

**COMPREHENSIVE AGREEMENT**

by and between

**FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**

and

**THE MICHAELS DEVELOPMENT COMPANY I, L.P.**

**10.88 ACRES OF LAND IN THE SPRINGFIELD DISTRICT  
FAIRFAX COUNTY, VIRGINIA  
Tax Map No. 055-3 ((1)) Parcel 26B**

**Dated as of March 15, 2021**

## COMPREHENSIVE AGREEMENT

THIS **COMPREHENSIVE AGREEMENT** (this “**Agreement**”) is made and entered into as of this 15<sup>th</sup> day of March, 2021 (the “**Agreement Date**”), by and between the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**FCRHA**”), and **THE MICHAELS DEVELOPMENT COMPANY I, L.P.**, a New Jersey limited partnership, (the “**Developer**”), and together with the FCRHA, collectively, the “**Parties**”.

### RECITALS:

R-1. The FCRHA is the fee simple owner of the property located in the south east quadrant of the intersection of Stringfellow Road and Autumn Willow Road in Fairfax County, Virginia, identified by Tax Map No. 55-3((1)) Parcel 26B (the “**Autumn Willow Property**”).

R-2. Pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, as amended, Virginia Code Ann. §§ 56-575.1 to 575.16 (such law, the “**PPEA**”) and FCRHA’s PPEA guidelines, FCRHA evaluated proposals and selected the Developer to develop and construct approximately 150 affordable senior housing units in one building with surface parking (the “**Development**”). The Development is anticipated to consist of two separate projects, with one project receiving nine percent (9%) low-income housing tax credits and the other receiving four percent (4%) low-income housing tax credits (together, the “**Tax Credits**”).

R-3. FCRHA and the Developer entered into that certain Interim Agreement (the “**Interim Agreement**”) dated July 31, 2020 to promptly commence certain design and zoning related work and other due diligence on the Autumn Willow Property in order to meet the requirements established by the Virginia Housing (“**VH**”) for nine percent (9%) low-income housing Tax Credits.

R-4. During the term of the Interim Agreement, the Parties were to negotiate in good faith to enter into this Agreement pursuant to §56-575.9 of the PPEA and such other documents, as determined by the Parties, as are necessary to satisfy the requirements of the PPEA regarding the Development.

R-5. The Parties have now negotiated this Agreement consistent with the PPEA, the RFP, and other laws, the terms and conditions of which are set forth herein.

R-6. Having considered this Agreement and other information, FCRHA has determined that the Development should be completed pursuant to this Agreement, and that this Agreement and the Development serves the public purpose of the PPEA under the criteria of Va. Code § 56-575.4C.

**NOW, THEREFORE**, for and in consideration of the mutual promises, conditions and covenants herein set forth, the Parties agree as follows:

1. The foregoing recitals are hereby incorporated by this reference as if fully set forth herein.

2. The Parties agree that the Development shall be constructed, operated, maintained, managed, leased (as applicable), and owned (as applicable) pursuant to, among other things, written agreements to be executed by one or more of FCRHA, the Developer or their respective subsidiaries and affiliates, including the separate ground lease tenants and project owners (the “**Tenants**”), as applicable, including, without limitation, the following written agreements, and any amendments to those agreements:

- a. The Options to Ground Lease, by and between FCRHA and the Tenants, in substantially the form which is attached hereto as **Exhibit A-2** (the “**Options to Ground Lease**”) and the Contracts to Ground Lease, by and between FCRHA and the Tenants, in substantially the form which is attached hereto as **Exhibit A-1** (the “**Contracts to Ground Lease**”);
- b. The form of the Deed of Lease, by and between FCRHA, as landlord, and each of the Tenants, or others subsidiaries and affiliates of the Developer, as tenant, in substantially the form which is attached hereto as **Exhibit B** (the “**Ground Lease(s)**”).

3. The Parties also agree as follows:

- a. This Agreement and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings of the Parties hereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon any party unless reduced to writing and signed by all of the Parties affected.
- b. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia. Should any provision of this Agreement require judicial interpretation, the Parties hereby agree and stipulate that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of any rule or conclusion of law that a document should be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that all Parties hereto have participated in the preparation of this Agreement and that each party had full opportunity to consult legal counsel of its choice before its execution of this Agreement.
- c. This Agreement may be executed in two or more counterparts, each of which shall constitute one and the same instrument. Delivery by telecopier, facsimile, or electronic mail of an executed counterpart of a signature page (in any electronic format, including, without limitation, “.TIFF”, “.JPG”, or Adobe Corporation’s Portable Document Format (“.PDF”)) shall be deemed an original signature page and fully effective as such.

- d. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible in order to be legal, valid and enforceable.

*(Remainder of Page Blank; Signatures Follow.)*

[SIGNATURE PAGE TO COMPREHENSIVE AGREEMENT – FCRHA]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above-written.

**FCRHA:**

**FAIRFAX COUNTY REDEVELOPMENT  
AND HOUSING AUTHORITY**, a political  
subdivision of the Commonwealth of Virginia

By:   
Name: Thomas Fleetwood  
Title: Assistant Secretary

*(Remainder of Page Blank; Signatures Continue on the Next Page.)*

[SIGNATURE PAGE TO COMPREHENSIVE AGREEMENT – DEVELOPER]

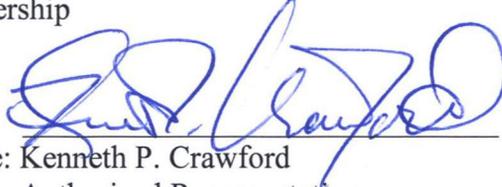
**The Developer:**

**THE MICHAELS DEVELOPMENT  
COMPANY I, L.P.**, a New Jersey limited  
partnership

By:

Name: Kenneth P. Crawford

Title: Authorized Representative



**Exhibit A-1**

**TO COMPREHENSIVE AGREEMENT**

**Form of Contracts to Ground Lease**

*(See Attached)*

**CONTRACT TO GROUND LEASE**  
(Autumn Willow 4% Project)

This Contract to Ground Lease (the “**Agreement**”) is made and entered into as of March 15, 2021 (the “**Effective Date**”) by and between the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**FCRHA**”), and **Autumn Willow 4, LLC**, a Virginia limited liability company, (together with any assignee permitted under this Agreement, “**AW4**”), and together with the FCRHA, collectively, the “**Parties**”.

**RECITALS:**

- R-1. The FCRHA is the fee simple owner of the property located in the south east quadrant of the intersection of Stringfellow Road and Autumn Willow Road in Fairfax County, Virginia, identified by Tax Map No. 55-3((1)) Parcel 26B (the “**Autumn Willow Property**”).
- R-2. Pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, as amended, Virginia Code Ann. §§ 56-575.1 to 575.16 (such law, the “**PPEA**”) and FCRHA’s PPEA guidelines, FCRHA evaluated proposals and selected The Michaels Development Company I, L.P. (the “**Developer**”) to develop and construct approximately 150 affordable senior housing units on the Autumn Willow Property with surface parking (the “**Development**”). The Development is anticipated to consist of two separate projects, with one project receiving four percent (4%) low-income housing tax credits and other sources (“**4% Project**”) to be owned and operated by AW4 and the other receiving nine percent (9%) low-income housing tax credits and other sources (the “**9% Project**”) to be owned and operated by Autumn Willow 9, LLC, a Virginia limited liability company (“**AW9**”).
- R-3. FCRHA and the Developer entered into that certain Interim Agreement (the “**Interim Agreement**”) dated July 31, 2020 to promptly commence certain design and zoning related work and other due diligence on the Autumn Willow Property.
- R-4. In order to meet the requirements established by the Virginia Housing (“**VH**”) for four percent (4%) low-income housing tax credits (the “**Tax Credits**”), the FCRHA is entering into this and into that certain Option to Lease that is by and between the FCRHA and AW4 and of even date herewith (“**4% Option**”) to enter into a ninety-nine (99) year, senior lien priority ground lease for all or a portion of the Autumn Willow Property (the “**4% Ground Lease**”). Certain capitalized terms not specifically defined herein are defined in the 4% Ground Lease.
- R-5. Simultaneously with the execution of this Agreement, the FCRHA and AW9 shall have entered into an additional Contract to Ground Lease which, subject to AW9 satisfying certain conditions precedent as set forth in said contract, provide that AW9 will enter into a separate ninety-nine (99) year, senior lien priority ground lease for all or a portion of the

Autumn Willow Property (the “9% Ground Lease”) for the development, construction, use and maintenance of the 9% Project.

R-5. AW4 and FCRHA desire to enter into this Agreement setting forth AW4’s contract rights and option to enter into the 4% Ground Lease for a portion of the Autumn Willow Property upon the satisfaction of certain conditions, as set forth below in this Agreement.

NOW THEREFORE for and in consideration of the mutual promises of the Parties and of other good and valuable consideration receipt and sufficiency of which are hereby acknowledged, FCRHA and AW4 intending to be legally bound do hereby agree as follows:

### Section 1. GRANT OF OPTION.

1.1 Property. FCRHA hereby and pursuant to the Option to Lease (defined herein) grants to AW4 an option to lease a portion of the Autumn Willow Property, subject to all of the terms and conditions of this Agreement. The term “**Property**” means that portion of the Autumn Willow Property and includes (a) the real property (the “**Land**”) more particularly described in Exhibit A of the 4% Ground Lease, which is attached as Exhibit A to this Agreement, and made a part hereof; (b) all of its interest in certain easements, development rights, improvements, equipment and fixtures located on the Land at the time of the Closing (as defined in Section 8.1 below); and (c) other intangible property associated with the Land or the improvements, equipment and fixtures located thereon owned by FCRHA.

1.2 Option. The option described in Section 1.1 is referred to in this Agreement as the “**Option**.”

1.3 Recordation of this Agreement. This Agreement, and the Option created hereby, may be recorded by AW4 in the Land Records of Fairfax County, Virginia (the “**Land Records**”). If this Agreement is recorded and later expires or is terminated as provided herein, then no later than five Business Days after the expiration or termination hereof, AW4 will deliver to FCRHA for recordation, duly signed and notarized by AW4, documents sufficient to confirm the expiration or termination of this Agreement and the termination of the Option, and otherwise in recordable form and reasonably acceptable to FCRHA (and this obligation of AW4 will survive expiration or termination of this Agreement). If AW4 records this Agreement in the Land Records, AW4 will be responsible for payment of all fees and taxes associated with such recording. The relationship between FCRHA and AW4 shall be governed by the provisions of this Agreement.

1.4 Effect of Agreement; Interest in Real Property. The Parties intend that this Agreement is given by FCRHA to AW4 as an option to lease a portion of the Autumn Property. The Parties intend that this Agreement creates a valid and present encumbrance on the Property in favor of AW4, effective as of the Effective Date, subject to any and all liens or encumbrances disclosed in the Land Records. Therefore, the Option will be deemed an encumbrance upon the Property during the term of this Agreement effective as of the Effective Date and will be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns (subject to Section 12.7 below).

## Section 2. **INDEPENDENT CONSIDERATION.**

In consideration of and concurrently with FCRHA entering into this Agreement, AW4 agrees to pay to FCRHA the sum of Ten Dollars (\$10.00) as “independent consideration” for the Option (the “**Consideration**”). The Consideration has been bargained for and agreed to as separate and independent consideration for AW4’s option to lease the Property pursuant to the terms herein, and for FCRHA’s execution and delivery of this Agreement. The Consideration will be deemed fully earned by FCRHA upon receipt and will be considered non-refundable to AW4.

## Section 3. **TERM; EXTENSION OF OPTION; EXERCISE OF OPTION.**

3.1 Term of Agreement. The term of this Agreement (the “**Term**”) begins on the Effective Date and will expire at 5:00 p.m. on the Expiration Date (defined herein), unless an Option Notice (defined below) has been sent to FCRHA by AW4 and an Approval Notice (defined below) has been sent to AW4 by FCRHA, in which case the Term will expire on the Closing Date (defined below). The initial Expiration Date will be December 1, 2021 (the “**Initial Expiration Date**”). The Initial Expiration Date, as may be extended by mutual agreement in writing by the Parties or as specifically provided in this Section 3.1 below is the “**Expiration Date.**”

(a) If (i) AW4 has not received an award of Tax Credits and has not sent an Option Notice on or before the Initial Expiration Date, (ii) this Agreement is then in full force and effect and AW4 is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) AW4 has given FCRHA notice in writing of AW4’s election to extend the Term of this Agreement no less than 10 Business Days before the Initial Expiration Date, AW4 will have the right to extend the Term of this Agreement until 5:00 p.m. on December 1, 2022 (the “**Second Expiration Date**”); provided, however, that AW4 will re-apply for the Tax Credits and equity and financing as required pursuant to Section 9.3.

(b) If (i) AW4 has not received an award of Tax Credits and has not sent an Option Notice on or before the Second Expiration Date, (ii) this Agreement is then in full force and effect and AW4 is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) AW4 has given FCRHA notice in writing of AW4’s election to extend the Term of this Agreement no less than 10 Business Days before the Second Expiration Date, AW4 will have the right to extend the Term of this Agreement until 5:00 p.m. on December 1, 2023 (the “**Third Expiration Date**”); provided, however, that AW4 will re-apply for the Tax Credits and equity and financing as required pursuant to Section 9.3.

(c) If (i) AW4 has not received an award of Tax Credits and has not sent an Option Notice on or before the Third Expiration Date, (ii) this Agreement is then in full force and effect and AW4 is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) AW4 has given FCRHA notice in writing of AW4’s election to extend the Term of this Agreement no less than 10 Business Days before the Third Expiration Date, APAH will have the right to extend the Term of this Agreement until 5:00 p.m. on December 1, 2024 (the “**Outside Expiration Date**”); provided, however, that AW4 will re-apply for the Tax Credits and equity and financing as required pursuant to Section 9.3.

(d) Notwithstanding anything to the contrary contained in this Agreement, in no event will the Expiration Date be extended to a date beyond the Outside Expiration Date, except by a mutual agreement in writing executed by both Parties. If AW4 has not exercised its right to extend the Expiration Date as expressly provided above, AW4 will be deemed to have forever waived its right to further extend the Term of this Agreement beyond the then current Expiration Date, except by mutual agreement in writing executed by both Parties.

3.2 Condition to Right to Exercise. AW4 may exercise the Option only if all of the following conditions have been met: (i) AW4 has received an award of Tax Credits from VH for the Development; and (ii) in connection with the entitlement and development of the Development, AW4 has received an approved Special Exception for the Property.

3.3 Exercise Notice. AW4 may exercise the Option at any time during the Term, provided AW4 has satisfied the conditions set forth in Section 3.2 above, by delivering a written notice to FCRHA (the “**Option Notice**”). The Option Notice will include: (i) a certification from AW4 that AW4 has satisfied the conditions precedent set forth in Section 3.2; and (ii) reasonably detailed supporting documentation of the satisfaction of such conditions (the “**Supporting Documentation**”). Upon FCRHA’s receipt of the Option Notice, FCRHA will have 20 Business Days to review the Supporting Documentation, and within such period FCRHA will deliver a written notice to AW4 either approving of the Supporting Documentation (the “**Approval Notice**”), or disapproving of all, or a portion, of the Supporting Documentation. If FCRHA sends an Approval Notice, then the Parties will continue to proceed to the Closing in accordance with this Agreement. If FCRHA disapproves all, or a portion of, the Supporting Documentation, then FCRHA’s written notice (the “**Disapproval Notice**”) will set forth, in detail, each and every one of FCRHA’s objections to the Supporting Documentation, and any such additional information required by FCRHA to approve the Supporting Documentation. Thereafter, within 15 Business Days following AW4’s receipt of the Disapproval Notice, AW4 will submit such additional information, or other documentation, requested by FCRHA in the Disapproval Notice. The process for FCRHA’s review and approval of the Supporting Documentation will continue until FCRHA has approved the Supporting Documentation, and FCRHA will have no obligation to execute the 4% Ground Lease until AW4 has obtained an Approval Notice from FCRHA, provided FCRHA will not unreasonably withhold, delay, or condition the approval of the Supporting Documentation.

3.4 Failure to Exercise. If AW4 fails to deliver the Option Notice or fails to deliver the Supporting Documentation by the Expiration Date, then (a) this Agreement will immediately terminate without further action of the Parties; (b) AW4 will promptly deliver to FCRHA such documentation (fully executed and acknowledged) reasonably requested by FCRHA to evidence termination of this Agreement; and (c) the Parties will have no further obligations to each other except as otherwise specifically provided in this Agreement. This Section 3.4 is not intended to and does not in any way limit or affect any of the rights or remedies available to any Party if the other Party defaults in the due and timely performance of any of its obligations, or is in breach of any of its representations and warranties, under this Agreement.

#### Section 4. **TERMS OF LEASE.**

At the Closing, FCRHA and AW4 will enter into the 4% Ground Lease, which will be substantially in the form of Exhibit B attached hereto and made a part hereof by this reference (except: (i) to the extent such terms and conditions are no longer applicable or are otherwise invalid or unenforceable under Virginia laws as of the Closing Date (as defined in Section 8.1 below); or (ii) as otherwise mutually agreed to by FCRHA and AW4, including without limitation any requirements of the tax credit investor or secured lenders that FCRHA deems acceptable). Promptly after delivery of the Option Notice, to the extent necessary, the Parties will meet in good faith to determine if any modifications are necessary to the proposed 4% Ground Lease to reflect either any new, or otherwise unanticipated, circumstances regarding the Property, financing of the 4% Project, investor requirements or any changes in Virginia law that make any term or provision of the proposed 4% Ground Lease invalid or unenforceable.

#### Section 5. **REPRESENTATIONS AND WARRANTIES OF FCRHA.**

5.1 In General. With the exception of those representations and warranties stated in Section 5.2, AW4 has not relied and will not rely upon any representations or warranties, express or implied, affirmative or negative, concerning the Property made by FCRHA or any of FCRHA's agents or employees.

5.2 Representations and Warranties of FCRHA. FCRHA represents and warrants that the following facts and circumstances are true and correct as of the Effective Date and as of the Closing:

(a) Authority, Authorizations and Consents. FCRHA is a political subdivision of the Commonwealth of Virginia. FCRHA has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of FCRHA in order to consummate the transactions contemplated herein. This Agreement is a legal, valid, and binding obligation of FCRHA, enforceable in accordance with its respective terms. FCRHA has obtained all authorizations, consents or approvals of any governmental entity or other person or entity required to be obtained or given in connection with the execution and delivery of this Agreement by FCRHA or the performance of any of FCRHA's obligations hereunder.

(b) No Violation. The execution and delivery of this Agreement by FCRHA, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of FCRHA's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations will be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Options; Leases. No person or entity other than AW4 holds or will hold any option or other right to lease or purchase all or any part of any of the Property or any interest in the Property.

(d) No Pending Actions. To FCRHA's knowledge; (i) there are no actions, suits, proceedings (including any arbitration proceedings, condemnation, expropriation or other proceeding in eminent domain, or environmental, zoning or other land use regulation proceedings), orders, investigations or claims that are pending against or relating to the Property or the FCRHA's rights therein; and (ii) there are no proceedings threatened or planned to be instituted by or against or relating to the Property.

(e) Compliance with Laws. FCRHA has not received any written notice from any governmental entity asserting that the Property (or FCRHA with respect to the Property) is in violation of any Laws. "Law" and "Laws" means, with respect to any person or entity, any U.S. federal, state or local, and any foreign national, state or local, law, statute, common law, ordinance, code, treaty, rule, regulation, order, ordinance, permit, license, writ, injunction, directive, determination, judgment or decree or other requirement of any governmental entity, in each case, applicable to or binding upon such person or entity or any of its property or to which such person or entity or any of its property is subject.

Notwithstanding the representations in Section 5.2(b), Section 5.2(d) and Section 5.2(e), if circumstances occur that make the representations therein untrue or incorrect at any time after the Effective Date, FCRHA will provide AW4 notice required in Section 5.4, and FCRHA will use reasonable efforts to make such representations true and correct as of the Closing, but will otherwise have no liability for such representations being untrue or incorrect, unless the failure of the representations to be true and correct were directly related to the actions or omissions of FCRHA in breach of this Agreement. The provisions of this paragraph will not limit AW4's right to terminate this Agreement as provided in Section 9.4.

5.3 Representations and Warranties of AW4. AW4 represents and warrants that the following facts and circumstances are true and correct as of the Effective Date. In the event that any of the following representations and warranties are not true and correct as of the date AW4 delivers the Option Notice to FCRHA, AW4 will use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. AW4 is a Virginia limited liability company. AW4 has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by AW4 have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of AW4 in order to consummate the transactions contemplated herein. This Agreement is a legal, valid, and binding obligation of AW4, enforceable in accordance with its respective terms. No authorization, consent or approval of, or notice to, any governmental entity or other person or entity is required to be obtained or given in connection with the execution and delivery of this Agreement by AW4 or the performance of any of AW4's obligations hereunder. In the event that AW4 assigns this Agreement (in accordance with its terms) to another entity, such entity will make the same (but corrected, as necessary) representations set forth in this Section 5.3(a) as of the Closing Date.

(b) No Violation. The execution and delivery of this Agreement by AW4, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of AW4's

obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations will be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Litigation and Claims. To AW4's knowledge, there is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or threatened against AW4 which could affect any of the transactions contemplated by this Agreement.

5.4 Inaccuracies. In the event that either Party becomes aware of facts or circumstances after the Effective Date that might result in any of that Party's representations or warranties set forth in Section 5.2 or Section 5.3 not being true as of the Closing, such Party will give prompt written notice to the other Party of such facts or circumstances.

## Section 6. **PROPERTY CONDITION; RIGHT OF ENTRY; TITLE.**

6.1 Property Condition. AW4 acknowledges that except to the extent of any express representations and warranties set forth in Section 5.2, FCRHA has made no representations or warranties, express or implied, regarding the Property or matters affecting the Property, whether made by FCRHA, or on FCRHA's behalf or otherwise, and that except as otherwise provided in this Agreement, the leasehold interest in the Property will be conveyed subject to, and in accordance with, the terms and conditions of the 4% Ground Lease. For the avoidance of doubt, AW4 will accept possession of the Property on the commencement date of the 4% Ground Lease "AS IS, WHERE IS, WITH ALL FAULTS", subject to the Permitted Exceptions.

6.2 Right of Entry. During the Term, AW4 will have reasonable rights of access to the Property to the extent set forth in this Section 6.2 for the purposes of surveying the Property and performing design and engineering analysis including environmental tests and studies and soils borings and tests, provided that neither AW4 nor its contractors will unreasonably disrupt the normal operation of the Property. AW4's access hereunder will be in compliance with all applicable statutes, laws, rules, regulations, ordinances, and orders of any governmental or quasi-governmental authority having jurisdiction over the Property and AW4's or its contractors' activities thereon. All such entry will be coordinated in advance with appropriate representatives of FCRHA; for purposes of this Section 6.2, unless AW4 is otherwise notified by FCRHA, the appropriate representatives will be Kevin (Casey) Sheehan at 703-246-5146, [kevin.sheehan@fairfaxcounty.gov](mailto:kevin.sheehan@fairfaxcounty.gov), and Regina Gerner at 703-246-5229, [regina.gerner@fairfaxcounty.gov](mailto:regina.gerner@fairfaxcounty.gov). Prior to AW4 entering the Property, AW4 (or its contractor) will obtain and maintain, at AW4's (or its contractor's, as the case may be) sole cost and expense, the following insurance coverage, and will cause each of its agents and contractors to obtain and maintain, and, upon request of FCRHA, will deliver to FCRHA evidence of (i) general liability insurance, from an insurer reasonably acceptable to FCRHA, in the amount of \$1,000,000.00 combined single limit for personal injury and property damage per occurrence, (ii) workers' compensation insurance at statutory limits, (iii) employer's liability insurance in an amount not less than \$1,000,000.00, and (iii) professional liability insurance of not less than \$1,000,000.00 for any access to conduct environmental tests and studies and/or soil borings and tests. AW4 will provide FCRHA with original certificates of insurance for the coverage required above not less

than five Business Days prior to any access, naming FCRHA and such other parties designated by FCRHA as additional insureds and otherwise in form reasonably satisfactory to FCRHA. FCRHA will have the right, in its discretion, to accompany AW4 and its contractors. All damage to the Property resulting from any access by or at the direction of AW4 or its contractors will be repaired immediately by AW4, at its sole cost and expense, so that the Property will be restored to the same condition in which it existed immediately prior to such access. AW4 will indemnify, defend and save FCRHA and its respective Commissioners, agents, directors, officers and employees (collectively, the “**Indemnitees**”) harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, engineers’, architects’ and attorneys’ fees and disbursements), which may be suffered by, imposed upon or incurred by or asserted against FCRHA or any of the Indemnitees as a result of any access pursuant to this Section 6.2. The provisions of this Section 6.2 will survive Closing or any termination of this Agreement.

6.3 Title. Prior to the Effective Date, AW4 ordered from Stewart Title and Escrow, Inc. (“**Title Company**”), a Commitment for Title Insurance Policy (the “**Title Commitment**”) insuring AW4’s interest in the Property, and requested copies of any recorded instruments that affect the title to the Property or would be applicable to AW4’s leasehold estate therein under the 4% Ground Lease. Items affecting FCRHA’s title to the Property as shown in the Title Commitment or survey on which AW4’s title review was based will be the “**Permitted Exceptions**” for purposes of this Agreement and the 4% Ground Lease, as applicable. Notwithstanding the foregoing, FCRHA agrees to take the following actions to be completed on or before Closing with respect to the Property:

(a) FCRHA will be obligated at Closing to remove any and all existing mortgage liens or similar liens or encumbrances against the Property. FCRHA hereby represents to AW4 that the mortgages which currently affect the Property, if any, can and will be released as aforesaid prior to the Closing;

(b) FCRHA will be obligated at Closing to deliver such title affidavits or similar materials as are customary for the issuance of title insurance for conveyance of leasehold estates (a “**Title Policy**”), as applicable, and which are reasonably consistent with the forms of such documents typically executed by FCRHA;

(c) From the Effective Date until the Closing, without the prior written consent of AW4, FCRHA will not voluntarily place or cause a lien to be placed on the Property or encumber or convey the Property or any portion thereof or any interest therein, nor amend or modify any existing encumbrances in any manner which will materially adversely affect the Property or any portion thereof or impose any material obligation with respect thereto. For purposes hereof, an encumbrance or obligation will be deemed to “materially adversely affect the Property or any portion thereof” or impose a “material obligation” if (1) the cost associated therewith on a stand-alone basis or aggregated with any other new or modified encumbrances or obligations subject to the provisions of this subsection (c) is greater than Twenty-Five Thousand Dollars, or (2) impacts the design, construction, configuration, square footage, or parking of the proposed Development. FCRHA will comply with all terms of any mortgage, encumbrance, or other agreements affecting the Property or any portion thereof and will not permit a default thereunder to exist or occur so long as this Agreement is in effect. If any monetary lien or liens

against the Property that FCRHA is either obligated to remove or has agreed in writing to remove, have not been removed and satisfied prior to Closing, then at Closing, FCRHA will pay such amounts as required to fully satisfy said liens. If any new encumbrance or matter that materially adversely affects the Property appears on any updated title commitment or survey that AW4 obtains after the Effective Date, and AW4 disapproves of such encumbrance or matter, then AW4 will provide written notice to FCRHA of such disapproval. If, within 15 Business Days after receipt of such notice, FCRHA does not provide written notice to AW4 of FCRHA's plan to cure, remove or otherwise address the encumbrance or matter in a manner that is reasonably satisfactory to AW4, then AW4 will have the right to terminate this Agreement, and except as otherwise expressly set forth in this Agreement, neither FCRHA nor AW4 will have any further liability hereunder.

## Section 7. **GOVERNMENTAL APPROVALS, SCHEMATICS, PLANS AND SPECIFICATIONS.**

7.1 Land Use Entitlement Approvals. During the Term and in accordance with a commercially reasonable schedule, AW4 covenants and agrees, at its expense, to file such applications with applicable Governmental Authority (as defined below) that are required in connection with the land use planning, design and other work activities necessary to obtain the following with respect to the Property that are necessary to develop and construct the Development (the "**Land Use Entitlement Approvals**"): (1) a Special Exception of the Property in connection with the Development; and (2) a Site Plan (defined below). Undefined capitalized terms in the preceding sentence have the meaning ascribed to such terms in Chapter 112 of the 1976 Code of the County of Fairfax, Virginia (the "**Zoning Ordinance**"). The Parties acknowledge that AW4 began filing applications and other work necessary to obtain the Land Use Entitlement Approvals during the period that the Interim Agreement was in effect and that certain of the Land Use Entitlement Approvals have already been obtained prior to the Term. All such Land Use Entitlement Approvals will be in form and substance satisfactory to AW4.

(a) "**Governmental Authority**" will mean any of the following: the United States of America, the Commonwealth of Virginia, the County of Fairfax, Virginia, Fairfax County Department of Housing and Community Development, Fairfax County Redevelopment and Housing Authority and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having lawful jurisdiction over the Property or any portion thereof.

(b) FCRHA, at no out-of-pocket cost to FCRHA, will (A) sign and join with AW4 in filing any applications, (B) cooperate with AW4 in obtaining any and all permits, regulatory agreements, consents, certificates, waivers, and other approvals relating to the Development, and (C) sign any applications made by AW4 required to obtain such permits, consents, certificates, waivers, and approvals. AW4 will reimburse FCRHA within 10 Business Days after FCRHA's demand for any reasonable third-party cost or expense incurred by FCRHA in obtaining such permits, consents, certificates, waivers, and approvals. Further, upon request, FCRHA will provide such authorization or approvals as any Governmental Authority or other third party may require to evidence the right of AW4 to be seeking regulatory approval for its Development.

(c) FCRHA and AW4 agree that obtaining the Land Use Entitlement Approvals and completion of the Schematics (defined below), Design Development Plans (defined below), Permit Documents (defined below) and Final Plans and Specifications in accordance with the terms of this Agreement are conditions precedent to Closing under this Agreement.

(d) AW4 agrees to provide FCRHA copies of any approval requests, applications, site plans, or other submissions for Land Use Entitlement Approvals at least three Business Days prior to the submission of such documents and instruments to any Governmental Authority other than FCRHA. Additionally, AW4 will submit progress reports to FCRHA containing updates regarding the Land Use Entitlement Approvals process and preparation of the Submission Materials (defined below) at least every 60 days for FCRHA's review and approval. AW4 and FCRHA may also set up a program of periodic team conference calls to provide regular updates concerning the development and construction of the Development, and if so, FCRHA may, in its sole discretion, waive the requirement for written progress reports, provided such waiver is in writing (including email).

(e) AW4 will file its initial Site Plan for review by the appropriate Governmental Authority within 120 days of obtaining from VH its initial letter of the award of Tax Credits for the Development.

(f) AW4 will use commercially reasonable efforts to obtain all Land Use Entitlement Approvals (except for the Site Plan) on or before the Expiration Date.

7.2 Submission and Review of Submission Materials. FCRHA and AW4 acknowledge and agree that the form of the Special Exception under consideration contains a general description of the Development upon which all Land Use Entitlement Approvals and the Schematics and the Final Plans and Specifications will be based. AW4 will submit to FCRHA for its review and approval any documents, drawings, proffers and other instruments that AW4 will submit to any Governmental Authority for any Land Use Entitlement Approvals related to the Development (including any modifications to any such documents, drawings, proffers and instruments) and any other documents that FCRHA will reasonably request in connection with its review thereof. Without limiting the foregoing, AW4 will submit to FCRHA for its review and approval prior to submission to any Governmental Authority for approval of the Conceptual Development Plan or Final Development Plan or for Special Exception approval any and all information related to such submissions, including (without limitation) the proposed elevations and facades for the Development, building layouts, site development plans and other proffered amenities related to the Development (collectively, the "**Submission Materials**"). The Submission Materials will include, without limitation: (i) Schematics; (ii) Design Development Plans; (iii) Permit Documents; and (iv) Final Plans and Specifications. If FCRHA does not approve the Submission Materials, FCRHA will so notify AW4 in writing, specifying in what respects it disapproves of the Submission Materials. AW4 and FCRHA will reasonably cooperate with one another in addressing the comments of FCRHA. AW4 will revise the Submission Materials to reflect the agreed upon changes and will then resubmit the Submission Materials to FCRHA for review. The initial review by FCRHA will be carried out within five Business Days of the date of submission of the Submission Materials; FCRHA's review of revisions to the Submission Materials will be carried out within five Business Days of the date of submission of the revised Submission

Materials. If FCRHA has not notified AW4 of its determination within the applicable period, FCRHA will be deemed to have approved the Submission Materials.

(a) The following definitions are used in this Section 7.2 and elsewhere in this Agreement as they relate to Submission Materials and design, development, and construction of the Development:

(i) “**Schematics**” means the concept plans completed at approximately fifteen percent of the Final Plans and Specifications;

(ii) “**Design Development Plans**” means the plans, specifications and construction drawings completed at approximately thirty-five percent of the Final Plans and Specifications for the development and construction of the Development and the parties having determined the anticipated costs associated with the relocation, upgrade and bringing of utilities to the Property;

(iii) “**Final Development Plan**” means the detailed plan of development approved in conjunction with the rezoning application.

(iv) “**Permit Documents**” means the plans, specifications and construction drawings completed at approximately seventy-five percent of the Final Plans and Specifications for the development and construction of the Development; and

(v) “**Final Plans and Specifications**” means one hundred percent of the final plans and specifications and construction drawings, including but not limited to the Site Plan and building plans prepared by AW4’s architect and engineers for the Development which materially conform to the Schematics and other Submission Materials previously approved by FCRHA that are necessary for the development and construction of the Development.

(b) Within 90 days after receipt of final, unappealable Final Development Plan approval for AW4’s proposed Development from each applicable Government Authority, AW4 will submit Schematics of the Development (which will include, without limitation, the site layout design of the Property) for FCRHA’s approval. If FCRHA does not approve the Schematics, FCRHA will so notify AW4 in writing, specifying in what respects it disapproves of the Schematics. AW4 and FCRHA will reasonably cooperate with one another in addressing the comments of FCRHA. AW4 will revise the Schematics to reflect the agreed upon changes and will then resubmit the Schematics to FCRHA for review. The initial review by FCRHA will be carried out within five Business Days of the date of submission of the Schematics; FCRHA’s review of revisions to the Schematics will be carried out within five Business Days of the date of submission of the revised Schematics. If FCRHA has not notified AW4 of its determination within the applicable period, FCRHA will be deemed to have approved the Schematics.

(c) Within 270 days after FCRHA has approved the Schematics, AW4 will submit completed proposed Final Plans and Specifications. FCRHA will review the proposed Final Plans and Specifications to determine whether they materially conform to the Schematics. If FCRHA determines that they do so conform, FCRHA will so notify AW4 in writing. If FCRHA reasonably determines that the proposed Final Plans and Specifications, as so revised, do not

materially conform to the Schematics and other previously approved Submission Materials, FCRHA will so notify AW4, specifying in writing in what respects they do not so conform. In such latter event, AW4 and FCRHA will reasonably cooperate with one another in addressing the comments of FCRHA. AW4 will revise the proposed Final Plans and Specifications to reflect the agreed upon changes and will then resubmit the proposed Final Plans and Specifications to FCRHA for review. The initial review by FCRHA will be carried out within five Business Days of the date of submission of the proposed Final Plans and Specifications; FCRHA's review of revisions to the proposed Final Plans and Specifications will be carried out within five Business Days of the date of submission of the revised proposed Final Plans and Specifications. If FCRHA has not notified AW4 of its determination within the applicable period, FCRHA will be deemed to have approved the proposed Final Plans and Specifications or determined that they materially conform to the Schematics or other Submission Materials.

## Section 8. **CLOSING.**

8.1 Time. If, and on the express condition that, AW4 delivered the Option Notice and the Supporting Documentation prior to the Expiration Date, and FCRHA provided the Approval Notice, then on a date prior to December 31<sup>st</sup> of the year following the calendar year in which the Approval Notice was sent and after the satisfaction or waiver (if applicable) of the conditions precedent set forth in Section 9.1 and Section 9.2, the Parties will each execute and exchange original counterparts and deposit into escrow the documents described in Section 8.3 and Section 8.4 below and will close the transaction contemplated by this Agreement (the "**Closing**"). AW4 will select the date of Closing (the "**Closing Date**"), which will be a Business Day, and give notice to FCRHA at least 15 Business Days prior to the Closing Date, unless otherwise agreed in writing by the Parties.

8.2 Escrow. The Parties will conduct the Closing through the Title Company (the "**Escrow Agent**") or such other party mutually agreed between the Parties at the time of Closing. The terms of this Agreement (including, but not limited to, the terms contained in this Section 8), together with such additional instructions as the Escrow Agent will reasonably request and to which the Parties will agree, will constitute the escrow instructions to the Escrow Agent. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Escrow Agent, this Agreement will control unless the intent to amend this Agreement is clearly and expressly stated in the additional escrow instructions.

8.3 FCRHA's Deposits into Escrow. FCRHA will deposit into escrow on or before Closing the following documents:

- (a) Two duly executed counterpart originals of the 4% Ground Lease;
- (b) A duly executed and acknowledged counterpart original memorandum of lease in a reasonable form that has been agreed to between FCRHA and AW4 in recordable form (the "**Memorandum of Lease**");
- (c) A certificate of FCRHA signed by FCRHA affirming that all of FCRHA's representations and warranties set forth in Section 5.2 are true in all material respects as of the Closing Date; provided however, to the extent FCRHA is aware of facts or circumstances that

result in FCRHA's representations or warranties set forth in Section 5.2 not being true as of the Closing, FCRHA will disclose such facts or circumstances in such certificate (the "**FCRHA Certificate**");

(d) Such additional documents, including written escrow instructions consistent with this Agreement, as are both (i) reasonably necessary for the consummation of the transactions contemplated by this Agreement and (ii) reasonably consistent with the forms of such documents typically executed by FCRHA.

8.4 AW4's Deposits into Escrow. AW4 will deposit into escrow on or before Closing:

(a) Two duly executed counterpart originals of the 4% Ground Lease;

(b) A duly executed and acknowledged counterpart original of the Memorandum of Lease;

(c) Two duly executed counterpart originals of the Guaranty (as defined in the 4% Ground Lease);

(d) A certificate of AW4 signed by a person duly authorized to do so on behalf of AW4, affirming that all of the representations and warranties of AW4 set forth in Section 5.3 are true in all material respects as of the Closing Date; provided however, to the extent AW4 is aware of facts or circumstances that result in AW4's representations or warranties set forth in Section 5.3 not being true as of the Closing, AW4 will disclose such facts or circumstances in such certificate (the "**AW4 Certificate**");

(e) Such evidence as the Escrow Agent reasonably requires as to the authority of the person or persons executing documents on behalf of AW4;

(f) The base rent due at Closing, if any, in immediately available funds;

(g) Such additional documents, including written escrow instructions consistent with this Agreement, as are reasonably necessary for the lease of the Property in accordance with the terms of this Agreement.

8.5 Closing. When the Escrow Agent has received all documents identified in Section 8.3 and Section 8.4, and has received written notification from AW4 and FCRHA that all conditions to Closing have been satisfied or waived; then, and only then, the Escrow Agent will take the following actions in the following chronological order:

(a) Record in the Land Records the Memorandum of Lease (marked for return to AW4) against the Land;

(b) Deliver to AW4: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the 4% Ground Lease; and (iii) the FCRHA Certificate;

(c) Deliver to FCRHA: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease; (ii) a fully executed original of the 4% Ground Lease; (iii) two duly executed counterpart originals of the Guaranty for the 4% Ground Lease; and (iv) AW4 Certificate.

8.6 Closing Costs. As additional consideration for the lease of the Property pursuant to the 4% Ground Lease, AW4 will pay all escrow and recording fees and other closing costs charged by the Escrow Agent.

## Section 9. **CONDITIONS PRECEDENT; COVENANTS.**

9.1 AW4's Conditions. AW4's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which will be deemed waived (other than Section 9.1(d) through Section 9.1(f), which may not be waived by AW4) unless AW4 exercises its rights pursuant to Section 9.4 below to terminate the Agreement or to extend the time for the Closing in accordance with Section 3.1 above:

(a) Representations and Warranties. FCRHA's representations and warranties contained in Section 5.2, as restated as of the Closing in the FCRHA Certificate, will be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the FCRHA Certificate will be acceptable to AW4, in its sole but reasonable discretion.

(c) Performance. FCRHA will have performed and complied in all material respects with all covenants, agreements, terms, and conditions required by this Agreement to be performed or complied with by FCRHA prior to or at the Closing.

(d) Tax Credit Award. AW4 will have obtained from the VH (and closed or be simultaneously closing) an award of Tax Credits for financing the construction to occur under the 4% Ground Lease (and any and all challenge periods related to such award have expired).

(e) Financing. AW4 will have obtained from investors and lenders (and closed or be simultaneously closing) any equity investment or loan financing or both in amounts sufficient to finance the Development.

(f) Land Use Entitlement Approvals. AW4 will have been approved for final, non-appealable Land Use Entitlement Approvals from each applicable Governmental Authority.

(g) Permits and Construction Approvals. AW4 will have applied for and received all governmental approvals and permits, including building permits, for the construction of the buildings under the 4% Ground Lease.

(h) Final Plans and Specifications. AW4 will have received approval from FCRHA of the Final Plans and Specifications.

(i) Construction Contract. AW4 will have entered into a contract with a reputable general contractor for the construction of the buildings and other improvements to be constructed under the 4% Ground Lease.

9.2 FCRHA's Conditions. FCRHA's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which will be deemed waived unless FCRHA exercises its rights pursuant to Section 9.4 below to terminate the Agreement:

(a) Representations and Warranties. AW4's representations and warranties contained in Section 5.3, as restated as of the Closing in AW4 Certificate, will be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in AW4 Certificate will be acceptable to FCRHA, in its sole but reasonable discretion.

(c) Performance. AW4 will have performed and complied in all material respects with all covenants, agreements, terms, and conditions required by this Agreement to be performed or complied with by AW4 prior to or at the Closing.

(d) No Litigation. There will exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against AW4 that would materially and adversely affect the ability of AW4 to perform its obligations under this Agreement.

(e) Tax Credit Award. AW4 will have obtained from the VH (and closed or be simultaneously closing) an award of Tax Credits for financing the construction to occur under the 4% Ground Lease (and any and all challenge periods related to such award have expired).

