

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (“Agreement”) is between the County of Ventura (“County”), and Cabrillo Economic Development Corporation, a California nonprofit public benefit corporation (“Developer”). County and Developer are sometimes individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

A. County currently owns certain real property located at 1400 Vanguard Drive, in the city of Oxnard, California, Assessor Parcel Numbers 220-0-296-035 and 220-0-296-035 (“Property”). The property is currently improved with an industrial building of approximately 78,000 square feet. The location of the Property is depicted on Exhibit “A,” attached hereto and incorporated herein by this reference.

B. County has determined that the development of the Property for the public purpose and use of providing permanent affordable and/or supportive housing, recuperative care housing, and an ancillary health clinic, for Ventura County’s vulnerable and economically disadvantaged population (“Housing and Related Services”) could be accomplished most effectively and economically if undertaken in County partnership with an experienced nonprofit developer under an agreement with County.

C. To that end, County issued a Request for Proposals (“RFP”) for qualified developers to develop, operate and provide Housing and Ancillary Services pursuant to a long-term ground lease substantially in the form set forth in Exhibit B. (“Ground Lease”).

D. In response to the RFP, Developer submitted a proposal to develop, operate and provide Housing and Related Services on the Property (“Proposal”), a copy of which is on file with County. The Proposal includes the development of 323 units of permanent supportive housing units, a recuperative care housing unit with 75 beds, and an ancillary health clinic, among other proposed improvements (the “Project”).

E. On the basis of the Proposal, County has selected Developer as the entity with which to negotiate to seek to execute a mutually acceptable Ground Lease which will include, but not be limited to terms and conditions of (i) the final Ground Lease; (ii) Developer’s development and provision of Housing and Ancillary Services on the Property; (iii) a sublease by the Developer to the County for the recuperative care housing unit with 75 beds, and an ancillary health clinic (the "Sublease") and (iv) affordability and occupancy restrictions that will apply to Developer’s use and development of the Property not subject to the Sublease (the "Housing Property").

F. The purpose of this Agreement is to establish procedures and standards for the negotiation by County and Developer of the Ground Lease. As more fully set forth in Section 6 below, the Parties acknowledge and agree that this Agreement in itself does not grant Developer the right to use or develop the Property, nor does it obligate Developer to any activities or costs to use or develop the Property, other than the activities and costs necessary to discharge

Developer's obligations under this Agreement including the obligation to negotiate in good faith as contemplated by this Agreement.

NOW, THEREFORE, in consideration of the recitals and mutual covenants and conditions contained in this Agreement, incorporated herein, the Parties agree as follows:

1. Effective Date; Term; Negotiation Period; Early Termination.

1.1 This Agreement shall take effect on the date approved by the County Board of Supervisors ("Effective Date").

1.2 The term of this Agreement shall be 18 months following the Effective Date, unless earlier terminated or extended pursuant to the terms of this Agreement ("Negotiation Period").

1.3 The County shall have the authority to approve up to two extensions of the Negotiation Period if the County determines, in its sole discretion, that satisfactory progress is being made to achieve the Parties' objectives but that such an extension is necessary in order to finalize discussions or negotiations on mutually satisfactory terms. Each extension shall be in writing and will be for a period of up to 90 days.

1.4 Notwithstanding the Negotiation Period, each Party has the right to terminate this Agreement upon 30 days' written notice to the other Party in the event that (i) County or Developer determines that the Project is infeasible based on financial or environmental impact considerations, or (ii) the Parties reach an impasse in their negotiations and cannot be resolved after good faith efforts.

2. Exclusive Good Faith Negotiations.

2.1 During the Negotiation Period, Developer will have the exclusive right to negotiate with the County regarding the use and development of the Property for Housing and Ancillary Services and regarding the Ground Lease. The Parties shall negotiate diligently and in good faith to achieve their objectives and accomplish the tasks described in this Agreement, and Developer agrees that it will commit the financial and time resources required to conduct the tasks outlined in this Agreement.

2.2 The Ground Lease shall contain terms acceptable to County and Developer, in the respective exercise by each of its sole discretion. The Ground Lease shall include, without limitation, the conditions precedent to County and Developer entering into the Ground Lease; physical and land title conditions of the Property at the conveyance of the leasehold interest, including environmental conditions; the site plan and proposed development schedule for the Project; and other matters that may be identified by either party during the course of completing the negotiations of the Ground Lease. The Ground Lease shall include a term of 99 years, the ground rent for a single lump sum payment in an agreed amount based on the mutually agreed upon appraised value and any ongoing obligations with regards to the use, development and operation of the Property and Project, in substantially the form attached as Exhibit B. The RFP and the Proposal shall serve as the guides in the negotiation of the Ground Lease, although the

Parties recognize that review of additional information and further discussion may lead to refinement of the issues and concepts set forth in the RFP and Proposal.

3. Exclusive Negotiations.

3.1 During the Negotiation Period, the Developer will have the exclusive right to negotiate with the County regarding the development of the Site. The Parties will negotiate in good faith to achieve their objectives and accomplish the tasks described in this Agreement with respect to the Project, and the County and the Developer each agree that it will commit the financial and time resources required to conduct the tasks outlined in this Agreement.

4. Preliminary Project Development Tasks.

4.1 During the Negotiation Period, Developer's responsibilities, with the cooperation from County, include the followings tasks:

- a) Refine the parameters of the Project and deal structure.
- b) Continue to evaluate the physical condition of the Property for the suitability of the Project.
- c) Refine the Project design.
- d) Refine the Project budget and development schedule.
- e) Retain a qualified consultant that is acceptable to County to prepare environmental documents (Initial Study, environmental review document, notices and postings, as applicable) that are required under the California Environmental Quality Act ("CEQA") and any other applicable environmental law for County's consideration and approval of the Ground Lease and Project. County shall determine the appropriate environmental review required for approval of the Ground Lease and Project and cooperate with the retained consultant in preparing the CEQA and any other environmental documents. Developer shall be solely responsible for all costs associated with preparing any environmental documents necessary for County's approval of the Ground Lease and Project. The determination of the adequacy of the environmental review shall be in the sole discretion of County.
- f) Identify other possible funding sources for the Project.
- g) Prepare a Super Notice of Availability of Funding (NOFA) application for submittal to the California Department of Housing and Community Development for the Project for 2023 and 2024 applications, including development of the Project budget, conducting a market survey, and working with County to develop a supportive services plan.

5. Entry and Inspection of Property.

5.1 License. County hereby grants to Developer and its employees, agents, consultants, and contractors (“Related Parties”) a license during the Negotiation Period to enter upon the Property between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday for the purposes of inspecting and surveying the Property (“Permitted Inspection”). Developer must notify County in writing of its intention to enter the Property at least 48 hours prior to any of the Related Parties entering the Property.

5.2 Indemnity. Developer agrees to protect, defend, indemnify and hold harmless the County and all respective officers, officials, members, employees, agents, and representatives (“collectively “Indemnitees”), from any and all third-party claims, demands, causes of action, damages, costs, expenses, losses and liabilities, at law or in equity, of every kind or nature whatsoever (“Claims”), arising out of or in any manner directly or indirectly connected with the entry upon the Property by Developer or any of its Related Parties and the performance of a Permitted Inspection, other than the discovery of existing conditions on the Property such as hazardous materials.

5.3 Insurance. Developer, at its sole cost and expense, will obtain and maintain in full force during the term of this Agreement the following types of insurance:

- 1) General Liability “occurrence” coverage in the minimum amount of \$5,000,000 combined single limit (CSL) bodily injury & property damage each occurrence and \$5,000,000 aggregate, including personal injury, broad form property damage, products/completed operations; and
- 2) Workers’ Compensation coverage, in full compliance with California statutory requirements, for all employees of Developer and Employer's Liability in the minimum amount of \$1,000,000.
- 3) Pollution Liability Insurance coverage in the minimum amount of \$1,000,000 per claim and \$2,000,000 annual aggregate.
- 4) Professional Liability coverage in the minimum amount of \$2,000,000 per occurrence and \$4,000,000 annual aggregate.

All insurance required will be primary coverage as respects to County and any insurance or self-insurance maintained by County will be excess of Developer’s insurance coverage and will not contribute to it.

County is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.

The County of Ventura, its Boards, Agencies, Departments, Districts, Officers, Employees, Agents, and Volunteers are to be named as Additional Insured as respects work done by Developer under the terms of this Agreement on all policies required (except Workers’ Compensation).

Developer agrees to waive all rights of subrogation against the County of Ventura, its Boards, Agencies, Departments, Districts, Officers, Employees, Agents and Volunteers for losses arising from work performed by Developer under the terms of this Developer as it pertains to Workers’ Compensation.

Policies will not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to the County of Ventura.

Developer agrees to provide County with the following insurance documents on or before the effective date of this Agreement:

- 1) Certificates of Insurance for all required coverage;
- 2) Additional Insured endorsements; and
- 3) Waiver of Subrogation endorsements (a.k.a.: Waiver of Transfer Rights of Recovery Against Others, Waiver of Our Right to Recover from Others) as it pertains to Workers' Compensation.

Failure to provide these documents will be grounds for immediate termination or suspension of this Agreement.

6. Limitations on Effect of Agreement.

6.1 General Limitation. This Agreement shall not obligate County to enter into any agreement for use or development of the Property or any portion thereof. By execution of this Agreement, County is not committing itself to or agreeing to undertake any disposition of the Property or any other action relating to the approval of any development of the Property. Execution of this Agreement by County is merely an agreement to conduct a period of exclusive negotiations with Developer in accordance with the terms hereof, reserving for subsequent County action the final discretion and approval regarding the execution of any agreement and all proceedings and decisions in connection therewith. Any Ground Lease resulting from negotiations pursuant to this Agreement shall become effective only if and after such Ground Lease has been considered and approved by the County Board of Supervisors, and if required by law following the completion of any review required under CEQA and the conduct of all legally required procedures and executed by a duly authorized representative of County and Developer. Until and unless a Ground Lease is duly approved and executed by the Parties, no agreement drafts, actions, deliverables, or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into or support entering into the Ground Lease or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document. Nothing contained in this Agreement shall be construed to grant Developer any vested rights and by entering into this Agreement Developer expressly waives any and all such rights or entitlements, nor shall it be construed to County's approval of the Property's development at all or in any particular fashion.

6.2 Compliance with CEQA. Without limiting the generality of Section 6.1, Developer expressly acknowledges that any Ground Lease resulting from the negotiations contemplated hereby shall become effective only if the Ground Lease and Project are approved by the County Board of Supervisors ("County Board") following compliance with all applicable notice and hearing requirements and compliance with all other requirements of law, including without limitation, the requirements of CEQA. The Parties acknowledge that the Project described in the Proposal is preliminary in nature and shall be described in further detail in the Ground Lease to be negotiated during the Negotiation Period. Without limiting the foregoing, the Parties acknowledge that County retains sole discretion to (i) modify the proposed development as the County may, in its sole discretion, determine to be necessary to comply with

CEQA, (ii) select other feasible alternatives and/or impose mitigation measures to avoid or minimize significant environmental impacts; (iii) balance the benefits of the proposed development against any significant environmental impacts prior to taking final action, if such impacts cannot otherwise be avoided; and/or (iv) determine not to proceed with the proposed development of the Property.

6.3 Developer's Expense Reimbursement; Ownership of Project Records. In the event Developer fulfills its obligations under this Agreement but the County terminates the Agreement or chooses not to pursue the Project, County shall reimburse Developer for all reasonable and necessary Project expenses incurred by Developer upon demand and proof of incurred expenses in an amount not to exceed one hundred seventy-five thousand dollars (\$175,000). In such event, to the extent allowed by law, Developer shall provide to, and County shall retain ownership of, all Project records and materials prepared by or on behalf of Developer under this Agreement including, construction and architectural plans, drawings, surveys, maps, documents pertaining to CEQA review, and related materials, but expressly excluding all internal Developer correspondence.

7. Miscellaneous.

7.1 Notices. Formal notices, demands, and communications between County and Developer must be given either by (i) personal service, (ii) delivery by reputable overnight document delivery service that provides a receipt showing date and time of delivery, or (iii) by U.S. first class certified mail, return receipt requested, addressed to:

To County: Scott Powers, Sr. Deputy Executive Officer
County Executive Office
County of Ventura
800 S. Victoria Ave., #1940
Ventura, CA 93009
805.677.8761

To Developer: Cabrillo Economic Development Corporation
Attn: William Hughes, Director of Real Estate
702 County Square Drive, Suite #200.
Ventura, CA 93003
Telephone: 805.672.2564

Notices will be deemed effective upon receipt. Such written notices, demands, and communications will be sent in the same manner to such other addresses as any Party may from time to time designate by mail.

7.2 Interpretation. The terms of this Agreement will be construed in accordance with the meaning of the language used and will not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only and will not be construed to limit or extend the meaning of this Agreement.

7.3 Entire Agreement; Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter of this Agreement. Any alteration, change, or modification of or to this Agreement must be in writing and signed on behalf of each Party.

7.4 Counterparts. This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, will be deemed to be an original, and such counterparts will constitute one and the same instrument.

