

**CONTRACT TO GROUND LEASE – 9%**  
(North Hill)

This **CONTRACT TO GROUND LEASE – 9%** (this “**Agreement**”) is made and entered into as of this 2<sup>nd</sup> day of March, 2017 (the “**Effective Date**”) by and between **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “**FCRHA**”), and **CHPPENN I, LLC**, a Virginia limited liability company (together with any assignee permitted under this Agreement, “**CHPPENN**”; **CHPPENN** and the **FCRHA**, are each a “**Party**” and, collectively, the “**Parties**”).

**RECITALS:**

- R-1. The FCRHA is the fee simple owner of an approximately 48 acre tract of land in Fairfax County, Virginia, having the Fairfax County Tax Map No. 92-4 ((1)), parcel 82A (the “**Existing County Land**”).
- R-2. The Existing County Land is comprised of (a) the Woodley Hills Estates manufactured home community, which occupies approximately 15 of the 48 acres, and (b) an approximately 33-acre unimproved tract of land known as North Hill and described on **Schedule A** attached hereto (such 33-acre tract, the “**Property**”).
- R-3. In 2012, the FCRHA received an unsolicited proposal from a developer under the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 *et seq.* (such law, the “**PPEA**”) proposing to redevelop the Property as a mixed income, affordable housing and market rate housing community comprised of multifamily apartments and townhouses.
- R-4. In accordance with the PPEA and the FCRHA PPEA guidelines, the FCRHA then issued a “Request for Competing Proposals”, RCP number RFCP 2000000000 in 2013 (the “**RCP**”). The RCP included criteria calling for, among other things, development of approximately 350 or more units on a portion of the Property, with the undeveloped balance to be preserved as parkland.
- R-5. CHPPENN submitted a response to the RCP which was determined to be the most responsive to the RCP. In its response, CHPPENN proposed, among other things, the construction of approximately 329 affordable multifamily units and approximately 144 for-sale townhomes (the “**For-Sale Townhomes**”) on a portion of the Property. In addition, a portion of the For-Sale Townhomes would be affordable dwelling units under Fairfax County’s affordable dwelling unit ordinance.
- R-6. After further negotiations with the FCRHA, CHPPENN proposed the construction of approximately 279 multi-family dwelling units, including approximately 63 senior independent living units, in five separate, high quality, urban designed buildings with parking that is structured in part (the “**Affordable Housing Units**”) on one or more portions of the Property.

- R-7. In connection with the RCP and the overall revitalization of the Property and surrounding area, the FCRHA desires to sell a portion of the Property, as approximately described on **Schedule B** attached hereto (the “**Sale Property**”), to a purchaser to be acceptable to the FCRHA (the “**Purchaser**”) pursuant to a purchase and sale agreement to be in form and substance reasonably acceptable to the FCRHA (the “**Purchase Agreement**”).
- R-8. The Parties also intend that the remainder of the Property be retained, developed and maintained for use as a public park (the “**Park**”). Development of the For-Sale Townhomes on the Sale Property, the Affordable Housing Units on the Ground Lease Premises (as hereinafter defined) and other portions of the Property intended to be leased pursuant to the Other Ground Leases (as hereinafter defined), and the Park shall be referred to as the “**Project**”.
- R-9. On March 25, 2015, the FCRHA and CHPPENN entered into an Interim Agreement which allowed CHPPENN to access the Property and perform diligence with regard to the Project.
- R-10. The Project is now subject to Rezoning / Final Development Plan RZ/FDP 2016-MV-014 and Proffered Condition Amendment PCA 78-V-125, approved by the Board of Supervisors of Fairfax County, Virginia on February 14, 2017 (collectively, the “**Land Use Approvals**”) and certain proffers dated February 9, 2017 accepted in connection therewith (the “**Proffers**”).
- R-11. Simultaneously with the execution of this Agreement, the FCRHA and CHPPENN have entered into two additional Contracts to Ground Lease which, subject to CHPPENN satisfying certain conditions precedent as set forth in said contracts, provide that CHPPENN, or its permitted subsidiary, affiliate or assignee, will enter into two (2) ninety-nine year ground leases for portions of the Property (collectively, the “**Other Ground Leases**”).
- R-12. The FCRHA and CHPPENN agree that, subject to CHPPENN satisfying certain conditions precedent as set forth in this Agreement below, CHPPENN, or its permitted subsidiary, affiliate or assignee, will enter into a ninety-nine year ground lease in the form attached as **Exhibit A** for the Ground Lease Premises (the “**Ground Lease**”).
- R-13. The FCRHA and CHPPENN desire to enter into this Agreement setting forth CHPPENN’s option to enter into the Ground Lease for the Ground Lease Premises upon the satisfaction of certain conditions, as hereinafter set forth.

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

Section 1. **GRANT OF OPTION.**

1.1 Ground Lease Premises. The FCRHA hereby grants to CHPPENN an option to lease the Ground Lease Premises, subject to all of the terms and conditions of this Agreement.

The term “**Ground Lease Premises**” shall mean (a) the real property (the “**Land**”) more particularly described in *Exhibit A* of the Ground Lease, (b) all improvements, equipment and fixtures located on the Land at the time of the Closing (as defined in Section 7.1 below); and (c) any entitlements, governmental approvals, permits, and other intangible property associated with the Land or the improvements, equipment and fixtures located thereon owned by the FCRHA.

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

1.3 Memorandum of Option. Concurrently with the execution of this Agreement, the FCRHA shall execute, acknowledge and deliver to CHPPENN a memorandum of option in a recordable form (the “**Option Memorandum**”), which Option Memorandum may be recorded by CHPPENN in the Official Records of Fairfax County, Virginia (the “**Official Records**”). No later than five (5) days after the Option has expired or terminated, CHPPENN shall deliver to the FCRHA for recordation, duly signed and notarized by CHPPENN, documents sufficient to confirm the expiration or termination of the Option and the termination of the recorded Option Memorandum, and otherwise in recordable form and reasonably acceptable to the FCRHA (and this obligation of CHPPENN shall survive expiration or termination of this Agreement). In the event CHPPENN records the Option Memorandum in the Official Records, CHPPENN shall be responsible for payment of all fees and taxes associated with such recording and with the recording of the termination of the Option Memorandum. The relationship between the FCRHA and CHPPENN shall be governed solely by the provisions of this Agreement and not by the Option Memorandum.

1.4 Effect of Agreement; Interest in Real Property. The Parties intend that this Agreement is given by the FCRHA to CHPPENN as an option to lease the Ground Lease Premises. The Parties intend that this Agreement creates a valid and present encumbrance on the Ground Lease Premises in favor of CHPPENN, effective as of the Effective Date, subject to any and all liens or encumbrances disclosed in the Official Records. Therefore, the Option shall be deemed an encumbrance upon the Ground Lease Premises during the term of this Agreement effective as of the Effective Date and shall be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns (subject to Section 10.7 below).

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

2.1 Consideration. In consideration of and concurrently with the FCRHA entering into this Agreement, CHPPENN agrees to pay to the 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 CHPPENN’s option to lease the Ground Lease Premises pursuant to the terms herein, and for the FCRHA’s execution and delivery of this Agreement. The Consideration shall be deemed fully earned by the FCRHA upon receipt, and shall be considered non-refundable to CHPPENN.

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

3.1 Term of Agreement. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall expire on 5:00 p.m. on August 1, 2017 (the “**Initial Expiration**”).

**Date**”). The Initial Expiration Date, as the same may be extended as provided in Section 3.2 below, is hereafter referred to as the “**Expiration Date**”.

3.2 Right to Extend. (a) If and on the express condition that CHPPENN has received an award of Tax Credits (as hereinafter defined) on or before the Initial Expiration Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2018.

(b) If (i) CHPPENN has not received an award of Tax Credits on or before July 1, 2017, (ii) this Agreement is then in full force and effect and CHPPENN is not then in default beyond any applicable notice and cure period under this Agreement, and (ii) CHPPENN has given the FCRHA notice in writing of CHPPENN’s election to extend the Term of this Agreement no less than ten (10) days before the Initial Expiration Date, CHPPENN shall have the right to extend the Term of this Agreement until 5:00 p.m. on August 1, 2018 (the “**Second Expiration Date**”); provided, however, that CHPPENN shall re-apply for the Tax Credits and equity and financing as required pursuant to Section 8.3.

(c) If CHPPENN has extended the Term of this Agreement to the Second Expiration Date and thereafter receives an award of Tax Credits (as hereinafter defined) on or before the Second Expiration Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2019.

(d) If (i) CHPPENN has extended the Term of this Agreement to the Second Expiration Date but has not received an award of Tax Credits on or before July 1, 2018, (ii) this Agreement is then in full force and effect and CHPPENN is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) CHPPENN has given the FCRHA notice in writing of CHPPENN's election to extend the Term of this Agreement no less than ten (10) days before the Second Expiration Date, CHPPENN shall have the right to extend the Term of this Agreement until 5:00 p.m. on August 1, 2019 (the “**Third Expiration Date**”); provided, however, that CHPPENN shall re-apply for the Tax Credits and equity and financing as required pursuant to Section 8.3.

(e) If CHPPENN has extended the Term of this Agreement to the Third Expiration Date and thereafter receives an award of Tax Credits (as hereinafter defined) on or before the Third Expiration Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2020.

(f) If and on the express conditions that (i) CHPPENN has extended the Term of this Agreement to the Third Expiration Date but has not received an award of Tax Credits on or before July 1, 2019, (ii) this Agreement is then in full force and effect and CHPPENN is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) CHPPENN has given the FCRHA notice in writing of CHPPENN's election to extend the Term of this Agreement no less than ten (10) days before the Third Expiration Date, CHPPENN shall have the right to extend the Term of this Agreement until 5:00 p.m. on August 1, 2020 (the “**Fourth Expiration Date**”); provided, however, that CHPPENN shall re-apply for the Tax Credits and equity and financing as required pursuant to Section 8.3.

(g) If CHPPENN has extended the Term of this Agreement to the Fourth Expiration Date and thereafter receives an award of Tax Credits (as hereinafter defined) on or before the Fourth Expiration Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2021 (the “**Outside Expiration Date**”).

(h) Notwithstanding anything to the contrary contained in this Agreement, in no event shall the Expiration Date be extended to a date beyond the Outside Expiration Date.

3.3 Condition to Right to Exercise. CHPPENN may exercise the Option only if all of the following conditions have been met: (i) all of the conditions precedent set forth in Section 8.1 (except as waived (to the extent waivable) at the sole discretion of CHPPENN), Section 8.2 (except as waived at the sole discretion of the FCRHA), and Section 8.3 (except as waived at the sole discretion of the FCRHA) below have been satisfied; and (ii) CHPPENN has otherwise performed or satisfied all of its obligations under this Agreement.

3.4 Exercise Notice. CHPPENN shall exercise the Option (if at all) at any time during the Term, provided CHPPENN has satisfied the conditions set forth in Section 3.3 above to the FCRHA’s reasonable satisfaction, by delivering a written notice to the FCRHA (the “**Option Notice**”). The Option Notice shall include: (i) a certification from CHPPENN that it has satisfied the conditions precedent set forth in Section 3.3; and (ii) reasonably detailed supporting documentation of the satisfaction of such conditions (the “**Supporting Documentation**”). Upon the FCRHA’s receipt of the Option Notice, the FCRHA shall have thirty (30) days to review the Supporting Documentation, and within such period the FCRHA shall deliver a written notice to CHPPENN either approving the Supporting Documentation, or disapproving all, or a portion, of the Supporting Documentation. In the event the FCRHA approves the Supporting Documentation, then the Parties shall continue to proceed to the Closing in accordance with this Agreement. In the event the FCRHA disapproves all, or a portion of, the Supporting Documentation, then the FCRHA’s written notice (the “**Disapproval Notice**”) shall set forth, in reasonable detail, the FCRHA’s objections to the Supporting Documentation, and any such additional information required by the FCRHA to approve the Supporting Documentation. Thereafter, within thirty (30) days following CHPPENN’s receipt of the Disapproval Notice, CHPPENN shall submit such additional information, or other documentation, requested by the FCRHA in the Disapproval Notice. The process for the FCRHA’s review and approval of the Supporting Documentation shall continue until the FCRHA has approved the Supporting Documentation, and the FCRHA shall have no obligation to execute the Ground Lease until CHPPENN has obtained such approval from the FCRHA; provided, however, in no event shall the FCRHA unreasonably withhold, delay, or condition the approval of the Supporting Documentation.

3.5 Failure to Exercise. If CHPPENN fails to deliver the Option Notice, or fails to deliver the Supporting Documentation and any additional information required by the FCRHA to approve the Supporting Documentation, by the Expiration Date, then (a) the FCRHA shall have no obligation to refund the Consideration to CHPPENN; (b) CHPPENN shall promptly deliver to the FCRHA such documentation (fully executed and acknowledged) reasonably requested by the FCRHA to evidence termination of this Agreement and the Option Memorandum, but the failure to deliver such documentation shall not affect the termination of this Agreement and the Option Memorandum; (c) this Agreement shall immediately terminate without further action of the

Parties; and (d) the Parties shall have no further obligations to each other except as otherwise specifically provided in this Agreement. This Section 3.5 is not intended to and does not in any way limit or affect any of the rights or remedies available to any Party to the extent expressly set forth in Section 9 below in the event 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.**

4.1 Form of Lease. At the Closing, the FCRHA and CHPPENN shall enter into the Ground Lease, which will be substantially in the form of Schedule 1 attached hereto and made a part hereof except to the extent that any 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 7.1 below) or as otherwise mutually agreed to by the FCRHA and CHPPENN. Promptly after delivery of the Option Notice, to the extent necessary, the Parties shall meet in good faith to determine if any modifications are necessary to the proposed Ground Lease to reflect either any new, or otherwise unanticipated, circumstances regarding the Ground Lease Premises, financing of the Project or any changes in Virginia law that make any term or provision of the proposed Ground Lease invalid or unenforceable.

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

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

5.2 Representations and Warranties of the FCRHA. The FCRHA 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 CHPPENN delivers the Option Notice to the FCRHA, the FCRHA shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. The FCRHA is a political subdivision of the Commonwealth of Virginia. The 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 the FCRHA in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of the FCRHA, enforceable in accordance with its terms. Subject to the receipt of the HUD Approval as provided in Section 6.4 below, the 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 the FCRHA or the performance of any of the FCRHA's obligations hereunder.

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

of the 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 shall 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 CHPPENN holds any option or other right to lease or purchase all or any part of any of the Ground Lease Premises or any interest in the Ground Lease Premises.

5.3 Representations and Warranties of CHPPENN. CHPPENN 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 CHPPENN delivers the Option Notice to the FCRHA, CHPPENN shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. CHPPENN is a Virginia limited liability company. CHPPENN 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 CHPPENN have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of CHPPENN in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of CHPPENN, enforceable in accordance with its 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 CHPPENN or the performance of any of CHPPENN's obligations hereunder. In the event that CHPPENN assigns this Agreement (in accordance with its terms) to another entity acting as the optionee hereunder, such entity shall 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 CHPPENN, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of CHPPENN'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 shall 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. There is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or, to CHPPENN's knowledge, threatened against or affecting 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 shall give prompt written notice to the other Party of such facts or circumstances.

Section 6. **GROUND LEASE PREMISES CONDITION; RIGHT OF ENTRY; EQUITY PARTNER; HUD; INTER-PARTY AGREEMENTS.**

6.1 Property and Ground Lease Premises Condition. CHPPENN acknowledges that except to the extent of any express representations and warranties set forth in Section 5.2, the FCRHA has made no representations or warranties, express or implied, affirmative or negative, regarding the Property or the Ground Lease Premises or matters affecting the Property or the Ground Lease Premises, whether made by the FCRHA, or on the FCRHA's behalf, or by the FCRHA's agents or employees, or otherwise, and that except as otherwise provided in this Agreement, the leasehold interest in the Ground Lease Premises shall be conveyed subject to, and in accordance with, the terms and conditions of the Ground Lease. For the avoidance of doubt, CHPPENN shall accept possession of the Premises on the Commencement Date "AS IS, WHERE IS, WITH ALL FAULTS", subject to the Title Matters (as defined in the Ground Lease).

6.2 Right of Entry. During the Term, CHPPENN shall have reasonable rights of access to the Ground Lease Premises to the extent set forth in this Section 6.2 for the purposes of performing design and engineering analysis including environmental tests and studies and soils borings and tests, provided that neither CHPPENN nor its contractors shall unreasonably disrupt the normal operation of the Ground Lease Premises. CHPPENN's access hereunder shall be in compliance with all applicable statutes, laws, rules, regulations, ordinances, and orders of any governmental or quasi-governmental authority having jurisdiction over the Ground Lease Premises and CHPPENN's and/or its contractors activities thereon. All such entry shall be coordinated in advance with appropriate representatives of the FCRHA; for purposes of this Section 6.2, the appropriate representatives shall be Kevin (Casey) Sheehan at 703-324-5146 and kevin.sheehan@fairfaxcounty.gov and Rex Peters at 703-324-5143 and john.peters2@fairfaxcounty.gov. Prior to CHPPENN entering the Ground Lease Premises, CHPPENN (or its contractor) shall obtain and maintain, at CHPPENN's (or its contractor's, as the case may be) sole cost and expense, the following insurance coverage, and shall cause each of its agents and contractors to obtain and maintain, and, upon request of the FCRHA, shall deliver to the FCRHA evidence of (i) general liability insurance, from an insurer reasonably acceptable to the FCRHA, in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence, (ii) workmen's compensation insurance at statutory limits, (iii) employer's liability insurance in an amount not less than \$1,000,000, and (iii) professional liability insurance of not less than \$1,000,000 for any access to conduct environmental tests and studies and/or soil borings and tests. CHPPENN shall provide the FCRHA with original certificates of insurance for the coverage required above not less than five (5) business days prior to any access, naming the FCRHA and such other parties designated by the FCRHA as additional insureds and otherwise in form reasonably satisfactory to the FCRHA. The FCRHA shall have the right, in its discretion, to accompany CHPPENN and/or its contractors. All damage to the Ground Lease Premises resulting from any access by or at the direction of CHPPENN or its contractors shall be repaired immediately by CHPPENN, at its sole cost and expense, so that the Ground Lease Premises shall be restored to the same condition in which it existed immediately prior to such access. CHPPENN shall indemnify, defend and save the 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 the 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 shall survive Closing or any termination of this Agreement.

6.3 CHPPENN's Equity Partner. CHPPENN shall promptly commence and use commercially reasonable efforts to secure an equity partner for its development of the Ground Lease Premises on or before the date that is 270 days after the Effective Date (the "**Equity Partner Outside Date**"). Promptly after the request of the FCRHA, CHPPENN shall provide the FCRHA with periodic updates with regard to its efforts in securing an equity partner. If CHPPENN shall have promptly commenced and used commercially reasonable efforts to secure an equity partner for the Project, then if CHPPENN shall not have secured an equity partner for its development of the Ground Lease Premises on or before the Equity Partner Outside Date, CHPPENN may, by notice delivered to the FCRHA on or prior to the Equity Partner Outside Date, terminate this Agreement, and except as otherwise expressly set forth in this Agreement, neither the FCRHA nor CHPPENN shall have any further liability hereunder. If CHPPENN does not timely and properly deliver to the FCRHA notice of CHPPENN's election to terminate this Agreement under this Section 6.3 prior to the Equity Partner Outside Date, then CHPPENN shall be deemed to have waived its right to terminate this Agreement under this Section 6.3 and this Section 6.3 shall thereafter be null, void and of no further force and effect.

6.4 HUD Approval. Notwithstanding anything herein to the contrary, if the FCRHA has not received approval from the U.S. Department of Housing and Urban Development to use proceeds from the sale of the Sale Property for site work costs related to the Affordable Housing Units (the "**HUD Approval**") by June 30, 2017 ("**HUD Deadline**"), then the FCRHA shall have the ability, upon delivery of written notice to CHPPENN by no later than August 1, 2017, to (A) terminate this Agreement, effective as of the date of such notice, or (B) extend the HUD Deadline to a date that shall be no later than September 1, 2017, or with CHPPENN's consent, not to be unreasonably withheld, conditioned or delayed, to a date that shall be no later than the Closing Date. If the HUD Approval has not been received by any such extended date, this Agreement shall automatically terminate, and thereupon the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder. The FCRHA will keep CHPPENN reasonably apprised of the FCRHA's discussions with HUD regarding efforts to obtain the HUD Approval, will discuss those efforts with CHPPENN, and will share related documentation of these discussions with CHPPENN.

6.5 Development Agreements. On or before the Development Agreement Approval Deadline (as defined below), the FCRHA and CHPPENN shall execute and (if applicable) record among the Fairfax County land records a development agreement to implement development of the Project (the "**Development Agreement**"). The Development Agreement will include, among other items, those matters set forth on Exhibit B, attached hereto and incorporated herein by reference. On or before April 1, 2017, unless otherwise agreed by the FCRHA and CHPPENN, the FCRHA shall provide an initial draft of the Development Agreement to CHPPENN for review and comment. The FCRHA and CHPPENN shall thereafter each act in good faith and use reasonable efforts to agree upon the final form of the Development Agreement no later than April 25, 2017, unless otherwise agreed by the FCRHA and CHPPENN, to be processed and approved under the PPEA on or before June 15, 2017, unless otherwise

agreed by the FCRHA and CHPPENN (the “**Development Agreement Approval Deadline**”). On or before the Development Agreement Approval Deadline, the FCRHA and CHPPENN shall execute the PPEA-approved Development Agreement. In the event that the FCRHA and CHPPENN are unable to reach agreement on the form and substance of the Development Agreement on or before the Development Agreement Approval Deadline, or the Development Agreement has not been finally approved and fully executed on or before the Development Agreement Approval Deadline, then this Agreement shall automatically terminate, and thereupon the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder.

6.6 At Closing hereunder, the FCRHA, CHPPENN, and the Purchaser shall execute and record among the Fairfax County land records an agreement to allocate the responsibilities and costs for Proffers for the Project (the “**Proffer Allocation Agreement**”). The FCRHA and CHPPENN shall each act in good faith and use reasonable efforts to agree, and shall use reasonable efforts to cause the Purchaser to agree, upon the final form of the Proffer Allocation Agreement.

6.7 At Closing hereunder, the FCRHA, CHPPENN, and the Purchaser shall execute and record among the Fairfax County land records an agreement to reflect such easements and related provisions as may be necessary for the development, operation, and maintenance (including the performance of and payment for routine and capital maintenance and replacement work) of the Project (the “**REA**”; together with the Proffer Allocation Agreement, the “**Inter-Party Agreements**”). The FCRHA and CHPPENN shall each act in good faith and use reasonable efforts to agree, and shall use reasonable efforts to cause the Purchaser to agree, upon the final form of the REA; provided, however, that in no event shall the FCRHA be responsible for any costs relating to the For-Sale Townhomes, the Sale Property, the Affordable Units, the Ground Lease Premises, the retaining walls, or stormwater.

6.8 CHPPENN acknowledges that the Purchaser of the Sale Property has not yet been identified, nor has the FCRHA yet entered into a Purchase Agreement for the Sale Property. CHPPENN further acknowledges that the FCRHA will require, as part of the Purchase Agreement or as part of a separate agreement with Purchaser that is approved and executed simultaneously with the Purchase Agreement, the Purchaser to construct the portion of the retaining wall to be located on the Sale Property and to provide adequate assurances to the FCRHA that such wall will be constructed. The terms of the Purchase Agreement (and separate development agreement, if applicable) remain to be negotiated between the FCRHA and the Purchaser and shall be acceptable to the FCRHA in its sole discretion. Notwithstanding the foregoing, CHPPENN acknowledges that the condition to closing at Section 8.2(i) of this Agreement is and shall be effective from the Effective Date until such condition is satisfied or expressly waived by the FCRHA in accordance with the terms of this Agreement.

## Section 7. **CLOSING.**

7.1 Time. If, and on the express condition that, CHPPENN delivered the Option Notice, the Supporting Documentation and any additional information required by the FCRHA to approve the Supporting Documentation not later than 30 days prior to the Expiration Date, then on a date prior to the Expiration Date and no later than ninety (90) days after the satisfaction

or waiver (if applicable) of the conditions precedent set forth in Section 8.1 and Section 8.2, the Parties shall each execute and exchange original counterparts and deposit into escrow the documents described in Section 7.3 and Section 7.4 below. The Parties shall close the transaction contemplated by this Agreement (the “**Closing**”) on a date (the “**Closing Date**”) that shall be selected by CHPPENN giving at least fifteen (15) business days prior written notice to the FCRHA, unless otherwise agreed in writing by the Parties.

7.2 Escrow. The Parties shall conduct the Closing through Land Services USA, Inc. (the “**Escrow Agent**”) or such other party mutually agreed by the Parties. The terms of this Agreement (including, but not limited to, the terms contained in this Section 7), together with such additional instructions as the Escrow Agent shall reasonably request and to which the Parties shall agree in writing, shall 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 shall control unless the intent to amend this Agreement is clearly and expressly stated in the additional escrow instructions.

7.3 The FCRHA’s Deposits into Escrow. The FCRHA shall deposit into escrow on or before Closing the following documents:

- (a) Two duly executed counterpart originals of the Ground Lease;
- (b) A duly executed and acknowledged counterpart original memorandum of lease in a reasonable form that has been agreed to by the FCRHA and CHPPENN in recordable form for the Ground Lease (the “**Memorandum of Lease**”);
- (c) A certificate of the FCRHA signed by a person duly authorized to do so on behalf the FCRHA affirming that all of the 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 the FCRHA is aware of facts or circumstances that result in the FCRHA’s representations or warranties set forth in Section 5.2 not being true as of the Closing, the FCRHA shall 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 the FCRHA.

7.4 CHPPENN’s Deposits into Escrow. CHPPENN shall deposit into escrow on or before Closing:

- (a) Two duly executed counterpart originals of the 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 Ground Lease) for the Ground Lease;

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

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

(f) The Base Rent payment in the amount of Ten (\$10) Dollars 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 Ground Lease Premises in accordance with the terms of this Agreement.