(f) Financing. AW4 will have obtained from investors and lenders (and closed or be simultaneously closing) any equity investment or loan financing or both in amounts sufficient to finance the Development.

(g) Land Use Entitlement Approvals. AW4 will have been approved for final, non-appealable Land Use Entitlement Approvals from each applicable Governmental Authority.

(h) Delivery of Option Notice; Approval of Supporting Documentation. AW4 will have delivered the Option Notice, the Supporting Documentation and any additional information required by FCRHA to issue the Approval Notice in accordance with Section 3.3, and FCRHA has approved the Supporting Documentation in accordance with Section 3.3.

9.3 Additional AW4 Covenants. AW4 covenants and agrees to satisfy the terms of this Section 9.3, prior to the Closing:

(a) Application for Tax Credits. AW4 will timely apply to VH for the Tax Credits in each applicable cycle during the Term for the Property, and AW4 will diligently and in good faith prosecute all steps and actions needed for the award of the Tax Credits. Promptly following the award of the Tax Credits, AW4 will (i) apply for and diligently prosecute in good faith all steps and actions needed to obtain loan or equity financing in amounts sufficient to finance the Development, and (ii) pursue the commitment of a tax credit investor for the purchase of the Tax Credits for the 4% Project.

In the event AW4 fails to satisfy the covenants set forth in this Section, FCRHA may avail itself to the rights and remedies set forth in Section 9.4 and Section 10 below.

9.4 Failure of Conditions. So long as a Party is not in default hereunder, if any condition to such Party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date or any other applicable date specified in this Agreement, such Party may, in its sole discretion, either (a) terminate this Agreement by delivering written notice to the other Party on or before the Closing Date, (b) extend the time available for the satisfaction of such condition, or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such Party will be deemed to have waived any such condition. If such Party elects to proceed pursuant to clause (b) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such Party may elect to proceed pursuant to either clause (a) or (c) of the preceding sentence. In the event the failure of a condition precedent for the benefit of either Party is not satisfied due to a breach of this Agreement by the other Party (for example, a failure or refusal to perform a Party's obligations under this Agreement), the benefitted Party's rights and remedies will be as set forth in Section 10.

## Section 10. **DEFAULT; REMEDIES.**

10.1 FCRHA Default. In the event FCRHA refuses to consummate the transaction contemplated by this Agreement or in the case of any other default or breach by FCRHA hereunder, AW4 will give FCRHA written notice of such default or breach and will provide FCRHA with 30 days to cure the default or breach. In the event FCRHA fails to cure the default or breach within such 30 day period, AW4 will be entitled to (a) seek specific performance to enjoin FCRHA to cure such default or breach and consummate the transaction contemplated by this Agreement; or (b) terminate the Option. AW4 may terminate the Option if any condition to Closing contained in Section 9.1 has not been satisfied or waived by AW4 in writing by the Closing Date. Notwithstanding anything set forth above, AW4 will be entitled to recover monetary damages from FCRHA in the event FCRHA defaults or breaches this Agreement and fails to convey the Property, so long as: (i) such failure is the result of FCRHA's refusal to convey the Property and not the failure to satisfy any condition outside of FCRHA's reasonable control (e.g. Section 5.2(b), Section 5.2(d) and Section 5.2(e)); (ii) all FCRHA's Conditions have been satisfied; and (iii) AW4 is not in default under this Agreement, beyond all applicable notice and cure periods.

10.2 AW4 Default. In the case of any default or breach by AW4 hereunder, FCRHA will give AW4 written notice of such default or breach and will provide AW4 with 30 days to cure the default or breach; provided, however, if such default or breach is not capable of being cured within 30 days, then AW4 will have an additional 30 days so long as AW4 continues to diligently pursue

a cure. In the event AW4 fails to cure the default or breach within such period, FCRHA may terminate the Option. Additionally, FCRHA may terminate the Option in the event of any condition to Closing contained in Section 9.2 has not been satisfied or waived by FCRHA in writing by the Closing Date. FCRHA's remedies for any default or breach by AW4 hereunder will be terminating the Option; in no event shall the FCRHA be entitled to any damages from AW4 if AW4 defaults or breaches under this Agreement.

## Section 11. **RISK OF LOSS; CONDEMNATION OR CASUALTY**

11.1 Risk of Loss. Risk of loss will remain with FCRHA until Closing. FCRHA will notify AW4 of any (i) condemnation or taking by eminent domain of any portions of the Property or (ii) casualty event affecting the Property. AW4 and FCRHA agree that FCRHA has no obligation to restore the Property in the event of a condemnation or casualty event.

11.2 Obligation to Close. Notwithstanding any condemnation or casualty event, AW4 will remain obligated to close under this Agreement so long as such condemnation or casualty event does not materially and adversely affect the Property. For purposes of this Section, a condemnation or casualty event will "materially and adversely affect the Property" if, after completion of such condemnation or the occurrence of such casualty event, as applicable, AW4 would no longer be able to develop and construct the Development in substantial accordance with Land Use Entitlement Approvals, the Final Plans and Specifications and the 4% Ground Lease, subject to any minor adjustments caused by such condemnation or casualty event, as applicable. In the event of a condemnation or casualty event that has a material and adverse effect on the Property, (A) AW4 will have the right to terminate this Agreement without liability on its part by so notifying FCRHA within 15 Business Days of FCRHA's notification to AW4 of said condemnation or casualty event, and except as otherwise expressly set forth in this Agreement, neither FCRHA nor AW4 will have any further liability hereunder, and (B) if AW4 does not so terminate the Agreement, then AW4 will remain obligated to close under this Agreement and neither such condemnation or casualty event nor the condition of the Property thereafter will be deemed to give rise to a default hereunder.

## Section 12. **MISCELLANEOUS PROVISIONS.**

12.1 No Brokers, Finders, Etc. None of the Parties has engaged any agent, broker, finder or investment or commercial banker in connection with the negotiation, execution or performance of this Agreement, or the transactions contemplated hereby.

12.2 Expenses. Except as specifically set forth herein, whether or not the transaction contemplated by this Agreement is consummated, each of the Parties will pay their own fees and expenses incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

12.3 Complete Agreement; Waiver and Modification, Etc. This Agreement and the 4% Option to Lease dated as of the date hereof between the FCRHA and AW4 for the 4% Ground Lease constitutes the entire agreement between the Parties hereto and thereto pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings of the Parties. There are no representations, warranties, covenants, or conditions

by or benefiting any Party except those expressly stated or provided for in this Agreement, any implied representations, warranties, covenants, or conditions being hereby expressly disclaimed. No person or entity other than the Parties to this Agreement have any rights or remedies under or in connection with this Agreement, except rights or remedies validly assigned hereunder. No amendment, supplement or termination of or to this Agreement, and no waiver of any of the provisions hereof or thereof, will require the consent of any person or entity other than the Parties hereto, nor will any such amendment, supplement, termination or waiver be binding on a Party to this Agreement unless made in a writing signed by such Party. To the extent any provision of the Option conflicts with, or is inconsistent with, this Agreement, then this Agreement shall govern and control.

12.4 Communications. Whether expressly so stated or not, all notices, demands, requests and other communications required or permitted by or provided for in this Agreement (“**Communications**”) will be given in writing to the Parties at their respective addresses set forth below, or at such other address as a Party will designate for itself in writing in accordance with this Section:

If to AW4, to:

C/O The Michaels Development Company I, L.P.  
PO Box 90708  
Camden, NJ 08101  
Attn: Kenneth P. Crawford, COO

with a copy to:

The Michaels Development Company I, L.P.  
1700 Development Road, Suite 330,  
Alexandria, VA 22314  
Attention: Nicholas C. Bracco

and a copy to:

Levine, Staller, Sklar, Chan & Brown, P.A  
3030 Atlantic Avenue  
Atlantic City, NJ 08401  
Attention: Arthur M. Brown, Esquire

and a copy to:

Klein Hornig LLP  
1325 G Street, NW, Suite 770  
Washington, DC 20005  
Attention: Chris Hornig

If to FCRHA, to:

Fairfax County Redevelopment and Housing Authority  
Attention: Director, HCD  
3700 Pender Drive, Suite 300

Fairfax, Virginia 22030-6039 e-mail:  
[Thomas.Fleetwood@fairfaxcounty.gov](mailto:Thomas.Fleetwood@fairfaxcounty.gov)

-and-

Fairfax County Redevelopment and Housing Authority  
Attention: Ms. Teresa Lepe  
3700 Pender Drive, Suite 300  
Fairfax, Virginia 22030-6039  
e-mail: [Teresa.Lepe@fairfaxcounty.gov](mailto:Teresa.Lepe@fairfaxcounty.gov)

With a copy to:

Office of the County Attorney  
Attention: County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
e-mail: [Beth.Teare@fairfaxcounty.gov](mailto:Beth.Teare@fairfaxcounty.gov)

Communications may be transmitted (a) electronic mail transmission (with a copy sent the next business day by one of the other methods permitted hereunder), (b) reputable overnight courier (with a signed receipt) or (c) hand delivery (with receipt acknowledged in writing by the office of the addressee). Except as otherwise provided in this Agreement, delivery or service of any Communications will be deemed effective only upon receipt (or refusal of receipt), and receipt will be deemed to have occurred when the Communications were delivered to the specified address without regard to whether or not a representative of the addressee was present to receive the Communications or was present but refused receipt of such Communications; provided, any Communications delivered after 5:00 P.M. local time of place of receipt, or on a day other than a Business Day, will be deemed received on the next succeeding business day. Either of the Parties may change the address(es) to which any such Communications are to be delivered by furnishing 10 Business Days written notice of such change(s) to the other of the Parties in accordance with the provisions of this Section.

12.5 Governing Law. This Agreement will be interpreted in accordance with and governed by the laws of the Commonwealth of Virginia.

12.6 Headings; References; "Hereof," Etc. The Section headings in this Agreement are provided for convenience only, and will not be considered in the interpretation hereof or thereof. References in this Agreement to Sections or Exhibits refer, unless otherwise specified, to the designated Section of or Exhibit to this Agreement, and terms such as "herein," "hereto" and "hereof" used in this Agreement refer to this Agreement as a whole.

12.7 Successors and Assigns. AW4 may not assign its rights under this Agreement to any party without the consent of FCRHA, which may be withheld in FCRHA's sole and absolute discretion. Notwithstanding the foregoing to the contrary, AW4 will be permitted to assign its

rights under this Agreement to any person or entity which directly or indirectly controls, is controlled by or is under common control with The Michaels Group (“AW4 Parent”), or to any person or entity resulting from a merger or consolidation with AW4 Parent, or to any person or entity which acquires all the assets of AW4 Parent’s business as a going concern pursuant to a written agreement, reasonably acceptable to FCRHA, provided that (i) such assignment or sublease is not a subterfuge to avoid the application of the provisions of this Section 12.7, (ii) the assignee assumes, in full, the obligations of AW4 hereunder, and (iii) AW4 provides FCRHA with written notice of any such assignment at least one (1) month prior to the Closing Date. This Section 12.7 will be subject to the provisions of Section 12.16, and will in no way limit AW4’s rights set forth in Section 12.16.

12.8 Severability. If for any reason any provision of this Agreement will be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision will be ineffective only to the extent of that invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of this Agreement in any other jurisdiction.

12.9 Cumulative Rights and Remedies. The rights and remedies of each Party under this Agreement are cumulative, except as otherwise expressly provided.

12.10 Survival of Representations and Warranties. Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements of the Parties contained in this Agreement will be considered material and will be effective and survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby notwithstanding any investigation of the matters covered thereby by or on behalf of any Party benefited by any such representation, warranty, covenant or agreement or any knowledge (actual or constructive) on the part of any Party benefited by any such representation, warranty, covenant or agreement as to the truth or accuracy (or falseness or inaccuracy) thereof.

12.11 Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the Parties, at their own expense, will execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other Party, and will take any other action consistent with the terms of this Agreement that may reasonably be requested by the other Party to evidence or carry out the intent of or to implement this Agreement.

12.12 Counterparts; Separate Signature Pages. This Agreement may be executed in any number of counterparts, or using separate signature pages. Each such executed counterpart and each counterpart to which such signature pages are attached will be deemed to be an original instrument, but all such counterparts together will constitute one and the same instrument.

12.13 Time; Business Days. **WHETHER EXPRESSLY SO STATED OR NOT IN CONNECTION WITH ANY OBLIGATION, TIME IS OF THE ESSENCE IN THE PERFORMANCE OF EACH PARTY’S RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT, AND NO NOTICE OF A PARTY’S INTENT TO REQUIRE STRICT**

**COMPLIANCE WITH ANY OF THE DEADLINES SET FORTH IN THIS AGREEMENT IS REQUIRED.** If any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period will be automatically extended to the next business day. As used in this Agreement, the term “Business Days” will mean any day which is not a Saturday, Sunday or a day observed as a holiday by the County of Fairfax, Virginia or the federal government.

12.14 Estoppel Certificates. Each Party will, from time to time upon 15 Business Days’ prior request by another Party, execute, acknowledge and deliver to the requesting Party a certificate signed by an authorized representative of such Party stating that to the knowledge of such Party this Agreement (a) is or is not in full force and effect, (b) is or is not unmodified (and, if modified, the details of the modification(s)), and (c) that default(s) do or do not exist hereunder (and if defaults do exist, the nature thereof to the extent known).

12.15 Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Agreement.

12.16 Ownership Structure. FCRHA acknowledges that due to lender requirements, investor requirements, tax issues and certain other factors, some of which are not known to AW4 as of the date of this Agreement, it is not possible for AW4 to commit to a final ownership structure for the Development as of the date of this Agreement. Therefore, FCRHA agrees that AW4 will have the right to submit a proposed ownership structure of the ground tenant or ground tenants under one or more Ground Leases prior to the Closing Date for FCRHA’s review and approval, which FCRHA will approve, so long as (i) the ground tenant under any Ground Lease for the Development is controlled, directly or indirectly, by AW4 Parent and (ii) the rights of FCRHA under the Ground Lease are not materially adversely affected. *By way of example and not limitation*, AW4 may separately establish a Ground Lease with a ground tenant to own a portion of the Development that utilizes the 9% Tax Credits and a separate Ground Lease with a ground tenant to own a portion of the Development that utilizes the 4% Tax Credits, or FCRHA may provide a single Ground Lease to a ground tenant that subleases a portion of the Property to a subtenant that utilizes the 9% Tax Credits and to a different subtenant that utilizes the 4% Tax Credits. To accomplish this apportionment, the Property may be subdivided or subjected to a land condominium regime. Due to the fluid nature of the ownership structure, FCRHA acknowledges and agrees that AW4, AW4 Parent or one or more subsidiaries directly or indirectly controlled by AW4 Parent may fulfill one or more of the obligations of AW4 under this Agreement, including making an application for the Tax Credits.

*[Signatures on the following page]*

[SIGNATURE PAGE TO CONTRACT TO GROUND LEASE (4%) – FCRHA]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first written above.

**FCRHA:**

**FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity

By:   
Name: Thomas Fleetwood  
Title: Assistant Secretary

COMMONWEALTH OF VIRGINIA            )  
COUNTY OF FAIRFAX                    ) to wit

The foregoing instrument was acknowledged before me this 11 day of March, 2021, by Thomas Fleetwood the Assistant Secretary on behalf of the Fairfax County Redevelopment and Housing Authority.

  
\_\_\_\_\_  
Notary Public

My commission expires:  
1/31/2023

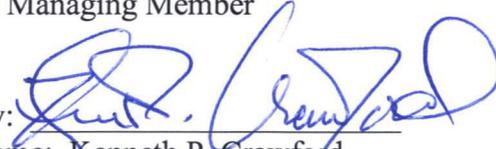
[Signatures continue on following page]



**AW4:**

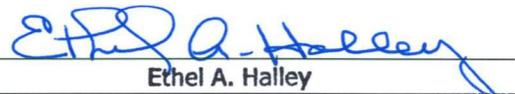
**AUTUMN WILLOW 4, LLC,**  
a Virginia limited liability company

By: Autumn Willow 4-Michaels, LLC,  
a Virginia limited liability company,  
its Managing Member

By:   
Name: Kenneth P. Crawford  
Title: Authorized Representative

~~STATE OF New Jersey~~  
~~COMMONWEALTH OF VIRGINIA~~  
COUNTY OF ~~FAIRFAX~~, to wit:  
Camden

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of March, 2021, by Kenneth P. Crawford, Authorized Representative and on behalf of Autumn Willow 4-Michaels, LLC, managing member of Autumn Willow 4, LLC.

  
Ethel A. Halley  
Notary Public

My commission expires:  
08-22-2022

ETHEL A HALLEY  
NOTARY PUBLIC  
State of New Jersey  
My Commission Expires 8-22-22

**EXHIBIT A**

**TO CONTRACT TO GROUND LEASE – 4%**

**THE LAND**

Starting at a point on the southerly right-of-way line of Autumn Willow Drive, Route 7988, said point also being the northwesterly corner of the land of the Fairfax County Park Authority, thence S57°59'53"W, 185.90 feet, to the true point of beginning, thence running through the land of the Fairfax County Redevelopment and Housing Authority the following eight (8) courses;

S 06° 32' 42" E, 266.17 feet to a point;  
S 83° 29' 05" W, 27.86 feet to a point;  
S 06° 30' 55" E, 206.62 feet to a point;  
S 83° 29' 05" W, 80.12 feet to a point;  
N 06° 20' 55" W, 334.92 feet to a point;  
N 80° 33' 55" W, 27.04 feet to a point;  
N 07° 57' 53" E, 132.31 feet to a point;  
N 82° 08' 35" E, 99.82 feet;

to the point of beginning containing 46,157 square feet or 1.05961 acres of land.

**EXHIBIT B**

**TO CONTRACT TO GROUND LEASE – 4%**

**FORM OF GROUND LEASE**

**[PLEASE SEE EXHIBIT B TO COMPREHENSIVE AGREEMENT.]**

**CONTRACT TO GROUND LEASE**  
(Autumn Willow 9% Project)

This Contract to Ground Lease (the “**Agreement**”) is made and entered into as of March 15, 2021 (the “**Effective Date**”) by and between the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**FCRHA**”), and **Autumn Willow 9, LLC**, a Virginia limited liability company, (together with any assignee permitted under this Agreement, “**AW9**”), and together with the FCRHA, collectively, the “**Parties**”.

**RECITALS:**

- R-1. The FCRHA is the fee simple owner of the property located in the south east quadrant of the intersection of Stringfellow Road and Autumn Willow Road in Fairfax County, Virginia, identified by Tax Map No. 55-3((1)) Parcel 26B (the “**Autumn Willow Property**”).
- R-2. Pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, as amended, Virginia Code Ann. §§ 56-575.1 to 575.16 (such law, the “**PPEA**”) and FCRHA’s PPEA guidelines, FCRHA evaluated proposals and selected The Michaels Development Company I, L.P. (the “**Developer**”) to develop and construct approximately 150 affordable senior housing units on the Autumn Willow Property with surface parking (the “**Development**”). The Development is anticipated to consist of two separate projects, with one project receiving nine percent (9%) low-income housing tax credits and other sources (“**9% Project**”) to be owned and operated by AW9 and the other receiving four percent (4%) low-income housing tax credits and other sources (the “**4% Project**”) to be owned and operated by Autumn Willow 4, LLC, a Virginia limited liability company (“**AW4**”).
- R-3. FCRHA and the Developer entered into that certain Interim Agreement (the “**Interim Agreement**”) dated July 31, 2020 to promptly commence certain design and zoning related work and other due diligence on the Autumn Willow Property.
- R-4. In order to meet the requirements established by the Virginia Housing (“**VH**”) for nine percent (9%) low-income housing tax credits (the “**Tax Credits**”), the FCRHA is entering into this and into that certain Option to Lease that is by and between the FCRHA and AW9 and of even date herewith (“**9% Option**”) to enter into a ninety-nine (99) year, senior lien priority ground lease for all or a portion of the Autumn Willow Property (the “**9% Ground Lease**”). Certain capitalized terms not specifically defined herein are defined in the 9% Ground Lease.
- R-5. Simultaneously with the execution of this Agreement, the FCRHA and AW4 shall have entered into an additional Contract to Ground Lease which, subject to AW4 satisfying certain conditions precedent as set forth in said contract, provide that AW4 will enter into a separate ninety-nine (99) year, senior lien priority ground lease for all or a portion of the Autumn Willow Property (the “**4% Ground Lease**”) for the development, construction,

use and maintenance of the 4% Project.

R-5. AW9 and FCRHA desire to enter into this Agreement setting forth AW9's contract rights and option to enter into the 9% Ground Lease for a portion of the Autumn Willow Property upon the satisfaction of certain conditions, as set forth below in this Agreement.

NOW THEREFORE for and in consideration of the mutual promises of the Parties and of other good and valuable consideration receipt and sufficiency of which are hereby acknowledged, FCRHA and AW9 intending to be legally bound do hereby agree as follows:

## Section 1. **GRANT OF OPTION.**

1.1 Property. FCRHA hereby and pursuant to the Option to Lease (defined herein) grants to AW9 an option to lease a portion of the Autumn Willow Property, subject to all of the terms and conditions of this Agreement. The term "**Property**" means that portion of the Autumn Willow Property and includes: (a) the real property (the "**Land**") more particularly described in *Exhibit A* of the 9% Ground Lease, which is attached as Exhibit A-1 to this Agreement, and made a part hereof; (b) all of its interest in certain easements, development rights, improvements, equipment and fixtures located on the Land at the time of the Closing (as defined in Section 8.1 below); (c) the Land Use Entitlement Approvals, certain appurtenant easements, and the FCRHA's rights and interests to certain Transferrable Development Rights, as defined herein, from that land identified by Tax Map No. 55-3((1)) Parcel 26A and more particularly described at Exhibit A-2 attached hereto; and (d) other intangible property associated with the Land or the improvements, equipment and fixtures located thereon owned by FCRHA.

1.2 Option. The option described in Section 1.1 is referred to in this Agreement as the "**Option**."

1.3 Recordation of this Agreement. This Agreement, and the Option created hereby, may be recorded by AW9 in the Land Records of Fairfax County, Virginia (the "**Land Records**"). If this Agreement is recorded and later expires or is terminated as provided herein, then no later than five Business Days after the expiration or termination hereof, AW9 will deliver to FCRHA for recordation, duly signed and notarized by AW9, documents sufficient to confirm the expiration or termination of this Agreement and the termination of the Option, and otherwise in recordable form and reasonably acceptable to FCRHA (and this obligation of AW9 will survive expiration or termination of this Agreement). If AW9 records this Agreement in the Land Records, AW9 will be responsible for payment of all fees and taxes associated with such recording. The relationship between FCRHA and AW9 shall be governed by the provisions of this Agreement.

1.4 Effect of Agreement; Interest in Real Property. The Parties intend that this Agreement is given by FCRHA to AW9 as an option to lease a portion of the Autumn Property. The Parties intend that this Agreement creates a valid and present encumbrance on the Property in favor of AW9, effective as of the Effective Date, subject to any and all liens or encumbrances disclosed in the Land Records. Therefore, the Option will be deemed an encumbrance upon the Property during the term of this Agreement effective as of the Effective Date and will be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns (subject to Section 12.7 below).

## Section 2. **INDEPENDENT CONSIDERATION.**

In consideration of and concurrently with FCRHA entering into this Agreement, AW9 agrees to pay to FCRHA the sum of Ten Dollars (\$10.00) as “independent consideration” for the Option (the “**Consideration**”). The Consideration has been bargained for and agreed to as separate and independent consideration for AW9’s option to lease the Property pursuant to the terms herein, and for FCRHA’s execution and delivery of this Agreement. The Consideration will be deemed fully earned by FCRHA upon receipt and will be considered non-refundable to AW9.

## Section 3. **TERM; EXTENSION OF OPTION; EXERCISE OF OPTION.**

3.1 Term of Agreement. The term of this Agreement (the “**Term**”) begins on the Effective Date and will expire at 5:00 p.m. on the Expiration Date (defined herein), unless an Option Notice (defined below) has been sent to FCRHA by AW9 and an Approval Notice (defined below) has been sent to AW9 by FCRHA, in which case the Term will expire on the Closing Date (defined below). The initial Expiration Date will be December 1, 2021 (the “**Initial Expiration Date**”). The Initial Expiration Date, as may be extended by mutual agreement in writing by the Parties or as specifically provided in this Section 3.1 below is the “**Expiration Date.**”

(a) If (i) AW9 has not received an award of Tax Credits and has not sent an Option Notice on or before the Initial Expiration Date, (ii) this Agreement is then in full force and effect and AW9 is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) AW9 has given FCRHA notice in writing of AW9’s election to extend the Term of this Agreement no less than 10 Business Days before the Initial Expiration Date, AW9 will have the right to extend the Term of this Agreement until 5:00 p.m. on December 1, 2022 (the “**Second Expiration Date**”); provided, however, that AW9 will re-apply for the Tax Credits and equity and financing as required pursuant to Section 9.3.

(b) If (i) AW9 has not received an award of Tax Credits and has not sent an Option Notice on or before the Second Expiration Date, (ii) this Agreement is then in full force and effect and AW9 is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) AW9 has given FCRHA notice in writing of AW9’s election to extend the Term of this Agreement no less than 10 Business Days before the Second Expiration Date, AW9 will have the right to extend the Term of this Agreement until 5:00 p.m. on December 1, 2023 (the “**Third Expiration Date**”); provided, however, that AW9 will re-apply for the Tax Credits and equity and financing as required pursuant to Section 9.3.

(c) If (i) AW9 has not received an award of Tax Credits and has not sent an Option Notice on or before the Third Expiration Date, (ii) this Agreement is then in full force and effect and AW9 is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) AW9 has given FCRHA notice in writing of AW9’s election to extend the Term of this Agreement no less than 10 Business Days before the Third Expiration Date, APAH will have the right to extend the Term of this Agreement until 5:00 p.m. on December 1, 2024 (the “**Outside Expiration Date**”); provided, however, that AW9 will re-apply for the Tax Credits and equity and financing as required pursuant to Section 9.3.

(d) Notwithstanding anything to the contrary contained in this Agreement, in no event will the Expiration Date be extended to a date beyond the Outside Expiration Date, except by a mutual agreement in writing executed by both Parties. If AW9 has not exercised its right to extend the Expiration Date as expressly provided above, AW9 will be deemed to have forever waived its right to further extend the Term of this Agreement beyond the then current Expiration Date, except by mutual agreement in writing executed by both Parties.

3.2 Condition to Right to Exercise. AW9 may exercise the Option only if all of the following conditions have been met: (i) AW9 has received an award of Tax Credits from VH for the Development; and (ii) in connection with the entitlement and development of the Development, AW9 has received an approved Special Exception for the Property.

3.3 Exercise Notice. AW9 may exercise the Option at any time during the Term, provided AW9 has satisfied the conditions set forth in Section 3.2 above, by delivering a written notice to FCRHA (the “**Option Notice**”). The Option Notice will include: (i) a certification from AW9 that AW9 has satisfied the conditions precedent set forth in Section 3.2; and (ii) reasonably detailed supporting documentation of the satisfaction of such conditions (the “**Supporting Documentation**”). Upon FCRHA’s receipt of the Option Notice, FCRHA will have 20 Business Days to review the Supporting Documentation, and within such period FCRHA will deliver a written notice to AW9 either approving of the Supporting Documentation (the “**Approval Notice**”), or disapproving of all, or a portion, of the Supporting Documentation. If FCRHA sends an Approval Notice, then the Parties will continue to proceed to the Closing in accordance with this Agreement. If FCRHA disapproves all, or a portion of, the Supporting Documentation, then FCRHA’s written notice (the “**Disapproval Notice**”) will set forth, in detail, each and every one of FCRHA’s objections to the Supporting Documentation, and any such additional information required by FCRHA to approve the Supporting Documentation. Thereafter, within 15 Business Days following AW9’s receipt of the Disapproval Notice, AW9 will submit such additional information, or other documentation, requested by FCRHA in the Disapproval Notice. The process for FCRHA’s review and approval of the Supporting Documentation will continue until FCRHA has approved the Supporting Documentation, and FCRHA will have no obligation to execute the 9% Ground Lease until AW9 has obtained an Approval Notice from FCRHA, provided FCRHA will not unreasonably withhold, delay, or condition the approval of the Supporting Documentation.

3.4 Failure to Exercise. If AW9 fails to deliver the Option Notice or fails to deliver the Supporting Documentation by the Expiration Date, then (a) this Agreement will immediately terminate without further action of the Parties; (b) AW9 will promptly deliver to FCRHA such documentation (fully executed and acknowledged) reasonably requested by FCRHA to evidence termination of this Agreement; and (c) the Parties will have no further obligations to each other except as otherwise specifically provided in this Agreement. This Section 3.4 is not intended to and does not in any way limit or affect any of the rights or remedies available to any Party if the other Party defaults in the due and timely performance of any of its obligations, or is in breach of any of its representations and warranties, under this Agreement.

#### Section 4. **TERMS OF LEASE.**

At the Closing, FCRHA and AW9 will enter into the 9% Ground Lease, which will be substantially in the form of Exhibit B attached hereto and made a part hereof by this reference (except: (i) to the extent such terms and conditions are no longer applicable or are otherwise invalid or unenforceable under Virginia laws as of the Closing Date (as defined in Section 8.1 below); or (ii) as otherwise mutually agreed to by FCRHA and AW9, including without limitation any requirements of the tax credit investor or secured lenders that FCRHA deems acceptable). Promptly after delivery of the Option Notice, to the extent necessary, the Parties will meet in good faith to determine if any modifications are necessary to the proposed 9% Ground Lease to reflect either any new, or otherwise unanticipated, circumstances regarding the Property, financing of the 9% Project, investor requirements or any changes in Virginia law that make any term or provision of the proposed 9% Ground Lease invalid or unenforceable.

#### Section 5. **REPRESENTATIONS AND WARRANTIES OF FCRHA.**

5.1 In General. With the exception of those representations and warranties stated in Section 5.2, AW9 has not relied and will not rely upon any representations or warranties, express or implied, affirmative or negative, concerning the Property made by FCRHA or any of FCRHA's agents or employees.

5.2 Representations and Warranties of FCRHA. FCRHA represents and warrants that the following facts and circumstances are true and correct as of the Effective Date and as of the Closing:

(a) Authority, Authorizations and Consents. FCRHA is a political subdivision of the Commonwealth of Virginia. FCRHA has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of FCRHA in order to consummate the transactions contemplated herein. This Agreement is a legal, valid, and binding obligation of FCRHA, enforceable in accordance with its respective terms. FCRHA has obtained all authorizations, consents or approvals of any governmental entity or other person or entity required to be obtained or given in connection with the execution and delivery of this Agreement by FCRHA or the performance of any of FCRHA's obligations hereunder.

(b) No Violation. The execution and delivery of this Agreement by FCRHA, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of FCRHA's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations will be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Options; Leases. No person or entity other than AW9 holds or will hold any option or other right to lease or purchase all or any part of any of the Property or any interest in the Property.

(d) No Pending Actions. To FCRHA's knowledge; (i) there are no actions, suits, proceedings (including any arbitration proceedings, condemnation, expropriation or other proceeding in eminent domain, or environmental, zoning or other land use regulation proceedings), orders, investigations or claims that are pending against or relating to the Property or the FCRHA's rights therein; and (ii) there are no proceedings threatened or planned to be instituted by or against or relating to the Property.

(e) Compliance with Laws. FCRHA has not received any written notice from any governmental entity asserting that the Property (or FCRHA with respect to the Property) is in violation of any Laws. "Law" and "Laws" means, with respect to any person or entity, any U.S. federal, state or local, and any foreign national, state or local, law, statute, common law, ordinance, code, treaty, rule, regulation, order, ordinance, permit, license, writ, injunction, directive, determination, judgment or decree or other requirement of any governmental entity, in each case, applicable to or binding upon such person or entity or any of its property or to which such person or entity or any of its property is subject.

Notwithstanding the representations in Section 5.2(b), Section 5.2(d) and Section 5.2(e), if circumstances occur that make the representations therein untrue or incorrect at any time after the Effective Date, FCRHA will provide AW9 notice required in Section 5.4, and FCRHA will use reasonable efforts to make such representations true and correct as of the Closing, but will otherwise have no liability for such representations being untrue or incorrect, unless the failure of the representations to be true and correct were directly related to the actions or omissions of FCRHA in breach of this Agreement. The provisions of this paragraph will not limit AW9's right to terminate this Agreement as provided in Section 9.4.

5.3 Representations and Warranties of AW9. AW9 represents and warrants that the following facts and circumstances are true and correct as of the Effective Date. In the event that any of the following representations and warranties are not true and correct as of the date AW9 delivers the Option Notice to FCRHA, AW9 will use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. AW9 is a Virginia limited liability company. AW9 has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by AW9 have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of AW9 in order to consummate the transactions contemplated herein. This Agreement is a legal, valid, and binding obligation of AW9, enforceable in accordance with its respective terms. No authorization, consent or approval of, or notice to, any governmental entity or other person or entity is required to be obtained or given in connection with the execution and delivery of this Agreement by AW9 or the performance of any of AW9's obligations hereunder. In the event that AW9 assigns this Agreement (in accordance with its terms) to another entity, such entity will make the same (but corrected, as necessary) representations set forth in this Section 5.3(a) as of the Closing Date.

(b) No Violation. The execution and delivery of this Agreement by AW9, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of AW9's

obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations will be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Litigation and Claims. To AW9's knowledge, there is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or threatened against AW9 which could affect any of the transactions contemplated by this Agreement.

5.4 Inaccuracies. In the event that either Party becomes aware of facts or circumstances after the Effective Date that might result in any of that Party's representations or warranties set forth in Section 5.2 or Section 5.3 not being true as of the Closing, such Party will give prompt written notice to the other Party of such facts or circumstances.

## Section 6. **PROPERTY CONDITION; RIGHT OF ENTRY; TITLE.**

6.1 Property Condition. AW9 acknowledges that except to the extent of any express representations and warranties set forth in Section 5.2, FCRHA has made no representations or warranties, express or implied, regarding the Property or matters affecting the Property, whether made by FCRHA, or on FCRHA's behalf or otherwise, and that except as otherwise provided in this Agreement, the leasehold interest in the Property will be conveyed subject to, and in accordance with, the terms and conditions of the 9% Ground Lease. For the avoidance of doubt, AW9 will accept possession of the Property on the commencement date of the 9% Ground Lease "AS IS, WHERE IS, WITH ALL FAULTS", subject to the Permitted Exceptions.

6.2 Right of Entry. During the Term, AW9 will have reasonable rights of access to the Property to the extent set forth in this Section 6.2 for the purposes of surveying the Property and performing design and engineering analysis including environmental tests and studies and soils borings and tests, provided that neither AW9 nor its contractors will unreasonably disrupt the normal operation of the Property. AW9's access hereunder will be in compliance with all applicable statutes, laws, rules, regulations, ordinances, and orders of any governmental or quasi-governmental authority having jurisdiction over the Property and AW9's or its contractors' activities thereon. All such entry will be coordinated in advance with appropriate representatives of FCRHA; for purposes of this Section 6.2, unless AW9 is otherwise notified by FCRHA, the appropriate representatives will be Kevin (Casey) Sheehan at 703-246-5146, [kevin.sheehan@fairfaxcounty.gov](mailto:kevin.sheehan@fairfaxcounty.gov), and Regina Gerner at 703-246-5229, [regina.gerner@fairfaxcounty.gov](mailto:regina.gerner@fairfaxcounty.gov). Prior to AW9 entering the Property, AW9 (or its contractor) will obtain and maintain, at AW9's (or its contractor's, as the case may be) sole cost and expense, the following insurance coverage, and will cause each of its agents and contractors to obtain and maintain, and, upon request of FCRHA, will deliver to FCRHA evidence of (i) general liability insurance, from an insurer reasonably acceptable to FCRHA, in the amount of \$1,000,000.00 combined single limit for personal injury and property damage per occurrence, (ii) workers' compensation insurance at statutory limits, (iii) employer's liability insurance in an amount not less than \$1,000,000.00, and (iii) professional liability insurance of not less than \$1,000,000.00 for any access to conduct environmental tests and studies and/or soil borings and tests. AW9 will provide FCRHA with original certificates of insurance for the coverage required above not less

than five Business Days prior to any access, naming FCRHA and such other parties designated by FCRHA as additional insureds and otherwise in form reasonably satisfactory to FCRHA. FCRHA will have the right, in its discretion, to accompany AW9 and its contractors. All damage to the Property resulting from any access by or at the direction of AW9 or its contractors will be repaired immediately by AW9, at its sole cost and expense, so that the Property will be restored to the same condition in which it existed immediately prior to such access. AW9 will indemnify, defend and save FCRHA and its respective Commissioners, agents, directors, officers and employees (collectively, the “**Indemnitees**”) harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, engineers’, architects’ and attorneys’ fees and disbursements), which may be suffered by, imposed upon or incurred by or asserted against FCRHA or any of the Indemnitees as a result of any access pursuant to this Section 6.2. The provisions of this Section 6.2 will survive Closing or any termination of this Agreement.

6.3 **Title.** Prior to the Effective Date, AW9 ordered from Stewart Title and Escrow, Inc. (“**Title Company**”), a Commitment for Title Insurance Policy (the “**Title Commitment**”) insuring AW9’s interest in the Property, and requested copies of any recorded instruments that affect the title to the Property or would be applicable to AW9’s leasehold estate therein under the 9% Ground Lease. Items affecting FCRHA’s title to the Property as shown in the Title Commitment or survey on which AW9’s title review was based will be the “**Permitted Exceptions**” for purposes of this Agreement and the 9% Ground Lease, as applicable. Notwithstanding the foregoing, FCRHA agrees to take the following actions to be completed on or before Closing with respect to the Property:

(a) FCRHA will be obligated at Closing to remove any and all existing mortgage liens or similar liens or encumbrances against the Property. FCRHA hereby represents to AW9 that the mortgages which currently affect the Property, if any, can and will be released as aforesaid prior to the Closing;

(b) FCRHA will be obligated at Closing to deliver such title affidavits or similar materials as are customary for the issuance of title insurance for conveyance of leasehold estates (a “**Title Policy**”), as applicable, and which are reasonably consistent with the forms of such documents typically executed by FCRHA;

(c) From the Effective Date until the Closing, without the prior written consent of AW9, FCRHA will not voluntarily place or cause a lien to be placed on the Property or encumber or convey the Property or any portion thereof or any interest therein, nor amend or modify any existing encumbrances in any manner which will materially adversely affect the Property or any portion thereof or impose any material obligation with respect thereto. For purposes hereof, an encumbrance or obligation will be deemed to “materially adversely affect the Property or any portion thereof” or impose a “material obligation” if (1) the cost associated therewith on a stand-alone basis or aggregated with any other new or modified encumbrances or obligations subject to the provisions of this subsection (c) is greater than Twenty-Five Thousand Dollars, or (2) impacts the design, construction, configuration, square footage, or parking of the proposed Development. FCRHA will comply with all terms of any mortgage, encumbrance, or other agreements affecting the Property or any portion thereof and will not permit a default thereunder to exist or occur so long as this Agreement is in effect. If any monetary lien or liens

against the Property that FCRHA is either obligated to remove or has agreed in writing to remove, have not been removed and satisfied prior to Closing, then at Closing, FCRHA will pay such amounts as required to fully satisfy said liens. If any new encumbrance or matter that materially adversely affects the Property appears on any updated title commitment or survey that AW9 obtains after the Effective Date, and AW9 disapproves of such encumbrance or matter, then AW9 will provide written notice to FCRHA of such disapproval. If, within 15 Business Days after receipt of such notice, FCRHA does not provide written notice to AW9 of FCRHA's plan to cure, remove or otherwise address the encumbrance or matter in a manner that is reasonably satisfactory to AW9, then AW9 will have the right to terminate this Agreement, and except as otherwise expressly set forth in this Agreement, neither FCRHA nor AW9 will have any further liability hereunder.

## Section 7. **GOVERNMENTAL APPROVALS, SCHEMATICS, PLANS AND SPECIFICATIONS.**

7.1 Land Use Entitlement Approvals and Transferrable Development Rights. During the Term and in accordance with a commercially reasonable schedule, AW9 covenants and agrees, at its expense, to file such applications with applicable Governmental Authority (as defined below) that are required in connection with the land use planning, design and other work activities necessary to obtain the following with respect to the Property that are necessary to develop and construct the Development (the "**Land Use Entitlement Approvals**"): (1) a Special Exception of the Property in connection with the Development; and (2) a Site Plan (defined below). Undefined capitalized terms in the preceding sentence have the meaning ascribed to such terms in Chapter 112 of the 1976 Code of the County of Fairfax, Virginia (the "**Zoning Ordinance**"). The Parties acknowledge that AW9 began filing applications and other work necessary to obtain the Land Use Entitlement Approvals during the period that the Interim Agreement was in effect and that certain of the Land Use Entitlement Approvals have already been obtained prior to the Term. All such Land Use Entitlement Approvals will be in form and substance satisfactory to AW9. The FCRHA has procured certain land easements and transferrable development rights from the Fairfax County Park Authority described below and related to that certain parcel of land described at Exhibit A-2.

(a) "**Governmental Authority**" will mean any of the following: the United States of America, the Commonwealth of Virginia, the County of Fairfax, Virginia, Fairfax County Department of Housing and Community Development, Fairfax County Redevelopment and Housing Authority and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having lawful jurisdiction over the Property or any portion thereof.

(b) FCRHA, at no out-of-pocket cost to FCRHA, will (A) sign and join with AW9 in filing any applications, (B) cooperate with AW9 in obtaining any and all permits, regulatory agreements, consents, certificates, waivers, and other approvals relating to the Development, and (C) sign any applications made by AW9 required to obtain such permits, consents, certificates, waivers, and approvals. AW9 will reimburse FCRHA within 10 Business Days after FCRHA's demand for any reasonable third-party cost or expense incurred by FCRHA in obtaining such permits, consents, certificates, waivers, and approvals. Further, upon request, FCRHA will provide such authorization or approvals as any Governmental Authority or other third

party may require to evidence the right of AW9 to be seeking regulatory approval for its Development.

(c) FCRHA and AW9 agree that obtaining the Land Use Entitlement Approvals and completion of the Schematics (defined below), Design Development Plans (defined below), Permit Documents (defined below) and Final Plans and Specifications in accordance with the terms of this Agreement are conditions precedent to Closing under this Agreement.

