

DEED OF LEASE

between

FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY

as Landlord

and

APAH OAKWOOD LLC

as Tenant

Premises:

**Oakwood Property**

Intersection of South Van Dorn Street and Oakwood Road  
Alexandria, Virginia

\_\_\_\_\_, 202\_\_\_\_

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### **List of Exhibits**

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Exhibit B – Project Description

Exhibit C – List of Plans and Specifications

Exhibit D – Project Schedule

Exhibit E – Form of Guaranty

Exhibit F – Approval Criteria for Residential Leases and  
Residential Tenants

## DEED OF LEASE

This DEED OF LEASE (this “Lease”) made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_ between FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity (“Landlord”) 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 APAH OAKWOOD LLC, a Virginia limited liability company, or its permitted assignee or designee (“Tenant”) having an office at c/o Arlington Partnership for Affordable Housing, Inc., 4318 N. Carlin Springs Road, Arlington, VA 22203.

### RECITALS

A. Landlord is the legal owner of certain real property identified as Fairfax County Tax Map No. 081-2 ((1)) Parcel 0017C and Tax Map Nos. 081-4 ((1)) Parcels 0032, 0033 and 0034 and located at the intersection in of South Van Dorn Street and Oakwood Road, and as further identified on Exhibit A attached hereto (the “Land”) and intends to use the real property for the purpose provided for in this Lease, together with any and all Buildings (as defined below) and other Improvements (defined below) on the Land and with all necessary, appurtenant easements and development rights related to the Land (together with the Land, the “Premises”).

B. Landlord and Tenant entered into a Contract to Ground Lease dated \_\_\_\_\_, 20[20] (the “Contract to Lease”), where Landlord and Tenant agreed that, upon satisfaction of certain conditions precedent, Landlord and Tenant shall enter into this Lease.

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

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

### ARTICLE 1

#### DEFINITIONS

The terms defined in this Article 1 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 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 and as required under this Lease (and irrespective of whether paid directly to third parties (e.g. utility companies, taxing authorities, a Depository, etc.) or as a reimbursement or payment to Landlord) as the same shall become due from Tenant under this Lease and which shall be paid on or before the respective due dates of such sums.

“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.

“APAH” shall mean Arlington Partnership for Affordable Housing, Inc., a Virginia nonprofit corporation.

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

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

“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 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 initial Architect is Grimm and Parker Architecture, Inc.

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

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

“Base Rent” means the rent payable by Tenant to Landlord in an amount equal to: with respect to any calendar year, (i) sixty-six and two thirds percent (66.66%) of Sublease Rent received by Tenant with respect to such calendar year, *less* (ii) any Project Operating Expenses with respect to such calendar year; provided, however, that if there is positive Tenant’s Other Net Cash Flow with respect to a calendar year, then in lieu of the deduction set forth in item (ii), the Base Rent shall include thirty-three and 33/100 percent (33.33%) of Tenant’s Other Net Cash Flow with respect to such calendar year.

“Building(s)” shall mean any building(s) hereafter erected on 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.

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

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

“Capitalized Rent Payment” shall have the meaning provided in Article 38.

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

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

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

“Condominium Units” shall have the meaning provided in Article 38.

“Construction Agreements” shall mean any agreements in which Tenant (or Tenant’s general contractor) is a contracting 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 Landlord, 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, according to the provisions of a contract or according to the organizational documents of the relevant entities.

“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 Landlord, 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) Business Days after request of Landlord, Landlord 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 Landlord and Tenant hereunder.

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

“Environmental Activity” 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.

“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 D, as such date may be postponed due to Unavoidable Delays as provided in this Lease.

“Fixed Expiration Date” shall mean the last day of the calendar month after the seventy-fifth (75<sup>th</sup>) anniversary of the Commencement Date; provided however, if the Commencement Date is the first day of the calendar month, the Fixed Expiration Date shall be the day preceding the seventy-fifth (75<sup>th</sup>) 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 any of the following: the

United States of America, the Commonwealth of Virginia, the County of Fairfax, Virginia, Fairfax County Department of Housing and Community Development, Fairfax County Redevelopment and Housing Authority and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having lawful jurisdiction over the Premises or any portion thereof. The term Governmental Authority shall also mean and include Landlord when acting in its governmental capacity, but not in its proprietary capacity.