**7.5 Closing.** When the Escrow Agent has received all documents identified in Section 7.3 and Section 7.4, and has received written notification from CHPPENN and the FCRHA that all conditions to Closing have been satisfied or waived; then, and only then, the Escrow Agent shall take the following actions in the following chronological order:

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

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

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

**7.6 Closing Costs.** As additional consideration for this Agreement and the lease of the Ground Lease Premises pursuant to the Ground Lease, CHPPENN shall pay all escrow and recording fees and other closing costs charged by the Escrow Agent.

## **Section 8. CONDITIONS PRECEDENT; COVENANTS.**

**8.1 CHPPENN's Conditions.** CHPPENN'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 shall be deemed waived (other than Section 8.1(d) and Section 8.1(e), which may not be waived by CHPPENN) unless CHPPENN exercises its rights pursuant to Section 8.4 below to terminate the Agreement:

(a) Representations and Warranties. The FCRHA's representations and warranties contained in Section 5.2, as restated as of the Closing in the FCRHA Certificate, shall 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 shall be acceptable to CHPPENN, in its reasonable discretion.

(c) Performance. The FCRHA shall 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 the FCRHA prior to or at the Closing.

(d) Permits and Construction Approvals. CHPPENN shall have applied for all governmental approvals and permits, including building permits for the construction of the Affordable Housing Units on the Ground Lease Premises.

(e) Tax Credits; Financing. CHPPENN shall be simultaneously closing on (i) an award from the Virginia Housing and Development Authority ("VHDA") of nine percent (9%) low-income housing tax credits (the "Tax Credits") necessary to enable CHPPENN to construct the Affordable Housing Units on the Ground Lease Premises (and all challenge periods related to such award have expired), and (ii) the equity investment and/or loan financing in amounts substantially similar to the amounts set forth in the application to VHDA for the Tax Credits.

(f) Sale Property. The Sale Property shall be simultaneously sold by the FCRHA as contemplated by the Purchase Agreement.

8.2 The FCRHA's Conditions. The 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 shall be deemed waived unless the FCRHA exercises its rights pursuant to Section 8.4 below to terminate the Agreement:

(a) Representations and Warranties. CHPPENN's representations and warranties contained in Section 5.3, as restated as of the Closing in the CHPPENN Certificate, shall 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 CHPPENN Certificate shall be acceptable to the FCRHA, in its reasonable discretion.

(c) Performance. CHPPENN shall 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 CHPPENN prior to or at the Closing.

(d) No Litigation. There shall 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 CHPPENN that would

materially and adversely affect the ability of CHPPENN to perform its obligations under this Agreement.

(e) Tax Credits; Financing. CHPPENN shall be simultaneously closing on (i) the VHDA Tax Credits (and any and all challenge periods related to such award have expired), and (ii) the equity investment and financing in amounts substantially similar to the amounts set forth in the application to VHDA for the Tax Credits; provided, however, that notwithstanding the foregoing to the contrary, the FCRHA shall have the option, in its sole and absolute discretion, to waive the obligation of CHPPENN to the simultaneous closings referenced in clause (i) and clause (ii) above.

(f) Subdivision and Site Plan. CHPPENN shall have prepared and obtained all approvals necessary for, and shall have actually effectuated, the subdivision of the Property as generally contemplated for the Project. CHPPENN shall have prepared and submitted the site plan for the Affordable Housing Units (the "**Site Plan**") to the Fairfax County Department of Public Works and Environmental Services ("**DPWES**") and shall have received an initial response with comments from the DPWES Land Development Services branch.

(g) Plans and Specifications. The FCRHA shall have approved CHPPENN's proposed Plans and Specifications (as defined in the Ground Lease).

(h) Delivery of Option Notice; Approval of Supporting Documentation. CHPPENN shall have delivered the Option Notice, the Supporting Documentation and any additional information required by the FCRHA to approve the Supporting Documentation in accordance with Section 3, and the FCRHA has approved the Supporting Documentation in accordance with Section 3.

(i) Sale Property. The Sale Property shall be simultaneously sold by the FCRHA as contemplated by the Purchase Agreement; provided, however, that notwithstanding the foregoing to the contrary, the FCRHA shall have the option, in its sole and absolute discretion, to waive the simultaneous sale of the Sale Property.

(j) Other Ground Leases. CHPPENN shall be simultaneously entering into the Other Ground Leases; provided, however, that notwithstanding the foregoing to the contrary, the FCRHA shall have the option, in its sole and absolute discretion, to waive the simultaneous execution of the Other Ground Leases.

(k) Easements; Proffers. The FCRHA, CHPPENN, and the Purchaser shall be simultaneously entering into the Inter-Party Agreements.

(l) Development Agreement Budget. The FCRHA shall have approved CHPPENN's proposed budget for the work to be performed by CHPPENN under the Development Agreement.

8.3 Additional CHPPENN Covenants. In addition to the obligations of CHPPENN under Section 8.1 and Section 8.2 above:

(a) CHPPENN shall timely apply to VHDA for the Tax Credits in each applicable cycle during the Term for the Ground Lease Premises, and CHPPENN shall 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, CHPPENN shall (i) apply for and diligently prosecute in good faith all steps and actions needed to obtain loan or equity financing in amounts substantially similar to the amounts set forth in the application for the Tax Credits, and (ii) pursue the commitment of a tax credit investor for the purchase of the Tax Credits for the Project.

(b) CHPPENN shall use its best efforts to prosecute the generation, submission and approval of (i) the subdivision of the Property to effectuate the Project, (ii) the Site Plan, and (iii) the Plans and Specifications. Prior to submitting each of the subdivision and Site Plan for regulatory approval (or, in the case of subdivision, should subdivision not require a regulatory approval, before recordation or other finalization of the subdivision), CHPPENN shall obtain the consent of the FCRHA to the proposed submission (or, as applicable, other documentation) and shall submit such materials to the FCRHA for review and approval, not to be unreasonably withheld, conditioned, or delayed. The FCRHA shall respond within ten (10) business days and otherwise reasonably cooperate with CHPPENN in the pursuit of the subdivision and Site Plan.

In the event that CHPPENN fails to satisfy the covenants set forth in this Section, the FCRHA may avail itself of the rights and remedies set forth in Section 8.4 and Section 9 below.

8.4 Satisfaction of Requirements; Failure of Conditions. CHPPENN shall promptly commence and diligently pursue until completion all work and actions needed to satisfy the obligations and requirements set forth in Section 8. 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 (provided however, that such extension may not be beyond the Expiration Date), or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such Party shall 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 shall be as set forth in Section 9.

#### Section 9. **DEFAULT; REMEDIES.**

9.1 A FCRHA Default. In the case of any default or breach by the FCRHA hereunder, CHPPENN shall give the FCRHA written notice of such default or breach and shall provide the FCRHA with thirty (30) days to cure the default or breach. In the event the FCRHA fails to cure the default or breach within such thirty (30) day period, CHPPENN shall be entitled to (a) if and to the extent that such default or breach is reasonably susceptible to cure by the FCRHA, seek

specific performance to enjoin the FCRHA to cure such default or breach and consummate the transaction contemplated by this Agreement; or (b) terminate the Option. Upon any termination by CHPPENN under this Section 9.1, CHPPENN shall be entitled to receive a refund of the Consideration previously paid. Additionally, CHPPENN may terminate the Option if any condition to Closing contained in Section 8.1 has not been satisfied or waived by CHPPENN in writing by the Closing Date. Notwithstanding anything to the contrary contained in this Agreement, CHPPENN's sole remedy for any default or breach by the FCRHA hereunder shall be specific performance (as described in Section 9.1(a)), or terminating the Option (as described in Section 9.1(b)); and in no event shall CHPPENN be entitled to recover any monetary damages (other than a refund of the Consideration) or other damages from the FCRHA in the event the FCRHA defaults or breaches this Agreement.

9.2 CHPPENN Default. In the case of any default or breach by CHPPENN hereunder, the FCRHA shall give CHPPENN written notice of such default or breach and shall provide CHPPENN with thirty (30) days to cure the default or breach. In the event CHPPENN fails to cure the default or breach within such thirty (30) day period, the FCRHA may terminate the Option. Additionally, the FCRHA may terminate the Option in the event any condition to Closing contained in Section 8.2 or Section 8.3 has not been satisfied or waived by the FCRHA in writing by the Closing Date. The FCRHA's sole remedy for any default or breach by CHPPENN hereunder shall be terminating the Option; in no event shall the FCRHA be entitled to any damages from CHPPENN in the event CHPPENN defaults or breaches this Agreement.

## Section 10. **RISK OF LOSS; CONDEMNATION OR CASUALTY**

10.1 Risk of Loss. Risk of loss shall remain with the FCRHA until Closing. The FCRHA shall notify CHPPENN of any (i) condemnation or taking by eminent domain of any portions of the Ground Lease Premises or (ii) casualty event affecting the Ground Lease Premises. CHPPENN and the FCRHA agree that the FCRHA has no obligation to restore the Ground Lease Premises or the Existing County Land in the event of a condemnation or casualty event.

10.2 Obligation to Close. Notwithstanding any condemnation or casualty event, CHPPENN shall remain obligated to close under this Agreement so long as such condemnation or casualty event does not materially and adversely affect the Ground Lease Premises. For purposes of this Section, a condemnation or casualty event will "materially and adversely affect the Ground Lease Premises" if, after completion of such condemnation or the occurrence of such casualty event, as applicable, CHPPENN would no longer be able to develop the Ground Lease Premises in substantial accordance with the 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 Ground Lease Premises, (A) CHPPENN shall have the right to terminate this Agreement without liability on its part by so notifying the FCRHA within fifteen (15) days of the FCRHA's notification to CHPPENN of said condemnation or casualty event, and except as otherwise expressly set forth in this Agreement, neither the FCRHA nor CHPPENN shall any further liability hereunder, and (B) if CHPPENN does not so terminate the Agreement, then CHPPENN shall remain obligated to close under this Agreement and neither such condemnation or casualty event nor the condition of the Ground Lease Premises thereafter shall be deemed to give rise to a default hereunder.



Section 11. **MISCELLANEOUS PROVISIONS.**

11.1 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.

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

11.3 Complete Agreement; Waiver and Modification, Etc. This Agreement and the Option to Lease dated as of the date hereof between the FCRHA and CHPPEN for the 9% Ground Lease (the "**Option**") 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, shall require the consent of any person or entity other than the Parties hereto, nor shall 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.

11.4 Notices. Whether expressly so stated or not, whenever it is provided in this Agreement that a notice, demand, request, consent, approval or other communication (each of which is herein referred to as "Notice") shall or may be given to or served upon either of the Parties by the other, and whenever either of the Parties shall desire to give or serve upon the other any Notice with respect hereto or the Ground Lease Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless 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 to the Parties as follows:

If to CHPPENN, to:

CHPPENN I, LLC  
c/o Penrose  
1301 N. 31<sup>st</sup> Street  
Philadelphia, PA 19131

And

CHPPENN I, LLC  
c/o CHP  
4915 Radford Ave., Suite 300  
Richmond, VA 23220

With a copy to:

Klein Hornig LLP  
1275 K Street NW, Suite 1200  
Washington, DC 20005  
Attention: Erik Hoffman

If to the FCRHA, to:

Fairfax County Redevelopment and Housing Authority  
3700 Pender Drive  
Fairfax, Virginia 22030  
Attention: Director, HCD

With copies to:

Office of the County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
Attention: County Attorney

Norton Rose Fulbright US LLP  
799 9th Street NW, Suite 1000  
Washington, DC 20001-4501  
Attention: Julie A. Tassi

Either the FCRHA or CHPPENN may change the address(es) to which any such Notice is to be delivered to it by furnishing ten (10) days written notice of such change(s) to the other Party in accordance with the provisions of this Section 11.4. Every Notice shall be deemed to have been given or served upon delivery thereof, with failure to accept delivery to constitute delivery for such purpose.

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

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

11.7 Successors and Assigns. CHPPENN may not assign its rights under this Agreement to any party without the prior written consent of the FCRHA, which may be withheld in the FCRHA's sole and absolute discretion. A sale, assignment, or other transfer of the equity of CHPPENN or any direct or indirect parent of CHPPENN shall be deemed to be an assignment subject to the restrictions of this Section 11.7. Notwithstanding the foregoing to the contrary, CHPPENN shall 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 CHPPENN, or to any person or entity resulting from a merger or consolidation with CHPPENN, or to any person or entity which acquires all the assets of CHPPENN's business as a going concern pursuant to a written agreement, reasonably acceptable to the FCRHA, provided that (i) such assignment or sublease is not a subterfuge to avoid the application of the provisions of this Section 11.7, (ii) the assignee assumes, in full, the obligations of CHPPENN under this Agreement, pursuant to a written agreement in form reasonably acceptable to the FCRHA, and (iii) CHPPENN provides the FCRHA with prior written notice of any such assignment.

11.8 Severability. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall 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.

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

11.10 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 shall be considered material and shall 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.

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

11.12 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 shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

11.13 Time. **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.** In the event that any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be automatically extended to the next business day.

11.14 Estoppel Certificates. Each Party shall, from time to time upon fifteen (15) days' prior written request by the other Party, execute, acknowledge and deliver to the requesting Party a certificate signed by an authorized representative of such Party stating whether to the actual knowledge of such Party (without investigation) (a) this Agreement is or is not in full force and effect, (b) this Agreement is or is not unmodified (and, if modified, the details of the modification(s)), and (c) the requesting Party is in default in performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such default of which the non-requesting Party may have actual knowledge.

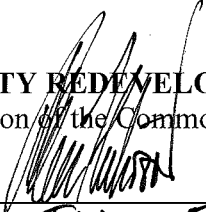
11.15 Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Agreement.

*[Signatures on the following page]*

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,

By:   
Name: THOMAS FLEETWOOD  
Title: Assistant Secretary

**CHPPENN**

**CHPPENN I, LLC,**  
a Virginia limited liability company

By: Pennrose Properties, LLC  
A Pennsylvania limited liability company  
Its Manager

By:   
Name: MARK A. GAMBLY  
Title: PRESIDENT

And by: Community Housing Partners Corporation  
a Virginia nonstock corporation  
Its Manager

By: \_\_\_\_\_  
Name:  
Title:

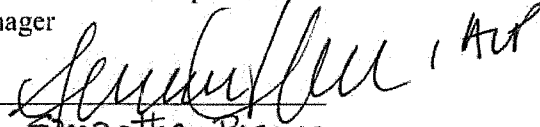
**CHPPENN**

**CHPPENN I, LLC,**  
a Virginia limited liability company

By: Pennrose Properties, LLC  
A Pennsylvania limited liability company  
Its Manager

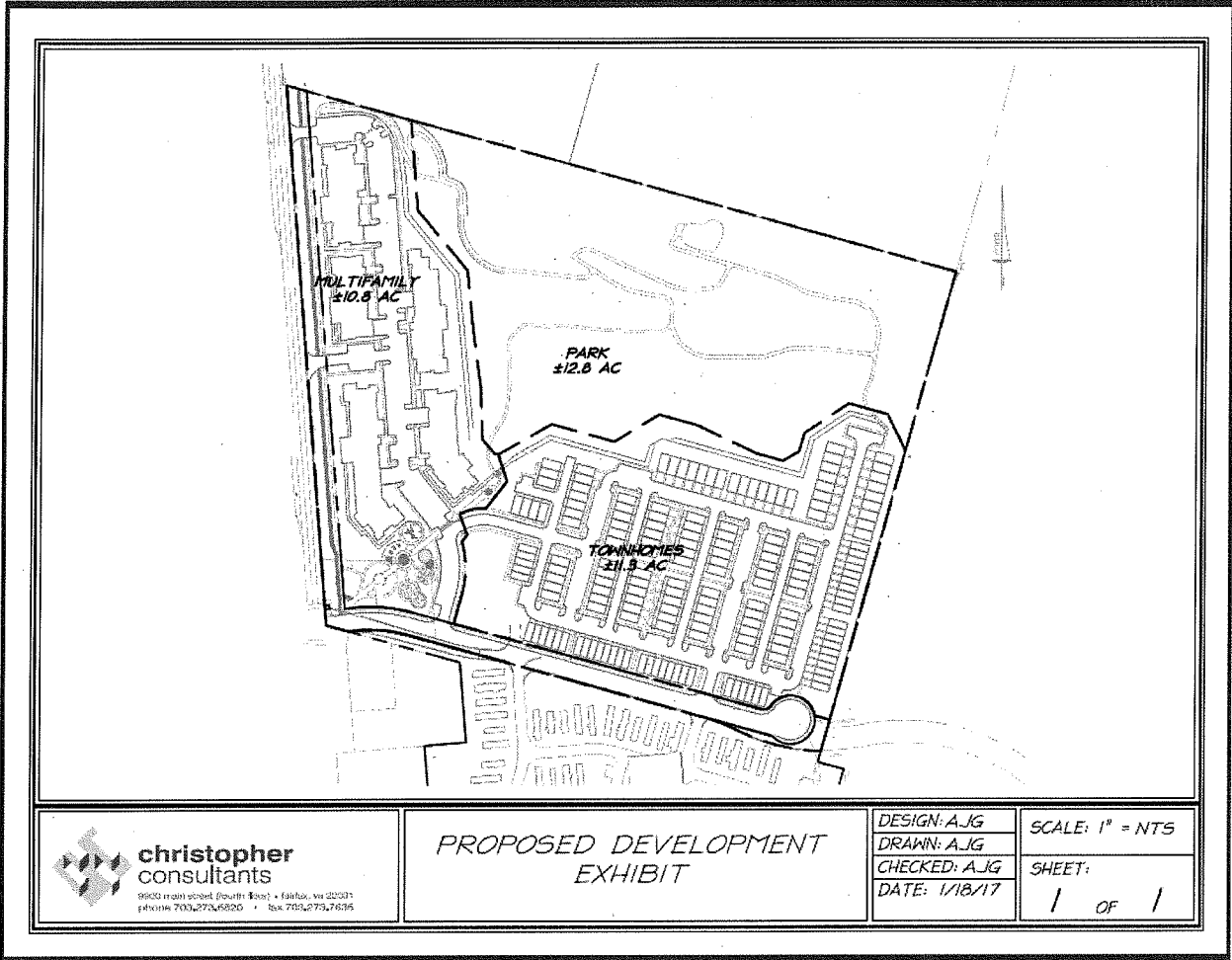
By: \_\_\_\_\_  
Name:  
Title:

And by: Community Housing Partners Corporation  
a Virginia nonstock corporation/  
Its Manager

By:   
Name: Samantha Brown  
Title: Assistant Vice President

**SCHEDULE A**

**DESCRIPTION OF PROPERTY – BELOW**



**christopher  
consultants**  
9500 north street, fourth floor • Fairfax, VA 22031  
phone: 703.273.6900 • fax: 703.273.7636

*PROPOSED DEVELOPMENT  
EXHIBIT*

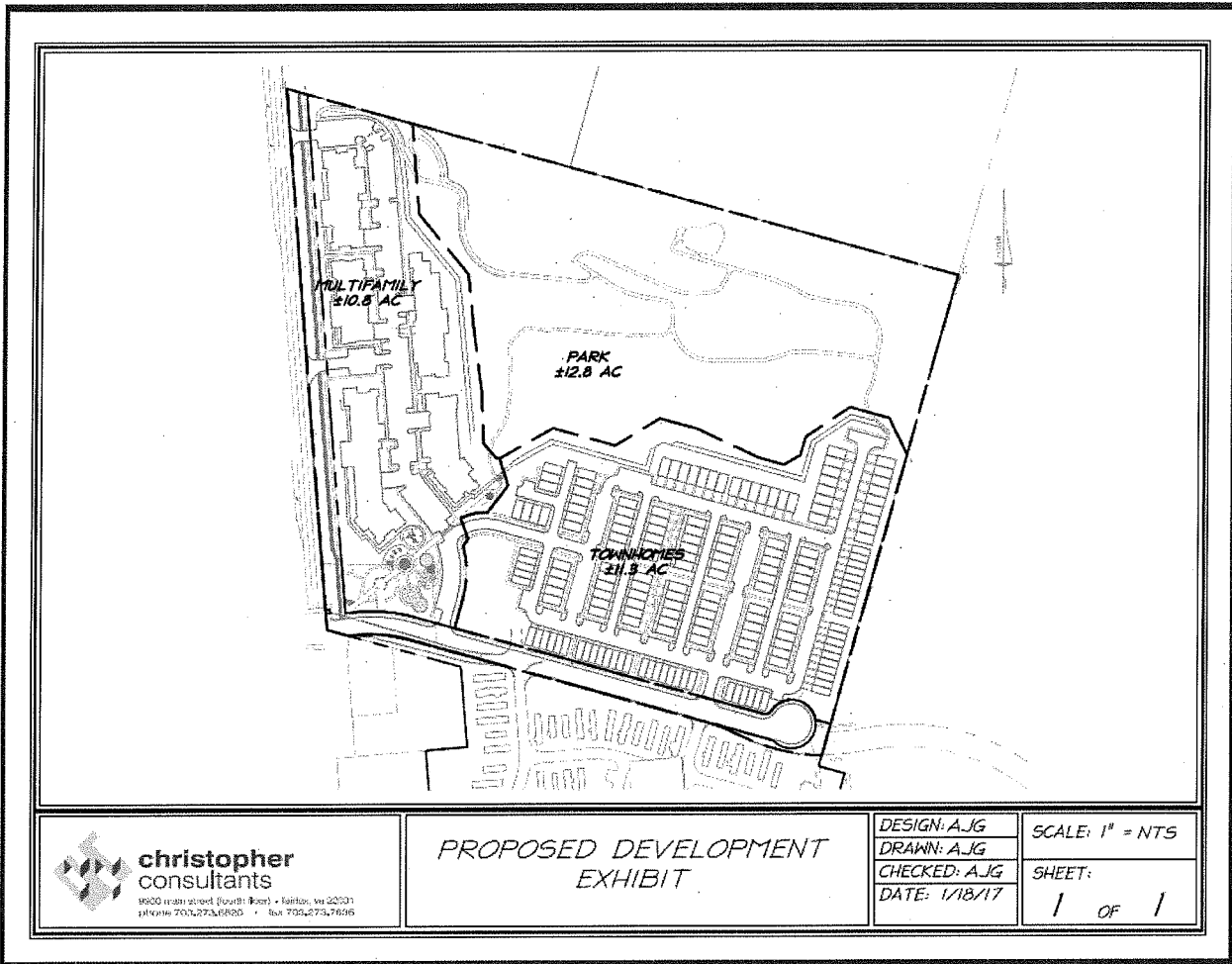
DESIGN: A.J.G.  
DRAWN: A.J.G.  
CHECKED: A.J.G.  
DATE: 1/18/17

SCALE: 1" = NTS  
SHEET:  
1 OF 1



**SCHEDULE B**

**DESCRIPTION OF SALE PROPERTY – THE SALE PROPERTY IS THAT PORTION OF THE PROPERTY DEPICTED BELOW AS THE “TOWNHOMES”**



**EXHIBIT A**  
**GROUND LEASE**  
**(Attached)**

DEED OF LEASE

between

FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY,

as Landlord

and

TBD<sup>1</sup>

as Tenant

Premises:

North Hill Site  
Fairfax County, Virginia

\_\_\_\_\_, 201\_\_

---

<sup>1</sup> To be named SPE for CHPPENN.

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### **List of Exhibits**

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Exhibit B – Project Description

Exhibit C – Intentionally Omitted

Exhibit D – Insurance Requirements

Exhibit E – List of Plans and Specifications

Exhibit F – Project Schedule

Exhibit G – Form of Guaranty

Exhibit H – Approval Criteria for Residential Leases and  
Residential Tenants

**DEED OF LEASE**

This DEED OF LEASE (this “Lease”) made as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_ between FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity (the “FCRHA”) as the owner of certain land described below in Fairfax County, Virginia and not in its governmental or regulatory capacity, having an office at 12000 Government Center Parkway, Fairfax, VA 22035, and TBD, a \_\_\_\_\_ (TBD and its permitted successors and assigns hereinafter referred to as, “Tenant”) having an office at \_\_\_\_\_.

**RECITALS**

- A.** The FCRHA is the legal owner of certain real property identified as Fairfax County Tax Map No. 92-4 ((1)), parcel 82A located in Fairfax County, Virginia (the “Property”).
- B.** The FCRHA intends to lease and demise to Tenant a portion of the Property for the purpose provided for herein, such portion of the Property being identified on Exhibit A attached hereto (the “Land”), together with any and all Buildings (as defined below), Fixtures (as defined below), [the Park Parking Lot]<sup>2</sup> and other improvements thereon and with all necessary appurtenant easements and development rights as provided herein (together with the Land, the “Premises”).
- C.** The FCRHA desires to lease to Tenant and Tenant desires to Lease from the FCRHA the Premises, in accordance with the terms and conditions of this Lease.

**WITNESSETH:**

It is hereby mutually covenanted and agreed by and between the parties hereto, for and in consideration of the mutual covenants set forth herein (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 shall, for all purposes of this Lease, have the following meanings.

“Additional Costs” shall consist of all other sums of money besides Base Rent, including, without limitation, payments to Depository of Impositions (if and as applicable) and all costs, expenses and charges of every kind and nature (including, without limitation, all public and private utilities and services and any easement or agreement maintained for the benefit of the Premises) relating to the Premises or required under this Lease as the same shall become due from and be payable by Tenant to the FCRHA hereunder and which shall be paid on or before

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<sup>2</sup> **The Park Parking Lot will only be included in the leasehold that includes the Park Parking Lot.**

the respective due dates of such sums. Without limitation of the foregoing, Additional Costs shall include all costs for service, maintenance, repair and replacement of the Lateral Support Improvements and with respect to the Stormwater Improvements, Additional Costs shall include all costs for service, maintenance, repair and replacement as required pursuant to all Applicable Laws.