(d) AW9 agrees to provide FCRHA copies of any approval requests, applications, site plans, or other submissions for Land Use Entitlement Approvals at least three Business Days prior to the submission of such documents and instruments to any Governmental Authority other than FCRHA. Additionally, AW9 will submit progress reports to FCRHA containing updates regarding the Land Use Entitlement Approvals process and preparation of the Submission Materials (defined below) at least every 60 days for FCRHA's review and approval. AW9 and FCRHA may also set up a program of periodic team conference calls to provide regular updates concerning the development and construction of the Development, and if so, FCRHA may, in its sole discretion, waive the requirement for written progress reports, provided such waiver is in writing (including email).

(e) AW9 will file its initial Site Plan for review by the appropriate Governmental Authority within 120 days of obtaining from VH its initial letter of the award of Tax Credits for the Development.

(f) AW9 will use commercially reasonable efforts to obtain all Land Use Entitlement Approvals (except for the Site Plan) on or before the Expiration Date.

(g) The Transferrable Development Rights include certain easements, interests, and rights to pursuant to the Special Exception and related zoning action is to combine subject property #0553 01 0026B with the Fairfax County Park Authority ("FCPA") property #0553 01 0026A and allow for an increase in density to allow the Development to achieve 150 units. This approach to allowable density was verified with the Fairfax County Department of Planning and Development (DPD) as appropriate. FCPA confirmed FCPA allowed its aforementioned property to be part of the rezoning application, and FCRHA will transfer the related density and development rights permitted by such zoning application and approvals under this Agreement.

7.2 Submission and Review of Submission Materials. FCRHA and AW9 acknowledge and agree that the form of the Special Exception under consideration contains a general description of the Development upon which all Land Use Entitlement Approvals and the Schematics and the Final Plans and Specifications will be based. AW9 will submit to FCRHA for its review and approval any documents, drawings, proffers and other instruments that AW9 will submit to any Governmental Authority for any Land Use Entitlement Approvals related to the Development (including any modifications to any such documents, drawings, proffers and instruments) and any other documents that FCRHA will reasonably request in connection with its review thereof. Without limiting the foregoing, AW9 will submit to FCRHA for its review and approval prior to submission to any Governmental Authority for approval of the Conceptual Development Plan or Final Development Plan or for Special Exception approval any and all information related to such submissions, including (without limitation) the proposed elevations and facades for the

Development, building layouts, site development plans and other proffered amenities related to the Development (collectively, the “**Submission Materials**”). The Submission Materials will include, without limitation: (i) Schematics; (ii) Design Development Plans; (iii) Permit Documents; and (iv) Final Plans and Specifications. If FCRHA does not approve the Submission Materials, FCRHA will so notify AW9 in writing, specifying in what respects it disapproves of the Submission Materials. AW9 and FCRHA will reasonably cooperate with one another in addressing the comments of FCRHA. AW9 will revise the Submission Materials to reflect the agreed upon changes and will then resubmit the Submission Materials to FCRHA for review. The initial review by FCRHA will be carried out within five Business Days of the date of submission of the Submission Materials; FCRHA’s review of revisions to the Submission Materials will be carried out within five Business Days of the date of submission of the revised Submission Materials. If FCRHA has not notified AW9 of its determination within the applicable period, FCRHA will be deemed to have approved the Submission Materials.

(a) The following definitions are used in this Section 7.2 and elsewhere in this Agreement as they relate to Submission Materials and design, development, and construction of the Development:

(i) “**Schematics**” means the concept plans completed at approximately fifteen percent of the Final Plans and Specifications;

(ii) “**Design Development Plans**” means the plans, specifications and construction drawings completed at approximately thirty-five percent of the Final Plans and Specifications for the development and construction of the Development and the parties having determined the anticipated costs associated with the relocation, upgrade and bringing of utilities to the Property;

(iii) “**Final Development Plan**” means the detailed plan of development approved in conjunction with the rezoning application.

(iv) “**Permit Documents**” means the plans, specifications and construction drawings completed at approximately seventy-five percent of the Final Plans and Specifications for the development and construction of the Development; and

(v) “**Final Plans and Specifications**” means one hundred percent of the final plans and specifications and construction drawings, including but not limited to the Site Plan and building plans prepared by AW9’s architect and engineers for the Development which materially conform to the Schematics and other Submission Materials previously approved by FCRHA that are necessary for the development and construction of the Development.

(b) Within 90 days after receipt of final, unappealable Final Development Plan approval for AW9’s proposed Development from each applicable Government Authority, AW9 will submit Schematics of the Development (which will include, without limitation, the site layout design of the Property) for FCRHA’s approval. If FCRHA does not approve the Schematics, FCRHA will so notify AW9 in writing, specifying in what respects it disapproves of the Schematics. AW9 and FCRHA will reasonably cooperate with one another in addressing the

comments of FCRHA. AW9 will revise the Schematics to reflect the agreed upon changes and will then resubmit the Schematics to FCRHA for review. The initial review by FCRHA will be carried out within five Business Days of the date of submission of the Schematics; FCRHA's review of revisions to the Schematics will be carried out within five Business Days of the date of submission of the revised Schematics. If FCRHA has not notified AW9 of its determination within the applicable period, FCRHA will be deemed to have approved the Schematics.

(c) Within 270 days after FCRHA has approved the Schematics, AW9 will submit completed proposed Final Plans and Specifications. FCRHA will review the proposed Final Plans and Specifications to determine whether they materially conform to the Schematics. If FCRHA determines that they do so conform, FCRHA will so notify AW9 in writing. If FCRHA reasonably determines that the proposed Final Plans and Specifications, as so revised, do not materially conform to the Schematics and other previously approved Submission Materials, FCRHA will so notify AW9, specifying in writing in what respects they do not so conform. In such latter event, AW9 and FCRHA will reasonably cooperate with one another in addressing the comments of FCRHA. AW9 will revise the proposed Final Plans and Specifications to reflect the agreed upon changes and will then resubmit the proposed Final Plans and Specifications to FCRHA for review. The initial review by FCRHA will be carried out within five Business Days of the date of submission of the proposed Final Plans and Specifications; FCRHA's review of revisions to the proposed Final Plans and Specifications will be carried out within five Business Days of the date of submission of the revised proposed Final Plans and Specifications. If FCRHA has not notified AW9 of its determination within the applicable period, FCRHA will be deemed to have approved the proposed Final Plans and Specifications or determined that they materially conform to the Schematics or other Submission Materials.

## Section 8. **CLOSING.**

8.1 Time. If, and on the express condition that, AW9 delivered the Option Notice and the Supporting Documentation prior to the Expiration Date, and FCRHA provided the Approval Notice, then on a date prior to December 31<sup>st</sup> of the year following the calendar year in which the Approval Notice was sent and after the satisfaction or waiver (if applicable) of the conditions precedent set forth in Section 9.1 and Section 9.2, the Parties will each execute and exchange original counterparts and deposit into escrow the documents described in Section 8.3 and Section 8.4 below and will close the transaction contemplated by this Agreement (the "**Closing**"). AW9 will select the date of Closing (the "**Closing Date**"), which will be a Business Day, and give notice to FCRHA at least 15 Business Days prior to the Closing Date, unless otherwise agreed in writing by the Parties.

8.2 Escrow. The Parties will conduct the Closing through the Title Company (the "**Escrow Agent**") or such other party mutually agreed between the Parties at the time of Closing. The terms of this Agreement (including, but not limited to, the terms contained in this Section 8), together with such additional instructions as the Escrow Agent will reasonably request and to which the Parties will agree, will constitute the escrow instructions to the Escrow Agent. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Escrow Agent, this Agreement will control unless the intent to amend this Agreement is clearly and expressly stated in the additional escrow instructions.

8.3 FCRHA's Deposits into Escrow. FCRHA will deposit into escrow on or before Closing the following documents:

- (a) Two duly executed counterpart originals of the 9% Ground Lease;
- (b) A duly executed and acknowledged counterpart original memorandum of lease in a reasonable form that has been agreed to between FCRHA and AW9 in recordable form (the "**Memorandum of Lease**");
- (c) A certificate of FCRHA signed by FCRHA affirming that all of FCRHA's representations and warranties set forth in Section 5.2 are true in all material respects as of the Closing Date; provided however, to the extent FCRHA is aware of facts or circumstances that result in FCRHA's representations or warranties set forth in Section 5.2 not being true as of the Closing, FCRHA will disclose such facts or circumstances in such certificate (the "**FCRHA Certificate**");
- (d) Such additional documents, including written escrow instructions consistent with this Agreement, as are both (i) reasonably necessary for the consummation of the transactions contemplated by this Agreement and (ii) reasonably consistent with the forms of such documents typically executed by FCRHA.

8.4 AW9's Deposits into Escrow. AW9 will deposit into escrow on or before Closing:

- (a) Two duly executed counterpart originals of the 9% Ground Lease;
- (b) A duly executed and acknowledged counterpart original of the Memorandum of Lease;
- (c) Two duly executed counterpart originals of the Guaranty (as defined in the 9% Ground Lease);
- (d) A certificate of AW9 signed by a person duly authorized to do so on behalf of AW9, affirming that all of the representations and warranties of AW9 set forth in Section 5.3 are true in all material respects as of the Closing Date; provided however, to the extent AW9 is aware of facts or circumstances that result in AW9's representations or warranties set forth in Section 5.3 not being true as of the Closing, AW9 will disclose such facts or circumstances in such certificate (the "**AW9 Certificate**");
- (e) Such evidence as the Escrow Agent reasonably requires as to the authority of the person or persons executing documents on behalf of AW9;
- (f) The base rent due at Closing, if any, in immediately available funds;
- (g) Such additional documents, including written escrow instructions consistent with this Agreement, as are reasonably necessary for the lease of the Property in accordance with the terms of this Agreement.

8.5 Closing. When the Escrow Agent has received all documents identified in Section 8.3 and Section 8.4, and has received written notification from AW9 and FCRHA that all conditions to Closing have been satisfied or waived; then, and only then, the Escrow Agent will take the following actions in the following chronological order:

(a) Record in the Land Records the Memorandum of Lease (marked for return to AW9) against the Land;

(b) Deliver to AW9: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the 9% Ground Lease; and (iii) the FCRHA Certificate;

(c) Deliver to FCRHA: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease; (ii) a fully executed original of the 9% Ground Lease; (iii) two duly executed counterpart originals of the Guaranty for the 9% Ground Lease; and (iv) AW9 Certificate.

8.6 Closing Costs. As additional consideration for the lease of the Property pursuant to the 9% Ground Lease, AW9 will pay all escrow and recording fees and other closing costs charged by the Escrow Agent.

## Section 9. **CONDITIONS PRECEDENT; COVENANTS.**

9.1 AW9's Conditions. AW9's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which will be deemed waived (other than Section 9.1(d) through Section 9.1(f), which may not be waived by AW9) unless AW9 exercises its rights pursuant to Section 9.4 below to terminate the Agreement or to extend the time for the Closing in accordance with Section 3.1 above:

(a) Representations and Warranties. FCRHA's representations and warranties contained in Section 5.2, as restated as of the Closing in the FCRHA Certificate, will be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the FCRHA Certificate will be acceptable to AW9, in its sole but reasonable discretion.

(c) Performance. FCRHA will have performed and complied in all material respects with all covenants, agreements, terms, and conditions required by this Agreement to be performed or complied with by FCRHA prior to or at the Closing.

(d) Tax Credit Award. AW9 will have obtained from the VH (and closed or be simultaneously closing) an award of Tax Credits for financing the construction to occur under the 9% Ground Lease (and any and all challenge periods related to such award have expired).

(e) Financing. AW9 will have obtained from investors and lenders (and closed or be simultaneously closing) any equity investment or loan financing or both in amounts sufficient to finance the Development.

(f) Land Use Entitlement Approvals. AW9 will have been approved for final, non-appealable Land Use Entitlement Approvals from each applicable Governmental Authority.

(g) Permits and Construction Approvals. AW9 will have applied for and received all governmental approvals and permits, including building permits, for the construction of the buildings under the 9% Ground Lease.

(h) Final Plans and Specifications. AW9 will have received approval from FCRHA of the Final Plans and Specifications.

(i) Construction Contract. AW9 will have entered into a contract with a reputable general contractor for the construction of the buildings and other improvements to be constructed under the 9% Ground Lease.

9.2 FCRHA's Conditions. FCRHA's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which will be deemed waived unless FCRHA exercises its rights pursuant to Section 9.4 below to terminate the Agreement:

(a) Representations and Warranties. AW9's representations and warranties contained in Section 5.3, as restated as of the Closing in AW9 Certificate, will be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in AW9 Certificate will be acceptable to FCRHA, in its sole but reasonable discretion.

(c) Performance. AW9 will have performed and complied in all material respects with all covenants, agreements, terms, and conditions required by this Agreement to be performed or complied with by AW9 prior to or at the Closing.

(d) No Litigation. There will exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against AW9 that would materially and adversely affect the ability of AW9 to perform its obligations under this Agreement.

(e) Tax Credit Award. AW9 will have obtained from the VH (and closed or be simultaneously closing) an award of Tax Credits for financing the construction to occur under the 9% Ground Lease (and any and all challenge periods related to such award have expired).

(f) Financing. AW9 will have obtained from investors and lenders (and closed or be simultaneously closing) any equity investment or loan financing or both in amounts sufficient to finance the Development.

(g) Land Use Entitlement Approvals. AW9 will have been approved for final, non-appealable Land Use Entitlement Approvals from each applicable Governmental Authority.

(h) Delivery of Option Notice; Approval of Supporting Documentation. AW9 will have delivered the Option Notice, the Supporting Documentation and any additional information required by FCRHA to issue the Approval Notice in accordance with Section 3.3, and FCRHA has approved the Supporting Documentation in accordance with Section 3.3.

9.3 Additional AW9 Covenants. AW9 covenants and agrees to satisfy the terms of this Section 9.3, prior to the Closing:

(a) Application for Tax Credits. AW9 will timely apply to VH for the Tax Credits in each applicable cycle during the Term for the Property, and AW9 will diligently and in good faith prosecute all steps and actions needed for the award of the Tax Credits. Promptly following the award of the Tax Credits, AW9 will (i) apply for and diligently prosecute in good faith all steps and actions needed to obtain loan or equity financing in amounts sufficient to finance the Development, and (ii) pursue the commitment of a tax credit investor for the purchase of the Tax Credits for the 9% Project.

In the event AW9 fails to satisfy the covenants set forth in this Section, FCRHA may avail itself to the rights and remedies set forth in Section 9.4 and Section 10 below.

9.4 Failure of Conditions. So long as a Party is not in default hereunder, if any condition to such Party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date or any other applicable date specified in this Agreement, such Party may, in its sole discretion, either (a) terminate this Agreement by delivering written notice to the other Party on or before the Closing Date, (b) extend the time available for the satisfaction of such condition, or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such Party will be deemed to have waived any such condition. If such Party elects to proceed pursuant to clause (b) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such Party may elect to proceed pursuant to either clause (a) or (c) of the preceding sentence. In the event the failure of a condition precedent for the benefit of either Party is not satisfied due to a breach of this Agreement by the other Party (for example, a failure or refusal to perform a Party's obligations under this Agreement), the benefitted Party's rights and remedies will be as set forth in Section 10.

## Section 10. **DEFAULT; REMEDIES.**

10.1 FCRHA Default. In the event FCRHA refuses to consummate the transaction contemplated by this Agreement or in the case of any other default or breach by FCRHA hereunder, AW9 will give FCRHA written notice of such default or breach and will provide FCRHA with 30 days to cure the default or breach. In the event FCRHA fails to cure the default or breach within such 30 day period, AW9 will be entitled to (a) seek specific performance to

enjoin FCRHA to cure such default or breach and consummate the transaction contemplated by this Agreement; or (b) terminate the Option. AW9 may terminate the Option if any condition to Closing contained in Section 9.1 has not been satisfied or waived by AW9 in writing by the Closing Date. Notwithstanding anything set forth above, AW9 will be entitled to recover monetary damages from FCRHA in the event FCRHA defaults or breaches this Agreement and fails to convey the Property, so long as: (i) such failure is the result of FCRHA's refusal to convey the Property and not the failure to satisfy any condition outside of FCRHA's reasonable control (e.g. Section 5.2(b), Section 5.2(d) and Section 5.2(e)); (ii) all FCRHA's Conditions have been satisfied; and (iii) AW9 is not in default under this Agreement, beyond all applicable notice and cure periods.

10.2 AW9 Default. In the case of any default or breach by AW9 hereunder, FCRHA will give AW9 written notice of such default or breach and will provide AW9 with 30 days to cure the default or breach; provided, however, if such default or breach is not capable of being cured within 30 days, then AW9 will have an additional 30 days so long as AW9 continues to diligently pursue a cure. In the event AW9 fails to cure the default or breach within such period, FCRHA may terminate the Option. Additionally, FCRHA may terminate the Option in the event of any condition to Closing contained in Section 9.2 has not been satisfied or waived by FCRHA in writing by the Closing Date. FCRHA's remedies for any default or breach by AW9 hereunder will be terminating the Option; in no event shall the FCRHA be entitled to any damages from AW9 if AW9 defaults or breaches under this Agreement.

## Section 11. **RISK OF LOSS; CONDEMNATION OR CASUALTY**

11.1 Risk of Loss. Risk of loss will remain with FCRHA until Closing. FCRHA will notify AW9 of any (i) condemnation or taking by eminent domain of any portions of the Property or (ii) casualty event affecting the Property. AW9 and FCRHA agree that FCRHA has no obligation to restore the Property in the event of a condemnation or casualty event.

11.2 Obligation to Close. Notwithstanding any condemnation or casualty event, AW9 will remain obligated to close under this Agreement so long as such condemnation or casualty event does not materially and adversely affect the Property. For purposes of this Section, a condemnation or casualty event will "materially and adversely affect the Property" if, after completion of such condemnation or the occurrence of such casualty event, as applicable, AW9 would no longer be able to develop and construct the Development in substantial accordance with Land Use Entitlement Approvals, the Final Plans and Specifications and the 9% Ground Lease, subject to any minor adjustments caused by such condemnation or casualty event, as applicable. In the event of a condemnation or casualty event that has a material and adverse effect on the Property, (A) AW9 will have the right to terminate this Agreement without liability on its part by so notifying FCRHA within 15 Business Days of FCRHA's notification to AW9 of said condemnation or casualty event, and except as otherwise expressly set forth in this Agreement, neither FCRHA nor AW9 will have any further liability hereunder, and (B) if AW9 does not so terminate the Agreement, then AW9 will remain obligated to close under this Agreement and neither such condemnation or casualty event nor the condition of the Property thereafter will be deemed to give rise to a default hereunder.

Section 12. **MISCELLANEOUS PROVISIONS.**

12.1 No Brokers, Finders, Etc. None of the Parties has engaged any agent, broker, finder or investment or commercial banker in connection with the negotiation, execution or performance of this Agreement, or the transactions contemplated hereby.

12.2 Expenses. Except as specifically set forth herein, whether or not the transaction contemplated by this Agreement is consummated, each of the Parties will pay their own fees and expenses incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

12.3 Complete Agreement; Waiver and Modification, Etc. This Agreement and the 9% Option to Lease dated as of the date hereof between the FCRHA and AW9 for the 9% Ground Lease constitutes the entire agreement between the Parties hereto and thereto pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings of the Parties. There are no representations, warranties, covenants, or conditions by or benefiting any Party except those expressly stated or provided for in this Agreement, any implied representations, warranties, covenants, or conditions being hereby expressly disclaimed. No person or entity other than the Parties to this Agreement have any rights or remedies under or in connection with this Agreement, except rights or remedies validly assigned hereunder. No amendment, supplement or termination of or to this Agreement, and no waiver of any of the provisions hereof or thereof, will require the consent of any person or entity other than the Parties hereto, nor will any such amendment, supplement, termination or waiver be binding on a Party to this Agreement unless made in a writing signed by such Party. To the extent any provision of the Option conflicts with, or is inconsistent with, this Agreement, then this Agreement shall govern and control.

12.4 Communications. Whether expressly so stated or not, all notices, demands, requests and other communications required or permitted by or provided for in this Agreement (“**Communications**”) will be given in writing to the Parties at their respective addresses set forth below, or at such other address as a Party will designate for itself in writing in accordance with this Section:

If to AW9, to:

C/O The Michaels Development Company I, L.P.  
PO Box 90708  
Camden, NJ 08101  
Attn: Kenneth P. Crawford, COO

with a copy to:

The Michaels Development Company I, L.P.  
1700 Development Road, Suite 330,  
Alexandria, VA 22314  
Attention: Nicholas C. Bracco

and a copy to:

Levine, Staller, Sklar, Chan & Brown, P.A

3030 Atlantic Avenue  
Atlantic City, NJ 08401  
Attention: Arthur M. Brown, Esquire

and a copy to: Klein Hornig LLP  
1325 G Street, NW, Suite 770  
Washington, DC 20005  
Attention: Chris Hornig

If to FCRHA, to:

Fairfax County Redevelopment and Housing Authority  
Attention: Director, HCD  
3700 Pender Drive, Suite 300  
Fairfax, Virginia 22030-6039 e-mail:  
[Thomas.Fleetwood@fairfaxcounty.gov](mailto:Thomas.Fleetwood@fairfaxcounty.gov)

-and-

Fairfax County Redevelopment and Housing Authority  
Attention: Ms. Teresa Lepe  
3700 Pender Drive, Suite 300  
Fairfax, Virginia 22030-6039  
e-mail: [Teresa.Lepe@fairfaxcounty.gov](mailto:Teresa.Lepe@fairfaxcounty.gov)

With a copy to:

Office of the County Attorney  
Attention: County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
e-mail: [Beth.Teare@fairfaxcounty.gov](mailto:Beth.Teare@fairfaxcounty.gov)

Communications may be transmitted (a) electronic mail transmission (with a copy sent the next business day by one of the other methods permitted hereunder), (b) reputable overnight courier (with a signed receipt) or (c) hand delivery (with receipt acknowledged in writing by the office of the addressee). Except as otherwise provided in this Agreement, delivery or service of any Communications will be deemed effective only upon receipt (or refusal of receipt), and receipt will be deemed to have occurred when the Communications were delivered to the specified address without regard to whether or not a representative of the addressee was present to receive the Communications or was present but refused receipt of such Communications; provided, any Communications delivered after 5:00 P.M. local time of place of receipt, or on a day other than a Business Day, will be deemed received on the next succeeding business day. Either of the Parties may change the address(es) to which any such Communications are to be delivered by furnishing

10 Business Days written notice of such change(s) to the other of the Parties in accordance with the provisions of this Section.

12.5 Governing Law. This Agreement will be interpreted in accordance with and governed by the laws of the Commonwealth of Virginia.

12.6 Headings; References; "Hereof," Etc. The Section headings in this Agreement are provided for convenience only, and will not be considered in the interpretation hereof or thereof. References in this Agreement to Sections or Exhibits refer, unless otherwise specified, to the designated Section of or Exhibit to this Agreement, and terms such as "herein," "hereto" and "hereof" used in this Agreement refer to this Agreement as a whole.

12.7 Successors and Assigns. AW9 may not assign its rights under this Agreement to any party without the consent of FCRHA, which may be withheld in FCRHA's sole and absolute discretion. Notwithstanding the foregoing to the contrary, AW9 will be permitted to assign its rights under this Agreement to any person or entity which directly or indirectly controls, is controlled by or is under common control with The Michaels Group ("**AW9 Parent**"), or to any person or entity resulting from a merger or consolidation with AW9 Parent, or to any person or entity which acquires all the assets of AW9 Parent's business as a going concern pursuant to a written agreement, reasonably acceptable to FCRHA, provided that (i) such assignment or sublease is not a subterfuge to avoid the application of the provisions of this Section 12.7, (ii) the assignee assumes, in full, the obligations of AW9 hereunder, and (iii) AW9 provides FCRHA with written notice of any such assignment at least one (1) month prior to the Closing Date. This Section 12.7 will be subject to the provisions of Section 12.16, and will in no way limit AW9's rights set forth in Section 12.16.

12.8 Severability. If for any reason any provision of this Agreement will be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision will be ineffective only to the extent of that invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of this Agreement in any other jurisdiction.

12.9 Cumulative Rights and Remedies. The rights and remedies of each Party under this Agreement are cumulative, except as otherwise expressly provided.

12.10 Survival of Representations and Warranties. Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements of the Parties contained in this Agreement will be considered material and will be effective and survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby notwithstanding any investigation of the matters covered thereby by or on behalf of any Party benefited by any such representation, warranty, covenant or agreement or any knowledge (actual or constructive) on the part of any Party benefited by any such representation, warranty, covenant or agreement as to the truth or accuracy (or falseness or inaccuracy) thereof.

12.11 Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the Parties, at their own expense, will execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other Party, and will take any other action consistent with the terms of this Agreement that may reasonably be requested by the other Party to evidence or carry out the intent of or to implement this Agreement.

12.12 Counterparts; Separate Signature Pages. This Agreement may be executed in any number of counterparts, or using separate signature pages. Each such executed counterpart and each counterpart to which such signature pages are attached will be deemed to be an original instrument, but all such counterparts together will constitute one and the same instrument.

12.13 Time; Business Days. **WHETHER EXPRESSLY SO STATED OR NOT IN CONNECTION WITH ANY OBLIGATION, TIME IS OF THE ESSENCE IN THE PERFORMANCE OF EACH PARTY'S RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT, AND NO NOTICE OF A PARTY'S INTENT TO REQUIRE STRICT COMPLIANCE WITH ANY OF THE DEADLINES SET FORTH IN THIS AGREEMENT IS REQUIRED.** If any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period will be automatically extended to the next business day. As used in this Agreement, the term "Business Days" will mean any day which is not a Saturday, Sunday or a day observed as a holiday by the County of Fairfax, Virginia or the federal government.

12.14 Estoppel Certificates. Each Party will, from time to time upon 15 Business Days' prior request by another Party, execute, acknowledge and deliver to the requesting Party a certificate signed by an authorized representative of such Party stating that to the knowledge of such Party this Agreement (a) is or is not in full force and effect, (b) is or is not unmodified (and, if modified, the details of the modification(s)), and (c) that default(s) do or do not exist hereunder (and if defaults do exist, the nature thereof to the extent known).

12.15 Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Agreement.

12.16 Ownership Structure. FCRHA acknowledges that due to lender requirements, investor requirements, tax issues and certain other factors, some of which are not known to AW9 as of the date of this Agreement, it is not possible for AW9 to commit to a final ownership structure for the Development as of the date of this Agreement. Therefore, FCRHA agrees that AW9 will have the right to submit a proposed ownership structure of the ground tenant or ground tenants under one or more Ground Leases prior to the Closing Date for FCRHA's review and approval, which FCRHA will approve, so long as (i) the ground tenant under any Ground Lease for the Development is controlled, directly or indirectly, by AW9 Parent and (ii) the rights of FCRHA under the Ground Lease are not materially adversely affected. *By way of example and not limitation*, AW9 may separately establish a Ground Lease with a ground tenant to own a portion of the Development that utilizes the 9% Tax Credits and a separate Ground Lease with a ground tenant to own a portion of the Development that utilizes the 4% Tax Credits, or FCRHA may provide a single Ground Lease to a ground tenant that subleases a portion of the Property to a subtenant that utilizes the 9% Tax Credits and to a different subtenant that utilizes the 4% Tax

Credits. To accomplish this apportionment, the Property may be subdivided or subjected to a land condominium regime. Due to the fluid nature of the ownership structure, FCRHA acknowledges and agrees that AW9, AW9 Parent or one or more subsidiaries directly or indirectly controlled by AW9 Parent may fulfill one or more of the obligations of AW9 under this Agreement, including making an application for the Tax Credits.

*[Signatures on the following page]*

[SIGNATURE PAGE TO CONTRACT TO GROUND LEASE (9%) – FCRHA]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first written above.

**FCRHA:**

**FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity

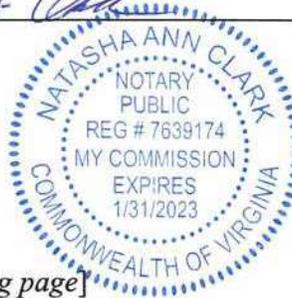
By: \_\_\_\_\_  
Name: **Thomas Fleetwood**  
Title: **Assistant Secretary**

COMMONWEALTH OF VIRGINIA )  
COUNTY OF FAIRFAX ) to wit

The foregoing instrument was acknowledged before me this 11 day of March, 2021, by Thomas Fleetwood, the Assistant Secretary, on behalf of the Fairfax County Redevelopment and Housing Authority.

  
\_\_\_\_\_  
Notary Public

My commission expires:  
11/31/2023

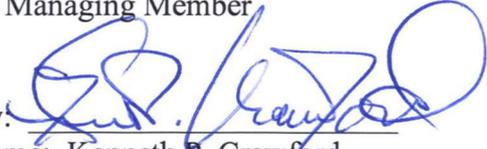


[Signatures continue on following page]

**AW9:**

**AUTUMN WILLOW 9, LLC,**  
a Virginia limited liability company

By: Autumn Willow 9-Michaels, LLC,  
a Virginia limited liability company,  
its Managing Member

By:   
Name: Kenneth P. Crawford  
Title: Authorized Representative

~~STATE OF New Jersey~~  
~~COMMONWEALTH OF VIRGINIA~~  
COUNTY OF ~~FAIRFAX~~, to wit:  
Camden

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of March, 2021, by Kenneth P. Crawford, Authorized Representative and on behalf of Autumn Willow 9-Michaels, LLC, managing member of Autumn Willow 9, LLC.

  
\_\_\_\_\_  
Ethel A. Halley  
Notary Public

My commission expires:  
08-22-2022

ETHEL A HALLEY  
NOTARY PUBLIC  
State of New Jersey  
My Commission Expires 8-22-22

**EXHIBIT A-1 and A-2**

**TO CONTRACT TO GROUND LEASE – 9%**

**THE LAND**

Beginning at a point on the easterly right-of-way line of Stringfellow Road, Route 645, said point also being on the southerly right-of-way line of Autumn Willow Drive, Route 7988, thence departing the easterly right-of-way line of Stringfellow Road and with the southerly right-of-way line of Autumn Willow Drive the following two (2) courses;

to a point being the northwesterly corner of the land of the Fairfax County Park Authority, thence departing the southerly right-of-way line of Autumn Willow Drive and with the westerly line of the Fairfax County Park Authority the following course;

S 05° 28' 06" W, 808.74 feet;

to a point being the northeasterly corner of other land of the Fairfax County Park Authority, thence departing the westerly line the Fairfax County Park Authority and with the northerly line the Fairfax County Park Authority the following course;

N 75° 17' 52" W, 644.82 feet to a point;

to a point being on the easterly line of other land of the Fairfax County Park Authority, thence departing the northerly line the Fairfax County Park Authority and with the easterly line the Fairfax County Park Authority and then the easterly right-of-way of Stringfellow Road (at 514.84 feet) the following two (2) courses;

N 10° 28' 01" E, 723.47 feet to a point;

N 36° 27' 31" E, 38.67 feet

to the point of beginning containing 474,183 square feet or 10.88574 acres of land,

Less and Except the following;

Starting at a point on the southerly right-of-way line of Autumn Willow Drive, Route 7988, said point also being the northwesterly corner of the land of the Fairfax County Park Authority, thence S57°59'53"W, 185.90 feet, to the true point of beginning, thence running through the land of the Fairfax County Redevelopment and Housing Authority the following eight (8) courses;

S 06° 32' 42" E, 266.17 feet to a point;

S 83° 29' 05" W, 27.86 feet to a point;

S 06° 30' 55" E, 206.62 feet to a point;  
S 83° 29' 05" W, 80.12 feet to a point;  
N 06° 20' 55" W, 334.92 feet to a point;  
N 80° 33' 55" W, 27.04 feet to a point;  
N 07° 57' 53" E, 132.31 feet to a point;  
N 82° 08' 35" E, 99.82 feet;

to the point of beginning containing 46,157 square feet or 1.05961 acres of land,

leaving a residual area of 428,026 square feet or 9.82613 acres of land.

**EXHIBIT B**

**TO CONTRACT TO GROUND LEASE – 9%**

**FORM OF GROUND LEASE**

**[PLEASE SEE EXHIBIT B TO COMPREHENSIVE AGREEMENT.]**

**Exhibit A-2**

**TO COMPREHENSIVE AGREEMENT**

**Form of Options to Ground Lease**

*(See Attached)*

**OPTION TO LEASE**  
**(AUTUMN WILLOW 4)**

This Option to Lease (the “Option”) is dated March 15, 2021, by and between FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a subdivision of the Commonwealth of Virginia, whose business address is 3700 Pender Drive, Fairfax, Virginia 22030 (“Landlord” or “FCRHA”) and AUTUMN WILLOW 4, LLC, a Virginia limited liability company, or its permitted assignee or designee (“Tenant 4”) having an office at 3 East Stow Road, Suite 100, Marlton, NJ 08053.

WHEREAS, Landlord owns certain real property in fee simple, identified as Fairfax County Tax Map No. 55-3((1)) Parcel 26B and located at the intersection of Stringfellow Road and Autumn Willow Drive, located in Fairfax County, Virginia, and intends to lease a portion of that real property and to convey any of its interests in certain easements, development rights and interest with respect to certain real property, such real property being more particularly identified on Exhibit A (“Premises”);

WHEREAS, in order to finance in part the design, development and construction of (i) one or more Buildings erected on the Premises and for the operation, maintenance and management by Tenant of a low income/affordable senior living residences facility (or facilities, as the case may be) on the Premises, which will include approximately 75 Residential Units but no more than 150, and (ii) surface parking and related public areas, together with all Fixtures, and other Improvements on the Premises (including, without limitation, Capital Improvements) and any and all Restorations, alterations and replacements thereof, additions thereto and substitutions therefor as defined in the Ground Lease (collectively, the “4% Project”) on the Premises, Tenant shall apply for tax credits (“Tax Credits”) pursuant to the Virginia Housing Development Authority’s Federal Low Income Housing Tax Credit Program Application (the “Application”);

WHEREAS, Landlord wishes to grant Tenant an option to lease the Premises under a long-term ground lease, the form of which has been agreed to by Landlord and Tenant (the “Ground Lease”) and Tenant wishes to accept the option.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Option. Landlord, upon Tenant’s receipt of an award of Tax Credits and in consideration of \$10.00, which shall be non-refundable, paid by Tenant to Landlord, receipt of which is hereby acknowledged, grants to Tenant the exclusive right and option to lease the Premises on the following terms and conditions. If Tenant does not receive an award of Tax Credits pursuant to the Application by the Expiration Date, as extended (defined below), this Option will automatically terminate.

2. Option Period. The term of this Option shall commence on the date first written above and continue until 5:00 p.m. on December 1, 2021 (the “Expiration Date”). If the Application is not approved for Tax Credits on or before the Expiration Date (or the Extended Expiration Date, as applicable), Tenant shall have three successive one time rights to re-apply for Tax Credits in each of calendar years 2022, 2023, and 2024 by sending written notice to Landlord and, in such event, this Option shall remain in full force and effect until the later of December 1 of the year following the exercise of the most recently-exercised extension, unless further extended in accordance with this Section (such later date, the “Extended Expiration Date”).

3. Ground Lease. Tenant shall be permitted to assign and encumber its leasehold interest under the Ground Lease, in accordance with the terms of the Ground Lease, as security for debt financing for the Project. This Option shall not be recorded; however, a memorandum of the Ground Lease is expected to be recorded or memorialized in the appropriate office of public records, in accordance with the laws of the Commonwealth of Virginia. All costs of transfer and such recordation will be borne by Tenant. The Base Rent, as defined in the Ground Lease, for the term of the Ground Lease shall be in an amount equal to One and 00/100 Dollars (\$1.00) or as otherwise agreed to by the parties.

4. Exercise of Option. Tenant may exercise this Option by giving Landlord written notice, signed by Tenant, on or before the Expiration Date (or Extended Expiration Date, applicable) as set forth in those documents and per the requirements of the FCRHA and from and after such date any agreement to lease, contract to lease, or conveyance documents shall govern until closing and execution of the ground lease.

5. Proof of Title. Tenant may, at Tenant’s expense, obtain a title commitment for the issuance of a leasehold insurance policy for the Premises. Tenant shall deliver a copy of any such commitment to Landlord.

6. Failure to Exercise Option. If Tenant does not exercise this Option in accordance with its terms and before the Expiration Date (or Extended Expiration Date, if applicable), this Option and the rights of Tenant hereunder will automatically and immediately terminate without notice. If Tenant fails to exercise this Option, Landlord will retain the sum paid as consideration for this Option.

7. Notices. All notices provided for in this Option will be deemed to have been duly given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next business day delivery specified, or (c) sent by registered or certified United States mail, postage prepaid, return receipt requested, in each case addressed to the party for whom intended at the party’s address listed above.

8. Binding Effect. This Option will be binding upon and inure only to the benefit of the parties to it and of any mutually-agreed successors and/or assigns, and of any permitted assigns pursuant to a Permitted Assignment (as hereinafter defined). Capitalized terms used but not specifically defined herein shall be defined in the Ground Lease.

9. Assignment. Tenant may not sell, assigned, or otherwise transferred, whether by operation of law or otherwise, its interest in this Option to any entity.

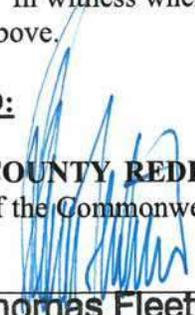
[Signature Pages Follow]

[SIGNATURE PAGE TO OPTION TO LEASE (4%) – LANDLORD]

In witness whereof, Landlord and Tenant have executed this Option on the date first written above.

**LANDLORD:**

**FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia

By:   
Name: Thomas Fleetwood  
Title: Assistant Secretary

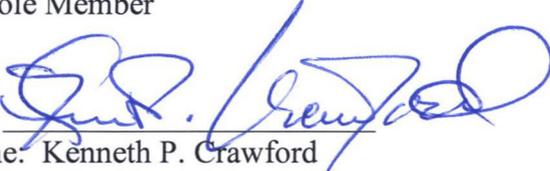
[Signatures Continue on Next Page]

[SIGNATURE PAGE TO OPTION TO LEASE (4%) – TENANT]

**TENANT:**

**AUTUMN WILLOW 4, LLC,**  
a Virginia limited liability company

By: Autumn Willow 4-Michaels, LLC,  
a Virginia limited liability company,  
its Sole Member

By:   
Name: Kenneth P. Crawford  
Title: Authorized Representative

[Exhibits Begin on Next Page]

**EXHIBIT A**

**TO OPTION TO LEASE – 4%**

**[Description of the Premises]**

Starting at a point on the southerly right-of-way line of Autumn Willow Drive, Route 7988, said point also being the northwesterly corner of the land of the Fairfax County Park Authority, thence S57°59'53"W, 185.90 feet, to the true point of beginning, thence running through the land of the Fairfax County Redevelopment and Housing Authority the following eight (8) courses;

S 06° 32' 42" E, 266.17 feet to a point;  
S 83° 29' 05" W, 27.86 feet to a point;  
S 06° 30' 55" E, 206.62 feet to a point;  
S 83° 29' 05" W, 80.12 feet to a point;  
N 06° 20' 55" W, 334.92 feet to a point;  
N 80° 33' 55" W, 27.04 feet to a point;  
N 07° 57' 53" E, 132.31 feet to a point;  
N 82° 08' 35" E, 99.82 feet;

to the point of beginning containing 46,157 square feet or 1.05961 acres of land.

**OPTION TO LEASE  
(AUTUMN WILLOW 9)**

This Option to Lease (the “Option”) is dated March 8, 2021, by and between FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a subdivision of the Commonwealth of Virginia, whose business address is 3700 Pender Drive, Fairfax, Virginia 22030 (“Landlord” or “FCRHA”) and AUTUMN WILLOW 9, LLC, a Virginia limited liability company, or its permitted assignee or designee (“Tenant 9”) having an office at 3 East Stow Road, Suite 100, Marlton, NJ 08053.

WHEREAS, Landlord owns certain real property in fee simple, identified as Fairfax County Tax Map No. 55-3((1)) Parcel 26B and located at the intersection of Stringfellow Road and Autumn Willow Drive, located in Fairfax County, Virginia, and intends to lease a portion of that real property and to convey any of its interests in certain easements, development rights and interest with respect to certain real property, such real property being more particularly identified on Exhibit A-1 (“Leasehold Premises”) and convey any of its interests in certain easements, development rights and interest with respect to certain real property, such real property being more particularly identified on Exhibit A-2, attached hereto and made a part hereof (the “Development Rights Premises” and together with the Leasehold Premises, the “Premises”);

WHEREAS, in order to finance in part the design, development and construction of (i) one or more Buildings erected on the Premises and for the operation, maintenance and management by Tenant of a low income/affordable senior living residences facility (or facilities, as the case may be) on the Premises, which will include approximately 75 Residential Units but no more than 150, and (ii) surface parking and related public areas, together with all Fixtures, and other Improvements on the Premises (including, without limitation, Capital Improvements) and any and all Restorations, alterations and replacements thereof, additions thereto and substitutions therefor as defined in the Ground Lease (collectively, the “9% Project”) on the Premises, Tenant shall apply for tax credits (“Tax Credits”) pursuant to the Virginia Housing Development Authority’s Federal Low Income Housing Tax Credit Program Application (the “Application”);

WHEREAS, Landlord wishes to grant Tenant an option to lease the Premises under a long-term ground lease, the form of which has been agreed to by Landlord and Tenant (the “Ground Lease”) and Tenant wishes to accept the option.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Option. Landlord, upon Tenant’s receipt of an award of Tax Credits and in consideration of \$10.00, which shall be non-refundable, paid by Tenant to Landlord, receipt of which is hereby acknowledged, grants to Tenant the exclusive right and option to lease the Premises on the following terms and conditions. If Tenant does not receive an award

of Tax Credits pursuant to the Application by the Expiration Date, as extended (defined below), this Option will automatically terminate.

2. Option Period. The term of this Option shall commence on the date first written above and continue until 5:00 p.m. on December 1, 2021 (the "Expiration Date"). If the Application is not approved for Tax Credits on or before the Expiration Date (or the Extended Expiration Date, as applicable), Tenant shall have three successive one time rights to re-apply for Tax Credits in each of calendar years 2022, 2023, and 2024 by sending written notice to Landlord and, in such event, this Option shall remain in full force and effect until the later of December 1 of the year following the exercise of the most recently-exercised extension, unless further extended in accordance with this Section (such later date, the "Extended Expiration Date").