7.5 Confidentiality. Developer acknowledges and agrees that County is a public entity with a responsibility and, in many cases, a legal obligation to conduct its business in a manner open and available to the public. Accordingly, information and documents provided by Developer to County with respect to the Property, the Project or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand, request or order. Developer shall designate as “Confidential” any information and documents which the Developer provides to County which Developer desires to keep confidential. County shall endeavor to maintain the confidentiality of said information and documents to the extent authorized by law.

7.6 Developer’s Sole Remedy for County Default. Subject to Developer’s right to terminate this Agreement, Developer’s exclusive remedy for an uncured County default under this Agreement is to institute an action for specific performance of the terms of this Agreement. In no event will Developer have the right, and Developer expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, or lost profits) from County in the event of a default by County under this Agreement or any action related to this Agreement. This Section 7.6 does not apply to, or in any way limit, Developer’s right to reimbursement pursuant to Section 6.3 above.

7.7 Time is of the Essence. Time is of the essence for each of Developer’s obligations under this Agreement.

7.8 Governing Law; Venue. This Agreement is made and entered into in the State of California and shall, in all respects, be governed by and interpreted in accordance with the laws of the State of California applicable to contracts entered into and to be fully performed therein. The venue for any action, suit or other proceeding concerning this Agreement shall be in Ventura County, California.

7.9 Assignment. Developer may assign this Agreement to an affiliate controlled by Developer (e.g., a limited partnership and/or limited liability company in which Developer or its affiliates are the managing general partner(s) or managing member(s), respectively) with the prior written approval of County, which approval will not be unreasonably withheld. Any assignment approved by County will not be effective unless and until Developer submits a signed assignment and assumption agreement in a form and with content approved by County Counsel.

[SIGNATURES ON FOLLOWING PAGE]

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES of County and Developer have executed this Agreement as set forth below:

COUNTY OF VENTURA

By: _____
Scott Powers, Sr. Deputy Executive Officer
County Executive Office
County of Ventura

Date: _____

CABRILLO ECONOMIC DEVELOPMENT CORPORATION,
A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION

By: _____
Margarita H. de Escontrias
Chief Executive Officer
Cabrillo Economic Development Corporation

Date: _____

By: _____
Victoria J. Brady
Chief Financial Officer
Cabrillo Economic Development Corporation

Date: _____

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF OXNARD, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A: ([APN: 220-0-296-055](#))

PARCEL 2, AS SHOWN AND DESIGNATED ON THAT CERTAIN LOT LINE ADJUSTMENT NO. 90-9, RECORDED JANUARY 18, 1991 AS DOCUMENT NO. 91-007686 OF OFFICIAL RECORDS, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AND BEING A PORTION OF LOT 4 OF TRACT NO. 4164, AS PER MAP RECORDED IN BOOK 105, PAGES 39 THROUGH 41 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND OTHER MINERALS LYING BELOW A DEPTH OF 500 FEET, WITH NO RIGHTS OF SURFACE ENTRY IN SAID PROPERTY, AS EXCEPTED IN AN INSTRUMENT RECORDED AUGUST 23, 1985 AS DOCUMENT NO. 92385 OF OFFICIAL RECORDS.

PARCEL B: ([APN: 220-0-296-035](#))

LOT 5 TRACT NO. 4164, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 105, PAGES 39 THROUGH 41, INCLUSIVE, OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM, WITHOUT THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET, ALL RIGHTS TO OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, AS RESERVED BY JESSIE P. DONLON, ROGER M DONLON, AND DAVID J DONLON, AS TRUSTEES UNDER THAT DECLARATION OF TRUST, DATED OCTOBER 7, 1968, COMMONLY KNOWN AS "THE JESSIE P. DONLON 1968 TRUST", IN A DEED RECORDED AUGUST 23, 1985, AS INSTRUMENT NO. 92385 OF OFFICIAL RECORDS.

[APN: 220-0-296-035 & 055](#)

[Plotted Easements](#)

Exhibit B

GROUND LEASE AGREEMENT

By and Between

the

COUNTY OF VENTURA

and

XXXXXXXXXXXXXXXXXXXXXXX

(XXXXXXXXXXXXXXXXXXXX)

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GROUND LEASE AGREEMENT
(XXXXXXXXXX)

This Ground Lease Agreement (“Ground Lease”), effective as of XXXXXXXXX (the “Effective Date”), by and between the County of Ventura (“Landlord”) and XXXXXXXXXXXXXXX, together with its permitted successors or assigns as more particularly set forth herein (collectively, “Tenant”).

RECITALS

A. Capitalized terms used, but not defined, in these Recitals shall have the meaning set forth in Section 1.1.

B. Landlord currently owns unimproved real property located at XXXXXXXX in unincorporated Ventura County, Assessor Parcel Number XXXXXXXX (“Site”).

C. Prior to the Effective Date of this Ground Lease, Landlord, and Tenant entered into an Exclusive Negotiation Agreement (“ENA”) to construct an XXXXXXXXX (“Project”) on a portion of the Site (“Property”).

D. The Property to be leased by Landlord to Tenant is more particularly described in Exhibit “A,” attached hereto and incorporated herein by this reference. The Site Map attached hereto as Exhibit “B,” and incorporated herein by this reference, generally depicts the boundary lines between the Site and the Property to be developed by Tenant. Landlord desires to lease the Property to Tenant for the development, construction and operation of the Improvements on the Property for use as a XXXXXXXXXXXXXXXXXXXX, referred to as the XXXXXXXXXXXXXXXXXXXX.

NOW, THEREFORE, in consideration of the mutual promises contained in this Ground Lease, Landlord and Tenant (each a “Party” and collectively, the “Parties”) agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made a part of this Ground Lease.

ARTICLE 1.
DEFINITIONS AND EXHIBITS.

Section 1.1 **Definitions.**

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Ground Lease, unless otherwise provided:

(a) “Approved Security Interest” means a mortgage, deed of trust or other reasonable method of security encumbering Tenant’s leasehold estate in the Property that meets the requirements of this Ground Lease. Any Approved Security Interest permitted hereunder may consist of two (2) or more separate loans or other financing arrangements from two (2) or

more Approved Security Interest Holders. In the event two (2) or more Approved Security Interest Holders each exercise their rights under this Ground Lease and there is a conflict that renders it impossible to comply with all requests of Approved Security Interest Holders, the Approved Security Interest Holders whose Approved Security Interest would have senior priority in the event of a foreclosure shall prevail.

(b) “Approved Security Interest Holder” means the holder or beneficiary of an Approved Security Interest, including, but not limited to XXXXXXXXXXXXXXXX and any lender that provides funds to Tenant to refinance or otherwise satisfy XXXXX’s interest in the Development.

(c) “Area Median Income” means the median gross yearly income, adjusted for actual number of persons in the applicable household, in the County of Ventura as published from time to time by TCAC. In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, Landlord shall provide Tenant with other income determinations that are reasonably similar with respect to methods of calculation to those previously utilized by Landlord and Tenant to determine area median income.

(d) “Building Permit” means all building permit(s) for the Development required under applicable law to be obtained from the County or any other Governmental Authorities.

(e) “Business Day” shall mean a day of the week on which the County is open to the public for carrying on substantially all business functions of the County. In no event shall a Saturday, Sunday or any legal holiday in the State of California be considered a Business Day.

(f) “CEQA” means the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*), and any state or local implementing guidelines in connection therewith.

(g) “CEQA Mitigation Measures and Development Requirements” means the CEQA mitigation measures and standard County development requirements applicable to the construction of the Improvements and operation of the Project that are listed in the attached Exhibit “E,” and incorporated herein by this reference.

(h) “County” means the County of Ventura.

(i) “Code” means the Internal Revenue Code of 1986, as amended, or any subsequent federal law governing the payment of federal tax.

(j) “Construction Contracts” means, collectively, (i) the construction contract between Tenant and any General Contractor(s) for the construction of the Improvements, and (ii) all other contracts between Tenant and any General Contractor(s) covering the construction of the Improvements or any Major Additional Improvements, as may be modified, amended, or replaced from time to time.

(k) “Construction Plans” means those certain plans and specifications for the construction of the Improvements as approved by Landlord pursuant to this Ground Lease.

(l) “Control” shall mean direct or indirect management or control of (i) the managing member or members in the case of a limited liability company, (ii) the managing general partner or general partners in the case of a partnership and (iii) a majority of the directors in the case of a corporation.

(m) “Development” means, collectively, (i) the Improvements, and (ii) Tenant’s leasehold interest in the Property.

(n) “Effective Date” has the meaning set forth in the introductory paragraph hereof.

(o) “ENA” shall mean that certain Exclusive Negotiation Agreement dated as of XXXXXXXX, by and among Landlord and Tenant.

(p) “General Contractor” shall mean any general contractor retained by Tenant to perform the initial construction of the Improvements, or any Major Additional Improvements.

(q) “General Partner” shall mean XXXXXX.

(r) “Governmental Authority(ies)” means any federal, state, and/or local agency, department, commission, board, bureau, administrative or regulatory body, or other public instrumentality having jurisdiction over the Property or any portion thereof, including, but not limited to, the County.

(s) “Ground Lease” has the meaning set forth in the introductory paragraph hereof.

(t) “Hazardous Materials” means any substance, material, or waste which is (i) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant” or any other terms comparable to the foregoing terms under any provision of California law or federal law, (ii) petroleum, (iii) asbestos and asbestos containing materials, (iv) polychlorinated biphenyls or (v) radioactive materials.

The term “Hazardous Materials” shall not include (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation or management of commercial properties, buildings and grounds or typically used in household activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Improvements, including but not limited to, cleaning supplies, prescription and over the counter drugs, alcoholic beverages, aspirin, tobacco products and low-calorie sweeteners such as aspartame and saccharin, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws.

(u) “Hazardous Materials Laws” means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials.

(v) “HCD” means the State of California Department of Housing and Community Development or any successor.

(w) “Improvements” means the Units and related improvements proposed to be constructed on the Property in accordance with the Construction Plans.

(x) “Insurance Trustee” shall have the meaning set forth in Section 8.5(c).

(y) “Investor” means the entity selected by the General Partner to be admitted as an investor limited partner to Tenant or its successors and/or assigns.

(z) “Land Use Approvals” means any governmental or regulatory approvals, permits or authority, other than the Building Permit, necessary for the development and operation of the Improvements, including but not limited to, any requirements under CEQA, or the State Density Bonus Law, Government Code Section 65915 *et seq.* (as applicable).

(aa) “License” means a Temporary Construction License Agreement anticipated to be entered into by and between Tenant, as licensee, and County, as licensor, regarding the use of the Site which is not part of the Property as construction staging for the Project.

(bb) “Major Additional Improvements” shall have the meaning set forth in Section 4.2(c).

(cc) “Management Agent” means XXXXXXXXXX, or any other management agent retained by Tenant and approved by Landlord in accordance with the provisions of Article 5 to manage or provide maintenance services to the Development.

(dd) “Memorandum of Lease” means the memorandum of this Ground Lease to be recorded against the Property substantially in the form attached hereto as Exhibit “C,” and incorporated herein by this reference.

(ee) “Official Records” means the official records of the County.

(ff) “Parties” and “Party” have the meanings set forth in the Recitals hereto.

(gg) “Preliminary Title Report” means that certain Preliminary Title Report for the Property dated XXXXXX, issued by XXXXXXXXXXXX, Order Number: XXXXXXXXXXXXXX.

(hh) “Property” means that certain real property commonly known as XXXXXXXXXXXX, Ventura County, California, as more particularly described in Exhibit “A.”

(ii) “Property Management Agreement” means the agreement(s) between Tenant and the Management Agent for the management and/or maintenance of the Property (as applicable) as approved by Landlord pursuant to this Ground Lease.

(jj) “Regulatory Agreements” means, collectively, any regulatory agreement regulating the use of the Property made by Tenant in favor of TCAC, HCD, and any other regulatory agreement agreed to by Tenant regulating the use of the Improvements.

(kk) “Related Entity Investor Transferee” means any of Special Limited Partner, or any entity under the Control of, Controlling, or under common Control with, the Investor.

(ll) “Rent” means the applicable amount set forth in Article 3, plus all other amounts owed by Tenant to Landlord, under this Ground Lease.

(mm) “Site” means all of the real property owned by Landlord, other than the Property. The Site is depicted on the Site Map.

(nn) “Site Map” means the map depicting the Site and the Property in Exhibit “B.”

(oo) “Special Limited Partner” means any entity admitted to Tenant as a special limited partner, or its affiliate or its successors and assigns (if any).

(pp) “Tax Credit” means federal or state low-income housing tax credits.

(qq) “Tax Credit Compliance Period” means the 15-year period as defined in section 42(i)(1) of the Internal Revenue Code.

(rr) “Tax Credit Funds” means the proceeds from the sale of limited partnership interests in Tenant to the Investor based on the Tax Credit Reservation.

(ss) “Tax Credit Reservation” means a preliminary reservation of federal or state low-income housing tax credits from TCAC to the Tenant.

(tt) “TCAC” means the California Tax Credit Allocation Committee, or its successor.

(uu) “Tenant” has the meaning set forth in the introductory paragraph hereof.