“Affiliate” shall mean 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.

“Appraiser” shall have the meaning provided in Section 9.04.

“Applicable Laws” shall have the meaning provided in Section 14.01.

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

“Architect” shall mean a registered architect engaged by Tenant from time to time and approved by the FCRHA (such approval not to be unreasonably withheld or delayed) 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 shall 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 approved Architect for the Initial Construction Work is \_\_\_\_\_.

“Bankruptcy Code” shall mean Title 11 of the United States Code.

“Bankruptcy Default” shall have the meaning provided in Section 24.01(1).

“Base Rent” shall have the meaning provided in Section 3.01.

“Building(s)” shall mean any building(s) hereafter erected in, on, under or above the Premises which are a part of the Project.

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

“Capital Improvements” shall have the meaning provided in Section 11.09.

“Certificate of Occupancy” shall mean with respect to each Building comprising the Project, a Residential Use Permit issued by the Department of Public Works and Environmental Services pursuant to Part 7, Section 18 of the Zoning Ordinance of Fairfax County, Virginia or successor agency or successor statute.

“Commencement Date” shall mean the date of the mutual execution of this Lease by the FCRHA and Tenant.

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

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

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

“Consumer Price Index” shall mean 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 thereto, appropriately adjusted; provided, that if there shall be no successor index, a substitute index or the appropriate adjustment of such successor index, as the case may be, shall be determined by the FCRHA, in its reasonable discretion.

“Control/Controlled/Controlling” shall mean, 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 or according to the provisions of a contract.

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

“Depository” shall mean a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by Tenant and approved by the FCRHA, which approval shall not be unreasonably withheld, to serve as Depository pursuant to this Lease. In the event Tenant shall have failed to designate a Depository within ten (10) days after request of the FCRHA, the FCRHA shall have the right to designate such Depository. Notwithstanding the foregoing, in the event a Mortgage exists on the Lease, any Institutional Lender designated by the Mortgagee (including, without limitation, the Mortgagee) as a Depository shall be deemed approved by the FCRHA and Tenant hereunder.

“Development Agreement” shall mean that certain Master Development Agreement, dated as of \_\_\_\_\_, 201\_, by and among the FCRHA and Developer.

“Developer” shall mean [CHPPENN I, LLC, a Virginia limited liability company]<sup>3</sup>.

“Due Date” shall mean, with respect to an Imposition, the last date on which such

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<sup>3</sup> To be confirmed at Lease execution.

Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof.

“Effective Date” shall mean the date of this Lease.

“Environmental Activity” shall have the meaning provided in Section 14.03.

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

“Expiration Date” shall mean (i) the Fixed Expiration Date or (ii) such earlier date upon which the term of this Lease shall cease or be terminated as hereinafter provided.

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

“FCRHA’s Termination Rights” shall have the meaning provided in Section 10.04(f).

“Final Completion” shall mean all of the following have occurred: (i) Substantial Completion of the Initial Construction Work, (ii) all “punch-list” items identified 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” shall mean the date of Final Completion, as set forth in the Project Schedule, attached hereto as Exhibit F, as such date may be postponed due to Unavoidable Delays as provided in this Lease.

“Financing Plan” shall have the meaning provided in Section 11.15.

“Fixed Expiration Date” shall mean the date immediately preceding the ninety-ninth (99th) anniversary of the Commencement Date.

“Fixtures” shall 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.

“GAAP” shall mean generally accepted accounting principles.

“Governmental Authority (Authorities)” shall mean the United States of America, the Commonwealth of Virginia, Fairfax County, FCRHA, 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 shall also mean and include the FCRHA when acting in its governmental capacity, but not in its proprietary capacity.

“Guarantor” shall mean a Person, or Persons (acting jointly and severally) that satisfy the Guarantor Net Worth Requirement in any circumstances where relevant and is approved in advance by the FCRHA to be a Guarantor of this Lease. The FCRHA acknowledges that it has approved [REDACTED] as an acceptable guarantor.

“Guarantor Net Worth Requirement” shall mean at all times after execution of the Guaranty until termination of the Guaranty: (i) an aggregate Net Worth of at least Fifteen Million Dollars (\$15,000,000); and (ii) a minimum liquidity (in accordance with the terms of the Guaranty) of at least One Million Dollars (\$1,000,000).

“Guaranty” means that certain Guaranty to be executed by Guarantor in substantially the same form as Exhibit G attached hereto.

“Hazardous Materials” shall have the meaning provided in Section 14.03.

“Impositions” shall have the meaning provided in Section 4.01.

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

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

“Improvements” shall mean the Buildings, Fixtures, structures, additions, enlargements, extensions, roads, drives, parking areas, modifications, repairs, replacements and improvements now or hereafter constructed, re-constructed, erected, placed, installed or located on the Premises.

“Indemnitees” shall have the meaning provided in Section 19.01.

“Initial Construction Work” shall mean 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 and includes, without limitation, any and all Work.

“Institutional Lender” shall mean 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 shall qualify as an Institutional Lender within the provisions of this Section only if such entity shall 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 (\$2,000,000,000), 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 government agency, body or entity.

“Involuntary Rate” shall mean the Prime Rate plus six percent (6%) per annum but, in no event, in excess of the maximum permissible interest rate then in effect in the Commonwealth of Virginia.

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

“Lateral Support Improvements” shall have the meaning provided in Section 2.07.

“Lease” shall mean this Agreement of Lease and all amendments, modifications, restatements and supplements thereof.

“Leasing Default” shall have the meaning provided in Section 24.01(j).

“Major Casualty Amount” shall mean initially Two Million Dollars (\$2,000,000), provided that such amount shall be increased on the fifth (5th) anniversary of the Commencement Date and on each fifth (5th) 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.

“Management Agreement” shall have the meaning provided in Section 26.01.

“Mortgage” shall mean 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” shall mean the holder of a Mortgage on Tenant’s interest in the Lease and the leasehold estate created thereby, *provided however* that such holder: (a) is an Institutional Lender; or (b) has been approved by the FCRHA prior to the entering into of such Mortgage, which consent shall be in the FCRHA’s reasonable discretion. No holder of 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, 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.

“Net Worth” shall mean, as of any date on which the amount thereof shall be determined for any entity, the value of all assets owned by such entity, minus the total liabilities of such entity; which shall be determined in accordance with GAAP, provided however, that real estate assets which are customarily valued based upon their fair market value by companies in the real estate industry shall be valued based upon such fair market value rather than any other method

inconsistent with such valuation under a strict interpretation of GAAP rules.

“Net Worth Requirement” shall mean an aggregate Net Worth of at least Fifteen Million Dollars (\$15,000,000).

“New Lease” shall have the meaning provided in Section 10.05.

“New Tenant” shall have the meaning provided in Section 10.05(a).

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

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

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

“Outside Final Completion Date” shall have the meaning provided in Section 2.06.

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

“Permitted Transfer of Interest” shall have the meaning provided in Section 10.01(a).

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

“Premises” shall have the meaning set forth in the Recitals.

“Prime Rate” shall mean the “prime lending rate” (or such other term as may be used for the rate presently referred to as its “prime lending rate”) announced as such from time to time by Citibank, N.A., or its successors (or, if such bank shall no longer exist, such other bank reasonably selected by the FCRHA), at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a 360 day year with twelve months of 30 days each.

“Project” shall mean (A) one or more Buildings on the Premises, and the design, development and construction thereof for the operation, maintenance and management by Tenant of a low income/affordable multi-family rental housing facility (or facilities, as the case may be) on the Premises, which will include seventy five (75) Residential Units, (B) the Work (as hereafter defined), and (C) parking facilities and related public areas, all as more particularly described in this Lease and on Exhibit B attached hereto (together with all Buildings erected on the Premises, including footings and foundations, Fixtures, and other improvements and appurtenances of every kind and description hereafter erected, constructed, or placed on the

Premises, including, without limitation, Capital Improvements and any and all alterations and replacements thereof, additions thereto and substitutions therefor).

“Project Schedule” shall mean the schedule to develop and construct the Construction Work from Commencement of Construction through the Final Completion Date, as is more particularly set forth in Exhibit F, attached hereto and made a part hereof.

“Property” shall have the meaning provided in the Recitals.

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

“Replacement Value” shall 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 (10) days after Substantial Completion, Tenant shall 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. Sixty (60) days prior to the tenth (10<sup>th</sup>) anniversary of the date of Substantial Completion and each subsequent tenth (10<sup>th</sup>) anniversary thereafter for the Term of this Lease, Tenant shall 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 shall determine the current cost (including all hard and soft costs) of rebuilding the entire Project, without regard to depreciation of the Project, which amount shall then be deemed to be the Replacement Value. The amount of Replacement Value shall 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 Building Cost Index* (or such other published index of construction costs which shall be selected from time to time by the FCRHA, provided that such index shall 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 Substantial Completion or prior redetermination, whichever is latest.

“Residential Criteria Default(s)” shall have the meaning provided in Section 24.01(j).

“Residential Lease(s)” shall have the meaning provided in Section 26.04(a).

“Residential Tenant(s)” shall have the meaning provided in Section 26.04(a).

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

“Respective Allocations” shall have the meaning provided in Section 9.04.

“Restoration” shall have the meaning provided in Section 8.01(a).

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

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

“Restore” shall have the meaning provided in Section 8.01(a).

“Stormwater Improvements” shall have the meaning provided in Section 2.07.

“Substantial Completion” or “Substantially Complete(d)” shall mean 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 Development Agreement, where applicable) 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.” In the event that the Project consists of multiple Buildings, Substantial Completion shall be determined for each Building separately.

“Tax Credits” shall have the meaning provided in Section 38.01.

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

“Taxes” shall mean 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.

“Term” shall mean the term of this Lease as set forth in Section 2.03 hereof.

“Termination Notice” shall have the meaning provided in Section 2.06.

“Title Matters” shall mean, collectively, the following matters affecting title to the Premises (i) any matters that would be disclosed by any title commitment that could be obtained by Tenant for the Premises as of the Effective Date; (ii) any matters that are disclosed in the public records as of the Effective Date; (iii) any matters that would be disclosed by an inspection or survey of the Premises as of the Effective Date; (iv) the REA and Proffer Allocation Agreement (as such terms are defined in the Contract to Ground Lease – 9%, dated as of March 2, 2017, by and between FCRHA and Developer;<sup>4</sup> and (iv) all other matters that may be imposed from time to time in accordance with the provisions of this Lease, but Title Matters shall not include any mortgage of FCRHA or any monetary liens affecting the Premises created by the FCRHA after the Effective Date.

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

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<sup>4</sup> To be updated at Closing.

“Unavoidable Delays” shall mean (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, 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 the FCRHA or its obligations hereunder, delays incurred by the FCRHA 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 the FCRHA, in its governmental or regulatory capacity), enemy action, civil commotion, fire, unavoidable casualty, unseasonably adverse weather conditions, or other similar causes beyond the control of the FCRHA (but not including the FCRHA’s insolvency or financial condition); in each case provided (x) such party shall have notified the other party reasonably promptly after such party knows or should have known 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.

“Work” shall mean all improvements, work, services and other obligations to be performed by or on behalf of the Developer under the Development Agreement; provided, that Work shall not include the obligation of the FCRHA to provide up to \$14,000,000 toward the cost of the Work pursuant to (and in accordance with the express provisions of) the Development Agreement.

## **ARTICLE 2**

### **PREMISES AND TERM OF LEASE**

Section 2.01 Premises. The FCRHA does hereby demise and lease to Tenant, and Tenant does hereby hire and take from the FCRHA, the Premises, subject to the Title Matters, TOGETHER WITH:

- (a) all of the appurtenances, rights, privileges and easements in anyway now or hereafter appertaining thereto;
- (b) all right, title and interest of the FCRHA in and to the land lying in the streets, avenues, ways and roads in front of and adjoining said Premises;
- (c) all existing Improvements on the Premises as of the Commencement Date, if any; and
- (d) the right of surface support of all Improvements to be constructed or erected on the Premises.

Section 2.02 Legal Description of the Land. The FCRHA 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 shall conduct a survey of the Land which provides, *inter alia*, a metes and bounds description of the Land and the FCRHA and Tenant shall, 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 the FCRHA and Tenant.

Section 2.03 Term. The term of this Lease is ninety-nine (99) years (the “Term”). The FCRHA and Tenant agree that the Lease shall commence on the Commencement Date and expire on the Expiration Date.

Section 2.04 Use. During the Term, Tenant agrees that the Premises shall be used solely for the development, construction, reconstruction, rehabilitation, management and operation of the Project (as more particularly described in Exhibit B, attached hereto and made a part hereof), including any Restoration thereof, and the leasing of Residential Units and uses ancillary to the operation of the Premises as affordable multi-family rental housing 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) shall 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. Immediately upon the expiration of the Term, all right, title, and interest in the Improvements and personal property (other than personal property of tenants) located on the Premises shall vest in the FCRHA without further action of the FCRHA or Tenant being necessary or required.

Section 2.06 The FCRHA’s Right to Terminate. Subject to the rights of a Mortgagee under Section 10.04, in the event that Final Completion has not occurred by (or, in the FCRHA’s reasonable judgment, is not contemplated to occur within) the date that is two hundred seventy (270) days after the Final Completion Date (the “Outside Final Completion Date”), the FCRHA shall 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 the FCRHA’s intent to terminate (a “Termination Notice”) if the Project has not been Substantially Completed by a date certain on or after the Outside Final Completion Date. Such Termination Notice must be provided not less than ninety (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 ninety (90) days prior to the Outside Final Completion Date), Tenant shall have ninety (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 in the determination of ninety (90) days (*i.e.*, the ninety (90) day period will be further extended by the number of days of Unavoidable Delays occurring after the date of the Termination Notice). Upon expiration of said notice period, if Final Completion has not yet occurred, Tenant shall provide to the FCRHA copies of the Plans and Specifications and such other similar materials related to the Project and assign any Construction Agreements to the FCRHA for the Project that are requested by the FCRHA, and this Lease shall terminate in accordance with Article 31 of this Lease. Notwithstanding anything set forth in this Lease to the

contrary, in no event will a failure by Developer to achieve Final Completion (as defined in the Development Agreement) under the Development Agreement by the Final Completion Date (as defined in the Development Agreement) be considered to be an Unavoidable Delay hereunder.

Section 2.07 Lateral Support Improvements; Stormwater Improvements. Tenant, as part of its initial construction, shall construct retaining walls, shorings, underpinnings, and/or other structures (collectively “Lateral Support Improvements”), and undertake all measures necessary to prevent loss of lateral support to the Premises or damage to any structure thereon and in compliance with all Applicable Laws. Tenant, as part of its initial construction, shall also perform such work and construct such facilities as necessary to handle the stormwater from the public park to be developed directly to the east of the Premises, in accordance with the site plans for the Property (collectively, the “Stormwater Improvements”). Lateral Support Improvements and Stormwater Improvements shall comprise a portion of the Work. During the Term of this Lease, Tenant shall, at Tenant’s sole cost and expense, maintain, repair, and replace the Lateral Support Improvements and keep same in good order and condition and in compliance with all Applicable Laws and with respect to the Stormwater Improvements, Tenant shall, at Tenant’s sole cost and expense, maintain, repair, replace, and keep same in good order and condition in compliance with all Applicable Laws. Tenant’s obligations under this Section 2.07 shall be subject to all exceptions, reservations, easements, restrictions, covenants, conditions, and any other matters of record.

### **ARTICLE 3**

#### **RENT**

Section 3.01 Base Rent. On the Commencement Date, Tenant shall pay to the FCRHA, 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, base rent under this Lease (the “Base Rent”) for the entire Term of the Lease in an amount equal to Ten Dollars (\$10.00). Upon payment of such amount, no additional Base Rent shall be due and payable under this Lease for the entirety of the Term.

Section 3.02 Proration of Impositions and Additional Costs. Any 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 shall be appropriately prorated.

Section 3.03 Net Lease. It is the purpose and intention of the FCRHA and Tenant, and the parties hereto agree that Base Rent shall be absolutely net to the FCRHA without any abatement, deduction, counterclaim, set-off or offset whatsoever. In addition to the foregoing, all Additional Costs, expenses and other charges relating to the Premises of every kind and nature shall be paid directly by Tenant, or in the event the same are paid by the FCRHA (in accordance with this Lease), so that this Lease shall yield, net to the FCRHA the Base Rent, all such Additional Costs during the term of this Lease shall be reimbursed to the FCRHA 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 the FCRHA pursuant to this Lease, including, without limitation, Base Rent, Additional Costs, Impositions, and all other sums, costs, expenses or deposits which Tenant in any of the provisions of this Lease assumes or agrees to pay or deposit shall 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 the FCRHA (in addition to all other rights and remedies) shall have all of the rights and remedies provided for herein and by law in the case of non-payment of rent. All Base Rent, Additional Costs and Impositions shall be payable without offset or deduction (except as expressly provided in this Lease) at the FCRHA's address set forth in this Lease or as the FCRHA may from time to time direct. Unless otherwise expressly set forth in this Lease, all Additional Costs and Impositions that are either payable directly to the FCRHA or to be reimbursed to the FCRHA shall be paid to the FCRHA on demand. As used in this Lease, "on demand" shall mean within five (5) Business Days after receipt of notice from the FCRHA that such Additional Costs or Impositions are due and payable to the FCRHA.

Section 3.05 Reimbursement of Expenses. Tenant shall reimburse the FCRHA upon demand for all: (a) Additional Costs paid directly by the FCRHA in accordance with the terms of this Lease; and (b) expenses, including, without limitation, reasonable attorneys' fees and disbursements, paid or incurred by the FCRHA in connection with any Event of Default, or arising out of any indemnity or "hold harmless" agreement given or made by Tenant to the FCRHA in this Lease, or otherwise incurred by the FCRHA in connection with the successful enforcement of its rights and Tenant's obligations under this Lease. Upon Tenant's request, the FCRHA shall provide reasonable documentation of any Additional Costs paid by the FCRHA. Tenant shall 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 shall govern.

## **ARTICLE 4**

### **IMPOSITIONS**

Section 4.01 Impositions. Tenant shall 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, consent, approval, and permit fees; (f) service charges, if any, with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, (g) fines, penalties and other similar or like 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 the FCRHA 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 shall 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 shall be responsible for the payment of such installments only, together with applicable interest, if any, relating to periods for which such installment is due, *provided however*, that Tenant shall have notified the FCRHA of its election to pay in installments prior to the Due Date of such Imposition.

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

Section 4.03 The FCRHA's Taxes. Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit, capital or transfer gains taxes of the FCRHA (if any), or any corporate franchise tax imposed upon the FCRHA (if any) or any transfer or gains tax imposed on the FCRHA (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 of time before the Commencement Date or after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between the FCRHA and Tenant as of the Commencement Date or the Expiration Date, as the case may be, so that Tenant shall 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 the FCRHA shall 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 shall be made if this Lease is terminated prior to the Fixed Expiration Date as the result of an Event of Default.

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

(a) neither the Premises nor any part thereof, nor any interest of the FCRHA therein, nor any income of the FCRHA 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 the FCRHA would, by reason of such postponement or deferment, be, in the reasonable judgment of the FCRHA, in imminent danger of being forfeited or lost or subject to any lien, encumbrance or charge, and the FCRHA by reason thereof be subject to any civil or criminal liability;

(b) Tenant shall have deposited with Depository, cash or other security reasonably satisfactory to the FCRHA 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 any amount so deposited by Tenant with such Mortgagee shall be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Section 4.05(b), provided further, Tenant shall send notice to the FCRHA of such requirement with evidence reasonably satisfactory to the FCRHA of Tenant's compliance with such requirement.

(c) Upon the termination of such proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, Depository shall return, with interest, if any, any amount deposited with it as aforesaid, *provided however*, that Depository, at the FCRHA's request, shall disburse said moneys on deposit with it directly to the Governmental Authority to whom such Imposition is payable and any remaining monies, with interest, if any, shall be returned promptly to Tenant. If, at any time during the continuance of such proceedings, the FCRHA shall, in its reasonable opinion, deem insufficient the amount deposited as aforesaid, Tenant, within ten (10) Business Days after demand, shall make an additional deposit of such additional sums or other acceptable security as the FCRHA may reasonably request, and upon failure of Tenant to do so, the amount theretofore deposited may be applied at the request of the FCRHA to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings, and the balance, if any, with any interest earned thereon, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to the FCRHA within ten (10) days after demand.

**Section 4.06 Contest Not Postpone Tenant's Obligation.** Tenant shall 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 shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05 hereof.

**Section 4.07 The FCRHA's Cooperation in Proceedings.** The FCRHA shall 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 shall require that such proceedings be brought by or in the name of the FCRHA, in which event, the FCRHA shall join and cooperate in such proceedings or permit the same to be brought in its name but shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse the FCRHA for any and all costs or expenses which the FCRHA may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. In the event Tenant shall institute a proceeding referred to in Sections 4.05 or 4.06 hereof and no law, rule or regulation in effect at the time requires that such proceeding be

brought by or in the name of the FCRHA, the FCRHA, nevertheless, shall, 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 shall be entitled to the full benefit thereof and the FCRHA shall assign any such refund, credit, or other recompense to Tenant or as Tenant may direct, except that the FCRHA shall be entitled to any refund, credit, or other recompense in connection with amounts paid by the FCRHA for any Impositions or as reimbursement for any amounts paid by the FCRHA 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 shall 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. The FCRHA, 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 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 the FCRHA evidence of payment of any Impositions that the FCRHA allows Tenant to pay directly during such Event of Default, that are payable on a monthly or more frequent basis within ten (10) days after the Due Date for such Impositions. The FCRHA may, at any time after the occurrence and during the continuance of an Event of Default, require that any Impositions that the FCRHA 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, Tenant, upon the demand of the FCRHA at any time, shall deposit with Depository on the first day of each month during the Term, an amount equal to one-twelfth (1/12<sup>th</sup>) 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, the FCRHA agrees that the amounts so deposited with the Depository shall 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, in the event that a Mortgagee (provided such Mortgagee be an Institutional Lender) shall require Tenant to deposit funds to insure payment of such Impositions, any amount so

deposited by Tenant with such Mortgagee shall be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Article 5; provided further, Tenant shall send notice to the FCRHA of such requirement with evidence reasonably satisfactory to the FCRHA of Tenant's compliance with such requirement.

#### Section 5.04 Changes to Deposits to Impositions Account.

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

(b) If at any time the amount of any Imposition is increased or the FCRHA 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 thirty (30) days prior to the Due Date thereof, then upon notice from the FCRHA to Tenant of such fact, the monthly deposits shall thereupon be increased and Tenant shall deposit immediately with Depository sufficient monies for the payment of the increased Imposition. Thereafter, the monthly payments shall be adjusted so that Depository shall receive from Tenant sufficient monies to pay each Imposition at least thirty (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 thirty (30) days prior to the Due Date thereof, deposits for each category of Imposition shall be treated separately. Depository shall 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 The FCRHA's Rights During an Event of Default. At the FCRHA's option after the occurrence and during the continuance of an Event of Default by Tenant, the FCRHA may withdraw any monies deposited pursuant to Articles 4 or 5 for the cure of any monetary Event of Default. The FCRHA and Tenant shall 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 the FCRHA 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 shall 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 shall, at the FCRHA's direction, be paid and applied to the FCRHA in payment for such Event of Default and any and all other sums due under this Lease and Tenant shall 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 shall become a part of the Impositions Account and shall be applied pursuant to the foregoing provisions.

## ARTICLE 6

### LATE CHARGES

Section 6.01 Late Payments. In the event that any payment of Base Rent, Additional Costs or Impositions shall 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 shall be deemed to be the date upon which demand therefor is made), 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, shall become due and payable to the FCRHA as liquidated damages for the administrative costs and expenses incurred by the FCRHA by reason of Tenant's failure to make prompt payment. The late charges will be considered Additional Costs and shall be paid by Tenant within ten (10) days after demand. No failure by the FCRHA to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by the FCRHA of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24, provided, however, if and to the extent that (i) Tenant is permitted under this Lease to contest Additional Rent and/or Impositions and (ii) Tenant shall have paid all Additional Rent and Impositions that are not being contested, then no such late charge will be incurred with respect to such properly contested Additional Rent and Impositions during such period that Tenant shall be contesting same diligently and in good faith and in accordance with the terms of this Lease.

## ARTICLE 7

### INSURANCE

#### Section 7.01 Required Insurance.

(a) Tenant shall maintain, or cause to be maintained, at its sole cost and expense the required insurance described in Exhibit D annexed hereto. Exhibit D may require additional forms or amounts of insurance that are required to be maintained by Tenant during the Initial Construction Work or Restoration or construction of Capital Improvements, and such additional insurance requirements will be separately set forth therein.

(b) The FCRHA 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 in the event Tenant disputes the reasonableness of any new requirement hereunder, the FCRHA and Tenant shall resolve such dispute in accordance with Article 34 below.

#### Section 7.02 Additional Insurance Requirements

(a) All insurance policies required by Section 7.01 shall 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) The FCRHA and Tenant shall cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss, and Tenant shall execute and deliver to the FCRHA 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 shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless the FCRHA and any other parties designated by the FCRHA 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 shall immediately notify the FCRHA of the carrying of any such separate insurance and shall cause copies of the declaration page(s) of the same to be delivered as in this Lease hereinafter required.

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

(e) Tenant shall procure policies for all such insurance required by any provision of this Lease for periods of not less than one (1) year (if such policy term is customary and available) and shall procure renewals or replacements thereof from time to time and deliver evidence of the same to the FCRHA at least thirty (30) days before the expiration thereof. If Tenant shall fail to procure any such policies or renewals thereof in accordance herewith, the FCRHA may procure the same, and Tenant shall be obligated to reimburse the FCRHA as Additional Costs hereunder for all costs incurred by the FCRHA in connection therewith.

