit is contained exists; and

(b) In the event that Lessor acquires title to or any other interest in any Residential Unit, Building (or portion thereof) or Building Lot by any method whatsoever, the undivided interest thereby acquired by Lessor in the common elements of such Residential Unit, Building (or portion thereof) or Building Lot shall not be merged with Lessor's underlying interest in the Premises; but the two estates shall remain separate and divided so long as such Residential Unit, Building (or portion thereof), and Building Lot exists; and

(c) In the event of the termination of this Lease prior to the Expiration Date, each and every Residential Unit Owner for itself and its successors and assigns, shall attorn to Lessor for the unexpired share, in proportion to such portion of the Term, and shall pay and continue to pay to Lessor any Association fees then required to be paid under the Association Instruments and the Rent required to be paid under such Residential Unit Owner's Sublease, and provided such Residential Unit Owner attorns that their interest in the Residential Unit, Building (or portion thereof) and Building Lot will not be disturbed. Said attornment shall be effective immediately and automatically upon Lessor's termination of this Lease prior to the Expiration Date.

15.2 Property Owners' Association Instruments.

(a) Prior to submission of the Premises to the Property Owners' Association form of ownership in accordance with the requirements of the Property Owners' Association Act, Lessee shall deliver to Lessor the Association Instruments required by O.C.G.A. § 44-3-20 *et seq.* of the Property Owners' Association Act (the "Association Instruments") by which Lessee intends to submit the Premises to the Act and form of ownership in accordance with the provisions of *Section 15.2(c)*. None of the Association Instruments shall contain any terms that are inconsistent with the terms of this Lease, and to the extent of any inconsistency, the terms of this Lease shall control.

(b) Without limitation of any other term or provision of the Association Instruments, the Association Instruments shall provide the following:

(i) All Residential Units, the Buildings, Building Lots and Improvements and all other parts, area and portions of the Premises shall be subject to this Lease;

(iii) Lessee shall be the "Declarant" with the powers, duties and responsibilities to the fullest extent provided as set forth at O.C.G.A. § 44-3-220 *et seq.* of the Property Owners' Association Act;

(iv) The Residential Units, the Buildings and the Building Lots shall be subject to, and the Residential Unit Owners shall comply with the Code of Ordinances for Jekyll Island-State Park, as the same may be amended from time to time, provided that the same is not in contradiction to the terms and conditions of the Property Owners' Association Act or this Lease;

(v) Lessor shall be released and indemnified by the Lessee, the Association and the Residential Unit Owners from all liability with respect to the marketing, sale, sublease, use or operation of the Residential Units, the Buildings, the Building Lots and all other portions of the Premises.

(c) Lessor shall not be required or permitted to approve, correct or revise the Association Instruments, nor shall Lessor have any liability or responsibility with respect to such Association Instruments, except for the sole purpose of determining whether such Association Instruments reasonably comply with this Lease. Upon submission of such Association Instruments to Lessor to determine if such Association Instruments reasonably comply with this Lease, Lessor shall have thirty (30) days after receipt to confirm the same, and such confirmation of Lessor shall not be unreasonably withheld, conditioned or delayed and shall be deemed given unless written objections are received by Lessee within such period. Lessor shall execute the Association declaration (the "Declaration") as required by O.C.G.A. § 44-3-222 of the Property Owners' Association Act and such other Association Instruments required by the Act to be executed by the fee Owner of property that is subject to a ground lease. Upon return of the executed Association Instruments to Lessee by Lessor, Lessee shall record the Association Instruments as required by the Act.

15.3 Liability of Residential Unit Owners for Rent. The Declaration shall include the following provisions, which shall be incorporated in all deeds to the Residential Unit Owners.

The Land upon which the Residential Unit is located is owned by the State of Georgia, and is leased to Declarant pursuant to the Jekyll Island – State Park Authority Third Revised and Restated Ground Lease by and between the Jekyll Island-State Park Authority and Jekyll Seaside Retreat LLC, (the "Lease") dated on the Commencement Date above between Jekyll Island State Park Authority, and Declarant, as ground lessee. All terms and conditions of the Lease are incorporated herein by reference. The initial term of the Lease expires on January 7, 2089. The Ground Lease is renewable at the discretion of the Jekyll Island Authority subject to its powers and duties as set forth in the Jekyll Island-State Park Authority Act, O.C.G.A. § 12-3-230 et seq.

ALL RIGHTS AND INTERESTS IN THE RESIDENTIAL UNIT, BUILDING (OR PORTION THEREOF)

CONTAINING SUCH RESIDENTIAL UNIT AND BUILDING LOT ON WHICH SUCH BUILDING (OR PORTION THEREOF) IS LOCATED WILL TERMINATE UPON THE TERMINATION OF THE LEASE. NO OWNER OF ANY RESIDENTIAL UNIT, BUILDING (OR PORTION THEREOF) OR BUILDING LOT WILL HAVE ANY FURTHER INTEREST IN THE PROPERTY AFTER THE TERMINATION OF THE LEASE.

At any time after the recording of the Declaration but no later than the final sale, transfer, assignment, conveyance or other disposition of a leasehold or ownership interest in the Building Lot, Building (or portion thereof) located thereof and Residential Unit contained in such Building (or portion thereof) in the final phase of this Project, Lessee/Declarant will assign all of its right, title and interest in the Lease to the Property Owners' Association that is formed pursuant to this Declaration. Thereafter, the Association will be liable to the Lessor for all Rent under the Lease, which includes Annual Base Rent, Percentage Rent, and Additional Rent as defined in the Lease.

The Lease provides that in the event Lessee defaults by not performing any of its covenants (such as the covenant to maintain the Building, or to carry insurance on the Building), Lessor may perform, but is not obligated to perform, any defaulted covenant, and to charge all of its costs of performing the defaulted covenant, including reasonable attorneys' fees, to Lessee as Additional Rent

By purchasing a Residential Unit subject to the Declaration, each Residential Unit Owner agrees as follows:

- A. The Association is liable to the Lessor for the full amount of Rent as provided in the Lease. Residential Unit Owners are liable to the Lessor for their pro rata share of the Rent as calculated pursuant to Section 2 of the Third Revised and Restated Ground Lease. The Association is authorized to assess the Rent, including all Annual Base Rent, Percentage Rent and Additional Rent as defined in the Lease, including but not limited to Section 2.2(a)(iv), under the provisions of the Sublease each Residential Unit Owner enters into with the Association. The Association shall itemize on its invoice to all Residential Unit Owners the amount of any invoice which is an assessment of Rent. A Residential Unit Owner's payment of Rent to the Association shall reduce the amount of his, her or its obligation to the Lessor by an amount equal to the payment to the Association.
- B. Annually, within 20 days after the beginning of a calendar year, the Residential Unit Owner shall deliver a report to the Association (upon a form provided by the Association), under oath, reporting the total number of nights during the preceding year when the Residential Unit was rented, the dates upon which it was rented, and the Gross Revenue received during the preceding year with respect to the Residential Unit. In the event the Residential Unit Owner has entered into a contract with a professional rental agent for all of the preceding year, the Residential Unit Owner may cause the report to be filed by the rental agent. The report will be used by the Association and the Lessor for calculating the amount of Percentage Rent, if any, which is due with respect to the Residential Unit. In the event the Residential Unit Owner does not file the report, then the Association shall calculate the amount of Percentage Rent based on the highest Gross Revenue for any of the Units in the Association for which reports have been filed for the preceding year, and the calculation shall be binding upon the Residential Unit Owner for such year.
- C. Upon each sale, transfer, assignment, conveyance or other disposition of a Building Lot, Building (or portion thereof) located thereon containing a Residential Unit and such Residential Unit occurring after the initial sale, transfer, assignment, conveyance or other disposition of such Building Lot, Building (or portion thereof) and Residential Unit by Lessee to a Purchaser, the Residential Unit Owner shall pay Lessor, as Additional Rent payable at the time of closing of the sale, one percent (1%) of the gross purchase price (as defined in Section 2.3) of such sale, transfer, assignment, conveyance or other disposition by a Residential Unit Owner to a successor Residential Unit Owner. Lessee and Lessor shall each have a lien against the Residential Unit, Building (or portion thereof) containing such Residential Unit and Building Lot on which such Building (or portion thereof) is located that is sold, to secure the Residential Unit's

obligation to pay this Additional Rent, in accordance with O.C.G.A. §§ 44-3-225 and 44-3-232.

IN ACCORDANCE WITH THE PROVISIONS OF O.C.G.A. § 44-3-220, ET SEQ., THE OBLIGATION OF EACH RESIDENTIAL UNIT OWNER TO PAY RENT AND ANY OTHER AMOUNTS DUE BY THE RESIDENTIAL UNIT OWNER UNDER THE LEASE AND THE SUBLEASE BETWEEN LESSOR AND SUCH RESIDENTIAL UNIT OWNER SHALL BE SECURED BY LIEN UPON THE RESIDENTIAL UNIT, BUILDING LOT AND BUILDING (OR PORTION THEREOF) OF SUCH RESIDENTIAL UNIT OWNER. THE LIEN SHALL BE PRIOR TO ALL OTHER LIENS AND ENCUMBRANCES ON SUCH RESIDENTIAL UNIT, BUILDING LOT AND BUILDING (OR PORTION THEREOF,) EXCEPT LIENS FOR AD VALOREM TAXES. THE LIEN SHALL SECURE ALL COSTS INCURRED, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, IN CONNECTION WITH THE FORECLOSURE THEREOF AND MAY BE FORECLOSED BY ACTION, JUDGMENT, AND FORECLOSURE IN THE SAME MANNER AS IS PROVIDED FOR ANY OTHER LIEN FOR THE IMPROVEMENT OF REAL PROPERTY. FOR PURPOSES OF THIS LIEN, "RENT" SHALL INCLUDE ALL OF THE REASONABLE COSTS INCURRED BY THE LESSOR IN THE PERFORMANCE OF ANY DEFAULTED COVENANT OF THE LESSEE, AS DESCRIBED IN O.C.G.A. §§ 44-3-225 and 44-3-232.

15.4 Rights and Obligations of Purchaser Mortgagees. For purposes of this *Section 15* only, the term "Residential Unit Owner" shall include any Purchaser Mortgagee who acquires title to or other interest in a Residential Unit and/or Building (or portion thereof) containing such Residential Unit and/or Building Lot on which such Building (or portion thereof) is located by reason of foreclosure or as a result of an acquisition by deed or other instrument in lieu of foreclosure, but only for the period during which such Purchaser Mortgagee holds title to such Residential Unit, Building (or portion thereof) and/or Building Lot.

15.5 Third Party Beneficiaries. Lessor and Lessee acknowledge and agree that the Residential Unit Owners on the Premises are intended third-party beneficiaries of this *Section 15*.

15.6 Conflicts and Omissions with Declaration or Property Association Instruments. Except as expressly set forth in this Lease, the Declaration and all Association Instruments are subordinate and subject to all provisions of this Lease. Notwithstanding anything in the Declaration or any Association Instrument, any provision in such Declaration or Association Instrument that is in conflict with this Lease shall be void *ab initio*, and any omission of a requirement, covenant, obligation or duty under this Lease from such Declaration or Association Instrument shall be deemed *ab initio* as incorporated by reference into such Declaration or Association Instrument. The effect of this Subsection 15.6 is limited by the provisions of Subsection 17.8 below concerning amendments to this Lease.

SECTION 16: LIMITED ARBITRATION

16.1 Limited Applicability.

For resolution of those disputes specifically and expressly specified in this Lease (allocation of insurance proceeds - *Section 6* above; allocation of condemnation proceeds - *Section 8.1(b)* above; dispute regarding evaluations; and no others), the dispute, controversy or claim arising out of this Lease shall be settled by arbitration as set forth in this *Section 16*. The arbitration shall be governed by the Rules of the American Arbitration Association ("AAA Rules"). In the event the AAA Rules shall cease being in effect or are materially modified so as to be inapplicable to the matters set forth in this Lease which are to be decided by arbitration, the parties shall agree upon substitute rules as similar as possible to the AAA Rules and if they promptly are unable to do so, either Lessor or Lessee may apply to the courts of general jurisdiction in the County of Glynn, State of Georgia to designate such substitute rules. If such Court fails or refuses to do so, the matter in question shall not be subject to arbitration.

16.2 Notice of Demand.

Either party may demand arbitration by notifying the other party in writing in accordance with the notice provisions of *Section 17.10* below. The notice shall describe the reasons for such demand, the amount involved, if any, and the particular remedy sought.

16.3 Response.

The party that has not demanded arbitration shall respond to the notice of demand within ten (10) calendar days of receipt of such notice by delivering a written response in accordance with the notice provisions of *Section 17.10* below. The response shall also describe counterclaims, if any, the amount involved, and the particular remedy sought.