3. Ground Lease. Tenant shall be permitted to assign and encumber its leasehold interest under the Ground Lease, in accordance with the terms of the Ground Lease, as security for debt financing for the Project. This Option shall not be recorded; however, a memorandum of the Ground Lease is expected to be recorded or memorialized in the appropriate office of public records, in accordance with the laws of the Commonwealth of Virginia. All costs of transfer and such recordation will be borne by Tenant. The Base Rent, as defined in the Ground Lease, shall include a one-time capitalized lease payment in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00), then for the term of the Ground Lease shall be in an amount equal to One and 00/100 Dollars (\$1.00) per year or as otherwise agreed to by the parties.

4. Exercise of Option. Tenant may exercise this Option by giving Landlord written notice, signed by Tenant, on or before the Expiration Date (or Extended Expiration Date, applicable) as set forth in those documents and per the requirements of the FCRHA and from and after such date any agreement to lease, contract to lease, or conveyance documents shall govern until closing and execution of the ground lease.

5. Proof of Title. Tenant may, at Tenant's expense, obtain a title commitment for the issuance of a leasehold insurance policy for the Premises. Tenant shall deliver a copy of any such commitment to Landlord.

6. Failure to Exercise Option. If Tenant does not exercise this Option in accordance with its terms and before the Expiration Date (or Extended Expiration Date, if applicable), this Option and the rights of Tenant hereunder will automatically and immediately terminate without notice. If Tenant fails to exercise this Option, Landlord will retain the sum paid as consideration for this Option.

7. Notices. All notices provided for in this Option will be deemed to have been duly given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next business day delivery specified, or (c) sent by registered or certified United States mail, postage prepaid, return receipt requested, in each case addressed to the party for whom intended at the party's address listed above.

8. Binding Effect. This Option will be binding upon and inure only to the benefit of the parties to it and of any mutually-agreed successors and/or assigns, and of any permitted assigns pursuant to a Permitted Assignment (as hereinafter defined). Capitalized terms used but not specifically defined herein shall be defined in the Ground Lease.

9. Assignment. Tenant may not sell, assigned, or otherwise transferred, whether by operation of law or otherwise, its interest in this Option to any entity.

[Signature Pages Follow]

[SIGNATURE PAGE TO OPTION TO LEASE (9%) – LANDLORD]

In witness whereof, Landlord and Tenant have executed this Option on the date first written above.

**LANDLORD:**

**FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia

By: \_\_\_\_\_  
Name: **Thomas Fleetwood**  
Title: **Assistant Secretary**

[Signatures Continue on Next Page]

[SIGNATURE PAGE TO OPTION TO LEASE (9%) – TENANT]

**TENANT:**

**AUTUMN WILLOW 9, LLC,**  
a Virginia limited liability company

By: Autumn Willow 9-Michaels, LLC,  
a Virginia limited liability company,  
its Sole Member

By:   
Name: Kenneth P. Crawford  
Title: Authorized Representative

[Exhibits Begin on Next Page]

**EXHIBIT A-1**  
**AND**  
**EXHIBIT A-2**

**TO OPTION TO LEASE – 9%**

**[Description of the Leasehold Premises]**

Beginning at a point on the easterly right-of-way line of Stringfellow Road, Route 645, said point also being on the southerly right-of-way line of Autumn Willow Drive, Route 7988, thence departing the easterly right-of-way line of Stringfellow Road and with the southerly right-of-way line of Autumn Willow Drive the following two (2) courses;

to a point being the northwesterly corner of the land of the Fairfax County Park Authority, thence departing the southerly right-of-way line of Autumn Willow Drive and with the westerly line of the Fairfax County Park Authority the following course;

S 05° 28' 06" W, 808.74 feet;

to a point being the northeasterly corner of other land of the Fairfax County Park Authority, thence departing the westerly line the Fairfax County Park Authority and with the northerly line the Fairfax County Park Authority the following course;

N 75° 17' 52" W, 644.82 feet to a point;

to a point being on the easterly line of other land of the Fairfax County Park Authority, thence departing the northerly line the Fairfax County Park Authority and with the easterly line the Fairfax County Park Authority and then the easterly right-of-way of Stringfellow Road (at 514.84 feet) the following two (2) courses;

N 10° 28' 01" E, 723.47 feet to a point;

N 36° 27' 31" E, 38.67 feet

to the point of beginning containing 474,183 square feet or 10.88574 acres of land,

Less and Except the following;

Starting at a point on the southerly right-of-way line of Autumn Willow Drive, Route 7988, said point also being the northwesterly corner of the land of the Fairfax County Park Authority, thence S57°59'53"W, 185.90 feet, to the true point of beginning, thence running through the land of the Fairfax County Redevelopment and Housing Authority the following eight (8) courses;

S 06° 32' 42" E, 266.17 feet to a point;

S 83° 29' 05" W, 27.86 feet to a point;

S 06° 30' 55" E, 206.62 feet to a point;

S 83° 29' 05" W, 80.12 feet to a point;  
N 06° 20' 55" W, 334.92 feet to a point;  
N 80° 33' 55" W, 27.04 feet to a point;  
N 07° 57' 53" E, 132.31 feet to a point;  
N 82° 08' 35" E, 99.82 feet;

to the point of beginning containing 46,157 square feet or 1.05961 acres of land,

leaving a residual area of 428,026 square feet or 9.82613 acres of land.

**Exhibit B**

**TO COMPREHENSIVE AGREEMENT**

**Form of Ground Leases**

*(See Attached)*

Deed of Lease Form

This deed of lease attachment is a draft template that will be modified by the mutual agreement of both parties as more detailed information negotiated regarding the proposed financing and other matters related to the project. The final document will be severed into two separate ground leases, one for the 9% project and the other for the 4% project. The final document will correct the page number references in the Table of Contents.

FORM OF

DEED OF LEASE

between

FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY

as Landlord

and

AUTUMN WILLOW 9, LLC

[to be finalized and bifurcated for Autumn Willow 4, LLC]

as Tenant

Premises:

**Autumn Willow Property**

Intersection of Stringfellow Road and Autumn Willow Drive  
Fairfax, Virginia



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**List of Exhibits**

- Exhibit A – Legal Description of Land [to be attached once finalized by title company]
- Exhibit B – Project Description [to be attached upon completion]
- Exhibit C – List of Plans and Specifications [to be attached upon completion]
- Exhibit D – Project Schedule [to be attached upon determination]
- Exhibit E – Form of Guaranty
- Exhibit F – Title Matters
- Exhibit G – Approval Criteria for Residential Leases and Residential Tenants
- Exhibit H – Cash Flow to FCRHA

## DEED OF LEASE

This DEED OF LEASE (this "Lease") made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ between FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia ("Landlord") as the owner of certain land described below in Fairfax County, Virginia, having an office at 3700 Pender Drive, Fairfax, Virginia 22030, and [AUTUMN WILLOW 9, LLC], a Virginia limited liability company, or its permitted assignee or designee ("Tenant") having an office at 3 East Stow Road, Suite 100, Marlton, NJ 08053.

### RECITALS

**A.** Landlord is the legal owner of certain real property identified as Fairfax County Tax Map No. 55-3((1)) Parcel 26B and located at the intersection of Stringfellow Road and Autumn Willow Drive, and as further identified on Exhibit A attached hereto (the "Land") and intends to use the real property for the purpose provided for in this Lease, together with any and all Buildings (as defined below) and other Improvements (defined below) on the Land and with all necessary, appurtenant easements and any and all density and development rights related to the Land (together with the Land, the "Premises")

**B.** Landlord and Tenant entered into a Contract to Ground Lease dated \_\_\_\_\_, 2021 (the "Contract to Lease"), in which Landlord and Tenant agreed that, upon satisfaction of certain conditions precedent, Landlord and Tenant will enter into this Lease.

**C.** Landlord desires to lease to Tenant and Tenant desires to Lease from Landlord a portion of the Premises, in accordance with the terms and conditions of this Lease.

THEREFORE, Landlord and Tenant hereby mutually covenant and agree, in consideration of the mutual covenants set forth below (including, without limitation the covenant to pay Base Rent hereunder), that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

### ARTICLE 1

#### DEFINITIONS

The terms defined in this Article 1 will, for all purposes of this Lease, have the following meanings.

"Additional Costs" consist of all other sums of money besides Base Rent, including without limitation, payments of Impositions (if and as applicable), as may become due from and be payable by Tenant to Landlord under this Lease and which must be paid on or before the

respective due dates of such sums, all costs, expenses and charges of every kind and nature (including, all public and private utilities and services, and any easement or agreement maintained for the benefit of the Premises) relating to the Premises and as required under this Lease (and irrespective of whether paid directly to third parties (e.g. utility companies, taxing authorities, a Depository, etc.).

“ADU Ordinance” means Part 8, Article 2 of the Zoning Ordinance of Fairfax County, Virginia, as may be amended from time to time, or any successor ordinances, regulations or statute, but subject to the applicable exemptions approved by the Fairfax County Department of Planning and Development, Zoning Administration Division.

“Affiliate” means a Person that Controls, is Controlled by, or is under common Control with another Person. In the case of an individual, an Affiliate means and includes any individual who is a member of the immediate family (whether by birth or marriage) of a Person, including without limitation a spouse; a sibling of such individual or his spouse; a lineal descendant or ancestor of any of the foregoing or a trust for the benefit of any of the foregoing.

“Affordable Dwellings” means “Affordable Dwellings,” as defined in the ADU Ordinance, but subject to the applicable exemptions approved by the Fairfax County Department of Planning and Development, Zoning Administration Division.

“Applicable Laws” means all applicable present and future federal, state, and local laws, rules, orders, ordinances, regulations, statutes, requirements, proffers, permits, consents, certificates, approvals, codes, and executive orders of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus affecting or relating to Tenant or the Premises.

“Applicable Laws” has the meaning provided in Section 14.01.

“Appraiser” has the meaning set forth in Section 9.04(a).

“Approved Property Manager” has the meaning set forth in Section 26.01.

“Architect” means a registered architect engaged by Tenant from time to time as the primary design professional in respect of the particular item of Construction Work or other action for which the services of an Architect is required under any applicable provision of this Lease. It is acknowledged that in certain types of Construction Work or valuation of improvements the primary design professional for the item in question may actually be a licensed professional engineer rather than a registered architect and in any such cases the references to “Architect” herein will be deemed to refer to such licensed professional engineer as is engaged by Tenant as the primary design professional for the matter in question. The initial Architect is KTG Architecture + Planning with Urban Practice, LLC.

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Default” has the meaning provided in Section 24.01( ). CHECK

“Base Rent” has the meaning provided in Section 3.01.

“Building(s)” means any building(s) erected on the Premises which are a part of the Project.

“Business Days” means any day which is not a Saturday, Sunday or a day observed as a holiday by Fairfax County, the Commonwealth of Virginia, or the federal government.

“Calendar Quarter” means each of the four consecutive three-month periods, which expire on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>, respectively, in each calendar year.

“Capital Improvements” has the meaning provided in Section 11.09.

“Certificate of Occupancy” means with respect to each Building comprising the Project, a Residential Use Permit issued by the Fairfax County Department of Planning and Development (or such other appropriate Governmental Authority) pursuant to Part 7, Section 18 of the Zoning Ordinance of Fairfax County, Virginia or successor agency or successor statute.

“Commencement Date” means the date of the mutual execution of this Lease by Landlord and Tenant.

“Commencement of Construction” means the date that the Initial Construction Work commences, as set forth on the Project Schedule.

“Comprehensive Agreement” means that agreement titled “comprehensive agreement” between Landlord TMDC I dated \_\_\_\_\_, 2021.

“Condominium Units” has the meaning provided in Article 38.

“Construction Agreements” mean agreements to which Tenant is a party for Construction Work, rehabilitation, alteration, repair, replacement or demolition performed pursuant to this Lease.

“Construction Work” means any construction, rehabilitation or renovation work performed by or on behalf of Tenant under this Lease, including, without limitation, (a) alterations, capital repairs or replacements, (c) a Restoration, or (d) Capital Improvements.

“Consumer Price Index” means the Consumer Price Index for all Urban Consumers Washington–Baltimore, DC–MD–VA–WV – all Items (1996=100), published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index, appropriately adjusted; provided, that if there is no successor index, a substitute index or the appropriate adjustment of such successor index, as the case may be, will be determined by Landlord, in its reasonable discretion.

“Control/Controlled/Controlling” means, as applicable, (i) ownership of more than fifty percent (50%) of the outstanding voting stock of a corporation; (ii) other majority equity and control interest of an entity which is not a corporation, or (iii) the possession of power to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities, by statute, according to the provisions of a contract or according to the organizational documents of the relevant entities.

“Counteroffer” has the meaning provided in Section 10.03(b).

“Depository” means a savings bank, a savings and loan association or a commercial bank or trust company that would qualify as an Institutional Lender, designated by Tenant and approved by Landlord, which approval will not be unreasonably withheld, to serve as Depository pursuant to this Lease. If Tenant fails to designate a Depository within ten Business Days after request of Landlord, Landlord will have the right to designate such Depository. If a Mortgage exists on the Lease, any Institutional Lender designated by the approved Mortgagee (including, without limitation, the Mortgagee) as a Depository will be deemed approved by Landlord and Tenant hereunder.

“Developer” means [\_\_\_\_\_, LLC].

“Due Date” means, with respect to an Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment (except with respect to interest that may be applied to a balance paid in installments when such installment payments are permitted by the applicable Governmental Authority).

“Environmental Activity” has the meaning provided in Section 14.03.

“Event of Default” has the meaning provided in Section 24.01.

“Expiration Date” means (i) the Fixed Expiration Date or (ii) such earlier date upon which the term of this Lease will cease or be terminated as described in this Lease.

“Final Completion” means all of the following have occurred: (i) Substantial Completion of the Initial Construction Work, (ii) all “punch-list” items prepared in connection with satisfying the conditions to Substantial Completion of the Initial Construction Work have been completed or satisfied, (iii) (A) there are no existing mechanics’, laborers’ or materialmens’ liens or similar encumbrances related to the Initial Construction Work or (B) any existing mechanics’, laborers’ or materialmens’ liens or similar encumbrances on the Project are being contested by Tenant in accordance with the provisions of Section 15.02 of the Lease, and (iv) the applicable statutory lien periods provided in Section 43-4 of the Code of Virginia have expired.

“Final Completion Date” means a date, as set forth in the Project Schedule, attached hereto as Exhibit C, as such date may be postponed due to Unavoidable Delays as provided in this Lease.

“Fixed Expiration Date” means the day immediately preceding the \_\_\_\_ ) anniversary of the Commencement Date.

“Fixtures” mean all fixtures incorporated in the Premises, including, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, antennas, computers, and sensors.

“Governmental Authority (Authorities)” means any of the following: the United States of America, the Commonwealth of Virginia, Fairfax County and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having lawful jurisdiction over the Premises or any portion thereof. The term Governmental Authority.

“Hazardous Materials” has the meaning provided in Section 14.03.

“Impositions” has the meaning provided in Section 4.01.

“Impositions Account” has the meaning provided in Section 5.01(a).

“Improvement Approvals” has the meaning provided in Section 11.09(a).

“Improvements” means the Buildings, Fixtures, structures, additions, enlargements, extensions, modifications, repairs, replacements, and improvements now located, or constructed, re-constructed, erected, placed, installed, or located on the Premises in the future until the Expiration Date.

“Indemnitees” has the meaning provided in Section 19.01.

“Initial Construction Work” means the initial design, development, and construction (including both materials and services) of the Project, which is identified in, and to be provided or performed under, and governed by this Lease.

“Institutional Lender” means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, a real estate investment trust, a religious, educational or eleemosynary institution, a governmental agency, body or entity, an employee, benefit, pension or retirement plan or fund, a commercial credit corporation, a commercial bank or trust company acting as trustee or fiduciary of various pension funds or other tax-exempt funds, or other form of entity that, in its ordinary course of business, is involved in the issuance or holding of mortgage loans secured by commercial or multifamily developments or a corporation or other entity which is owned wholly by an Institutional Lender, or any combination of the foregoing; provided, that any of the above entities will qualify as an Institutional Lender within the provisions of this Section only if such entity will have (as of the time of the closing of a loan or other financing secured in whole or in part by this

Lease) individual or combined assets, as the case may be, of not less than Two Billion Dollars, subject to an annual adjustment by taking the product of \$2,000,000,000 and multiplying by a fraction, the numerator of which will be the Consumer Price Index for first month of any calendar year in which this calculation is to be determined and the denominator of which will be the Consumer Price Index for the month in which the Commencement Date occurs; *provided however*, that the foregoing minimum combined asset requirement will not apply to any governmental agency providing Tax Credits or loans hereunder.

“Involuntary Rate” means the Prime Rate plus six percent per annum but, in no event, more than the maximum permissible interest rate then in effect in the Commonwealth of Virginia.

“Land” means the land as generally depicted in Exhibit A annexed hereto, *provided however*, that this definition is subject to Section 2.02 below.

“Landlord” has the meaning set forth in the Preamble.

“Landlord’s Termination Rights” has the meaning provided in Section 10.04(f).

“Lease” will mean this Lease and all amendments, modifications, and supplements.

“Management Agreement” has the meaning provided in Section 26.01.

“Mortgage” means any deed of trust, indenture, mortgage, or similar instrument which constitutes a lien on Tenant’s interest in this Lease and the leasehold estate created hereby, provided such mortgage is held by a Mortgagee, as defined in this Lease. A deed of trust, indenture, mortgage, or similar interest which is not held by a Mortgagee is not a “Mortgage” as such term is used in this Lease.

“Mortgagee” means the holder of a Mortgage on Tenant’s interest in the Lease and the leasehold estate created thereby, *provided however* that such holder: (i) is an Institutional Lender; or (ii) has been approved by Landlord prior to the entering into of such Mortgage, which consent will be in Landlord’s reasonable discretion. No holder of any deed of trust, indenture, mortgage, or similar instrument that constitutes a lien on Tenant’s interest in this Lease and the leasehold estate created hereby, but which is not a “Mortgage” hereunder, will be a “Mortgagee” as such term is used in this Lease nor will have the rights of a Mortgagee hereunder.

“New Lease” is defined in Section 10.06.

“New Tenant” has the meaning provided in Section 10.0506(a).

“Notice” has the meaning provided in Section 25.01.

“Offer” has the meaning provided in Section 10.03(a).

“Offer Period” has the meaning provided in Section 10.03(a).

“Offer Terms” has the meaning provided in Section 10.03(a).

“Outside Final Completion Date” means the date that is [270] days after the Final Completion Date, subject to Unavoidable Delays.

“Permitted Transfer” has the meaning provided in Section 10.01(g).

“Person” means an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any federal, state, County or municipal government or any bureau, department, or agency thereof.

“Plans and Specifications” means the completed final drawings and plans and specifications for the Initial Construction Work, a list of which is attached as Exhibit B which are prepared by an Architect, as the same may be modified from time to time in accordance with the provisions of Article 11.

“Premises” has the meaning set forth in the Recitals.

“Prime Rate” means the prime or base rate as published in the “money rates table of The Wall Street Journal, or if the Wall Street Journal is not available, its nearest equivalent publication. Any interest payable under this Lease with reference to the Prime Rate will be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and will be calculated on the basis of a 360-day year with twelve months of 30 days each.

“Project” means (i) one or more Buildings erected on the Premises and for the operation, maintenance and management by Tenant of a low income/affordable senior living residences facility (or facilities, as the case may be) on the Premises, which will include approximately 150 Residential Units, and (ii) surface parking and related public areas, all as more particularly described in this Lease.

“Proposed Transfer Premises” has the meaning provided in Section 10.03.

“Replacement Value” will be deemed to be an amount equal to the costs of replacing the Improvements on the Property with new Improvements that contain the same number of Residential Units of substantially equal quality and character. Within ten Business Days after Final Completion, Tenant will deliver an estimate of or statement with respect to the Replacement Value prepared by the insurer(s) of the Project or another disinterested insurance provider. 60 days prior to the tenth anniversary of the date of Final Completion and each subsequent tenth anniversary thereafter for the Term of this Lease, Tenant will provide an estimate of or statement with respect to the Replacement Value prepared by the insurer(s) of the Project or another disinterested insurance provider. Such estimate will determine the current cost (including all hard and soft costs) of rebuilding the entire Project, without regard to depreciation of the Project, which amount will then be deemed to be the Replacement Value. The amount of Replacement Value will be adjusted on each anniversary of the initial determination of Replacement Value and of each subsequent decennial redetermination of Replacement Value throughout the Term by a percentage

equal to the percentage change in the appropriate index in the [*Dodge Momentum Construction Cost Index*] (or such other published index of construction costs which will be selected from time to time by Landlord, provided that such index will be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the Project) in effect on such anniversary date as compared to the same index in effect on the date of Final Completion or prior redetermination, whichever is latest.

“Residential Lease(s)” has the meaning provided in Section 26.04.

“Residential Tenant(s)” has the meaning provided in Section 26.04.

“Residential Unit(s)” means individually or collectively (as the context requires), any or all residential apartment unit(s) in the Project.

“Respective Allocation(s)” has the meaning provided in Section 9.04.

“Restoration” has the meaning provided in Section 8.01.

“Restoration Funds” has the meaning provided in Section 8.04(a).

“Restoration Plans and Specifications” has the meaning provided in Section 8.02.

“Restore” has the meaning provided in Section 8.01.

“Substantial Completion” or “Substantially Complete(d)” means that the Initial Construction Work for the Project (or applicable component thereof) has been completed in substantial accordance with the terms of this Lease and a Certificate of Occupancy has been issued for each Building and each Residential Unit (as applicable, in each instance subject only to (i) minor matters that do not materially adversely affect the use of the Project (or component thereof) for its intended purpose and which have been identified by Tenant, with input from the Architect, on a “punch -list,” and to (ii) items of exterior landscaping that cannot then be completed pending appropriate seasonal opportunity and which have been identified by Tenant on the “punch -list.” If the Project consists of multiple Buildings, Substantial Completion will be determined for each Building separately.

“TMDC I” means The Michaels Development Company I, LP., a Virginia limited partnership.

“Tax Credit Project Owner” means the Tenant or an entity Controlled by TMDC I as its general partner and having a Tax Credit investor as its limited partner. The Tax Credit Project Owner will receive an award of Tax Credits and will own a portion of the Project for purposes of Section 42 of the Internal Revenue Code and the regulations promulgated thereunder, as further described in Section Article 38.

“Tax Credits” has the meaning provided in Article 38.

“Tax Year” means each tax fiscal year of Fairfax County, Virginia.

“Tax Credits” are defined in Section 38.01.

“Tax Credit Period” is defined in Section 38.01.

“Tax Equity Investor” is defined in Section 38.01.

“Taxes” means federal, state, and local real estate taxes, personal property taxes, or similar “ad valorem” taxes, occupancy or rent taxes or other assessments applicable to the Premises or Tenant’s ownership interests therein. The term “Taxes” does not include any federal, state, or local income taxes, sales or use taxes, gross receipts taxes, or other taxes or charges imposed upon Tenant as an entity or its partners or members, unless (and only to the extent that) any of the foregoing taxes in this sentence are secured or can be secured by a lien on the Premises when imposed.

“Tenant” has the meaning set forth in the Preamble.

“Tenant’s Net Cash Flow” means for each Lease Year (or any Calendar Quarter or other period, as applicable), Gross Project Revenue minus Project Operating Expenses.

“Term” means the term of this Lease as set forth in Section 2.06.

“Title Matters” mean those matters affecting title to the Premises that are disclosed in the public records or may be disclosed by an inspection or survey of the Premises as of the date hereof, plus as set forth in Exhibit F hereto, and additional matters affecting title to the Premises that may be imposed from time to time in accordance with the provisions of Section 27.04, but excluding any monetary liens affecting the Premises created by Landlord.

“Transfer” has the meaning provided in Section 10.01(a).

“Unavoidable Delays” means (i) with respect to Tenant or its obligations hereunder, delays incurred by Tenant due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions, enemy action, civil commotion, pandemics, government ordered shut downs or transportation restrictions, fire, unavoidable casualty, unseasonably adverse weather conditions, or other similar causes beyond the control of Tenant (but not including Tenant’s insolvency or financial condition or the availability or applicability of insurance proceeds or condemnation awards), and (ii) with respect to Landlord or its obligations hereunder, delays incurred by Landlord due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions imposed by Landlord, in its governmental or regulatory capacity), enemy action, civil commotion, fire, unavoidable casualty or other similar causes beyond the control of Landlord (but not including Landlord’s insolvency or financial condition); in each case provided (x) such party will have notified the other party reasonably promptly after such party knows of the occurrence of same and the effects of

which a prudent Person in the position of the party asserting such delay could not have reasonably prevented and (y) such party takes reasonable steps to minimize the impact of such event upon the performance in question and keeps the other party reasonably informed, upon request, of the nature of the steps so taken and of the progress of the performance which is subject to Unavoidable Delay.

## ARTICLE 2

### PREMISES AND TERM OF LEASE

Section 2.01. Premises. Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, as defined herein and more particularly described on the attached Exhibit A, subject to the Title Matters, TOGETHER WITH:

- (a) all of the appurtenances, rights, privileges, and easements in any way now or hereafter pertaining thereto;
- (b) all right, title and interest of Landlord in and to the land lying in the streets, avenues, ways and roads in front of and adjoining said Premises; and
- (c) all existing Improvements, including the storm-water sewer management system, on the Premises as of the Commencement Date, if any.

Section 2.02. Legal Description of the Land. Landlord and Tenant agree that, upon execution of this Lease, Exhibit A may contain a visual depiction of the Land. Prior to Commencement of Construction under this Lease, Tenant will conduct a survey of the Land which provides, among other things, a metes and bounds description of the Land and Landlord and Tenant will, by amendment to this Lease, replace the visual depiction contained in Exhibit A with a revised Exhibit A containing such metes and bounds description, as approved by both Landlord and Tenant.

Section 2.03. Term. The term of this Lease is 99 years (the “Term”). Landlord and Tenant agree that the Lease will commence on the Commencement Date and expire on the Fixed Expiration Date, subject to earlier termination in accordance with the terms set forth in this Lease.

Section 2.04. Use. During the Term, Tenant agrees that the Premises will be used solely for the development, construction, reconstruction, rehabilitation, management, and operation of the Project, including any Restoration thereof, and the leasing of Residential Units and uses ancillary to the operation of the Premises as a senior living facility and for no other purpose.

Section 2.05 Ownership of the Improvements. During the Term, ownership and title to all Improvements and personal property located on the Premises (other than fee title to the land) will be vested in and held by Tenant. During the Term, Tenant is entitled to all depreciation, allowances, investment tax credits, or other such rights, tax benefits, and privileges provided by federal, state, or local law to the owners of real property. Immediately upon the expiration of the

Term, all right, title, and interest in the Improvements and personal property of Tenant located on the Premises (excluding any personal property of Residential Tenants) will vest in Landlord without further action of Landlord or Tenant being necessary or required.

Section 2.06 Landlord's Right to Terminate. Subject to the rights of a Mortgagee under Section 10.04 and Section 10.06, if Final Completion has not occurred on or before the Final Completion Date, Landlord will have the right to terminate this Lease by providing notice to Tenant at any time after the Final Completion Date notifying Tenant (with a copy to each Mortgagee) of Landlord's intent to terminate (a "Termination Notice") if the Final Completion of the Project does not occur by a date certain on or after the Outside Final Completion Date; provided, however, that expiration of the statutory lien period provided in Section 43-4 of the Code of Virginia will not be an element to determine whether Final Completion has occurred prior to the Outside Completion Date (or such later date for Final Completion, as provided in the Termination Notice) if a Termination Notice is sent. Such Termination Notice must be provided not less than 90 days prior to the Outside Final Completion Date in order to allow Tenant to complete the Initial Construction Work by the Outside Final Completion Date, or in the event such Termination Notice is sent on any date thereafter (*i.e.*, less than 90 days prior to the Outside Final Completion Date), Tenant will have 90 days from the date of such Termination Notice to achieve Final Completion. Any further delay in Final Completion resulting from Unavoidable Delays that occur after the Termination Notice is sent will not be counted against the 90 days to achieve Final Completion. Upon expiration of the notice period, if Final Completion has not yet occurred, Tenant will provide to Landlord copies of the Plans and Specifications and such other similar materials related to the Project required to be delivered under the Comprehensive Agreement and this Lease will terminate in accordance with Article 31 of this Lease.

### **ARTICLE 3**

#### **RENT**

Section 3.01. Base Rent. Section 3.01. Base Rent. Commencing on the Commencement Date, Tenant will pay Base Rent to Landlord as follows, either as part of this Lease or separately documented to the satisfaction of the Landlord and as may be apportioned or allocated between this Lease and the 4% Ground Lease, defined herein: (i) a one-time capitalized lease payment in the amount of \$500,000.00 ("Capitalized Lease Payment"), the total amount payable on the Commencement Date, (ii) a one-time lease preparation fee of \$50,000.00 ("Lease Preparation Fee"), the total amount payable on the Commencement Date, (iii) with respect to each calendar year, the payment of \$1.00 per year (prepayable for the entire Term at Tenant's election), and (iv) [with respect to each calendar year an amount equal to 50% of Tenant's Net Cash Flow for such calendar year] [pleaseholder, see Exhibit H. for provisions to be inserted in lease or separate agreement]. The annual Base Rent in subsections (iii) and (iv) immediately above will be payable on May 1<sup>st</sup> of each year with respect to the preceding calendar year. The Base Rent will be paid to Landlord, in currency which, at the time of

payment, is legal tender for public and private debts in the United States of America, without notice or demand, in the manner set forth in this Section. (The Base Rent” for the entire Term of the Lease in an amount equal to \_\_\_\_ dollars, plus the Capitalized Lease Payment and the Lease Preparation Fee have been paid. No additional Base Rent will be due and payable under this Lease for the entirety of the Term.

Section 3.02. Proration of Base Rent, Impositions and Additional Costs. Any Base Rent, Impositions, or other Additional Costs that are due for any partial month, year, or other applicable period in the calendar year in which the Commencement Date occurs or the Expiration Date occurs will be appropriately prorated.

Section 3.03. Net Lease; Audit Rights. It is the purpose and intention of Landlord and Tenant, and the parties hereto agree that Base Rent will be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever. In addition, all Additional Costs, expenses, and other charges relating to the Premises of every kind and nature will be paid directly by Tenant, or if paid by Landlord or a Depository in accordance with this Lease, all such Additional Costs during the term of this Lease will be reimbursed to Landlord on demand, except as otherwise specifically provided in this Lease.

Section 3.04. Base Rent and Additional Costs. All of the amounts payable by Tenant to or for the benefit of Landlord pursuant to this Lease, including, without limitation, Base Rent and Additional Costs which are due from Tenant in any of the provisions of this Lease will constitute rent under this Lease for the purpose of Tenant’s failure to pay any amounts due under this Lease after the expiration of any applicable notice and cure periods, and Landlord, in addition to the rights and remedies in this Lease, will have all of the rights and remedies at law or in equity in the case of non-payment of rent. All Base Rent and Additional Costs will be payable without offset or deduction (unless otherwise expressly provided in this Lease) to Landlord at Landlord’s address set forth in this Lease or as Landlord may from time to time direct.

Section 3.05. Reimbursement of Expenses. Tenant will reimburse Landlord upon demand for all: (a) Additional Costs paid directly by Landlord in accordance with the terms of this Lease; and (b) expenses, including without limitation reasonable out of pocket, third party attorneys’ fees and disbursements, paid or incurred by Landlord in connection with any Event of Default, or arising out of any indemnity or “hold harmless” agreement given or made by Tenant to Landlord in this Lease, or otherwise incurred by Landlord in connection with the successful enforcement of its rights and Tenant’s obligations under this Lease. Upon Tenant’s request, Landlord will provide reasonable documentation of any Additional Costs paid by Landlord. Tenant will have the right to contest the amount or validity, in whole or in part, of any Additional Costs by appropriate proceedings diligently conducted in good faith, in which event Article 34 will govern.

## ARTICLE 4

### IMPOSITIONS

Section 4.01. Impositions. Tenant will pay, as hereinafter provided, all of the following items (collectively, “Impositions”) imposed by any Governmental Authority that are applicable to the Premises or the operation thereof: (a) Taxes, (b) water, water meter and sewer rents, rates and charges, (c) excises, (d) levies, (e) license and permit fees; (f) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (g) fines, penalties and other similar governmental charges applicable to the foregoing and any interest or costs with respect thereto, and (h) any and all other governmental levies, fees, rents, proffers, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, which at any time during the Term are (1) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises, or the use and occupancy thereof by Tenant and (2) encumbrances or liens on (i) the Premises, or (ii) any appurtenances of the Premises, or (iii) any personal property (except personal property which is not owned by or leased to Tenant), Fixtures or other facility used in the operation thereof, or (iv) any amounts due to Landlord under this Lease, including Base Rent and Additional Costs (or any portion of either) payable by Tenant hereunder, each such Imposition, or installment thereof, during the Term to be paid not later than the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest will accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments (subject to the limitation on Tenant’s obligations set forth in Section 4.04 below) and will be responsible for the payment of such installments only, together with applicable interest, if any, relating to periods for which such installment is due.

Section 4.02. Receipts. Tenant, from time to time upon request of Landlord, will promptly furnish to Landlord official receipts of the appropriate imposing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of Impositions.

Section 4.03. Landlord’s Taxes. Nothing herein contained will require Tenant to pay municipal, state, or federal income, gross receipts, inheritance, estate, succession, profit, capital, or transfer gains taxes of Landlord (if any), or any corporate franchise tax imposed upon Landlord (if any) or any transfer or gains tax imposed on Landlord (if any).

Section 4.04. Impositions Beyond Term. Any Imposition relating to a period, a part of which is included within the Term and a part of which is included in a period before the Commencement Date or after the Expiration Date (whether or not such Imposition will be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or will become payable, during the Term) will be apportioned between Landlord and Tenant as of the

Commencement Date or the Expiration Date, as the case may be, so that Tenant will pay the portion of such Imposition attributable to the part of such fiscal period included in the period of time after the Commencement Date or before the Expiration Date and Landlord will pay the portion of such Imposition attributable to the part of such fiscal period not included in the period of time after the Commencement Date or before the Expiration Date. Notwithstanding the foregoing, no such apportionment of Impositions that are held in an Impositions Account as of the Expiration Date will be made if this Lease is terminated prior to the Fixed Expiration Date as the result of an Event of Default; provided, however, that such apportionment will be made at such time as there are no outstanding payment defaults.

Section 4.05. Tenant's Contest. Tenant will have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently that are conducted in good faith, in which event, notwithstanding the provisions of Section 4.01 hereof, payment of such Imposition will be postponed if, and only as long as:

(a) Neither the Premises nor any part thereof, nor any interest of Landlord therein, nor any income of Landlord therefrom (except to the extent covered by security deposited in accordance with this Section 4.05) nor any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost or subject to any new lien, encumbrance or charge, and Landlord by reason thereof be subject to any civil or criminal liability;

(b) Tenant will have deposited with Depository, cash or other security reasonably satisfactory to Landlord in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may be assessed against or become a charge on the Premises or any part thereof in such proceedings; ***provided however***, if a Mortgagee requires Tenant to deposit cash or other security reasonably acceptable to a Mortgagee in connection with any such contest, then Mortgagee's requirements will take precedent over those provided in this Section 4.05(b) and will satisfy Tenant's obligations under this Section 4.05(b), provided further, Tenant will send notice to Landlord of such requirement with evidence reasonably satisfactory to Landlord of Tenant's compliance with such requirement.

(c) Upon the termination of such proceedings, it will be the obligation of Tenant to pay the amount of such Imposition or part thereof as finally determined in the proceedings, together with any costs, fees (including attorney's fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, Depository will return, with interest, if any, any amount deposited with it, ***provided however***, that Depository, at Landlord's request, will disburse such monies on deposit with it directly to the Governmental Authority to whom such Imposition is payable and any remaining monies, with interest, if any, will be returned promptly to Tenant. If, at any time during the continuance of any proceedings, Landlord, in its reasonable opinion, deems the amount deposited with Depository insufficient, Tenant, within 15 Business Days after Landlord's demand, will make a deposit of additional sums or other security to Depository as Landlord requests, and if Tenant fails to make the additional deposit, Landlord may direct Depository to apply the amount already deposited with Depository to the payment, removal and

discharge of any Imposition, plus interest and penalties on the Imposition and costs, fees (including attorney's fees and disbursements) or other liability accruing in any of the proceedings, and the balance of any deposit (plus interest earned thereon), if any, will be returned to Tenant. If the amount held by Depository is insufficient to pay the Imposition in full, Tenant will pay to Landlord (or directly to the Governmental Authority, as Landlord directs in writing) the amount of the deficiency within ten Business Days after demand.

Section 4.06. Contest Not Postpone Tenant's Obligation. Tenant will have the right to seek a reduction in the valuation of the Premises assessed for Taxes or other Impositions and to prosecute any action or proceeding in connection therewith, provided that no such action or proceeding will postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05 hereof.

Section 4.07. Landlord Cooperation in Proceedings. Landlord will not be required to join in any proceedings referred to in Sections 4.05 or 4.06 hereof unless the provisions of any law, rule or regulation at the time in effect will require that such proceedings be brought by or in the name of Landlord, in which event, Landlord will join and cooperate in such proceedings or permit the same to be brought in its name but will not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant will reimburse Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. If Tenant will institute a proceeding referred to in Sections 4.05 or 4.06 and no law, rule, or regulation in effect at the time requires that such proceeding be brought by or in the name of Landlord, Landlord, nevertheless, will, at Tenant's cost and subject to the reimbursement provisions hereinabove set forth, cooperate with Tenant in such proceeding. To the extent any such proceeding results in a refund, credit, or other recompense of Taxes or other Imposition paid by Tenant, Tenant will be entitled to the full benefit thereof and Landlord will assign any such refund, credit, or other recompense to Tenant or as Tenant may direct, except that Landlord will be entitled to any refund, credit, or other recompense in connection with amounts paid by Landlord for any Impositions or as reimbursement for any amounts paid by Landlord in connection with such proceedings, if any.

Section 4.08. Tax Bills. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition will be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice, or bill, at the time or date stated therein.

## ARTICLE 5

### DEPOSITS FOR IMPOSITIONS

Section 5.01. Impositions Subject to Deposit. Subject to the rights of any Mortgagee approved by Landlord, Landlord, by written notice, may at any time after the occurrence and during the continuance of an Event of Default hereunder:

(a) require Tenant to deposit each month into an account to be held with the Depository (the "Impositions Account") an amount sufficient to pay 1/12<sup>th</sup> of the annual Taxes and, subject to Section 5.01(b), any other Impositions required to be paid by Tenant hereunder at least thirty (30) days prior to the Due Date for such Impositions; and

(b) require that Tenant provide to Landlord evidence of payment of any Impositions that Landlord allows Tenant to pay directly during such Event of Default, that are payable on a monthly or more frequent basis within ten Business Days after the Due Date for such Impositions. Landlord may, at any time after the occurrence and during the continuance of an Event of Default, require that any Impositions that Landlord has allowed Tenant to pay directly be subject to the monthly deposit requirements of Section 5.01(a) and the other provisions of this Article 5.

Section 5.02. Deposit of Impositions. After the occurrence and during the continuance of an Event of Default, unless otherwise required by the Mortgagee as approved by Landlord, Tenant, upon the demand of Landlord at any time, will deposit with Depository on the first day of each month during the Term, an amount equal to one-twelfth of the annual Impositions for Taxes and those other Impositions required to be escrowed pursuant to Section 5.01(a). Except as set forth in Section 5.05 below, Landlord agrees that the amounts so deposited with the Depository will be used to pay the Impositions for which such amounts were deposited. The Impositions Account may be held by Depository as a single bank account.

Section 5.03. Rights of Mortgagee. Notwithstanding anything in this Article 5 to the contrary, if a Mortgagee (provided such Mortgagee is an Institutional Lender) requires Tenant to deposit funds to ensure payment of such Impositions, any amount so deposited by Tenant with such Mortgagee will be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Article 5.

Section 5.04. Changes to Deposits to Impositions Account.

(a) If at any time the monies so deposited by Tenant will be insufficient to pay the next installment of Impositions then due, Tenant will, after demand therefor by Landlord, deposit the amount of the insufficiency into the Impositions Account to enable Depository to pay the next installment of Impositions at least 30 days prior to the Due Date thereof.

(b) If at any time the amount of any Imposition is increased or Landlord receives information from the entity or entities imposing such Imposition that an Imposition will be increased and the monthly deposits then being made by Tenant under this Section 5.01 would be insufficient to pay such Imposition 30 days prior to the Due Date thereof, then upon notice from Landlord to Tenant of such fact, the monthly deposits will thereupon be increased and Tenant will deposit immediately with Depository sufficient monies for the payment of the increased Imposition. Thereafter, the monthly payments will be adjusted so that Depository will receive from Tenant sufficient monies to pay each Imposition at least 30 days prior to the Due Date of such Imposition.

(c) For the purpose of determining whether Depository has on hand sufficient monies to pay any particular Imposition at least 30 days prior to the Due Date thereof, deposits for each category of Imposition will be treated separately. Depository will not be obligated to use monies deposited for the payment of an Imposition not yet due and payable for the payment of an Imposition that is due and payable.

Section 5.05. Landlord's Rights During an Event of Default. At Landlord's option after the occurrence and during the continuance of an Event of Default by Tenant, Landlord may withdraw any monies deposited pursuant to Articles 4 or 5 for the cure of any monetary Event of Default. Landlord and Tenant will enter into a mutually acceptable depository agreement with the Depository with respect to the Impositions Account. Tenant agrees that any such depository agreement will provide that Landlord will have a unilateral right to withdraw money from the Impositions Account after the occurrence and during the continuance of an Event of Default by Tenant to pay Impositions or to cure a monetary Event of Default under this Lease and Tenant will have no consent rights over any such withdrawal. If this Lease is terminated by reason of an Event of Default or if Tenant is dispossessed of the Premises pursuant to Article 24 of the Lease, all monies deposited in the Impositions Account then held by Depository will, at Landlord's direction, be paid and applied to Landlord in payment for such Event of Default and any and all other sums due under this Lease and Tenant will promptly pay any resulting deficiency (if any).