(vv) “Tenant Event of Default” means an event described in Section 12.1.

(ww) “Term” means the term of this Ground Lease, commencing on the Effective Date and ending on the earlier to occur of: (1) the ninety-ninth (99th) anniversary of the Effective Date; or (2) the date of any termination of this Ground Lease in accordance with the provisions hereof.

(xx) “Transfer” has the meaning set forth in Section 7.1.

(yy) “Unit” means the XXXXXXXXXXXX, proposed to be constructed on the Property in accordance with the Construction Plans.

Section 1.2 Exhibits.

The following exhibits are attached hereto and incorporated into this Ground Lease:

- Exhibit "A": Legal Description of the Property
- Exhibit "B": Site Map
- Exhibit "C": Memorandum of Lease
- Exhibit "D": Insurance Requirements
- Exhibit "E": CEQA Mitigation Measures and Development Requirements
- Exhibit "F": HCD Rider
- Exhibit "G": TCAC Rider

ARTICLE 2.
LEASE OF THE PROPERTY

Section 2.1 Property.

Subject to the terms, covenants, and conditions hereof and in consideration of rents to be paid pursuant to this Ground Lease, Landlord hereby demises and leases the Property to Tenant, and Tenant hereby leases and takes from Landlord, the Property.

Section 2.2 Term.

Unless terminated sooner pursuant to the provisions of this Ground Lease, this Ground Lease shall continue in full force and effect for the Term, commencing on the Effective Date and shall expire on midnight the day immediately preceding the ninety-ninth (99th) anniversary of the Effective Date.

Section 2.3 Use.

Subject to the provisions of this Ground Lease, Tenant shall use the Property for the construction, development and operation of the Improvements on the Property for an XXXXXXXXXXXXXXX in compliance with all County approvals and permits and the requirements of all lenders as may be in effect from time to time during the Term, referred to as the "XXXXXXXXXXXXXXXX." During the Term, Tenant agrees to cooperate with any audits or investigations by Landlord relating to Tenant's compliance with the eligibility requirements for residents placed at the Property, including allowing examination of books, records and files maintained by Tenant.

Section 2.4 Possession.

Landlord agrees to, and shall, provide possession of the Property to Tenant immediately following the Effective Date. To the best of Landlord's knowledge, the Property is subject only to the encumbrances listed in the Preliminary Title Report and such encumbrances approved by the Parties and recorded concurrently with the Memorandum of Lease.

Section 2.5 As-Is Conveyance.

(a) As-Is. EXCEPT AS SET FORTH IN THIS GROUND LEASE, AS OF THE EFFECTIVE DATE, TENANT ACCEPTS THE PROPERTY "AS IS," WITH NO

WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY LANDLORD CONCERNING THE CONDITION OF THE PROPERTY.

Section 2.6 Memorandum of Lease.

The Parties shall execute and acknowledge the Memorandum of Lease, in the form attached hereto as Exhibit "C," which Tenant shall cause to be recorded against the Property.

Section 2.7 Closing Costs.

The closing costs associated with execution of this Ground Lease and recordation of the Memorandum of Lease including, but not limited to recording charges, County documentary transfer tax, and conveyance taxes (if any) and the cost of Tenant's title insurance policy shall be borne by Tenant. Each Party shall bear its own attorneys' fees and costs.

ARTICLE 3.
RENT

Section 3.1 Annual Rent. Tenant shall pay, on an annual basis, rent in the amount of XXXXXXXXXX per year.

Section 3.2 Advances for Lease Obligations.

During the continuance of a Tenant Event of Default, Landlord shall have the right (at its sole election and without any obligation to do so) to advance on behalf of Tenant any mandatory amount due and payable under this Ground Lease by Tenant, or to otherwise satisfy any of Tenant's obligations under this Ground Lease (subject to applicable notice and cure rights), provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant and all Approved Security Interest Holders no less than thirty (30) days advance written notice of Landlord's intention to advance such amounts on behalf of Tenant. All amounts advanced by Landlord pursuant to this Section 3.2 are hereinafter referred to as "Advances."

Section 3.3 Net-Net-Net Lease.

This Ground Lease is a net-net-net lease, and Rent, utilities and other payments, such as taxes, insurance and maintenance, payable to or on behalf of Landlord shall: (a) be paid by Tenant without notice or demand (except as expressly provided herein) and without offset, counterclaim, abatement, suspension, deferment, deduction or defense; and (b) be an absolute net return to Landlord, free and clear of any expenses, charges or offsets whatsoever.

ARTICLE 4.
CONSTRUCTION OF IMPROVEMENTS

Section 4.1 Construction of Improvements.

(a) Landlord Approval of Construction Plans. Prior to the initial commencement of construction of the Improvements, Tenant shall submit, or cause to be submitted, to the Landlord in accordance with Section 13.1 the proposed construction plans for the Improvements. The Landlord shall approve or disapprove the proposed plans by notifying the Tenant in writing within forty-five (45) days after the submission of such plans. If the proposed plans are disapproved by the Landlord, the disapproval shall state with reasonable specificity the basis for disapproval. As approved by the Landlord, such plans are referred to as the “Construction Plans.”

(b) Specific Standards. Within the time and in the manner set forth in this Ground Lease, Tenant shall construct, or cause to be constructed on the Property, the Improvements, as required by this Ground Lease. The Improvements shall be constructed in full conformity with the Land Use Approvals, and the Construction Plans, as may be amended pursuant to this Ground Lease.

(c) Material Changes. If Tenant desires to make any Material Change (as defined below) in the Construction Plans then in effect, Tenant shall first submit, or cause to be submitted, to Landlord in accordance with Section 13.1 such plans or other information which document the desired change. If the proposed change is disapproved by the Landlord, the disapproval shall state with reasonable specificity the basis for disapproval. Until and unless such change is approved by Landlord, the previously approved Construction Plans shall remain in effect.

For purposes of this Article 4, a “Material Change” is one involving a material change in the exterior design, or a change in interior design that, in each case, would materially affect the uses to which the Improvements may be put, a change that will reduce the number of bedrooms within a Unit, or that will reduce the total number of Units.

(d) Commencement and Completion. Once Tenant commences construction of the Improvements, Tenant shall not halt, or permit the cessation of construction for such work except as provided in Section 13.2.

Section 4.2 Additional Construction on Property.

(a) General Standards. Any Major Additional Improvements (as defined below), once commenced, shall be diligently prosecuted, and completed (i) only after Tenant has obtained Landlord’s prior written approval for such Major Additional Improvements, such approval not to be unreasonably withheld, conditioned or delayed, (ii) without material cost to the Landlord, (iii) in good and workmanlike manner, and (iv) in accordance with any plans and specifications approved by the Landlord pursuant to subsection (b) below. Tenant shall secure all Land Use Approvals for such Major Additional Improvements, to the extent required under applicable law, prior to submitting any construction plans to Landlord under this Section 4.2.

(b) Approval of Plans. Prior to commencing construction of any Major Additional Improvements (as defined below), Tenant shall submit to Landlord for Landlord’s reasonable approval plans and specifications for such work. Landlord shall approve or disapprove (in Landlord’s reasonable discretion) such plans and specifications in writing within

forty-five (45) days of submission. Any disapproval shall state with specificity the reasons for such disapproval.

If rejected by Landlord in whole or in part (in Landlord's reasonable discretion), Tenant shall submit new or corrected construction plans within forty-five (45) days of notification of Landlord's disapproval. Landlord shall then have forty-five (45) days to review and approve Tenant's new or corrected construction plans. The provisions of this Section 4.2 relating to time periods for approval, rejection or resubmission of new or corrected construction plans shall continue to apply until construction plans have been approved by Landlord at which time they shall be attached to and become a part of this Ground Lease as if fully set forth herein. Only upon approval of the construction plans by Landlord shall this condition be met.

In the event that prior to or during the course of construction, Tenant desires to make any material change in the Major Additional Improvements from that contemplated in the approved plans and specifications, Tenant shall, prior to making such change, submit to the Landlord such plans or other information which document the desired change. Landlord shall approve or disapprove such change within forty-five (45) days of its submission to Landlord. Any disapproval shall state with reasonable specificity the basis for such disapproval. Unless such change is approved, the previously approved plans and specifications shall remain in effect.

(c) “Major Additional Improvements” means any of the following: (i) any new buildings or structures to be located on the Property after the completion of the initial construction of the Improvements, (ii) construction of additional spaces or facilities, or (iii) a change that will reduce or increase the number of bedrooms within a Unit, or the number of Units at the Property. Alteration, construction, remodeling, or reconstruction not constituting a Major Additional Improvement shall not require Landlord's consent or approval of plans and specifications but must be designed and performed in accordance with the General Standards set forth in subsection (a) above.

Section 4.3 Construction Standards.

(a) General Standards. All construction of the Improvements, and alteration or repair work permitted by this Ground Lease shall, subject to Section 4.1(b) above, be accomplished expeditiously and diligently by a reputable licensed contractor(s), approved by Landlord in accordance with the provisions of Section 4.3(j), below.

(b) Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements and any Major Additional Improvements shall be constructed in all material respects in compliance with the requirements of the construction documents approved by Landlord, in accordance with this Ground Lease (if applicable), and also in compliance with all applicable local, state and federal laws and regulations. Tenant shall have the sole responsibility for obtaining all necessary permits required under applicable law for such construction and shall make any application for such permits directly to the Governmental Authorities having jurisdiction.

(c) Construction Safeguards. Tenant shall erect and properly maintain at all times during construction of the Improvements, all reasonable safeguards for the protection of workers and the public as required by applicable law.

(d) Rights of Access. Representatives of Landlord shall have the reasonable right of access to the Property and the Improvements thereon without charges or fees, at normal construction hours on Business Days, during the period of construction, for the purposes of ascertaining compliance with the terms of this Ground Lease, including, but not limited to, the inspection of the construction work being performed, provided that such representatives shall be those who are so identified in writing by Landlord, shall be accompanied by Tenant's representatives if Tenant so desires, shall comply with Tenant's contractor's reasonable rules for the construction site, and shall provide Tenant with forty-eight (48) hours' written notice prior to any such inspection.

(e) Notice of Completion. Upon completion of the Improvements and any Major Additional Improvements, Tenant shall file or cause to be filed in the Official Records a notice of completion with respect to the applicable construction, and Tenant shall deliver to Landlord, at no cost to Landlord, an electronic set of final as-built plans and specifications of the Improvements, or Major Additional Improvements, as applicable.

(f) Discharge of Liens. Tenant shall not permit or suffer any lien (including, but not limited to, the liens of mechanics, laborers, material men, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Property and the Improvements thereon), encumbrances or other charge to be recorded or filed against the Property and the Improvements thereon, or any part thereof, or upon Tenant's leasehold interest therein, except as otherwise permitted under this Ground Lease.

Notwithstanding the foregoing, Tenant shall have the right to contest in good faith and by appropriate legal proceedings the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or other claimed lien; provided that Tenant shall utilize all reasonable means (including the posting of adequate security for payment) to protect the Property, and any part thereof, or the Improvements thereon against foreclosure, and shall indemnify, defend and hold harmless Landlord and its elected officials, directors, employees, agents, subcontractors, volunteers, successors and assigns from any and all third-party demands, claims, actions, losses, damages, costs, expenses, including reasonable attorney's fees, or liability resulting from any and all such liens, except to the extent arising from Landlord's gross negligence, willful misconduct, illegal acts or breach of this Ground Lease.

(g) Protection of Landlord. Nothing in this Ground Lease shall be construed as constituting the consent of Landlord, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or the Improvements thereon, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving Tenant or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the fee interest of the Property. Landlord shall have the right at all reasonable times to post and keep posted on the Property any reasonable notices which Landlord may deem reasonably necessary for the protection of Landlord and of its fee interest in the Property from mechanics' liens or other claims, including, but not limited to, a notice of non-responsibility pursuant to California Civil Code Section 8444.

(h) Tenant to Furnish and Equip the Improvements. Tenant covenants and agrees to furnish and equip the Improvements, or any Major Additional Improvements, with all

fixtures, furnishings, equipment and other personal property (collectively, the “Personal Property”) of a quantity as necessary to operate the Improvements in accordance with the standards set forth in this Ground Lease. As used in this Ground Lease, the term “Personal Property” includes all such replacements and renewals, and all fixtures, furnishings, equipment and other personal property of Tenant located in, on or about the Property and the Improvements thereon; provided, however, for the avoidance of doubt, the Parties agree and acknowledge that Tenant has no obligation to furnish the Units, and the term “Personal Property” excludes the furniture, or other personal property, of any occupant of the Units. Any and all fixtures, furnishings, equipment and other personal property placed in, on or about the Property shall be the Personal Property of Tenant during the Term.

(i) Performance and Payment Bonds. Unless otherwise waived by Landlord or if required by an Approved Security Interest Holder providing construction funding for the Project, prior to commencing construction of the Improvements or any Major Additional Improvements, Tenant shall obtain and provide to Landlord evidence of one (1) labor and material, and, one (1) performance, bond issued by a reputable insurance company licensed to do business in California, and named in the current list of “Surety Companies Acceptable on Federal Bonds” as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and reasonably acceptable to Landlord, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction on the Property. Landlord shall be named as an obligee under those bonds.