16.4 Selection of Arbitrator.

The parties shall mutually designate an arbitrator or, in the absence of agreement of the parties, the arbitrator shall be selected pursuant to the AAA Rules.

16.5 Arbitration Hearing; Discovery; Venue.

The arbitration hearing shall commence within thirty (30) calendar days of selection of the arbitrator as described in *Section 16.4* above. The hearing shall in no event last longer than two (2) calendar days. There shall be no discovery or dispositive motion practice (such as motions for summary judgment or to dismiss or the like) except as may be permitted by the arbitrator; and any such discovery or dispositive motion practice permitted by the arbitrator shall not in any way conflict with the time limits contained therein.

16.6 Decision.

The arbitrator's decision shall be made in no event later than twenty (20) calendar days after the commencement of the arbitration hearing described in *Section 16.5* above. Absent fraud, collusion or Willful Misconduct by the arbitrator, or the arbitrator's exceeding his or her powers or the failure to follow applicable law or the existence of facts meeting the express provisions for appeal of the Georgia Arbitration Act, the award shall be final, and judgment may be entered in any court having jurisdiction thereof. The arbitrator may award specific performance of this Lease. The arbitrator may also require remedial measures as part of any award but shall not have the authority to award and shall not award punitive damages to any party. The arbitrator shall have the discretion to award attorneys' fees and costs to the prevailing party.

SECTION 17: MISCELLANEOUS

17.1 No Partnership or Joint Venture.

Nothing contained herein or in any instrument relating hereto shall be construed as creating a partnership or joint venture between Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for debts or obligations of Lessee or any other party.

17.2 Time of the Essence.

Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof. The word "day" means "calendar day" as used for computation of time periods herein and the computation of time shall include Saturdays, Sundays and holidays.

The phrase "business day" means any day on which commercial banks are generally open for business in the

State of Georgia. Any period of time that would otherwise end on a non-business day shall be extended to the next following business day.

17.3 Captions.

The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

17.4 Meaning of Terms.

Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

17.5 Lease Construed as a Whole.

The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Lessor or Lessee.

17.6 Severability.

If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

17.7 Survival.

Each provision of this Lease which may require the payment of money by, to or on behalf of Lessor or Lessee or third parties after the expiration of the Term hereof or its earlier termination shall survive such expiration or earlier termination.

17.8 Amendment.

This Lease may be amended only in writing, signed by both Lessor and Lessee.

17.9 Broker.

Lessor and Lessee each represent and warrant to each other that it has had no dealings with any real estate broker or agent in connection with this Lease, and that it knows of no real estate broker or agent who is or might be entitled to a commission in connection with this Lease.

17.10 Notices.

All notices, demands, requests, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, or by any Leasehold Mortgagee to either party shall be in writing and shall be deemed to have been duly given if (a) sent by a nationally recognized overnight delivery service, or (b) sent by registered or certified mail, return receipt requested, postage prepaid and sent to the following addresses:

Lessor:

Jekyll Island-State Park Authority
c/o Executive Director
100 James Road
Jekyll Island, GA 31527

With Copies To:

State of Georgia
Department of Law
40 Capitol Square
Atlanta, GA 30334
Attn: Division 2

Lessee:

Jekyll Seaside Retreat LLC
c/o Retreat Hotels and Resorts LLC
One Point Centre
4 Denny Road
Wilmington, Delaware 19809
Attn: Jas J. Singh/Glenn R. Brooks

Either party may change its notice address by giving notice thereof in accordance with this *Section 17.10*. All notices hereunder shall be deemed given: (a) if sent by certified mail, return receipt requested, postage prepaid, on the third (3rd) day after deposit in the U.S. mail; or (b) if sent by overnight courier, on the first (1st) business day after delivery to the courier.

17.11 Judgment Costs.

Should Lessor, without fault on Lessor's part, be made a party to any litigation instituted against Lessee, Lessee covenants to pay or reimburse to Lessor for the amount of any judgment rendered against Lessor and all reasonable costs and expenses, including reasonable attorneys' fees incurred by Lessor in connection with such litigation.

17.12 Interest.

Except as otherwise specifically provided herein, any amounts due from one party to the other pursuant to the terms of this Lease, including amounts to be reimbursed one to the other, shall bear interest ("Interest") from the due date or the date the right to reimbursement accrues at the prime rate of interest published in the Wall Street Journal or similar publisher of business statistical data, plus two percent (2%); provided, however, that such rate shall not exceed, in any event, the highest rate of interest which may be charged under applicable law without the creation of liability for penalties or rights of offset or creation of defenses. The due date or the date the right to reimbursement accrues for an unliquidated claim by either party shall be the date of judgment in a court of competent jurisdiction or the date of written acknowledgement of liability along with acknowledgement of the amount which is due by the party against whom the claim is made.

17.13 Consents and Approvals.

Whenever the consent or approval of Lessor or Lessee is required hereunder, such consent or approval shall not be unreasonably withheld, conditioned or delayed unless otherwise specified.

17.14 Governing Law.

This Lease shall be construed according to and governed by the laws of the State of Georgia.

17.15 Exhibits.

All exhibits referred to in this lease are attached to this Lease and are incorporated into this as if fully set forth in this Lease.

17.16 Counterparts.

This Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Each party may execute a facsimile or pdf counterpart signature page to be followed by an original counterpart. Each such facsimile or pdf counterpart signature page shall constitute a valid and binding obligation of the party signing such facsimile or pdf counterpart.

17.17 Remedies Cumulative.

It is understood and agreed, that the remedies herein given to either party shall be cumulative, and the exercise of any one remedy of such party shall not be to the exclusion of any other remedy.

17.18 Entire Agreement.

This Lease, the exhibits referred to herein, and any addendum executed concurrently herewith, are the final, complete and exclusive agreement between the parties and cover in full each and every agreement of every kind or nature, whatsoever, concerning the leasing of the Premises. All preliminary negotiations and agreements of whatsoever kind or nature are merged herein. Lessor has made no representations or promises whatsoever with respect to the Premises, except those contained herein, and no other person, firm or corporation has at any time had any authority from Lessor to make any representations or promises on behalf of Lessor, and Lessee expressly agrees that if any such representations or promises have been made

by others, Lessee hereby waives all right to rely thereon. No verbal agreement or implied covenant shall be held to vary the provisions hereof, any statute, law or custom to the contrary notwithstanding. This Lease amends and supersedes the Original Lease.

(Signatures contained on following pages)

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Third Revised and Restated Ground Lease as of the latter date written below, and with an effective date of September 1, 2024.

LESSOR:

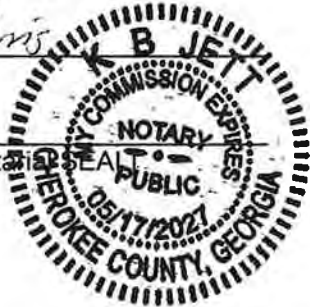
Jekyll Island-State Park Authority, a public Corporation and instrumentality of the State of Georgia

By: [Signature]
Name: Dale Atkins
Title: Chairman

Signed, sealed and delivered before me
this 20th day of August, 2024
in the presence of:

[Signature]
Witness

[Signature]
Notary Public [Notarial SEAL]



ATTEST:

By: [Signature]
Name: William H. Gross
Title: Secretary/Treasurer

LESSEE:

Jekyll Seaside Retreat LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

Signed, sealed and delivered before me
this _____ day of _____, 2024
in the presence of:

Witness

Notary Public [Notarial SEAL]

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Third Revised and Restated Ground Lease as of the latter date written below, and with an effective date of September 1, 2024.

LESSOR:

Jekyll Island-State Park Authority, a public Corporation
and instrumentality of the State of Georgia

By: _____
Name: _____
Title: _____

Signed, sealed and delivered before me
this _____ day of _____, 2024
in the presence of:

ATTEST:

By: _____
Name: William H. Gross
Title: Secretary/Treasurer

Witness

Notary Public [Notarial SEAL]

LESSEE:

Jekyll Seaside Retreat LLC, a Delaware limited liability
company

By: *Glenn R. Brooks*
Name: Glenn R. Brooks
Title: President

Signed, sealed and delivered before me
this 4th day of September, 2024
in the presence of:

[Signature]
Witness

Sara Lee Jinks
Notary Public [Notarial SEAL]

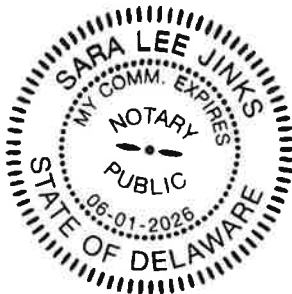


EXHIBIT A - LEGAL DESCRIPTION OF THE PROPERTY

All of that lot, parcel or tract of land, lying and being in the 25th Georgia Militia District, Jekyll Island, Glynn County, Georgia as shown on a survey prepared by C. Teeple Hill, G.R.L.S. No. 3081, entitled "A Boundary Survey of: Tract 1, Conservation Area-A, Conservation Area-B", dated 7/24/15, last revised 9/18/15, said tract of land being shown as Tract 1 and being more particularly described as follows:

Commencing at a 5/8" iron rebar found having a Georgia State Plane Coordinate System, East Zone NAD83, coordinates of: NORTHING: 379533.257, EASTING: 891900.461; thence proceed with a curve, turning to the left with a radius of 6136.30', a chord bearing of S 15°38'06" W, and a chord length of 140.00', thence along the arc of said curve a distance of 140.00' to a capped iron rebar set, said point also being the POINT OF BEGINNING; thence S 75°01'07" E a distance of 85.00' to a capped iron rebar set; thence N 15°20'54" E a distance of 77.53' to a capped iron rebar set; thence S 73°18'38" E a distance of 297.64' to a capped iron rebar set; thence S 13°53'48" W a distance of 931.19' to a capped iron rebar set; thence N 73°20'04" W a distance of 230.00' to a capped iron rebar set; thence N 13°33'06" E a distance of 330.00' to a capped iron rebar set; thence N 73°18'10" W a distance of 150.00' to a capped iron rebar set; thence N 13°17'45" E a distance of 11.45' to an iron rebar found; thence N 13°18'56" E a distance of 329.14' to an iron rebar found; thence with a curve turning to the right with a radius of 6136.30', a chord bearing of N 14°08'14" E, and a chord length of 180.79', thence along the arc of said curve a distance of 180.80' to the POINT OF BEGINNING; said tract of land having an area of 6.892 acres more or less.

EXHIBIT B- DEFINITIONS

The capitalized terms used in the Lease shall have the following definitions, unless the context in which they are used clearly provides a different definition:

Additional Rent is defined in Section 2.5.

Affiliate means, with respect to Lessee, any firm, partnership, corporation or other legal entity that, directly or indirectly, (i) owns or controls Lessee, (ii) is owned or controlled by Lessee, or (iii) is under common ownership or control with Lessee. In addition, unless the consequences of such relationship for the purposes of this Lease are expressly waived in writing by the Lessor after full disclosure by the Lessee, the term "Affiliate" also includes any entity currently affiliated with Lessee as a partner or joint venturer with respect to any commercial venture, whether or not such venture includes this Lease.

Alternate Current Year Land Value -- In the event, and only in the event that (i) the Glynn County Tax Assessor for any reason does not for a tax year issue an Assessor's Current Year Land Value for a Building Lot for a Sublease Year (irrespective of whether such Assessor's Current Year Land Value changes or does not change from the previous tax year), or (ii) if the current year Assessor's Current Year Land Value appraisal process is "frozen" or otherwise limited by any law, legislation, ordinance or policy, the Alternative Current Year Land Value shall be used for such Sublease Year. Alternative Current Year Land Value is calculated from the most recent Assessor's Current Year Land Value, adjusted by the "Alternative Annual Adjustment." The Alternative Annual Adjustment shall continue to be applied only so long as the events in subsection (i) or (ii) exist. The Alternative Annual Adjustment shall be calculated by multiplying the most recent Assessor's Current Year Land Value by a fraction, the numerator of which shall be the CPI-U (defined below) for the month of September, and the denominator of which shall be the CPI-U for September that is one (1) year previous. As used in this Lease, the term "CPI-U" shall mean the Consumer Price Index for All Urban Consumers - All Items (1982-1984=100), as published by the United States Department of Labor, Bureau of Labor Statistics. So long as the events in subsection (i) or (ii) continue to exist for consecutive years, the next following year's determination shall be calculated by applying the Alternative Annual Adjustment to the preceding Alternate Current Year Land Value. Upon the next determination and issuance of an Assessor's Current Year Land Value, the Alternative Current Year Land Value shall no longer be used, *provided however* that there shall be no recalculation (or "look back" provision) of Annual Base Rent for the Sublease Years in which the Alternative Current Year Land Value was utilized to establish rent, regardless of whether such recalculation would increase or decrease the rent previously paid for such Sublease Years.

