

## WAIVER AND MODIFICATION OF RIGHTS UNDER U.S. SERVICEMEMBERS CIVIL RELIEF ACT

The "Servicemembers Civil Relief Act" - 50 App. U.S.C.A. § 501-579, is a federal law providing certain benefits and privileges to active duty servicemembers.

\_\_\_\_\_ and \_\_\_\_\_ have entered into a Lease (the "Lease") with \_\_\_\_\_ ("Owner"), dated \_\_\_\_\_ for a residential apartment unit for the premises known as \_\_\_\_\_, \_\_\_\_\_, CO \_\_\_\_\_ County of \_\_\_\_\_ State of Colorado ("Premises").

The Servicemembers Civil Relief Act ("SCRA") gives Servicemembers and Servicemembers' dependents certain rights, including but not limited to, the right to terminate the Lease referenced above. However, because not all rights under SCRA or clear or desirable, «Resident1» and «Resident2» and Owner by this Waiver and Modification ("Waiver", "Modification", or "Waiver and Modification") hereby clarify «Resident1» and «Resident2», and Owner's rights and duties under SCRA.

**1. Definitions.** Regardless of any definition to the contrary, the following terms shall have the following meanings:

**(a) Servicemember(s)** - shall have the same meaning as set forth in the SCRA, including dependents, and shall mean any individual signing this Waiver who is a Servicemember or dependent as defined by SCRA. For ease of reference, all persons signing this Waiver and Modification shall be referred to collectively as Servicemember.

**(b) Permanent Change in Station Orders ("PCS Orders")** - military orders dated after the Lease, requiring any Servicemember who has signed this Waiver to report, deploy, move, transfer, or relocate for a period not less than ninety (90) days to a military base or unit that is more than fifty (50) miles from the Premises. Orders pre-dating the Lease are not PCS Orders, and the Servicemember or dependents shall have no right to terminate the Lease based on PCS Orders that pre-date the Lease. Regardless of the circumstances or reasons, absent specific PCS Orders that comply with definition of PCS Orders in this Section 1(b), discharge, resignation, or separation from the military are not a Permanent Change in Station ("PCS"), and shall not constitute grounds for terminating the Lease. Permission, desire, or Orders requiring Servicemember to move onto base, or into base housing does not constitute PCS Orders, nor provide grounds to terminate the Lease.

**(c) PCS Date.** The date that the Servicemember is ordered and required to report to the Servicemember's new station pursuant to PCS Orders.

**2. Waiver of SCRA's Rights.** Servicemember and dependents intentionally and knowingly waive any rights under SCRA to terminate the Lease, and agree that Servicemember's only rights to terminate the Lease are contained in this Waiver and Modification. If Servicemember is

not actively attached, deployed, called up, or serving, for a period of thirty (30) days or longer, with a military unit or on a military base that is more than one hundred and twenty (120) miles from the Premises, Servicemember and dependents knowingly and intentionally waive any rights and protections under SCRA prohibiting default judgments from entering against non-appearing Servicemembers and their dependents, including but not limited to, any right to have counsel appointed, the proceedings stayed, and all other rights under 50 App. U.S.C.A. § 521. Servicemember shall notify Owner in writing if Servicemember is deployed for more than thirty (30) days. Owner and any Court may rely on the lack of notification to determine that Servicemember is not deployed. Owner shall only be entitled to a default judgment upon compliance with all other laws and statutes other than SCRA, including the proof of legal process. Owner shall never be entitled to a default judgment, without full compliance with SCRA, if Servicemember is deployed for a period of thirty (30) days or longer and more than one hundred and twenty miles from the Premises.

**3. Service Members Right to Terminate the Lease.** A Servicemember shall have the right to terminate the Lease upon receiving PCS Orders that meet the definition in Section 1(b). A dependent, as defined by SCRA, has the same rights under this Waiver to terminate the Lease as a Servicemember. To terminate the Lease, Servicemember must deliver to Owner a copy Servicemember's PCS Orders that meet the PCS Orders definition in 1(b). A Servicemember shall not terminate a lease more than sixty-two (62) days prior to being required to report pursuant to any PCS Orders that comply with Section 1(b). Termination of the Lease by Servicemember or a dependent does not terminate Servicemember or dependent's liability for charges due under the Lease as of the date of termination, or for physical damages to the Premises. Owner will process the security deposit, if any, set forth in the Lease, in the normal course of business.

**4. Termination Notice and Date.** To terminate the Lease, Servicemember must deliver to Owner written notice that Servicemember is terminating the Lease. Servicemember's notice of termination shall state the termination date and the termination date shall not be more than sixty-two (62) days prior to the Servicemember's PCS Date. The termination date shall be for a date at least thirty (30) days after the date that the next monthly rental payment is due. If the Servicemember's notice of termination states a date greater than sixty-two (62) days prior to the Servicemember's PCS date or a termination date that is not at least thirty (30) days after the date the next monthly rental payment is due, the termination date set forth in the Servicemember's notice of termination is deemed to be amended to a date the soonest date that complies with the notice requirements of this Section 4. The Servicemember's liability for rent under the Lease and the termination date will be determined in accordance with this Waiver. Regardless of Servicemember's right to terminate the Lease, Servicemember shall always be liable for rent through the termination date.

**5. Repayment of Concessions.** Servicemember acknowledges that if Owner gave concessions (reduced rent), Servicemember acknowledges that Owner gave such concessions, if any, in reliance on Servicemember's promise to pay rent for the entire term. Upon termination, if required by the Lease, Servicemember shall be liable for, and pay or repay any Lease concessions.

**6. Dependents.** All dependents of any Servicemember shall not have any SCRA rights, and knowingly waive such rights. Dependents shall only have the rights of Servicemember as set forth in this Waiver. By signing this Waiver, Servicemember represents that Servicemember either has no dependents, or that all dependents have executed this Waiver.

**7. Supersedes Lease.** Servicemember(s) and Owner knowingly intend for this Waiver to control all rights under SCRA. To the extent, if any, that this Waiver conflicts with the Lease, the terms and provisions of this Waiver shall control. Unless specifically addressed by this Waiver and Modification, all other contractual rights, duties, and obligations set forth in the Lease shall remain unchanged and in effect.

\_\_\_\_\_  
**Resident 1      Signature and Date**

\_\_\_\_\_  
**Resident 3      Signature and Date**

\_\_\_\_\_  
**Resident 2      Signature and Date**

\_\_\_\_\_  
**Resident 4      Signature and Date**

\_\_\_\_\_  
**Community Manager    Signature and Date**

**Solely as Agent for Owner**