(j) Contractor(s). The Improvements and any Major Additional Improvements shall be performed by a General Contractor reasonably satisfactory to the Landlord. Tenant shall submit for Landlord’s reasonable approval the identity of any proposed General Contractor. Landlord shall approve or disapprove the proposed General Contractor by notifying Tenant in writing within ten (10) business days of the submission. Any disapproval shall state with reasonable specificity the basis for disapproval.

(k) Construction Contracts. Tenant shall enter into the Construction Contracts, which shall provide for the work to be performed for fixed and specified maximum amounts or allowances pursuant to the approved Construction Plans. Tenant shall submit a copy of all Construction Contracts for such construction to Landlord, for the sole and limited purposes of determining: (a) that the amount of the costs of work has been clearly fixed and determined and is consistent with the amount set forth in the approved applicable budget for such work; and (b) that no changes to the provisions of the Construction Contracts which, pursuant to this Ground Lease require the approval of Landlord, shall be made without the prior consent of Landlord.

(l) Conditions to Commencement of Construction. In no event shall Tenant commence any construction of the Improvements or any Major Additional Improvements on the Property until the following conditions have been satisfied or waived by Landlord, in addition to other conditions and requirements imposed by this Ground Lease:

(1) Landlord has approved the final plans and specifications for the Improvements or the Major Additional Improvements to be constructed, as set forth above;

(2) Tenant has complied with all development requirements as set forth above and CEQA Mitigation Measures and Development Requirements referenced in Exhibit "E" that are required for completion prior to commencement of construction of the Improvements or the Major Additional Improvements;

(3) Tenant has obtained financing and equity capital necessary, as applicable, for the full payment of the costs of construction of the Improvements or the Major Additional Improvements (as applicable) and has delivered evidence of such financing to Landlord;

(4) Tenant has obtained building permits and all other governmental approvals necessary for the construction of the Improvements, or the Major Additional Improvements, to the extent required by applicable law;

(5) Tenant has entered into complete and binding Construction Contracts with General Contractors for the construction of the Improvements, or the Major Additional Improvements, which Construction Contracts shall meet the requirements of subsection (k) above;

(6) Tenant has obtained the performance bond and the payment bond meeting the requirements of subsection (i) above; and

(7) There exists no continuing Tenant Event of Default under this Ground Lease.

Section 4.4 No Liens.

Tenant shall not have any right, authority or power to bind the Landlord, or the Landlord's fee interest in the Property, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto including, but not limited to, any Major Additional Improvements. The Tenant shall not have any right to encumber the Tenant's estate in the Property without the written consent of the Landlord, other than with the Approved Security Interests. Any easements necessary and incidental to the development, construction and operation of the Improvements are subject to the approval of the Landlord, which shall not be unreasonably withheld, delayed, or conditioned.

Section 4.5 Permits, Licenses and Easements.

In accordance with Section 13.13, at no material cost to Landlord, Landlord shall cooperate with Tenant in the submittal of applications for all required permits, licenses, applications for utility services and easements, provided that Tenant shall be responsible for obtaining any and all permits, licenses, easements and other authorizations required by any Governmental Authorities with respect to any construction or other work to be performed on the Property and for granting or causing to be granted all permits, licenses, easements and other governmental authorizations that are necessary or helpful, as determined by Tenant, for electric, telephone, gas, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Tenant shall be entitled, without separate payment to the

Landlord for tap or connection fees, to tap into the existing third-party utilities (neither owned nor operated by Landlord) including all lines, facilities and systems of the applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Property (if any), provided Tenant remains responsible for payment of such fees and Landlord is not responsible for payment of such fees therefor. Tenant shall be entitled to connect into the existing utilities that are owned or operated by Landlord serving the Property (if any), provided Tenant remains responsible for payment of standard fees therefor. Additionally, Tenant shall have the right to utilize any Landlord water entitlements, allocations or other utility rights to the extent such entitlements are sufficient to serve the Project. In the event the water district serving the Property requires an additional one-time fee or cost to increase Landlord's water entitlements or allocations for the Project, the Parties shall promptly negotiate in good faith and attempt to reach agreement regarding the Parties' respective responsibilities for payment of said fee or cost and then return to the Board for consideration of approval of said agreement. The Parties acknowledge that Tenant shall have the rights to use the portions of the Site which do not comprise the Property for construction staging for the Project as set forth in the License.

Section 4.6 Landlord as Regulator.

Tenant acknowledges and agrees that neither this Ground Lease nor any other agreement with Landlord in its proprietary capacity as lessor under this Ground Lease shall limit the general police power of Landlord acting in its regulatory capacity as a Governmental Agency and that nothing contained herein is an agreement of Landlord as a Governmental Agency having regulatory jurisdiction of the Property to issue or grant to Tenant any permit (including land use permits). Tenant acknowledges that Tenant shall not have the right to apply for or obtain a change of land use designation, or obtain a conditional use permit, a variance or other land use entitlement inconsistent with the Construction Plans with respect to the Project without Landlord's written consent. Tenant further acknowledges that Landlord in its proprietary capacity as lessor under this Ground Lease has control over contractual rights concerning land uses of the Property which might be more restrictive and specific by such contractual rights, and the rights inuring to landlords as a matter of law, than it may have in its governmental role as regulator. Nothing contained herein shall be construed to require Landlord to exercise its powers as a regulatory agency. Landlord, in its capacity as lessor under the Ground Lease, hereby agrees to cooperate with the Tenant and to take such actions as Tenant reasonably requests in connection with Tenant's efforts to obtain all approvals and permits necessary for the completion of the Project, as applicable, in each case without any out-of-pocket cost or expense to Landlord.

ARTICLE 5.

USE, CHARACTER, OPERATION AND MAINTENANCE OF IMPROVEMENTS

Section 5.1 Required and Permitted Uses.

(a) Covenant to Provide XXXXXXXXXXXXX. Throughout the Term, Tenant shall XXXXXXXXXXXXXXXX.

(b) Other Regulatory Agreements. Nothing in this Section shall be deemed to waive, limit, or impair Tenant's right to agree to more restrictive population, income and rent

limitations that (i) may be imposed by any Regulatory Agreements, (ii) are otherwise required by any Approved Security Interest Holder, or (iii) are otherwise necessary to obtain the Tax Credit Funds. Tenant's compliance with the requirements of the Regulatory Agreements, while such agreements remain in effect, shall be deemed to be compliance with the requirements of this Section.

Section 5.2 Limitations on Use.

In addition to the covenants regarding the use of the Property set forth above, Tenant further agrees:

- (a) Not to use or permit the use of the Property for any unlawful purpose;
- (b) Not to cause or permit any waste in, on or about the Property;
- (c) Not to use or permit the use of the Property for any purpose that violates the terms of this Ground Lease.

Section 5.3 Operation of Development.

The Development shall be managed and operated by a Management Agent, reasonably satisfactory to Landlord, having the necessary financial capability to operate the Development and the reputation, experience and qualifications for operating similar affordable housing developments as set forth in this Article 5. Prior to entering into the Property Management Agreement with the Management Agent, Tenant submitted the proposed Property Management Agreement to Landlord for Landlord's reasonable approval. The Landlord approved the Property Management Agreement dated XXXXXXXXXXXXXXXX. Tenant shall submit, in writing, for Landlord approval (in its reasonable discretion), any proposed change to the Management Agent or any material changes to the Property Management Agreement. Landlord shall approve or disapprove (in Landlord's reasonable discretion) the amendments to the Property Management Agreement within thirty (30) days of submission by notifying Tenant in writing. To the extent applicable, Tenant shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably requested by Landlord to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, Landlord shall approve the proposed Management Agent by notifying Tenant in writing. Subject to Tenant's compliance with Section 13.1(c) hereof, unless the proposed Management Agent is disapproved by Landlord within ten business (10) days following Landlord's receipt of Tenant's notice, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed Management Agent is disapproved by Landlord for failing to meet the standard for a qualified Management Agent set forth above, Tenant shall submit for Landlord's approval (in its reasonable discretion) a new proposed Management Agent within thirty (30) days following Landlord's disapproval. Tenant shall continue to submit proposed Management Agents for Landlord's approval (in its reasonable discretion) until Landlord approves a proposed Management Agent. Landlord hereby approves XXXXXXXXXXXX as the initial Management Agent.

Section 5.4 Maintenance of Improvements.

During the Term of this Ground Lease, Tenant shall operate and maintain the Improvements in an adequate manner to provide safe and sanitary housing to the tenants at the Property.

Section 5.5 Cost of Operation and Maintenance of Improvements.

As between Landlord and Tenant, all costs incurred by Tenant in the development, operation, and maintenance of the Improvements shall be paid by Tenant.

Section 5.6 Landlord Not Obligated to Repair.

Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Improvements, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under Section 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced or restated.

Section 5.7 Non-Discrimination. Except to the extent required by this Ground Lease or any applicable requirements of an Approved Security Interest Holder, in accordance with applicable law, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Improvements, or any part thereof, and, except as set forth above, Tenant or any person claiming under or through Tenant, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Improvements, or any part thereof.

Section 5.8 Compliance with Laws.

Tenant shall, at Tenant's sole cost and expense, comply with all applicable federal, state, County, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Improvements the use thereof, or construction thereon, including those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted were within the contemplation of the Parties at the time of execution of this Ground Lease, or involve a change of policy on the part of the Governmental Authority enacting the same.

Section 5.9 Property Taxes.

The Tenant acknowledges and agrees that this Ground Lease will create a possessory interest subject to property taxation. Subject to Tenant's rights of contest as provided in Section 5.14, Tenant agrees to pay and discharge, or cause the payment and discharge, during the Term of the Ground Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with Tenant's interest in the Property, the Ground Lease, and any so-called value added tax), assessments (including without limitation, all assessments for public improvements or benefits, whether or not to be completed prior to the date hereof and whether or not to be completed within the Term of the Ground Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Tenant acquired pursuant to the Ground Lease (all of the foregoing

collectively called “Taxes”). Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any Taxes required to be paid by Tenant hereunder. Tenant shall use good faith efforts to apply for and maintain a welfare exemption in accordance with Section 214(g) and Section 236 of the California Revenue and Taxation Code.

Section 5.10 Limits of Tax Liability.

The provisions of this Ground Lease shall not be deemed to require Tenant to pay municipal, county, state or federal income or gross receipts taxes (except as provided below) or excess profits taxes assessed against Landlord or any interest of Landlord in the Property or Improvements, or municipal, County, state or federal capital levy, estate, succession, inheritance, gift or transfer taxes of Landlord, or corporation franchise taxes imposed upon any corporate owner of the fee of the Property; except, however, that Tenant shall pay all taxes assessed by any Governmental Authorities by virtue of any operations by Tenant conducted on or out of the Improvements.

Section 5.11 Apportionment of Taxes.

All Taxes for the fiscal or tax years in which the Term begins and ends shall be apportioned so that Tenant shall pay only those portions thereof that will correspond with the portion of said years as are within the Term.

Section 5.12 Assistance in Making Payments.

The Parties acknowledge that Tenant is responsible under this Ground Lease for making various payments to third parties, such as tax and utility payments in accordance with the provisions of this Article 5. In case any person or entity to whom any sum is directly payable by Tenant under any of the provisions of this Ground Lease (e.g., a tax collector or utility company) shall refuse to accept payment of such sum from Tenant (due to the fact that the Tenant is not the fee owner of the Property or for any other reason), Tenant shall thereupon give written notice of such fact to Landlord and shall pay such sum directly to Landlord at the address specified in Section 13.1 hereof, and Landlord shall thereupon pay such sum to such person or entity.

Section 5.13 The Landlord’s Right to Cure.

If Tenant, in violation of the provisions of this Ground Lease, shall fail to pay and to discharge any Taxes, or any other tax or fee, Landlord may (but shall not be obligated to) pay or discharge such Taxes, and the amount paid by the Landlord shall be deemed to be and shall, upon demand of Landlord, be payable by Tenant as repayment of an Advance.

Section 5.14 Permitted Contests.

Tenant shall not be required to pay, discharge or remove any Taxes (including penalties and interest) upon or against the Improvements, or any part thereof, so long as Tenant shall in good faith contest the same or the validity thereof by appropriate legal proceedings and such legal proceedings shall operate to prevent the collection of the taxes so contested, or the sale of the Improvements, or any part thereof, to satisfy the same; and Tenant shall, prior to the date such taxes are due and payable, meet all requirements for contest imposed by the taxing entity whose Tax is being contested (including, without limitation, depositing any sums required by such taxing entity). In the event the final determination of

any such contest is adverse to Tenant, Tenant shall promptly pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Tenant. Any proceedings to contest the validity or amount of taxes or to recover back any taxes paid by Tenant shall be brought by Tenant, at Tenant's sole expense, in the name of Tenant. If any such proceedings are brought by Tenant, Tenant shall indemnify, defend and hold harmless Landlord and its elected officials, directors, employees, agents, subcontractors, volunteers, successors and assigns from and against any and all losses, costs or expenses of any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by Landlord in connection with those proceedings except to the extent arising from Landlord's gross negligence, willful misconduct, illegal acts or breach of this Ground Lease.