**Section 7.03 Deposit of Insurance Premiums.** The FCRHA, by written notice, may at any time after the occurrence and during the continuance of an Event of Default hereunder, require Tenant to deposit on the first (1<sup>st</sup>) 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 shall 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 the FCRHA may (a) require payment to be made on demand or (b) pay the same, the FCRHA may at any time after such Event of Default has occurred and is continuing, pay such insurance premiums, whereupon Tenant shall be obligated to reimburse the FCRHA therefor as Additional Costs. Notwithstanding anything in this Article 7 to the contrary, in the event that a Mortgagee (provided such Mortgagee is an Institutional Lender) requires Tenant to deposit funds to insure payment of insurance premiums, and any amount so deposited by Tenant with such Mortgagee shall be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Section 7.03; provided further, Tenant shall send notice to the FCRHA of such requirement with evidence reasonably satisfactory to the FCRHA of Tenant's compliance with such requirement.

Section 7.04 Delivery of Certificates and Declaration Pages. Upon the execution and delivery of this Lease and thereafter not less than thirty (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 the FCRHA of such payment, shall be delivered by Tenant to the FCRHA. The FCRHA shall 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 shall, upon the written request of the FCRHA, obtain and deliver to the FCRHA, within fifteen (15) days after the date of any such request, a certificate from Tenant's insurer or independent insurance agent certifying to the FCRHA, 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 thirty (30) days prior written notice to the FCRHA (or ten (10) Business Days in the case of non-payment of premium).

Section 7.05 The FCRHA's Right to Procure Insurance. If Tenant fails to obtain and maintain insurance as in this Lease provided, the FCRHA may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor. All premiums so paid by the FCRHA shall constitute Additional Costs. Such Additional Costs shall be payable by Tenant within ten (10) Business Days after written notice from the FCRHA that the FCRHA has made payment of such premiums and reimbursement is being demanded therefor. The payment by the FCRHA of premiums for any such insurance policy shall 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 the FCRHA to pursue any other remedy under this Lease or by law in relation to such Event of Default.

## **ARTICLE 8**

### **USE OF INSURANCE PROCEEDS**

#### Section 8.01 Tenant's Obligation to Restore.

(a) If all or any part of any of the Project shall be 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 shall give to the FCRHA immediate notice thereof, except that no notice or related approvals from the FCRHA shall be required if the cost of repairs, alterations, restorations, replacements and rebuilding (collectively, "Restoration"), as reasonably estimated by Tenant, will be less than Three Hundred Fifty Thousand Dollars (\$350,000), as such amount is adjusted on the fifth (5th) anniversary of the Commencement Date and on each fifth (5th) 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 (the "Threshold Amount"). Whether or not the foregoing notice requirement applies, Tenant shall, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose of such Restoration, with reasonable diligence (subject to Unavoidable Delays) 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 the FCRHA, may elect to make, provided that, after the Restoration, the Project shall be in substantial conformity with the original Plans and Specifications; with any changes as mutually agreed to by Tenant and the FCRHA, acting in their reasonable discretion. If Tenant shall fail or neglect to Restore with reasonable diligence (subject to Unavoidable Delays) the Project or the portion thereof so damaged or destroyed, or having so commenced such Restoration, shall 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 shall expire or be terminated for any reason, the FCRHA may after written notice to Tenant and expiration of the cure periods applicable to such failure, but shall not be required to, complete such Restoration at Tenant’s expense. Each such Restoration shall be done in accordance with the provisions of this Lease. In any case where this Lease shall expire or be terminated prior to the completion of Restoration, Tenant shall account to the FCRHA for all amounts spent in connection with any Restoration which was undertaken and shall pay over to the FCRHA, within ten (10) 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 shall survive the expiration or termination of this Lease.

(b) Tenant will commence Restoration no later than six (6) months after the casualty and shall continue thereafter diligently and without interruption as provided herein. Tenant shall diligently prosecute such Restoration to completion, and in any event, such Restoration shall be completed, subject to Unavoidable Delays, within eighteen (18) months after the commencement of the Restoration. In the event Tenant does not commence Restoration within the applicable time period, or if Tenant does not thereafter diligently prosecute such Restoration to completion and complete such Restoration within the applicable time period (subject to Unavoidable Delay), then it shall be an Event of Default hereunder.

(c) In no event will the FCRHA 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 above the Threshold Amount, Tenant shall submit completed final drawings and plans and specifications in CADD format for the Restoration prepared by an Architect which comply with 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 the FCRHA for the Initial Construction Work or with any changes mutually agreed to by Tenant and the FCRHA, acting in their reasonable discretion (the “Restoration Plans and Specifications”). The FCRHA shall review the proposed Restoration Plans and Specifications to determine whether they do so materially comply. If the FCRHA determines that they do so comply, the FCRHA shall so notify Tenant in writing. If the FCRHA reasonably determines that the Restoration Plans and Specifications do not materially comply with the first sentence of this Section (and any changes agreed to by the parties), the FCRHA shall so notify Tenant, specifying in writing in what respects they do not so comply. In such latter event, Tenant and the FCRHA shall reasonably cooperate with one another in addressing the comments of the FCRHA. Tenant shall revise the



proposed Restoration Plans and Specifications to reflect the agreed upon changes and shall then resubmit the Restoration Plans and Specifications to the FCRHA for review. The initial review by the FCRHA shall be carried out within twenty (20) Business Days of the date of submission of the Restoration Plans and Specifications; and the FCRHA's review of revisions to the Restoration Plans and Specifications shall be carried out within twenty (20) Business Days of the date of submission of the revised Restoration Plans and Specifications. If the FCRHA has not notified Tenant of its determination within twenty (20) Business Days following the FCRHA's receipt of the Restoration Plans and Specifications or the revised Restoration Plans and Specifications, as the case may be, within such twenty (20) Business Day period, then Tenant shall have the right to give to the FCRHA a second notice stating (in bold, capital letters) **"IF THE FCRHA SHALL FAIL TO RESPOND TO TENANT WITHIN FIVE (5) BUSINESS DAYS AFTER THE FCRHA'S RECEIPT OF THIS NOTICE, THE FCRHA'S CONSENT TO THE RESTORATION PLANS AND SPECIFICATIONS SHALL BE DEEMED GIVEN IN ACCORDANCE WITH SECTION 8.02 OF THE LEASE"** and if the FCRHA has not notified Tenant of the FCRHA's approval or disapproval of the Restoration Plans and Specifications or the revised Restoration Plans and Specifications, as the case may be, within such five (5) Business Day period following the FCRHA's receipt of such second notice, then such Restoration Plans and Specifications or the revised Restoration Plans and Specifications, as the case may be, shall be deemed approved by the FCRHA (but such deemed approval shall be solely in the FCRHA's proprietary capacity and not in its governmental or regulatory capacity) and no such approval hereunder shall in any manner be deemed to affect, limit or obligate the FCRHA in its governmental or regulatory capacity or the County of Fairfax, Virginia, or any other Governmental Authority (including, without limitation, the Department of Planning and Zoning) in its regulatory or governmental capacity.

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 shall be held and disbursed by the Mortgagee to apply to the costs of Restoration pursuant to such provisions as the Mortgage may provide therefor. In the event that there is not a Mortgagee with respect to 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 in the event 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) shall be deposited with the Depository (other than proceeds for rent insurance) and shall be subject to monthly disbursement procedures as more fully described in Section 8.04 below. 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 shall nonetheless, at its own cost and expense, provide the additional 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 shall be paid over to Tenant or as Tenant may direct. If Depository is to disburse the insurance proceeds, the provisions of Section 8.04 shall apply.

Section 8.04 Conditions Precedent to Disbursements. The following shall 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 shall 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, shall be entitled to reimburse itself and the FCRHA therefrom to the extent, if any, of the necessary, reasonable and proper expenses (including, but not limited to, reasonable attorneys’ fees) paid or incurred by Depository and the FCRHA in the collection of such monies. Depository shall pay to Tenant, as hereinafter provided, the Restoration Funds, for the purpose of the Restoration.

(b) Prior to commencing any Restoration, Tenant shall furnish the FCRHA with an estimate of the cost of such Restoration, prepared by an Architect. The FCRHA, at the FCRHA’s reasonable expense, without reimbursement from Tenant, 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 shall be resolved by dispute resolution in accordance with the provisions of Article 34, and any time required to resolve such dispute shall 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 shall be paid to Tenant in installments as the Restoration progresses, upon application to be submitted by Tenant to Depository and the FCRHA 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 the FCRHA, or any assets of, or funds appropriated to, the FCRHA, Tenant shall 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 shall 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 shall 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) all payments theretofore made to Tenant out of the Restoration Funds.

(e) Notwithstanding the foregoing, if the FCRHA makes the Restoration at Tenant’s expense, as provided in Section 8.01(a), then Depository shall pay over the Restoration Funds to the FCRHA, upon request, to the extent not previously paid to Tenant

pursuant to this Section 8.04, and Tenant shall pay to the FCRHA, within ten (10) days after demand, any sums in excess of the portion of the Restoration Funds received by the FCRHA necessary to complete the Restoration. Upon completion of the Restoration, the FCRHA shall deliver to Tenant a certificate, in reasonable detail, setting forth the expenditures made by the FCRHA for such Restoration.

(f) There shall be submitted to Depository and the FCRHA 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 shall 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 shall be furnished to the FCRHA an official search, or a certificate of a title insurance company reasonably satisfactory to the FCRHA, or other evidence reasonably satisfactory to the FCRHA, 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 the FCRHA, or the assets of, or funds appropriated to, the FCRHA, 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.

#### Section 8.05 Major Casualty.

(a) If any loss, damage or destruction occurs, the cost of Restoration of which equals or exceeds the Major Casualty Amount determined as provided in Section 8.04(b), in addition to the requirements set forth in this Article 8 with respect to Restoration, Tenant shall 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 Major Casualty Amount, such cost to be determined as provided in Section 8.04(b), to the extent that any portion of the Restoration involves: (i) material change or changes to the exterior of the Project, or (ii) a material 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 shall furnish to the FCRHA at least thirty (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 the FCRHA's review and approval as provided in this Article 8.

(c) In the event Tenant shall desire to modify the Restoration Plans and Specifications which the FCRHA theretofore has approved pursuant to Sections 8.02 or Article 11, Tenant shall submit the proposed modifications to the FCRHA. The FCRHA shall 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 shall approve such proposed changes if they do so conform and so provide. If the FCRHA determines that the proposed changes are not satisfactory in light of the above criteria, it shall so advise Tenant, specifying in what respect the plans and specifications, as so modified, do not conform to requirements above. Tenant shall revise the plans and specifications so as to meet the FCRHA's objections and shall deliver same to the FCRHA for review within twenty (20) Business Days of the date of delivery of the FCRHA's notice that the proposed changes are not satisfactory. If the FCRHA shall not have notified Tenant whether or not the proposed changes to the Restoration Plans and Specifications are satisfactory to the FCRHA in light of the above criteria within twenty (20) Business Days following the FCRHA's receipt of the proposed modifications, then Tenant shall have the right to give to the FCRHA a second notice stating (in bold, capital letters) **"IF THE FCRHA SHALL FAIL TO RESPOND TO TENANT WITHIN FIVE (5) BUSINESS DAYS AFTER THE FCRHA'S RECEIPT OF THIS NOTICE, THE FCRHA'S CONSENT TO THE PROPOSED MODIFICATIONS TO THE RESTORATION PLANS AND SPECIFICATIONS SHALL BE DEEMED GIVEN IN ACCORDANCE WITH SECTION 8.05(c) OF THE LEASE"** and if the FCRHA has not notified Tenant of the FCRHA's approval or disapproval of the modified Restoration Plans and Specifications within such five (5) Business Day period following the FCRHA's receipt of such second notice, then such modified Restoration Plans and Specifications shall be deemed approved by the FCRHA (but such deemed approval shall be solely in the FCRHA's proprietary capacity and not in its governmental or regulatory capacity) and no such approval hereunder shall in any manner be deemed to affect, limit or obligate the FCRHA, the County of Fairfax, Virginia, or any other Governmental Authority (including, without limitation, the Department of Planning and Zoning) in its regulatory or governmental capacity.

Section 8.06 Deposit of Proceeds. If the cost of any Restoration, determined as provided in Section 8.04(b), exceeds both (i) the Major Casualty Amount and (ii) the Restoration Funds, after all required payments to Mortgagees are made, then, prior to the commencement of such Restoration, Tenant shall deposit with Depository, as security for completion of the Restoration, a bond, cash or other security reasonably satisfactory to the FCRHA 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 shall not terminate or be forfeited or be affected in any manner, and there shall 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, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of all Additional Costs and Impositions required by this Lease shall 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 the Major Casualty Amount, Tenant has not theretofore delivered same to the FCRHA, Tenant shall deliver to the FCRHA, within ninety (90) days of the completion of such Restoration, a complete set of “as built” plans in CADD format, 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 ninety-fifth (95<sup>th</sup>) 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, shall have the right to terminate this Lease upon thirty (30) days’ notice to the FCRHA, in which event all insurance proceeds in respect of such casualty (or a sum equivalent to such amount) shall 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 Additional Costs or other amounts owed by Tenant to the FCRHA under this Lease; and fourth, the balance to the FCRHA. Tenant, at its sole expense, shall deliver to the FCRHA any plans or other technical materials related to the design and construction of the Improvements and, at the request of the FCRHA, shall 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 the FCRHA and the payment of such portion of any such insurance proceeds due to the FCRHA pursuant to the terms of this Section 8.09, and provided that no Tenant Event of Default exists hereunder, this Lease shall be terminated without liability or further recourse to the parties hereto, provided that any Additional Costs owed by Tenant to the FCRHA as of the date of said termination shall 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 shall 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 the FCRHA, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking.

(b) The term “substantially all of the Premises” shall 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 shall 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 aforesaid portion thereof shall 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 shall be so taken, this Lease and the Term shall continue as to the portion of the Premises remaining without abatement of Base Rent or Additional Costs or Impositions or diminution of any of Tenant’s obligations hereunder. Tenant, whether or not the award or awards, if any, shall be sufficient for the purpose shall (subject to Unavoidable Delays) proceed diligently to Restore any remaining part of the Project not so taken so that the latter shall 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 shall 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 shall 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 the FCRHA in the condemnation proceedings, as may be necessary to pay the cost of Restoration of the part of the Project remaining. Such Restoration shall be done in accordance with and subject to the provisions of Article 8. Payments to Tenant as aforesaid shall 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 with Depository pursuant to Section 9.04 remaining after completion of the Restoration shall be paid to Tenant or its Mortgagee, if any. Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards.

Section 9.04 Condemnation Award. In any condemnation proceedings, the FCRHA and Tenant each agree to cooperate in obtaining the highest award possible and agree to request that separate awards be made for the FCRHA's and Tenant's interests in the Premises and the Improvements. In the event that separate awards are not made for the FCRHA'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 shall be fairly allocated between the ownership of the fee and the leasehold estates 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 the FCRHA's remainder interest in such Improvements as well as the value of the FCRHA's 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 the FCRHA and Tenant (the "Respective Allocations") within thirty (30) days after the condemnation proceedings have terminated, the allocation shall be determined by appraisal, using the method hereinafter set forth:

(a) If, during such negotiation period, the parties do not agree in writing, the FCRHA and Tenant shall each designate in writing, within seven (7) days after the expiration of the aforementioned thirty (30) day period, an MAI or similarly accredited appraiser (an "Appraiser") having at least ten (10) 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 the FCRHA or Tenant or their respective affiliates. Within fifteen (15) days after the designation of the Appraisers, the two Appraisers so designated shall designate a third Appraiser of the same qualifications. The Appraisers so designated shall, within sixty (60) days after the date of the third Appraiser is designated, determine the Respective Allocations.

(b) If the three Appraisers are unable to agree upon the Respective Allocations, then the Respective Allocations shall be the average of the two closest appraisals. The FCRHA and Tenant shall each cooperate with the Appraisers and provide all information reasonably requested by the Appraisers to all three (3) Appraisers at the same time. Any information provided by the FCRHA or Tenant to the Appraisers shall also simultaneously be delivered to the other party hereto. Each Appraisers shall give written notice to the parties stating his determination, and shall furnish to each party a copy of such determination signed by him.

(c) The determination of such Appraisers shall 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 shall be appointed promptly in his stead. The party who designated the Appraiser so failing, refusing or unable to act shall 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 shall jointly designate the replacement Appraiser.

(d) The FCRHA and Tenant shall each bear the cost of its Appraiser and the FCRHA and Tenant shall share equally the cost of the third Appraiser. If the Appraisers shall fail to make the determination herein provided, then either party shall have the right to institute such action or proceeding in such court as shall be appropriate in the circumstances and Tenant and the FCRHA shall 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 shall 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 shall give prompt notice thereof to the FCRHA and the Term shall not be reduced or affected in any way and Tenant shall continue to pay all 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 shall 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 shall be apportioned between the FCRHA 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 shall remain the property of the FCRHA, if this Lease shall 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 shall be distributed as provided in cases of condemnation as provided in Section 9.04 above.

Section 9.07 Participation in Proceedings. The FCRHA, Tenant and any Mortgagee shall 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 subtenants) shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its tenants (but not including any Fixtures) and for relocation expenses of Tenant or its tenants, and all awards and damages in respect thereof shall belong to Tenant or its tenants, as applicable, and the FCRHA hereby waives any and all claims to any part thereof; *provided however*, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant and its tenants, or awards and damages, shall be addressed as provided in Section 9.04.

## **ARTICLE 10**

### **ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.**

Section 10.01 Assignment; Subletting; Transfers.



(a) Tenant acknowledges that the FCRHA has examined and relied on (i) the creditworthiness and experience of Tenant, and (ii) Tenant's or its Affiliate's (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:

(i) neither this Lease nor any interest of Tenant in this Lease, shall be sold, assigned, or otherwise transferred, whether by operation of law or otherwise;

(ii) Tenant shall not sublet, license or otherwise permit the use or occupancy of all or any portion of the Premises (except in connection with (A) a Residential Lease or other leases typically entered into in connection with ancillary or incidental uses typically found in residential apartment projects or (B) any easements to which the FCRHA grants its prior written consent); and

(iii) Nor shall 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 shall 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 shall there be any merger or consolidation of such corporation into or with another corporation nor shall 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) (X) 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) or (Y) in accordance with Section 38.02 below (if change of Control of Tenant would occur); and such transfer made in accordance with this proviso shall not constitute a Transfer.

Each of the foregoing transactions referenced in (i) through (iii) above are hereinafter referred to as a "Transfer". Additionally, each of the Transfers referenced after the *provided however* clause of Section 10.01(a)(iii) above are hereinafter referred to as a "Permitted Transfer of Interest."

(b) Tenant may not make any Transfer prior to or within the first five (5) years after Final Completion. After the five (5) year anniversary of the Final Completion, Tenant may not make a Transfer, except upon the prior written approval of the FCRHA, which the FCRHA may grant or withhold in its sole and absolute discretion (subject to Section 10.01(e) below), *provided however*, that the FCRHA's consent will not be unreasonably withheld, conditioned or delayed so long as (i) no Event of Default shall have occurred and then be continuing hereunder (or such Event of Default is cured simultaneously with such Transfer), and (ii) Tenant shall have otherwise complied with the provisions of this Article 10.

(c) Tenant may not make a Transfer to any Person, in which, an ownership interest, in the aggregate, of five percent (5%) 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 or the County of Fairfax, Virginia or any agency, department, 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.

(d) In each instance wherein Tenant desires to effect a Transfer, and as a condition to the effectiveness thereof, Tenant shall, prior to the effective date of such transaction, notify the FCRHA of the proposed transaction and submit to the FCRHA the following documents and information (which documents may be unexecuted but shall, in all other respects, be in substantially final form) and such other information and documents the FCRHA 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 (5%) or greater ownership interest in the assignee, (y) in the case of a corporation, the names and addresses of all persons having five percent (5%) 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 the FCRHA may reasonably request to permit the FCRHA to evaluate whether the proposed transferee or sublessee meets the criteria set forth in Section 10.01(e).

The FCRHA shall within twenty (20) Business Days after receipt of the foregoing, notify Tenant whether it grants its consent to such Transfer. In the event that the FCRHA denies its consent to such transaction or determines that the information provided in the applicable certificate is insufficient to determine whether or not the FCRHA's consent may not be unreasonably withheld, conditioned or delayed, then the FCRHA shall notify Tenant in writing specifying the reasons for such denial or determination. If the FCRHA shall not have notified Tenant of such denial or determination within such period, then Tenant shall have the right to give to the FCRHA a second notice stating (in bold, capital letters) **"IF THE FCRHA SHALL**

**FAIL TO RESPOND TO TENANT WITHIN FIVE (5) BUSINESS DAYS AFTER THE FCRHA'S RECEIPT OF THIS NOTICE, THE FCRHA'S CONSENT TO THE TRANSFER SHALL BE DEEMED GIVEN IN ACCORDANCE WITH SECTION 10.01(d) OF THE LEASE"** and if the FCRHA has not notified Tenant of its determination within such five (5) Business Day period following the FCRHA's receipt of such second notice, the FCRHA shall be deemed to have consented to the proposed Transfer. Tenant shall bear and shall pay or reimburse the FCRHA on demand for all out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the FCRHA in connection with the review, approval, disapproval and documentation of any Transfer under this Article 10. If the FCRHA 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 the FCRHA of the applicable executed documents of Transfer, assignment, or conveyance and receipt of payment or reimbursement by the FCRHA as set forth in the preceding sentence. Any attempted or purported Transfer, if made in contravention of this Article 10, shall be null and void and of no force and effect and shall constitute an immediate Event of Default under this Lease.

(e) Notwithstanding any of the foregoing in this Article 10 to the contrary, the FCRHA 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 shall have (or shall be Controlled by an entity that has) or shall have arranged for management services through an asset management or property management company approved by the FCRHA (which approval will not be unreasonably withheld, conditioned or delayed) that has at least ten (10) years of experience in operating and maintaining apartment projects similar or larger in size to the Project;

(ii) the proposed transferee (A) shall have or shall be Controlled by an entity that has a Net Worth at least equal to the Net Worth Requirement or (B) shall deliver to the FCRHA a guaranty of all of such transferee's obligations under this Lease, in form and substance reasonably acceptable to the FCRHA, from a creditworthy entity satisfactory to the FCRHA in its reasonable discretion that has a Net Worth at least equal to the Net Worth Requirement;

(iii) the proposed transferee shall 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 shall have paid all of the FCRHA's reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with the review, approval, disapproval and documentation 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 the FCRHA shall 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, shall, 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 shall 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) shall apply to any such purchaser except Mortgagee. Each reference in this Section 10.01 to “Mortgagee” shall be deemed to include a wholly owned subsidiary (direct or indirect) of such Mortgagee or its direct parent, provided such Mortgagee has delivered to the FCRHA 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 the FCRHA in accordance with, or otherwise allowed (with or without the FCRHA’s approval) pursuant to the terms of this Article 10 shall be a “Permitted Transfer”. Upon a Permitted Transfer, the previous “Tenant” shall 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 shall have any validity except upon compliance with the provisions of this Article 10.

(i) Any assignment of this Lease shall not be effective for purposes of this Lease unless and until the assignee, in the case of an assignment, shall execute, acknowledge and deliver to the FCRHA an agreement, whereby the assignee shall (A) assume 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) agree that the provisions of this Article 10 shall, notwithstanding such assignment, 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 shall remain fully and primarily and jointly and severally liable for the payment of all 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, Tenant may sublease any of the Residential Units to Residential Tenants (and any commercial space on the Premises, if any, to commercial tenants) in the ordinary course of Tenant’s business without obtaining the FCRHA’s prior consent; and any subleasing as provided in this subsection (j) shall not be considered a Transfer for purposes of this Article 10, and

*provided further*, that any such subleasing of Residential Units is in compliance with the Exhibit H and Section 26.04 below.

(k) Notwithstanding anything to the contrary in this Section 10.01 to the contrary, *provided* (i) no Event of Default shall have occurred and be continuing, (ii) Tenant provides at least thirty (30) days prior written notice to the FCRHA of Tenant's intention to assign this Lease to an Affiliate of Tenant, (iii) Tenant provides the FCRHA with such reasonable documentation as requested by the FCRHA in order to verify compliance with Sections 10.01(e)(i)-(iv) above, (iv) the FCRHA reasonably determines that the requirements of Sections 10.01(e)(i)-(iv) above have been met, and (v) Tenant pays the FCRHA'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 the FCRHA's consent or approval being required (other than as set forth in clause (iv) of this subsection) and such Transfer or assignment shall be a Permitted Transfer hereunder.

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

Section 10.03 The FCRHA's Right of First Offer. Subject and subordinate to Section 10.01(k) above, in the event Tenant would like to make a 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 shall promptly give the FCRHA notice of such election and shall first offer to transfer the Proposed Transfer Premises to the FCRHA or an Affiliate of the FCRHA pursuant to the terms of this Section 10.03. Such offer may be made by Tenant to the FCRHA prior to the time Tenant has made an offer to or received an offer from any third party.

(a) Tenant shall offer (the "Offer") to transfer to the FCRHA the Proposed Transfer Premises pursuant to terms determined in Tenant's sole and absolute discretion (the "Offer Terms"). The Offer shall be irrevocable for a period ending at 5:00 P.M. east coast time, on the sixtieth (60<sup>th</sup>) day (or the next Business Day if the sixtieth (60<sup>th</sup>) day is not a Business Day) following the day on which the Offer was made (the "Offer Period").

(b) In the event that the Offer is accepted by the FCRHA during the Offer Period, the FCRHA shall close on the Proposed Transfer Premises within sixty (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 in the event that such closing does not occur within such period solely as a result of a default by the FCRHA after acceptance, then Tenant shall be entitled to Transfer the Proposed Transfer Premises to any third party in accordance with this Section 10.03(b). The FCRHA and Tenant shall 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. In the event that the FCRHA does not elect to accept the Offer, the FCRHA may, at its election, make a counteroffer ("Counteroffer") setting forth the price and other material terms on which the FCRHA 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 shall close on the Proposed Transfer Premises in accordance with this Section 10.03(b).