Section 5.06. Interest on Impositions Account. Any interest paid on monies deposited pursuant to this Article 5 will become a part of the Impositions Account and will be applied pursuant to the foregoing provisions.

## **ARTICLE 6**

### **LATE CHARGES**

If any payment of Base Rent, Additional Costs or Impositions (to the extent the amount of such Impositions is due to be paid to Landlord) become overdue beyond the due date thereof (or if no such date is set forth in this Lease, then such due date for purposes of this Article 6 will be deemed to be the date upon which demand therefor is made (or if with respect to Impositions, the Due Date for such Impositions)), a late charge on the sums so overdue equal to the

Involuntary Rate, for the period from the due date to the date of actual payment, will become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment. The late charges will be considered Additional Costs and will be paid by Tenant within ten Business Days after demand. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges will constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 will not be construed in any way to extend the grace periods or notice periods provided for in Article 24, provided however, this Article 6 is subject to Tenant's right to contest certain Additional Costs or Impositions, and no such late charge will be incurred while Tenant is contesting any such matters in good faith and in accordance with the terms of this Lease.

## ARTICLE 7

### INSURANCE

Section 7.01. Required Insurance During the Term of the Lease. Tenant will maintain, or cause to be maintained, at its sole cost and expense the following required insurance:

(a) At all times during the Term after Substantial Completion of any Improvements on the Premises, Tenant will maintain or cause to be maintained insurance for the Premises, and for any and all Improvements, equipment, motors and machinery owned or leased by Tenant and located, installed in or used in connection with the Premises, including all alterations, renovations, replacements, substitutions, changes and additions thereto, such insurance will insure against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered) and such other hazards, casualties, risks and contingencies now covered by or that may hereafter be considered as included within a standard "broad form" policy and against loss or damage by other risks and hazards covered by a standard extended coverage insurance policy (including without limitation, fire, lightning, hail, hurricane, windstorm, tidal wave, explosion, acts of terrorism, riot and civil commotion, vandalism, malicious mischief, strike, water damage, sprinkler leakage, burglary, theft, mold and microbial matter (to the extent available at commercially reasonable rates) in an amount equal to the Replacement Value, subject to commercially reasonable sub-limits. Tenant will name Landlord and any Mortgagees as additional insureds on such policy or policies.

(b) At all times during the Term, Tenant will maintain and keep in force commercial general liability insurance in standard form, protecting Tenant, and naming Landlord and any Mortgagees as additional insureds, against personal injury, including without limitation, bodily injury, death or property damage and elevator and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than [[Normally Five Million—confirm Ten]] Million Dollars per occurrence. All such policies will cover the entire Premises.

(c) At all times during the Term, Tenant will maintain and keep in force flood insurance in an amount at least equal to the maximum limit of coverage available with respect to the Premises and the Project under the “Flood Disaster Protection Act of 1973,” and which otherwise complies with the national flood insurance program as set forth in said Act as well as subsequent amendments or successors thereto, provided that such insurance will be required only if and so long as the Premises are or become included in a United States Department of Housing and Urban Development (or successor agency) designated flood prone area. If Tenant is required to maintain such flood insurance policy, then Landlord and any Mortgagees will be listed as additional insureds on such policy.

(d) At all times during the Term, at its own cost and expense, Tenant will provide and keep in force or cause to be provided and kept in force a policy covering business automobile liability which will have minimum limits of One Million Dollars per occurrence combined single limit for bodily injury liability and property damage liability, subject to adjustment every year after the end of the first Lease Year to reflect any increases that are consistent with and customary for other comparable properties of comparable age and quality in the Northern Virginia area. This will be an “any-auto” type of policy including owned, hired, non-owned and employee non-ownership coverage, if applicable. Landlord and Mortgagees will be listed as additional insureds on such policy.\

(e) Beginning when Tenant first commences to rent of any portion of the Premises (e.g., Residential Leases) and at all times thereafter during the Term, Tenant will maintain business or rental interruption insurance (including rental value) in form and substance reasonably acceptable to Landlord and any Mortgagee and in an annual aggregate amount equal to the estimated gross revenues from the Residential Leases (including, without limitation, the loss of all rental payable by all of the Residential Tenants under Residential Leases (whether or not such leases are terminable in the event of a fire or casualty)), such insurance to cover losses for a period from the time of loss until all repairs are fully completed with reasonable diligence and dispatch with an extended period of indemnity of 180 days.

(f) Landlord may, on a commercially reasonable basis, from time to time by written notice to Tenant require Tenant to maintain, or cause to be maintained, at its sole cost and expense, such other insurance covering insurable hazards that are commonly insured against in the case of premises located in Fairfax County, Virginia, that are similarly situated and have similar uses to that of the Premises, provided such other insurance is available on a commercially reasonable basis, provided however, that if Tenant disputes the reasonableness of any new Landlord requirement hereunder, Landlord and Tenant will resolve such dispute in accordance with Article 34 below.

#### Section 7.02 Required Insurance During Construction Work.

In addition to the insurance required to be carried in Section 7.01 or otherwise in this Lease, during any time that Tenant is performing or is causing the performance of Construction Work on the Premises, Tenant will maintain (or cause to be maintained) the following insurance on the Premises:

(a) a complete value “all risk” builders risk insurance on the Premises and any and all

Improvements for which Construction Work is being done in an amount equal to the Replacement Value thereof. Landlord and Mortgagees will be listed as additional insureds on such policy;

(b) worker's compensation insurance in an amount not less than as required by the laws of the Commonwealth of Virginia and applicable federal laws;

(c) employer's liability insurance in an amount not less than the amount maintained by prudent owners of properties in Falls Church, Virginia comparable to the Premises; and

(d) errors and omissions insurance policies for the architects, engineers and other professionals engaged by or on behalf of Tenant in connection with the Construction Work in an amount not less than Two Million Dollars per occurrence, subject to adjustment every year after the end of the first Lease Year to reflect any increases that are consistent with and customary for other comparable properties of comparable age and quality in the Northern Virginia area, but subject to being available commercially reasonable rates for the Project.

#### Section 7.03. Additional Insurance Requirements.

(a) All insurance policies required by this Article 7 will be issued by responsible companies authorized to issue insurance in the Commonwealth of Virginia and have an AM Best rating of not less than A:VI (or other similar rating in the event an AM Best rating is no longer available).

(b) Landlord and Tenant will cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss, and Tenant will execute and deliver to Landlord such proofs of loss and other instruments which may reasonably be required for the purpose of obtaining the recovery of any such insurance moneys.

(c) Tenant will not carry separate liability or property insurance concurrent in form or contributing to the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord and any other parties designated by Landlord with a bona fide insurable interest are included therein as additional insureds with respect to liability and loss payees with respect to property, as their interests may appear, with loss payable as provided in this Lease. Tenant will immediately notify Landlord of the carrying of any such separate insurance and will cause copies of the declaration page(s) of the same to be delivered as in this Lease hereinafter required.

(d) Tenant will provide written notice to Landlord promptly after Tenant is aware that any insurance claim or insurance proceeding has been filed against Tenant.

(e) Tenant will procure policies for all such insurance required by any provision of this Lease for periods of not less than one year (if such policy term is customary and available) and will procure renewals or replacements thereof from time to time and deliver evidence of the same to Landlord at least 30 days before the expiration thereof. If Tenant will fail to procure any such policies or renewals thereof in accordance herewith, Landlord may procure the same, and Tenant

will be obligated to reimburse Landlord as Additional Costs hereunder for all costs incurred by Landlord in connection therewith.

Section 7.04. Deposit of Insurance Premiums. Landlord, by written notice, may at any time after the occurrence and during the continuance of an Event of Default, require Tenant to deposit on the first day of each calendar month with the Depository an amount sufficient to pay the annual premiums for insurance required to be carried by Tenant hereunder when the same will become due and payable, ***provided however***, if an Event of Default exists due to Tenant's failure to pay insurance premiums when due and as to which failure Landlord may (a) require payment to be made on demand or (b) pay the same, Landlord may at any time after such Event of Default has occurred and is continuing, pay such insurance premiums, whereupon Tenant will be obligated to reimburse Landlord therefor as Additional Costs. Notwithstanding anything in this Article 7 to the contrary, if a Mortgagee (provided such Mortgagee is an Institutional Lender) requires Tenant to deposit funds to ensure payment of insurance premiums, any amount so deposited by Tenant with such Mortgagee will be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Section 7.03.

Section 7.05. Delivery of Certificates and Declaration Pages. Upon the execution and delivery of this Lease and thereafter not less than 30 days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Article, certified copies of each of the policies required by this Article 7, bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payment, will be delivered by Tenant to Landlord. Landlord will not be deemed to have responsibility for or knowledge of the accuracy, adequateness, or compliance of such policies with the requirements set forth in this Article 7. Tenant will, upon the written request of Landlord, obtain and deliver to Landlord, within 15 Business Days after the date of any such request, a certificate from Tenant's insurer or independent insurance agent certifying to Landlord, as certificate holder, in reasonable detail the insurance policies then being maintained by Tenant in accordance with the requirements of this Article 7, and providing for the non-cancellation of such policies except upon 30 days prior written notice to Landlord (or ten Business Days in the case of non-payment of premium).

Section 7.06. Landlord's Right to Procure Insurance. If Tenant fails to obtain and maintain insurance as in this Lease provided, Landlord may, but will not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor. All premiums so paid by Landlord will constitute Additional Costs. Such Additional Costs will be payable by Tenant within 10 Business Days after written notice from Landlord that Landlord has made payment of such premiums and reimbursement is being demanded therefor. The payment by Landlord of premiums for any such insurance policy will not be, or be deemed to be, a waiver or release of the Event of Default by Tenant with respect thereto or the right of Landlord to pursue any other remedy under this Lease or by law in relation to such Event of Default.

Section 7.07 Waiver of Subrogation. Tenant hereby waives any and every claim which arises or may arise in its favor and against Landlord during the Term, for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises or any

portion thereof or any claims for loss for which Landlord may be liable under this Lease, which loss or damage is covered by valid and collectible insurance policies, to the extent that such loss or damage is recoverable under such policies. This waiver will be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss or damage to the Premises or any of Tenant's (or its Residential Tenants, subtenants, or licensees) property located within or upon, or constituting a part of, the Premises. Inasmuch as the said waiver will preclude the assignment of any claim by way of subrogation (or otherwise) to an insurance company (or any other person), Tenant agrees immediately to give each insurance company which has issued to it policies of insurance, written notice of the terms of this waiver, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of coverage by reason of the waiver.

## ARTICLE 8

### USE OF INSURANCE PROCEEDS

Section 8.01. Tenant's Obligation to Restore. To the extent that Restoration is possible at the time of a casualty:

(a) If all or any part of any of the Project is destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant will give to Landlord immediate notice, except that no notice or related approvals from Landlord will be required if the cost of repairs, alterations, restorations, replacements and rebuilding (collectively, "Restoration"), as reasonably estimated by Tenant, will be less than Twenty-Five Thousand Dollars as such amount is adjusted on the fifth anniversary of the Commencement Date and on each fifth anniversary of the Commencement Date thereafter occurring during the Term, by the percent increase, if any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Commencement Date occurs). Whether or not the foregoing notice requirement applies, Tenant will, whether or not such damage or destruction will have been insured, and whether or not insurance proceeds, if any, will be sufficient for the purpose of such Restoration, with reasonable diligence (subject to Unavoidable Delays and, as applicable, subject to Section 8.01(b) below) repair, alter, restore, replace and rebuild (collectively, "Restore") the same, at least to the extent of the value it would have had absent the casualty and as nearly as possible to the condition, quality and class of the Project existing immediately prior to such occurrence, with such changes or alterations as Tenant, with the consent of Landlord, will elect to make, provided that, after the Restoration, the Project will be, to the extent possible given the amount of damage and destruction to the Project, in substantial conformity with the original Plans and Specifications; with any changes as mutually agreed to by Tenant and Landlord, acting in their reasonable discretion. If Tenant fails or neglects to Restore with reasonable diligence (subject to Unavoidable Delays and, as applicable, subject to Section 8.01(b) below) the Project or the portion thereof so damaged or destroyed, or having so commenced such Restoration, will fail to complete the same with reasonable diligence (subject to

Unavoidable Delays) in accordance with the terms of this Lease, or if prior to the completion of any such Restoration by Tenant, this Lease will expire or be terminated for any reason, Landlord may after written notice to Tenant and expiration of the cure periods applicable to such failure, but will not be required to, complete such Restoration at Tenant's expense. Each such Restoration will be done in accordance with the provisions of this Lease. In any case where this Lease will expire or be terminated prior to the completion of Restoration, Tenant will account to Landlord for all amounts spent in connection with any Restoration which was undertaken and will pay over to Landlord, within ten Business Days after demand, the remainder, if any, of the Restoration Funds previously received by it. Tenant's obligations for any Restoration which commenced (or which Tenant was obligated to commence) under this Section 8.01 will survive the expiration or termination of this Lease.

(b) Tenant will commence, no later than, as applicable,

(i) if: (A) five percent or less of the Residential Units are rendered uninhabitable; or (B) twelve and one-half percent or less of the common areas of the Project (including, without limitation, the Public Use Improvements to the extent that such improvements have not yet been accepted by the applicable Governmental Authority and the bonds therefor have not yet been released) are rendered unusable; or (C) twelve and one-half percent or less of the parking facilities is rendered unusable, within three months after the casualty event;

(ii) if: (A) (1) greater than five percent, but not more than ten percent of the Residential Units are rendered uninhabitable; or (2) greater than twelve and one-half percent, but not more than twenty-five percent of the common areas of the Project (including, without limitation, the Public Use Improvements to the extent that such improvements have not yet been accepted by the applicable Governmental Authority and the bonds therefor have not yet been released) are rendered unusable; or (3) greater than twelve and one-half percent, but not more than twenty-five percent of the parking facilities is rendered unusable, and (B) insurance proceeds sufficient to cover the costs of Restoration (less any deductible under such insurance policies) are available to be applied to the Restoration, within six months after the casualty event; or

(iii) in all other cases, within 12 months after the casualty event, and in any such case will continue thereafter diligently and without interruption Restore the same as provided herein. Tenant will diligently prosecute such reconstruction or repair to completion, and in any event, such reconstruction or repair will be completed, subject to Unavoidable Delays, (X) within six months after the commencement of the Restoration in the case of a casualty addressed in Section 8.01(b)(i), (Y) within 12 months after the commencement of the Restoration in the case of a casualty addressed in Section 8.01(b)(ii) and (B) within 24 months after the commencement of the Restoration in the case of a casualty addressed in Sections 8.01(b)(iii). If Tenant does not commence reconstruction or repair within the applicable time period, or if Tenant does not thereafter diligently prosecute such reconstruction or repair to completion and complete such reconstruction or repair within the applicable time period (subject to Unavoidable Delay), then it will be deemed an Event of Default.

(c) In no event will Landlord be obligated to Restore the Project or any portion thereof or to pay any of the costs or expenses thereof.

Section 8.02. Restoration Approvals. Prior to commencing any Restoration, Tenant will submit completed final drawings and plans and specifications (which may be in the form of field marked copies of the original plans and specifications) for the Restoration prepared by an Architect which comply with the all Applicable Laws and, to the extent possible given the amount of damage and destruction to the Project, materially conform to the original Plans and Specifications approved by Landlord for the Initial Construction Work or with any changes as mutually agreed to by Tenant and Landlord, acting in their reasonable discretion (the “Restoration Plans and Specifications”). Landlord will review the proposed Restoration Plans and Specifications to determine whether they materially comply. If Landlord determines that they do comply, Landlord will notify Tenant in writing. If Landlord reasonably determines that the Restoration Plans and Specifications, as revised, do not materially comply with the first sentence of this Section (and any changes agreed to by the parties), Landlord will notify Tenant, specifying in writing in what respects they do not so comply. In such latter event, Tenant and Landlord will reasonably cooperate with one another in addressing the comments of Landlord. Tenant will revise the proposed Restoration Plans and Specifications to reflect the agreed upon changes and will then resubmit the Restoration Plans and Specifications to Landlord for review. The initial review by Landlord will be carried out within 20 Business Days of the date of submission of the Restoration Plans and Specifications; Landlord’s review of revisions to the Restoration Plans and Specifications will be completed 20 Business Days after the date of submission of the revised Restoration Plans and Specifications. If Landlord has not notified Tenant of its determination within the applicable period, Landlord will be deemed to have approved the Restoration Plans and Specifications and determined that they materially comply with this Section 8.02, with any changes mutually agreed to by Tenant and Landlord.

Section 8.03. Control of Proceeds. So long as a Mortgagee holds a Mortgage on the Premises, the proceeds of any fire or casualty insurance with respect thereto may be made payable to such Mortgagee or, if provided in the Mortgage, an insurance trustee, for application in accordance with the terms of the Mortgage, and such proceeds will be held and disbursed by the Mortgagee to apply to the costs of Restoration pursuant to such provisions as the Mortgage may provide therefor. If there is not a Mortgagee with respect the Premises at the time of such casualty (or any existing Mortgage is fully discharged by application of a portion of the insurance proceeds), or if the proceeds of fire or casualty insurance are not required to be paid to a Mortgagee or insurance trustee to Restore the Project under the terms of the applicable Mortgage but are nevertheless available to Tenant for such purposes, then the insurance proceeds (or remaining proceeds after the first use of insurance proceeds to discharge Mortgages) will be deposited with the Depository (other than proceeds for rent insurance) and will be subject to monthly disbursement procedures as more fully described in Section 8.04. If the insurance proceeds available for such purpose are not sufficient to Restore the Project to its prior condition or to a condition in compliance with this Lease, Tenant will nonetheless, at its own cost and expense, provide the funds necessary, or obtain new financing as necessary, to Restore the Project to such condition. Provided no Event of Default has occurred and is continuing, any excess insurance

proceeds remaining after the Restoration of the Project will be paid over to Tenant or as Tenant may direct. If Depository is to disburse the insurance proceeds, the provisions of Section 8.04 will apply.

Section 8.04. Conditions Precedent to Disbursements. The following will be conditions precedent to each payment made to Tenant by Depository if required in Section 8.03 above:

(a) Subject to the provisions of Section 8.04, Section 8.05 and, if applicable, Section 8.06, Depository will pay over to Tenant from time to time, upon the following terms, any monies which may be received by Depository from insurance provided by Tenant (other than rent insurance) or cash or the proceeds of any security deposited with Depository pursuant to Section 8.06 (collectively, the “Restoration Funds”); *provided however*, that Depository, before paying such monies over to Tenant, will be entitled to reimburse itself and Landlord therefrom to the extent, if any, of the necessary, reasonable and proper expenses (including reasonable attorneys’ fees) paid or incurred by Depository and Landlord in the collection of such monies. Depository will pay to Tenant, as hereinafter provided, the Restoration Funds, for the purpose of the Restoration.

(b) Prior to commencing any Restoration, Tenant will furnish Landlord with an estimate of the cost of such Restoration, prepared by an Architect. Landlord, at Landlord’s expense, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Restoration. If there is any dispute as to the estimated cost of the Restoration, such dispute will be resolved by dispute resolution in accordance with the provisions of Article 34, and any time required to resolve such dispute will constitute an Unavoidable Delay in the Restoration process.

(c) Subject to the provisions of Section 8.04, Section 8.05 and, if applicable, Section 8.06, the Restoration Funds will be paid to Tenant in installments as the Restoration progresses, upon application to be submitted by Tenant to Depository and Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation in the Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant. If any vendor’s, mechanic’s, laborer’s, or materialman’s lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration of the Premises is created or permitted to be created by Tenant and is filed against Landlord, or any assets of, or funds appropriated to, Landlord, Tenant will not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise). Notwithstanding the foregoing, subject to the provisions of Section 8.04(d), the existence of any such lien will not preclude Tenant from receiving any installment of Restoration Funds, provided such lien will be discharged with funds from such installment.

(d) The amount of any installment to be paid to Tenant will be (i) the product of (x) the total Restoration Funds and (y) a fraction, the numerator of which is the cost of labor and materials theretofore incorporated (or delivered to the Premises to be incorporated) by Tenant in the Restoration and the denominator of which is the total estimated cost of the Restoration, such

estimated cost determined in accordance with Section 8.04(b), less (ii) (A) all payments theretofore made to Tenant out of the Restoration Funds.

(e) Notwithstanding the foregoing, if Landlord makes the Restoration at Tenant's expense, as provided in Section 8.01(a), then Depository will pay over the Restoration Funds to Landlord, upon request, to the extent not previously paid to Tenant pursuant to this Section 8.04, and Tenant will pay to Landlord, within ten Business Days after demand, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to complete the Restoration. Upon completion of the Restoration, Landlord will deliver to Tenant a certificate, in reasonable detail, setting forth the expenditures made by Landlord for such Restoration.

(f) There will be submitted to Depository and Landlord the certificate of Architect in industry standard form to the effect that (i) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses will be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificate, (ii) no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds previously received by Tenant, (iii) the sum then requested does not exceed the value of the services and materials described in the certificate, and (iv) the balance of the Restoration Funds held by Depository will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion;

(g) There will be furnished to Landlord an official search, or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien with respect to the Premises or the Restoration created or permitted to be created by Tenant affecting Landlord, or the assets of, or funds appropriated to, Landlord, which had not been satisfied or discharged (by bonding or otherwise) except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn; and

(h) At the time of making such payment, there is no existing and unremedied Event of Default on the part of Tenant.

(i) Any Restoration obligations under this Lease will be subject to the approval of the approved Mortgagee.

Section 8.05. Major Casualty.

(a) If any loss, damage or destruction occurs, the cost of Restoration of which equals or exceeds Two Million Dollars in the aggregate, determined as provided in Section 8.04(b) (as such amount is adjusted on the fifth anniversary of the Commencement Date and on each fifth anniversary of the Commencement Date thereafter occurring during the Term, by the percent increase, if any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Commencement Date occurs, in addition to the requirements set forth in this Article 8 with respect to Restoration, Tenant will comply with the terms of Section 11.02, Section 11.04, Section 11.05, Section 11.06, Section 11.07, Section 11.08, Section 11.11, Section 11.12 and Section 11.15 with respect to such Restoration.

(b) Notwithstanding that the cost of Restoration is less than Two Million Dollars, as such amount is increased as provided in Section 8.05(a), such cost to be determined as provided in Section 8.04(b), to the extent that any portion of the Restoration involves, (i) a material changes to the exterior of the Project, or (ii) a change in the height, bulk or setback of the Project from the height, bulk or setback existing immediately prior to the damage or destruction, then Tenant will furnish to Landlord at least 30 days prior to commencement of the Restoration a complete set of Restoration Plans and Specifications for the Restoration, involving such work or such change, prepared by an Architect, subject to Landlord's review and approval as provided in this Article 8.

(c) If Tenant desires to modify the Restoration plans and specifications that Landlord theretofore has approved pursuant to Sections 8.02 or Article 11, Tenant will submit the proposed modifications to Landlord. Landlord will review the proposed changes to determine whether or not they (i) conform to the requirements of Section 8.01 and (ii) provide for design, equipment, engineering, and materials which are comparable in quality to those provided for in the approved plans and specifications, and will approve such proposed changes if they do conform and provide. If Landlord determines that the proposed changes are not satisfactory in light of the above criteria, it will advise Tenant, specifying in what respect the plans and specifications, as modified, do not conform to requirements above. Tenant will revise the plans and specifications to meet Landlord's objections and will deliver same to Landlord for review. Each review by Landlord will be carried out within 20 Business Days of the date of delivery of the plans and specifications, as revised (or one or more portions thereof), by Tenant, and if Landlord will not have notified Tenant of its determination within such 20 Business Day period, it will be deemed to have determined that the proposed changes are satisfactory.

Section 8.06. Deposit of Proceeds. If the cost of any Restoration, determined as provided in Section 8.04(b), exceeds both (i) Two Million Dollars (as such amount will be increased as provided in Section 8.05(a)) and (ii) the Restoration Funds, after all required payments to Mortgagees are made, then, prior to the commencement of such Restoration, Tenant will deposit with Depository, as security for completion of the Restoration, a bond, cash or other security reasonably satisfactory to Landlord in the amount of such excess, to be held and applied by Depository in accordance with the provisions of Section 8.04; ***provided however***, that if Tenant has made arrangements for additional financing from a Mortgagee for portions of the cost of the

Restoration then such portion of the Restoration costs expected to be advanced by the Mortgagee for such purpose need not be deposited with the Depository, and the new Mortgagee may act as the Depository with respect to disbursement of the insurance proceeds then available.

Section 8.07. No Abatement. This Lease will not terminate or be forfeited or be affected in any manner, and there will be no reduction or abatement of Base Rent, Additional Costs or Impositions payable hereunder, by reason of damage to or total, substantial or partial destruction of any of the Project or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant waives any and all rights available at law or in equity to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of all Base Rent, Additional Costs and Impositions required by this Lease will continue as though the Project had not been damaged or destroyed and without abatement, suspension, diminution, or reduction of any kind.

Section 8.08. As-Built Plans. If for any completed Restoration the cost of which exceeds Two Million Dollars (as such amount will be increased as provided in Section 8.05(a)), Tenant has not delivered same to Landlord, Tenant will deliver to Landlord, within 90 days of the completion the Restoration, a complete set of “as built” plans (which may be in the form of field marked copies of the original plans and specifications) together with a statement in writing from Tenant or its Architect that such plans are complete and correct in all material respects.

Section 8.09. Casualty Where Restoration is Impossible or at End of Term. In the event of substantial damage or destruction by a casualty at any time after the \_\_\_\_ anniversary of the Commencement Date, and so long as no Tenant Event of Default exists hereunder, Tenant, in lieu of Restoring the Project, subject to the rights of any Mortgagee, will have the right to terminate this Lease upon 30 days’ notice to Landlord, in which event all insurance proceeds in respect of such casualty (or a sum equivalent to such amount) will be payable as follows: first, to satisfy Tenant’s obligations to any and all Mortgagees; second, to the demolition, clearing and grading work occasioned by such casualty described below; third, to pay any Base Rent, Additional Costs or other amounts owed by Tenant to Landlord under this Lease; and fourth, to be divided between Tenant and Landlord in relation to the loss sustained by each, taking into consideration the remaining Term and the discounted value of Landlord’s remainder interest in the Improvements destroyed by such destruction, Tenant’s interest in the remainder of the Term and the Improvements and such other matters as will be appropriate to determining the amount of such loss after any taxes or other charges have been paid. If the parties are unable to agree on such division at the end of the immediately preceding sentence, then the division will be made pursuant to dispute resolution in the manner provided in Article 34. Tenant, at its sole expense, will deliver to Landlord any plans or other technical materials related to the design and construction of the Improvements and, at the request of Landlord, will remove any damaged Improvements and restore that portion of the Premises on which the demolished Improvements were located to a cleared and safe condition and at a grade approximately level with the abutting land and otherwise in accordance with all Applicable Laws relating to the removal of Improvements on the Property.

Upon the completion of any such demolition, clearing and grading work to the reasonable satisfaction of Landlord and the payment of such portion of any such insurance proceeds due to Landlord pursuant to the terms of this Section 8.09, and provided that no Tenant Event of Default exists, this Lease will be terminated without liability or further recourse to the parties hereto, provided that any Base Rent and Additional Costs owed by Tenant to Landlord as of the date of said termination will be paid or otherwise carried out in full.

## ARTICLE 9

### CONDEMNATION

#### Section 9.01. Taking of All or Substantially All of Premises.

(a) If the whole or substantially all of the Premises will be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term will terminate and expire on the date of such taking.

(b) The term “substantially all of the Premises” will mean such portion of the Premises as when so taken would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws or building regulations then existing or prevailing permit the economic operations of the Project for their permitted uses hereunder.

(c) Each of the parties will execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards.

Section 9.02. Date of Taking. For purposes of this Article 9, the date that the Premises will be deemed to be “taken” will be on the earlier of (i) the date on which actual possession of the whole or substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or Virginia law or (ii) the date in which title to the Premises or the portion thereof will have vested in any lawful power or authority pursuant to the provisions of the applicable federal or Virginia law.

Section 9.03. Partial Taking: Tenant’s Obligation to Restore. If less than substantially all of the Premises are taken, this Lease and the Term will continue as to the portion of the Premises remaining without abatement of Base Rent or Additional Costs or diminution of any of Tenant’s obligations hereunder. Tenant, whether or not the award or awards, if any, will be sufficient for the purpose will (subject to Unavoidable Delays) proceed diligently to Restore any remaining part of the Project not so taken so that the latter will be complete, operable and in good condition and repair in conformity with the requirements of Section 8.01. In the event of a partial taking pursuant to this Section, the entire award attributable to such taking will be deposited with the Depository for application to the cost of Restoration of the part of the Project not so taken. Subject to the provisions and limitations in this Article 9, Depository will make available to Tenant as much of

that portion of the award actually received and held by Depository, if any, less all necessary and proper expenses paid or incurred by Depository, the Mortgagee most senior in lien and Landlord in the condemnation proceedings, as may be necessary to pay the cost of Restoration of the part of the Project remaining. Such Restoration will be done in accordance with and subject to the provisions of Article 8. Payments to Tenant will be disbursed in the manner and subject to the conditions set forth in Article 8. Any balance of the award held by Depository and any cash and the proceeds of any security deposited remaining with Depository pursuant to Section 9.04 remaining after completion of the Restoration and Landlord receiving its Respective Allocation pursuant to Section 9.04 below, will be paid to Tenant or its Mortgagee, if any. Each of the parties will execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards. Any obligation to restore will be subject to the approval of the approved Mortgagee.

Section 9.04. Condemnation Award. In any condemnation proceedings, Landlord and Tenant each agree to cooperate in obtaining the highest award possible and agree to request that separate awards be made for Landlord's and Tenant's interests in the Premises and the Improvements. If separate awards are not made for Landlord's and Tenant's interests in the Premises and the Improvements, any compensation which may be awarded on account of the taking of all of the Premises, and improvements by eminent domain will be fairly allocated between the ownership of the fee and the remainder of the leasehold estate in accordance with the loss and damage suffered by each, taking into consideration all the relevant facts and circumstances, including, but not limited to, the then present value of the Premises and all of the improvements and the present value of Landlord's remainder interest in such Improvements as well as the value of Landlord's interest in the fee and Tenant's interest in the Lease for the remainder of the Term (i.e. from the date the Premises is taken until the Fixed Expiration Date). If the parties are unable to agree on the allocation of the condemnation award between Landlord and Tenant (the "Respective Allocations") within 30 days after the condemnation proceedings have terminated, the allocation will be determined by appraisal, using the method hereinafter set forth:

If, during such negotiation period, the parties do not agree in writing, Landlord and Tenant will each designate in writing, within five Business Days after the expiration of the aforementioned 30-day period, an MAI or similarly accredited appraiser (an "Appraiser") having at least ten years' experience in the appraisal of commercial real estate in the Northern Virginia area of metropolitan Washington, DC for purposes of determining the Respective Allocations. The Appraiser may not be affiliated in any respect with either Landlord or Tenant or their respective affiliates. Within 15 Business Days after the designation of the Appraisers, the two Appraisers so designated will designate a third Appraiser of the same qualifications. The Appraisers so designated will, within 60 days after the date of the third Appraiser is designated, determine the Respective Allocations.

If the three Appraisers are unable to agree upon the Respective Allocations, then the Respective Allocations will be the average of the two closest appraisals. Landlord and Tenant will each cooperate with the Appraisers and provide all information reasonably requested by the Appraisers to all three Appraisers at the same time. Any information provided by Landlord or

Tenant to the Appraisers will also simultaneously be delivered to the other party hereto. Each Appraisers will give written notice to the parties stating his/her determination and will furnish to each party a copy of such determination signed by him/her.

(c) The determination of such Appraisers will be final and binding upon the parties and a final judgment thereon may be entered in a court of competent jurisdiction on the petition of either party. If either party, or the two Appraisers designated by the parties, fail to timely designate an Appraiser (or a replacement Appraiser pursuant to the next sentence), then either party may apply to a court of competent jurisdiction to make such designation. In the event of the failure, refusal, or inability of any Appraiser to act, a new Appraiser with the qualifications described above will be appointed promptly in his stead. The party who designated the Appraiser so failing, refusing or unable to act will designate the replacement Appraiser, or, if the Appraiser failing, refusing or unable to act was the Appraiser designated jointly by the parties' Appraisers, the parties' Appraisers will jointly designate the replacement Appraiser.

(d) Landlord and Tenant will each bear the cost of its Appraiser and Landlord and Tenant will share equally the cost of the third Appraiser. If the Appraisers will fail to make the determination herein provided, then either party will have the right to institute such action or proceeding in such court as will be appropriate in the circumstances and Tenant and Landlord will share equally the cost of such action.

Section 9.05. Temporary Taking. If the temporary use of the whole or any part of the Premises will be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant will give prompt notice thereof to Landlord and the Term will not be reduced or affected in any way and Tenant will continue to pay all Base Rent and Additional Costs and Impositions payable by Tenant hereunder without reduction or abatement and perform all of Tenant's other obligations under this Lease, and Tenant will be entitled to receive for itself any award or payments made in connection with such temporary taking, ***provided however***, if the taking is for a period extending beyond the Term, such award or payment will be apportioned between Landlord and Tenant as of the Expiration Date; and further ***provided however***, that the amount of any award or payment allowed or retained for the Restoration of the Project and not previously applied for such purpose will remain the property of Landlord, if this Lease will expire prior to such Restoration.

Section 9.06. Sale in Lieu of Condemnation. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds will be distributed as provided in cases of condemnation as provided in Section 9.04 above.

Section 9.07. Participation in Proceedings. Landlord, Tenant, and any Mortgagee will be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 9.08. Claims for Personal Property. Notwithstanding anything to the contrary contained in this Article 9, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant (and, if applicable, its Residential Tenants) will have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its Residential Tenants (but not including any Fixtures) and for relocation expenses of Tenant or its Residential Tenants, and all awards and damages in respect thereof will belong to Tenant or its Residential Tenants, as applicable, and Landlord hereby waives any and all claims to any part thereof; *provided however*, that if there will be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant and its Residential Tenants, or awards and damages, will be addressed as provided in Section 9.04.

## ARTICLE 10

### ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

#### Section 10.01. Assignment; Subletting; Transfers.

(a) Tenant acknowledges that Landlord has examined and relied on (i) the creditworthiness and experience of Tenant, and (ii) Tenant's or its Affiliates' (if applicable) management and operation of properties such as the Project, in agreeing to lease the Premises to Tenant pursuant to the terms and conditions of this Lease. Except as otherwise specifically provided in this Section 10.01:

(j) neither this Lease nor any interest of Tenant in this Lease, will be sold, assigned, or otherwise transferred, whether by operation of law or otherwise except to an affiliate of the Tenant provided the Control of the Tenant does not change;

(ii) Tenant will not sublet all or any portion of the Premises (except in connection with a Residential Lease or other subleases typically entered into in connection with ancillary or incidental uses typically found in affordable senior living facility projects, and except in accordance with Article 38 below);

(iii) nor will any of the: (A) general or limited partnership interests of Tenant (if Tenant is a partnership), or (B) membership interests of Tenant (if Tenant is a limited liability company), or (C) issued or outstanding capital stock of Tenant (if Tenant is a corporation); be (voluntarily or involuntarily) sold, assigned, transferred, pledged or encumbered, whether by operation of law or otherwise, nor will any voting trust or similar agreement be entered into with respect to such stock, nor any reclassification or modification of the terms of such stock take place, nor will there be any merger or consolidation of such corporation into or with another corporation nor will additional stock (or any warrants, options or debt securities convertible, directly or indirectly, into such stock) in any such corporation be issued if the issuance of such additional stock (or such other securities, when exercised or converted into stock), will result in a change of the controlling stock ownership of such corporation as held by the shareholders thereof as of the

Commencement Date, *provided however*, Tenant may transfer such partnership interests, membership interests or capital stock (as applicable) in accordance with Article 38 below, so long as Control of Tenant does not change (i.e. the possession of power to direct or cause the direction of the management and policy of Tenant remains the same as prior to such transfer of interests or capital stock) and such transfer made in accordance with this proviso will not constitute a Transfer.

Each of the foregoing transactions referenced in (i) through (iii) above are hereinafter referred to as a "Transfer".

(a) Tenant may not make any Transfer prior to or within the first five years after Final Completion. After the five year anniversary of the Final Completion, Tenant may not make a Transfer, except upon the prior written approval of Landlord, which Landlord may grant or withhold in its sole and absolute discretion (subject to Section 10.01(e) below), *provided however*, that Landlord's consent will not be unreasonably withheld, conditioned or delayed so long as (i) no Event of Default will have occurred and then be continuing hereunder (or such Event of Default is cured simultaneously with such Transfer), and (ii) Tenant will have otherwise complied with the provisions of this Article 10. Tenant may not make a Transfer to any Person, in which, an ownership interest, in the aggregate, of five percent or greater is then held, directly or indirectly (other than as a result of ownership of publicly traded securities), by any individual (i) who has ever been convicted of a felony, (ii) against whom any action or proceeding is pending to enforce rights of the Commonwealth of Virginia, the County of Fairfax, Virginia or any agency, department, political subdivision (including without limitation, the Fairfax County Redevelopment and Housing Authority), public authority or public benefit corporation of either, or (iii) with respect to whom any notice of substantial monetary default which remains uncured has been given by the Commonwealth of Virginia, the County of Fairfax, Virginia or any agency, department, public authority or any public benefit corporation of either.

(c) In each instance when Tenant desires to effect a Transfer, and as a condition to the effectiveness thereof, Tenant will, prior to the effective date of such transaction, notify Landlord of the proposed transaction and submit to Landlord the following documents and information (which documents may be unexecuted but will, in all other respects, be in substantially final form) and such other information and documents Landlord may reasonably require:

(i) a copy of the proposed instrument(s) of assignment or sublease of the Premises or assignment of ownership interests in Tenant containing, *inter alia*, the name, address, and telephone number of the assignee;

(ii) a copy of the proposed instrument(s) of assumption of Tenant's obligations under this Lease by said assignee (which need not be in a separate document from the instrument of assignment);

(iii) a certificate of the assignee or subtenant (or an authorized officer, general partner or managing member thereof), setting forth (x) in the case of a partnership or limited liability company, the names and addresses of all partners (general and limited (if applicable)) or

members thereof of the assignee having a five percent or greater ownership interest in the assignee, (y) in the case of a corporation, the names and addresses of all persons having five percent or greater record ownership of stock in the assignee, and all directors and officers of the assignee; ***provided however***, that in the case of an entity whose equity interests are publicly traded the names of the holders of publicly traded securities need not be disclosed; and

(iv) any such other documents and information as Landlord may reasonably request to permit Landlord to evaluate whether the proposed transferee or sublessee meets the criteria set forth in Section 10.01(e).

Landlord will within 20 Business Days after receipt of the foregoing, notify Tenant whether it grants its consent to such Transfer. If Landlord denies its consent to such transaction or determines that the information provided in the applicable certificate is insufficient to determine whether or not Landlord's consent may not be unreasonably withheld, conditioned, or delayed, then Landlord will notify Tenant in writing specifying the reasons for such denial or determination. If Landlord does not notify Tenant of such denial or determination within such period, it will be deemed to have consented to the proposed transaction and to have determined that the documents and the information submitted establish compliance with the applicable provisions of this Section 10.01. Tenant agrees to bear and will pay or reimburse Landlord on demand for all out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection with the review, approval, and documentation of any Transfer under this Article 10. If Landlord has consented (or be deemed to have consented) to the proposed Transfer or has determined that the documents and information establish compliance with the applicable provisions of this Section 10.01, such consent or determination will still be conditioned upon the delivery to Landlord of the applicable executed documents of transfer, assignment, or conveyance and receipt of payment or reimbursement by Landlord as set forth in the preceding sentence. Any attempted or purported Transfer, if made in contravention of this Article 10, will be null and void and of no force and effect and will constitute an immediate Event of Default under this Lease.

(e) Notwithstanding any of the foregoing in this Article 10 to the contrary, Landlord will not unreasonably withhold its consent to any proposed Transfer provided no Event of Default is then existing hereunder (or such Event of Default is cured simultaneously with such Transfer) and that the proposed transferee satisfies the following conditions:

(i) the proposed transferee will have (or will be Controlled by an entity that has) or will have arranged for management services through an asset management or property management company approved by Landlord (which approval will not be unreasonably withheld, conditioned, or delayed) that has at least ten years of experience in operating and maintaining apartment projects similar or larger in size to the Project;

(ii) the proposed transferee will have or will be Controlled by an entity that has a Net Worth at least equal to the Net Worth Requirement;

(iii) the proposed transferee will use the Premises for the uses permitted under this Lease;

(iv) the proposed transferee is not a person or entity prohibited from owning the interests of Tenant hereunder pursuant to Section 10.01(c) above; and

(v) Tenant pay all of Landlord's reasonable out-of-pocket costs and expenses related to its review and approval of the Transfer.

(f) Subject to compliance by a Mortgagee with the provisions of Sections 10.04 hereof, the requirements in this Section 10.01 of consent by Landlord will not apply to the acquisition of the Premises by such Mortgagee or another purchaser of the Premises pursuant to a foreclosure of a Mortgage or through a deed or instrument of transfer delivered in lieu of such foreclosure, so long as such Mortgagee or purchaser, as applicable, will, in the instrument transferring to such Mortgagee the interest of Tenant hereunder, assume and agree to perform all of the terms, covenants and conditions of this Lease thereafter to be observed or performed by Tenant. The notice and review periods set forth in this Section 10.01 will not apply (i) in connection with a transfer by a Mortgagee to a purchaser from Mortgagee after a foreclosure or acceptance of a deed or instrument of transfer delivered in lieu of foreclosure, or (ii) to any purchaser at foreclosure; ***provided however***, the criteria set forth in Section 10.01(e)(i)-(v) will apply to any such purchaser except Mortgagee. Each reference in this Section 10.01 to "Mortgagee" will be deemed to include a wholly owned subsidiary (direct or indirect) of such Mortgagee or its direct parent, provided such Mortgagee has delivered to Landlord a written notice advising that such a subsidiary should be so deemed and certifying (i) that such subsidiary is wholly owned (directly or indirectly) by such Mortgagee or its direct parent and (ii) that such subsidiary is authorized to act in the place and stead of such Mortgagee.