Landlord shall cooperate with Tenant in providing Tenant information in connection with contests permitted under this Section.

Section 5.15 Service and Utilities.

Tenant shall pay promptly as the same become due and payable all charges, costs, bills and expenses of and for water, gas, electricity, sewer, air-conditioning, telephone and all other public or private services and utilities of whatever kind furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Improvements or any part thereof, and shall comply with all contracts relating to such services and shall do all other things reasonably necessary and required for the maintenance and continuance of such services.

Section 5.16 Hazardous Materials.

(a) Covenants.

(1) No Hazardous Materials Activities. Tenant hereby represents and warrants to Landlord that, at all times from and after the Effective Date, Tenant shall not cause or permit the Property or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(2) Hazardous Materials Laws. Tenant hereby represents and warrants to Landlord that, at all times from and after the Effective Date, Tenant shall comply and cause the Property and the Improvements thereon to comply with all Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

(3) Notices. Tenant hereby represents and warrants to Landlord that, at all times from and after the Effective Date, Tenant shall immediately notify Landlord in writing of any claims or actions pending, for which Tenant has been served, or threatened in writing against Tenant, the Property or the Improvements thereon by any Governmental Authorities or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws (collectively "Hazardous Materials Claims").

(4) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Property in violation of Hazardous Materials Laws during the Term, Tenant shall immediately take, at Tenant's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise with

respect to any Hazardous Materials Claims unless and to the extent any such Hazardous Materials Claims relate any Hazardous Materials which were present on, under or about the Property prior to the Effective Date.

(b) Environmental Indemnity. Without limiting the generality of the indemnity set forth elsewhere in this Ground Lease, Tenant shall defend, indemnify, and hold harmless Landlord and its elected officials, directors, employees, agents, subcontractors, volunteers, successors and assigns (the “Indemnified Parties”) from and against any third-party demands, claims, actions, losses, damages, costs, expenses, including reasonable attorney’s fees, or liability they may actually incur directly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, or disposal by Tenant or its contractors, subcontractors, tenants, agents and employees, of Hazardous Materials on, under, or about the Property or the Improvements in violation of Hazardous Materials Laws (except to the extent caused by any act or omission of the Indemnified Parties). Notwithstanding the foregoing, Tenant shall have no liability for any such claims, loss, damage, costs, expense or liability imposed upon or incurred by or asserted against any Indemnified Parties to the extent arising from (i) the negligence, willful misconduct, illegal acts or breach of this Ground Lease by any Indemnified Parties, (ii) actions, conditions or events relating to Hazardous Materials placed in, on, above or under the Property prior to the Effective Date, or after the expiration of the Term of this Ground Lease (or the earlier termination thereof) and were not caused by the direct or indirect actions of Tenant or any party acting, by, under, or through Tenant, and (iii) any other portion of the Site.

ARTICLE 6.
TITLE TO IMPROVEMENTS; QUIET ENJOYMENT; INSPECTIONS.

Section 6.1 During the Term.

Landlord hereby grants to Tenant, without warranty express or implied, any right, title, or interest that Landlord has or may have in the Improvements now or hereafter located on the Property, which Improvements are and shall at all times during the Term be deemed real property. It is the intent of the Parties hereto that this Ground Lease shall create a constructive notice of severance of the Improvements from the Property without the necessity of a deed from the Landlord after the Improvements have been constructed.

Section 6.2 After the Term.

Upon the expiration of the Term or other termination of the Ground Lease, the Improvements and all alterations, additions, equipment and fixtures shall be deemed to be and shall automatically become the property of Landlord, without cost or charge to Landlord. Landlord agrees that Tenant, at any time prior to the sixtieth (60th) day after the expiration or other termination of this Ground Lease, may remove from the Property, the Personal Property, and any and all equipment which Tenant has furnished for maintenance purposes, provided that Tenant shall repair any physical damage to the Property or the Improvements caused by the removal of such equipment and property. Tenant agrees to execute, at the request of Landlord at the end of the Term, a quitclaim deed of the Improvements to Landlord to be

recorded at Landlord's option and expense and any other documents that may be reasonably required by Landlord or Landlord's title company to provide Landlord title to the Property and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by Landlord.

Section 6.3 Benefits of Improvements During Term.

Landlord acknowledges and agrees that any and all depreciation, amortization, tax credits and other tax benefits for federal or state tax purposes relating to the Improvements located on the Property and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively to Tenant during the Term and for the tax years during which the Term begins and ends.

Section 6.4 Quiet Enjoyment.

Landlord covenants and warrants that Tenant shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Property during the Term, subject only to the provisions of this Ground Lease and all applicable legal requirements of the Governmental Authorities.

Section 6.5 Landlord's Right of Inspection.

Notwithstanding Section 6.4 above, Landlord, its employees or its agents, upon at least forty-eight (48) hours prior written notice to Tenant, shall have the right to enter upon the Property for purposes of reasonable inspections performed during reasonable business hours, on Business Days, in order to assure compliance by Tenant with its obligations under this Ground Lease, subject to the rights of the tenants of the Units.

ARTICLE 7.
ASSIGNMENT AND SUBLETTING

Section 7.1 Definitions.

(a) Definition. For purposes of this Ground Lease, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Ground Lease, and/or (ii) any interest in Tenant or the Development, which may include (but is not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest or an interest evidenced by a land contract by which possession of the Development is transferred and Tenant retains title. The term "Transfer" shall exclude the leasing of any single Unit in the Development to an occupant in compliance with the Regulatory Agreement.

(b) Prohibited Transfers. Other than the Permitted Transfers (as set forth in Section 7.3, below), no Transfer shall be permitted without the prior written consent of Landlord, which Landlord may withhold in its reasonable discretion. Any unauthorized Transfer shall constitute a Tenant Event of Default under Section 12.1, below.

Section 7.2 Purpose of Restrictions on Transfer; Applicability.

This Ground Lease is granted to Tenant solely for the purpose of development and operation of the Improvements, and its subsequent use in accordance with the terms of this Ground Lease, and not for speculation in landholding. Tenant recognizes that, in view of the following factors, the qualifications and identity of Tenant are of particular concern to the community Landlord:

(a) The fact that a Transfer as defined in Section 7.1 above is for practical purposes a transfer or disposition of the leasehold interest in the Property then owned by Tenant; and

(b) The fact that the Improvements are not to be acquired, developed or used for speculation, but only for development and operation by Tenant in accordance with this Ground Lease.

Tenant further recognizes that it is because of such qualifications and identity that Landlord is entering into this Ground Lease with Tenant and that Transfers are permitted only as provided in this Ground Lease.

Section 7.3 Prohibited Transfers.

Except as expressly permitted in this Ground Lease, Tenant represents and agrees that Tenant has not made or created and shall not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law. Any Transfer made in contravention of this Section 7.3 shall be void and shall be deemed to be a default under this Ground Lease whether or not Tenant knew of or participated in such Transfer.

Section 7.4 Permitted Transfers.

Notwithstanding the provisions of Section 7.3, the following Transfers shall be permitted and approved by Landlord:

(a) Any Transfer to an Approved Security Interest Holder pursuant to an Approved Security Interest (as set forth in Article 9);

(b) Any Transfer directly resulting from the foreclosure of an Approved Security Interest, the granting of a deed in lieu of foreclosure of an Approved Security Interest, or as otherwise permitted under Article 9 below and the first transfer to a unaffiliated third party thereafter;

(c) Any Transfer solely and directly resulting from the death or incapacity of an individual;

(d) Transfers of the limited partner interest of Tenant to the Investor, and any subsequent Transfer of the Investor's limited partner interest to either a Related Entity Investor Transferee, or any other entity;

(e) Transfer of the Tenant's leasehold interest Property from Tenant to (i) the General Partner, or an entity under the Control of the General Partner, (ii) XXXXXXXX, or an entity under the Control of XXXXXXXXXXXX, or (iii) XXXXXXXXXXXX, or an entity under the Control of XXXXXXXXXXXX, at the end of the Tax Credit Compliance Period, or as otherwise

permitted by the Investor, pursuant to an option or right of first refusal agreement as described in the Partnership Agreement, or related documents;

(f) Transfers of any interest in Tenant from: (i) the Limited Partner to the General Partner or any entity under the Control of the General Partner (or either XXXXX or XXXXX), and (ii) the General Partner to any entity under the Control of the General Partner (or either XXXXX or XXXXX);

(g) In the event the General Partner is removed by the Investor for cause following default under the Partnership Agreement, Landlord hereby approves the Transfer of the general partner interest to (i) a corporation exempt from federal income tax pursuant to Section 501(c)(3) of the Code, or a limited liability company whose member is a corporation exempt from federal income tax under Section 501(c)(3) of the Code, selected by the limited partner, or (ii) the Investor Limited Partner, the Special Limited Partner, or a Related Entity Investor Transferee, but only for a period not to exceed one hundred eighty (180) days during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (1) above; and

(h) The lease of the Units within to income-eligible households in accordance with this Ground Lease.

Section 7.5 Procedure for Landlord Approval of Certain Transfers.

In the event Tenant desires to effect a Transfer that is not permitted hereunder, Tenant shall first submit to Landlord all Landlord-requested information regarding such proposed Transfer including but not necessarily limited to the following: proposed documents to effectuate the Transfer, a description of the type and amount of consideration for the Transfer, and information regarding the proposed transferee's financial strength and the proposed transferee's capacities and expertise with respect to operation and management of similar affordable housing developments. After receiving all information and documents as set forth above, Landlord shall approve such Transfer within a reasonable time by written notice to Tenant if, based upon the information submitted by Tenant and any other information available to Landlord, it appears to Landlord in its reasonable discretion that following the Transfer, the new Tenant will be of sound reputation and will have sufficient financial strength and management and operation expertise in the ownership and operation of similar affordable housing developments, to fully perform and comply with all terms of this Ground Lease.

Section 7.6 Effectuation of Certain Permitted Transfers.

No Transfer of this Ground Lease (as opposed to a Transfer in whole or in part of an interest in Tenant) permitted pursuant to Section 7.4 (other than a Transfer pursuant to an Approved Security Interest under Section 9.1 or the lease of the Units to income-eligible households in accordance with this Ground Lease) shall be effective unless, at the time of the Transfer, the person or entity to whom such Transfer is made, by an instrument in writing reasonably satisfactory to Landlord and in form recordable among the land records, shall expressly assume all of the obligations of Tenant under this Ground Lease and agrees to be subject to all conditions and restrictions to which Tenant is subject arising during such person's or entity's ownership of this Ground Lease. Anything to the contrary notwithstanding, an Approved Security Interest Holder or any owner of the estate created by this Ground Lease whose interest

shall have been acquired by, through or under an Approved Security Interest, or shall have been derived immediately from an Approved Security Interest Holder, shall not be required to give Landlord such written assumption until such holder or other person is entitled to possession of the Property or the Improvements thereon, or entitled to possession thereof.

Section 7.7 Transfer by Landlord.

In the event of a sale, assignment, transfer or conveyance by Landlord of the fee interest in the Property or of Landlord's rights under this Ground Lease, Landlord shall be released from any future liability upon any of the covenants or conditions of this Ground Lease, expressed or implied, in favor of Tenant, and, in such event, Tenant agrees to look solely to the successor in interest of Landlord in and to the Property or this Ground Lease. This Ground Lease shall not be affected by any such sale, and Tenant agrees to attorn to any such purchaser or assignee.

ARTICLE 8.
INSURANCE; DAMAGE AND DESTRUCTION OF IMPROVEMENTS

Section 8.1 Insurance Requirements.

During the Term, Tenant shall furnish to Landlord the type and amounts of insurance specified in the attached Exhibit "D" and incorporated herein by this reference. Tenant shall submit to Landlord evidence of the insurance coverage meeting the general requirements set forth in Exhibit "D," on, or before, the Effective Date, provided any evidence of insurance required for construction purposes shall be submitted ten (10) days prior to commencement of any construction work on the Property. Landlord shall review and reasonably approve or disapprove of the evidence of insurance not less than ten (10) days after submission of complete information in the form required by Landlord. If Landlord disapproves the evidence of insurance, it shall specify in writing the reasons for such disapproval. Tenant shall resubmit the information required within fifteen (15) days of Tenant's receipt of Landlord's written notification. The review and submission periods shall continue to apply until Landlord approves the evidence of insurance coverage.

Section 8.2 No Termination of Ground Lease; Obligation to Restore.

Except as otherwise provided in Section 8.3 or 8.4, no loss or damage by fire or any other cause resulting in either partial or total destruction of any buildings or the Improvements now or hereafter located in, upon or on the Property, or any fixtures, equipment or machinery used or intended to be used in connection with the Improvements shall operate to terminate this Ground Lease, or to relieve or discharge Tenant from the payment of any Rent or other amounts payable under this Ground Lease, as Rent or otherwise, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Tenant hereby waives the provisions of Section 1932, subsection 2, and of Section 1933, subsection 4, of the California Civil Code, as either or both may from time to time be amended, replaced or restated. Except as provided in Section 8.3 and 8.4, Tenant shall promptly repair, or cause the prompt repair of, any damage or destruction caused to the Improvements and restore the Improvements to at least as good a condition as existed prior to the damage or destruction, as more specifically provided in Section 8.5.