Annual Base Rent, as applicable to the Lessee is defined in Section 2.2(a) as distinguished from Annual Base Rent applicable to the Resident Unit Owner which is described in Section 2.2(a)(iv).

Assessor's Current Year Land Value - means the fair market value for a Building Lot as determined by the Glynn County Tax Assessor for a tax year, regardless of any freeze or adjustment of the assessed value or of the property tax due for any reason. The Lessor shall use its best efforts to obtain such fair market value each tax year from the Glynn County Tax Assessor's office in the form and manner then utilized by the Glynn County Tax Assessor's Office for furnishing such fair market. In the event Lessor is unable to obtain the current fair market value from the Glynn County Tax Assessor's Office, then the Lessee shall be permitted, forty-five (45) days after Lessee provides notice thereof to Lessor, to secure from the Glynn County Tax Assessor's Office such fair market value for such Building Lot.

- (i) Should the amount of the current fair market of a Building Lot not be available from the Glynn County Tax Assessor's Office, same shall be computed by subtracting from the aggregate fair market value of such Building Lot and the Building and any miscellaneous improvements located thereon: (a) the current fair market value of such Building and (B) the current fair market value, if any, of any such miscellaneous improvements (if and only if the Glynn County Tax Assessor verifies such fair market value of such miscellaneous improvements. If the fair market value of such miscellaneous improvements includes any land value, Lessor or Lessee, as the case may be, shall use its best efforts to have the Glynn County Tax Assessor provide a fair market value that does not include any

land value.

(ii) In the event that neither the fair market value of the Building Lot nor the Building is available from the Glynn County Tax Assessor's Office, the fair market value for a Building Lot as determined by the Glynn County Tax Assessor for the immediately preceding tax year shall be increased or decreased in the same annual percentage as the average annual percentage increase or decrease in the fair market value of such Building Lot, from the most recent tax year prior to such immediately preceding tax year for which the Assessor's Current Land Value was established, **to** such immediately preceding tax year, with same being a conclusive determination of the fair market value of the Building Lot for the current Sublease Year.

(iii) Should the fair market value as determined by the Glynn County Tax Assessor of a Building Lot be appealed by an Owner the Subtenant, then such fair market value then in effect as determined by the Glynn County Tax Assessor, shall continue to be in effect until the appeal is resolved. Thereafter, should the appeal result in an increase or decrease such fair market value, the Annual Base Rent payments during said appeal period shall be adjusted to reflect the revised fair market value and the increased rent shall be paid to Lessee within 40 days of the decision, or the decreased Annual Base Rent shall be deducted from the next Annual Base Rent billing by Lessee.

Association is defined in Section 14.1.

Association Instruments is defined in Section 15.2(a).

Buildings are defined in Section 1.4(a) and is encompassed in the term *Improvements* as defined therein.

Building Lot – any plot or parcel of land on which a Building or portion containing a Residential Unit designated for separate occupancy as shown on a recorded subdivision plat for the Project and subject to a declaration pursuant to O.C.G.A. § 44-3-220 *et seq.* is located.

Commencement Date is defined in the first paragraph of the Lease.

Construction Commencement Date means the day on which construction of the Project commences, which shall be deemed to be the date that the first applicable building permit for a Building within the Project is issued.

Declaration is defined in Section in Section 15.2(c).

Development Agreement is defined in the second recital of the background. Further, as provided in Section 1.1, the provisions of the Development Agreement are expressly incorporated into the provisions of this Lease as if such provisions are expressly set forth herein; provided, however, where a conflict appears between the terms of the Development Agreement and the terms of this Lease (without regard to the incorporated such terms) the latter will control.

Experienced Property Management Company means a property management company with substantial experience in the management of residential developments.

Expiration Date is defined in Section 1.1(a).

Force Majeure means an Act of God, or similar event which delays performance of a non-monetary obligation hereunder, and which is beyond the reasonable control of the party which is otherwise obligated to perform the obligation, including but not limited to (A) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (B) riot, insurrection, acts of terror or terrorism or other civil disorder affecting completion of performance; (C) labor strikes or shortage of labor or materials; (D) delays due to the actions (or inactions) of governmental or quasi-governmental agencies or (E) earthquakes, or unusual and extreme weather conditions or so-called "Acts of God."

Gross Residential Unit Revenue means the total amount in dollars Lessee derives from the operation of the Residential Units from rentals of Residential Units, Buildings, and/or Building Lots held by the Lessee. There shall not be deducted from Gross Residential Unit Revenue any income, excess profit, franchise, or other taxes based upon or measured by Lessee's income, and no deduction shall be allowed for uncollected or uncollectible credit amounts. However, notwithstanding anything to the contrary in this Lease, "Gross Residential Unit Revenue" shall not include (or there shall be deducted therefrom): (1) any sums collected on revenue and paid out by Lessee for excise tax (including, but not limited to, any hotel-motel tax, bed tax or occupancy tax), luxury tax, use tax or gross receipts tax imposed by any legally organized and constituted governmental authority; (2) the amount of any refunds, credits, allowances and adjustments to Gross Residential Unit Revenue provided the related sales were previously included in Lessee's Gross Residential Unit Revenue; (3) optional gratuities or tips received by or for the account of employees of Lessee, a subtenant, sublessee, or concessionaire in addition to or in lieu of salary or compensation for employment (but excluding service charges or similar mandatory charges or fees); (4) insurance or condemnation proceeds recoverable by Lessee, a subtenant, sublessee, or concessionaire; (5) management commissions earned by any management company, including, but not limited to, for management services rendered for any portion of the Premises; (6) any revenues or other proceeds received from the sale, transfer, assignment, conveyance or other disposition of the Residential Units, Buildings, Building Lots or Lessee's interest in all or any portion of the Premises; or (7) any revenue which is included in Gross Food and Beverage Revenue or Gross Other Revenue.

Gross Food and Beverage Revenue means the total amount in dollars Lessee derives from the operation of the Premises, and from sales, whether for cash or on credit, or partly for cash and partly on credit, of all food and beverages in or about the Residential Units, Buildings, and/or Building Lots (collectively, "Food and Beverages"). There shall not be deducted from Gross Revenue any income, excess profit, franchise, or other taxes based upon or measured by Lessee's income, and no deduction shall be allowed for uncollected or uncollectible credit amounts. However, notwithstanding anything to the contrary in this Lease, "Gross Food and Beverage Revenue" shall not include (or there shall be deducted therefrom): (1) any sums collected on sales of Food and Beverages to customers and paid out by Lessee, a sublessee, subtenant, or concessionaire for any sales, cabaret, excise (including, but not limited to, the hotel-motel tax), luxury, use or gross receipts tax imposed by any legally organized and constituted governmental authority; (2) the amount of any refunds, credits, allowances and adjustments made on account of Food and Beverages, provided the sales of such Merchandise have been included in Lessee's Gross Food and Beverage Revenue; (3) any discounts to employees of Lessee; (4) gratuities or tips received by or for the account of employees of Lessee, a subtenant, sublessee, or concessionaire in addition to or in lieu of salary or compensation for employment; (5) insurance or condemnation proceeds recoverable by Lessee, a subtenant, sublessee, or concessionaire; (6) management commissions earned by any management company, including, but not limited to, for management services rendered for any portion of the Premises; (7) any revenues or other proceeds received from the sale, transfer, assignment, conveyance or other disposition of the Residential Units, Buildings, Building Lots or Lessee's interest in all or any portion of the Premises or any personal property of Lessee which is not Merchandise held for sale in the ordinary course of business; or (8) any revenue which is included in Gross Residential Unit Revenue or Gross Other Revenue. Except for the foregoing exclusions and reductions, it is the intent of Lessor and Lessee that the term Gross Food and Beverage Revenue shall include the total amount in dollars Lessee (or any party acting in and through Lessee) derived from the sale of Food and Beverages in or about the Residential Units, Buildings, and/or Building Lots (including the total money consideration paid to Lessee by a subtenant, sublessee, or concessionaire operation within the Project or on the Premises), and from any and all income producing operations and activities of whatever nature conducted in, on, upon, from or through the Premises, whether by Lessee, a subtenant, sublessee, or concessionaire (but not any Residential Unit Owners), and whether or not the same shall have been specifically referenced or described herein as being includible within the meaning of the term Gross Residential Unit Revenue or Gross other Revenue.

Gross Revenue means the sum of Gross Resident Unit Revenue, Gross Food and Beverage Revenue, and Gross Other Revenue, to the extent actually collected by Lessee.

Gross Other Revenue means the total amount in dollars Lessee derives from the operation of the Residential

Units, Buildings, and/or Building Lots and from sales, whether for cash or on credit, or partly for cash and partly on credit, of all goods, wares, merchandise, and services of whatever kind and nature, (collectively, "Merchandise"), made in, on, upon, from, or through the Premises, excluding Gross Residential Unit Revenue and Gross Food and Beverage Revenue, which Merchandise shall include, but not be limited to: (1) conference, banquet and meeting room rentals, (2) parking revenues (reduced by expenses directly related to the operation of the parking facilities); (3) all e-mail, telegraph or telephone orders received or filled; all deposits not refunded by Lessee; (4) all sales of Merchandise made through vending machines and other machines including, but not limited to, laundry and dry cleaning machines; provided, however, that where Lessee receives only commissions on sales of Merchandise, such as sales from vending machines, only such commissions shall be included in Gross Residential Unit Revenue; and (5) all commissions on pay telephones, "pay television" and internet services. In addition, Gross Revenue shall include the total amount in dollars of all sales of any Merchandise made by any sublessee, subtenant or concessionaire in, on, upon, from, or through the Premises (but shall exclude rent or other sums payable by such sublessee, subtenant or concessionaire under the sublease or concession agreement). There shall not be deducted from Gross Other Revenue any income, excess profit, franchise, or other taxes based upon or measured by Lessee's income, and no deduction shall be allowed for uncollected or uncollectible credit amounts. However, notwithstanding anything to the contrary in this Lease, "Gross Other Revenue" shall not include (or there shall be deducted therefrom): (1) any sums collected on sales of Merchandise to customers and paid out by Lessee, a sublessee, subtenant, or concessionaire for any sales, cabaret, excise (including, but not limited to, the hotel- motel tax), luxury, use or gross receipts tax imposed by any legally organized and constituted governmental authority; (2) the dollar amount of any returns of Merchandise to shippers or manufacturers; (3) the amount of any refunds, credits, allowances and adjustments made on account of Merchandise claimed to be defective or unsatisfactory, provided the sales of such Merchandise have been included in Lessee's Gross Other Revenue; (4) the amount of any credit refunded upon any sale where the Merchandise sold, or some part thereof, is returned by the purchaser and accepted by Lessee, provided the Merchandise sold, or such part thereof, has been included in Lessee's Gross Other Revenue; (5) the sales price of any Merchandise returned by customers for exchange, provided the sales price of Merchandise delivered to the customer in exchange therefore shall be included in Lessee's Gross Other Revenue; or (6) any discounts to employees of Lessee; (7) gratuities or tips received by or for the account of employees of Lessee, a subtenant, sublessee, or concessionaire in addition to or in lieu of salary or compensation for employment; (8) insurance or condemnation proceeds recoverable by Lessee, a subtenant, sublessee, or concessionaire; (9) management commissions earned by any management company, including, but not limited to, for management services rendered for any portion of the Premises; (10) any revenues or other proceeds received from the sale, transfer, assignment, conveyance or other disposition of the Residential Units, Buildings, Building Lots or Lessee's interest in all or any portion of the Premises; or (11) any revenue which is included in Gross Food and Beverage Revenue or Gross Residential Unit Revenue. Except for the foregoing exclusions and reductions, it is the intent of Lessor and Lessee that the term Gross Other Revenue shall include the total amount in dollars Lessee derives from the operation of the Residential Units (including the total money consideration paid to Lessee by a subtenant, sublessee, or concessionaire operation on the Premises), and from any and all income producing operations and activities of whatever nature (except those included in Gross Residential Unit Revenue or Gross Food and Beverage Revenue) conducted in, on, upon, from or through the Premises, whether by Lessee, a subtenant, sublessee, concessionaire, but not any Residential Unit Owner, and whether or not the same shall have been specifically referenced or described herein as being includible within the meaning of the term Gross Other Revenue. In the event that Lessee or any of its partners or any Affiliate thereof becomes a subtenant or occupant of any space at the Premises at a rental less than the fair market rent for such space as of the date such sublease is executed, an amount equal to the difference between the fair market rent for such space and the rent which would be payable for such space (other than space used by Lessee or any Affiliate of Lessee solely to provide leasing, management, janitorial or other necessary services to the Premises) if it were subleased to an unrelated party, for the period of time that Lessee or such partner or affiliate remains a subtenant or occupant of such space shall be added to Gross Other Revenue.