(g) Any Transfer approved by Landlord in accordance with, or otherwise allowed (with or without Landlord's approval) pursuant to the terms of this Article 10 will be a "Permitted Transfer". Upon a Permitted Transfer, the previous "Tenant" will be relieved from all subsequent obligations and liabilities arising under this Lease.

(h) No assignment of this Lease, subletting of the Premises as an entirety or substantially as an entirety or other Transfer will have any validity except upon compliance with the provisions of this Article 10 or Article 38.

(i) Any assignment of this Lease will not be effective for purposes of this Lease unless and until the assignee, in the case of an assignment, executes, acknowledges and delivers to Landlord an agreement that provides that the assignee (A) assumes the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such assignment, and (B) agrees that the provisions of this Article 10 will continue to be binding upon assignee in the future. Tenant covenants that, if Tenant engages in an assignment or transfer in violation of the provisions of this Lease, Tenant will remain fully and

primarily and jointly and severally liable for the payment of all Base Rent, Additional Costs and Impositions due and to become due under this Lease and for the performance and observance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Tenant to be performed or observed until a Permitted Transfer occurs.

(j) Notwithstanding anything to the contrary in this Section 10.01 to the contrary, *provided* Tenant (i) is not in an Event of Default, (ii) provides at least 30 days prior written notice to Landlord of Tenant's intention to assign this Lease to an Affiliate of Tenant, (iii) Tenant provides Landlord with such reasonable documentation as requested by Landlord in order to verify compliance with Section 10.01(d) and Section 10.01(e) above, and (iv) Tenant pays Landlord's out-of-pocket expenses in accordance with Section 10.01(e)(v) above, Tenant may assign this Lease or transfer all or any portion of the Premises to an Affiliate of Tenant without Landlord's consent or approval being required and such Transfer or assignment will be a Permitted Transfer hereunder.

Section 10.02. Consent Limited to Transaction. Any consent by Landlord under Section 10.01 above will apply only to the specific transaction thereby authorized and will not relieve Tenant from any requirement hereunder of obtaining the consent of Landlord to any further Transfer of this Lease or the interests of Tenant.

Section 10.03. Landlord's Right of First Offer. Subject and subordinate to Section 10.01(k) above, if Tenant would like to make a Permitted Transfer with respect to all or any portion of the Premises (the "Proposed Transfer Premises") pursuant to the terms and conditions of this Article 10, Tenant will promptly give Landlord notice of such election and will first offer to transfer the Proposed Transfer Premises to Landlord or an Affiliate of Landlord pursuant to the terms of this Section 10.03. Such offer may be made by Tenant to Landlord prior to the time Tenant has made an offer to or received an offer from any third party.

(a) Tenant will offer (the "Offer") to transfer to Landlord the Proposed Transfer Premises pursuant to terms determined in Tenant's sole and absolute discretion (the "Offer Terms"). The Offer will be irrevocable for a period ending at 5:00 P.M. east coast time, on the sixtieth day (or the next Business Day if the sixtieth day is not a Business Day) following the day on which the Offer was made (the "Offer Period").

(b) If that the Offer is accepted by the Landlord during the Offer Period, Landlord will close on the Proposed Transfer Premises within 60 days after the Offer is accepted (or such longer time as is agreed to by the parties in writing) in accordance with the Offer Terms; *provided however*, that if such closing does not occur within such period as a result of a default by Landlord after acceptance, then Tenant will be entitled to Transfer the Proposed Transfer Premises to any third party in accordance with this Section 10.03(c). Landlord and Tenant will execute such documents and instruments as may be necessary or appropriate to effect the transfer of the Proposed Transfer Premises pursuant to the terms of the Offer and this Section 10.03. If Landlord does not elect to accept the Offer, Landlord may, at its election, make a counteroffer ("Counteroffer") setting forth the price and other material terms on which Landlord would be

willing to purchase the Proposed Transfer Premises, but Tenant has no obligation to accept or otherwise address any such Counteroffer. If Tenant elects to accept the Counteroffer, the parties will close on the Proposed Transfer Premises in accordance with this Section 10.03(c).

(c) If the Offer is not accepted by Landlord (or a proposed Counteroffer is not accepted by Tenant) in the manner hereinabove provided, Tenant may transfer the Proposed Transfer Premises at any time within nine months after the last day of the Offer Period, provided that the terms of any such Transfer of the Proposed Transfer Premises to such third party are substantially the same as the Offer Terms (which, in the case of price, means that the sale price is not less than: (i) 95% of the sale price set forth in the Offer Terms if Landlord did not make a Counteroffer, or (2) 100% of the amount of the Counteroffer price if a Counteroffer was made. If the Proposed Transfer Premises are not transferred to an unrelated third party within such nine-month period, such Transfer will again be subject to all of the terms of this Section 10.03. If Tenant is required to re-offer the Proposed Transfer Premises to Landlord during such nine-month period, the procedures in subsections 10.03(a) and (b) will apply.

(d) The Landlord's right of first offer set out in this Section 10.03 is intended to apply only to the sale of the Proposed Transfer Premises by Tenant and is not intended to apply to a Mortgagee or another purchaser of the Premises pursuant to a foreclosure of a Mortgage or through a deed or instrument of transfer delivered in lieu of such foreclosure, which is not subject to this Section 10.03, ***provided however***, if such Mortgagee or other purchaser of the Premises pursuant to a foreclosure of a Mortgage acquires this Lease and becomes a "Tenant" hereunder, this Section 10.03 will apply to any future attempted Transfer of this Lease or Proposed Transfer Premises.

#### Section 10.04. Leasehold Mortgages.

(a) Tenant will have the right to mortgage or pledge its interest in this Lease to one or more Mortgagees which at any time and from time to time during the Term, provided however, that (x) until Final Completion has occurred, all proceeds from any loan secured by Tenant's interest in this Lease will be used only in connection with the costs of pre-development, development, construction, carry, and operations of the Project and (y) no holder of any Mortgage, nor anyone claiming by, through or under any such Mortgage, will by virtue thereof, acquire any greater rights hereunder than Tenant has, except the right to cure or remedy Tenant's defaults or become entitled to a New Lease as more fully set forth in this Section 10.04 and Section 10.05 and such other rights as are expressly granted to Mortgagees in this Lease. No Mortgage will be effective, unless:

(i) at the time of making such Mortgage there is no existing and unremedied Event of Default on the part of Tenant under any of the agreements, terms, covenants and conditions of this Lease on the part of Tenant to be performed; ***provided however***, that if such Event of Default exists, but this Lease has not been terminated and such Event of Default will be cured simultaneously with the granting of such Mortgage or with the proceeds from such Mortgage, Tenant may nevertheless enter into such Mortgage for Tenant's interest in this Lease;

(ii) such Mortgage will be subject to all the agreements, terms, covenants, and conditions of this Lease;

(iii) Tenant will use commercially reasonable efforts so that each such Mortgage will contain in substance the following provisions:

“This instrument is executed upon condition that (unless this condition be released or waived by Landlord under said Lease or its successors in interest by an instrument in writing) no purchaser or transferee of said Lease at any foreclosure sale hereunder, or other transfer authorized by law by reason of a default hereunder where no foreclosure sale is required, will, as a result of such sale or transfer, acquire any right, title or interest in or to said Lease or the leasehold estate hereby mortgaged or pledged, unless and until (i) Landlord has been given written notice of such sale or transfer of said Lease and the effective date thereof, and (ii) such purchaser or transferee has delivered to Landlord a duplicate original or certified copy of the instrument of sale or transfer to Landlord.

“The purchaser or transferee of said Lease will, effective from and after the effective date of the foreclosure or transfer in lieu of foreclosure, assume and agree to perform all of the terms, covenants and conditions of the Lease to be observed or performed on the part of Tenant after the foreclosure or transfer and, that no further or additional mortgage or assignment of the Lease hereby mortgaged may be made except in accordance with the provisions contained in Article 10 of the Lease.

“This mortgage is not a security interest in or lien on the fee interest in the premises covered by the Lease hereby mortgaged.

“The mortgagee hereunder waives all right and option to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward the payment of the sum secured by this mortgage but only to the extent such proceeds are required for and applied to the demolition, repair or restoration of the mortgaged premises in accordance with the provisions of the Lease.

“In the event of foreclosure, the mortgagee will not name, in such foreclosure action or otherwise, and in any event will not disturb the possession or right to possession (except for default) of, any subtenants of Tenant under the Lease) who are not Affiliates of Tenant.

“This mortgage and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject to the terms of said Lease and the rights of the landlord thereunder, as said Lease may have been previously modified, amended or renewed with the consent of the mortgagor or its predecessors in interest, or may hereafter be modified, amended or renewed with the consent of the mortgagee. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge, and deliver any instruments reasonably requested by Landlord to evidence the foregoing.”

(b) Tenant or the Mortgagee will give to Landlord written notice of the making of any Mortgage (which notice will contain the name and office address of the Mortgagee) promptly after the execution and delivery of such Mortgage and a duplicate original or certified copy thereof.

(c) Landlord will give to each Mortgagee, at the address of such Mortgagee set forth in the notice from such Mortgagee or from Tenant, and otherwise in the manner provided by Article 25, a copy of each notice given by Landlord to Tenant hereunder (including any notices of Event(s) of Default under the Lease) at the same time as and whenever any such notice will thereafter be given by Landlord to Tenant, and no such notice by Landlord will be deemed to have been duly given to Tenant (and no grace or cure period will be deemed to have commenced) unless and until a copy thereof will have been given to each such Mortgagee. Upon receipt of such notice, each Mortgagee will have the right (but not the obligation) to remedy such Event of Default or cause the same to be remedied, within the following additional time periods (in each instance after the applicable period afforded Tenant for remedying the Event of Default or causing the same to be remedied has expired): (i) a period of ten Business Days more in the case of a monetary Event of Default, and (ii) a period of 15 Business Days more in the case of a non-monetary Event of Default, or in the case of a non-monetary Event of Default which will require more than the additional 15 Business Days to cure using due diligence, then such longer period of time as will be necessary, so long as such Mortgagee will have commenced to cure (or caused to be commenced such cure) within such additional 15 Business Day period and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence and continuity. Landlord will accept performance by or on behalf of a Mortgagee of any covenant, condition, or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Lease. Landlord will not object to any temporary entry onto the Premises by or on behalf of Mortgagee to the extent necessary to effect such Mortgagee's cure rights, provided such entry is in compliance with all Applicable Laws. If possession of the Premises or any part thereof is required in order to cure such Event of Default, Mortgagee will notify Landlord within the applicable period afforded to Mortgagee hereunder.

(d) During any period in which Mortgagee, in good faith and acting with reasonable diligence and continuity, is attempting or in the process of curing (or caused to be commenced such cure) a non-monetary Event of Default within the time periods provided in Section 10.04(c), Landlord will not exercise any remedies to terminate this Lease or dispossess Tenant of possession thereof. At any time prior to the expiration of the additional cure period afforded Mortgagee under Section 10.04(c) to cure (or caused to be cured) the Event of Default, Mortgagee may send Landlord notice of its intention to institute foreclosure proceedings, and thereafter, provided Mortgagee commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Unavoidable Delays) and, upon obtaining such possession, commences promptly to cure the Event of Default and prosecutes the same to completion with all reasonable diligence and continuity (subject to Unavoidable Delays), Landlord will not exercise any remedies to terminate this Lease or dispossess Tenant of possession thereof; ***provided however***, that: (i) Mortgagee will have first delivered to Landlord, in writing, its

agreement to cure (or caused to be cured), and (ii) during the period in which Mortgagee is curing (or causing such cure of) such Event of Default (and any foreclosure proceedings are pending), all of the other obligations of Tenant under this Lease are being duly performed (including, without limitation, payment of all Base Rent, Additional Costs and Impositions due hereunder (including further, without limitation, the payment of any Impositions or payments of installments for Impositions are being made to a Depository in accordance with Article 5 above)) within any applicable grace periods. However, at any time after the delivery of the aforementioned agreement, the Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, and, in such event, the Mortgagee will have no further liability under such agreement from and after the date it delivers such notice to Landlord (except for any obligations assumed by the Mortgagee and accruing prior to the date it delivers such notice), and, thereupon, Landlord will have the unrestricted right to terminate this Lease, dispossess Tenant of the Premises and to take any other action Landlord deems appropriate by reason of any uncured Event of Default by Tenant.

(e) Notwithstanding anything in this Section 10.04 to the contrary, a Mortgagee will not be required to cure any non-monetary Events of Default of Tenant that are not capable of being cured by such Mortgagee, and if any Mortgagee, assignee or transferee will acquire the Premises pursuant to a foreclosure or transfer in lieu of foreclosure, then any such non-monetary Event of Default by Tenant that is not capable of being cured will no longer be deemed an Event of Default of the acquiring Mortgagee, assignee or transferee of this Lease after such foreclosure or transfer in lieu of foreclosure (*provided however*, that Landlord may continue to pursue any and all remedies at law or in equity against the defaulting Tenant unless Tenant was released of such obligations, *provided further*, that any such remedies may not involve the disturbance of quiet possession of any Mortgagee, assignee or transferee of the Premises under this Lease or a New Lease).

(f) With respect to any non-monetary Event of Default, so long as a Mortgagee will be diligently exercising its cure rights under this Section 10.04 with respect thereto within the applicable cure periods set forth above and so long as, if possession of the Premises is required to cure the same, Mortgagee will be taking the actions required by clause (d) of this Section 10.04, Landlord will not (i) re-enter the Premises, (ii) serve a termination notice, or (iii) bring a proceeding on account of such default to (A) dispossess Tenant or other occupants of the Premises, (B) re-enter the Premises, or (C) terminate this Lease or the leasehold estate (such rights described in clauses (i), (ii) and (iii) being herein "Landlord's Termination Rights").

(g) In addition, with respect to any monetary Event of Default, Landlord will not exercise any of Landlord's Termination Rights so long as a Mortgagee will be diligently exercising its cure rights under this Section 10.04 within the time periods set forth above. Upon any Mortgagee ceasing to diligently exercise such rights and undertaking such activities, Landlord may exercise any of Landlord's Termination Rights hereunder. Nothing in the protections to Mortgagees provided in this Lease will, however, be construed to either (i) extend the Term beyond

the stated Fixed Expiration Date provided for in this Lease that would have applied if no Event of Default had occurred or (ii) require such Mortgagee to cure any non-monetary Event of Default by Tenant that is not capable of being cured and as a condition to preserving this Lease or, in the case of a Mortgagee only, to obtaining a New Lease as provided in Section 10.05.

(h) The exercise of any rights or remedies of a Mortgagee under a Mortgage, including the consummation of any foreclosure or transfer in lieu of foreclosure, will not constitute an Event of Default; ***provided however***, that any assignment of this Lease resulting from any such foreclosure or transfer in lieu of foreclosure to an entity other than a Mortgagee or an Affiliate of such Mortgagee will be an Event of Default under this Lease unless such assignment meets the requirements of Section 10.03.

(i) Except as provided in clause (d) of this Section 10.04, no Mortgagee will become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby and no performance by or on behalf of such Mortgagee of Tenant's obligations hereunder will cause such Mortgagee to be deemed to be a "mortgagee in possession" unless and until such Mortgagee will take control or possession of the Premises.

(j) If there is more than one Mortgagee, the rights and obligations afforded by this Section 10.04 to a Mortgagee will be exercisable only by the party whose collateral interest in the Premises is senior in lien (or which has obtained the consent of any Mortgagees that are senior to such Mortgagee).

(k) In addition to the other rights, notices and cure periods afforded to the holders of any Mortgage, Landlord further agrees that:

(i) without the prior written consent of each holder of a Mortgage, Landlord will neither agree to any modification or amendment of this Lease, nor accept a surrender or cancellation of this Lease;

(ii) Landlord will consider in good faith any modification to the Lease requested by a Mortgagee or prospective Mortgagee (including the Mortgage language set forth in Section 10.04(a)(iii)) as a condition or term of granting financing to Tenant, provided that the same does not materially increase Landlord's obligations or diminish Landlord's rights and immunities hereunder;

(iii) the holder of the Mortgage most senior in lien priority on this Lease will have the right to participate in any dispute resolution proceedings under Article 34 hereof;

(iv) the holder of the Mortgage most senior in lien priority on this Lease will have the right to participate in the adjustments of any insurance claims of the nature set forth in Article 7 and Article 8 hereof and condemnation awards of the nature set forth in Article 9 hereof

and to serve as the Depository (subject to any terms, conditions and covenants applicable to Mortgagee(s), as set forth in such Articles); and

(v) at the request of Tenant from time to time, Landlord will execute and deliver an instrument addressed to the holder of any Mortgage confirming that such holder is a Mortgagee and entitled to the benefit of all provisions contained in the Lease which are expressly stated to be for the benefit of Mortgagees.

Section 10.05. Additional Mortgagee Requirement. Landlord and Tenant acknowledge that a potential Mortgagee may request certain modifications or amendments to this Lease, which Landlord will approve in its reasonable discretion. Landlord and Tenant agree to cooperate in good faith to negotiate with any potential Mortgagee, provided, however, that it is agreed by the parties that Landlord will not be required to subordinate this Lease to the rights of any Mortgagee, nor will Landlord be required in any manner to modify or reduce the affordability requirements in this Lease in recognition that the principal reason for Landlord entering into this Lease is to increase the number of affordable housing units in Fairfax County. The Landlord has been provided with and recognizes that certain governmental and institutional lenders, such as Virginia Housing, Fannie Mae, Freddie Mac, and HUD-FHA, each have specific ground lease and subordination requirements, as amended, that will require revisions to this lease.

Section 10.06. New Lease. If Tenant has mortgaged its interest in this Lease in accordance with its terms, for so long as any such Mortgage is outstanding and of record, prior to the exercise of Landlord's Termination Rights, provided Mortgagee is continuing to exercise (and has not abandoned) its cure rights as provided in Section 10.04, Mortgagee will have the option to obtain a new lease (a "New Lease") in accordance with the terms of this Section 10.05, which New Lease will become effective upon the termination of this Lease.

(a) Mortgagee will send written notice to Landlord in accordance with Article 25 of its exercise of the option to obtain a New Lease at any time during which Mortgagee is exercising its cure rights within the applicable cure periods provided in Section 10.04 above and prior to Landlord exercising Landlord's Termination Rights and Landlord will enter into a New Lease of the Premises with the Mortgagee or any designee of the Mortgagee (such Mortgagee or such designee, the "New Tenant").

(b) The New Lease will be effective commencing from the date of termination of this Lease and continuing for the remainder of the Term and upon all of the same agreements, terms, covenants, and conditions of this Lease. Upon the execution of a New Lease, the New Tenant will pay any and all sums which would at the time of the execution of the New Lease be due under this Lease but for its termination and New Tenant will commence to remedy any non-monetary Events of Default from this Lease (that remains uncured in the New Lease) and that are of a nature or type that are capable of being cured by a party other than Tenant and New Tenant (or Mortgagee, on New Tenant's behalf) will pay all costs and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with the Events of Default and termination of this Lease, the recovery of possession of said Premises and the

preparation, execution and delivery of such New Lease. In the event of a dispute between the parties as to the reasonability of New Tenant's diligence in remedying non-monetary Events of Default as provided in the preceding sentence, such dispute will be determined by dispute resolution as provided in Article 34. Landlord will have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that Landlord has not previously have recovered possession of same. As between Landlord and such New Tenant, any such New Lease and the leasehold estate thereby created, subject to the same conditions contained in this Lease, will continue to maintain the same priority as this Lease with regard to any Mortgage or any other lien, charge, or encumbrance whether or not the same will then be in existence.

(c) If there is more than one Mortgagee, Landlord will enter into a New Lease with the Mortgagee whose Mortgage is senior in lien (or which has obtained the consent of any Mortgagees that are senior to such Mortgagee) as the Mortgagee entitled to the rights afforded by this Section 10.05.

(d) Any rejection of this Lease by any trustee of Tenant in any bankruptcy, reorganization, arrangement, or similar proceeding which would otherwise cause this Lease to terminate, will, without any action or consent by Landlord, Tenant, or any Mortgagee, effect the transfer of Tenant's interest hereunder to the senior Mortgagee or its nominee or designee. Such Mortgagee may reject the transfer of this Lease upon such transfer upon giving notice thereof to Landlord no later than 60 days after notice from Landlord of such transfer. Such Mortgagee will thereupon have no further obligations hereunder. Alternatively, the senior Mortgagee may request a New Lease in accordance with the provisions of this Section 10.05.

(e) Except as expressly provided in Section 10.04(f) regarding Mortgagee not having to cure any non-monetary Event of Default by Tenant that is not capable of being cured, nothing in this Section 10.05 releases Tenant from any of its obligations under this Lease which have not been discharged or fully performed by Tenant or Mortgagee.

## **ARTICLE 11**

### **INITIAL CONSTRUCTION OF THE PROJECT; RESTORATION; CAPITAL IMPROVEMENTS**

Section 11.01. Initial Construction Work. Tenant will cause the Project to be developed as described in the Plans and Specifications listed on Exhibit B. Tenant will cause Final Completion of the Project on or before the Final Completion Date; provided, however, that an Event of Default will not be deemed to have occurred with respect to Tenant's failure to cause Final Completion in a timely manner, until the Outside Final Completion Date has occurred. Until Final Completion of the Project, Tenant will always prosecute construction of the Project (and, for purposes of this clause, "prosecute construction of the Project" will include actions necessary to obtain construction financing) with reasonable diligence and continuity (subject to Unavoidable

Delays) in accordance with the then applicable Project Schedule. Tenant will provide Landlord with a copy of Tenant's Project Schedule, but Tenant is entitled to modify such Project Schedule from time to time as Tenant deems appropriate (except that Tenant may not modify the Project Schedule in a manner that would reflect Final Completion of the Project occurring after the Final Completion Date). Tenant will promptly provide a copy of any revised Project Schedule to Landlord.

Section 11.02. Restoration – Construction Work in Excess of Ten Percent of the Replacement Value or That Would Affect the Exterior of any Building.

If: (a) the estimated cost (determined as provided in Section 8.04(b) hereof) of any Restoration of the Initial Construction Work to be performed in accordance with the provisions of this Lease, other than any interior alteration is greater than, (i) Two Million Dollars (subject to adjustment as provided in Section 8.05(a)), or (ii) ten percent of the Replacement Value, either individually or in the aggregate with other Construction Work which is in any calendar year, or (b) the Construction Work involves work that would materially change the exterior of any Building (but not including painting of the exterior of a Building) or (c) the Construction Work would materially change the height, bulk or setback of any Building from the height, bulk or setback of the Building existing immediately before the commencement of the Construction Work; then in any such case, Tenant will obtain the consent of Landlord for such Construction Work, which consent will not be unreasonably withheld, which request will be accompanied by sufficient information to permit Landlord to fairly evaluate the request. Following any request by Tenant to Landlord to approve any proposed modifications to the Construction Work as set forth herein, Landlord will, subject to the terms set forth hereinabove in this Section, review the information submitted to Landlord and notify Tenant in writing of Landlord's approval or disapproval of such submission within 20 Business Days after its receipt of the same from Tenant. If Landlord disapproves any such modifications, Landlord's notice to Tenant will set forth in reasonable detail the reasons for such disapproval. Landlord will bear the costs for the reasonable fees and expenses of any registered architect or licensed professional engineer selected by Landlord to review the information provided by Tenant to Landlord in connection with such Construction Work and to inspect the Construction Work on behalf of Landlord or may request to rely on the inspecting architects or engineers selected by the Mortgagee for such purposes.

Section 11.03. Standards of Construction and Maintenance during Lease Term. Throughout the term of this Lease, Tenant will be obligated to construct and maintain the Project and make all appropriate capital replacement (including without limitation, all Capital Improvements) in a good and workmanlike manner that is consistent with the construction and maintenance standards for the Initial Construction Work of the Project.

Section 11.04. Modification of Approved Plans and Specifications. Prior to the Commencement Date, Tenant has submitted and Landlord has approved the Plans and Specifications for the Project. If Tenant desires to modify the Plans and Specifications after they

have been approved by Landlord in any way which will materially affect any aspect of the exterior of any Building or result in a change in the height, bulk or setback of any Building, Tenant will submit the proposed modifications to Landlord. Landlord will review the proposed changes to determine whether they materially conform to the Plans and Specifications originally approved by Landlord. A modification will be “material” or will “materially affect” the exterior of the Building if the costs associated with such modification exceed: (a) \$300,000.00 on an occurrence basis; or (b) \$600,000.00 in the aggregate in any 12-month period, and in such event, Landlord will have the review and approval rights set forth herein for each modification over the \$600,000.00 aggregate that costs more than \$100,000.00 in any instance. The initial review by Landlord will be carried out within 20 Business Days of the date of submission of the proposed modifications to the Plans and Specifications. If Landlord determines that they do so conform, Landlord will so notify Tenant. If Landlord reasonably determines that the Plans and Specifications, as so revised, do not materially conform to the Plans and Specifications originally approved by Landlord, Landlord will so notify Tenant, specifying in what respects they do not so conform. Tenant will either (i) withdraw the proposed modifications, in which case construction of the Project will proceed on the basis of the Plans and Specifications previously approved by Landlord, or (ii) revise the proposed modifications to so conform and resubmit them to Landlord for review. Each review by Landlord after the initial review will be carried out within ten Business Days of the date of submission of the proposed modifications to the Plans and Specifications. If Landlord has not notified Tenant of its determination within the time period for Landlord’s review as outlined above, Landlord will be deemed to have determined that they materially conform to the Plans and Specifications previously approved by Landlord. Landlord and Tenant agree that the ten Business Day review period outlined above will only apply to modifications previously reviewed and commented on by Landlord. To the extent Tenant submits new or additional modifications outside the scope of Tenant’s original submission to Landlord or in addition to any changes requested by Landlord as a result of its initial review, Landlord will have 20 Business Days to review and comment on such new or additional modifications thereto. It is understood and agreed that any consent or approval by Landlord to a modification under this Section 11.04 is a consent or approval by Landlord, and no such approval hereunder will in any manner be deemed to affect, limit or obligate the Board of Supervisors of Fairfax County in its governmental or regulatory capacity or the County of Fairfax, Virginia, or its agencies, departments or divisions (including without limitation the Department of Planning and Development) thereof with respect to any actions the foregoing may require or be requested to undertake that pertain in any manner to, any approval requests, inspections or other matters involving Governmental Authorities.

Section 11.05. Payment for Construction Work; Contested Matters. Tenant will make full and timely payment or will cause full and timely payment to be made to all contractors, subcontractors, materialmen, engineers, architects, or other Persons who have rendered or furnished services or materials for any Construction Work (including the Initial Construction Work) or contest or discharge such matters in accordance with Section 15.02 below, to the extent such matters result in a lien or encumbrance against the Project.

Section 11.06. Landlord’s Right to Use Field Personnel. Landlord reserves the right to maintain, at its sole cost and expense, its field personnel at the Premises to observe Tenant’s construction methods and techniques and Landlord will be entitled to have appropriate members of its field personnel or other designees attend Tenant’s job and safety meetings. Such field

personnel will conduct themselves in such a manner so as not to interfere with Tenant's activities at the Premises and will comply with any and all job site rules and regulations imposed by Tenant and its contractors on personnel on the job site. No such observation or attendance by Landlord's personnel or designees will impose upon Landlord responsibility for any failure by Tenant to observe appropriate safety practices in connection with such construction or constitute an acceptance of any work which does not comply in all respects with the provisions of this Lease.

Section 11.07. Commencement and Completion of all Construction Work. All Construction Work, once commenced, will be completed within the time periods required in this Lease (subject to Unavoidable Delays), in a good and workmanlike manner and, with respect to Construction Work for which this Lease requires Tenant to prepare plans and specifications, in substantial accordance with such plans and specifications, and all Applicable Laws.

Section 11.08. Supervision of Architect. All: (a) Initial Construction Work; and (b) Construction Work, the estimated cost of which (determined as provided in Section 8.04(b) hereof) is ten percent of the Replacement Value or more either individually or in the aggregate in any calendar year or (c) that involves work that would materially change the exterior of any Building or the height, bulk or setback of any Building will be carried out under the supervision of an Architect if the work in question is of a type that is typically carried out under such supervision.

Section 11.09. Capital Improvements. From and after Final Completion, Tenant will not replace or materially alter the Project, or any part thereof (except as provided to the contrary with respect to Fixtures in Article 13), or make any addition thereto, whether voluntarily or in connection with repairs required by this Lease (collectively, "Capital Improvements"), unless Tenant will comply with the following requirements and, if applicable, with the additional requirements set forth in Section 11.10:

(a) No Capital Improvements will be undertaken, as applicable, until Tenant will have procured from all Governmental Authorities and paid for all permits, consents, certificates, and approvals for the proposed Capital Improvements which are required to be obtained prior to the commencement of the proposed Capital Improvements (collectively, "Improvement Approvals"). Landlord will not unreasonably refuse to join or otherwise cooperate in the application for any such Improvement Approvals, provided such application is made without cost, expense or liability (contingent or otherwise) to Landlord. True copies of all such Improvement Approvals will be delivered by Tenant to Landlord prior to commencement of the proposed Capital Improvements.

(b) The Premises after completion of such Capital Improvements, will have a value at least equal to the value of the Premises immediately before construction of such Capital Improvements. In addition, the Project will at all times remain in substantial conformity with the original Plans and Specifications therefor (except to the extent specifically consented to by Landlord, in its sole but reasonable discretion).

(c) All Capital Improvements will be made with reasonable diligence and continuity (subject to Unavoidable Delays) and in a good and workmanlike manner and in compliance with

(i) all Improvement Approvals, (ii) if required pursuant to Section 11.10(a), in substantial accordance with the plans and specifications for such Capital Improvements as approved by Landlord, (iii) all Applicable Laws.

(d) No construction of any Capital Improvement will be commenced until Tenant will have delivered to Landlord certificate of insurance and copies of the declaration page(s) for the insurance required by Section 7.05. Such insurance policies will comply with the terms of Section 7.03 above.

Section 11.10. Submissions to Landlord for Capital Improvements. If the estimated cost of any proposed Capital Improvements exceeds One Million Dollars (as such amount will be increased as provided in Section 8.05(a)), either individually or in the aggregate with other Capital Improvements which are a related portion of a program or project of Capital Improvements constructed in any 12-month period during the Term, Tenant will comply with the following requirements:

Tenant will furnish to Landlord at least 30 days prior to commencement of the proposed Capital Improvements, complete plans and specifications for the Capital Improvements, prepared by an Architect (if the services of an Architect are necessary), for Landlord's approval, which approval will not be unreasonably withheld provided such Capital Improvements will be in substantial conformity with the original Plans and Specifications (except to the extent specifically consented to by Landlord in its sole, but reasonable discretion or as otherwise expressly provided in Article 8 above), and the Project will be in substantial conformity with applicable requirements of this Lease; and

(c) If the Capital Improvements are of a type for which "as-built" plans are typically prepared, then within 90 days after completion of any Capital Improvements, Tenant will furnish to Landlord a complete set of "as-built" plans (which may be field marked copies of the construction plans) for such Capital Improvements, together with a permanent Certificate of Occupancy therefor issued by County of Fairfax, Virginia, to the extent a modification thereof was required.

The provisions of this Section 11.10 apply to Restoration or construction of additional Capital Improvements only and are not applicable for the Initial Construction Work.

Section 11.11. Completion of Construction Work. Upon Final Completion of the Project, Tenant will furnish Landlord with (a) a certification of the Architect (certified to Landlord) that it has examined the applicable plans and specifications (that will include the Plans and Specifications in the case of Initial Construction Work or a Restoration of the Project) and that, in its best professional judgment, after diligent inquiry, to its best knowledge and belief, the Construction Work has been completed in accordance with the plans and specifications applicable thereto and, as constructed, the Project complies with all Applicable Laws, (b) if required, a copy or copies of the temporary or permanent certificate(s) of occupancy for the Project issued by the Fairfax County Department of Planning and Development (or such other appropriate Governmental Authority),

and (c) with respect to the Initial Construction Work (or a Restoration for which “as built” plans will be issued) of the Project, within 90 days after Substantial Completion, a complete set of “as built” plans and a survey showing the Project. Landlord will have an unrestricted non-exclusive license to use such “as built” plans and survey in connection with any Restoration of the Project without paying any additional cost or compensation therefor, which license will be subject to the rights of the parties preparing such plans and survey under copyright and other applicable laws.

Section 11.12. Construction Agreements. Throughout the Term, all Construction Agreements will include the following provisions; provided, however, that Landlord will not unreasonably withhold its consent to any revisions to such language reasonably requested by a contractor or materialman:

["Contractor"/["Subcontractor"/Materialman"] hereby agrees that Landlord will not be liable in any manner for payment or otherwise to ["contractor"/["subcontractor"/["materialman"] in connection with the purchase of any building materials for the Project and Landlord will have no obligation to pay any compensation to ["contractor"/["subcontractor"/["materialman"] by reason of such materials becoming incorporated into the Project.

(b) ["Contractor"/["Subcontractor"/["Materialman"] hereby agrees that regardless of the fact that ["contractor"/["subcontractor"/["materialman"] performed work at the Premises (as such term is defined in the Lease) or any part thereof; Landlord is not liable in any manner for payment or otherwise to ["contractor"/["subcontractor"/["materialman"] in connection with the work performed at the Premises.

(c) Landlord will be a third -party beneficiary of all guarantees and warranties of ["contractor"/["subcontractor"/["materialman"] hereunder and such guarantees and warranties will be enforceable against ["contractor"/["subcontractor"/["Materialman"] by said Landlord.

(d) Landlord is not a party to this ["agreement"] ["contract"] nor will Landlord in any way be responsible to any party for any and or all claims of any nature whatsoever arising or which may arise from such ["contract"] ["agreement"].’

Section 11.13. Demolition of the Project. Except as hereinafter provided, Tenant will not demolish the Project during the Term. If the Project is substantially destroyed as a result of a fire or other casualty and it is necessary in connection with a Restoration to demolish the remainder of the Project, Tenant will have the right, subject to compliance with the terms of Article 8 and Article 11, to demolish the remainder of the Project.

Section 11.14. Materials Incorporated in Project. The materials to be incorporated in the Project at any time during the Term will, upon purchase of same and at all times thereafter during the Term, constitute the property of Tenant, and upon construction of the Project or the incorporation of such materials therein, title thereto will vest in Tenant. Nothing in this Section

will limit the Landlord's vesting of all right, title, and interest in such materials located on the Premises at the expiration or earlier termination of the Term.

Section 11.15. Landlord Approval of Financing of Construction Work. Prior to Commencement of Construction (or commencement of a Restoration that is subject to Section 8.05(a) unless required by a Mortgagee), Tenant will provide Landlord with a detailed financing plan for the Construction Work to be completed and any and all other costs and expenses which may be necessary to achieve Final Completion (the "Financing Plan"). The Financing Plan will be subject to the prior written approval of Landlord (including, without limitation, Tenant's proposed Mortgagee and any member or investor of Tenant providing equity funding as part of Tenant's Financing Plan), which approval will not be unreasonably withheld, conditioned or delayed so long as the Financing Plan is consistent with the Construction Work set forth in the Plans and Specifications (or Restoration Plans and Specifications, if applicable) approved by Landlord in accordance with the terms of this Lease. To the extent that Tenant determines that any modifications to the Financing Plan for the Project are necessary after such Financing Plan has been approved by Landlord, Tenant will make such modifications to such Financing Plan and submit the revised Financing Plan to Landlord for informational purposes, provided however, that if Section 11.04 allows for Landlord's right to approve changes to the Plans and Specifications as provided herein, prior to commencement of Construction, Landlord will also have the right to approve modifications to the Financing Plan under this Section 11.15. Landlord will review and approve the Financing Plan in writing, or disapprove such Financing Plan, provided Landlord sends with any notice of disapproval sufficient details and explanation for the reason of such disapproval and any requested changes to the modifications of such Financing Plan necessary to obtain Landlord's approval, within ten Business Days after receipt of the proposed Financing Plan. If Landlord fails to notify Tenant in writing of either its approval or disapproval of the proposed modifications to such Financing Plan within ten Business Days after its receipt of the same from Tenant, then such proposed modifications to such Financing Plan will be deemed approved by Landlord. As used in the preceding two sentences, "Financing Plan," means the initial Financing Plan or any modifications of the Financing Plan which require Landlord's approval or submission for informational purposes hereunder.

## **ARTICLE 12**

### **REPAIRS AND MAINTENANCE; CAPITAL RESERVE; PARKING**

Section 12.01. Repairs. Tenant will take good care of the Premises, including, without limitation, the Project, roofs, foundations and appurtenances thereto, water, sewer and gas connections, pipes and mains which are located on or service the Premises and all Fixtures, and will put, keep and maintain the Project in good and safe order and condition in a manner that is consistent with the maintenance of other comparable market rate apartment projects in Fairfax County, Virginia, to the extent that such improvements have not yet been accepted by the

applicable governmental authority and the bonds therefor have not yet been released, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition in a good and workmanlike manner that is consistent with the construction and maintenance standards for the Initial Construction Work of the Project, to the extent that such improvements have not yet been accepted by the applicable governmental authority and the bonds therefor have not yet been released, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, *provided however* that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation will be as provided in Article 8 and Article 9 hereof. Tenant will not commit or suffer, and will use all reasonable precaution to prevent, waste, damage or injury to the Premises or the Project. When used in this Section 12.01, the term "repairs" will include all necessary replacements, alterations, and additions. All repairs made by Tenant will be at least equal in quality and class to the original work and will be made in compliance with all Applicable Laws. Section 12.02.

Section 12.02 Capital Reserve. Subject and subordinate to any requirements of the Mortgagee, including the amount, where they are held, Tenant's access to reserves, and disposition of such reserves and the follow provisions shall apply if there is no Mortgagee or if the Mortgagee has no capital reserve or related replacement reserve requirements, commencing upon Substantial Completion of the Project, Tenant will, on the first day of each month during the Term, make monthly deposits to a capital reserve fund (the "Maintenance Capital Reserve") in an amount equal to \$250.00/Residential Unit per annum, escalating each year by the increase in the Consumer Price Index for the year in question.

(a) Tenant will utilize the funds in the Maintenance Capital Reserve to cover the costs of repair and maintenance of the Project, including, without limitation, Capital Improvements.

(b) Depository will hold the monies deposited into the Maintenance Capital Reserve in an interest-bearing account for the purpose of paying (or reimbursing Tenant for) the maintenance and repair charges of the Project pursuant to a depository agreement reasonably satisfactory to Landlord and Tenant.

(c) Any interest paid on monies deposited with the Depository pursuant to this Section 12.02 will be added to the Maintenance Capital Reserve.

(d) After the occurrence and during the continuance of an Event of Default and subject to any rights of a Mortgagee, Landlord, at Landlord's option, may withdraw any monies from the Maintenance Capital Reserve for the purpose of performing maintenance, repairs, or capital improvements for the Project, as Landlord may reasonably determine. Notwithstanding the foregoing, this Section 12.02(d) will not apply to the extent that Landlord's rights hereunder would violate or conflict with a Mortgagee's rights to any Maintenance Capital Reserve for the Project.

(e) Landlord will not be liable for any delay in investing or reinvesting monies deposited with the Depository pursuant to Section 12.02 or for any loss incurred by reason of any such investments, except for any willful misconduct or negligence of Landlord.

Section 12.03. Maintenance Capital Reserve in the Event of a Transfer. In the event of a sale or transfer by either party of its interest in the Premises, such party will transfer to the person who owns or acquires such interest in the Premises or is the transferee of such party's interest under this Lease, all of such party's rights with respect to the Maintenance Capital Reserve if it is then held by the Depository, if applicable, subject to the provisions thereof. Upon such transfer, the transferor will be deemed to be released and relieved from all liability with respect to such deposited monies and the non-transferring party will look solely to the transferee with respect thereto, and the provisions hereof will apply to each successive transfer of such party's rights with respect to such deposits.

Section 12.04. Mortgagee and Reserves. Notwithstanding anything in Section 12.02 and Section 12.03 to the contrary, if a Mortgagee (provided such Mortgagee be an Institutional Lender) will require Tenant to deposit funds for maintaining and replacing Capital Improvements, any amount so deposited by Tenant with such Mortgagee will be credited against the amount, if any, which Tenant would otherwise be required to deposit in the Maintenance Capital Reserve. Subject and subordinate to any requirements of the Mortgagee, including the amount, where they are held, Tenant's access to reserves, and disposition of such reserves.

Section 12.05 Parking. Tenant hereby covenants and agrees that during the Term it will provide parking for the Premises in accordance with all Applicable Laws.

Section 12.06. No Obligation on Landlord. Landlord will not be required to furnish any services, utilities, or facilities whatsoever to the Premises, nor will Landlord have any duty or obligation to make any alteration, change, improvement, replacement, Restoration, or repair to, nor to demolish, any Project. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance, and management of the Premises.

## **ARTICLE 13**

### **FIXTURES**

Section 13.01. Property of Tenant. All Fixtures will be and will remain the property of Tenant throughout the Term. Nothing in this Section will limit the Landlord's vesting of all right, title, and interest in such Fixtures at the expiration or earlier termination of the Term.

Section 13.02. Maintenance, Repair and Replacement. Tenant will keep all Fixtures in good order and will maintain, repair and replace the same when necessary with items at least equal

in utility to the Fixtures being replaced, *provided however*, that Tenant will not be required to maintain, repair and replace any Fixtures which performed a function which has become obsolete or otherwise is no longer necessary or desirable in connection with the use or operation of the Premises, unless such failure to replace would reduce the value of the Premises or would result in a reduced level of maintenance of the Premises, in which case Tenant will be required to install such Fixtures as may be necessary to prevent such reduction in the value of the Premises or in the level of maintenance.