Section 8.3 Damage or Destruction Occurring Prior to Final Years of Term.

The following provisions shall apply in cases of damage or destruction not described in Section 8.4:

(a) If the Improvements on the Property are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Ground Lease, and (2) the insurance proceeds available are in an amount of not less than one hundred percent (100%) of the amount necessary to repair and restore such Improvements, then Tenant shall make full repair of such damage and shall restore the Improvements in accordance with the provisions of Sections 8.2 and 8.5.

(b) If the Improvements on the Property are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Ground Lease, (2) Tenant is not in default with respect to its obligation under this Ground Lease to maintain insurance against the casualty causing such damage or destruction, and (3) the insurance proceeds available are in an amount that is less than one hundred percent (100%) of the amount necessary to repair and restore such Improvements, then Tenant shall make full repair of such damage and to restore the Improvements in accordance with the provisions of Sections 8.2 and 8.5 and pay for any shortfall in funds to repair such damage and restore the Improvements.

(c) If the Improvements on the Property are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Ground Lease, and (2) Tenant is in default with respect to its obligation under this Ground Lease to maintain insurance against the casualty causing such damage or destruction, then Tenant shall make full repair of such damage and shall restore the Improvements in accordance with the provisions of Section 8.2 and 8.5.

(d) If the Improvements on the Property are damaged or destroyed by any casualty where the casualty causing such damage or destruction is not required to be insured against under the terms of this Ground Lease, then Tenant shall have the right, at Tenant's election (upon obtaining the written consent of the Investor and the Approved Security Interest Holder(s)), to (1) terminate this Ground Lease in accordance with the provisions of Section 8.6, or (2) make full repair of such damage and to restore the Improvements in accordance with the provisions of Section 8.2 and 8.5, or (3) repair such damage or restore the Improvements to the extent necessary to preserve them and make them safe, and in addition, to the extent of the insurance proceeds available.

Section 8.4 Damage or Destruction During Final Years of Term.

In the event of major damage or destruction to the Improvements (as defined below) on the Property during the last ten (10) years of the Term, Tenant shall have the right, at Tenant's election, to either make full repair of such damage and fully restore the Improvements on the Property in accordance with the provisions of Sections 8.2 and 8.5 or to terminate this Ground Lease, but subject to the rights of Approved Security Interest Holders, and provided that if Tenant elects to terminate this Ground Lease, Tenant shall comply with all of the following conditions:

(a) Tenant shall give Landlord written notice of the damage or destruction within ten (10) days after the event causing such damage or destruction;

(b) There shall not then exist a Tenant Event of Default;

(c) As promptly as is feasible, Tenant shall repair or restore the damaged Improvements to the extent necessary to preserve them and make them safe from immediate danger to the public; and

(d) Tenant shall deliver possession of the Property and the Improvements thereon to Landlord and shall quitclaim to Landlord all right, title and interest in the Property and the Improvements thereon.

“Major damage or destruction to the Improvements on the Property” (as used in this Section) means damage or destruction where the cost to make full repair of such damage and restore the Improvements in accordance with the provisions of Sections 8.2 and 8.5 would be fifty percent (50%) or more of the replacement cost of all of the Improvements on the Property in their entirety. The calculation of such percentage shall be based upon the replacement cost of the Improvements on the Property as of the date of the damage or destruction. The determination of whether any particular damage or destruction constitutes major damage or destruction within the meaning of this paragraph shall be determined and certified by a professional cost estimator experienced in such matters and mutually designated by Landlord and Tenant within forty-five (45) days of the occurrence of such damage or destruction. If the Parties are unable to designate a mutually acceptable cost estimator within such period, either Party may apply to the presiding judge of the Superior Court of the County who shall appoint such cost estimator.

Section 8.5 Procedure for Repair and Restoration.

The provisions of this Section shall apply whenever the Improvements on the Property are to be repaired or restored under the provisions of this Article. Notwithstanding any provision to the contrary, the Approved Security Interest Holder(s) shall have the right to participate in adjustment of losses as to any casualty or hazard insurance proceeds as set forth in this Article 8.

(a) In the event of any damage or destruction to the Property or the Improvements where the cost to repair exceeds One Hundred Thousand Dollars (\$100,000) (as increased by 3.5% for each successive year of the Term), Tenant shall promptly give Landlord written notice of such damage or destruction, setting forth the cause (if known), the date on which such damage or destruction occurred, and the estimated cost of repair and restoration as certified by a professional cost estimator experienced in such matters. Whenever any part of the Property or the Improvements shall have been damaged or destroyed, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided below, sums of money received as payments for any losses pursuant to said insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Property or the Improvements which have been destroyed or damaged in accordance with one of the following procedures:

(1) Subject to the provisions of the loan documents evidencing and securing the Approved Security Interests and in accordance with the procedures for use and expenditure of insurance proceeds established by one or more Approved Security Interest Holders if there is an Approved Security Interest Holder(s) and such Approved Security Interest

Holder(s) has established such procedures as of the time of receipt of the insurance process (in such case, the procedures in subsections (b) and (c) below shall not apply); or

(2) Otherwise, in accordance with the procedures of subsections (b) and (c) below, unless the Tenant has established alternate procedures that, in the Landlord's reasonable judgment, will accomplish the use and expenditure of the insurance proceeds to effectuate full repair or reconstruction of the portions of the Property or the Improvements which have been destroyed or damaged in a more effective manner than the procedures set forth in subsections (b) and (c). The provisions of subsection (d) below shall apply regardless of the procedure employed for the use and expenditure of insurance proceeds.

(b) Within one hundred eighty (180) days after the event of damage or destruction, Tenant shall make available to the Insurance Trustee, if applicable, described in subsection (c) below, the difference, if any, between the certified estimated cost of repair and restoration and the amount of insurance proceeds anticipated to be received for such repair and restoration (such amount is hereinafter referred to as the "Tenant Contribution").

(c) Unless otherwise set forth in the loan documents evidencing or securing the Approved Security Interests, all proceeds of insurance together with the Tenant Contribution, if any, shall be paid by Tenant to the insurance trustee, which insurance trustee shall be a commercial bank or trust company experienced in such matters and designated by Landlord (the "Insurance Trustee"). The Insurance Trustee shall hold such proceeds in trust and shall disburse same to Tenant as follows: from time to time as the work of restoration progresses, Tenant shall submit to the Insurance Trustee a certificate of Tenant, signed by an authorized officer or representative thereof, and approved by an architect selected by Tenant and approved by Landlord (in Landlord's reasonable discretion) (the "Architect"), which certificate shall:

(1) accurately describe the work for which Tenant is requesting payment and the cost incurred by Tenant in connection therewith,

(2) certify that Tenant has not theretofore received payment for such work, and

(3) conditional lien releases based upon payment executed by all persons or entities supplying labor or materials in connection with such work; and

(4) contain or be accompanied by a statement by Tenant that the work for which Tenant is requesting payment has been performed substantially in accordance with plans and specifications therefor approved by Landlord (in Landlord's reasonable discretion).

Within five (5) days after receipt of any such certificate, the Insurance Trustee shall pay to Tenant, from the funds within its possession, an amount equal to ninety percent (90%) of the amount of the cost of the work for which Tenant is requesting payment, as shown on such certificate. Upon completion of such work, the remainder of such cost (to the extent of the balance of the funds held by the Insurance Trustee) and all other insurance proceeds held by the Insurance Trustee shall be paid to Tenant within five (5) days after the delivery to the Insurance Trustee of a certificate of Tenant, signed by an authorized officer or representative thereof and approved by the Architect for the work, stating that the work has been completed and setting forth the total cost thereof, which certificate shall: (1) contain or be

accompanied by a statement by Tenant that the work has been completed substantially in accordance with plans and specifications therefor approved by Landlord (in Landlord's reasonable discretion); and (2) be accompanied by either (A) an unconditional waiver or release of mechanics' and materialmen's liens executed by all persons or entities supplying labor or materials in connection with such work or (B) other evidence reasonably satisfactory to Landlord that the period for filing any such lien has expired and no such lien has been filed, or, if filed, has been bonded by Tenant to the reasonable satisfaction of Landlord and the Insurance Trustee. The Insurance Trustee shall not be required to invest or pay interest on any funds held by such trustee, except in accordance with any agreement between Tenant and the Insurance Trustee.

(d) Tenant shall promptly commence and complete, in a good and workmanlike manner and in accordance with Article 4, the reconstruction or repair of any part of the Property or the Improvements thereon damaged or destroyed after (1) Landlord has approved (in Landlord's reasonable discretion) Tenant's plans, drawings, specifications and construction schedule for such reconstruction or repair as such approval may be required under Article 4, and (2) the proceeds of insurance, if any, applicable to such reconstruction or repair have been made available for such purpose.

Section 8.6 Procedures Upon Permitted Termination.

Upon termination of this Ground Lease pursuant to Section 8.4, insurance proceeds for the Improvements not used in repair or restoration shall be distributed as follows:

(a) First, to the Approved Security Interest Holder(s), the amount required by such Approved Security Interest Holder(s).

(b) Second, at the option of Landlord, to Landlord in the amount necessary to raze the remaining Improvements, and clear from the Property.

(c) Third, any balance shall be divided between Landlord and Tenant on the following basis: Proceeds for Improvements having a remaining useful life less than the remaining Term as of the termination date shall be paid to Tenant. A proportionate share of proceeds for the Improvements having a remaining useful life greater than the remaining Term as of the termination date, calculated by the ratio that the remaining Term bears to the remaining useful life, shall be paid to Tenant, and the balance of such proceeds for such Improvements shall be paid to Landlord. All other insurance proceeds shall be paid to and become the sole property of Tenant

Section 8.7 Prosecution of Claims.

In connection with and as a condition of any termination pursuant to Section 8.4, Tenant shall make proof of loss and proceed to collect or commence collection of all valid claims which Tenant may have against insurers or others based upon such damage or destruction, and shall assign and transfer to Landlord all rights under insurance policies and against others and proceeds of insurance and other claims resulting from the casualty.

Upon termination of this Ground Lease, Tenant shall deliver possession of the Property and the Improvements thereon to Landlord and quitclaim to Landlord all right, title and interest in the Property and the Improvements thereon.

ARTICLE 9.
APPROVED SECURITY INTERESTS AND INVESTOR RIGHTS

Section 9.1 Right to Encumber the Leasehold Estate.

Tenant shall have the right during the Term to encumber, through an Approved Security Interest, all of Tenant's right, title and interest in the Property subject to the provisions of this Ground Lease; provided, however, any Approved Security Interest shall remain subordinate and inferior to Landlord's right, title, and interest in the Property and, upon acquisition of the leasehold interest in the Property, any foreclosing Approved Security Interest Holder's rights to the Property shall be subject to the terms and provisions of this Ground Lease. Landlord and Tenant agree that, so long as any Approved Security Interest encumbers the leasehold interest in the Property, the prior written consent of the Approved Security Interest Holders shall be required (a) in connection with any agreement by Landlord and Tenant (or their respective successors and assignees) to cancel, waive, terminate (other than termination following a Tenant Event of Default), surrender, amend or modify this Ground Lease, (b) with respect to any acceptance by Landlord of any attempted cancellation, termination, or surrender of this Ground Lease or the on the part of Tenant, and/or (c) with respect to any termination or cancellation of the Ground Lease by Tenant and/or Landlord pursuant to Article 8, or any other provision of the Ground Lease which gives Tenant and/or Landlord an express right to terminate or cancel the Ground Lease (other than termination following a Tenant Event of Default).

Notwithstanding any provision to the contrary, the Approved Security Interest Holder(s) shall have the right to participate in adjustment of losses as to any casualty or hazard insurance proceeds as set forth in Article 8.

Section 9.2 Notice to Approved Security Interest Holders.

During any period in which an Approved Security Interest is in place, Landlord shall give any such Approved Security Interest Holder of which Landlord has received notice from Tenant, and the Investor, a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Investor or Approved Security Interest Holder originally designated in the Approved Security Interest may be changed upon written notice delivered to Landlord in the manner specified in Section 13.1 below. Landlord's failure to give any such notice to any such Approved Security Interest Holder, or Investor, shall not render such notice ineffective, nor shall any such failure constitute a Tenant Event of Default hereunder; provided, however, all rights of Landlord to terminate this Ground Lease as the result of the occurrence of any Tenant Event of Default shall be subject to, and conditioned upon (i) Landlord having first given Approved Security Interest Holders, and the Investor, notice of such Tenant Event of Default, and (ii) the Approved Security Interest Holder, or the Investor, having failed to remedy such default or acquire the Tenant's leasehold estate created pursuant to this Ground Lease, or commence foreclosure or other appropriate proceedings in the nature thereof within the time and manner set forth in Section 9.3, below, as applicable.

Section 9.3 Right to Perform and Right to Cure; New Lease.