Hazardous Materials means any (i) material, substance or waste that is of has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive, mutagenic or corrosive, including, without limitation, petroleum, or any petroleum derivative, solvents, heavy metals, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive problems and those

materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the state in which the Premises are located or the United States Government including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; all environmental laws of the state where the Premises is located; and any other environmental law, regulation or ordinance now existing or hereinafter enacted; (ii) any other substance or matter which results in liability to any person or entity from exposure to such substance or matter under any statutory or common law theory; and any substance or matter which is in excess of relevant and appropriate levels set forth in any applicable federal, state or local law or regulation pertaining to any hazardous or toxic substance, material, or waste, or for which any applicable federal, state or local agency orders or otherwise requires removal, remediation or treatment.

Hazardous Materials Laws shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

"Initial Stipulated Land Value" means, for a Building Lot, the following applicable amount, in lieu of Assessor's Current Year Land Value, to be used to calculate the Annual Base Rent to be charged, to a Residential Unit Owner under the Sublease to such Residential Unit Owner of such Building Lot, Building (or portion thereof) located thereon containing a Residential Unit and such Residential Unit pursuant to the provisions of Section 2.2(a)(iv), if, as of the time of the sale, transfer, assignment, conveyance or other disposition by Lessee to such Residential Unit Owner of the leasehold or ownership interest in such Building Lot, Building (or portion thereof) and Residential Unit the Glynn County Tax Assessor, has not yet issued, disclosed or published the Assessor's Current Year Land Value of or for such Building Lot:

Lot Numbers (as identified in the Plan)	Initial Stipulated Value
1-14	\$550,000
15-25	\$400,000

Such applicable Stipulated Land Value shall be used to calculate the Annual Base Rent to be charged, to a Residential Unit Owner under a Sublease for the time period commencing on the effective date of such Sublease and ending on December 31st of the year in which the Glynn County Tax Assessor, issues, discloses or publishes the Assessor's Current Year Land Value of or for the Building Lot that is the subject of such Sublease.

Interest is defined in Section 17.12.

Impositions are defined in Section 3.3.

Improvements are defined in Section 1.4(a).

JIA Design Guidelines mean the Design Guidelines adopted by the JIA in effect as of the Commencement Date and all subsequent amendments.

Land is defined in the Recitals and in Section 1.1, and excludes any Buildings or other Improvements, unless and until any such Buildings or other Improvements become the property of the Lessor as provided herein.

Lease Year means the twelve (12) month period immediately following the Commencement Date, and each successive twelve (12) month period during the Term.

Leasehold Mortgage means a mortgage, deed of trust, deed to secure debt, and any similar instrument by which Lessee conveys a collateral interest in its leasehold estate, as well as a security interest, including a

security interest in personal property, and a pledge and assignment of the Lessee's interest in this Lease; and modifications, replacements and consolidations of any of the foregoing.

Lessor means JEKYLL ISLAND-STATE PARK AUTHORITY, a public authority created by the General Assembly of the State of Georgia pursuant to O.C.G.A. §12-3-230 *et seq.* and deemed an instrumentality of the State of Georgia and a public corporation, or any successor agency or authority.

Lessor Beach Access Land is defined in Section 1.4(b).

Lessee means Jekyll Seaside Retreat LLC, a Delaware limited liability company, and any permitted assignee.

Operations Commencement Date means the first day upon which Lessee closes on the initial sale, transfer, assignment, conveyance or other disposition or sublease of a Residential Unit.

Percentage Rent is defined in Section 2.2(a)(iv).

Permitted Use is defined in Section 1.4.

Plans and Specifications are defined in Section 5.2(b).

"Pool Facilities" is defined in Section 1.4(a).

Premises is defined in Section 1.1.

Project means the design, construction, operation and management of the Buildings and other Improvements and sale, transfer, assignment, conveyance or other disposition of the Residential Units, Buildings (or portions thereof) and Building Lots which will constitute the residential community known at "Seaside Retreat at Jekyll Island" and will be constructed on the Land by the Lessee, together with all future improvements, additions and modifications thereto.

Purchaser or Owner of a Residential Unit, Building (or portion thereof) and/or Building Lot is defined in Section 14.1.

Purchaser Mortgagee is defined in Section 14.2.

Remaining Assignment is defined in Section 11.3.

Rent(s) as applicable to the Lessee is defined in Section 2.1 as distinguished from Rent applicable to the Resident Unit Owner which is described in Section 2.2(a)(iv).

Residential Unit(s) – is defined in Section 1.4(a).

Residential Unit Owner means each third party, who is not the Lessee and, as of or during any designated time, is the owner and sublessee of a Residential Unit, the Building (or portion thereof) containing such Residential Unit and the Building Lot on which such Building (or portion thereof) is located pursuant to the provisions of a Sublease.

Residential Unit Participation Fee -- a one-time Fee to be paid by Lessee to Lessor upon the initial sale, transfer, assignment, conveyance or other disposition of a Residential Unit, the Building (or portion thereof) containing such Residential Unit and the Building Lot on which such Building (or portion thereof) is located.

Residential Unit Transfer Fee -- a Fee to be paid on all assignments, conveyances, or transfers of a Sublease by to a successor Subtenant calculated at one percent (1.0%) of the net sales proceeds of such sale, transfer, assignment, conveyance or other disposition of a Sublease by a Residential Unit Owner to a successor Residential Unit Owner.

Sublease means each sublease of a Residential Unit, Building (or portion thereof) containing such Residential Unit and/or Building Lot on which such Building (or portion thereof) is located, entered into between Lessee and a Residential Unit Owner, in the form attached hereto as Exhibit C, which form contains the terms of Lessor's Standard Residential Property Lease.

Sublease Year means, in any Sublease, the twelve (12) month period immediately following the date of commencement of the term or such Sublease and each successive twelve (12) month period during such term.

Term is defined in Section 1.1 (a).

Willful Misconduct means an intentional, wrongful act of a person, or such person's Intentional disregard of a manifest duty, done either (i) with knowledge that such conduct will cause serious hardship to another person, or (ii) with wanton and reckless disregard of the possible consequences of such conduct.

Year means a calendar year, unless the context clearly specifies a "Lease Year."

EXHIBIT C
SUBLEASE
(See Attached)

AFTER RECORDING RETURN TO:
Lee A. Carmical
1528 Ellis Street
Brunswick, GA 31520

**GROUND SUBLEASE OF LOT _____
SEASIDE RETREAT AT JEKYLL ISLAND**

STATE OF GEORGIA
COUNTY OF GLYNN

THIS SUBLEASE (the "Sublease"), made and entered into this the ____ day of _____, 20____, (the "Effective Date") by and between **JEKYLL SEASIDE RETREAT LLC**, a Delaware limited liability company whose address for purposes of this Sublease is One Fox Pointe Center, Wilmington, DE 19809, hereinafter called the "Grantor/Sub-Lessor", and _____ of _____, hereinafter called the "Grantee/Sub-lessee(s)," or "Sub-lessee(s)" (the words "Grantor/Sub-Lessor" and "Grantee/Sub-lessee" and "Sub-lessee" shall inure to the benefit of and bind the respective estates, heirs, administrators, successors and assigns as the case may be; these terms shall include the plural where the context may require).

WITNESSETH:

WHEREAS, Sub-Lessor acquired a leasehold interest in certain land on which the "Project" (as hereinafter defined) will be constructed and operated pursuant to _____, as approved by the Jekyll Island - State Park Authority (hereinafter "JIA"); and

WHEREAS, pursuant to a certain land plan approved by JIA and recorded, or to be recorded, in the Glynn County land records and other approvals, a copy of which is attached to the "Ground Lease" (as hereinafter defined) as Exhibit A-1 (the "Plan"), Sub-Lessor is developing on such land (the "Land"), and intends to sell, residential units that are part of a Project known as **Seaside Retreat at Jekyll Island** and to provide for the operation of a Rental Management Program for such residential units; and

WHEREAS JIA and Sub-Lessor entered into a _____ (the "Ground Lease") to amend, revise and restate the lease previously entered into with regard to the Land, to rectify certain discrepancies and to add provisions regarding the development and operation of the Project on the Land and to otherwise govern the relationship between JIA and Sub-Lessor with respect to the Land, for the Term and pursuant to the conditions and provisions set forth herein.

WHEREAS, said Ground Lease contemplates the construction and operation of "**Seaside Retreat at Jekyll Island**," hereinafter referred to as the "Project," on the Land pursuant to a Declaration of Covenants, Conditions and Restrictions for Jekyll Seaside Retreat LLC, now or soon to be recorded, in the office of the Clerk of Superior Court of Glynn County, Georgia, as may be amended from time to time; and,

WHEREAS, Grantee/Sub-lessee desires to purchase a sublease for a certain Building Lot on which is constructed and located a Residential Unit, other appurtenant buildings, structures and other improvements (such Residential Unit and other appurtenant buildings, structures and other improvements shall hereinafter be referred to, collectively, as the "Improvements") (consisting of a sub-leasehold interest in a Building Lot and ownership interests in a Residential Unit and such other Improvements, sometimes also referred to, collectively, as the "Premises"), in the Project.

NOW THEREFORE, Grantor/Sub-Lessor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid to Grantor/Sub-Lessor, the receipt and sufficiency of which is

hereby acknowledged, has leased and rented and by these presents does lease and rent unto the Grantee/Sub-lessee and the Grantee/Sub-lessee does hereby agree to lease and take upon the terms and conditions which hereinafter appear, the following described property, hereinafter referred to as the "Residential Unit," to wit:

All that lot, tract or parcel of land situate lying and being at Jekyll Island, Glynn County, Georgia identified as Lot _____, Phase _____, SEASIDE RETREAT AT JEKYLL ISLAND pursuant to a survey entitled "_____", prepared for Jekyll Seaside Retreat LLC by Shupe Surveying Company, P.C., Teeple Hill GRLS No. 3081, _____, and recorded on the _____ at **Plat Drawer** _____, **Folio** _____, in the Office of the Clerk of Superior Court, Glynn County, Georgia.

To have and to hold unto the Grantee/Sub-lessee and Grantee/Sub-lessee's heirs and assigns, together with all and singular the rights, members, and appurtenances thereof, to the same being, belonging, or in anywise appertaining to the proper use, benefit, and behoof of the Grantee/Sub-lessee upon the terms and conditions set forth herein. This Sublease is executed subject to the real and personal property taxes for the current year and subsequent years, applicable zoning regulations and ordinances, and is subordinate and subject to all of the terms, provisions, conditions, rights, privileges, obligations, easements and liens set forth and contained in the **Declaration**, the **Ground Lease**, and that certain "**Jekyll Island State Park Authority General Notice and Property Restrictions**" (hereinafter the "General Notice"), recorded at **Book 7-Q, Page 316 et seq.**, in the real property records of the Clerk of the Superior Court of Glynn County, Georgia together with those restrictions, easements and limitations of record created thereby.

SECTION 1 - PREMISES, TERM, REPRESENTATIONS, USE OF PREMISES AND DEFINITIONS

1.1 Premises Subleased. For and in consideration of Sub-lessee's covenant to pay the Rent and other sums provided for herein, and the performance of the other obligations of Sub-lessee hereunder, Grantor/Sub-Lessor Subleases to Sub-lessee, and Sub-lessee Subleases from Grantor/Sub-Lessor, the Building Lot together with the Improvements collectively, the Premises) in which Grantor/Sub-Lessor holds or claims a real property interest, currently located and/or hereafter constructed thereon. There is no option provided or available to the Sub-lessee to purchase the fee interest in the Residential Unit. There shall be no merger of the Sub-leasehold interest and the fee simple interest in the Premises by operation of law.

1.2 Term and Expiration of Sublease.

(a) *Term.* The term of this Sublease ("Term") shall commence on the Effective Date and shall expire at midnight on the 7th day of January, 2089, (the "Expiration Date"), unless terminated earlier as provided herein or extended as set forth in Section 1.2(b) below or by the terms of the Ground Lease.

(b) *Automatic Renewal.* The term of this Sublease shall automatically extend upon, and consistent with, any extension or renewal of the Ground Lease unless terminated earlier as provided herein.

(c) *Expiration of Term.* Sub-lessee shall vacate the Premises promptly upon the expiration of the Term of this Sublease. Any holding over of the Premises by Sub-lessee after expiration of this Sublease without written consent from Grantor/Sub-Lessor shall be prohibited and subjects Sub-lessee to immediate dispossession, and Sub-lessee to be considered a tenant-at-sufferance and not a tenant-at-will. There shall be no renewal of this Sublease by operation of law.