(c) If the Offer is not accepted by the FCRHA (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 (9) 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) ninety-five percent (95%) of the sale price set forth in the Offer Terms if the FCRHA did not make a Counteroffer, or (2) one hundred percent (100%) of the amount of the Counteroffer price if a Counteroffer was made). In the event that the Proposed Transfer Premises are not transferred to an unrelated third party within such nine (9) month period, such Transfer shall 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 the FCRHA during such nine (9) month period, the procedures in subsections 10.03(a) and (b) shall apply.

(d) The FCRHA'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*, in the event 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 shall apply to any future attempted Transfer of this Lease or Proposed Transfer Premises.

#### Section 10.04 Leasehold Mortgages.

(a) Tenant shall have the right to mortgage or pledge its interest in this Lease to one or more Mortgagees 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 shall 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, shall 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 such other rights as are expressly granted to Mortgagees hereunder. No Mortgage shall 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 shall be subject to all the agreements, terms, covenants and conditions of this Lease;

(iii) such Mortgage shall contain and shall be deemed to contain in substance the following provisions:

(A) “This instrument is executed upon condition that (unless this condition be released or waived by the FCRHA 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, shall, 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 as between such transferee and said the FCRHA, unless and until (i) the FCRHA 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 the FCRHA a duplicate original or certified copy of the instrument of sale or transfer to the FCRHA.”

(B) “The purchaser or transferee of said Lease shall, 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 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.”

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

(D) “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.”

(E) “In the event of foreclosure, the mortgagee shall not name, in such foreclosure action or otherwise, and in any event shall 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.”

(F) “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, which consent shall not be unreasonably withheld or delayed. 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 the FCRHA to evidence the foregoing.”

(b) Tenant or the Mortgagee shall give to the FCRHA written notice of the making of any Mortgage (which notice shall 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) If the FCRHA shall have received timely the notice described in Section 10.04(b) above, the FCRHA shall 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 the FCRHA to Tenant hereunder (including any notices of Event(s) of Default under the Lease) at the same time as and whenever any such notice shall thereafter be given by the FCRHA to Tenant, and no such notice by the FCRHA shall be deemed to have been duly given to Tenant (and no grace or cure period shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Mortgagee. Upon receipt of such notice, each Mortgagee shall 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 (10) Business Days more in the case of a monetary Event of Default, and (ii) a period of fifteen (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 shall require more than the additional fifteen (15) Business Days to cure using due diligence, then such longer period of time as will be necessary, so long as such Mortgagee shall have commenced to cure (or caused to be commenced such cure) within such additional fifteen (15) Business Day period and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence and continuity. The FCRHA shall 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. The FCRHA shall 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 shall notify the FCRHA 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), the FCRHA 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 the FCRHA 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), the FCRHA will not exercise any remedies to terminate this Lease or dispossess Tenant of possession thereof; *provided however*, that: (i) Mortgagee shall have first delivered to the FCRHA, 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 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 the FCRHA, 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 shall have no further liability under such agreement from and after the date it delivers such notice to the FCRHA (except for any obligations assumed by the Mortgagee and accruing prior to the date it delivers such notice), and, thereupon, the FCRHA shall have the unrestricted right to terminate this Lease, dispossess Tenant of the Premises and to take any other action the FCRHA 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 shall 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 shall 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 shall 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 the FCRHA 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 shall 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 shall be taking the actions required by clause (d) of this Section 10.04, the FCRHA shall 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 the “FCRHA’s Termination Rights”). In addition, with respect to any monetary Event of Default, the FCRHA shall not exercise any of the FCRHA’s Termination Rights so long as a Mortgagee shall 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, the FCRHA may exercise any of the FCRHA's Termination Rights hereunder. Nothing in the protections to Mortgagees provided in this Lease shall, 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.

(g) 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, shall 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 shall be an Event of Default under this Lease unless such assignment meets the requirements of Section 10.03.

(h) Except as provided in clause (d) of this Section 10.04, no Mortgagee shall 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 shall cause such Mortgagee to be deemed to be a "mortgagee in possession" unless and until such Mortgagee shall take control or possession of the Premises.

(i) If there is more than one Mortgagee, the rights and obligations afforded by this Section 10.04 to a Mortgagee shall 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).

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

(i) without the prior written consent of each holder of a Mortgage, the FCRHA will neither agree to any material modification or material amendment of this Lease, nor accept a surrender or cancellation of this Lease except in accordance with the express terms and provisions of this Lease (e.g., condemnation);

(ii) The FCRHA shall consider in good faith any modification to the Lease requested by a Mortgagee or prospective Mortgagee as a condition or term of granting financing to Tenant, provided that the same does not materially increase the FCRHA's obligations or materially diminish the FCRHA's rights and immunities hereunder;

(iii) the holder of the Mortgage most senior in lien priority on this Lease shall 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 shall 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, the FCRHA shall 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 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 the FCRHA's Termination Rights, provided Mortgagee is continuing to exercise (and has not abandoned) its cure rights as provided in Section 10.04, Mortgagee shall have the option to obtain a new lease (a "New Lease") in accordance with the terms of this Section 10.05.

(a) Mortgagee shall send written notice to the FCRHA 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 the FCRHA exercising the FCRHA's Termination Rights and the FCRHA shall 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 shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and upon all of the same agreements, terms, covenants and conditions of this Lease. Upon the execution of such New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for its termination, as aforesaid, and shall otherwise with reasonable diligence commence to remedy any non-monetary Events of Default under this Lease that are of a nature or type that are capable of being cured by a party other than Tenant and shall pay all costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and disbursements incurred by the FCRHA in connection with such Events of Default and termination, 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 shall be determined by dispute resolution as provided in Article 34. The FCRHA shall have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that the FCRHA has not previously recovered possession of same. As between the FCRHA and such New Tenant, any such New Lease and the leasehold estate thereby created, subject to the same conditions contained in this Lease, shall 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 shall then be in existence.

(c) If there is more than one Mortgagee, the FCRHA shall 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, shall, without any action or consent by the FCRHA, 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 the FCRHA no later than sixty (60) days after notice from the FCRHA of such transfer. Such Mortgagee shall 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 shall cause the Project to be developed to as described in the Plans and Specifications listed on Exhibit E, subject to any modifications permitted under Section 11.04. Tenant shall cause Final Completion of the Project on or before the Final Completion Date. Until Final Completion of the Project, Tenant shall always prosecute construction of the Project (and, for purposes of this clause, "prosecute construction of the Project" shall 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 shall provide the FCRHA 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 shall promptly provide a copy of any revised Project Schedule to the FCRHA.

Section 11.02 Restoration – Construction Work in Excess of Ten Percent (10%) 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) the Major Casualty Amount, or (ii) ten percent (10%) 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 shall obtain the consent of the FCRHA for such Construction Work, which consent shall not be unreasonably withheld, which request shall be accompanied by sufficient information to permit the FCRHA to fairly evaluate the request. Following any request by Tenant to the FCRHA to approve any proposed modifications to the Construction Work as set forth herein, the FCRHA shall, subject to the terms set forth hereinabove in this Section, review the information submitted to the FCRHA and notify Tenant in writing of the FCRHA's approval or disapproval of such submission within twenty (20) Business Days after its receipt of the same from Tenant. If the FCRHA disapproves any such modifications, the FCRHA's notice to Tenant shall set forth in reasonable detail the reasons for such disapproval. If the FCRHA fails to notify Tenant in writing of either its approval or disapproval of any such submission within such twenty (20) Business Day period, then Tenant shall have the right to give to the FCRHA a second notice stating (in bold, capital letters) **"IF THE FCRHA SHALL FAIL TO RESPOND TO TENANT WITHIN FIVE (5) BUSINESS DAYS AFTER THE FCRHA'S RECEIPT OF THIS NOTICE, THE FCRHA'S CONSENT TO THE CONSTRUCTION WORK SHALL BE DEEMED GIVEN IN ACCORDANCE WITH SECTION 11.02 OF THE LEASE"** and if the FCRHA has not notified Tenant of the FCRHA's approval or disapproval of the Construction Work within such five (5) Business Day period following the FCRHA's receipt of such second notice, then such submission shall be deemed approved by the FCRHA (but such deemed approval from the FCRHA shall be solely in its proprietary capacity and not in its governmental or regulatory capacity) and no such approval hereunder shall in any manner be deemed to affect, limit or obligate the FCRHA, the County of Fairfax, Virginia, or any other Governmental Authority (including, without limitation, the Department of Planning and Zoning) in its regulatory or governmental capacity. The FCRHA shall bear the costs for the reasonable fees and expenses of any registered architect or licensed professional engineer selected by the FCRHA to review the information provided by Tenant to Landlord in connection with such Construction Work and to inspect the Construction Work on behalf of the FCRHA 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 shall be obligated to construct and maintain the Project and make all appropriate capital replacements (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 the FCRHA has approved the Plans and Specifications for the Project. If Tenant desires to modify the Plans and Specifications after they have been approved by the FCRHA or in any way which will materially affect any aspect of the exterior of any Building or materially result in a change in the height, bulk or setback of any Building, Tenant shall submit the proposed modifications to the FCRHA. The FCRHA shall review the proposed changes to determine whether they materially conform to the Plans and Specifications originally approved by the FCRHA. A modification will be deemed to be "material" or will "materially affect" the exterior of the Building if the costs associated with such modification exceed: (a) One Hundred Fifty Thousand Dollars (\$150,000) on an occurrence basis; or (b) Three Hundred Thousand Dollars (\$300,000) in the aggregate in any twelve (12)

month period, and in such event, the FCRHA shall have the review and approval rights set forth herein for each modification over the Three Hundred Thousand Dollars (\$300,000) aggregate that costs more than Seventy-Five Thousand Dollars (\$75,000) in any instance. The initial review by the FCRHA shall be carried out within ten (10) Business Days of the date of submission of the proposed modifications to the Plans and Specifications. If the FCRHA determines that they do so conform, the FCRHA shall so notify Tenant. If the FCRHA reasonably determines that the Plans and Specifications, as so revised, do not materially conform to the Plans and Specifications originally approved by the FCRHA, the FCRHA shall so notify Tenant, specifying in what respects they do not so conform. Tenant shall either (i) withdraw the proposed modifications, in which case construction of the Project shall proceed on the basis of the Plans and Specifications previously approved by the FCRHA, or (ii) revise the proposed modifications to so conform and resubmit them to the FCRHA for review. Each review by the FCRHA after the initial review shall be carried out within ten (10) Business Days of the date of submission of the proposed modifications to the Plans and Specifications. If the FCRHA has not notified Tenant of its determination within the time period for the FCRHA's review as outlined above, then Tenant shall have the right to give to the FCRHA a second notice stating (in bold, capital letters) **"IF THE FCRHA SHALL FAIL TO RESPOND TO TENANT WITHIN FIVE (5) BUSINESS DAYS AFTER THE FCRHA'S RECEIPT OF THIS NOTICE, THE FCRHA SHALL BE DEEMED TO HAVE DETERMINED THAT THE MODIFIED PLANS AND SPECIFICATIONS CONFORM TO THE PLANS AND SPECIFICATIONS PREVIOUSLY APPROVED BY THE FCRHA IN ACCORDANCE WITH SECTION 11.04 OF THE LEASE"** and if the FCRHA has not notified Tenant of its determination within such five (5) Business Day period following the FCRHA's receipt of such second notice, the FCRHA shall be deemed to have determined that they materially conform to the Plans and Specifications previously approved by the FCRHA. The FCRHA and Tenant agree that the additional ten (10) Business Day review period outlined above shall only apply to modifications previously reviewed and commented on by the FCRHA. To the extent Tenant submits new or additional modifications outside the scope of Tenant's original submission to the FCRHA or in addition to any changes requested by the FCRHA as a result of its initial review, the FCRHA shall have an additional ten (10) Business Days to review and comment on such new or additional modifications thereto. It is understood and agreed that any consent or approval by the FCRHA to a modification under this Section 11.04 is a consent or approval by the FCRHA solely in its proprietary capacity and not in its governmental or regulatory capacity and no such approval hereunder shall in any manner be deemed to affect, limit or obligate the FCRHA, the County of Fairfax, Virginia, or any other Governmental Authority (including, without limitation, the Department of Planning and Zoning).

Section 11.05 Payment for Construction Work; Contested Matters. Tenant shall make full and timely payment or shall 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 The FCRHA's Right to Use Field Personnel. The FCRHA 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 the FCRHA shall be entitled to have

appropriate members of its field personnel or other designees attend Tenant's job and safety meetings. Such field personnel shall conduct themselves in such a manner so as not to interfere with Tenant's activities at the Premises and shall 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 the FCRHA's personnel or designees shall impose upon the FCRHA 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, shall be completed with reasonable promptness (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 (10%) 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 shall 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 shall 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 shall comply with the following requirements and, if applicable, with the additional requirements set forth in Section 11.10:

(a) No Capital Improvements shall be undertaken, as applicable, until Tenant shall 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"). The FCRHA shall not unreasonably refuse to join or otherwise unreasonably refuse to cooperate in the application for any such Improvement Approvals, provided such application is made without cost, expense or liability (contingent or otherwise) to the FCRHA. True copies of all such Improvement Approvals shall be delivered by Tenant to the FCRHA prior to commencement of the proposed Capital Improvements.

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

(c) All Capital Improvements shall 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) or (b), in substantial accordance with the plans and specifications for such Capital Improvements as approved by the FCRHA, and (iii) all Applicable Laws.

(d) No construction of any Capital Improvement shall be commenced until Tenant shall have delivered to the FCRHA certificates of insurance and copies of the declaration page(s) for the insurance required by Exhibit D. Such insurance policies shall comply with the terms of Section 7.02 above.

Section 11.10 Submissions to the FCRHA for Capital Improvements. If the estimated cost of any proposed Capital Improvements exceed the Threshold Amount, 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 twelve (12) month period during the Term, Tenant shall comply with the following requirements:

(a) [Reserved];

(b) Tenant shall furnish to the FCRHA at least thirty (30) days prior to commencement of the proposed Capital Improvements, complete plans and specifications for the Capital Improvements, prepared by an Architect, for the FCRHA's approval, which approval shall not be unreasonably withheld provided such Capital Improvements shall be in substantial conformity with the original Plans and Specifications (except to the extent specifically consented to by the FCRHA in its sole, but reasonable discretion or as otherwise expressly provided in Article 8 above), and the Project shall 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 ninety (90) days after completion of any Capital Improvements, Tenant shall furnish to the FCRHA a complete set of "as-built" plans in either CADD format, to the extent available, or in field marked copies of the plans for such Capital Improvements, together with a permanent Certificate of Occupancy therefor issued by the County of Fairfax, Virginia, to the extent a modification thereof was required.

(d) If any Capital Improvements are necessitated as the result of an emergency (e.g. a casualty or imminence of harm to people or property), the FCRHA and Tenant agree to work in an expeditious and good faith manner in order to mitigate such emergency, notwithstanding the time requirements imposed by Section 11.10(b) above.

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 Substantial Completion of the Project, Tenant shall furnish the FCRHA with (a) a certification of the Architect (certified to the FCRHA) that it has examined the applicable plans and specifications (that shall 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 substantially completed in accordance with the plans and specifications applicable thereto and, as constructed, the Project complies with all applicable Requirements, (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 Public Works and Environmental Services (or such other appropriate Governmental Authority), and (c) with respect to the Initial Construction Work (or a Restoration) of the Project, within ninety (90) days of Substantial Completion, a complete set of “as built” plans, in either CADD format, to the extent available, or in field marked copies of the plans, and a survey showing the Project. The FCRHA shall have an unrestricted non-exclusive license to use such “as built” plans and survey for any purpose without paying any additional cost or compensation therefor, which license shall 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 shall include the following provisions:

(a) “[“Contractor”]/[“Subcontractor”]/[“Materialman”] hereby agrees that the FCRHA shall 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 the FCRHA shall 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 notwithstanding that [“contractor”]/ [“subcontractor”]/[“materialman”] performed work at the Premises (as such term is defined in the Lease) or any part thereof; the FCRHA shall not be liable in any manner for payment or otherwise to [“contractor”]/[“subcontractor”]/[“materialman”] in connection with the work performed at the Premises.”

(c) “The FCRHA shall be a third party beneficiary of all guarantees and warranties of [“contractor”]/[“subcontractor”]/[“materialman”] hereunder and such guarantees and warranties shall be enforceable against [“contractor”]/[“subcontractor”]/[“Materialman”] by said the FCRHA.”

(d) “The FCRHA is not a party to this [“agreement”] [“contract”] nor will the FCRHA 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”].”

(e) Industry standard workplace safety provisions regarding the performance of the work on the Premises.

Section 11.13 Demolition of the Project. Except as hereinafter provided, Tenant shall 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 shall 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 shall, 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 shall vest in Tenant. Nothing in this Section shall limit the FCRHA'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 The FCRHA's Approval of Financing of Construction Work. Prior to Commencement of Construction (or commencement of a Restoration that is subject to Section 8.05(a)), Tenant shall provide the FCRHA 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 shall be subject to the prior written approval of the FCRHA (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 shall 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 the FCRHA 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 the FCRHA, Tenant shall make such modifications to such Financing Plan and submit the revised Financing Plan to the FCRHA for informational purposes, provided however, that if Section 11.04 allows for the FCRHA's right to approve changes to the Plans and Specifications thereunder, the FCRHA shall also have the right to approve modifications to the Financing Plan under this Section 11.15. The FCRHA will review and approve the Financing Plan in writing, or disapprove such Financing Plan, provided the FCRHA 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 the FCRHA's approval, within fifteen (15) business days after receipt of the proposed Financing Plan. If the FCRHA fails to notify Tenant in writing of either its approval or disapproval of the proposed modifications to such Financing Plan within fifteen (15) Business Days after its receipt of the same from Tenant, then Tenant shall have the right to give to the FCRHA a second notice stating (in bold, capital letters) **"IF THE FCRHA SHALL FAIL TO RESPOND TO TENANT WITHIN FIVE (5) BUSINESS DAYS AFTER THE FCRHA'S RECEIPT OF THIS NOTICE, THE FCRHA SHALL BE DEEMED TO HAVE APPROVED THE MODIFIED FINANCING PLAN IN ACCORDANCE WITH SECTION 11.15 OF THE LEASE"** and if the FCRHA has not notified Tenant of its either its approval or disapproval of the proposed modifications to such Financing Plan within such five (5) Business Day period following the FCRHA's receipt of such second notice, then such proposed modifications to such Financing Plan shall be deemed approved by the FCRHA. As used in the preceding two sentences, "Financing Plan," means the initial Financing Plan or any modifications of the Financing Plan which require the FCRHA's approval hereunder.

## ARTICLE 12

### REPAIRS AND MAINTENANCE; CAPITAL RESERVE; PARKING

Section 12.01 Repairs. Tenant shall 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 shall 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 well maintained low income housing tax credit apartment projects in Fairfax County, Virginia, 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, 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 shall be as provided in Article 8 and Article 9 hereof. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises or the Project other than normal wear and tear (provided that the foregoing reference to normal wear and tear shall not limit or otherwise affect Tenant's repair and other obligations under this Lease). When used in this Section 12.01, the term "repairs" shall include all necessary replacements, alterations and additions. All repairs made by Tenant shall be at least equal in quality and class to the original work and shall be made in compliance with all Applicable Laws.

Section 12.02 Capital Reserve. Commencing upon Substantial Completion of the Project, Tenant shall, 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 \$350.00/Residential Unit per annum, escalating each year by the increase in the Consumer Price Index for the year in question; provided, however, that the FCRHA (i) may agree in its sole discretion, upon the reasonable request of a Mortgagee in connection with its Mortgage, to a lesser Maintenance Capital Reserve amount and (ii) shall, upon the reasonable request of a Mortgagee in connection with its Mortgage, not require the Consumer Price Index escalator with respect to the Maintenance Capital Reserve Amount; provided, further, however, that the FCRHA shall have the right to reinstate the original Maintenance Capital Reserve amount as provided herein and the Consumer Price Index escalator upon the discharge of any such requesting Mortgagee's Mortgage.

(a) Tenant shall utilize the funds in the Maintenance Capital Reserve to cover the costs of repair and maintenance of the Project, including, without limitation, the Capital Improvements and, in accordance with Section 2.07, the Lateral Support Improvements.

(b) Depository shall 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 the FCRHA and Tenant.

(c) Any interest paid on monies deposited with the Depository pursuant to this Section 12.02 shall 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, the FCRHA, at the FCRHA'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 the FCRHA may reasonably determine. Notwithstanding the foregoing, this Section 12.02(d) will not apply to the extent that the FCRHA's rights hereunder would violate or conflict with a Mortgagee's rights to any Capital Maintenance Reserve for the Project.

(e) The FCRHA shall 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 the FCRHA.

**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 shall 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 shall be deemed to be released and relieved from all liability with respect to such deposited monies and the non-transferring party shall look solely to the transferee with respect thereto, and the provisions hereof shall 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, in the event that a Mortgagee (provided such Mortgagee be an Institutional Lender) shall require Tenant to deposit funds for maintaining and replacing Capital Improvements, any amount so deposited by Tenant with such Mortgagee shall be credited against the amount, if any, which Tenant would otherwise be required to deposit in the Capital Maintenance Reserve; provided further, Tenant shall send notice to the FCRHA of such requirement with evidence reasonably satisfactory to the FCRHA of Tenant's compliance with such requirement.

**Section 12.05 Parking.** Tenant hereby covenants and agrees that during the Term it shall provide parking for the Premises in accordance with all Applicable Laws. Tenant acknowledges (a) that the 23-space parking lot to be located on the northwestern corner of the Property (the "Park Parking Lot") is for the exclusive use of the FCRHA, the Fairfax County Park Authority ("FCPA"), and their visitors, licensees, and successors and assigns, and (b) that the FCRHA, the FCPA, and their employees, agents, and contractors may use the Park Parking Lot for construction staging and/or access for construction activity on the park above the Premises, so long as a vehicular route through the Park Parking Lot is maintained. Neither Tenant nor any of its agents, employees, contractors, occupants of and other visitors to the Premises, or any other party claiming by or through Tenant (collectively, the "Excluded Users") shall park on or otherwise use the spaces in the Park Parking Lot, and Tenant shall use commercially reasonable efforts to prevent the Excluded Users from parking on or otherwise using the spaces in the Park

Parking Lot, including without limitation advising residential tenants of this prohibition. During the Term, Tenant shall be responsible, at its sole cost and expense, to clear the Park Parking Lot and any sidewalks adjacent thereto of ice and snow in accordance with the following standards. Tenant will cause the commencement of plowing operations by no later than when there is an accumulation of approximately two (2) inches of snow and/or ¼” of sleet or ice. Snowplow operations are to be accomplished in such a manner that a continued heavy snowfall does not cause snow buildup that would then make the drive aisle through the Park Parking Lot impassable. Plow operators are to be diligent and observant that no vehicle is “plowed in.” Chemical treatment will include the application of anti-slip aggregate material whenever necessary where ice formation is probable or imminent. Areas where ramps are involved will be chemically treated and aggregate will be added whenever necessary. Tenant shall begin applying the appropriate sand/salt mix immediately and continuously during freezing rain and or sleeting conditions.

Section 12.06 No Obligation on the FCRHA. The FCRHA shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall the FCRHA 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; provided, however, that Tenant’s sole obligation with respect to the Park Parking Lot shall be as set forth in Section 12.05.

## **ARTICLE 13**

### **FIXTURES**

Section 13.01 Property of Tenant. All Fixtures shall be and shall remain the property of Tenant throughout the Term. Nothing in this Section shall limit the FCRHA’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 shall keep all such Fixtures in good order and shall 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 shall 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 shall comply with any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes,

requirements, proffers, permits, licenses, authorizations, 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 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 shall 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 the FCRHA, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Applicable Laws, provided that: (a) the FCRHA shall not be subject to civil or criminal penalty or to prosecution for a crime, nor shall 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 shall furnish to the FCRHA the bond of a surety company reasonably satisfactory to the FCRHA, or other deposit or security in each case in form, substance and amount reasonably satisfactory to the FCRHA, and shall indemnify the FCRHA 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 shall keep the FCRHA regularly advised as to the status of such proceedings; (d) such contest shall 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), shall be at the sole cost of and shall be paid by Tenant; (1) promptly after disposition of the contest, Tenant shall comply with such Applicable Laws to the extent determined by such contest; and (f) notwithstanding any bond, deposit or other security furnished to the FCRHA, Tenant shall comply with any Applicable Laws in accordance with the applicable provisions of this Lease if the Premises, or part thereof, shall be in danger of being forfeited or if the FCRHA is in danger of being subject to criminal liability or penalty, or civil liability, in connection with such contest. The FCRHA shall be deemed subject to prosecution for a crime if the FCRHA 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 (10) days before such party is required to plead or answer thereto.