(a) Right to Perform and Cure. Each Approved Security Interest Holder, and the Investor, shall have the right, but not the obligation, at any time prior to termination of this Ground Lease and without payment of any penalty other than the interest on unpaid Rent, to pay all of the Rent due hereunder, to effect any insurance, to pay any Taxes, to make any repairs and improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions set forth in this Ground Lease to prevent a termination of this Ground Lease as the same would have been if made, done and performed by Tenant instead of by an Approved Security Interest Holder or the Investor. Should any event of default under this Ground Lease occur, and not be cured by Tenant within the applicable notice and cure period provided in this Ground Lease, Landlord shall not terminate this Ground Lease nor exercise any other remedy hereunder unless it first gives written notice of such event of default to the Approved Security Interest Holders, and the Investor, and, thereafter, the Approved Security Interest Holder, or the Investor, shall have failed, within one hundred eighty (180) days of receipt of said written notice, to (i) remedy such default, (ii) obtain title to Tenant's interest in the Property in lieu of foreclosure, or (iii) commence foreclosure or other appropriate proceedings in the nature thereof and thereafter diligently prosecute such proceedings to completion; provided, however, that Investor shall be deemed to have met any condition relating to the commencement or continuation of a foreclosure proceeding if it is attempting with diligence and in good faith to remove the managing general partner of Tenant, and as long as said removal is accomplished within 270 days of receipt of said written notice from Landlord. If the Approved Security Interest Holder, or the Investor, takes any of the actions in (i) thru (iii) above, then such event of default shall be deemed remedied.

(b) Additional Cure Period. Further, as to any non-monetary default, the Approved Security Interest Holder and Investor shall each have one hundred eighty (180) days after receipt of such written notice from Landlord, and, in the case of the Approved Security Interest Holder, ninety (90) days after the expiration of said one hundred eighty (180) days if it shall have commenced foreclosure or other appropriate proceeding in the nature thereof within said one hundred eighty (180) day period and is diligently prosecuting the same or, in the case of the Investor, the Investor has commenced to cure any such non-monetary default within such one hundred eighty (180) day period and is diligently pursuing such cure to completion, within which to endeavor to cure such default, and as long as said cure is accomplished within two hundred seventy (270) days of receipt of said written notice from Landlord. Notwithstanding anything contained herein to the contrary, Landlord's right to terminate the Ground Lease shall be postponed indefinitely if the default which gives rise to such termination right is of such a nature that the same is not susceptible of being cured by the Approved Security Interest Holder or the Investor and, in the case of the Approved Security Interest Holder, the Approved Security Interest Holder shall institute foreclosure proceedings and diligently prosecute the same to completion, subject to any stay in any proceedings involving the insolvency of Tenant or other proceeding or injunction (unless, in the meantime, the Approved Security Interest Holder shall acquire Tenant's estate under the Ground Lease, either in its own name or through a nominee, by assignment in lieu of foreclosure), or, in the case of the Investor, the Investor has commenced to cure any such non-monetary default within such one hundred eighty (180) day period and is diligently pursuing such cure to completion.

(c) New Lease. Notwithstanding any provision to the contrary, Landlord further agrees, in the event Landlord terminates the Ground Lease or if the Ground Lease is terminated as a result of any voluntary or involuntary bankruptcy action by or against Tenant, or if the Ground Lease is terminated or expires for any other reason, Landlord shall provide written notice of such termination to the Approved Security Interest Holder and shall include in the notice a statement of all sums which would be due under the Ground Lease at the time of termination and all other defaults of Tenant existing at such time. At the Approved Security Interest Holder's request, which shall be made within sixty (60) days following receipt of Landlord's notice of termination, Landlord and the Approved Security Interest Holder shall enter into a new lease of the Property upon substantially the same terms and rental rate contained in the Ground Lease, and otherwise remedy, to the extent such defaults are susceptible to cure, any and all other defaults of Tenant under the Ground Lease, other than defaults that result in monetary amounts payable by Tenant to Landlord based on actions or inactions of Tenant that first occurred or accrued prior to the date of such new lease ("Excluded Defaults").

(d) Obligation of Approved Security Interest Holder or Other Foreclosure Successor. Any Approved Security Interest Holder or purchaser at a foreclosure sale shall, without the requirement of the consent of Landlord, become the Tenant under this Lease and shall be subject to all of the benefits and burdens of Tenant under this Lease, provided that no such party, nor any successor thereof as Tenant under this Lease, shall be liable for any Excluded Defaults. Further, no such party shall have any responsibility or liability for any obligations that arise under this Lease after such party transfers or assigns its interest in this Lease. Finally, all liability of such parties shall be limited to its interest in this Lease and any portion of the Property and none shall have any personal obligation for any liabilities that arise under this Lease.

Section 9.4 Notice and Right to Cure Defaults Under Approved Security Interests.

Upon the recording of the Memorandum of Lease, Landlord may record in the Official Records a request for notice of any default under the Approved Security Interests. In the event of default by Tenant under any of the Approved Security Interests, Landlord shall have the right, but not the obligation, to cure the default. Any payments made by Landlord to cure a default shall be treated as additional Rent due from Tenant as provided in Article 3.

Section 9.5 Estoppel Certificates.

Landlord and Tenant agree that at any time and from time to time upon not less than twenty (20) days prior written notice by the other Party, or upon request from any Approved Security Interest Holder, the Investor or a permitted assignee or other interested party, Landlord or Tenant shall execute, acknowledge and deliver to the other Party or to such other parties a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect; (b) the date through which the Rent has been paid; (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease; and (4) acknowledging the identity of the Investor and/or Approved Security Interest Holder(s), the amended and restated Partnership Agreement with the Investor, and notice addresses for the Investor and/or Approved Security Interest Holder(s). It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant,

the Investor or any Approved Security Interest Holder, as the case may be, in this Ground Lease or by any assignee of any Approved Security Interest Holder.

Section 9.6 Mortgage of Landlord's Estate.

Landlord agrees not to encumber or convey any interest in Landlord's fee interest in the Property with any deed to secure debt, mortgage, deed of trust or other instrument in the nature thereof as security for any debt which is not expressly subordinate to Tenant's interest in the Property under this Ground Lease and to any Approved Security Interest without the written consent of Tenant, Investor, and the Approved Security Interest Holder(s). Landlord agrees not to permit any liens, or stop notices, arising from work contracted for by Landlord to be filed against the Property without causing the same to be removed or bonded over within thirty (30) days of such filing.

ARTICLE 10.
SURRENDER; HOLDING OVER

Section 10.1 Surrender of Property.

(a) Surrender. At the end of the Term or other sooner termination of this Ground Lease, Tenant shall surrender and deliver to Landlord the Property and the possession of the Property, together with all Improvements, and any Personal Property (if any) in condition required for the Property and Improvements to be maintained under this Ground Lease, and free and clear of all liens and encumbrances other than those, if any, presently existing or created by Landlord, without payment or allowance whatever by Landlord on account of any such Improvements.

(b) Quitclaim Deed. Tenant shall execute such documents as set forth in Section 6.2, above.

(c) Delivery. Unless otherwise agreed by Landlord, Tenant shall cause and be solely responsible for the Property and the Improvements to be delivered vacant to Landlord at time of surrender.

(d) No Relocation Claim. Tenant acknowledges that Tenant has voluntarily entered into this Ground Lease, and, upon the expiration or termination of this Ground Lease, Tenant shall not be entitled to any relocation assistance, or any other benefit, under any provision of law.

Section 10.2 Holding Over.

If Tenant shall retain possession of the Property or the Improvements thereon or any part thereof without Landlord's prior written consent following the expiration or sooner termination of this Ground Lease for any reason (the "Holding Over Period"), then Tenant shall pay to Landlord an amount equal to one hundred fifty percent (150%) of the Rent, and other payments that would have been due had the Ground Lease not expired or been terminated and had the Rent and other payment terms in effect at the time of the expiration or sooner termination of the Ground Lease remained in effect. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Ground Lease and nothing contained in this Section 10.2 shall waive Landlord's right of reentry or any other right. Tenant

shall be only a tenant at sufferance, whether or not Landlord accepts any Rent from Tenant while Tenant is holding over without Landlord's written consent.

Section 10.3 No Merger.

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

ARTICLE 11. EMINENT DOMAIN

Section 11.1 Total Taking.

If either the entire Property (or any improvements thereon) or a substantial and essential portion of the Property (or any improvements thereon), the taking of which portion materially impairs the use of the Improvements then being made by Tenant and renders the remainder of the Improvements unsuitable or economically not feasible for such use, as reasonably determined by Tenant in good faith, is taken under the power of eminent domain during the Term of this Ground Lease, then this Ground Lease shall terminate as of the date of such taking. Landlord and Tenant shall together make one claim for an award for their combined interests in the Property and all buildings, structures, Improvements and fixtures thereon which are so taken. Such award shall be paid to and divided between Landlord and Tenant in priority as follows:

(a) All compensation and damages payable for or on account of the underlying fee title to the Property, assuming that the Property were unimproved but encumbered by this Ground Lease, shall be payable to and be the sole property of Landlord.

(b) All compensation and damages payable for or on account of the buildings and Improvements located on the Property shall be divided between Landlord and Tenant in the manner specified in Section 8.6 of this Ground Lease.

Section 11.2 Partial Taking.

If less than the whole of the Property is taken under the power of eminent domain during the Term of this Ground Lease and this Ground Lease is not terminated as provided in Section 11.1 hereof, then this Ground Lease shall terminate only with respect to the portion of the Property taken and this Ground Lease shall continue in full force and effect with respect to the portion of the Property not taken. Tenant shall, but only to the extent of the amount of the award received, promptly reconstruct and restore the portion of the Property not taken and the buildings and Improvements located on the portion of the

Property not taken as an integral unit of the same general quality and character as existed prior to such taking. Such reconstruction and restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by Landlord in accordance with Article 4, and otherwise in accordance with the applicable provisions of this Ground Lease.

All awards or other payments received on account of a partial taking as described in this Section 11.2 shall be paid to the Insurance Trustee referred to in Section 8.5 above to be held and disbursed in the same manner as insurance proceeds, except that any portion of such award remaining after completion of any restoration shall be divided between Landlord and Tenant and disbursed by the Insurance Trustee in the manner provided in Section 8.6.

Section 11.3 Temporary Taking.

If the use of all or any part of the Property is taken under the power of eminent domain during the Term on a temporary basis for a period less than the time remaining after the date of such taking to the end of the Term, then this Ground Lease shall continue in full force and effect and Tenant shall continue to be obligated to perform and observe all of the agreements, covenants and conditions on the part of Tenant to be performed and observed as and when performance and observance is due to the full extent that such agreements, covenants and conditions are physically capable of performance and observance by Tenant after such taking. The award payable for or on account of such taking shall be paid to Tenant.

Section 11.4 Notice of Taking; Single Proceeding.

In case of a taking of all or any part of the Property or the Improvements thereon or the commencement of any proceeding or negotiations which might result in such taking, the Party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other Party. Landlord and Tenant shall jointly prosecute their claims for an award in a single proceeding, in which any Approved Security Interest Holder may join. In any eminent domain proceeding affecting the Property, both Landlord and Tenant, as well as any Approved Security Interest Holder(s), shall have the right to appear in the proceeding and to defend against the eminent domain action as they deem proper in accordance with their own interests. To the extent possible, Landlord and Tenant shall reasonably cooperate with each other to maximize the amount of the award payable by reason of the eminent domain. Issues between Landlord and Tenant that arise under this Article 11 shall be joined in any such eminent domain proceeding to the extent permissible under then applicable rules governing such joinder.

As used in this Ground Lease: (1) a “taking” means the acquisition of all or any part of the Property for a public use by exercise of the power of eminent domain; (2) the taking shall be considered to occur as of the earlier of the date on which possession of the Property by the entity exercising the power of eminent domain is authorized as stated in an order for possession, or the date on which title to the Property vests in the person exercising the power of eminent domain; and (3) “award” means the compensation paid for the taking.

ARTICLE 12. EVENTS OF DEFAULT

Section 12.1 Events of Default.

Each of the following, subject to the applicable notice and cure period below, shall be a “Tenant Event of Default” by Tenant hereunder:

(a) Failure by Tenant to pay any Rent when due or to pay or cause to be paid any, insurance premiums or other liquidated sums of money herein stipulated to be paid by Tenant, if such failure shall continue for a period of ten (10) Business Days after written notice thereof has been given by Landlord to Tenant (and copies of such notice sent to the Investor and any Approved Security Interest Holder in accordance with Section 9.2);

(b) Subject to Article 9, and except as expressly provided otherwise in this Ground Lease, failure by Tenant to perform or observe any other provisions of this Ground Lease to be observed and performed by Tenant, if such failure shall continue for a period of one hundred eighty (180) days after written notice thereof has been given by Landlord to Tenant (and copies of such notice sent to the Investor and any Approved Security Interest Holder in accordance with Section 9.2); provided, however, that if any such failure cannot reasonably be cured within such one hundred eighty (180) day period, then Landlord shall not have the right to terminate this Ground Lease or Tenant’s right to possession hereunder so long as Tenant promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure and then corrects such failure within a reasonable period of time.