1.3 Grantor/Sub-Lessor's Representations. Grantor/Sub-Lessor represents, acknowledges and covenants that:

(a) *Title.* The term "Building Lot," as used in this Sublease, does not include any Improvements, so long as such Improvements are owned and titled in Sub-lessee's name. Fee simple title to the Building Lot is vested in the State of Georgia, with such powers of disposition as vested by law in Jekyll Island – State Park Authority pursuant to O.C.G.A. § 12-3-241 and Grantor/Sub-Lessor through the Ground Lease, subject to such encumbrances as may be of record in the real property records of the Clerk of the Superior Court of Glynn County. Fee simple title to public land of the State of Georgia is not subject to lien or levy whatsoever. *Neal-Millard Co. v. Trustees of Chatham Academy*, 121 Ga. 208, 213-215 (1904); *B&B Elec. Supply Co. v. HJ. Russell Constr. Co.*, 166 Ga. App. 499, 503 (1983); 1982 Op. Att'y Gen. 82-91; 2009 Op. Att'y Gen. 2009-6.

(b) *Power and Authority.* Grantor/Sub-Lessor has full authority and power to enter into this Sublease and to

consummate the transaction provided for herein, pursuant to law and the terms of the Ground Lease and referenced herein.

(c) *Quiet Enjoyment.* For so long as Sub-lessee complies with all obligations set forth in this Sublease, including but not limited to making the required payments of Rent, Sub-lessee shall have the right to peacefully and quietly have, hold, occupy and enjoy the Premises, subject to the terms of this Sublease, without hindrance or molestation from Grantor/Sub-Lessor or any person or entity claiming by, through or under Grantor/Sub-Lessor.

(d) *Condemnation.* In the event of condemnation of all or any portion of the Building Lot by competent authority, Grantor/Sub-Lessor shall provide prompt notice to Sub-lessee and, if notified in writing by any Sub-lessee Mortgagee, shall honor the rights (if any) of such Sub-leasehold Mortgagee of the Sub-lessee to receive just compensation to the extent of the Sub-lessee's share of same.

1.4 Sub-lessee's Representations. Sub-lessee represents, acknowledges and covenants that:

(a) *Power and Authority.* This Sublease and all other documents executed and delivered by Sub-lessee have been duly authorized, executed and delivered by Sub-lessee and constitutes legal, valid, binding and enforceable obligations of Sub-lessee.

(b) *Nature of Sublease.* This is a "triple-net" ground Sublease wherein Sub-lessee, in addition to the payment of Rent, shall be directly responsible for the payment of any and all taxes, including land taxes; insurance; expenses; utility connection fees; utility usage charges; and the construction, maintenance, operation and repair with respect to the Premises; and that Grantor/Sub-Lessor shall have no obligation of any nature with respect to the Premises, except as specifically provided in this Sublease, the Declaration, and the Ground Lease. Under Georgia law this Sublease is an estate for years, and not a usufruct, and the parties agree that the rights of Grantor/Sub-Lessor and Sub-lessee are governed thereby. Sub-lessee is obligated to pay all applicable association dues, fees and assessments and is solely entitled to exercise all membership rights, subject to the conditions set forth in the Declaration.

(c) *Title to Improvements.* Title and ownership of all existing Improvements on the Building Lot on the Effective Date and any Improvements added or constructed thereafter during the Term vests in Sub-lessee, subject to assumption of the responsibilities and restrictions and duty to remove required of Grantor/Sub-Lessor upon the Expiration Date as provided in Section 5.6 of the Ground Lease. Sub-lessee shall have the right, however, during the two (2) years immediately prior to the Expiration Date, to remove any or all Improvements from the Premises at Sub-lessee's sole cost and expense, so long as Sub-lessee remediates the Building Lot to a clean and level condition as required under Jekyll Island Ordinances, or in the absence of applicable Jekyll Island Ordinances, those of Glynn County, and any Improvement left on the Premises is left in good and tenable condition. Upon any earlier termination of this Sublease for cause, title shall immediately, without further action, vest in Grantor/Sub-Lessor.

(d) *Condemnation.* In the event of condemnation of all or any portion of the Sub-leasehold estate by competent authority Sub-lessee shall provide prompt notice to Grantor/Sub-Lessor and any Sub-leasehold Mortgagee and shall honor the rights of Grantor/Sub-Lessor to receive just compensation for its interests; and the rights of the Sub-leasehold Mortgagee and Sub-lessee to receive just compensation to the extent of their rights as set forth in Section 6.4.

1.5 Permitted Use. The Premises is Subleased to Sub-lessee for use of the property as a single family residence (the "Permitted Use") subject to those covenants, conditions, and restrictions of the Declaration, all applicable laws, regulations and ordinances and zoning, now existing or properly enacted during the Term of this Sublease, of the United States of America, the State of Georgia, Glynn County, Georgia, and the JIA, including but not limited to the Jekyll Island State Park Authority's General Notice, Tree Ordinance, Sign Ordinance, Home Occupation Ordinance and the 2008 Design Guidelines, as adopted and as they may be amended.

1.6 Use of Residential Units. Notwithstanding the sale, transfer and conveyance of the interests in Residential Units, it is understood and agreed by, Sub-Lessor, and Sub-Lessee, and the Declaration provides, that purchasers of such interests in Residential Units, may elect to participate in the Rental Management Program, and cannot elect to utilize their Residential Units as vacation rental properties outside the Rental Management Program. In any and all cases, such purchaser must comply with all of the Rent payment requirements described elsewhere in this Sub-lease. Use of the Premises for overnight rental purposes to any person, whether by the week, month or other period of time, is subject to the provisions of the Declaration, application and issuance of a rental license from JIA and payment of Percentage Rent as set forth in Sections 2.1(c) and (d) below. This subsection and Sections 2.1(c) and (d) are subject to modification by ordinance and of the Declaration covering this Permitted Use as may hereafter be adopted or amended.

1.7 Recordation of Sublease. Sub-lessee agrees to record this Sublease at its sole expense. Sub-Lessee may also record, at its sole expense, any other documents related to the Sublease that are recordable under Georgia law. Sub-Lessee shall provide a copy of the recorded Sublease and documents to Grantor/Sub-Lessor, at Sub-Lessee's sole expense, containing the book and page of recording annotated as officially applied thereon, within thirty (30) days of the Effective Date.

1.8 Definitions.

(a) *Architectural Review Committee* means the architectural review committee established by the Declaration.

(b) *Assessor's Current Year Land Value and Initial Stipulated Land Value: Assessor's Current Year Land Value* - means the fair market value for a Building Lot as determined by the Glynn County Tax Assessor for a tax year, regardless of any freeze or adjustment of the assessed value or of the property tax due for any reason. The Grantor/Sub-Lessor shall use its best efforts to obtain such fair market value each tax year from the Glynn County Tax Assessor's office in the form and manner then utilized by the Glynn County Tax Assessor's Office for furnishing such fair market. In the event Grantor/Sub-Lessor is unable to obtain the current fair market value from the Glynn County Tax Assessor's Office, then the Sub-lessee shall be permitted, forty-five (45) days after Sub-lessee provides notice thereof to Grantor/Sub-Lessor, to secure from the Glynn County Tax Assessor's Office such fair market value for such Building Lot.

The parties recognize the Assessor's Current Year Land Value for a Building Lot with new construction often will not be available from the Glynn County Tax Assessor's Office but must be computed for purposes of proration of Annual Base Rent, payment of transfer fees and other Additional Rent. Should the amount of the Current Year Land Value of the Building Lot not be available from the Glynn County Tax Assessor's Office, same shall be computed by utilizing the Initial Stipulated Land Values as set for the herein. "*Initial Stipulated Land Value*" means, for a Building Lot, the following applicable amount, in lieu of Assessor's Current Year Land Value, to be used to calculate the Annual Base Rent to be charged, to a Residential Unit Owner under the Sublease to such Residential Unit Owner of such Building Lot, Building (or portion thereof of) located thereon containing a Residential Unit and such Residential Unit pursuant to the provisions of Section 2.2(a)(iv), if, as of the time of the sale, transfer, assignment, conveyance or other disposition by Lessee to such Residential Unit Owner of the leasehold or ownership interest in such Building Lot, Building (or portion thereof of) and Residential Unit the Glynn County Tax Assessor, has not yet issued, disclosed or published the Assessor's Current Year Land Value of or for such Building Lot:

Lot Numbers (as identified in the Plan)	Initial Stipulated Value
1-14	\$550,000
15-25	\$400,000

(i) Such applicable Stipulated Land Value shall be used to calculate the Annual Base Rent to be charged to a Residential Unit Owner under a Sublease for the time period commencing on the effective date of such Sublease and ending December 31 of the year the Glynn County Tax Assessor issues, discloses or publishes the Assessor's Current Year Land Value of or for the Building Lot that is the subject of such Sublease.

(ii) In the event that neither the fair market value of the Building Lot nor the Improvements

is available from the Glynn County Tax Assessor's Office for years subsequent to the Initial Current Year Land Value, the fair market value for a Building Lot as determined by the Glynn County Tax Assessor for the immediately preceding tax year shall be increased or decreased in the same annual percentage as the average annual percentage increase or decrease in the fair market value of the Building Lot, from the most recent tax year prior to such immediately preceding tax year for which the Assessor's Current Land Value was established, **to** such immediately preceding tax year, with same being a conclusive determination of the fair market value of the Building Lot for the current Sublease Year.

(iii) Should the fair market value of a Building Lot as determined by the Glynn County Tax Assessor be appealed by the Sub-lessee, then such fair market value then in effect as determined by the Glynn County Tax Assessor, shall continue to be in effect until the appeal is resolved. Thereafter, should the appeal result in an increase or decrease such fair market value, the Annual Base Rent during said appeal period shall be adjusted to reflect the revised fair market value and the increased Annual Base Rent shall be paid to Sub-lessee within 40 days of the decision, or the decreased annual rent shall be deducted from the next Annual Base Rent billing by the Grantor/Sub-Lessor.

(c) *Alternate Current Year Land Value* - In the event, *and only in the event*, that (i) the Glynn County Tax Assessor for any reason, other than that described in Section 1.8(b)(i) above concerning calculation of an Initial Current Land Value For New Construction, does not for a tax year issue a value for the current year Land Value or appraised value for the Premises (irrespective of whether such value changes or does not change from value issued for the previous tax year), or (ii) if the current year Land Value appraisal process is "frozen" or otherwise limited by any law, legislation, ordinance or policy, *then* the Alternative Current Year Land Value shall be used for any such Sublease Year. Alternative Current Year Land Value is calculated from the most recent Assessor's Current Year Land Value, adjusted by the "Alternative Annual Adjustment." The Alternative Annual Adjustment shall continue to be applied only so long as the events in subsection (i) or (ii) exist. The Alternative Annual Adjustment shall be calculated by multiplying the most recent Assessor's Current Year Land Value by a fraction, the numerator of which shall be the CPI-U (defined below) for the month of September, and the denominator of which shall be the CPI-U for September that is one (1) year previous. As used in this Sublease, the term "CPI-U" shall mean the Consumer Price Index for All Urban Consumers - All Items (1982-1984=100), as published by the United States Department of Labor, Bureau of Labor Statistics. So long as the events in subsection (i) or (ii) continue to exist for consecutive years, the next following year's determination shall be calculated by applying the Alternative Annual Adjustment to the preceding Alternate Current Year Land Value. Upon the next determination and issuance of an Assessor's Current Year Land Value, the Alternative Current Year Land Value shall no longer be used, *provided, however*, that there shall be no recalculation (or "look back" provision) of Annual Rent for the Sublease Years in which the Alternative Current Year Land Value was utilized to establish rent, regardless of whether such recalculation would increase or decrease the rent previously paid for such Sublease Years.

(d) *Building Lot* – the plot or parcel of land, other than a common area, designated for separate occupancy shown on a recorded subdivision plat for the Project and subject to a Declaration pursuant to O.C.G.A. 44-3-220 et. seq. and to this Sublease by Grantor/Sub-Lessor to Sub-lessee.

(e) *Declaration* means the Declaration of Covenants, Conditions, and Restrictions for Ocean Oaks at Jekyll Island, LLC dated _____, _____ and recorded in the Office of the Clerk of Superior Court of Glynn County, Georgia, at Deed Book _____, Page _____ as may be amended from time to time.

(f) *Effective Date* - refer to the opening Paragraph of the Sublease.

(g) *Expiration Date* - see Section 1.2(a) above.

(h) *Gross Revenue* means the total amount in dollars Sub-lessee derives from the rental operation of the Premises and from any sales, whether for cash or on credit, of all goods, foods and beverages, merchandise, and services of whatever kind and nature made by reason of the rental of the Premises.