Section 14.03 Environmental Requirements. Tenant shall 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 shall keep the Premises free from any lien imposed in respect of or as a consequence of such Environmental Activity. Tenant shall 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 shall notify the FCRHA within twenty-four (24) hours (or the next Business Day if such twenty-four (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. The FCRHA shall have the right, upon reasonable advanced notice and in cooperation with the Tenant, from time to time and at the FCRHA's expense to conduct an environmental audit of the Premises during regular business hours, and Tenant shall reasonably cooperate in the conduct of such environmental audit. The FCRHA shall provide a copy of any such audit to Tenant. The FCRHA shall 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 shall repair any damage to the Premises caused by the same, except that the FCRHA shall have no such repair obligation to the extent the damage was due to any Environmental Activity. If Tenant shall breach the covenants provided in this Section, then in addition to any other rights and remedies which may be available to the FCRHA under this Lease or otherwise at law or in equity, the FCRHA may require Tenant to take all actions, or to reimburse the FCRHA for the costs of any and all actions taken by the FCRHA, as are necessary or reasonably appropriate to cure such breach. Tenant shall not be responsible for and shall have no liability in connection with any Environmental Activity to the extent occurring prior to the Effective Date. 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 shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, the income therefrom or any assets of, or funds appropriated to, the FCRHA, and Tenant shall not suffer any other matter or

thing whereby the estate, right and interest of the FCRHA 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 the FCRHA) at any time shall be 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 shall be filed against any assets of, or funds appropriated to, the FCRHA, Tenant, within forty-five (45) days after notice of the filing thereof shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional ten (10) days after notice by the FCRHA to Tenant, then, in addition to any other right or remedy, the FCRHA may, but shall not be obligated to, discharge the same 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, the FCRHA shall be entitled, if the FCRHA 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 the FCRHA, including all reasonable costs and expenses incurred by the FCRHA in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of the FCRHA's making of the payment or incurring of the costs and expenses, shall constitute Additional Costs and shall be paid by Tenant to the FCRHA within ten (10) days after demand. Notwithstanding the foregoing provisions of this Section 15.02, Tenant shall not be required to discharge (and the FCRHA shall 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 the FCRHA in an amount sufficient to pay such lien with interest and penalties.

Section 15.03 No Authority to Contract in Name of the FCRHA. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of the FCRHA, 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 the FCRHA's interest in the Premises or any part thereof, or any assets of, or funds appropriated to, the FCRHA. Notice is hereby given that the FCRHA shall 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 shall attach to or affect the estate or interest of the FCRHA in and to the Premises or any part thereof or any assets of, or funds appropriated to, the FCRHA. Tenant shall 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, the FCRHA or of any interest of the FCRHA in the Premises.



## **ARTICLE 16**

### **DELIVERY OF POSSESSION**

Section 16.01 Delivery. The FCRHA shall deliver possession of the Premises on the Commencement Date “AS IS, WHERE IS, WITH ALL FAULTS”, subject to the Title Matters.

## **ARTICLE 17**

### **REPRESENTATIONS**

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 the FCRHA 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 the FCRHA shall in no event whatsoever be liable for any latent or patent defects in the Premises.

Section 17.02 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 the FCRHA 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 corporate action on the part of Tenant, and, upon such execution and delivery, this Lease and such other documents and instruments shall constitute valid and binding obligations of Tenant.

## **ARTICLE 18**

### **THE FCRHA NOT LIABLE FOR INJURY OR DAMAGE, ETC.**

Section 18.01 No Liability for Injury. The FCRHA shall 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 shall have resulted from the sole negligence, gross negligence, or intentional misconduct of the FCRHA, its officers, agents, employees or licensees.

Section 18.02 No Liability for Utility Failure. The FCRHA, in its proprietary capacity, shall 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 shall have resulted from the sole negligence, gross negligence or intentional misconduct of the FCRHA, 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, the FCRHA shall 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 shall assume and bear all risk of loss with respect thereto, except to the extent such injury or damage results from the activities of the FCRHA after the Effective Date on the Premises or an land adjacent to the Premises.

## **ARTICLE 19**

### **INDEMNIFICATION OF THE FCRHA AND OTHERS**

Section 19.01 Indemnification. Tenant shall 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 may reasonably be likely to subject the FCRHA 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 shall use its reasonable efforts to exercise such control over the Premises so as to fully protect the FCRHA against any such liability. Tenant, to the fullest extent permitted by law, shall indemnify and save the FCRHA and its respective Commissioners, 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 shall 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 or not done in, under, above 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;

(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 including, without limitation, those related to the Residential Units, Exhibit H 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 the FCRHA; 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 shall 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 shall be relieved of its aforesaid obligation of indemnity 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 the FCRHA, Tenant shall 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 shall select and the FCRHA shall approve, which approval shall not be unreasonably withheld. The foregoing notwithstanding, and 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, the FCRHA may, following such consultation with Tenant as to the necessity of such engagement and the choice of such attorneys as is reasonable under the circumstances, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding and Tenant shall pay the reasonable fees and disbursements of such attorneys. Tenant shall control the settlement of any such claim, action, or proceeding. The FCRHA's consent to any such settlement shall not be required if such settlement provides solely for the payment of money and does not impose any other liability on the FCRHA; otherwise the FCRHA'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 shall 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**

### **THE FCRHA'S RIGHT OF INSPECTION; RIGHT TO PERFORM TENANT'S COVENANTS.**

Section 20.01 The FCRHA's Right of Inspection. Tenant shall permit the FCRHA 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, the FCRHA shall have given Tenant notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within thirty (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 The FCRHA's Right to Cure. If an Event of Default shall have occurred and be continuing, the FCRHA, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf. If Tenant disputes, in good faith, a claim by the FCRHA that Tenant is failing to comply with the terms of this Lease regarding the maintenance and repair of the

Premises the parties shall resolve such dispute resolution pursuant to Article 34 below before Tenant is obligated to perform the disputed obligations.

Section 20.03 Reimbursement of the FCRHA. All reasonable sums paid by the FCRHA and all reasonable costs and expenses incurred by the FCRHA 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 the FCRHA'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 the FCRHA, shall be paid by Tenant to the FCRHA within ten (10) Business Days after the FCRHA shall have submitted to Tenant a statement, in reasonable detail, substantiating the amount demanded by the FCRHA. Any payment or performance by the FCRHA pursuant to Section 20.02 shall 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 the FCRHA to terminate this Lease, institute summary proceedings or take such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. The FCRHA shall not be limited in the proof of any damages which the FCRHA may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but the FCRHA also shall 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 the FCRHA shall not be entitled to reimbursement for any work they may have performed.

Section 20.04 No Duty on the FCRHA. Nothing in this Article 20 or elsewhere in this Lease shall imply any duty upon the part of the FCRHA to do any work required to be performed by Tenant hereunder and performance of any such work by the FCRHA shall not constitute a waiver of Tenant's default in failing to perform the same. The FCRHA, 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 the FCRHA undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Unavoidable Delays.

## **ARTICLE 21**

### **THE FCRHA'S RIGHT TO GRANT EASEMENTS**

Section 21.01 Grant of Easements. Notwithstanding anything to the contrary contained in this Lease, the FCRHA, at any time and from time-to-time during the Term of this Lease, shall have the right and option to create and grant such easements, licenses, rights-of-way and other rights and privileges with respect to the Premises as the FCRHA shall desire. The FCRHA covenants and agrees that it shall not grant or create any easement, license, right-of-way or other right or privilege without the prior consent of Tenant, not to be unreasonably withheld, conditioned, or delayed.

## **ARTICLE 22**

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

Section 22.01 No Abatement. Except as may be otherwise expressly provided herein, there shall 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 shall 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 shall 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 shall fail to take such actions, and such failure shall continue for thirty (30) days after notice from the FCRHA to Tenant specifying such failure, the FCRHA is hereby irrevocably authorized to take all such actions in Tenant's name and on Tenant's behalf, Tenant hereby appointing the FCRHA as Tenant's attorney-in-fact coupled with an interest for all such purposes. If Tenant disputes the FCRHA'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 shall 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 the FCRHA's right to cure and right to reimbursement shall apply hereunder.

Section 23.02 No Adverse Possession. Tenant shall 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 shall be an "Event of Default" hereunder:

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

(b) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease, and such failure shall continue for a period of thirty (30) days after notice thereof by the FCRHA 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 thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within such thirty (30) day period and shall diligently and continuously prosecute the same to completion);

(c) if the Final Completion has not occurred prior to Outside Final Completion Date (in accordance with Section 2.06 above, and if the FCRHA exercises its rights in Section 2.06, the additional notice and cure period set forth in Section 24.02 will not apply);

(d) Intentionally Omitted,

(e) if Tenant shall abandon the Premises for a continuous period of sixty (60) days, subject to Unavoidable Delay;

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

(g) if this Lease or the estate of Tenant hereunder shall be assigned or subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, without the FCRHA's approval to the extent required hereunder or without compliance with the provisions of this Lease applicable thereto and such transaction shall not be made to comply or voided ab initio within thirty (30) days after notice thereof from the FCRHA to Tenant;

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

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

(j) if at any time it is determined that five percent (5%) or more of the Residential Leases or the Residential Tenants (or a combination thereof) fail to comply with the criteria set forth in Exhibit H for Residential Leases and Residential Tenants as a result of Tenant's actions or failure to act (but not as a result of any default, act, omission, misrepresentation, misstatement or fraud by a Residential Tenant, provided that Tenant takes such actions as provided in this Section 24.01(j) after Tenant becomes aware of such default, act, omission, misrepresentation, misstatement or fraud) (each being a "Residential Criteria Default")

and collectively, “Residential Criteria Defaults”), and Tenant does not commence to cure such Residential Criteria Defaults within thirty (30) days after notice thereof by the FCRHA to Tenant specifying such failure or cure such Residential Criteria Defaults within thirteen (13) months after such notice (either such failure being, a “Leasing Default”);

(k) if any of the following occur (each of the following individually and collectively referred to as a “Bankruptcy Default”):

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

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

(iii) if Tenant shall 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 shall 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 shall 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 shall take any corporate action in furtherance of any action described in Sections 24.01(k)(ii), (iii) or (iv) hereof;

(iv) if within ninety (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 shall not have been dismissed, or if, within ninety (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 shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated.

#### Section 24.02 Expiration and Termination of Lease.

(a) If any Event of Default (other than a Bankruptcy Default or Leasing Default) shall occur, the FCRHA (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 shall expire and terminate on the date specified in such notice, which date shall be not less than twenty (20) Business Days after the giving of such notice, and if, on the date specified in such notice, Tenant shall 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 shall expire and terminate as of the date on which the Event of Default described in clause (i) above occurred or the date specified in the notice given pursuant to clause (ii) above, as the case may be, were the date herein definitely fixed for the expiration of the Term and Tenant immediately shall quit and surrender the Premises.

(b) If an Event of Default (other than a Bankruptcy Default or Leasing Default) shall occur, or this Lease is terminated as provided in Section 24.02(a), the FCRHA, 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 shall pay to the FCRHA all 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 the FCRHA, as the case may be;

(b) The FCRHA may, (i) complete all construction required to be performed by Tenant hereunder and may repair and alter the Premises in such manner as the FCRHA 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 the FCRHA's name or as agent of Tenant, or (iii) any combination of (i) and (ii), as the FCRHA determines; and out of any Base Rent, Additional Costs, Impositions and other sums collected or received as a result of such reletting the FCRHA shall: (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 the FCRHA shall 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 the FCRHA; the FCRHA in no way shall 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 shall 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), shall 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 shall 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 shall execute, acknowledge and deliver any instruments which the FCRHA 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 shall occur, the FCRHA may (subject to Section 24.14 below), at its option, give notice to Tenant stating that the FCRHA is terminating any Management Agreement then in effect for the Project and removing the Approved Property Manager from the Premises. Thereafter, the FCRHA, 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 the FCRHA 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 the FCRHA undertakes leasing or property management duties as the result of a Leasing Default, the FCRHA shall use good faith efforts to cure the Residential Criteria Defaults that resulted in the Leasing Default. The FCRHA shall not be liable to indictment, prosecution or damages for any actions or failure to act by the FCRHA 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 the FCRHA in connection with the FCRHA's duties set forth in this Section 24.06(a) shall be Additional Costs and shall 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. Without limitation of the foregoing, the FCRHA agrees that if the FCRHA shall terminate the Management Agreement and remove the Approval Property Manager from the Premises, then if the FCRHA shall desire to appoint a replacement property manager, the FCRHA shall request the consent of the then current Mortgagee (which consent shall not be unreasonably withheld, delayed or conditioned). If the Mortgagee shall fail to respond to the FCRHA within ten (10) Business Days after receipt of FCRHA's request, or if the Mortgagee shall withhold its consent without specifying the reasons therefor in reasonable detail, then the Mortgagee shall be deemed to have consented to the proposed property manager.

(b) In addition to the remedies set forth in this Section 24.06, the FCRHA 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 an Leasing Default.

(c) The FCRHA 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

the FCRHA 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 shall 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) In the event that Tenant commits a Leasing Default within thirty-six (36) months after the date on which a prior Leasing Default was cured, in addition to the FCRHA's rights under this Section 24.06, the FCRHA 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 the FCRHA was responsible for the leasing and management of the Property shall not be considered in determining whether Tenant has committed a Leasing Default.

#### Section 24.07 Bankruptcy Defaults and Remedies.

(a) If any Bankruptcy Default shall occur, the FCRHA may (subject to Section 24.14 below), at its option, give notice to Tenant stating that the FCRHA is terminating any Management Agreement then in effect for the Project and removing the Approved Property Manager from the Premises. Thereafter, the FCRHA, 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 the FCRHA 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. The FCRHA shall not be liable to indictment, prosecution or damages for any actions or failure to act by the FCRHA 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 the FCRHA. Any sums expended by the FCRHA in connection with the FCRHA's duties set forth in this Section 24.07(a) shall be Additional Costs and shall 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, the FCRHA shall 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, the FCRHA 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, the

FCRHA, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on ten (10) Business Days' notice to Tenant, Tenant as debtor-in-possession or said trustee and upon the expiration of said ten (10) Business Day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession or trustee shall immediately quit and surrender the Premises as aforesaid.

(d) Nothing contained in this Article 24 shall limit or prejudice the right of the FCRHA 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 shall 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 the FCRHA 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), shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of the FCRHA 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 the FCRHA 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, the FCRHA 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 the FCRHA, 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 Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by the FCRHA or in case of any expiration or termination of this Lease, and the FCRHA and Tenant waive and shall 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 the FCRHA 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 the FCRHA. No failure by the FCRHA or any prior the FCRHA 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 the FCRHA from Tenant under this Lease during the continuance of any such breach, shall 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, shall be waived, altered or modified except by a written instrument executed by the FCRHA. No waiver of any breach shall 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 breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, the FCRHA shall be entitled to enjoin such breach or threatened breach and shall 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 the FCRHA provided for in this Lease shall be cumulative and shall 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 the FCRHA 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 shall not preclude the simultaneous or later exercise by the FCRHA 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 the FCRHA is the prevailing party, Tenant shall pay to the FCRHA all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by the FCRHA in any action or proceeding to which the FCRHA may be made a party by reason of any act or omission of Tenant. If the FCRHA is the prevailing party, Tenant also shall pay to the FCRHA all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by the FCRHA in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by the FCRHA 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 the FCRHA against Tenant on or under this Lease. All of the sums paid or obligations incurred by the FCRHA as aforesaid, with interest at the Involuntary Rate, shall be paid by Tenant to the FCRHA within fifteen (15) Business Days after demand by the FCRHA.

Section 24.14 Mortgagee Protections. Nothing contained in this Articles 24 shall be deemed to modify the provisions of Section 10.04 and Section 10.05 hereof.

## **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”) shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless 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, in each case to the parties as follows:

If to the FCRHA:

Fairfax County Redevelopment and Housing Authority  
3700 Pender Drive  
Fairfax, Virginia 22030  
Attention: Director, HCD

With a copy to:

Office of the County Attorney  
Attention: County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064

If to Tenant:

CHPPENN I, LLC  
c/o Penrose  
1301 N. 31<sup>st</sup> Street  
Philadelphia, PA 19131

And

CHP  
4915 Radford Ave., Suite 300  
Richmond, VA 23220

With a copy to:

Klein Hornig LLP  
1275 K Street NW  
Suite 1200  
Washington, DC 20005  
Attention: Erik Hoffman

With copies to: [TAX EQUITY INVESTOR HERE]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: **LENDERS AND COUNSEL HERE]**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either the FCRHA or Tenant may change the address(es) to which any such Notice is to be delivered to it by furnishing ten (10) 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 shall be deemed to have been given or served upon delivery thereof, 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 shall be made in the manner provided in Section 25.01 and shall specify an address to which Notices shall be given), and Notice of Default to a party shall 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 the FCRHA if such party is an Affiliate of Tenant or such party satisfies the following requirements: (a) such proposed property manager, or the officer or manager having supervisory responsibility for the Project has at least five (5) years' experience operating residential 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 shall, prior to the effective date of any such management agreement, notify the FCRHA of the proposed management agreement and submit to the FCRHA all information and documents the FCRHA may reasonably require for its review with respect to the criteria set

forth above. If the FCRHA determines that the third-party manager does not comply with the foregoing criteria, the FCRHA shall so advise Tenant in writing within twenty (20) Business Days, specifying in what respect the proposed third-party manager does not conform to the requirements above. In such event, Tenant shall submit a different third-party manager for the FCRHA's review in accordance with the terms of this Section or provide evidence reasonably satisfactory to the FCRHA that such third-party property manager has satisfied the criteria set forth above. Each review by the FCRHA shall be carried out within twenty (20) Business Days of the date of delivery of the information requested hereunder, and if the FCRHA does not notify Tenant of FCRHA's determination within the time period for the FCRHA's review as outlined above, then Tenant shall have the right to give to the FCRHA a second notice stating (in bold, capital letters) **"IF THE FCRHA SHALL FAIL TO RESPOND TO TENANT WITHIN FIVE (5) BUSINESS DAYS AFTER THE FCRHA'S RECEIPT OF THIS NOTICE, THE FCRHA SHALL BE DEEMED TO HAVE DETERMINED THAT THE PROPOSED THIRD-PARTY MANAGER CONFORMS TO THE REQUIREMENTS IN SECTION 26.01 OF THE LEASE"** and if the FCRHA has not notified Tenant of its determination within such five (5) Business Day period following the FCRHA's receipt of such second notice, the FCRHA shall 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 shall be an "Approved Property Manager" and any management agreement between Tenant and an Approved Property Manager with respect to the Project shall be a "Management Agreement". Notwithstanding the forgoing, [\_\_\_\_\_], a [\_\_\_\_\_], an Affiliate of the Tenant, is an Approved Property Manager under this Lease. Tenant shall 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.

Section 26.02 Compliance with the Housing Criteria. Tenant covenants and agrees at all times to comply with Exhibit H (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.

Section 26.03 Termination of Approved Property Manager. The FCRHA shall have the right to require the replacement of an Approved Property Manager with a Person chosen by the FCRHA upon the earliest to occur of any one or more of the following events: (i) the occurrence and continuance of a Leasing Default or Bankruptcy Default, (ii) thirty (30) days after notice from the FCRHA to Tenant that such Approved Property Manager has engaged in fraud, gross negligence, malfeasance or willful misconduct arising from or in connection with its performance at the Project, or (iii) Tenant has entered into a new management agreement, or approved the assignment of an existing Management Agreement from an Approved Property Manager without first complying with the terms of Section 26.01 above. Without limitation of the foregoing, the FCRHA agrees that if the FCRHA shall require the appointment of a replacement property manager, the FCRHA shall request the consent of the then current Mortgagee (which consent shall not be unreasonably withheld, delayed or conditioned). If the Mortgagee shall fail to respond to the FCRHA within ten (10) Business Days after receipt of FCRHA's request, or if the Mortgagee shall withhold its consent without specifying the reasons therefor in reasonable detail, then the Mortgagee shall be deemed to have consented to the proposed property manager.



Section 26.04 Residential Leases.

(a) Notwithstanding anything else herein to the contrary, Tenant may, without the FCRHA's consent, enter into residential tenant leases which meet the lease criteria set forth on Exhibit H hereto (all residential leases meeting such criteria being herein referred to, collectively, as "Residential Leases"), provided no Event of Default shall have occurred and then be continuing hereunder, unless such Event of Default is cured simultaneously with such subletting, and Tenant shall have complied with the provisions of this Section 26.04. Residential Leases shall mean tenant leases by Tenant of residential units to certain residential tenants meeting the financial and reporting requirements set forth on Exhibit H (all residential tenants meeting such criteria being herein referred to, collectively, as "Residential Tenants").

(b) Each Residential Lease shall obligate the Residential Tenant pursuant thereto to occupy and use the premises included therein for purposes consistent with the Requirements, the financial and reporting conditions set forth on Exhibit H and the provisions of this Lease. Except as otherwise provided below, with respect to each and every Residential Lease under the provisions of this Lease, it is further agreed that:

(i) no Residential Lease shall be for a term of more than one (1) year;

(ii) each Residential Lease shall specifically state that (A) it is subject to all of the terms, covenants, agreements, provisions, and conditions of this Lease, (B) subject to the rights of any Mortgagee, if Tenant defaults in the payment of any Base Rent, Additional Costs or Impositions beyond any applicable notice and cure periods under this Lease, each Residential Tenant shall pay to the FCRHA upon demand, any and all rent and other sums due or accruing to Tenant under such Residential Lease, and (C) subject to the rights of any Mortgagee, if there is a termination of this Lease, or if the FCRHA shall exercise its rights to dispossess Tenant or to re-enter the Premises, any Residential Tenant which is not an Affiliate of Tenant will at the FCRHA's election, attorn to the FCRHA and the FCRHA will have all rights of a Residential Tenant under such Residential Lease, including, without limitation, the right to enforce those rights by court proceeding or otherwise;

(iii) the receipt by the FCRHA of any amounts from any Residential Tenant or other occupant of any part of the Premises shall not be deemed or construed as releasing Tenant from Tenant's obligations hereunder; and

(iv) the Residential Tenant will not pay rent or other sums under the Residential Lease more than one (1) month in advance (excluding security and other deposits required under such Residential Lease).

(c) Tenant shall enforce its rights as the landlord under all Residential Leases.

Section 26.05 Residential Lease Not a Transfer. Notwithstanding anything contained in this Lease to the contrary, a Residential Lease shall not require the FCRHA's prior consent and shall 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, shall not relieve Tenant of Tenant's obligation to cure the same. Tenant shall take any and all reasonable steps necessary to prevent any such violation or breach.

Section 26.07 Collection of Rental Payments from Residential Tenants. The FCRHA, after an Event of Default by Tenant, may, subject to the rights of any Mortgagee under this Lease, collect sub rent and all other sums due under the Residential Leases, and apply the net amount collected to any amounts due to the FCRHA under this Lease (including, without limitation, Additional Costs and Impositions), but no such collection shall be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease or the acceptance by the FCRHA 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 shall maintain at its principal place of business in the Commonwealth of Virginia or such other place as agreed to by the FCRHA 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 the Exhibit H of this Lease. At all times during the Term, the FCRHA 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 H of this Lease and pertaining to maintenance of the Project. Tenant agrees that the FCRHA, or any of its duly authorized representatives, shall, until the expiration of three (3) years after the expiration or earlier termination of this Lease, have access to the records related to compliance with requirements of Exhibit H of this Lease and maintenance of the Project. Tenant shall: (i) keep and maintain accurate, true, and complete books and records (A) with respect to all requirements of Exhibit H of this Lease, and (B) which shall 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 the FCRHA's request therefor, certify such files, books and records to the FCRHA as true, complete, and accurate in all material respects.

Section 26.09 Rent Roll. Upon the FCRHA'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: (i) a copy of a rent roll for the Project showing the name of each Residential Tenant, the Residential Unit occupied, the Residential Lease expiration date, the rent payable for the current month, and the date through which rent has been paid; and (ii) a monthly property management report for the Project, showing the number of inquiries made and rental applications received from prospective Residential Tenants and deposits received from Residential Tenants, and materials relating to marketing and leasing efforts for the Project.

## **ARTICLE 27**

### **SUBORDINATION; THE FCRHA'S MORTGAGES**

Section 27.01 Lease Not Subordinate. The FCRHA's interest in this Lease and in the Premises shall 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 The FCRHA Mortgage. Tenant's leasehold interest in the Premises shall be prior to any mortgage, lien or other encumbrance on the FCRHA's interest in the Premises, subject to the Title Matters. As of the date hereof, the FCRHA represents to Tenant that there is no mortgage encumbering the FCRHA's interest in the Premises.

Section 27.03 No Impairment of Title. Nothing contained in this Lease or any action or inaction by the FCRHA shall be deemed or construed to mean that the FCRHA 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 the FCRHA in the Premises. In amplification and not in limitation of the foregoing, Tenant shall 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 the FCRHA'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 any provisions hereof to the contrary, Tenant shall 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 shall not be unreasonably withheld or delayed. The FCRHA shall review any proposed easement (or modification thereof) within twenty (20) Business Days of its receipt of such easement from Tenant. If the FCRHA has not notified Tenant of its determination within the time period for the FCRHA's review as outlined above, then Tenant shall have the right to give to the FCRHA a second notice stating (in bold, capital letters) **"IF THE FCRHA SHALL FAIL TO RESPOND TO TENANT WITHIN FIVE (5) BUSINESS DAYS AFTER THE FCRHA'S RECEIPT OF THIS NOTICE, THE FCRHA SHALL BE DEEMED TO HAVE APPROVED SUCH EASEMENT AS CONTEMPLATED BY SECTION 27.04 OF THE LEASE"** and if the FCRHA has not notified Tenant of its determination within such five (5) Business Day period following the FCRHA's receipt of such second notice, the FCRHA shall be to have approved such easement. The FCRHA agrees that if required by the applicable utility provider or other easement grantee, the FCRHA shall join in the execution of such easements as approved by the FCRHA in accordance with the provisions of this Section 27.04.

## **ARTICLE 28**

### **GUARANTY**

Section 28.01 Guaranty Requirements. Concurrently with the execution of this Lease, Tenant shall cause Guarantor or another creditworthy entity satisfactory to the FCRHA in its

reasonable discretion to enter into the Guaranty in the form annexed hereto as **Exhibit G**, pursuant to which Guarantor guaranties to the FCRHA: (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; provided, however, that for the avoidance of doubt, such obligations shall not include any Capital Improvements to the extent first performed after the Final Completion Date. In the event that the Project consists of more than one Building, the Guaranty shall remain in effect until Final Completion with respect to all of the Buildings to be developed on the Premises. In the event that Guarantor fails to meet the Guarantor Net Worth Requirement at any time prior to Final Completion, Tenant shall promptly replace such Guarantor with another creditworthy entity reasonably satisfactory to the FCRHA meeting the Guarantor Net Worth Requirement and cause such entity to enter into the Guaranty in the form annexed hereto as **Exhibit G**.