Any cure of a default by the Investor, or an Approved Security Interest Holder, shall be deemed to be a cure by Tenant, and shall be accepted or rejected on the same basis as if made or tendered by Tenant, subject to the provisions of Article 9.

Section 12.2 Rights and Remedies.

(a) Termination. At any time after the occurrence of a Tenant Event of Default hereunder, Landlord, subject in all respects to the provisions of this Ground Lease with respect to Landlord’s rights to cure defaults by Tenant and with respect to the rights of the Investor and any Approved Security Interest Holders, may terminate this Ground Lease by giving Tenant written notice thereof (with a copy of such notice to the Investor and the Approved Security Interest Holders), setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Ground Lease and Tenant’s estate created hereby and all interest of Tenant and all parties claiming by, through or under Tenant shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, Landlord, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Property (including all buildings, the Improvements, and other improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches of covenants or any other remedy available at law or equity to Landlord. Notwithstanding anything contained herein to the contrary, Landlord shall not be permitted to terminate this Ground Lease during the Tax Credit Compliance Period.

(b) Additional Remedies. In addition to the remedy set forth above, upon any Tenant Event of Default Landlord may exercise any remedy available at law or at equity, including, but not limited to, specific performance; provided, however, in no event shall Tenant be liable for any consequential or special damages.

(c) Remedies Cumulative. No right, power, or remedy given to Landlord by the terms of this Ground Lease is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to Landlord by the terms of any such instrument, or by any statute or otherwise against Tenant and any other person. Neither the failure nor any delay on the part of Landlord to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by Landlord of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

(d) Tenant Obligation. Upon the exercise of Landlord's remedies pursuant to this Section 12.2, Tenant shall execute such releases, deeds and other instruments in recordable form as Landlord shall reasonably request in order to accurately set forth of record then current status of the Tenant's estate in the Property and Tenant's rights hereunder. The obligations set forth in this subsection shall survive the termination of the Ground Lease.

Section 12.3 Default by Landlord.

(a) Events of Default. Landlord shall be in default of this Ground Lease if it fails to perform any material provision of this Ground Lease that it is obligated to perform, and if the failure to perform is not cured within ninety (90) days after written notice of the default has been given to the Landlord. If the default cannot reasonably be cured within ninety (90) days, the Landlord shall not be in default of this Ground Lease if the Landlord commences to cure the default within such ninety (90) day period and diligently and in good faith continues to cure the default until completion.

(b) Right to Cure; the Tenant's Remedies. If the Landlord shall have failed to cure a default by the Landlord after expiration of the applicable time for cure of a particular default, the Tenant, at its election, but without obligation therefor (i) may seek specific performance of any obligation of Landlord, after which Tenant shall retain, and may exercise and enforce, any and all rights that Tenant may have hereunder, at law or at equity against the Landlord as a result of such default, (ii) from time to time without releasing Landlord in whole or in part from the obligations to be performed by Landlord hereunder, may cure the default at the Landlord's cost, and/or (iii) may, with prior written consent of the Investor, terminate this Ground Lease.

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

ARTICLE 13.
MISCELLANEOUS PROVISIONS

Section 13.1 Notice, Demands and Communication.

(a) Notices. Formal notices, demands, and communications between Landlord and Tenant shall be in writing and shall be sufficiently given if and shall not be deemed given unless dispatched by (i) registered or certified mail, postage prepaid, return receipt requested, (ii) delivered by personal delivery or reputable overnight delivery service, or (iii) delivered by facsimile or by electronic mail, with an additional copy immediately delivered by one of the methods set forth in clause (i) or (ii), to the principal office of the Parties as follows:

Landlord: County of Ventura
Central Services Department
800 S. Victoria Avenue, Suite #1640
Ventura, CA 93009
Attn: Chief Executive Officer

with a copy to: Dr. Sevet Johnson
Director, Ventura County Behavioral Health
1911 Williams Drive, Suite #200
Oxnard, CA 93036

Tenant: XXXXXXXXXXXX

with a copy to: XXXXXXXXXXXX

with a copy to: Investor at the address(es) that Tenant provides in writing to Landlord for so long as the Investor is a partner in the Tenant

(b) New Address; Delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt for delivery or refusal of delivery.

(c) Mandatory Provision Regarding Deemed Approval. Notwithstanding any provision of this Ground Lease to the contrary, in no event shall any submission by Tenant to Landlord under Section 5.3 for approval of a proposed Management Agent be deemed approved unless the request for approval contains the following provision, in bold print, with ten (10) days provided for the approval of such item in this Ground Lease:

NOTICE IS HEREBY GIVEN THAT FAILURE TO APPROVE OR DISAPPROVE THE REQUESTED MATTER WITHIN 10 DAYS SHALL BE DEEMED AN APPROVAL PURSUANT TO SECTION 5.3 OF THE GROUND LEASE. THIS PROVISION HAS BEEN INCLUDED WITH THIS SUBMITTAL PURSUANT TO SECTION 13.1 OF THE GROUND LEASE.

Section 13.2 Enforced Delay.

In addition to specific provisions of this Ground Lease, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; acts of terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; widespread disease (including without limitation COVID-19), public health emergency or quarantine restrictions; strikes and disruption of shipping, labor or material shortages or disruption; government instability; or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause shall be deemed granted if notice by the Party claiming such extension is sent to the other within thirty (30) days from the commencement of the cause, and such extension of time is not rejected, in writing, by the other Party within thirty (30) days after receipt of the notice. Times of performance under this Ground Lease may also be extended by written agreement of Landlord and Tenant.

Section 13.3 Title of Parts and Sections.

Any titles of the sections or subsections of this Ground Lease are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 13.4 Indemnification.

Upon written demand by Landlord, Tenant shall indemnify, defend (with counsel reasonably selected by Landlord) and hold harmless the Indemnified Parties (as defined in Section 5.16 above) from and against any and all third-party claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith (including without limitation actual attorneys' fees and costs of experts and consultants) arising from: (i) Tenant's performance or non-performance of its obligations under this Ground Lease; (ii) Tenant's lease of the Property; or (iii) the approval, development, construction, and operation of the Development, except for claims arising solely from the gross negligence, willful misconduct, illegal acts, or breach of this Ground Lease by any Indemnified Party.

Section 13.5 No Claims.

Nothing contained in this Ground Lease shall create or justify any claim against the Landlord by any person that Tenant may have employed or with whom Tenant may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the construction or operation of the Development.

Section 13.6 Lease Administration and Approvals.

The County Executive Officer or designee shall be authorized to act on behalf of Landlord regarding any matter requiring Landlord action, approval or consent pursuant to this Ground Lease, as well as any additional agreement, certificate or addendum required to implement or carry out this Ground Lease or, in the County Executive Officer's or designee's sole discretion, to submit any such matter for consideration and action by the Ventura County Board of Supervisors.

Section 13.7 Severability.

If any term, provision, covenant or condition of this Ground Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 13.8 Governing Law; Venue. This Ground Lease is made and entered into in the State of California and shall, in all respects, be governed by and interpreted in accordance with the laws of the State of California applicable to contracts entered into and to be fully performed therein. The venue for any action, suit, arbitration, judicial reference or other proceeding concerning the Agreement shall be in Ventura County, California.

Section 13.9 Binding Upon Successors; Covenants to Run with Land.

This Ground Lease shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties; provided, however, that there shall be no transfer of any interest by Tenant except pursuant to the terms of this Ground Lease. Any reference in this Ground Lease to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Ground Lease, or under law.

The terms of this Ground Lease shall run with the land and shall bind all successors in title to the Property during the Term of this Ground Lease, except that the provisions of this Ground Lease that are specified to survive termination of this Ground Lease shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property or the Improvements or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless Landlord expressly releases the Property, the Improvements, or the applicable portion of the Property, from the requirements of this Ground Lease.

Section 13.10 Relationship of Parties.

Nothing contained in this Ground Lease shall be interpreted or understood by either of Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Landlord and Tenant or their agents, employees or contractors, and Tenant shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Ground Lease.

Section 13.11 Time.

Time is of the essence in this Ground Lease. All references to days in this Ground Lease are calendar days, unless explicitly referenced as a Business Day. The number of days specified in any provision of this Ground Lease shall be counted by excluding the first day and including the last day, unless the last day is a not a Business Day, in which case it shall be excluded. Any act required by this Ground Lease to be performed by a certain day is timely performed if completed before 5:00 p.m. local time on that date. If the day for performance of any obligation under this Ground Lease is not a Business Day, then the time for performance of that obligation is extended to 5:00 p.m. local time on the first day following that is a Business Day.

Section 13.12 Third-Party Beneficiary.

No person or entity other than Landlord, Tenant, and their permitted successors and assigns shall have any right of action under this Ground Lease.

Section 13.13 Further Assurances.

(a) By Tenant. At any time during the Term, and from time to time upon written request by Landlord, Tenant shall do any acts and execute and deliver any documents as may be reasonably requested by Landlord to accomplish the purposes of this Ground Lease; provided, however, in no event shall Tenant be obligated to assume any additional obligations or liabilities not otherwise set forth in this Ground Lease.

(b) By Landlord. At any time during the Term, and from time to time upon written request by Tenant, Landlord shall do any acts and execute and deliver any documents as may be reasonably requested by Tenant to accomplish the purposes of this Ground Lease, including, but not limited to (i) granting such easements over and across the Site necessary for the development and operation of the Development, including any necessary access to the Property, (ii) executing such agreements, certificates or amendments to this Ground Lease as may be required by HCD, any other Approved Security Interest Holder(s), or the Investor, in order for the Tenant to obtain financing or refinancing for the Development, and (iii) executing such certificates or assurances as may be required by TCAC; provided, however, in no event shall Landlord be obligated to assume any additional obligations or liabilities not otherwise set forth in this Ground Lease.

Section 13.14 Amendments.

This Ground Lease shall not be modified or amended in any respect, except by written instrument specifically referencing such a modification or amendment which is executed by or on behalf of the Parties in the same manner as this Ground Lease is executed. Any modification or amendment of this Ground Lease shall require the prior written consent of the Approved Security Interest Holder(s) and the Investor (as applicable).

Section 13.15 Modifications and Amendments.

If an Approved Security Interest Holder or Investor requests a modification or amendment to this Ground Lease, Landlord agrees not to unreasonably withhold its consent to any such modification or amendment; provided that Landlord shall not be required to consent to such a modification or amendment if it would, in Landlord's reasonable determination, materially impair any of Landlord's material rights or materially increase any of Landlord's obligations under this Ground Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any instrument necessary to effectuate any such modification or amendment; provided, however, that any such modification or amendment shall not in any way affect the Term, nor otherwise in any material respect adversely affect any material rights of Landlord under this Ground Lease. Any such modification or amendment shall be subject to Section 13.14.

Section 13.16 Waivers.

Any waiver by the Landlord of any obligation or condition in this Ground Lease must be in writing. No waiver will be implied from any delay or failure by Landlord to take action on any breach or Tenant Event of Default or to pursue any remedy allowed under this Ground Lease or applicable law. Any extension of time granted to Tenant to perform any obligation under this Ground Lease shall not operate as a waiver or release from any of its obligations under this Ground Lease. Consent by Landlord to any act or omission by

Tenant shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Landlord's written consent to future waivers.

Section 13.17 Entire Understanding of the Parties.

The terms and provisions of this Ground Lease supersede any inconsistent terms and conditions of any term sheet, commitment letter, or similar document issued by Landlord to Tenant. This Ground Lease and the attached exhibits constitute the entire agreement of the Parties with respect to the matters set forth in this Ground Lease. As of the Effective Date, the ENA as it pertains to the Property, as assigned to Tenant, pursuant to the Assignment and Assumption Agreement is terminated and is of no further force or effect. This Ground Lease supersedes any prior agreement and understandings between the Parties as to such matters, oral or written, all of which are hereby cancelled. This Ground Lease shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties have read and reviewed this Ground Lease and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to California Civil Code Section 1654 as may be amended from time to time, or any other state law, or common law principle) shall not apply to the interpretation of this Ground Lease.

Section 13.18 Gender and Number.

Words of any gender used in this Ground Lease shall be held to include any other gender, and any words in the singular number shall be held to include the plural (and vice versa), when the sense requires.

Section 13.19 Multiple Originals; Counterparts.

This Ground Lease may be executed in counterparts and multiple originals, each of which shall be deemed to be an original. This Ground Lease shall become effective when the Parties have duly executed and delivered signature pages of this Ground Lease to each other. Delivery of this Ground Lease shall be effectuated by electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

Section 13.20 HCD Lease Rider.

If HCD is providing financing to the Project, at the time required by HCD, Landlord and Tenant agree to execute and record against Tenant's leasehold estate in the Property in the Official Records the lease rider required by HCD, which shall be in a form reasonably acceptable to Landlord and Tenant. The current form of lease rider required by HCD is attached as Exhibit "F" to this Ground Lease.

Section 13.21 TCAC Lease Rider.

At the time required by TCAC, Landlord and Tenant agree to execute and record against Tenant's leasehold estate in the Property in the Official Records the lease rider required by TCAC, which shall be in a form reasonably acceptable to Landlord and Tenant. The current form of lease rider required by TCAC is attached as Exhibit "G" to this Ground Lease.

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