(i) *Improvements* - see the last "Whereas" recital above.

(j) *Land* - see the second "Whereas" recital above.

- (k) *Residential Unit* – encompasses the portion of the Improvements on the Building Lot designated as a residence.
- (l) *Residential Unit Owner/Sub-lessee* – For purposes of this Sublease and of Section 14 of the Ground Lease, *Sale of Residential Units*, the terms “Owner,” and “Sub-lessee” are synonymous and describe an individual or entity to whom Grantor/Sub-Lessor transfers its interest in a Building Lot, Residential Unit, and Improvements.
- (m) *Residential Unit Participation Fee* -- a one-time Fee to be paid by Grantor/Sub-Lessor to JIA upon the initial sale of the Residential Unit with its Improvements.
- (n) *Residential Unit Transfer Fee* -- a Fee to be paid on all assignments, conveyances, or transfers of this Sublease to a successor owner/purchaser/sub-lessee calculated at one percent (1.0%) of the gross purchase price, which price includes the sales price or contract sales price for the sale of a leasehold or ownership interest in such Building Lot and Residential Unit, together with the price of contents and personal property within such Building Lot and Residential Unit if itemized separately, but excludes broker commissions, transfer taxes and/or title fees imposed by Glynn County and/or the State of Georgia and reasonable closing costs as evidenced by the purchase and sale agreement, settlement statement, closing disclosure or other closing document for such sale.
- (o) *Sub-leasehold Mortgage and Sub-leasehold Mortgagee*- see Section 4.3 below.
- (p) *Sublease Year*- The twelve months comprising a year (from January 1 through December 31) of each calendar year, ending with calendar year 2089 as the last Sublease Year unless extended by the Ground Lease and agreement of the parties.
- (q) *Sublease* - see the introductory paragraph of this Sublease.
- (r) *Permitted Use* - see Section 1.5 above.
- (s) *Premises* - see the last “Whereas” recital above.
- (t) *Rent* - see Section 2.1 below.
- (u) *Term* - see Section 1.2(a) above.
- (v) *Other Definitions*. Initially capitalized but undefined terms contained in this Ground Lease shall have the same meanings as assigned to them in the Ground Lease and/or Declaration, as the case may be.

SECTION 2 – RENT

2.1 **Rent.** “Rent” means, collectively, the prorated Rent for 20____, Annual Base Rent, Percentage Rent and Additional Rent for the Residential Unit based upon a pro-rata apportionment of Grantor/Sub-Lessor’s obligations pursuant to Section 2, RENT, of the Ground Lease.

- (a) *Annual Base Rent, Adjusted Rent Schedule.* Annual Base Rent for each Sublease Year shall be calculated at four-tenths of one percent (0.4%) of the Assessor’s Current Year Land Value (or, in the event and only in the event specified in Section 1.7 (b) above, the Alternate Current Year Land Value) in effect for the tax year ending on December 31 of the year immediately preceding each Sublease Year. Grantor/Sub-Lessor shall provide Sub-lessee the amount of the Annual Base Rent to be paid not later than December 1 of the year immediately preceding the Sublease Year for which the rent is due.
- (b) *Payment of Annual Base Rent.* Sub-lessee agrees to pay Annual Base Rent to Grantor/Sub-Lessor, at its offices on Jekyll Island, Georgia, or at such other place as the Grantor/Sub-Lessor may direct, payable in advance, in annual installments on or before January 1st of each successive Sublease Year, until the Expiration Date of this Sublease
- (c) *Percentage Rent; Adjusted Rate Schedule.* Percentage Rent shall be collected on all rent received by Sub-lessee for the Premises and shall consist of three percent (3.0%) of Gross Revenue from such rental or sublease activity.

- (d) *Payment of Percentage Rent.* Sub-lessee shall pay Percentage Rent to Grantor/Sub-Lessor, together with submission of such accounting forms as Grantor/Sub-Lessor shall prescribe, at its offices on Jekyll Island, Georgia, or at such other place as the Grantor/Sub-Lessor may direct and beginning on the first calendar month of the initial rental to be paid not later than the 15th day of the following month and thereafter on or before the 15th day of each successive month, until the Expiration Date of this Sublease. This payment schedule shall be in the same manner as required for payment of the Georgia Hotel-Motel Tax payments assessed pursuant to Georgia law. Percentage Rent shall be paid in addition to, and not in lieu of, Georgia Hotel Motel Tax payments required of Sub-lessee under Georgia law.

2.2 Residential Unit Transfer Fee.

(a) Unless otherwise negotiated between the parties, upon purchase of its Residential Unit, Sub-lessee shall pay a Residential Unit Transfer Fee as Additional Rent to the Sub-Lessor on behalf of the JIA subject to the terms and conditions imposed upon Grantor/Sub-Lessor pursuant to the Ground Lease, and particularly Section 2.3, providing that a Transfer Fee shall be paid on all assignments, conveyances, or transfers of a Sublease to a successor Sub-lessee. Said Fee shall be calculated at one percent (1.0%) of the gross purchase price.

(b) The following special exemptions apply to the Residential Unit Transfer Fee

- (i) Any transfer wholly between legally married individuals, or to and from married individuals and a living trust or instrument of similar effect which has one or both of the same legally married individuals as its only beneficiaries, shall be exempt from payment of the Fee.
- (ii) The following types of transfers shall pay a Special Residential Unit Transfer Fee of Five Hundred Dollars (\$500.00), which Special Residential Unit Transfer Fee will be subject to CPI Adjustment as provided in Section 2.2(a)(iii) of the Ground Lease.
 - (1) Transfers for the sole purpose of securing debt that are required to complete the debt transaction;
 - (2) Transfers that are *bona fide* gifts for which IRS Form 709 is filed and gift tax is paid or IRS Form 8283 with accompanying appraisal is filed;
 - (3) Transfers between husband and wife in connection with a divorce property settlement;
 - (4) Transfers without consideration by reason of death of a Sub-lessee.
 - (5) Transfers without consideration either directly among a Sub-lessee's immediate family or involving a living trust or instrument of similar effect for the benefit of members of a Sub-lessee's immediate family (e.g. parents and children); or,
 - (6) Transfers in lieu of foreclosure or to the first transferee at a foreclosure sale.

2.3 Additional Rent

(a) Wherever it is provided in this Sublease that Sub-lessee is required to make any payment to Grantor/Sub-Lessor or any third party or instrumentality of government, other than the Annual Base Rent, the payment shall be deemed to be Additional Rent and all remedies applicable to the non-payment of Rent shall be applicable. Grantor/Sub-Lessor shall not be required to advance any such amounts owed to any third party or instrumentality of government, including JIA, on the account of Sub-lessee in order to demand payment and declare default under Section 8.1 hereof.

(b) Additional Rent includes all required taxes (including the Hotel-Motel Tax), charges, fees or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Premises including, but not limited to, water and sewer fees, advertising fee, fire fees, EMT services fees, and the like that are payable by the parties to the JIA, but not including fees for services, such as utility fees, that are payable to private services suppliers.

(c) Additional Rent includes all required costs, payments and deposits, including but not limited to costs of required insurance policies and the premiums therefore.

(d) Additional Rent includes, but is not limited to, all late payment fees, interest charges, fines or impositions authorized by law or ordinances or assessed to enforce law or ordinances, and costs of land disturbance permit compliance or of remediating the Premises pursuant to Sections 1.4(c), Section 3 and Section 6; and the costs and expenses to remedy any other breach of the Sub-lessee's covenants or obligations under the Sublease.

(e) Additional Rent includes, but is not limited to fees collected by Grantor/Sub-Lessor pursuant to the Ground Lease or as Declarant in conjunction with its duties under the Ground Lease and Declaration, which duties may be subsequently assigned to a Property Owners' Association.

2.4 Late Payment Fees. If any installment of Rent is not received by Grantor/Sub-Lessor on or before the tenth (10th) day after the due date, Sub-lessee shall pay a late charge equal to five percent (5%) of such overdue amounts. Sub-lessee shall also be responsible for a service fee equal to fifty dollars (\$50.00) for any check returned for insufficient funds, which amount may be reasonably adjusted from time to time by Grantor/Sub-Lessor, together with such other costs and expenses as may be imposed by Grantor/Sub-Lessor's bank. The payment to and acceptance by Grantor/Sub-Lessor of such late charge shall in no event constitute a waiver by Grantor/Sub-Lessor of Sub-lessee's default with respect to such overdue amounts, nor prevent Grantor/Sub-Lessor from exercising any of the other rights and remedies granted at law or equity or pursuant to this Sublease.

2.5 Obligation of Sub-Lessor to Remit Rent and Additional Rents to the Jekyll Island State Park Authority. The Grantor/Sub-Lessor shall promptly remit all Rents received from the Grantee/Sub-lessee to the Jekyll Island State Park Authority as required by the terms of the Ground Lease.

SECTION 3 - CONSTRUCTION OF IMPROVEMENTS

3.1 Improvements. Any renovation, modification or construction of Improvements is subject to and shall comply with the requirements of the Declaration. The design and the construction of any new Improvements or major modifications, including new structures shall fully comply with all building requirements and restrictions imposed by the Jekyll Island Ordinances, or in the absence of applicable Jekyll Island Ordinances, those of Glynn County, including then existing Jekyll Island State Park Authority design and environmental guidelines, as amended. All land disturbing activities shall be completed with appropriate grasses and groundcovers and shall meet all soil erosion and storm water control requirements of Jekyll Island Ordinances, or in the absence of applicable Jekyll Island Ordinances, those of Glynn County. All construction shall meet or exceed State of Georgia building codes and life safety codes as specified and supplemented by the Georgia Department of Community Affairs, or by Jekyll Island Ordinances, or in the absence of applicable Jekyll Island Ordinances, those of Glynn County codes and ordinances; and shall meet or exceed FEMA coastal area building requirements and Jekyll Island ordinances, including Chapter IX, Flood Damage Prevention. All applicable permits shall be obtained at the sole cost of Sub-lessee, and shall be posted on the construction site.

3.2 Design Requirements. Any Improvements shall be approved by the Architectural Review Committee as set forth in the Declaration and shall also be designed and constructed in compliance with JIA's Design Guidelines, as amended, and with any environmental restrictions or guidelines promulgated for Jekyll Island by JIA and the Georgia Department of Natural Resources and/or its Environmental Protection Division. All applicable permits shall be obtained at the sole cost of Sub-lessee.

SECTION 4 - SUB-LEASEHOLD ASSIGNMENT, SUBLETTING AND FINANCING

4.1 Assignment, transfer and conveyance. Sub-lessee shall have the right to assign, transfer or convey this Sublease, without obtaining Grantor/Sub-Lessor's consent, subject only to the payment of the Residential Unit Transfer Fee set forth in Section 2.2 above. Each such assignment, transfer or conveyance shall release the assigning Sub-lessee from the Sublease and shall be in recordable form, and accepted for inventory by the Grantor/Sub-Lessor prior to recording, and a copy of the recorded instrument provided to Grantor/Sub-Lessor within 30 days of the effective date of the instrument, all at Sub-lessee's sole and exclusive expense. Grantor/Sub-Lessor will not recognize any instrument as binding upon Grantor/Sub-Lessor unless such instrument is presented for inventory, recorded, and a recorded copy supplied as set forth herein.

4.2 **Subletting.** Sub-lessee shall have the right to sublet (estate for years) or rent (usufruct) all or any portion of the Premises, subject to this Section 4.2. Any such sublease or rental agreement shall require a rental license and the payment of Percentage Rent pursuant to the provisions of Sections 1.6 and 2.1(c) and (d) above.

4.3 **Sub-leasehold Mortgage Authorized.** Subject to the requirements of this Section 4.3, Sub-lessee shall have the absolute and unconditional right, from time to time, to mortgage, finance and refinance its interest in this Sublease and/or its sub-leasehold interest in the Premises, or any part or parts thereof, without limitation as to amount and without limitation as to what the mortgage secures, under one or more mortgages (each a "Sub-leasehold Mortgage"), and the right to assign unconditionally, collaterally or otherwise, this Sublease and any related rental agreements as collateral security for such Sub-leasehold Mortgage. In connection therewith, Sub-lessee may grant and convey Sub-lessee's interest in this Sublease in such form as the holder of the Sub-leasehold Mortgage (the "Sub-leasehold Mortgagee") determines as long as Grantor/Sub-Lessor:

- (i) is expressly made not liable for the repayment of the indebtedness; and,
- (ii) the fee interest in the Premises is not security for the repayment of the indebtedness. All proceeds of any loan secured by a Sub-leasehold Mortgage shall belong to Sub-lessee. The term "Sub-leasehold Mortgage" shall include mortgages, deeds of trust, deeds to secure debt, security deeds, assignments of the Sub-lessee's interest, and all similar instruments, as well as security interests, including security interests in personal property, and pledges and assignments of the Sub-lessee's interest in this Sublease, and modifications, replacements and consolidations of any of the foregoing. Each Sub-leasehold Mortgage and all instruments evidencing the property encumbered shall contain the following statement of limitation:

This Sub-leasehold Mortgage makes no claim of interest in, nor shall it have any effect upon, the fee simple title and ownership of the real property interest underlying the Premises owned by the State of Georgia and vested by law in the Jekyll Island-State Park Authority by virtue of O.C.G.A. §12-3-241, which property is public property of the State of Georgia and the Jekyll Island-State Park Authority and not subject to lien or levy for any purpose.