## **ARTICLE 29**

### **CERTIFICATES BY THE FCRHA AND TENANT**

Section 29.01 Tenant Estoppels. At any time and from time to time upon not less than ten (10) days' notice by the FCRHA, Tenant shall execute, acknowledge and deliver to the FCRHA or any other party specified by the FCRHA 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, Additional Costs and Impositions have been paid, stating whether or not to the actual knowledge of Tenant, without investigation, the FCRHA 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 the FCRHA or such other addressee may reasonably request.

Section 29.02 The FCRHA Estoppels. At any time and from time to time upon not less than ten (10) days' notice by Tenant, the FCRHA shall 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, Additional Costs and Impositions have been paid, and stating whether or not to the actual knowledge of the FCRHA, without investigation, 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 the FCRHA 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 the FCRHA to Tenant to perform any act of Tenant requiring the FCRHA's consent or approval under the terms of this Lease, or the failure on the part of the FCRHA to object to any such action taken by Tenant without the FCRHA's consent or approval (except in any instance where the FCRHA has been deemed to have consented to or deemed to have approved something as expressly provided in this Lease), the FCRHA shall not be deemed to have waived its right to require such consent or approval, nor 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 the FCRHA's consent or approval under the terms of this Lease Tenant shall secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver on the part of the FCRHA of the requirement to secure such consent or approval.

Section 30.02 Consent Not To Be Unreasonably Delayed. Anywhere in this Lease where the FCRHA has agreed not to unreasonably withhold its consent, the FCRHA also agrees that its consent shall not be unreasonably delayed.

Section 30.03 The FCRHA Not Liable for Money Damages. Whenever in this Lease the FCRHA's consent or approval is required and this Lease provides that the FCRHA's consent or approval shall not be unreasonably withheld and the FCRHA shall refuse such consent or approval, or in any instance in which the FCRHA shall delay its consent or approval, Tenant shall in no event be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that the FCRHA unreasonably withheld or unreasonably delayed its consent or approval. Tenant's sole remedy shall be an action or proceeding to enforce any such provision, for specific performance, injunction or declaratory judgment or for a determination as to whether the FCRHA reasonably withheld its consent pursuant to the Simplified Procedure for Court Determination of Disputes as set forth in the CPLR Section 3031 et seq. (or any successor thereto) in the Commonwealth of Virginia and the decisions shall 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 the FCRHA upon the Premises pursuant to Article 24 hereof, Tenant shall well and truly surrender and deliver up to the FCRHA 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 Effective Date, created by or consented to by the FCRHA, 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 the FCRHA shall have consented and agreed, in writing, may extend beyond the Expiration Date, without any payment or allowance whatever by the FCRHA. 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 the FCRHA upon the Premises pursuant to Article 24 hereof, Tenant shall deliver to the FCRHA 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, consents, authorizations, certificates, approvals 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 the FCRHA 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 shall remain on the Premises for ten (10) 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 the FCRHA, be deemed to have been abandoned by Tenant or such Residential Tenant, or subtenant of a Residential Tenant and either may be retained by the FCRHA as its property or be disposed of, without accountability, in such manner as the FCRHA may see fit. The FCRHA shall 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 shall survive any termination of this Lease.

## **ARTICLE 32**

### **ENTIRE AGREEMENT**

Section 32.01 Entire Agreement. This Lease, together with the Exhibits hereto, contains all the promises, agreements, conditions, inducements and understandings between the FCRHA 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**

Section 33.01 Quiet Enjoyment. The FCRHA covenants that so long as this Lease is in full force and effect and Tenant is not in default beyond notice and grace hereunder, Tenant shall 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 the FCRHA or any Person claiming through the FCRHA and free of any encumbrance created or suffered by the FCRHA, 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 the FCRHA 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 shall give the other written notice specifying the nature of the dispute and the monetary amount involved, if any. For a period of fifteen (15) Business Days after receipt of such notice, the FCRHA and Tenant shall proceed diligently and in good faith in an effort to resolve the dispute to their mutual satisfaction. If the FCRHA 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 shall identify a mediator. If the non-moving party does not agree with the mediator chosen by the moving party, the non-moving party shall send written notice to the moving party of its decision and choose its own mediator within five (5) Business Days thereafter, and the FCRHA's and Tenant's mediators shall work together and within ten (10) Business Days thereafter, choose a mediator agreeable to both mediators from a list of approved mediators from the AAA (defined below). The mediation shall be held at a date, time and place mutually agreeable to the FCRHA and Tenant and shall be administered in accordance with the Commercial Mediation Rules of the American Arbitration Association ("AAA"). The costs of the mediation shall be borne equally by the FCRHA and Tenant.

Section 34.02 Discovery. Notwithstanding any provision in the AAA Rules to the contrary, in any mediation proceeding, the FCRHA 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 thirty (30) interrogatories and the right to take not more than four (4) 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 will not be binding on the FCRHA or Tenant, but may be introduced into evidence in any court or proceeding between the parties.

Section 34.04 Judicial Proceedings. Except as otherwise specifically provided in this Lease or as otherwise mutually agreed in writing by the FCRHA and Tenant, any dispute between the parties arising from or in connection with this Lease shall be resolved by judicial proceedings.

## **ARTICLE 35**

### **INVALIDITY OF CERTAIN PROVISIONS**

Section 35.01 Invalidity. If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than

those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

## **ARTICLE 36**

### **RECORDING OF MEMORANDUM**

Section 36.01 Memoranda. 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. The FCRHA shall, 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. Within five (5) Business Days of written request by the FCRHA to Tenant after this Lease has expired or terminated, Tenant shall deliver to the FCRHA for recordation, duly signed and notarized by Tenant, documents sufficient to confirm the expiration or termination of the Lease and the termination of the recorded memorandum of lease, and otherwise in recordable form and reasonably acceptable to the FCRHA (and this Tenant obligation shall survive expiration or termination of this Lease). The relationship between the FCRHA and Tenant shall be governed solely by the provisions of this Lease and not by any memorandum of lease or amendment thereto.

## **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 the FCRHA or Tenant shall be deemed to include any individual the FCRHA or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of the FCRHA or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual the FCRHA 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 shall 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, the FCRHA 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 shall designate another such entity as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by the FCRHA of notice of its revocation. Subject to Section 37.06, each entity named as Tenant shall be fully liable for all of Tenant's obligations



hereunder. Any notice by the FCRHA to any entity named as Tenant shall be sufficient and shall 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, the FCRHA agrees to send copies of all notices to that entity.

#### Section 37.06 Limitation of Liability.

(a) The liability of the FCRHA or of any Person who has at any time acted as the FCRHA hereunder for damages or otherwise shall be limited to the FCRHA's fee interest in the Premises, including, without limitation, 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 the FCRHA nor any such Person nor any of the Commissioners, members, limited partners, directors, officers, employees, agents or servants or either shall have any liability (personal or otherwise) hereunder beyond the FCRHA's interest in the Premises, and no other property or assets of the FCRHA or any such Person or any of the members, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

(b) Subject to (and not in limitation of) Guarantor's obligations under the Guaranty, the liability of Tenant or of any Person who has at any time acted as Tenant hereunder for damages or otherwise shall 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 shall 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 shall 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 shall 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 shall 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 shall claim to have acted or dealt with the FCRHA 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 shall 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 shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 37.12 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, the FCRHA 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" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 37.14 Plans and Specifications. All of Tenant's right, title and interest in all plans and drawings required to be furnished by Tenant to the FCRHA 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, shall become the sole and absolute property of the FCRHA upon the Expiration Date or any earlier termination of this Lease. Tenant shall deliver all such documents to the FCRHA promptly upon the Expiration Date or any earlier termination of this Lease. Tenant's obligation under this Section 37.14 shall survive the Expiration Date. Notwithstanding the foregoing, if a New Lease is entered into, then the New Tenant shall be entitled to such documents, *provided however*, the New Tenant shall be obligated to deliver the same to the FCRHA 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" shall 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. The FCRHA shall 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 shall be deemed to create a joint venture or partnership between the FCRHA and Tenant, nor to make the FCRHA in any way responsible for the debts or losses of Tenant.

Section 37.18 Tax Benefits. To the extent permitted by law, Tenant shall 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. The FCRHA, from time to time, shall execute and deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 37.18, and Tenant shall pay the FCRHA's reasonable costs and expenses thereof. The FCRHA makes no representations as to the availability of any such deductions, credits or tax benefits.

Section 37.19 Appropriations. To the extent this Lease is construed to impose any financial obligations upon the FCRHA, any such financial obligations shall be binding to the extent of appropriations by the Fairfax County Board of Supervisors, in its governmental capacity.

Section 37.20 Submission Not an Offer. Submission of this Lease by the FCRHA to Tenant does not constitute an offer by the FCRHA to lease the Premises upon the terms hereof, and in no event will the FCRHA be bound hereunder except upon the mutual execution and delivery by the FCRHA and Tenant of the Lease, and the approval of such execution by the FCRHA's County of Directors pursuant to applicable law.

Section 37.21 Qualification as Institutional Lender. The FCRHA acknowledges that, as of the Effective Date, [\_\_\_\_\_] meets the definition of an Institutional Lender, as defined in this Lease.

## **ARTICLE 38**

### **TAX CREDIT SYNDICATION**

Section 38.01 Agreement of the FCRHA to Cooperate with Syndication of Tax Credits. The FCRHA 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, the FCRHA agrees that notwithstanding anything else in this Lease to the contrary, Tenant shall have the right to syndicate the Tax Credits allocated to the Project and the FCRHA shall 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 whereby all of the low-income rental units are subleased to a syndication company. Furthermore, Tenant shall not be charged any fee by the FCRHA 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. The FCRHA 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 Project (the "Tax Credit Period"), notwithstanding any provision of this Lease to the contrary.

Section 38.02 Permitted Transfer of Interest Related to Tax Equity Investor. During the Tax Credit Period and any period thereafter that Tenant has a member, partner or stockholder

that held Tax Credits as a Tax Equity Investor, each of the following Transfers will be allowed and deemed to be a Permitted Transfer of Interest:

(a) Any assignment, sale, transfer, conveyance or pledge of any limited partnership interest, membership interest or capital stock (as applicable) of non-Controlling interests of Tenant held by the Tax Equity Investor or other investor holding interests in the Tax Credits that does not change the Control of Tenant;

(b) The pledge of any partner, member or stockholder of Tenant's partnership interest (either limited or general partnership interest), membership interest or capital stock (as applicable) to the Tax Equity Investor; or

(c) An assignment, sale, transfer, conveyance or pledge of any partnership interest (either limited or general partnership interest), membership interest or capital stock (as applicable) of a Controlling interest of Tenant if a Tax Equity Investor exercises its rights to replace a partner, member or stockholder that has such Controlling interest as a result of an uncured default under Tenant's organizational documents; *provided however*, that such Transfer otherwise complies with Section 10.01 (b) through (k) (other than the initial five (5) year prohibition in Section 10.01(b)) of this Lease).

Section 38.03 Notice and Cure Rights of Tax Equity Investor. Notwithstanding anything in Article 24 to the contrary, during any Tax Credit Period where a Tax Equity Investor is a partner, member or shareholder of Tenant, a Tax Equity Investor shall be afforded the notice and cure rights of a Mortgagee under Section 10.04(c), Section 10.04(d) and Section 10.04(f) (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 shall only be afforded the additional cure periods set forth in Section 10.04(c) if the Tax Equity Investor notifies Landlord in writing of its intent to cure such Event of Default prior to the expiration of Tenant's cure period related thereto; *provided further*, that such notice (if given) does not thereafter create a binding obligation on the Tax Equity Investor to effectuate such cure, but protects the Tax Equity Investor's additional cure rights that are afforded to Mortgagees as set forth in Section 10.04(c) and Section 10.04(d).

Section 38.04 Permitted Transfer of Interest to Bridge Lender. During the period during which the bridge loan ("**Bridge Loan**") from [ ] ("**Bridge Lender**") is outstanding, each of the following Transfers will be allowed and deemed to be a Permitted Transfer of Interest:

(a) The pledge of any partner, member or stockholder of Tenant's partnership interest (either limited or general partnership interest), membership interest or capital stock (as applicable) to the Bridge Lender; or

(b) An assignment, sale, transfer, conveyance or pledge of any partnership interest (either limited or general partnership interest), membership interest or capital stock (as applicable) or a Controlling interest of Tenant if Bridge Lender exercises its rights to replace a partner, member or stockholder that has such Controlling interest as a result of an uncured default under the Bridge Loan documents; *provided however*, that such Transfer

otherwise complies with Section 10.01(b) through (k) (other than the initial five (5) year prohibition in Section 10.01(b)) of this Lease.

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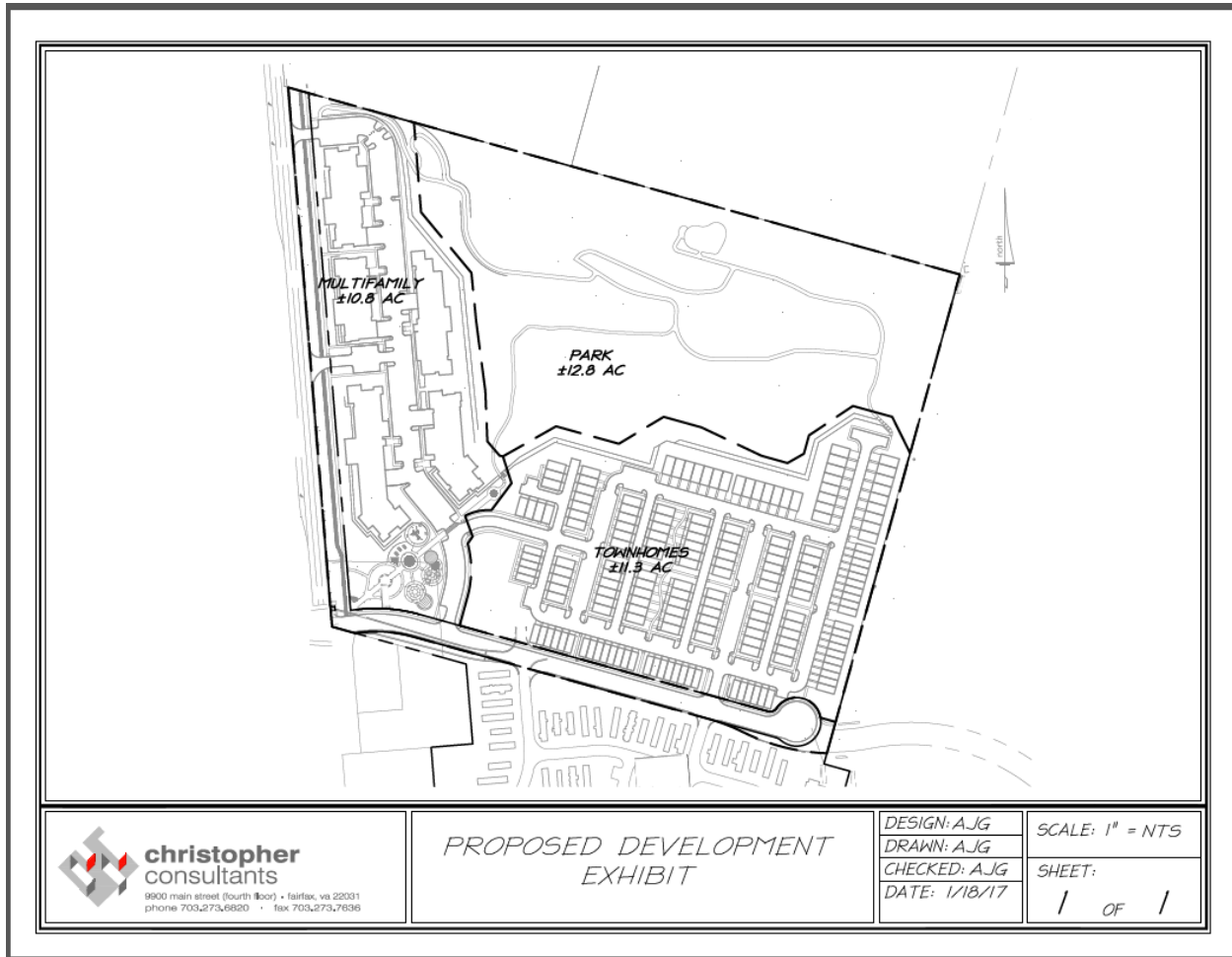
IN WITNESS WHEREOF, the FCRHA and Tenant have executed this Lease as of the day and year first above written.

[SIGNATURE BLOCKS TO BE INSERTED PRIOR TO LEASE EXECUTION]

## Exhibit A

### Legal Description of Land

The Land is that portion depicted as "MULTIFAMILY" in the below plan.



**Exhibit B**

[Project Description]

**[EXHIBIT B WILL BE AGREED UPON BY THE FCRHA AND TENANT AND ADDED  
HERE TO PRIOR TO EXECUTION OF THE GROUND LEASE]**



**Exhibit C**

[Intentionally Omitted.]

## Exhibit D

### Insurance Requirements

Tenant shall, during the continuance of this Lease maintain/provide the following:

- A. Statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect Tenant from any liability or damages for any injuries (including death and disability) to any and all of its employees or volunteers, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
- B. Commercial General Liability insurance in the amount of \$5,000,000 per occurrence/aggregate, to protect Tenant and the interest of the FCRHA, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Lease.
- C. During any construction activities, the Tennant shall maintain, or require any contractors to maintain, Pollution Liability insurance in the amount of \$2,000,000 per loss/aggregate to cover any emission, discharge, dispersal, release or escape of pollutants into the environment.
- D. During any construction activities, the Tennant shall maintain, or require any contractors to maintain, Commercial Automobile Liability insurance in the amount of \$1,000,000 per occurrence, covering all owned, non-owned borrowed, leased, or rented vehicles operated by the Tennant or any contractor hired by the Tennant. In addition, all mobile equipment used in connection with any construction activity will be insured under a Commercial Automobile Liability policy or a Commercial General Liability policy.
- E. Tenant agrees to obtain and maintain in effect at all times during the term hereof, commercial property insurance insuring the Improvements described under this Lease. Coverage will include FEMA flood insurance if flood is excluded under the property insurance policy.  
  
Property insurance coverage shall be for Replacement Value (as defined in the Lease).
- F. No change, cancellation, or non-renewal shall be made in any insurance coverage without a thirty (30) day written notice to the FCRHA Purchasing Agent and/or Risk Manager. Tenant shall furnish a new certificate prior to any change or cancellation date.
- G. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- H. The County of Fairfax, its employees and officers shall be named as an additional insured in the General Liability policy and it shall be stated on the Insurance Certificate with the provision that this coverage is primary to all other coverage the FCRHA may possess. The County of Fairfax shall be named as a loss payee on the commercial property policy.

- I. Liability insurance may be arranged by General Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- J. Tenant shall require all contractors it engages in connection with this Lease to maintain workers' compensation, general liability, automobile liability and/or professional liability at limits appropriate to the nature of the work to be done. Tenant shall require such contractors to indemnify Tenant and the FCRHA and to list Fairfax County as an additional insured on general liability and automobile liability insurance policies with the provision that this coverage is primary to all other coverage the FCRHA may possess.

**Exhibit E**

[List of Plans and Specifications]

**[EXHIBIT E WILL BE AGREED UPON BY THE FCRHA AND TENANT AND ADDED  
HERETO PRIOR TO EXECUTION OF THE GROUND LEASE]**

**Exhibit F**

[Project Schedule]

**[EXHIBIT F WILL BE AGREED UPON BY THE FCRHA AND TENANT AND ADDED  
HERETO PRIOR TO EXECUTION OF THE GROUND LEASE]**

**Exhibit G**

**COMPLETION GUARANTY**

(Lease Guaranty)

THIS **COMPLETION GUARANTY** (this “**Guaranty**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by [\_\_\_\_\_] a \_\_\_\_\_ (each a “**Guarantor**”, and collectively, the “**Guarantors**”)<sup>5</sup> for the benefit of the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia, acting in its proprietary capacity and not in its governmental or regulatory capacity, as landlord under the Ground Lease (defined below) (the “**FCRHA**”).

**RECITALS:**

WHEREAS, the FCRHA and [CHPPENN I, LLC]<sup>6</sup>, a [Virginia limited liability company] (“**Tenant**”) entered into that certain Deed of Lease dated as of the date hereof (the “**Ground Lease**”), covering certain real property located in Fairfax County, Virginia, more particularly described therein;

WHEREAS, as a material inducement to the FCRHA entering into the Ground Lease, Tenant is obligated to construct the Initial Construction Work (as defined in the Ground Lease) and to cause the delivery of a completion guaranty securing the payment and performance of Tenant’s obligations to complete the Initial Construction Work under the Ground Lease;

WHEREAS, Tenant has caused the delivery of this Guaranty by Guarantors, to satisfy Tenant’s obligations with respect to the foregoing Recital; and

WHEREAS, Guarantors are the owners, either directly or indirectly, of a beneficial interest in Tenant and will receive material benefit from the execution of this Guaranty and the execution of the Ground Lease by Tenant;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantors hereby irrevocably and unconditionally jointly and severally guarantee the Guaranteed Obligations (hereinafter defined) upon the following terms and conditions:

1. **Incorporation of Recitals; Defined Terms.** 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 shall have the meanings set forth in the Ground Lease.

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<sup>5</sup> **Guarantors to be confirmed.**

<sup>6</sup> **Actual tenant entity to be confirmed at ground lease closing.**

2. Guaranteed Obligations. Each Guarantor irrevocably and unconditionally guarantees the payment and performance of all Guaranteed Obligations in this Guaranty. The term “**Guaranteed Obligations,**” as used herein means the following:

(a) The timely payment and performance of all of Tenant’s obligations to complete and deliver the Initial Construction Work under the Ground Lease, including, without limitation: (i) the full and timely performance of all of the Initial Construction Work in strict accordance with the terms of the Ground Lease, free and clear of any and all liens or encumbrances which may arise from, or in any way relate to the Initial Construction Work (except and limited to the extent such liens or encumbrances are expressly permitted in the Ground Lease); and (ii) the full and timely payment of all contractors, subcontractors, materialmen, engineers, architects or other Persons who have rendered or furnished services or materials for the Initial Construction Work, and

(b) The timely payment and performance of all of Tenant’s other obligations under the Ground Lease accruing up to and including the Final Completion Date; provided, however, that for the avoidance of doubt, such obligations shall not include any Capital Improvements to the extent first performed after the Final Completion Date.

Nothing in this Section is intended to transfer, waive or release Tenant from its obligations for the Final Completion of the Initial Construction Work under the Ground Lease and for the payment of all sums owed in connection with the Initial Construction Work.

3. Enforcement of Guaranty.

(a) Upon the occurrence of a default by Tenant in the timely payment or performance, as the case may be, of any of its obligations under the Ground Lease which constitute Guaranteed Obligations and that continues beyond any applicable notice and cure periods provided for in the Ground Lease, Guarantors shall, within thirty (30) days from the date of notice from the FCRHA, pay or perform any Guaranteed Obligations then to be paid or performed, at their sole cost and expense. This Guaranty is an absolute, irrevocable, and unconditional guaranty of payment and performance. The Guarantors are and shall be liable for the payment and performance of the Guaranteed Obligations, as set forth in this Guaranty, as primary obligors. Any time that FCRHA is entitled to exercise its rights or remedies hereunder, FCRHA may in its discretion elect to demand payment and/or performance. If FCRHA elects to demand performance, then it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. Nothing herein shall require the FCRHA to provide any notices of default to Tenant, Guarantors or any other party that the FCRHA is not already expressly required to give under the terms and conditions of the Ground Lease.

(b) In the event of a breach by either Guarantor of any warranty or covenant under Section 9 of this Guaranty (and, for the avoidance of doubt, neither the Guaranteed

Obligations nor any other provision of this Guaranty other than Section 9 shall be subject to the following), the FCRHA shall provide the non-defaulting Guarantor with written notice of such breach and such non-defaulting Guarantor shall have thirty (30) days from the date of such notice to cure the breach, after which the FCRHA shall be entitled to exercise all rights and remedies in connection with any such breach; provided, however, that the foregoing shall not prevent or delay the FCRHA's rights to enforce the Guaranteed Obligations hereunder.

(c) It is acknowledged that it is a defense hereunder to the enforcement of the Guaranteed Obligations solely as they relate to Tenant's obligations to complete and deliver the Initial Construction Work under the Ground Lease if the FCRHA shall have defaulted in its obligation, beyond any applicable notice and cure periods provided in the Development Agreement<sup>7</sup>, to disburse up to \$14,000,000 for the cost of the Work pursuant to and in accordance with the terms and provisions of the Development Agreement, and such default materially adversely affects the completion of the Initial Construction Work. For purposes of this clause (c), a default of the FCRHA as aforesaid will "materially adversely affect the completion of the Initial Construction Work" if after such default, the Tenant would no longer be able to complete the Initial Construction Work by the Final Completion Date in accordance with the provisions of the Ground Lease and the Development Agreement due solely to the default of the FCRHA.

4. Cumulative Remedies. The exercise by the FCRHA of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy; *provided however*, that in any event the FCRHA shall be entitled to only one recovery (i.e. no "double recovery") for any of the Guaranteed Obligations from Tenant and Guarantors, collectively.

5. Direct Action Against Guarantors. It shall not be necessary for the FCRHA, in order to enforce the Guaranteed Obligations, first to institute suit or exhaust its remedies against Tenant or others liable on such indebtedness, liability, undertaking, or obligation, or to enforce its rights against any security which shall ever have been given to secure the same. Each Guarantor acknowledges and agrees that it is a primary obligor of the Guaranteed Obligations and not merely a surety of the Ground Lease.