#### **ARTICLE 14**

##### **REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES**

Section 14.01. Compliance with Applicable Laws. Tenant promptly will comply with all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus affecting or relating to Tenant or the Premises (collectively, "Applicable Laws, including without limitation, requiring the removal of any encroachment, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, or whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put, and without regard to the fact that Tenant is not the fee owner of the Premises. Tenant also will comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 14.02 Right to Contest. Tenant, at its expense, after notice to Landlord, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Applicable Laws, provided that: (a) Landlord will not be subject to civil or criminal penalty or to prosecution for a crime, nor will the Premises or any part thereof be subject to being condemned or vacated, by reason of non-compliance or otherwise by reason of such contest; (b) if an adverse decision in such proceeding or the failure to pay any judgment resulting from such adverse decision could result in the imposition of any lien against the Premises, then before the commencement of such contest, Tenant will furnish to Landlord the bond of a surety company reasonably satisfactory to Landlord, or other deposit or security in each case in form, substance and amount reasonably satisfactory to Landlord, and will indemnify Landlord against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest; (c) Tenant will keep Landlord regularly advised as to the status of such proceedings; (d) such contest will be prosecuted with diligence and in good faith to final adjudication, settlement, compliance or other

disposition of the Applicable Laws so contested; (e) such contest, and any disposition thereof (including, without limitation, the cost of complying therewith and paying all interest, penalties, fines, liabilities, fees and expenses in connection therewith), will be at the sole cost of and will be paid by Tenant; (1) promptly after disposition of the contest, Tenant will comply with such Applicable Laws to the extent determined by such contest; and (f) Tenant will comply with any Applicable Laws in accordance with the applicable provisions of this Lease if the Premises, or part thereof, will be in danger of being forfeited or if Landlord is in danger of being subject to criminal liability or penalty, or civil liability, in connection with such contest. Landlord will be deemed subject to prosecution for a crime if Landlord or any of its respective officers, directors, partners, shareholders, agents, or employees is charged with a crime of any kind whatever unless such charge is withdrawn ten Business Days before such party is required to plead or answer thereto.

Section 14.03. Environmental Requirements. Tenant will not undertake, or, to the extent within its reasonable control, permit or suffer any Environmental Activity other than (i) in compliance with all Applicable Laws and all of the terms and conditions of all insurance policies covering, related to or applicable to the Premises, and (ii) in such a manner as will keep the Premises free from any lien imposed in respect of or as a consequence of such Environmental Activity. Tenant will act in a commercially reasonable manner to ensure that any Environmental Activity undertaken or permitted at the Premises by Tenant, its agents, or representatives, is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Premises. Tenant will notify Landlord within 24 hours (or the next Business Day if such 24-hour period includes a day that is not a Business Day) of any known material release of Hazardous Materials from or at the Premises. Landlord will have the right, upon reasonable advanced notice and in cooperation with the Tenant, from time to time and at Landlord's expense to conduct an environmental audit of the Premises during regular business hours, and Tenant will reasonably cooperate in the conduct of such environmental audit. Landlord will provide a copy of any such audit to Tenant. Landlord will use its reasonable efforts to minimize interference with Tenant's and any subtenant's use and occupancy of the Premises in performing such environmental audit and will repair any damage to the Premises caused by the same, except that Landlord will have no such repair obligation to the extent the damage was due to any Environmental Activity. If Tenant will breach the covenants provided in this Section, then in addition to any other rights and remedies which may be available to Landlord under this Lease or otherwise at law or in equity, Landlord may require Tenant to take all actions, or to reimburse Landlord for the costs of any and all actions taken by Landlord, as are necessary or reasonably appropriate to cure such breach. Tenant will not be responsible for and will have no liability in connection with any Environmental Activity undertaken Landlord, its agents, employees, representatives, licensees, or invitee, provided however that the parties acknowledge that Landlord has conducted no studies on the Premises and that Landlord did not acquire any interest therein until November 12, 2019, and thereafter has not been active on the site. For purposes of this Section, "Environmental Activity" means any storage, installation, existence, release, threatened release, discharge, generation, abatement, removal, disposal, handling or transportation from, under, into or on the Premises of (A) any substance, product, waste or other material of any nature whatsoever that is listed, regulated or addressed pursuant to the Comprehensive Environmental

Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Emergency Planning and Community Right of Know Act of 1986, 42 U.S.C. § 11001, *et seq.*, and the Virginia State Water Control Law, Va. Code Ann. § 62.1-44.2, *et seq.*; (B) any substance, product, waste or other material of any nature whatsoever that may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (C) petroleum or crude oil or products thereof, other than petroleum and petroleum products that are contained within regularly- operated motor vehicles or products used in connection with the construction, operation, and maintenance of the Project; and (D) asbestos (the materials described in clauses (A) through (D) above are collectively referred to herein as “Hazardous Materials”).

## **ARTICLE 15**

### DISCHARGE OF LIENS; BONDS

Section 15.01. Creation of Liens. Subject to the provisions of Section 15.02 hereof, except as otherwise expressly provided herein, Tenant will not create or permit to be created any mechanic’s, laborer’s or materialman’s lien upon the Premises or any part thereof, a lien upon the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant will not suffer any other encumbrance, matter, or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 15.02. Discharge of Liens. If any mechanic’s, laborer’s or materialman’s lien (other than a lien arising out of any work performed by Landlord) at any time is filed in violation of the obligations of Tenant pursuant to Section 15.01 against the Premises or any part thereof or the Project or any part thereof, or, if any public improvement lien created or permitted to be created by Tenant will be filed against any assets of, or funds appropriated to, Landlord, Tenant, within 45 days after notice of the filing thereof will cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant will fail to cause such lien to be discharged of record within the 45-day period, and if such lien continues for an additional ten Business Days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but is not obligated to, discharge the lien either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord will be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of Landlord’s making of the payment or incurring of the costs and expenses, will constitute Additional Costs and will be paid by Tenant to Landlord within ten Business Days after demand.

Notwithstanding the foregoing provisions of this Section 15.02, Tenant will not be required to discharge (and Landlord will not pay or discharge) any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security reasonably satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 15.03. No Authority to Contract in Name of Landlord. Nothing in this Lease will be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given that Landlord will not be liable for any work performed or to be performed at the Premises for Tenant or any Residential Tenant or other subtenant (or any sub-subtenants of either), for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials will attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof or any assets of, or funds appropriated to, Landlord. Tenant will have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or of any interest of Landlord in the Premises.

## **ARTICLE 16**

### DELIVERY OF POSSESSION

Landlord will deliver possession of the Premises on the Commencement Date "AS IS, WHERE IS, WITH ALL FAULTS", subject to the Title Matters.

## **ARTICLE 17**

### REPRESENTATIONS; POSSESSION

Section 17.01. As-Is Condition; No Representations. Tenant acknowledges that Tenant is fully familiar with the Land, the Premises, the physical condition thereof, the Title Matters and the zoning status thereof. Tenant accepts the Premises in its existing legal and physical condition and state of repair, and, except as otherwise expressly set forth in this Lease, no representations, statements, or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Land, the Premises, the status of title thereof, the physical condition thereof, including, without limitation, the zoning or other laws, regulations, rules and orders applicable thereto, Taxes, or the use that may be made of the Premises, that Tenant has relied on no such representations, statements or warranties, and that Landlord will in no event whatsoever be liable

for any latent or patent defects in the Premises. Tenant acknowledges that Landlord has conducted no studies on the Premises and that Landlord did not acquire any interest therein until November 12, 2019, and thereafter has not been active on the site.

Section 17.02. Delivery of Possession. Landlord will deliver possession of the Premises on the Commencement Date, vacant and free of occupants and tenancies, subject to the Title Matters.

Section 17.03. Tenant's Representations. Tenant represents that:

(a) Tenant is duly organized under the laws of the Commonwealth of Virginia, and is validly existing and in good standing under the laws of the Commonwealth of Virginia;

(b) Tenant has not dealt with any broker in connection with this Lease or the transactions contemplated hereby, and it agrees to indemnify and hold Landlord harmless from and against any claim for commission or other compensation in connection herewith that is asserted by any broker, finder or other agent which claims to have dealt with Tenant, together with the cost of defending any such claim; and

(c) the execution and delivery of this Lease, and all documents and instruments collateral to this Lease, by the officer(s) of Tenant executing and delivering the same, have been duly authorized by all requisite company action on the part of Tenant, and, upon such execution and delivery, this Lease and such other documents and instruments will constitute valid and binding obligations of Tenant.

## **ARTICLE 18**

### **LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.**

Section 18.01. No Liability for Injury. Landlord will not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Project (including, but not limited to, any of the common areas within the Project, Fixtures, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever except to the extent any of the foregoing will have resulted from the gross negligence, or intentional misconduct of Landlord, its officers, agents, employees or licensees.

Section 18.02. No Liability for Utility Failure. Landlord will not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or

disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing will have resulted from the gross negligence or intentional misconduct of Landlord, its officers, agents, employees or licensees.

Section 18.03. No Liability for Soil Conditions. In addition to the provisions of Sections 18.01 and 18.02, Landlord will not be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises, it being agreed that Tenant will assume and bear all risk of loss with respect thereto.

## ARTICLE 19

### INDEMNIFICATION OF LANDLORD AND OTHERS

Section 19.01. Indemnification. Tenant will not do, or knowingly permit any Residential Tenants or other subtenants (or sub-subtenants of either), or any employee, agent or contractor of Tenant to do any act or thing upon the Premises or elsewhere which could subject Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Applicable Laws, and will use its reasonable efforts to exercise such control over the Premises so as to fully protect Landlord against any such liability. Tenant, to the fullest extent permitted by law, will indemnify and save Landlord and its respective agents, directors, officers and employees (collectively, the “Indemnitees”), harmless from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including without limitation engineers’, architects’ and reasonable attorneys’ fees and charges), which may be suffered by, imposed upon or incurred by or asserted against any of the Indemnitees, by reason of any of the following occurring prior to the Expiration Date, except to the extent that the same will have been caused in whole or in part by the gross negligence or intentional misconduct of any of the Indemnitees:

- (a) construction of the Project or any other work or thing done in or on the Premises or any part thereof;
- (b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof;
- (c) any negligent or tortious act or failure to act within the Premises on the part of Tenant or any agent, contractor, servant, or employee of Tenant;
- (d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof;

(e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Lease on its part to be performed or complied with;

(f) any lien or claim which may have arisen out of any act of Tenant or any agent, contractor, servant or employee of Tenant against or on the Premises, or any lien or claim created or permitted to be created by Tenant in respect of the Premises against any assets of, or funds appropriated to any of the Indemnitees under the laws of the Commonwealth of Virginia or of any other Governmental Authority or any liability which may be asserted against any of the Indemnitees with respect thereto;

(g) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions, or limitations contained in Construction Agreements, Residential Leases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) any failure on the part of Tenant to comply with any and all Applicable Laws related to the Residential Units, Exhibit G and Article 26 hereof;

(i) any tax attributable to the execution, delivery or recording of this Lease other than any real property transfer gains tax or other transfer tax which may be imposed on Landlord; or

(j) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Articles 4 and 14 hereof.

Section 19.02. Not Affected by Insurance. The obligations of Tenant under this Article 19 will not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises; ***provided however***, Tenant will be relieved of its indemnity obligation to the extent of the amount actually recovered from one or more of the insurance carriers of either Tenant or Indemnitee, and (a) paid to Indemnitee, or (b) paid for Indemnitee's benefit in reduction of any such liability, penalties, damage, expense, or charges imposed upon Indemnitee.

Section 19.03. Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 19.01, then, upon demand by Landlord, Tenant will resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant will select and Landlord will approve, which approval will not be unreasonably withheld. Additionally, except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, Landlord may, following consultation with Tenant, if reasonable under the circumstances, engage its own attorneys to defend or to assist in its defense of such claim, action

or proceeding and Tenant will pay the reasonable fees and disbursements of such attorneys. Tenant will control the settlement of any such claim, action, or proceeding. Landlord's consent to any such settlement will not be required if such settlement provides solely for the payment of money and does not impose any other liability on Landlord; otherwise, Landlord's consent to a proposed settlement will be required, provided such consent will not be unreasonably withheld.

Section 19.04. Survival. The provisions of this Article 19 will survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

## ARTICLE 20

### LANDLORD'S RIGHT OF INSPECTION; RIGHT TO PERFORM TENANT'S COVENANTS.

Section 20.01. Landlord Right of Inspection. Tenant will permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice, subject to the rights of Residential Tenants and other permitted subtenants under this Lease, if any (and except in cases of emergency) for the purpose of (a) inspecting the same, (b) determining whether or not Tenant is in compliance with its obligations hereunder, and (c) making any necessary repairs to the premises and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work, provided that, except in any emergency, Landlord will have given Tenant notice specifying such repairs or work and Tenant will have failed to make such repairs or to do such work within 30 days after the giving of such notice (subject to Unavoidable Delays), or if such repairs or such work cannot reasonably be completed during such thirty 30-day period, to have commenced and be diligently pursuing the same.

Section 20.02. Landlord Right to Cure. If Tenant at any time will be in an Event of Default, after notice thereof and after applicable grace periods, if any, provided under this Lease for Tenant or a Mortgagee, respectively, to cure or commence to cure same, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but will be under no obligation to) perform such obligation on Tenant's behalf. If Tenant disputes a claim by Landlord that Tenant is failing to comply with the terms of this Lease regarding the maintenance and repair of the Premises the parties will resolve such dispute resolution pursuant to Article 34 below before Tenant is obligated to perform the disputed obligations.

Section 20.03. Reimbursement of Landlord. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with its performance of any obligation pursuant to Section 20.02, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, will be paid by Tenant to Landlord within ten Business Days after Landlord will have submitted to Tenant a statement, in reasonable detail, substantiating the amount demanded by Landlord. Any payment

or performance by Landlord pursuant to Section 20.02 will not be nor be deemed to be a waiver or release of breach or Event of Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take such other action as may be permissible hereunder if an Event of Default by Tenant will have occurred. Landlord will not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force as required by this Lease to the amount of the insurance premium or premiums not paid, but Landlord also will be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of an uninsured damage to or destruction of the Premises. If as a result of such dispute resolution it is determined that Tenant was complying with the terms of this Lease regarding the maintenance and repair of the Premises, then Landlord will not be entitled to reimbursement for any work they may have performed.

Section 20.04. No Duty on Landlord. Nothing in this Article 20 or elsewhere in this Lease will imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord will not constitute a waiver of Tenant's default in failing to perform the same. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment so long as such storage does not materially interfere with the operation of the Premises or the use of any Residential Units. To the extent that Landlord undertakes such work or repairs, such work or repairs will be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Unavoidable Delays.

#### **ARTICLE 21**

[RESERVED]

#### **ARTICLE 22**

##### **NO ABATEMENT OF BASE RENT OR ADDITIONAL COSTS**

Except as may be otherwise expressly provided herein, there will be no abatement, off-set, diminution or reduction of Base Rent or Additional Costs payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances.

#### **ARTICLE 23**

##### **NO UNLAWFUL OCCUPANCY**

Section 23.01. No Unlawful Use. Tenant will not use or occupy, nor, to the extent within its reasonable control, permit or suffer the Premises or any part thereof to be used or occupied for

any unlawful, illegal or extra hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that is offensive by reason of odors, fumes, dust, smoke, noise or other pollution, or for any purpose or in any way in violation of the Certificate of Occupancy for the Premises or the Applicable Laws or which may make void or voidable any insurance then in force on the Premises. Tenant will take, promptly upon the discovery of any such unpermitted, unlawful, illegal, or extra hazardous use, such actions as Tenant deems necessary to address such unpermitted, unlawful, illegal, or extra hazardous use. If for any reason Tenant will fail to take such actions, and such failure will continue for 30 days after notice from Landlord to Tenant specifying such failure, Landlord is hereby irrevocably authorized to take all such actions in Tenant's name and on Tenant's behalf, Tenant hereby appointing Landlord as Tenant's attorney-in-fact coupled with an interest for all such purposes. If Tenant disputes Landlord's claim as to the existence of such unpermitted, unlawful, illegal, or extra hazardous use or Tenant's actions with respect thereto, then the parties will resolve such dispute pursuant to the provisions of Article 34 and the procedures set forth in Section 20.02, Section 20.03 and Section 20.04 following such dispute regarding Landlord's right to cure and right to reimbursement will apply hereunder.

Section 23.02. No Adverse Possession. Tenant will not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

## ARTICLE 24

### EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. Events of Default. Each of the following events will be an "Event of Default" hereunder:

(a) if Tenant will fail to pay any item of Base Rent, Additional Costs or Impositions or any part thereof, when the same will become due and payable and such failure will continue for five (5) Business Days after notice from Landlord to Tenant;

(b) if Tenant will fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease, and such failure will continue for a period of 30 days after notice thereof by Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such 30-day period, in which case no Event of Default will be deemed to exist as long as Tenant will have commenced curing the same within such 30-day period and will diligently and continuously prosecute the same to completion);

(c) if Tenant will abandon the Premises;

(d) if Tenant is a corporation, limited partnership, or limited liability company, if Tenant will at any time fail to maintain its proper entity existence in good standing, or to pay any franchise tax when and as the same will become due and payable and such failure will continue for 30 days after notice thereof from any governmental agency to Tenant;

(e) if this Lease or the estate of Tenant hereunder will be assigned or subleased, transferred, mortgaged, or encumbered, or there will be a Transfer, without Landlord's approval to the extent required hereunder or without compliance with the provisions

of this Lease applicable thereto and such transaction will not be made to comply or voided ab initio within 30 days after notice thereof from Landlord to Tenant;

(g) if a levy under execution or attachment (other than a Mortgage) will be made against the Premises and such execution or attachment will not be vacated or removed by court order, bonding, insured over, or otherwise within a period of 30 days; and

(h) if, after notice and opportunity to cure as provided in the Guaranty, Guarantor will default in the performance or observance of any term of the Guaranty;

(i) If any of the following occur (each of the following individually and collectively referred to as a "Bankruptcy Default")

(j) if Tenant will admit, in writing, that it is unable to pay its debts as such become due;

(ii) if Tenant will make an assignment for the benefit of creditors;

(iii) if Tenant will file a voluntary petition under the Bankruptcy Code or if such petition is filed against it, and an order for relief is entered, or if Tenant will file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, other present or future applicable federal, state or other statute or law, or will seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, or if Tenant will take any corporate action in furtherance of any action described in Sections 24.01(i)(ii), (iii) or (iv) hereof;

(iv) if within 90 days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding will not have been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant or such appointment will not have been vacated or stayed on appeal or otherwise, or if, within 30 days after the expiration of any such stay, such appointment will not have been vacated.

(v) Notwithstanding anything herein to the contrary, this Lease will not be cross defaulted with that certain lease entered into by the Landlord and [Autumn Willow 4, LLC] (the “**4% Ground Lease**”) and no agreement between the Tenant and its affiliates and the Landlord will cross default this Lease and the 4% Lease.

Section 24.02. Expiration and Termination of Lease.

(a) If any Event of Default (other than a Bankruptcy Default or Leasing Default) will occur, Landlord (subject to Section 24.14 below) may, at any time thereafter, at its option, give notice to Tenant stating that this Lease and the Term will expire and terminate on the date specified in such notice, which date will not be less than 15 Business Days after the giving of such notice, and if, on the date specified in such notice, Tenant will have failed to cure the breach which was the basis for the Event of Default, then this Lease and the Term and all rights of Tenant under this Lease will expire and terminate as of the date specified in the notice and such date will be the Expiration Date and Tenant immediately will quit and surrender the Premises.

(b) If an Event of Default described in Sections 24.01(a) – (g) will occur, or this Lease is terminated as provided in Section 24.02(a), Landlord, without notice, may re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution, or damages therefor and may dispossess Tenant by summary proceedings or other lawful process.

Section 24.03. Effect of Termination. If this Lease is terminated as provided in Section 24.02(a), or Tenant is dispossessed by summary proceedings or otherwise as provided in Section 24.02(b), hereof:

(a) Tenant will pay to Landlord all Base Rent, Additional Costs and Impositions payable by Tenant under this Lease to the Expiration Date or to the date of re-entry upon the Premises by Landlord, as the case may be;

(b) Landlord may, (i) complete all construction required to be performed by Tenant hereunder and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing all funds, if any, then held by Depository pursuant to Articles 8, 9, 11 or 12) without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, (ii) let or relet the Premises for the whole or any part of the remainder of the Term or for a longer period, in Landlord’s name or as agent of Tenant, or (iii) any combination of (i) and (ii), as Landlord determines; and out of any Base Rent, Additional Costs, Impositions and other sums collected or received as a result of such reletting Landlord will: (1) first, pay to itself the reasonable cost and expense of terminating this Lease, re-entering, retaking, repossessing, completing construction and repairing or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys’ fees and disbursements, (2) second, pay to itself the reasonable cost and expense sustained in securing a new tenant and other occupant, including in such costs brokerage commissions, legal expenses and reasonable

attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord will maintain and operate the Premises, the reasonable cost and expense of operating and maintaining the Premises, and (3) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord; Landlord in no way will be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent will operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability.

Section 24.04. Survival of Obligations. No termination of this Lease pursuant to Section 24.02(a) or taking possession of the Premises pursuant to Section 24.02(b) or reletting the Premises pursuant to Section, or any part thereof, pursuant to Sections 24.03(b), will relieve Tenant of its liabilities and obligations under this Lease to: (a) achieve Final Completion of the Initial Construction Work (or Restoration if a casualty or condemnation occurred before the Expiration Date) hereunder, and (b) otherwise pay all of its obligations under Section 24.03 which become due through the Expiration Date (but not afterwards); all of which will survive such expiration, termination, repossession or reletting.

Section 24.05. Tenant's Waiver. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 24. Tenant will execute, acknowledge, and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

#### Section 24.06. Leasing Default.

(a) If any Leasing Default will occur, Landlord may (subject to Section 24.14 below), at its option, give notice to Tenant stating that Landlord is terminating any Management Agreement then in effect for the Project and removing the Approved Property Manager from the Premises. Thereafter, Landlord, without further notice, may re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor, and undertake any leasing and property management duties, responsibilities or obligations that Landlord deems necessary or desirable for the Project, provided such actions are commercially reasonable and consistent with the management of comparable market rate apartment projects in Fairfax County, Virginia. During any period that Landlord undertakes leasing or property management duties as the result of a Leasing Default, Landlord will use good faith efforts to cure the Residential Criteria Defaults that resulted in the Leasing Default. Landlord will not be liable to indictment, prosecution or damages for any actions or failure to act by Landlord in its leasing or property management capacity, except to the extent such action or failure to act was not commercially reasonable. Any sums expended by Landlord in connection with Landlord's duties set forth in this Section 24.06(a) will be Additional Costs and will be paid by Tenant in accordance with the terms of this Lease. Failure to pay Additional Costs in accordance with the terms hereof will (after the applicable notice and cure period) constitute an Event of Default by Tenant under Section 24.01(a) above.

(b) In addition to the remedies set forth in this Section 24.06, Landlord may avail itself to any other remedies set forth in this Article 24, except those remedies set forth in Section 24.02 and Section 24.03 above (but subject to Section 24.06(d) below) if Tenant commits a Leasing Default.

(c) Landlord may continue to operate and manage the Project for so long as any of the Residential Criteria Defaults that caused the Leasing Default that resulted in Landlord undertaking any leasing or property management responsibilities for the Project remain uncured. Once all such Residential Criteria Defaults have been cured and Tenant is no longer in a Leasing Default, Tenant will retain all leasing and property management duties (and may retain an Approved Property Manager for such purposes) in accordance with the terms of this Lease.

(d) If Tenant commits a Leasing Default within 36 months after the date on which a prior Leasing Default was cured, in addition to Landlord's rights under this Section 24.06, Landlord may avail itself to any other remedies set forth in this Lease, including the termination of this Lease pursuant to Section 24.02 and Section 24.03 above. Any Residential Criteria Defaults that occurred during any period in which Landlord was responsible for the leasing and management of the Property will not be considered in determining whether Tenant has committed a Leasing Default. All of Landlord's rights set forth in this Section 24.06 will be subject to the rights of Tenant's (or its subtenants') Mortgagees and Tax Credit investors set forth in this Lease or set forth in any agreements between Tenant (or its subtenants) and those parties.

#### Section 24.07. Bankruptcy Defaults and Remedies.

(a) If any Bankruptcy Default occurs, Landlord may (subject to Section 24.14 below), at its option, will give notice to Tenant stating that Landlord is terminating any Management Agreement then in effect for the Project and removing the Approved Property Manager from the Premises. Thereafter, Landlord, without further notice, may re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor, and undertake any leasing and property management duties, responsibilities or obligations that Landlord deems necessary or desirable for the Project, provided such actions are commercially reasonable and consistent with the management of comparable market rate apartment projects in Fairfax County, Virginia. not be liable to indictment, prosecution or damages for any actions or failure to act by Landlord in its leasing or property management capacity, except to the extent such action or failure to act was due to the gross negligence or willful misconduct of Landlord. Any sums expended by Landlord in connection with Landlord's duties set forth in this Section 24.07(a) will be Additional Costs and will be paid by Tenant in accordance with the terms of this Lease. Failure to pay such Additional Costs in accordance with the terms hereof will (after the applicable notice and cure period) constitute an Event of Default by Tenant under Section 24.01(a) above.

(b) If an order for relief is entered or if a stay of proceeding or other acts becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Bankruptcy Code or any other

present or future applicable federal, state or other statute or law, Landlord will be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of all of Tenant's obligations under this Lease (including without limitation, the obligations set forth in Articles 3, 4, 7, 8, 9, 10, 11, 12, 13, 15, 19, 20, 24, 26 and 37 of this Lease).

(c) Notwithstanding anything in this Article 24 (other than Section 24.14) to the contrary, Landlord and Tenant agree that, in the event a Bankruptcy Default hereunder results in a liquidation of Tenant's assets under Chapter 7 of the Bankruptcy Code, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, will have the right, at its election, to terminate this Lease on ten Business Days' notice to Tenant, Tenant as debtor-in-possession or said trustee and upon the expiration of said ten day period this Lease will cease and expire and Tenant, Tenant as debtor-in-possession or trustee will immediately quit and surrender the Premises.

(d) Nothing contained in this Article 24 will limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount will be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 24.

Section 24.08. No Reinstatement. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless such receipt cures the Event of Default which was the basis for the notice), will reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Base Rent, Additional Costs or Impositions payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 24.09. Waiver of Notice of Re-Entry; Waiver of Jury Trial. Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Landlord and Tenant waive and will waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage.

The terms “enter”, “re-enter”, “entry” or “re-entry”, as used in this Lease are not restricted to their technical legal meaning.

Section 24.10. No Waiver by Landlord. No failure by Landlord or any prior Landlord to insist upon the strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial amounts due to Landlord from Tenant under this Lease during the continuance of any such breach, will constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, will be waived, altered, or modified except by a written instrument executed by Landlord. No waiver of any breach will affect or alter this Lease, but each and every covenant, agreement, term, and condition of this Lease still continue in full force and effect with respect to any other than existing or subsequent breach thereof.

Section 24.11. Injunction. In the event of any actual or threatened Event of Default by Tenant with respect to any of the covenants, agreements, terms, or conditions contained in this Lease, Landlord will be entitled to enjoin such breach or threatened breach and will have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

Section 24.12. Rights Cumulative. Each right and remedy of Landlord provided for in this Lease will be cumulative and will be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 24.13. Enforcement Costs. If Landlord is the prevailing party, Tenant will pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys’ fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord is a party by reason of any act or omission of Tenant. If Landlord is the prevailing party, Tenant also will pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys’ fees and disbursements, incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, and all such costs, expenses, and reasonable attorneys’ fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord hereunder, with interest at the Involuntary Rate, will be paid by Tenant to Landlord within 15 Business Days after demand by Landlord.

Section 24.14. Mortgagee Protections. Landlord’s rights contained in this Article 24 are subject to the rights of Mortgagee set forth in Section 10.04 and hereof (including without limitation, as they apply, where applicable, to a Tax Equity Investor under Section 10.05 and

nothing contained in this Articles 24 will be deemed to modify or limit Mortgagee's rights thereunder.

## **ARTICLE 25**

### NOTICES

Section 25.01. Notice Addresses. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication (each of which is herein referred to as "Notice") will or may be given to or served upon either of the parties by the other, and whenever either of the parties desire to give or serve upon the other any Notice with respect this Lease or the Premises, each Notice will be in writing. No Notice will be effective for any purpose unless the Notice is given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, (c) sent by registered or certified United States mail, postage prepaid, or (d) sent by using the most current business technology at the time of giving such notice, provided that such use is a generally accepted practice at the time, with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a), (b) or (c) above, in each case to the parties as follows:

If to Tenant, to:

C/O The Michaels Development Company I, LP  
3 East Stow Road, Suite 100  
Marlton, NJ 08053 Attn: Kenneth P. Crawford, COO

with a copy to:

The Michaels Development Company I, L.P.  
1700 Development Road, Suite 330,  
Alexandria, VA 22314  
Attention: Nicholas C. Bracco

and a copy to:

Levine, Staller, Sklar, Chan & Brown, P.A  
3030 Atlantic Avenue  
Atlantic City, NJ 08401  
Attention: Arthur M. Brown, Esquire

and a copy to:

Klein Hornig LLP  
1325 G Street, NW, Suite 770  
Washington, DC 20005  
Attention: Chris Hornig

And a copy to:

Tax Credit Investor and Counsel

If to Landlord: Fairfax County Redevelopment and Housing Authority  
Attention: Director, HCD 3700 Pender Drive  
Fairfax, Virginia 22030-6039  
e-mail: [Thomas.Fleetwood@fairfaxcounty.gov](mailto:Thomas.Fleetwood@fairfaxcounty.gov)

and

Fairfax County Redevelopment and Housing Authority  
Attention: Ms. Teresa Lepe  
3700 Pender Drive  
Fairfax, Virginia 22030-6039  
e-mail: [Teresa.Lepe@fairfaxcounty.gov](mailto:Teresa.Lepe@fairfaxcounty.gov)

With a copy to: Office of the County Attorney  
Attention: County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
e-mail: [Beth.Teare@fairfaxcounty.gov](mailto:Beth.Teare@fairfaxcounty.gov)

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten Business Days written notice of such change(s) to the other party in accordance with the provisions of this Section 25.01.

Section 25.02. When Notices Deemed Given. Every Notice will be deemed to have been given or served (a) if given by hand or overnight mail, upon delivery thereof, (b) if given by the most current business technology at the time of giving such notice, at the time confirmation of such transmission is received by the sender provided that a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a), (b) or (c) in Section 25.01 above, and (c) if given by certified or registered mail, on the third (3rd) business day after the posting the same, postage prepaid; in each case with failure to accept delivery to constitute delivery for such purpose.

Section 25.03. Notices to Mortgagees. If requested in writing by any Mortgagee (which request will be made in the manner provided in Section 25.01 and will specify an address to which Notices will be given), any Notice of Default to a party will also be given contemporaneously to such holder in the manner herein specified.

## ARTICLE 26

### OPERATION AND MANAGEMENT OF THE PROJECT; RESIDENTIAL UNITS; BOOKS AND RECORDS

Section 26.01. Property Manager. Provided that no Event of Default exists, Tenant may select and enter into an agreement for the management and operation of the Premises with any party without the consent of Landlord if such party is an Affiliate of Tenant or such parties satisfies the following requirements: (a) such proposed property manager, or the officer or manager having supervisory responsibility for the Project has at least ten years' experience operating low income/affordable senior living facility projects similar in size to or larger than the Project, (b) such proposed property manager is not one against whom any action or proceeding is pending to enforce rights of the Commonwealth of Virginia or any agency, department, public authority or public benefit corporation thereof arising out of a mortgage obligation to the Commonwealth of Virginia or to any such agency, department, public authority or public benefit corporation, and (c) such proposed property manager is not one with respect to whom any notice of default which remains uncured has been given by the Commonwealth of Virginia or any agency, department, public authority or any public benefit corporation thereof arising out of a contractual obligation to the Commonwealth of Virginia or to any such agency, department, public authority or public benefit corporation. Tenant will, prior to the effective date of any such management agreement, notify Landlord of the proposed management agreement and submit to Landlord all information and documents Landlord may reasonably require for its review with respect to the criteria set forth above. If Landlord determines that the third-party manager does not comply with the foregoing criteria, Landlord will so advise Tenant in writing within 20 Business Days, specifying in what respect the proposed third-party manager does not conform to the requirements above. In such event, Tenant will submit a different third-party manager for Landlord's review in accordance with the terms of this Section or provide evidence reasonably satisfactory to Landlord that such third-party property manager has satisfied the criteria set forth above. Each review by Landlord will be carried out within 20 Business Days of the date of delivery of the information requested hereunder, and if Landlord does not notify Tenant of its determination within such 20 Business Day period, Landlord will be deemed to have determined that the third-party property manager is satisfactory. Each property manager that satisfies the requirements of this Section 26.01 will be an "Approved Property Manager" and any management agreement between Tenant and an Approved Property Manager with respect to the Project will be a "Management Agreement". Notwithstanding the foregoing, Realty Management dba Michaels Management Affordable is an Approved Property Manager under this Lease. Tenant will not enter into a management agreement with a new third-party property manager or consent to the assignment by an Approved Property Manager of its interest under its Management Agreement, without first complying with the notification and verification requirements set forth in this Section 26.01. Notwithstanding anything herein to the contrary, the Approved Property Manager is Interstate Realty Management Company, an affiliate of the Tenant, and such Property Manager may only be removed if this Lease is terminated and

the Tenant and its affiliates are released from any guaranties related to Tax Credit compliance and operations related to future defaults, noncompliance or deficits.

Section 26.02. Compliance with the Housing Criteria. Tenant covenant and agrees at all times to comply with Exhibit G (as now in effect or as may be amended from time to time during the Term) with respect to any and all Residential Units in the Project.

Notwithstanding anything contained in this Lease to the contrary, a Residential Lease will not require Landlord's prior consent and will not be deemed a Transfer hereunder.

Section 26.06. Acts of Residential Tenants. The fact that a violation or breach of any of the terms, provisions, or conditions of this Lease results from or is caused by an act or omission by any Residential Tenant, or subtenant of a Residential Tenant, will not relieve Tenant of Tenant's obligation to cure the same. Tenant will take any and all reasonable steps necessary to prevent any such violation or breach.

Section 26.07. Collection of Rental Payments from Residential Tenants. Landlord, after an Event of Default by Tenant, may, subject to the rights of any Mortgagee under this Lease, collect rent and all other sums due under the Residential Leases, and apply the net amount collected to any amounts due to Landlord under this Lease (including without limitation, Base Rent, Additional Costs and Impositions), but no such collection will be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease or the acceptance by Landlord of any Residential Tenant as tenant hereunder, or a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 26.08. Record Keeping. At all times during the Term, Tenant will maintain at its principal place of business or such other place as agreed to by Landlord and Tenant, a complete and accurate set of files, books, and records in connection with the Project and with respect to the operation and maintenance of the Project, including without limitation, compliance with any and all requirements of Exhibit G of this Lease. At all times during the Term, Landlord may, at such reasonable times during normal business hours and upon reasonable advanced notice, inspect Tenant's files, books, records, and related material pertaining to compliance with requirements of Exhibit G of this Lease and pertaining to maintenance of the Project. Tenant agrees that Landlord, or any of its duly authorized representatives, will, until the expiration of 3 years after the expiration or earlier termination of this Lease, have access to the records related to compliance with requirements of Exhibit G of this Lease and maintenance of the Project. Tenant will: (i) keep and maintain accurate, true, and complete books and records (A) with respect to all requirements of Exhibit G of this Lease, and (B) which will fully reflect the physical condition and maintenance status of the Project, together with all business licenses and permits required to be kept and maintained pursuant to the provisions of any Applicable Laws, and (ii) upon Landlord's request therefor, certify such files, books and records to Landlord as true, complete, and accurate in all material respects.

Section 26.09. Rent Roll. Upon Landlord's request (which will be limited to no more than two (2) times in any calendar year and at any time when Tenant is in an Event of Default under this Lease), Tenant will provide (a) a copy of a rent roll for the Project showing the name of each Residential Tenant, the Residential Unit occupied, the Residential Unit Lease expiration date, the rent payable for the current month, and the date through which rent has been paid.

## ARTICLE 27

### SUBORDINATION; LANDLORD MORTGAGES

Section 27.01. Lease Not Subordinate. Landlord's interest in this Lease and in the Premises will not be subject or subordinate to (a) any Mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens, security interests or encumbrances now or hereafter affecting Tenant's interest in this Lease.

Section 27.02. Landlord Mortgage. Tenant's leasehold interest in the Premises will be prior to any mortgage, lien, or other encumbrance on Landlord's interest in the Premises, subject to the Title Matters. As of the date hereof, Landlord represents to Tenant that there is no mortgage encumbering Landlord's interest in the Premises.

Section 27.03. No Impairment of Title. Nothing contained in this Lease or any action or inaction by Landlord will be deemed or construed to mean that Landlord has granted to Tenant any right, power, or permission to do any act or make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge, or other encumbrance other than this Lease upon the estate of Landlord in the Premises. In amplification and not in limitation of the foregoing, Tenant will not permit any portion of the Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Lease, in such manner as might impair Landlord's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises or any part thereof.

Section 27.04. Easements. Notwithstanding the provisions of Section 27.03 to the contrary, Tenant will have the right to create customary and ordinary utility and other operationally related easements which are reasonably required in connection with any Construction Work or operation of the Premises for the Permitted Uses; provided that Tenant provides each such easement to Landlord for its prior written approval, which approval will not be unreasonably withheld or delayed. Landlord will review any proposed easement (or modification thereof) within 15 Business Days of its receipt of such easement from Tenant. If Landlord has not notified Tenant of its determination within the applicable period, Landlord will be deemed to have approved such easement. Landlord agrees that if required by the applicable utility provider or other easement grantee, Landlord will join in the execution of such easements as approved by Landlord in accordance with the provisions of this Section 27.04.

## **ARTICLE 27**

### **GUARANTY**

Concurrently with the execution of this Lease, Tenant will cause Guarantor or another creditworthy entity satisfactory to Landlord in its sole discretion to enter into the Guaranty in the form annexed hereto as Exhibit E, pursuant to which Guarantor guaranties to Landlord: (i) the complete performance of all of Tenant's obligations in this Lease necessary to achieve Final Completion; and (ii) the timely payment and performance of all of Tenant's other obligations under this Lease from the Commencement Date through Final Completion. If that Guarantor fails to meet the Guarantor Net Worth Requirement at any time prior to Final Completion, Tenant will promptly replace such Guarantor with another creditworthy entity meeting the Guarantor Net Worth Requirement and cause such entity to enter into the Guaranty in the form annexed hereto as Exhibit E.

## **ARTICLE 29**

### **CERTIFICATES BY LANDLORD AND TENANT**

Section 29.01. Tenant Estoppels. At any time and from time to time upon not less than ten Business Days' notice by Landlord, Tenant will execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Base Rent and Additional Costs have been paid, stating whether or not to the knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge, and certifying as to any other matter with respect to this Lease as Landlord or such other addressee may reasonably request.

Section 29.02. Landlord Estoppels. At any time and from time to time upon not less than ten Business days' notice by Tenant, Landlord will execute, acknowledge and deliver to Tenant or any other party specified by Tenant a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Base Rent and Additional Costs have been paid, and stating whether or not to the best knowledge of Landlord, Tenant is in an Event of Default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such Event of Default of which Landlord may have knowledge, and certifying as to any other matter with respect to this Lease as Tenant or such other addressee may reasonably request.

## ARTICLE 30

### CONSENTS AND APPROVALS

Section 30.01. Consent Not a Waiver. It is understood and agreed that the granting of any consent or approval by Landlord to Tenant to perform any act of Tenant requiring Landlord's consent or approval under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent or approval, and Landlord will not be deemed to have granted such consent or approval for any further similar act by Tenant for which approval or consent is required. Tenant hereby expressly covenants and warrants that as to all matters requiring Landlord's consent or approval under the terms of this Lease, Tenant will secure such consent or approval for each and every happening of the event requiring such consent or approval, and will not claim any waiver on the part of Landlord of the requirement to secure such consent or approval.

Section 30.02. Consent Not To Be Unreasonably Delayed. Anywhere in this Lease where Landlord has agreed not to unreasonably withhold its consent, Landlord also agrees that its consent will not be unreasonably delayed.

Section 30.03. Landlord Not Liable for Money Damages. Whenever in this Lease Landlord's consent or approval is required and this Lease provides that Landlord's consent or approval will not be unreasonably withheld and Landlord will refuse such consent or approval, or in any instance in which Landlord will delay its consent or approval, Tenant will in no event be entitled to make, nor will Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor will Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld or unreasonably delayed its consent or approval, unless Tenant's claim is based upon an assertion that Landlord acted in bad faith. Tenant's sole remedy will be an action or proceeding to enforce any such provision, for specific performance, injunction, or declaratory judgment or for a determination as to whether Landlord reasonably withheld its consent, and the decisions will be final and conclusive on the parties.

## ARTICLE 31

### SURRENDER AT END OF TERM

Section 31.01. Surrender at End of Term. On the last day of the Term or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant will well and truly surrender and deliver up to Landlord the Premises and the Project in good order, condition and repair, reasonable wear and tear and damage by casualty or condemnation excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof, created by or consented to by Landlord, Residential Leases the term of which extends beyond the Expiration Date, or which lettings and occupancies

by their express terms and conditions extend beyond the Expiration Date, and which Landlord will have consented and agreed, in writing, may extend beyond the Expiration Date, without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 31.02. Delivery of Residential Leases and Other Agreements. On the last day of the Term or upon any earlier termination of the Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant will deliver to Landlord Tenant's executed counterparts of all Residential Leases and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Occupancy then in effect for the Project, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Fixtures installed in the Project, together with a duly executed assignment thereof to Landlord and all records required by Section 26.08.

Section 31.03. Abandonment of Property. Any personal property of Tenant or of any Residential Tenant, or subtenant of a Residential Tenant which will remain on the Premises for ten Business Days after the termination of this Lease and after the removal of Tenant or such Residential Tenant, or subtenant of a Residential Tenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Residential Tenant, or subtenant of a Residential Tenant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord will not be responsible for any loss or damage occurring to any such property owned by Tenant or any Residential Tenant, or subtenant of a Residential Tenant.

Section 31.04. Survival. The provisions of this Article 31 will survive any termination of this Lease.

## **ARTICLE 32**

### ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

### **ARTICLE 33**

#### QUIET ENJOYMENT

Landlord covenants that so long as this Lease is full force and effect and Tenant is not in default beyond notice and grace hereunder, Tenant will and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except those encumbrances, liens or defects of title, created or suffered by Tenant and the Title Matters.