4.4 **Sub-leasehold Mortgagee's Rights.** A Sub-leasehold Mortgagee may, at its option, at any time before the rights of the Sub-lessee shall have been forfeited to the Grantor/Sub-Lessor due to default, termination, or early termination as herein provided, exercise these rights without limitation, or any other rights of the Sub-lessee granted to the Sub-leasehold Mortgagee in the Sub-leasehold Mortgage documents:

- (i) pay any of the Rents due hereunder, taxes assessed or other assessments (annual, special and/or specific) against said property, or any insurance premiums which the Sub-lessee may have failed to pay, or
- (ii) do any other act or thing required of the Sub-lessee by the terms of this Sublease, to cure any default or to prevent the forfeiture or termination of this Sublease, and
- (iii) all payments so made, and all things so done and performed, by or for any such Sub-leasehold Mortgagee shall be as effective to prevent a forfeiture of the rights of the Sub-lessee hereunder as the same would have been if done and performed by Sub-lessee.

In connection with the exercise of such rights, no Sub-leasehold Mortgagee shall be or become liable to the Grantor/Sub-Lessor as an assignee of this Sublease or otherwise unless the Sub-leasehold Mortgagee expressly assumes the liability, and no such assumption of liability shall be inferred solely from or the result of foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Sub-leasehold Mortgage or by proper conveyance from said Sub-lessee pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interests of the Sub-lessee under the terms of this Sublease. The Sub-leasehold Mortgagee shall have not less than 45 days after receipt of notice from Grantor/Sub-Lessor to exercise the rights granted in this Sublease before any rights of the Sub-lessee shall be forfeited by Grantor/Sub-Lessor. See also Section 8.1(b) in this regard. The Sub-leasehold Mortgagee may acquire the Sublease in its own name or in the name of its nominee.

4.5 **Sub-leasehold Mortgagee's Notice to Grantor/Sub-Lessor and Effect Thereof.** The Sub-leasehold Mortgagee of any Sub-leasehold Mortgage may notify Grantor/Sub-Lessor, at its offices on Jekyll Island, Georgia, of the name and address of the Sub-leasehold Mortgagee and request that copies of all notices under this Sublease, in particular notices of default or of termination of the Sublease, as hereinafter provided, be mailed to such Sub-leasehold Mortgagee. After receiving such notice and request, Grantor/Sub-Lessor covenants with Sub-leasehold Mortgagee:

- (i) that Grantor/Sub-Lessor shall not issue an early termination of the Sublease, whether by default or otherwise, without providing notice to the requesting Sub-leasehold Mortgagee and providing Sub-leasehold Mortgagee with the same periods for cure offered Sub-lessee under Section 8.1 hereof (provided such periods may run concurrently); and,
- (ii) that upon receipt of notice that the Sub-leasehold Mortgagee intends to initiate foreclosure or accept a deed in lieu of foreclosure, so long as Sub-leasehold Mortgagee diligently and timely exercises and fully performs its right to cure any monetary defaults then existing under the Sublease as provided under Section 4.4 hereof, Grantor/Sub-Lessor shall suspend any effort to terminate or declare default concerning this Sublease.

4.6 **Grantor/Sub-Lessor's Estoppel.** Grantor/Sub-Lessor, within twenty (20) business days after written request to Grantor/Sub-Lessor from Sub-lessee, or any assignee or any grantee, or any Sub-leasehold Mortgagee (or prospective Sub-leasehold Mortgagee), will furnish a written estoppel certificate including the following items:

- (i) the amount of the Rent due, if any;
- (ii) whether or not the Sublease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);
- (iii) whether or not to Grantor/Sub-Lessor's actual knowledge Sub-lessee is in default and specifying the nature of any such defaults, if any; and
- (iv) such other matters as Sub-lessee or the Sub-leasehold Mortgagee may reasonably request and which relate to the actual knowledge of Grantor/Sub-Lessor.

SECTION 5- LIABILITY, INSURANCE AND GENERAL INDEMNITY

5.1 **Liability.** Sub-lessee accepts the Premises **"AS IS" AND "WHERE IS" AND WITH ALL FAULTS.** Grantor/Sub-Lessor makes no express or implied representations or warranties as to the condition of the Premises, including the absence of any hazardous condition or environmental condition, or the suitability of the Premises for the Permitted Use. Sub-lessee, as a material part of the consideration to be rendered to Grantor/Sub-Lessor under this Sublease, hereby waives, to the fullest extent permitted by law, all claims against Grantor/Sub-Lessor for loss, theft or damages to property (whether tangible or intangible) in and about the Premises, for economic loss (whether direct or consequential), and for the injury or death to any persons in, on or about the Premises, except for damage or loss directly caused by the sole negligence of Grantor/Sub-Lessor.

5.2 Insurance Requirements.

(a) *Basic Insurance Coverages.* Sub-lessee shall provide or cause to be provided throughout the Term the following liability insurance coverages. Each of the insurance coverages required below (i) shall be issued by a company licensed by the Georgia Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.

(b) *Homeowner's Liability or Commercial General Liability Insurance.* Sub-lessee shall procure and maintain throughout the Term Homeowner's Liability Insurance or Commercial General Liability Insurance that shall include, but need not be limited to, coverage for bodily injury and property damage arising from the premises in an amount not less than \$1,000,000.00 per occurrence, and shall name Grantor/Sub-Lessor and the Jekyll Island State Park Authority as additional insureds on such policy.

(c) *Property Insurance.* Sub-lessee shall procure and maintain throughout the Term all-risk property

insurance, including fire and extended coverage covering the full replacement value of Sub-lessee's Improvements and including the property of others, and shall name the Sub-leasehold Mortgagee (if any), the JIA, and the Grantor/Sub-Lessor as loss payees and/or additional insureds on such policy as their interests may appear (A.T.I.M.A.). Notwithstanding anything to the contrary in this Sublease, the proceeds of any insurance shall be first applied to the repair or replacement of the Improvements on the Premises. In the event the Improvements are not to be repaired or replaced, the insurance proceeds shall first be applied to the reduction of the unpaid principal balance of any Sub-leasehold Mortgage; and then toward the costs of removing all debris and remains of the damaged Improvements from the Premises pursuant to Glynn County ordinances; then the balance of the proceeds, if any, shall be equitably allocated between Grantor/Sub-Lessor and Sub-lessee in accordance with the values of their respective interests in the Premises.

(d) *Grantor/Sub-Lessor's Right to Amend Minimum Insurance Coverages.* Grantor/Sub-Lessor may modify and amend the minimum insurance coverages from time to time, but not less than three (3) years from the Effective Date or from any previous modification or amendment, to reflect then-current reasonable and standard limits, so long as such modification is uniform among all similarly situated residential Sub-lessees, by giving Notice to Sub-lessee and both parties shall execute an amendment to this Sublease reflecting the change.

5.3 **General Indemnity.** Sub-lessee hereby agrees to indemnify and hold harmless the Grantor/Sub-Lessor, the Jekyll Island State Park Authority, the State of Georgia and its departments, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of performance of this Sublease or resulting from any act or omission on the part of:

- (i) the Sub-lessee, its agents, employees or others working at the direction of Sub-lessee or on its behalf or invitees of Sub-lessee, or
- (ii) the act or omissions of any Sub-lessee's sub-lessee or such sub-lessee's employees or others working at the direction of such sub-lessee or invitees of such sub-lessee, or
- (iii) due to any breach of this Sublease by the Sub-lessee, or
- (iv) due to the violation by Sub-lessee or any Sub-lessee's sub-lessees of any pertinent federal, state or local law, rule or regulation.

This indemnification obligation survives the termination of the Sublease and the dissolution or, to the extent allowed by law, the bankruptcy of the Sub-lessee. If and to the extent such damage or loss (including costs and expenses) as covered by this indemnification is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS") the Sub-lessee agrees to reimburse the Funds for such monies paid out by the Funds. This indemnification does not extend beyond the scope of this Sublease and the activities undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred directly by the Indemnitees due to the sole negligence of any indemnitee.

SECTION 6 - MAINTENANCE, REPAIRS, DAMAGE AND DESTRUCTION, CONDEMNATION

6.1 **Maintenance and Repair.** Sub-lessee shall, during the Term of this Sublease, at its own cost and expense, keep and maintain the Premises in good order, and in accordance with the Declaration and all applicable laws and ordinances, and shall promptly make all necessary repairs and replacements thereto, provided, however, if the Residential Unit that is the subject of this Sublease is contained in a Duplex, then the Association shall be responsible to repair, maintain and replace the roof, exterior and structure of such Duplex as provided in the Declaration. Sub-lessee agrees to maintain and keep the Premises clean and clear of all trash and debris and upon Sub-lessee's failure to do so, the Grantor/Sub-Lessor is hereby authorized to do or have done the necessary work to maintain said Premises as herein provided at the expense of the Sub-lessee and the Sub-lessee hereby agrees to pay to the Grantor/Sub-Lessor upon demand the costs and expenses thereof. Grantor/Sub-Lessor shall not be required to advance any amounts on the account of Sub-lessee in order to remedy violations of Sub-lessee prior to demanding payment and declaring default under Section 8.1 hereof. No provision contained in this Sublease shall be construed to limit the ability of the JIA or of any instrumentality of the State of Georgia with competent jurisdiction, to enforce lawfully enacted ordinances against Sub-lessee.

6.2 Damage and Destruction. In the event of damage to or destruction to any Improvements on or to the Premises, the following shall apply:

(a) **Sub-lessee's Duty to Restore.** Except as set forth in Section 6.2(b) below, any time during the Term, if Improvements now or hereafter on the Premises are damaged and/or destroyed in whole or in part by fire, theft, the elements, or any other cause, this Sublease shall continue in full force and effect, and Sub-lessee, at its sole cost and expense, shall repair and restore the damaged or destroyed Improvements to substantially the same or better condition as existed prior to the damage or destruction in compliance with then-existing JIA design and environmental guidelines, and according to such modified plans as shall be reasonably approved in writing by Grantor/Sub-Lessor, whether or not there are sufficient insurance proceeds to cover the repair and restoration expenses. The work of repair and restoration shall be commenced by Sub-lessee as soon as possible, in accordance with the provisions of Section 3 above, but not later than one hundred twenty (120) days, unless mutually extended, after the date of the occurrence. Such work shall be deemed to have commenced upon the execution of a contract for design or construction or accomplishment of a preliminary activity, such as temporary physical property protection measures, and shall be prosecuted with all due diligence and shall be completed within twenty-four (24) months of the date of occurrence unless extended by force majeure or other excusable delay.

(b) **Option to Terminate Sublease for Destruction.** In the event that the Improvements located on the Premises are damaged or destroyed by fire, theft or any other casualty, so that it or they cannot be repaired and restored, then Sub-lessee, with the express written consent of its Sub-leasehold Mortgagee (if any) and the Grantor/Sub-lessor, shall have the option of terminating this Sublease by providing notice not later than ninety (90) days after the date of the occurrence of its intent to do so. In such event, Sub-lessee shall be required to remove, at Sub-lessee's own cost and expense, all debris and remains of all Improvements from the Premises.

6.3 Destruction by Major Catastrophe. In the event the Improvements are damaged or destroyed by any casualty in a major catastrophe to Jekyll Island, such that unrestricted road access to the island, and/or island utilities (e.g. water, sewer, gas, electric) and essential services (e.g. fire and police protection services) are destroyed or disrupted, to the extent that restoration is reasonably estimated to take twelve (12) months or more to restore access and/or full utilities and essential services, Sub-lessee, with the express written consent of its Sub-leasehold Mortgagee (if any)) and the Grantor/Sub-lessor, shall have the option of terminating this Sublease by providing notice not later than one hundred eighty (180) days after the date of the occurrence of its intent to do so. In such event, Sub-lessee shall be required to remove, at Sub-lessee's own cost and expense, all debris and remains of all Improvements from the Premises.