6. Unimpaired Liability. Guarantors' obligations under the terms of this Guaranty shall not be released, diminished, impaired, reduced, or affected by any of the following:

a. the taking or accepting of any other security or guaranty for any or all of the Guaranteed Obligations;

b. any release, surrender, exchange, subordination, or loss of any security at any time existing in connection with any or all of the Guaranteed Obligations;

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<sup>7</sup> Development Agreement to be negotiated.



c. the insolvency, bankruptcy, or lack of partnership or corporate power of Tenant, or any party at any time liable for any or all of the Guaranteed Obligations;

d. any neglect, delay, omission, failure, or refusal of the FCRHA to take or prosecute any action for the collection of any of the Guaranteed Obligations or to foreclose or take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Obligations;

e. subject to Section 3 above, the existence of any claim, setoff, counterclaim, defense or other rights which Guarantors may have against Tenant or the FCRHA, whether in connection with the Ground Lease or any other transaction;

f. any assignment of the Ground Lease or the Guaranteed Obligations or any part thereof;

g. any termination of the Ground Lease or dispossession of Tenant under the Ground Lease as a result of an uncured Event of Default by Tenant prior to the Final Completion of the Initial Construction Work;

h. the unenforceability of all or any part of the Guaranteed Obligations against Tenant by reason of the fact that the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or the officers creating same acted in excess of their authority;

i. any payment by Tenant to the FCRHA in respect of the Guaranteed Obligations is held to constitute a preference under the bankruptcy laws or if for any other reason the FCRHA is required to refund such payment or pay the amount thereof to someone else;

j. any impairment, modification, release, or limitation of liability of Tenant or its estate in bankruptcy, resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or from the decision of any court interpreting same;

k. the settlement or compromise of any of the Guaranteed Obligations;

l. any change in the corporate, partnership, or limited liability company, as applicable, existence, structure, or ownership of the Tenant; or

m. any other circumstance which might otherwise constitute a defense available to, or discharge of, the Tenant or the Guarantors.

7. Binding Effect. This Guaranty is for the benefit of the FCRHA and its

respective successors and assigns.

8. Representations and Warranties. Each Guarantor represents and warrants that:

a. it will receive a direct or indirect material benefit from the execution and delivery of the Ground Lease;

b. this Guaranty has been duly authorized by all necessary corporate action on Guarantor's part and has been duly executed and delivered by a duly authorized agent of the limited liability company;

c. this Guaranty constitutes Guarantor's valid and legally binding agreement, enforceable in accordance with its terms except as limited by debtor relief laws;

d. Guarantor's execution of this Guaranty will not violate Guarantor's organizational documents or result in the breach of, or conflict with, or result in the acceleration of, any obligation under any guaranty, indenture, credit facility or other instrument to which Guarantor or any of its assets may be subject, or violate any order, judgment or decree to which Guarantor or any of its assets is subject;

e. no action, suit, proceeding or investigation, judicial, administrative or otherwise (including without limitation any reorganization, bankruptcy, insolvency or similar proceeding), currently is pending or, to the best of Guarantor's knowledge, threatened against Guarantor which, either in any one instance or in the aggregate, may have a material adverse effect on Guarantor's ability to perform its obligations under this Guaranty;

f. Guarantor is currently solvent and will not be rendered insolvent by providing this Guaranty; and

g. By virtue of Guarantor's relationship with the Tenant, the execution, delivery, and performance of this Guaranty is for the direct benefit of the Guarantor and it has received adequate consideration for this Guaranty.

9. Affirmative Covenants. At all times until the Guaranteed Obligations have been fully satisfied, Guarantors will maintain the covenants set forth herein:

a. Financial Covenants. At all times until the Guaranteed Obligations have been fully satisfied, Guarantors (collectively, not individually) shall comply with the following financial covenants:

(i) Net Worth Covenant. Guarantors will maintain a tangible aggregate net worth at least equal to Fifteen Million Dollars (\$15,000,000). For purposes of this Guaranty, "tangible aggregate net worth" means, as of a given date, Guarantors'

equity calculated in conformance with generally accepted accounting principles by subtracting total liabilities from the fair market value of Guarantors' total tangible assets, excluding Guarantors' interest in Tenant.

(ii) Liquidity. Guarantors will maintain liquidity at least equal to One Million Dollars (\$1,000,000). For purposes of this Guaranty, "liquidity" means (A) cash, (B) cash equivalents, and (C) unencumbered, marketable securities.

b. Financial Reporting Requirements. Every twelve (12) months after execution of this Guaranty, and at such other times as the FCRHA may reasonably request (including, without limitation, at any time after the occurrence and during the existence of an Event of Default under the Ground Lease), each Guarantor shall provide a financial statement, certified by an officer of Guarantor to be true and correct in all material respects, with sufficient detail, as reasonably requested by the FCRHA, for the FCRHA to determine that such Guarantor has satisfied its financial covenants set forth herein. This financial statement shall include a balance sheet at the end of such completed fiscal year and the related statements of income, retained earnings, cash flows and owners' equity for such completed fiscal year. At any time when there is an Event of Default under the Ground Lease, such financial statements shall be prepared and certified without qualification by an independent certified public accounting firm satisfactory to FCRHA.

c. Corporate Existence. Each Guarantor will do any and all things necessary to preserve and keep in full force and effect its corporate status in good standing under the laws of the state of its organization and in the Commonwealth of Virginia.

10. Waiver and Subordination. Until such time as this Guaranty is terminated in accordance with Section 19 hereof, each Guarantor (a) waives to the fullest extent permitted by law: (i) any rights that Guarantor may have against Tenant by reason of any one or more payments or acts in compliance with the obligations of Guarantor hereunder, (ii) any rights to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against Guarantor, (iii) all rights and remedies accorded by applicable law to sureties or guarantors, except any rights of subrogation and contribution (the exercise of which are subject to the terms of this Guaranty), (iv) to presentment for payment, demand, protest, notice of nonpayment or failure to perform or observe, or any other proof, notice or demand (except as may be otherwise expressly required herein), (v) any principles or provisions of law, statutory, or otherwise, that are or might be in conflict with this Guaranty and any legal or equitable discharge of the Guarantor's obligations and (vi) the benefit of any statute of limitations affecting the Guarantor's liability hereunder or the enforcement hereof; and (b) subordinates any liability or indebtedness of Tenant held by Guarantor to the obligations of Tenant to the FCRHA under the Ground Lease for the Guaranteed Obligations. Each Guarantor agrees that any liability or indebtedness of Tenant held by Guarantor is subordinate to Tenant's obligations to the FCRHA under the Ground Lease. Each Guarantor agrees that no payment by it under this Guaranty shall give rise to any rights of

subrogation against Tenant.

11. Intentionally Omitted.

12. Notices. Any notice, demand, statement, request or consent shall be in writing and shall be deemed to be received by the addressee on the day such notice is delivered in hand, on the following day if tendered to a nationally recognized overnight delivery service or on the third day following the day such notice is deposited with the United States Postal Service first class certified mail, return receipt requested addressed to the address, as set forth below, of the party to whom such notice is to be given, or to such other address as either party shall in like manner designate in writing. The addresses of the parties are as follows:

Guarantors:

[ ]

With a Copy to:

Klein Hornig LLP  
1275 K Street, NW  
Suite 1200  
Washington, DC 20005  
Attention: Erik T. Hoffman

FCRHA:

Fairfax County Redevelopment and Housing Authority  
3700 Pender Drive, Suite 300  
Fairfax, VA 22030  
Attention: Director, HCD

With a Copy to:

Office of the County Attorney  
Attention: County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, VA 22035-0064

13. Governing Law. **THIS GUARANTY SHALL BE GOVERNED BY, INTERPRETED UNDER THE LAWS OF, AND ENFORCED IN THE COURTS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT ITS REGARD TO THE APPLICATION OF ITS INTERNAL RULES GOVERNING CONFLICTS OF LAWS. ANY ACTION OR CLAIM UNDER THIS GUARANTY THAT IS BROUGHT IN A COURT OF LAW SHALL BE BROUGHT SOLELY IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA, OR IN THE EASTERN**

**DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA,  
ALEXANDRIA DIVISION.**

14. Unenforceable Provisions; Severability. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Guaranty, such provision shall be fully severable and this Guaranty shall be construed and enforced as if the illegal, invalid or unenforceable provision had never comprised a part of this Guaranty, and the remaining provisions of this Guaranty 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 Guaranty, unless such continued effectiveness of this Guaranty, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

15. Entire Agreement. This Guaranty represents the entire agreement by and between Guarantors and the FCRHA with respect to the subject matter hereof and may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced.

16. Headings. The headings in this Guaranty have been used for administrative convenience only and should not be used in interpreting and construing the meaning of any provision of this Guaranty.

17. Time of the Essence. Time is of the essence in the performance of this Guaranty.

18. Counterparts; Facsimile Signatures. Any party may execute this Guaranty by delivery to the other party of a facsimile copy evidencing such party's signature. In any such case, the party executing by facsimile shall promptly provide a signed original counterpart to the other parties; provided, that the non-delivery of such a signed counterpart shall not affect the validity or enforceability of this Guaranty.

19. Termination. This Guaranty shall terminate upon the earlier to occur of (a) the completion of all of the Guaranteed Obligations under the Ground Lease and the indefeasible payment and performance of any and all Guaranteed Obligations that are due to be paid or performed at the time of such termination and (b) the occurrence of a Permitted Transfer pursuant to the provisions of the Ground Lease, including, without limitation, the provisions of Article 10 thereof; provided, however, that no termination pursuant to this clause (b) shall be effective unless and until the FCRHA shall have received a replacement guaranty in the form hereof or otherwise in form and substance satisfactory to the FCRHA by guarantor(s) satisfactory to the FCRHA and meeting the Guarantor Net Worth Requirement.

20. Insolvency. Should either Guarantor become insolvent, or fail to pay the Guarantor's debts generally as they become due, or voluntarily seek, consent to, or acquiesce in the benefit or benefits of any debtor relief law, or become a party to (or be made the subject of) any proceeding provided for by any debtor relief law (other than as a

creditor or claimant) that could suspend or otherwise adversely affect the rights of FCRHA under this Guaranty, then the Guaranteed Obligations shall be, as between the Guarantors and FCRHA, a fully matured, due, and payable obligation of the Guarantors to FCRHA (without regard to whether the Tenant is then in default under the Ground Lease or whether the Guaranteed Obligations, or any part thereof is then due and performable by the Tenant or any other party to the FCRHA), payable in full by the Guarantors to FCRHA upon demand, which shall be the estimated amount owing in respect of the contingent claim created hereunder.

21. No Fraudulent Transfer. It is the intention of the Guarantors and the FCRHA that the amount of the Guaranteed Obligations shall be in, but not in excess of, the maximum amount permitted by fraudulent conveyance, fraudulent transfer, or similar laws applicable to each Guarantor (collectively, “**Fraudulent Transfer Laws**”). Accordingly, notwithstanding anything to the contrary contained in this Guaranty or any other agreement or instrument executed in connection with the payment of any of the Guaranteed Obligations, the amount of the Guaranteed Obligations shall be limited to that amount which after giving effect thereto would not (a) render the Guarantors insolvent, (b) result in the fair saleable value of the assets of the Guarantors being less than the amount required to pay their debts and other liabilities (including contingent liabilities) as they mature, or (c) leave the Guarantors with unreasonably small capital to carry out their business as now conducted and as proposed to be conducted, including its capital needs, as such concepts described in **clauses (a), (b) and (c)** of this Section 21 are determined under applicable law, if the obligations of the Guarantors would otherwise be set aside, terminated, annulled or avoided for such reason by a court of competent jurisdiction in a proceeding actually pending before such court. For purposes of this Guaranty, the term “**applicable law**” means as to each Guarantor each statute, law, ordinance, regulation, order, judgment, injunction or decree of the United States or any state or commonwealth, any municipality, any foreign country, or any territory, possession or governmental authority applicable to the Guarantor.

22. Indemnification. Without limitation of any other obligations of the Guarantors or remedies of the FCRHA under this Guaranty, the Guarantors shall, to the fullest extent permitted by law, indemnify, defend, and save and hold harmless the FCRHA from and against, and shall pay on demand, any and all damages, losses, liabilities, and expenses (including reasonable attorneys’ fees and expenses) that may be suffered or incurred by FCRHA in connection with or as a result of any failure of any Guaranteed Obligations to be the legal, valid, and binding obligations of the Tenant enforceable against the Tenant in accordance with their terms.

23. Waiver Of Jury Trial. TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH OF THE GUARANTORS AND THE FCRHA EACH IRREVOCABLY WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT, OR PROCEEDING ON, ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE ACTS OR FAILURE TO ACT OF OR BY FCRHA IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTY.

24. Joint and Several Liability. The liability of each Guarantor hereunder shall be joint and several with the Tenant and each other Guarantor of Tenant's obligations under the Ground Lease as provided herein.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Guarantors have executed this Guaranty as of the date and year first written above.

**GUARANTORS**

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[ADD ACKNOWLEDGEMENT]**



**Exhibit H**  
**9% Project**

**Criteria for Affordable Housing Units, Tenants, Rents and Eligible Household Income**

The Premises shall be used as a residential rental development having one hundred percent (100%) of its 75 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 shall 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 Development Authority, and (b) with the terms and conditions of the Lease and this Exhibit H 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 shall 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 shall include a table setting forth the number of units in each of the bedroom count categories and shall 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 shall be deemed features shown for purposes of Va. Code Ann. §15.2-2232 and, as such, shall not require further approvals pursuant thereto in the event the Board of Supervisors shall acquire or lease such units.

**2. Administration of Affordable Housing Units**

A. All AHUs are to be initially leased for a minimum six (6) -month term with a maximum term of one (1) year and maximum renewal term(s) of one (1) year to tenants who meet the eligibility criteria established in accordance with the Lease, including, but not limited to, the terms of this Exhibit H 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 shall 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 shall not be a permissible

reason for Tenant to reject or discriminate against such applicant. provided, however, that the Tenant shall 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 H 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>8</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 fifteen (15) days of the end of each quarter, the Tenant shall provide the DHCD with a certified statement 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 shall 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 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 A 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 shall 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 shall 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.

Type	BR	Bath	Number	Area Median Income (AMI)
1 Bedroom	1	1.0	10	60%
1 Bedroom	1	1.0	1	50%
1 Bedroom	1	1.0	2	30%
1 Bedroom	1	1.0	2	50%
2 Bedroom	2	2.0	19	60%
2 Bedroom	2	2.0	12	50%
2 Bedroom	2	2.0	4	30%
2 Bedroom	2	2.0	5	50%
3 Bedroom	2	3.0	7	60%
3 Bedroom	2	3.0	10	50%
3 Bedroom	2	3.0	2	30%
3 Bedroom	2	3.0	2	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 shall 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 Development Housing Authority 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 shall 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 thirty percent (30%) of the monthly gross income of households whose incomes do not exceed, as applicable, thirty percent (30%), fifty percent (50%), and sixty percent (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 shall 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 of time that the LIHTC Program is in effect for any of the AHUs and shall 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 shall 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. Intentionally omitted.

G. Eligible Affordable Housing Tenant Household Incomes. The maximum eligible household gross income for Affordable Housing Tenant households for each AHU at each AMI level shall 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.

H. Household Size. The minimum household size for any unit shall be one person per bedroom. The maximum household size for any unit shall 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 A, 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 shall provide an executed affidavit on an annual basis certifying their continuing occupancy of the units. Affordable Housing Tenants shall 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 shall 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 thirty (30) days after a written request for such affidavit, then the Affordable Housing Lease shall automatically terminate, become null and void, and shall require the occupant to vacate the unit within thirty (30) days after written notice from the Tenant. Tenant shall 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 H, 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 H), then at the end of the applicable Affordable Housing Lease term, Tenant shall require the occupant to vacate that AHU and Tenant shall 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 shall provide that in the event an Affordable Housing Tenant fails to occupy the applicable AHU for a period in excess of sixty (60) days, a default under the applicable Affordable Housing Lease shall occur. The Affordable Housing Lease shall automatically terminate, become null and void and Tenant shall require occupants to vacate the AHU within thirty (30) days of written notice from the Tenant and Tenant shall 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 shall 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 shall make a determination on the basis of current income of whether the income of any Affordable Housing Tenant exceeds the applicable income limit and shall 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 shall be furnished to Landlord. Tenant shall maintain in its records the certifications and recertifications for five (5) 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 shall obtain written evidence substantiating the information given on the Affordable Housing Tenants' certifications and recertifications of income and shall 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 shall 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.

E. Number of Affordable Housing Units Rented. Tenant shall not permit an Affordable Housing Tenant to rent more than one AHU at any given time.

F. Reports. Tenant shall prepare, or shall 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 H.

G. Components of Development.

- (i) all of the AHUs shall be rented or available on a non-transient basis; and
- (ii) none of the AHUs shall 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 shall maintain all of the AHUs rented or available for rental on a continuous basis.

I. [Intentionally Deleted]

J. 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 H are being satisfied by Tenant. The Affordable Housing Leases shall 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 shall be deemed substantial and material obligations of such Affordable Housing Tenant's tenancy, that Affordable Housing Tenant shall 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 shall be deemed a violation by such Affordable Housing Tenant of a substantial obligation.

K. 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 H.

L. Acts Requiring Landlord Approval. Tenant shall 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 (2) month's gross rent, pet deposits, and, to the extent applicable, such other amounts addressed in paragraph P below. Any funds collected as security deposits shall be kept separate and apart from all other funds of the Premises. If interest is earned on such trust account, it shall 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.

M. Non-Discrimination in Housing. Tenant shall comply with all federal, state, and Fairfax County fair housing laws and equal employment laws and all rules and regulations promulgated in connection therewith.

N. Other Income – Tenant shall have the right to charge for the following in addition to the rent:

(i) Parking – (1) one free 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 shall 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.

## **5. LIHTC Program**

To the extent any provision of this Exhibit H or the Deed of Ground Lease conflicts with the LIHTC Program laws, regulations, rules and guidance, then the LIHTC Program requirements shall 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 cause.



## EXHIBIT B

### DEVELOPMENT AGREEMENT TERMS (CHPPENN)

- A. **Anticipated Scope.** CHPPENN will construct certain infrastructure work necessary to construct fully functioning Affordable Housing Units in accordance with the Proffers and Site Plan, including:
- i. The retaining wall for the Project, except that portion located on the Sale Property (“**CHPPENN Retaining Wall**”);
  - ii. Curbs, gutters, sanitary sewer mains, manholes, service laterals to behind the curb and gutter, storm drains, and pavement and internal road network (except for roads located on the Sale Property);
  - iii. Storm water management facilities, including outfall;
  - iv. Additional utility rough-ins and connections work necessary for the preparation of the remainder of the Affordable Housing Units;
  - v. Improvements to Dart Drive, in accordance with VDOT requirements;
  - vi. Frontage improvements along Route 1, in accordance with VDOT requirements;
  - vii. A public plaza area at the intersection of Route 1 and Dart Drive;
  - viii. The following improvements to the Park: the parking lot to be located in the northwest corner of the Existing FCRHA Land that will benefit the Park, a trail head to the Park from said parking lot, certain access points to the Park per the Site Plan, a to be designed trailhead feature between the multifamily and townhome parcels, and possibly an accessible pathway between the trailhead feature and the trailhead adjacent to the Park parking lot, and
  - ix. Hauling off necessary soils (including all unsuitable materials), grading and other site work (collectively, the “**Scope**”).

The ultimate Scope will be finalized by the parties to the Development Agreement.

- B. **Approval of Drawings, Plans, and Specifications.** In connection with the initial construction and development of the Scope, CHPPENN shall submit reasonably detailed construction drawings, plans and specifications to the FCRHA for the FCRHA’s review and approval, subject to an agreed-upon milestone schedule. The FCRHA’s approval of the construction drawings, plans and specifications shall not be unreasonably withheld, conditioned or delayed. CHPPENN will design the CHPPENN Retaining Wall taking into account the contemplated improvements referenced above, including, without limitation, the improvements to be constructed to the Park.
- C. **Approval of Contractors.** Final selection by CHPPENN of a general contractor (“**General Contractor**”) and Major Subcontractors for the Scope shall be subject to the prior approval of the FCRHA, which approval shall not be unreasonably withheld, conditioned or delayed. A “**Major Subcontractor**” shall mean any subcontractor performing work the cost of which is in excess of ten percent (10%) of the total cost of constructing the Scope, as set forth in the Budget (as defined below). Contracts for the Scope must be separate from contracts for the vertical construction of the Affordable Housing Units. The bidding process and criteria are to be discussed.

- D. **FCRHA Funding.** If, and only if, (1) the sale of the Sale Property occurs, (2) the Ground Leases are executed, (3) the FCRHA has approved the Budget (as defined below), and (4) the FCRHA receives the full sales price of under the Purchase Agreement, the FCRHA will contribute \$14,000,000, subject to the Budget and invoicing, for the Scope (“**FCRHA Infrastructure Funding**”). The FCRHA Infrastructure Funding shall only be utilized for the following Scope costs: (1) hard costs of construction; and (2) fees paid to third party construction administration consultants. The FCRHA Infrastructure Funding shall not be applied to any developer fee, to costs of the preparation or obtaining of site plan or other regulatory approvals, or to general design costs. CHPPENN shall make monthly draw requests for the FCRHA Infrastructure Funding, and such requests shall only seek reimbursement for the Scope completed to date, unless otherwise permitted by the Development Agreement.
- E. **CDBG.** CHPPENN acknowledges and agrees that the FCRHA Infrastructure Funding is comprised of Community Development Block Grant (“**CDBG**”) program income. CHPPENN therefore will construct the Scope in accordance with all applicable CDBG laws, rules, and regulations, and take such other steps as may be required by the same. CHPPENN shall provide or cause to be provided to the FCRHA certifications evidencing this compliance, in forms to be appended to the Development Agreement. In no event will CHPPENN apply any FCRHA Infrastructure Funding to work performed on the Sale Property.
- F. **Budget.** CHPPENN shall prepare a budget for the Scope (“**Budget**”). The Budget shall be reasonably detailed, shall include a 10% contingency, and shall be submitted to the FCRHA for its review and approval prior to the FCRHA’s contribution of the FCRHA Infrastructure Funding. The parties acknowledge and agree (i) that the FCRHA shall not be required to disburse any FCRHA Infrastructure Funding until an approved Budget has been agreed upon between the parties, (ii) that the contingency will be paid only if contingency-eligible expenses are actually incurred, and (iii) any cost overruns for the Scope above the applicable Budget amount shall be the responsibility of CHPPENN.
- G. **Development Approvals.** CHPPENN shall consult and coordinate with the FCRHA regarding all submissions to be made in connection with efforts to obtain all required government approvals for the Scope. Further, CHPPEN shall submit its proposed application for each such approval to the FCRHA for its review and approval, subject to an agreed-upon milestone schedule. The FCRHA’s approval shall not be unreasonably withheld, conditioned, or delayed.
- H. **Supervision.** CHPPENN shall supervise, direct and coordinate the construction of the Scope using its best skill and attention. CHPPENN acknowledges that CHPPENN shall be solely responsible for all construction methods, techniques and procedures employed by CHPPENN, its agents, contractors and subcontractors in connection with the construction of the Scope.

- I. **Compliance.** CHPPENN shall cause the Scope to be designed and constructed in a good and workmanlike manner, and in compliance with all applicable laws, licensing requirements, and governmental approvals, including, without limitation, the Land Use Approvals and the Proffers, and to produce fully connected, complete, operational and functional systems such that the Affordable Housing Units are fully able to be constructed as vertical construction prior to and without full development of the remainder of the Project. CHPPENN shall arrange for the provision of payment and performance bonds in accordance with the PPEA statute.
- J. **Insurance.** CHPPENN acknowledges and agrees that it will be required, pursuant to the Development Agreement to maintain or cause to be maintained the following types of insurance (amounts to be negotiated in the Development Agreement):
- i. Workers Compensation Insurance;
  - ii. Employer Liability insurance;
  - iii. "All Risk" Builders Risk Insurance;
  - iv. Errors and Omissions Insurance;
  - v. Business Automobile Liability Insurance; and
  - vi. Commercial General Liability Insurance.
- K. **Cooperation regarding Sale Property.** CHPPENN agrees that it will cooperate with the Purchaser of the Sale Property to determine each parties' respective responsibilities with respect to the retaining wall to ensure the design of each parties' portion of the retaining wall is generally consistent in appearance and material with the other, and satisfies any governmental and regulatory approvals, including, without limitation, the Land Use Approvals and the Proffers.
- L. **Warranties to the FCRHA; Inspections.** All warranties for the Scope shall run to the FCRHA as well as CHPPENN. The contract with the General Contractor shall provide for the ability of the FCRHA to access the Ground Lease Premises, inspect the construction of the Scope, and discuss with the General Contractor and CHPPENN.
- M. **Completion of Scope.** CHPPENN agrees that construction of the Scope will begin promptly after Closing and shall be completed no later than eighteen (18) months after Closing.
- N. **THE FCRHA's Termination Right and Damages.** If CHPPENN defaults under the Development Agreement, following an appropriate cure period, the FCRHA shall have the right, by sending written notice to CHPPENN, to terminate the Development Agreement. In the event of a termination of the Development Agreement, CHPPENN will not be entitled to reimbursement of any FCRHA Infrastructure Funding previously expended by CHPPENN, *provided however*, the FCRHA shall reimburse any and all FCRHA Infrastructure Funding incurred and paid for by CHPPENN and for which it is entitled to reimbursement for the period up to the date of such termination (but with the submission by CHPPENN of an invoice complying with the requirements of the Development Agreement) and shall pay to CHPPENN any other obligations accrued by CHPPENN under the Scope as of the date of termination. Any retainage on the date of

termination shall be forfeited by CHPPENN and retained by the FCRHA. The parties agree that the FCRHA's damages upon such termination, shall include, but shall not be limited to, the costs to complete the Scope, the provision to the FCRHA of Project development documents, and any other remedies available at law or equity. These damages shall be set forth in the Development Agreement.