### **ARTICLE 34**

#### DISPUTE RESOLUTION

Section 34.01. Mediation. If, after the Effective Date, a dispute occurs between Landlord and Tenant with respect to any matter arising under this Lease that is subject to this Article 34, the party raising a dispute or claim will give the other written notice specifying the nature of the dispute and the monetary amount involved, if any. For a period of 15 Business Days after receipt of such notice, Landlord and Tenant will proceed diligently and in good faith in an effort to resolve the dispute to their mutual satisfaction. If Landlord and Tenant fail to resolve the dispute prior to the expiration of the 15-day period, then mediation may be commenced by a written demand made by either party upon the other. As part of such demand, the moving party will identify a mediator. If the non-moving party does not agree with the mediator chosen by the moving party, the non-moving party will send written notice to the moving party of its decision and choose its own mediator within five Business Days thereafter, and Landlord's and Tenant's mediators will work together and within ten Business Days thereafter, choose a mediator agreeable to both mediators from a list of approved mediators from the AAA (defined below). The mediation will be held at a date, time, and place mutually agreeable to Landlord and Tenant and will be administered in accordance with the Commercial Mediation Rules of the American Arbitration Association ("AAA"). The costs of the mediation will be borne equally by Landlord and Tenant.

Section 34.02. Discovery. Notwithstanding any provision in the AAA Rules to the contrary, in any mediation proceeding, Landlord and Tenant each (i) will have the right to add by way of joinder any other party under contract for work or professional services of any kind relating to the Project; (ii) prior to the mediation hearing, will be entitled to take limited discovery in the form of the right to request documents, the right to serve not more than 30 interrogatories and the right to take not more than four depositions, with respect to each other party; and (iii) at the mediation hearing, will be entitled to present evidence and to cross-examine witnesses.

Section 34.03. Non-Binding Presumption. The decision and award of the mediator, if any, will not be binding on Landlord or Tenant and will not be introduced into evidence in any court or

proceeding between the parties unless Landlord and Tenant enter into a written agreement memorializing the decision and award of the mediator.

Section 34.04. Judicial Proceedings. Except as otherwise specifically provided in this Lease or as otherwise mutually agreed in writing by Landlord and Tenant, any dispute between the parties arising from or in connection with this Lease will be resolved by judicial proceedings.

### **ARTICLE 35**

#### INVALIDITY OF CERTAIN PROVISIONS

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

### **ARTICLE 36**

#### RECORDING OF MEMORANDUM

Tenant, at Tenant's sole cost and expense, may record a memorandum of (a) this Lease, or (b) any amendment or modification of this Lease. Landlord will, upon the request of Tenant, join in the execution of a memorandum of this Lease or a memorandum of any amendment or modification of this Lease in proper form for recordation.

### **ARTICLE 37**

#### MISCELLANEOUS

Section 37.01. Captions. The captions of this Lease are for convenience of reference only and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

Section 37.02. Table of Contents. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 37.03. Pronouns. The use herein of the neuter pronoun in any reference to Landlord or Tenant will be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant will be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 37.04. Depository Charges. Depository may pay to itself out of the monies held by Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant will pay Depository any additional charges for such services.

Section 37.05. More than One Entity. If more than one entity is named as or becomes Tenant hereunder, Landlord may require the signatures of all such entities in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such entity will designate another such entity as its attorney-in-fact to act on its behalf, which designation will be effective until receipt by Landlord of notice of its revocation. Subject to Section 37.06, each entity named as Tenant will be fully liable for all of Tenant's obligations hereunder. Any notice by Landlord to any entity named as Tenant will be sufficient and will have the same force and effect as though given to all parties named as Tenant. If all such parties designate in writing one entity to receive copies of all notices, Landlord agrees to send copies of all notices to that entity.

Section 37.06. Limitation of Liability. None of Landlord's members, directors, officers, employees, agents, or servants will have any liability (personal or otherwise) hereunder, and no property or assets of such Persons will be subject to levy, execution, or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

(a) The liability of Landlord or of any Person who has at any time acted as Landlord hereunder for damages or otherwise will be limited to Landlord's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes or action or other interests, sums or receivables appurtenant to the Premises. Neither Landlord nor any such Person nor any of the members, directors, officers, employees, agents or servants or either will have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, directors, officers, employees, agents or servants of either will be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

(b) The liability of Tenant or of any Person who has at any time acted as Tenant hereunder for damages or otherwise will be limited to Tenant's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, any funds held by Depository pursuant to any of the provisions of this Lease, and any other rights, privileges, licenses, franchises, claims, causes or action or other interests, sums or receivables appurtenant to the Premises. Neither Tenant nor any such Person nor any of the members, directors, officers, employees, agents or servants or either will have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any such Person or any of the members, directors, officers, employees,

agents or servants of either will be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

Section 37.07. No Merger. Except as otherwise expressly provided in this Lease, there will be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 37.08. Refuse. Tenant will store all refuse from the Premises off the streets in an enclosed area on the Premises in accordance with the requirements of municipal and private sanitation services serving the Premises.

Section 37.09. No Brokers. Each of the parties represents to the other that it has not dealt with any broker, finder or like entity in connection with this Lease. If any claim is made by any Person who will claim to have acted or dealt with Landlord or Tenant in connection with this transaction, the party for whom the Person claims to represent will pay the brokerage commission, fee or other compensation to which such Person is entitled and will reimburse the other for any costs or expenses including, without limitation, reasonable attorneys' fees and disbursements, incurred by the other party in defending itself against claims made against it for any such brokerage commission, fee or other compensation.

Section 37.10. Amendments in Writing. This Lease may not be changed, modified, or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification, or termination is sought.

Section 37.11. Governing Law. This Lease and any dispute, controversy or proceeding arising out of or relating to this Lease (whether in contract, tort, common or statutory law, equity or otherwise) will be governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than those of Virginia, and must be brought and resolved in the courts of the Commonwealth of Virginia located in the County of Fairfax, Virginia or U.S. District Court for the Eastern District of Virginia, Alexandria Division.

Section 37.12. Successors and Assigns. The agreements, terms, covenants, and conditions herein will be binding upon, and will inure to the benefit of, Landlord and Tenant and their respective successors and assigns that are permitted under this Lease.

Section 37.13. Sections. All references in this Lease to "Articles" or "Sections" will refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 37.14. Plans Specifications. All of Tenant's right, title and interest in all plans and drawings required to be furnished by Tenant to Landlord under this Lease and in any and all other plans, drawings, specifications, or models prepared in connection with construction of the Project,

any Restoration or Capital Improvements, will become the sole and absolute property of Landlord upon the Expiration Date or any earlier termination of this Lease. Tenant will deliver all such documents to Landlord promptly upon the Expiration Date or any earlier termination of this Lease. Tenant's obligation under this Section 37.14 will survive the Expiration Date. Notwithstanding the foregoing, if a New Lease is entered into, then the New Tenant will be entitled to such documents, ***provided however***, the New Tenant will be obligated to deliver the same to Landlord at the expiration or earlier termination of the New Lease.

Section 37.15. Licensed Professionals. All references in this Lease to "licensed professional engineer," "licensed surveyor" or "registered architect" will mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the Commonwealth of Virginia.

Section 37.16. Matters Effecting Title to Premises. Landlord will not enter into or cause there to be entered into any agreements, easements, instruments, or other documents that will encumber or otherwise effect title to the Premises without obtaining the prior written consent of Tenant.

Section 37.17. No Joint Venture. Nothing herein is intended nor will be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 37.18. Tax Benefits. To the extent permitted by law, Tenant will have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, demolition and Restoration performed by Tenant or attributable to the ownership of the Project. Landlord, from time to time, will execute and deliver such instruments as Tenant will reasonably request in order to effect the provisions of this Section 37.18, and Tenant will pay Landlord's reasonable costs and expenses thereof. Landlord makes no representations as to the availability of any such deductions, credits, or tax benefits.

Section 37.19. Waiver of Jury Trial. Each party waives all rights to a trial by jury in any claim, action, proceeding, or counterclaim arising out of or in any way connected with this Lease.

Section 37.20. Submission Not an Offer. Submission of this Lease by Landlord to Tenant does not constitute an offer by Landlord to lease the Premises upon the terms hereof, and in no event will Landlord be bound hereunder except upon the mutual execution and delivery by Landlord and Tenant of the Lease, and the approval of such execution by Landlord's Board of Directors pursuant to applicable law.

## ARTICLE 38

### TAX CREDIT SYNDICATION

Section 38.01. Agreement of Landlord to Cooperate with Syndication of Tax Credits. Landlord hereby acknowledges that the right to syndicate the low-income housing tax credits (“the “Tax Credits””) allocated to the Project is a material benefit bargained for by Tenant. Therefore, Landlord agrees that Tenant will have the right to syndicate the Tax Credits allocated to the Project and Landlord will reasonably cooperate with Tenant in connection with any syndication of the Tax Credits. To effectuate any such syndication, Tenant may elect to: (a) form a condominium on the Project such that one or more condominium units contain all of the low-income units which can be conveyed to a syndication company; or (b) enter into a master sublease, or bifurcate this Lease into two or more leases to separate the leasehold interest, whereby all of the low-income rental units are subleased to a syndication company. Furthermore, Tenant will not be charged any fee by Landlord in connection with a syndication of the Tax Credits allocated to the Project or require the reimbursement of any costs incurred in connection with the admission of a Person who will claim the Tax Credits with respect to the Project (the “Tax Equity Investor”) as a partner or member of Tenant under its organizational documents. Landlord acknowledges and agrees that the Project may be operated and maintained in accordance with all requirements related to the Tax Credits (while such requirements remain effective against the Tax Credits (the “Tax Credit Period”)). In addition, during any Tax Credit Period where a Tax Equity Investor is a partner, member or shareholder of Tenant, a Tax Equity Investor will be afforded the notice and cure rights of a Mortgagee under Section 10.04(c) above (the parties agreeing that any notice given to a Tax Equity Investor under Section 25.01 will also be deemed to satisfy the notice requirement of Section 10.04(c)), ***provided however***, that Landlord and Tenant agree that the Tax Equity Investor will only be afforded the additional cure periods set forth in Section 10.04(c) if Tenant has terminated (or terminates prior to the end of the notice and cure period for such Event of Default) Tenant’s property manager and replaces such property manager with an Approved Property Manager (that is not an Affiliate of the terminated property manager) under the Lease.

Section 38.02. Severance Leases. If Tenant has assigned a portion of the Project to a Permitted Transferee upon satisfaction of the terms and conditions set forth in Article 10 of this Lease, then at Tenant’s request, and at Tenant’s sole cost and expense, Landlord will sever this Lease into (x) a lease demising separately the portion of the Premises on which a Building is to be constructed (the “Parcel Lease”), and (y) a lease for the balance of the Premises (the “Balance Lease”). The Severance Lease and the Balance Lease will be executed and delivered simultaneously with the closing of a construction loan or other financing for the construction of the Project located on the premises demised under the Parcel Lease. The Parcel Lease will be on all of the terms and conditions of this Lease, mutatis mutandis, and will also provide as follows:

- (a) Rental will be divided between the Parcel Lease and the Balance Lease in a proportion as requested by Tenant, provided, however, in no event will the Rental under

the Parcel Lease be lesser in proportion to the entire Rental hereunder than the proportion that the Floor Area of the Project to be located on the Parcel Lease bears to the Floor Area appurtenant to the entire Premises.

(b) The Parcel Lease and the Balance Lease will not be cross-defaulted.

(c) The Completion Guaranty (Affordable Housing – Family) will remain in effect upon the terms described therein, except that such guaranty may, at Tenant’s request, be severed into separate guaranties with respect to each lease.

(d) Tenant will pay to Landlord within ten Business Days following demand all of Landlord’s costs and expenses incurred in connection with the severance of this Lease and Landlord’s other actions incident thereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

[SIGNATURE BLOCKS TO BE INSERTED PRIOR TO CLOSING]



**EXHIBIT A**

**TO FORM OF DEED OF LEASE**

[Legal Description of Land]

[To be Attached]

[FOR 4% PLEASE SEE EXHIBIT A TO CONTRACT TO GROUND LEASE (4%);  
FOR 9% PLEASE SEE EXHIBITS A -1 and A-2 TO CONTRACT TO GROUND LEASE  
(9%)]



**EXHIBIT B**

**TO FORM OF DEED OF LEASE**

**Project Description**

**[Will be provided]**

**EXHIBIT C**

**TO FORM OF DEED OF LEASE**

Plans and Specifications

[List of Plans and Specifications will be added prior to execution of the ground lease]

**EXHIBIT D**

**TO FORM OF DEED OF LEASE**

[Project Schedule]

**[EXHIBIT D WILL BE AGREED UPON BY LANDLORD AND TENANT AND ADDED  
HERETO PRIOR TO EXECUTION OF THE GROUND LEASE]**

**EXHIBIT E**

**TO FORM OF DEED OF LEASE**

Form of  
**GUARANTY OF COMPLETION**

THIS GUARANTY OF COMPLETION (this "Guaranty") is made this \_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, a \_\_\_\_\_ (the "Guarantor") in favor of FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia, its successors and assigns ("FCRHA").

**RECITALS**

R-1 Autumn Willow 9, LLC, a Virginia limited liability company, as tenant ("Tenant"), and FCRHA, as landlord, have entered into the Deed of Lease, dated \_\_\_\_\_, 202\_, by and between FCRHA and Tenant (the "Lease"), covering real property located in the County of Fairfax, Virginia, as more particularly described in Exhibit A attached hereto and made a part thereof (the "Premises" );

R-2 Tenant is obligated to deliver a payment and performance guaranty for the Final Completion (as defined in the Lease) of the Project (as defined in the Lease), and Tenant has caused the delivery of this Guaranty by Guarantor, to satisfy Tenant's obligations with respect to the delivery of such guaranty; and

R-3 Guarantor will receive material benefit from the execution of this Guaranty and the execution of the Lease by Tenant.

NOW, THEREFORE, IN CONSIDERATION of the agreement by FCRHA to enter into the Lease with Tenant and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees with FCRHA as follows:

1. The Recitals set forth above are hereby incorporated in this Guaranty by this reference. Capitalized terms used in this Guaranty and not otherwise defined herein will have the meanings as are set forth in the Lease.

2. If Tenant will (a) fail to achieve Final Completion, within the period or periods required by the Lease, and in accordance with all laws, rules, regulations and requirements of all governmental authorities having jurisdiction, or (b) fail to keep the Premises free from all liens and claims which may be filed or made for performing work and labor thereon or furnishing

materials therefor in connection with the construction of the Initial Construction Work; then Guarantor hereby guarantees to FCRHA that it will:

cause the Final Completion to occur, in the manner and within the period of time required by the Lease and in accordance with the Plans and Specifications, amended only as approved in writing by FCRHA, and in accordance with all laws, rules, regulations and requirements of all governmental authorities having jurisdiction;

(a) cause any such mechanics' or materialmen's liens and claims related to the Initial Construction Work to be removed or bonded and thereafter keep the Premises thereon free from all such liens and claims;

(b) make payment in full to any contractor(s) to which Tenant is obligated in accordance with the Lease for any and all contracts related to the Initial Construction Work; and

(c) pay all costs and expenses incurred in doing (i), (ii) and (iii) of this Section; provided however, that if Guarantor fails to timely take the actions described in (i), (ii) and (iii) of this Section and pay the costs and expenses incurred in connection therewith, then FCRHA may take the actions described in (i), (ii) and (iii) of this Section and Guarantor will pay to or reimburse FCRHA for all such costs and expenses incurred by FCRHA in connection therewith.

(d) Guarantor further agrees to indemnify and hold harmless FCRHA from any loss (including reasonable attorney's fees) resulting from any default by Guarantor under the terms of this Guaranty.

3. Guarantor hereby waives (to the extent permitted by applicable laws) notice of acceptance of this Guaranty by FCRHA and any and all notices and demands of every kind and description which may be required to be given by any statute or rule or law (other than notices required by the terms of the Lease), and agrees that the liability of Guarantor hereunder will in no way be affected, diminished or released (a) by any forbearance which may be granted to Tenant (or to any successor to it or to any person or entity which will have assumed the obligations of Tenant under the Lease), (b) by any waiver by FCRHA of any term, covenant or condition in any of the Lease, (c) by reason of any change or modification in any construction contract with any contractor or any of the construction contracts, or (d) by the acceptance of additional security for the obligations under the Lease or the release by FCRHA of any security or of any party primarily or secondarily liable under the Lease, including one or more of the undersigned (if applicable).

4. Guarantor hereby agrees that the Plans and Specifications, and any other terms, covenants and conditions contained in the Lease or any construction contract with any contractor may be altered, extended, changed, modified, or released by Tenant, with the approval of

FCRHA (when required under the Lease), and without notice to or the consent of Guarantor, without in any manner affecting the obligations of Guarantor under this Guaranty or releasing Guarantor therefrom. Guarantor specifically acknowledges and agrees that change orders approved by Tenant will in no manner release Guarantor from the obligations evidenced by this Guaranty.

5. Guarantor agrees that this Guaranty may be enforced by FCRHA without the necessity at any time of resorting to or exhausting any other remedies under the Lease and without the necessity at any time of having recourse under the Lease. Guarantor further agrees that nothing herein contained will prevent FCRHA from suing under the Lease or terminating the Lease or from exercising any other right available to it under the Lease, and the exercise of any of the aforementioned rights will not constitute a legal or equitable discharge of Guarantor, it being the purpose and intent of Guarantor that its obligations under this Guaranty be released therefrom upon payment of all sums due hereunder and achievement of Final Completion in accordance with the terms and conditions of the Lease and this Guaranty. Notwithstanding anything to the contrary herein, this Guaranty will terminate and be of no further force or effect and Guarantor will be released of all obligations hereunder upon the achievement of Final Completion, as set forth in the Lease.

6. Nothing contained in this Guaranty will operate as a release or discharge in whole or in part, of any claim of Guarantor against Tenant by subrogation or otherwise, by reason of any act done or any payment made by Guarantor pursuant to the provisions of this Guaranty; provided, however, all such claims will be subordinate to the claims of FCRHA and Guarantor assigns all of its right, title and interest in all claims of Guarantor as security for the fulfillment of all of Guarantor's obligations under this Guaranty.

7. Guarantor acknowledges, consents and agrees (a) that the provisions of this Guaranty and the rights of all parties to this Guaranty are governed by the laws of the Commonwealth of Virginia and interpreted and construed in accordance with such laws and (b) that the United States District Court for the Eastern District of Virginia or any court of competent jurisdiction of the Commonwealth of Virginia will have jurisdiction in any proceeding instituted to enforce this Guaranty and any objections to venue are waived by Guarantor.

8. \GUARANTOR AND FCHRA HEREBY, JOINTLY AND SEVERALLY, WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GUARANTOR AND FCHRA MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS GUARANTY OR THE LEASE. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTY. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF

TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GUARANTOR FURTHER REPRESENTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

9. The rights, powers, privileges, and discretions (the “Rights”) to which FCRHA may be entitled hereunder will inure to the benefit of its successors and assigns. All the Rights of FCRHA are cumulative and not alternative and may be enforced successively or concurrently. Failure of FCRHA to exercise any of its Rights will not be deemed a waiver thereof and no waiver of any of its Rights will be effective unless in writing and signed by FCRHA. The terms, covenants, and conditions of or imposed upon Guarantor herein will be binding upon his respective heirs, personal representatives, successors, and assigns.

10. Guarantor represents and warrants that it has examined or has had an opportunity to examine the Lease, and that it has full power, authority, and legal right to execute and deliver this Guaranty, and that this Guaranty is a binding legal obligation of Guarantor.

11. In case any provision contained in this Guaranty will for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this Guaranty, but this Guaranty will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

WITNESS the signature and seal of Guarantor as of the day and year first above written.

**GUARANTOR:**

\_\_\_\_\_ ,

a \_\_\_\_\_

By: \_\_\_\_\_ [SEAL]

Name:

Title:

**EXHIBIT F**

**TO FORM OF DEED OF LEASE**

**Title Matters**

**[EXHIBIT E WILL BE AGREED UPON BY LANDLORD AND TENANT AND ADDED  
HERETO PRIOR TO EXECUTION OF THE GROUND LEASE]**



## **EXHIBIT G**

### **TO FORM OF DEED OF LEASE**

#### **9% Project**

#### **Criteria for Affordable Housing Units, Tenants, Rents and Eligible Household Income**

The Premises will be used as a residential rental development having 100% of its [redacted] dwelling units operated as affordable housing (such dwelling units may be referred to as “**Affordable Housing Units**” or as “**AHUs**”). At all times during the term of the Lease Tenant will maintain, as applicable, all AHUs in compliance with (a) as and when applicable, the laws, rules, and regulations of the federal Low-Income Housing Tax Credit Program administered under Section 42 of the Internal Revenue Code of 1986, as amended, (“**LIHTC Program**”) and/or the applicable requirements of the Virginia Housing, and (b) with the terms and conditions of the Lease and this Exhibit F thereto. Notwithstanding anything herein to the contrary, so long as an AHU Unit is subject to the regulatory restrictions of the LIHTC Program, then Tenant will comply with the requirements of (a) and (b) above with respect to such AHU Unit. At such time as an **ASH** Unit is not a subject to the regulatory restrictions of the LIHTC Program (i.e., after the expiration of the extended use restriction period), then Tenant need only comply with requirements of (b) with respect to such AHU Unit.

#### **1. Designation on Approved Plans**

Approved site plans and building plans will include a table setting forth the number of units in each of the bedroom count categories and will demonstrate that such units meet the minimum floor area limitations. The AHUs accepted as part of proffered conditions associated with a rezoning application for the Premises and included on approved site plans will be deemed features shown for purposes of Va. Code Ann. §15.2-2232 and, as such, will not require further approvals pursuant thereto in the event the Board of Supervisors will acquire or lease such units.

#### **2. Administration of Affordable Housing Units**

A. All AHUs are to be initially leased for a minimum six-month term with a maximum term of one year and maximum renewal term(s) of one year to tenants who meet the eligibility criteria established in accordance with the Lease, including, but not limited to, the terms of this Exhibit G and/or all applicable LIHTC Program requirements. Such leases are referred to as “**Affordable Housing Leases**” and qualified tenant occupants of such AHUs are referred to

herein as “**Affordable Housing Tenants.**” The Affordable Housing Leases for AHUs will include conditions that require the Affordable Housing Tenant to occupy the AHU as his or her domicile, that prohibit the subleasing of the unit, that require continued compliance with the applicable eligibility criteria, and that require the Affordable Housing Tenant to annually verify under oath, on a form approved by the Fairfax County Department of Housing and Community Development (“**DHCD**”), the total household annual income and such other facts that the Tenant may require in order to ensure that the Affordable Housing Tenant household continues to meet the applicable eligibility criteria. The fact that an Affordable Housing Tenant applicant does not possess a housing choice (a/k/a “Section 8”) voucher or other subsidy will not be a permissible reason for Tenant to reject or discriminate against such applicant. provided, however, that the Tenant will be allowed to apply reasonable credit, background, and other admissions criteria to all applicants.

**B.**

- (1) As used in this Exhibit, area median income (“**AMI**”), or any specified percentage of AMI, means the annual estimate of area median income, or percentage thereof, for the Washington Metropolitan Statistical Area (“**WMSA**”) published by the United States Department of Housing and Urban Development (“**HUD**”), as adjusted for household size.
- (2) Affordable Housing Tenant households must continue to meet the eligibility and income criteria set forth in this Exhibit G in order to continue occupancy of the AHU, provided that (a) during any period in which a unit is subject to LIHTC Program restrictions, an Affordable Housing Tenant household will continue to be eligible so long as it complies with LIHTC Program requirements, and (b) during any period in which a unit is not subject to LIHTC Program restrictions, an Affordable Housing Tenant household will continue to be eligible so long as its income does not exceed 80%<sup>1</sup> of AMI. However, an Affordable Housing Tenant household that no longer meets such criteria may continue to occupy an AHU until the end of the applicable lease term.
- (3) AHUs may not be subleased.

**C.** Within 15 days of the end of each quarter, the Tenant will provide the DHCD with a certified statement from the property manager as of the first of such quarter providing for:

- (1) The address and name of the Premises and the name of the Tenant.
- (2) The number of AHUs by bedroom count and floor area, which are vacant.

(3) The number of AHUs by bedroom count and floor area that are leased. For each such unit, the statement will contain the following information:

- (i) The unit number, address, bedroom count and floor area.
- (ii) The Affordable Housing Tenant's name and household size.
- (iii) The effective date of the Affordable Housing Lease.
- (iv) The Affordable Housing Tenant's household income as of the date of the lease as certified by such Affordable Housing Tenant and confirmed by acceptable third-party verification (e.g., IRS W-2 Form) at such Affordable Housing Tenant's most recent (re)certification.
- (v) The current monthly rent.
- (vi) The Area Median Income ("AMI") level.

(4) That to the best of the Tenant's information and belief, the tenant households who lease AHUs meet the eligibility criteria established in accordance with the Lease, including, but not limited to, the terms of this Exhibit G and, to the extent applicable, the LIHTC Program requirements.

(5) At the request of DHCD, the Tenant will provide the DHCD with a copy of each new or revised annual tenant verification obtained from the renters of AHUs pursuant to Paragraph B above.

D. Distribution of Affordable Housing Units by AMI Level and Unit Type. The table below sets forth the number of AHUs of each unit type that will be occupied by households having incomes at or below thirty percent (30%), fifty percent (50%) and sixty percent (60%) of AMI, as applicable:

As units become vacant, Tenant will lease such units with households whose incomes fall into a category (based on unit size and AMI) that is under-represented based on the table below.

Area Median Income (AMI)	Number of Units
30%	
50%	
60%	

In the event of federal cuts to the Housing Choice Voucher (a/k/a Section 8) program, the FCRHA will prioritize the funding of any Project-Based Vouchers awarded to the Project in accordance with and subject to Section 8 laws, rules, and regulations.

E. Affordable Housing Unit Rental Pricing. The maximum rent charged to the Affordable Housing Tenant for each AHU at each AMI tier will be calculated and reset each year throughout the term of the Lease pursuant to the formula established under the federal LIHTC Program and administered by the Virginia Housing under Section 42 of the Internal Revenue Code of 1986, as amended from time to time, provided however, that in the event such LIHTC Program should be terminated or discontinued at any time during the term of the Lease, all units will be deemed to be affordable to a tenant household if the monthly rent charged to the Affordable Housing Tenant for that unit, together with reasonable utility costs, does not exceed 30% of the monthly gross income of households whose incomes do not exceed, as applicable, 30%, 50%, and 60% of the annual AMI as established above. For purposes of establishing the maximum affordable rent, (a) the imputed household size for determining the applicable income limit is assumed to be one person for a unit that does not have a separate bedroom, and 1.5 persons per separate bedroom for a unit with one or more separate bedrooms and (b) the AMI level for each AHU will be as set forth in Section 3.D above. This method of establishing annual rent charged to the Affordable Housing Tenant will continue to apply to all AHUs both during and after the period that the LIHTC Program is in effect for any of the AHUs and will continue through the end of the lease term. Notwithstanding anything to the contrary contained herein, if rental subsidy payments are made to or on behalf of a tenant household under the Section 8 Housing Choice Voucher Program (either tenant- or project-based) or any other rental subsidy program, then (x) the unit will be deemed affordable if the tenant's share of rent and utilities does not exceed the maximum amount described above, and (y) such tenant may occupy any AHU as long as the tenant's share of the rent and utilities does not exceed the maximum amount described above and the tenant's household income is at or below the designated AMI applicable to the unit.

F. Eligible Affordable Housing Tenant Household Incomes. The maximum eligible household gross income for Affordable Housing Tenant households for each AHU at each AMI level will be calculated and reset each year using HUD's annual estimate of AMI for the WMSA as referenced above, adjusted for household size, and, if applicable, applied in accordance with LIHTC Program.

G. Household Size. The minimum household size for any unit will be one person per bedroom. The maximum household size for any unit will not exceed the applicable limits of state and local laws and regulations and any limits of federal programs applicable to the Project.

### **3. Occupancy of Affordable Housing Units**

A. Before a prospective Affordable Housing Tenant may rent an AHU, he or she must meet the eligibility criteria established in the Lease and this Exhibit G, including, but not limited to the

household income limitations for eligible households. The Tenant is responsible for determining that the proposed Affordable Housing Tenant household meets the eligibility criteria applicable to an Affordable Housing Tenant household for the applicable AHU at a particular AMI level.

B. Affordable Housing Tenants must occupy the AHUs as their domicile and will provide an executed affidavit on an annual basis certifying their continuing occupancy of the units. Affordable Housing Tenants will provide such affidavit to the Tenant by the date that may be specified in their Affordable Housing Lease or that may otherwise be specified by the Tenant.

C. The Affordable Housing Lease will provide that in the event an Affordable Housing Tenant fails to provide Tenant with an executed affidavit as provided for in the preceding paragraph within 30 days after a written request for such affidavit, then the Affordable Housing Lease will automatically terminate, become null and void, and will require the occupant to vacate the unit within 30 days after written notice from the Tenant. Tenant will take appropriate enforcement action when necessary if such Affordable Housing Tenant fails to vacate the applicable unit. Provided Tenant has acted in accordance with the foregoing, a failure by an Affordable Housing Tenant to vacate a unit will not be considered an Affordable Housing Criteria Default under the terms of the Lease.

D. Except as specifically provided for in the Lease, this Exhibit G, and pursuant to the LIHTC Program (for those AHUs to which the LIHTC Program is applicable), if a renter of an AHU no longer meets the Affordable Housing Tenant criteria, as a result of increased income or other factors (subject to Section 3.B of this Exhibit G), then at the end of the applicable Affordable Housing Lease term, Tenant will require the occupant to vacate that AHU and Tenant will take appropriate enforcement action when necessary if such Affordable Housing Tenant fails to vacate the applicable unit. Provided Tenant has acted in accordance with the foregoing, a failure by an Affordable Housing Tenant to vacate a unit will not be considered an Affordable Housing Criteria Default under the terms of the Lease.

E. The Affordable Housing Lease will provide that in the event an Affordable Housing Tenant fails to occupy the applicable AHU for a period in excess of 60 days, a default under the applicable Affordable Housing Lease will occur. The Affordable Housing Lease will automatically terminate, become null and void and Tenant will require occupants to vacate the AHU within 30 days of written notice from the Tenant and Tenant will take appropriate enforcement action when necessary if such Affordable Housing Tenant fails to vacate the applicable unit. Provided Tenant has acted in accordance with the foregoing, a failure by an Affordable Housing Tenant to vacate a unit will not be considered an Affordable Housing Criteria Default under the terms of the Lease.

#### **4. Additional Criteria**

A. Utility Charges. The rental charges actually collected by Tenant from Affordable Housing Tenants may include or exclude utility charges, at the option of Tenant, and such utility

charges may be billed directly from the provider of such utility to the individual Affordable Housing Tenants and/or billed separately by Tenant to the individual Affordable Housing Tenants.

B. Certification of Income. Tenant will obtain from each prospective Affordable Housing Tenant of an AHU a certification of income in using a form to be reasonably acceptable to both parties. Annually thereafter, Tenant will make a determination on the basis of current income of whether the income of any Affordable Housing Tenant exceeds the applicable income limit and will obtain a recertification of income from all tenants of AHUs on forms approved by Landlord. Upon request of Landlord, copies of all certifications and recertifications will be furnished to Landlord. Tenant will maintain in its records the certifications and recertifications for five years or for such longer periods as may be required by the LIHTC Program.

C. Evidence of Income. In a manner and form agreed to by Landlord and Tenant, Tenant will obtain written evidence substantiating the information given on the Affordable Housing Tenants' certifications and recertifications of income and will retain the evidence in its files for a time supportive of the certification requirements of the immediately preceding clause. HUD Handbook 4350.3 REV-1 sets forth instructions for verifying and calculating incomes.

D. No Restrictions Against Families with Children. Tenant will not restrict occupancy of AHUs which can be occupied by more than one person by reason of the fact that there are children in a family; provided however, that all of the AHUs are senior living facilities only.

E. Number of Affordable Housing Units Rented. Tenant will not permit an Affordable Housing Tenant to rent more than one AHU at any given time.

F. Reports. Tenant will prepare, or will cause the managing agent of the Premises to prepare, such reports as may be required by Section 26.09 of the Lease and this Exhibit G.

G. Components of Development.

- (i) all of the AHUs will be rented or available on a non-transient basis; and
- (ii) none of the AHUs will be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanatorium, or rest home.

H. Continuance of Rental Restriction. Subject to maintenance and repair of AHUs in the ordinary course of business, and subject to the casualty and condemnation provisions of the Lease, Tenant will maintain all of the AHUs rented or available for rental on a continuous basis.

I. Furnishing Tenant Information. Tenant agrees to furnish to Landlord, on an annual basis a Certification of Continuing Program Compliance, in a form to be reasonably acceptable to both parties, and maintain on file Tenant Income Certifications, in a form to be reasonably acceptable

to both parties, in order to permit verification that the covenants set forth in this Lease and this Exhibit G are being satisfied by Tenant. The Affordable Housing Leases will contain clauses wherein each Affordable Housing Tenant certifies as to the accuracy of statements made in the Tenant Income Certification and agrees that family income and other eligibility requirements will be deemed substantial and material obligations of such Affordable Housing Tenant's tenancy, that Affordable Housing Tenant will comply with all requests for information with respect thereto from Tenant and that failure to provide accurate information on the Tenant Income Certification or refusal to comply with a request for information with respect thereto will be deemed a violation by such Affordable Housing Tenant of a substantial obligation.

J. Covenant to Notify. Tenant will notify Landlord of the occurrence of any event of which Tenant has notice and which event, to the knowledge of Tenant, would constitute a default in Tenant's obligations under this Exhibit G.

K. Acts Requiring Landlord Approval. Tenant will not without the prior written approval of Landlord, such approval not to be unreasonably withheld or delayed:

(i) require, as a condition of the occupancy or leasing of any AHU, any consideration or deposit except for an application fee, the prepayment of the first month's rent plus a security deposit in an amount not in excess of two month's gross rent, pet deposits, and, to the extent applicable, such other amounts addressed in paragraph M below. Any funds collected as security deposits will be kept separate and apart from all other funds of the Premises. If interest is earned on such trust account, it will accrue to the benefit of the Affordable Housing Tenant, unless otherwise required by law or federal or state regulation; or

(ii) permit the use of the AHUs for any purpose except the use which was originally intended or permit commercial use greater than that approved by Landlord.

L. Non-Discrimination in Housing. Tenant will comply with all federal, state, and Fairfax County fair housing laws and equal employment laws and all rules and regulations promulgated in connection therewith.

M. Other Income – Tenant will have the right to charge for the following in addition to the rent:

(i) Parking – One parking space per unit;

(ii) Laundry - Either an in-unit washer and dryer or in building coin operated machines will be provided;

(iii) Other Fees – Other fees including, but not limited to, pet premiums, late charges, administration fees associated with managing and invoice for utilities, NSF Fee, processing

fees, early lease termination fees, charges for use of the community laundry facilities, etc.;

(iv) Bulk Cable Charge – If Tenant installs or causes to be installed the equipment necessary to provide cable, FIOS, telephone, internet, or other related services, then Tenant will be entitled to charge a fee to Affordable Housing Tenants that elect to use such equipment and additional fees for the related services that such Affordable Housing Tenants elect to use; and

(v) Storage – A monthly charge to those Affordable Housing Tenants that lease a storage unit provided by Tenant at the Premises.

N. Accessible Units. Tenant will design and construct the Lodge at Autumn Willow to provide at all times at least 10% of the units (15) to be fully accessible and at least 4 units will be accessible for persons with hearing and visual disabilities. Further, Tenant will design and construct the remaining units such that each may be converted to fully accessible units if the need arises, with the understanding that several of these remaining units, such as a corner unit, may encounter design challenges that require minor variations from the standard accessibility criteria.

## **5. LIHTC Program**

To the extent any provision of this Exhibit G or the Deed of Ground Lease conflicts with the LIHTC Program laws, regulations, rules, and guidance, then the LIHTC Program requirements will control. This includes without limitation the requirements of Internal Revenue Code Section 42(h)(6)(E)(ii) prohibiting the eviction or termination of tenancy other than for good

## **EXHIBIT H**

### **TO FORM OF DEED OF LEASE**

#### **[Cash Flow to FCRHA]**

The following provisions will be incorporated into a separate incentive management fee agreement or cash flow contingent seller take back note or will be reinserted into the ground lease, provided the senior lender is satisfied with the subordination provisions.

The specific terms will be subject to review and revision based on the relevant defined terms in the amended and restated operating agreement of the Tenant, which will allow consistent terms so the audited financial statements of the Tenant will reflect accurate and consistent Net Cash Flow.

The FCRHA and the Tenant agree that these terms are subject to reasonable revision by the parties upon refinancings or recapitalizing the Project which may include new sources of financing that would share in the cash flow, new reserve requirements of senior lenders, or other changes to the underwriting that would affect Net Cash Flow.

“Tenant’s Net Cash Flow” means for each Lease Year (or any Calendar Quarter or other period, as applicable) commencing in a year when there are no subject to cash flow payments then due and owing pursuant to any loan agreement made by the FCRHA or its assigns pursuant to the Tenant, Gross Project Revenue minus Project Operating Expenses.

“Gross Project Revenue” means, with respect to each Lease Year (or any Calendar Quarter or other period of time, as applicable, any and all gross rentals, receipts, fees, proceeds and amounts of any kind (and anything else of value) actually received on a cash basis, by or for the account of Tenant, from or in connection with, or directly or indirectly arising out of the Premises or any part thereof, including without limitation, (i) all amounts received in respect of the Residential Leases, (ii) payments to Tenant for electricity, air conditioning and cleaning, payments for providing goods or services of any kind, to the extent that the Tenant receives payment for such goods, services and utilities which is in excess of the costs paid by Tenant for such goods, services and utilities, and (iii) payments received by Tenant for concessions, licenses or agreements granted to third parties or Affiliates in connection with the providing of any such goods or services; but excluding proceeds received from (A) any capital contributions from the Investor, (B) Mortgage, (C) a casualty, to the extent such proceeds are to be used for a Restoration (i.e. not business interruption or rental interruption insurance, which will be a part of Gross Project Revenue), (C) a condemnation, (D) a Transfer, (E) tenant security or other deposits (unless forfeited, funds released from reserves or interest on reserves not available for distribution, and (F) any other transaction the proceeds of which are considered to be capital in nature.

“Project Operating Expenses” means, with respect to each Lease Year (or any Calendar Quarter or other period of time, as applicable) all cash operating expenses and unpaid

expenses that are properly accrued of the Tenant for the use, operation and management of the Premises, including without limitation, (i) all public and private utilities and services and any easement or agreement maintained for the benefit of the Premises, (ii) Impositions (whether paid directly or into an Impositions Account in accordance with this Lease), (iii) insurance required to be maintained by Tenant pursuant to Article 7 of this Lease, (iv) all amounts due to Mortgagees under Mortgages (other than in connection with the Housing Blueprint Loan) (to the extent such amounts are not in duplication of other items that are Project Operating Expenses herein (e.g. Impositions)), (v) all repairs and replacements required under this Lease (unless funded from a source not included in Gross Project Revenues), (vi) Capital Improvements (unless funded from a source not included in Gross Project Revenues) , (vii) any reserves required by the Mortgagee or reasonable reserves for the Premises set aside by Tenant, and (viii) management fees payable by Tenant related to the Approved Property Manager, (ix) any reasonable third-party out-of-pocket audit, accounting and legal costs and fees incurred by Tenant, and (x) any Net Cash Flow expenditures, if any, due pursuant to the amended and restated operating of the Tenant or its successors and assigns, which will require the reasonable consent of the Landlord, but shall include, without limitation, any priority payments to the Investor for unsecured partner loans, fees, or other amounts due and owing; replenishing any Investor-required reserves, and any payments to cash flow contingent lenders, such as Virginia Department of Housing and Community Development, Federal Home Loan Bank or other third party cash flow loans, any Managing Member loans, if any, for operating deficits or development deficits, any payments for the deferred developer fee, any social services fees due if required to pay for social services benefiting the residents of the Project, and less the IRS-required amount to be paid to the Investor that is customarily 10% of the remaining Net Cash Flow, and results in the amount of remaining Net Cash Flow otherwise payable to the Managing Member as an “incentive management fee” or as a distribution of Net Cash Flow.

#### Payment and Auditing Rights

(a) Tenant will remit to the Landlord for the prior Calendar Year an amount equal to 50% of Tenant’s Net Cash Flow for such calendar year (“FCRHA Incentive Lease Fee Payment”).

(b) Tenant will submit to Landlord with each annual [FCRHA Incentive Lease Fee Payment] [payment of Base Rent], a complete statement made and certified by a duly authorized officer of Tenant, showing accurately in reasonable detail the calculation of Tenant’s Net Cash Flow during the preceding calendar year and following the expiration or termination of the Term a like statement (and all such statements under this clause with respect to the Tenant will also be audited by a certified public accountant reasonably acceptable to Landlord, which initially is approved as \_\_\_\_\_) covering the prior calendar year or then expired portion of the calendar year or fractional part thereof if at the end of the Term, as applicable.

(c) Tenant will keep during the Term, for a period of three consecutive years following the end of each calendar year, a permanent, complete and accurate record of all Gross Project Revenue, Project Operating Expenses, and all other information necessary to determine Tenant’s Net Cash Flow derived from the Premises for such calendar year. All such

books and records kept by Tenant in relation to the Project and will be open to the inspection and audit of Landlord and its representatives and agents at all reasonable times during ordinary business hours and upon reasonable prior notice. Tenant will also submit to Landlord on or before 120 days following the end of each calendar year, a complete statement showing accurately in reasonable detail the amount of Gross Project Revenue, Project Operating Expenses, and all other information necessary to determine Tenant's Net Cash Flow derived from the Premises, each audited by a certified public accountant reasonably acceptable to Landlord covering the Lease Year (or Lease Years) that occurred (in whole or in part) during such calendar year. Upon the failure of Tenant to promptly supply Landlord with the statements required hereunder, Landlord will be entitled, with at least one Business Day prior notice to Tenant, to conduct an audit of Tenant's books for such period or periods during which Tenant has failed to supply Landlord with statements at the cost and expense of Tenant together with an administrative fee of \$2,000.00, which will be considered Additional Costs hereunder. If any audit by Landlord or its agents or representatives of Tenant's records will reveal a deficiency in any [FCRHA Incentive Lease Fee Payment] [payment of Base Rent], Tenant will immediately pay Landlord the amount of the deficiency together with interest at the rate of ten percent per annum from the date when such [FCRHA Incentive Lease Fee Payment] [payment of Base Rent] should have been made, together with the reasonable cost of such audit.