6.4 Condemnation. In the event of condemnation of all or any portion of the Residential Unit by competent authority, Grantor/Sub-Lessor shall provide prompt notice to Sub-lessee and any mortgagee of the Sub-lessee (a "Sub-leasehold Mortgagee") of which it has notice. In the event of condemnation of all or any portion of the Sub-leasehold estate or Improvements by competent authority, Sub-lessee shall provide prompt notice to Grantor/Sub-Lessor and any Sub-leasehold Mortgagee. Grantor/Sub-Lessor, Sub-lessee and Sub-leasehold Mortgagee shall cooperate reasonably with one another in any such condemnation proceedings commenced against the Residential Unit, the Sub-leasehold, or the Improvements. No party (Sub-lessee, Sub-leasehold Mortgagee, Jekyll Island State Park Authority, and Grantor/Sub-Lessor) shall be entitled to the condemnation award proceeds of any other party as awarded by a court of competent jurisdiction, except to the extent Sub-lessee is required to remit its condemnation award proceeds to Sub-leasehold Mortgagee pursuant to a Sub-leasehold Mortgage.

(a) *Continuation of Sublease.* Except as set forth in Section 6.4(b) below, any time during the Term, if the Sub-leasehold, the Improvements, or the Residential Unit are condemned by any party with competent authority, this Sublease shall continue in full force and effect, so long as the requirements of termination in Section 6.4(b) have not occurred.

(b) *Option to Terminate Sublease for Destruction.* Notwithstanding Section 6.4(a) above, in the event of a condemnation of the Sub-leasehold, the Improvements or the Residential Unit which results in the inability of Sub-lessee to occupy the Improvements in accordance with applicable laws and ordinances, so long as Sub-lessee provides notice to Grantor/Sub-Lessor within ninety (90) days of the final settlement or adjudication of the condemnation and Grantor/Sub-Lessor provides its written approval, Sub-lessee shall be entitled to terminate

this Sublease. In such event, Sub-lessee shall be required to remove, at Sub-lessee's own cost and expense, all debris and remains of all Improvements from the Premises.

SECTION 7 - VISITS BY GRANTOR/SUB-LESSOR, EMERGENCIES

7.1 Grantor/Sub-Lessor may visit the Residential Unit at reasonable times upon twenty-four (24) hours' notice to observe whether or not Sub-lessee is complying with the terms of this Sublease and applicable ordinances. If the Sub-lessee or representative of the Sub-lessee is not available, the Sub-lessee may reschedule the visit to a date and time mutually agreed. Grantor/Sub-Lessor reserves the right, but is not obligated, to enter upon the Premises, without prior notice, in the event of an emergency condition or situation (e.g., an unexpected or sudden serious and urgent occurrence that demands immediate action to prevent imminent peril to life, limb or destruction of property). The cost of remedying deficiencies identified by observation and the expenses of any emergency entry shall be due and paid by Sub-lessee to Grantor/Sub-Lessor on demand as Additional Rent. Grantor/Sub-Lessor shall assume no duty or liability with respect to the Premises as a result of any visit, observation or emergency entry. Grantor/Sub-Lessor shall have no right to enter upon the Premises except in conformance with this Sublease.

SECTION 8 - DEFAULT AND TERMINATION

8.1 **Default and Remedies.** If Sub-lessee (i) fails to pay any Rent, including but not limited to Annual Base Rent, Additional Rent, Percentage Rent, Residential Unit Transfer Fees, or any other sum due and payable by Sub-lessee hereunder at the time set forth in this Sublease and continues to fail to pay such Rent or other sum for a period of thirty (30) days after receipt of written notice from Grantor/Sub-Lessor pertaining thereto; or (ii) violates any permit, ordinance, regulation, or law applicable to the Premises and fails to promptly cure such violation for a period of thirty (30) days after receipt of notice from Grantor/Sub-Lessor or any government entity with competent jurisdiction respecting such law or ordinance (and any such notices shall be promptly provided to Grantor/Sub-Lessor), or (iii) fails to perform any other covenant to be performed by Sub-lessee or obligation of Sub-lessee under this Sublease and continues to fail to perform the same for a period of ninety (90) days after receipt of written notice from Grantor/Sub-Lessor pertaining thereto (or a reasonable period of time, using due diligence, if any non-monetary default cannot be cured within such ninety (90) day period or as further extended by Grantor/Sub-Lessor), then Sub-lessee shall be deemed to be in default under this Sublease and Grantor/Sub-Lessor, in addition to other rights or remedies it may have, in Grantor/Sub-Lessor's sole and exclusive discretion, may take the following actions after providing to the Sub-leasehold Mortgagee the notices required under this Sublease:

(a) Continue this Sublease in effect by not terminating Sub-lessee's right to possession of the Premises, and thereby be entitled to enforce by bringing an action or enforcing all Grantor/Sub-Lessor's rights and remedies under this Sublease, including the right to recover Rent or other amounts due as specified in this Sublease as they become due under this Sublease; or

(b) In the case of a monetary default as set forth in Section 8.1 (i) above only, terminate Sub-lessee's right to possession of the Premises and recover the Premises and any unpaid Rent and other amounts due from Sub-lessee; provided however, that, so long as Sub-leasehold Mortgagee diligently and timely exercises and fully performs its right to cure any monetary defaults then existing under the Sublease as provided under Section 4.4 hereof: (i) Grantor/Sub-Lessor covenants and agrees it shall not terminate Sub-lessee's rights in the event the Sub-leasehold Mortgagee provides notice to Grantor/Sub-Lessor of the foreclosure of or similar undertaking to acquire the Sub-leasehold Mortgage or to protect its security interest in the Sub-leasehold estate, and for so long as Sub-leasehold Mortgagee diligently prosecutes such undertaking to protect its rights and/or its security interest as granted to the Sub-leasehold Mortgagee under Section 4 above and elsewhere in this Sublease; and (ii) at the Sub-leasehold Mortgagee's option, Grantor/Sub-Lessor covenants and agrees to execute a new Sublease for the remaining term with the Sub-leasehold Mortgagee or its designee on otherwise the same form, terms and conditions of this Sublease, such new Sublease to be of the same priority as this Sublease and Grantor/Sub-Lessor further shall cooperate with the Sub-leasehold Mortgagee in obtaining a title endorsement insuring that the new Sublease is of the same priority and that the lien on the Sub-leasehold estate is of the same priority.

(c) In lieu of, or in addition to, bringing an action for any or all of the recoveries described in this Section, in the case of a monetary default as set forth in Section 8.1 (i) above only, to bring an action to recover and regain possession of the Premises by dispossessory proceeding in any state court in Glynn County, Georgia, but subject to the provision in Section 8.1(b) above.

8.2 **Effect of Termination.** Subject to the provisions of Section 4 above (relating to the rights of Sub-leasehold Mortgagees), upon termination of this Sublease all rights and privileges of Sub-lessee and all duties and obligations of Grantor/Sub-Lessor hereunder shall terminate. Immediately upon such termination of the Term, and without further notice to any other party, but subject to the provisions of Section 4 above, Grantor/Sub-Lessor shall have the right to assert, perfect, establish and confirm all rights reverting to Grantor/Sub-Lessor by reason of such termination by any means permitted by law, including the right to take possession of the Premises together with all Improvements thereto, subject to Sub-lessee's rights to remove its property as provided herein, and to remove all persons occupying the same and to use all necessary lawful force therefor and in all respects to take the actual, full and exclusive possession of the Premises and every part thereof as Grantor/Sub-Lessor's original estate, thereby wholly terminating any right, title, interest or claim of or through Sub-lessee as to the Premises or the Improvements or fixtures and alterations to the Improvements, and all personal property located on the Premises, all without incurring any liability to Sub-lessee or to any person occupying or using the Premises for any damage caused or sustained by reason of such entry or such removal, except for damage resulting from Grantor/Sub-Lessor's negligence or willful misconduct in effecting such removal.

8.3 **No Waivers.** No failure by any party hereto to insist upon the strict performance of any provision of this Sublease or to exercise any right, power or remedy consequent to any breach or default thereof, and no waiver of any such breach or default, or the acceptance of full or partial Rent during the continuance thereof, shall constitute a waiver of any such breach or of any such provision. No waiver of any breach or default shall affect or alter this Sublease, which shall continue in full force and effect, or the rights of any party hereto with respect to any other then existing or subsequent breach or default.

SECTION 9-MISCELLANEOUS PROVISIONS

9.1 **Sublease Construed as a Whole.** The language in all parts of this Sublease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Grantor/Sub-Lessor or Sub-lessee. This Sublease shall be construed in accordance with Georgia law and at all times shall be subordinate to the terms of the Ground Lease and the Declaration.

9.2 **Severability.** If any provision of this Sublease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Sublease shall be valid and be enforced to the fullest extent permitted by law.

9.3 **Survival.** Each provision of this Sublease which may require the payment of money by, to or on behalf of Grantor/Sub-Lessor or Sub-lessee or third parties after the expiration of the Term hereof or its earlier termination shall survive such expiration or earlier termination.

9.4 **Amendment.** This Sublease may be amended only in writing, signed by both Grantor/Sub-Lessor and Sub-lessee.

9.5 **Remedies Cumulative.** It is understood and agreed that the remedies herein given to either party shall be cumulative, and the exercise of any one remedy of such party shall not be to the exclusion of any other remedy.

9.6 **Entire Agreement.** This Sublease and any exhibits referred to herein, are the final, complete and exclusive agreement between the parties and cover in full each and every agreement of every kind or nature, whatsoever, concerning the leasing of the Premises. All preliminary negotiations and agreements of whatsoever kind or nature, are merged herein. Grantor/Sub-Lessor has made no representations or promises whatsoever with respect to the Premises, and no other person, firm or corporation has at any time had any authority from Grantor/Sub-Lessor to make any representations or promises on behalf of Grantor/Sub-Lessor, and Sub-lessee expressly agrees that if any such representations or promises have been made by others, Sub-lessee hereby waives all right to rely thereon. No verbal agreement or implied covenant shall be held to vary the provisions hereof, any statute, law or custom to the contrary notwithstanding.

IN WITNESS WHEREOF, Grantor/Sub-Lessor and Grantee/Sub-lessee(s) have signed and sealed this Sublease, effective on the day and year first above written.

WITNESSES:

Signed, sealed and delivered
on this _____ day of _____
20____, in the presence of:

Unofficial Witness

Notary Public
My Commission Expires: _____ (NOTARY SEAL)

Grantor/Sub-Lessor:
JEKYLL SEASIDE RETREAT LLC,
a Delaware limited liability company by its

Manager

By: _____
David W. Curtis,
Authorized Signatory

Grantee/Sub-lessee(s):

Signed, sealed and delivered
on this _____ day of _____
20____, in the presence of:

Unofficial Witness

Notary Public
My Commission Expires: _____ (NOTARY SEAL)

Signed, sealed and delivered
on this _____ day of _____
20____, in the presence of:

Unofficial Witness

Notary Public
My Commission Expires: _____ (NOTARY SEAL)

EXHIBIT A - LEGAL DESCRIPTION OF THE PROPERTY

All of that lot, parcel or tract of land, lying and being in the 25th Georgia Militia District, Jekyll Island, Glynn County, Georgia as shown on a survey prepared by C. Teeple Hill, G.R.L.S. No. 3081, entitled "A Boundary Survey of: Tract 1, Conservation Area-A, Conservation Area-B", dated 7/24/15, last revised 9/18/15, said tract of land being shown as Tract 1 and being more particularly described as follows:

Commencing at a 5/8" iron rebar found having a Georgia State Plane Coordinate System, East Zone NAD83, coordinates of: NORTHING: 379533.257, EASTING: 891900.461; thence proceed with a curve, turning to the left with a radius of 6136.30', a chord bearing of S 15°38'06" W, and a chord length of 140.00', thence along the arc of said curve a distance of 140.00' to a capped iron rebar set, said point also being the POINT OF BEGINNING; thence S 75°01'07" E a distance of 85.00' to a capped iron rebar set; thence N 15°20'54" E a distance of 77.53' to a capped iron rebar set; thence S 73°18'38" E a distance of 297.64' to a capped iron rebar set; thence S 13°53'48" W a distance of 931.19' to a capped iron rebar set; thence N 73°20'04" W a distance of 230.00' to a capped iron rebar set; thence N 13°33'06" E a distance of 330.00' to a capped iron rebar set; thence N 73°18'10" W a distance of 150.00' to a capped iron rebar set; thence N 13°17'45" E a distance of 11.45' to an iron rebar found; thence N 13°18'56" E a distance of 329.14' to an iron rebar found; thence with a curve turning to the right with a radius of 6136.30', a chord bearing of N 14°08'14" E, and a chord length of 180.79', thence along the arc of said curve a distance of 180.80' to the POINT OF BEGINNING; said tract of land having an area of 6.892 acres more or less.