“Gross Project Revenue” shall mean, with respect to each Lease Year (or any Calendar Quarter or other period of time, as applicable), excluding Sublease Rent and the Capitalized Rent Payment, any and all gross rentals, receipts, fees, proceeds and amounts of any kind (and anything else of value) actually received, by or for the account of Tenant, from or in connection with, or directly or indirectly arising out of the Premises or any part thereof, including without limitation, (i) all amounts received in respect of the Residential Leases, to the extent the same is paid directly to Tenant, (ii) payments to Tenant for electricity, air conditioning and cleaning, payments for providing goods or services of any kind provided to the Tax Credit Project Owners or directly to Residential Tenants or other subtenants or licensees in connection with the use, occupation or operation of a Residential Unit or other portion of the Premises, to the extent that the Tenant receives payment for such goods, services and utilities which is in excess of the costs paid by Tenant for such goods, services and utilities, and (iii) payments received by Tenant for concessions, licenses or agreements granted to third parties or Affiliates in connection with the providing of any such goods or services; but excluding proceeds received from (A) any Mortgage, (B) a casualty, to the extent such proceeds are to be used for a Restoration (i.e. not business interruption or rental interruption insurance, which will be a part of Gross Project Revenue), (C) a condemnation, (D) a Transfer, and (E) any other transaction the proceeds of which are considered to be capital in nature.

“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 Landlord to be a Guarantor of this Lease. Landlord acknowledges that it has approved Arlington Partnership for Affordable Housing, Inc., a Virginia non-profit corporation 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 Ten Million Dollars (\$10,000,000); and (ii), a minimum liquidity (in accordance of 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 E attached hereto.

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

“Housing Blueprint Loan” means the loan from Landlord to the Tenant made with funds from the Fairfax County Housing Blueprint program. Landlord and Tenant expect that the documents evidencing the Housing Blueprint Loan will require annual loan repayments in an amount equal to approximately thirty-three and one third percent (33.33%) of Sublease Rent

received by Tenant with respect to such calendar year.

“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, 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.

“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 (as defined herein), 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 governmental agency providing Tax Credits or loans hereunder.

“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.

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

“Landlord’s Termination Rights” shall have the meaning provided in Section

10.04(f).

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

“Lease Year” shall mean a consecutive period of twelve (12) months, except that the first Lease Year shall commence on the Commencement Date and shall end on the last day of the calendar month after the first anniversary of the Commencement Date; *provided however*, if the Commencement Date is the first day of the calendar month, the first Lease Year shall end on the day preceding the anniversary of the Commencement Date; and each subsequent Lease Year shall commence on the day immediately following the previous Lease Year.

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

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

“Maintenance Capital Reserve” shall have the meaning provided in Section 12.02.

“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 (or an Tax Credit Project Owner’s interest in a Sublease in accordance with Article 38), *provided however* that such holder: (i) is an Institutional Lender; or (ii) has been approved by Landlord prior to the entering into of such Mortgage, which consent shall be in Landlord’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 Ten Million Dollars (\$10,000,000).

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

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

“Notice” shall have the meaning provided in Section 25.01.

“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 mean the date that is two hundred seventy (270) days after the Final Completion Date, subject to Unavoidable Delays.

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

“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 C 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 or base rate announced as such from time to time by Citibank, N.A., or its successors, 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 thirty (30) days each.

“Project” shall mean (i) one or more Buildings erected on the Premises and for the operation, maintenance and management by Tenant of a low income/affordable senior living residences facility (or facilities, as the case may be) on the Premises, which will include approximately one hundred fifty (150) Residential Units, and (ii) surface parking and related public areas, all as more particularly described in this Lease and on Exhibit B attached hereto, together with all Fixtures, and other Improvements on the Premises (including, without limitation, Capital Improvements) and any and all Restorations, alterations and replacements thereof, additions thereto and substitutions therefor.

“Project Operating Expenses” shall mean, with respect to each Lease Year (or any Calendar Quarter or other period of time, as applicable) all operating expenses of the Tenant for the use, operation and management of the Premises, including without limitation, (i) all public and private utilities and services and any easement or agreement maintained for the benefit of the Premises, (ii) Impositions (whether paid directly or into an Impositions Account in accordance with this Lease), (iii) insurance required to be maintained by Tenant pursuant to Article 7 of this Lease, (iv) all amounts due to Mortgagees under Mortgages (other than in connection with the Housing Blueprint Loan) (to the extent such amounts are not in duplication of other items that are Project Operating Expenses herein (e.g. Impositions)), (v) all repairs and replacements required under this Lease (or any Sublease or Residential Lease that is the obligation of Tenant, as landlord, provided the same is commercially standard in a first-class senior residential facility in the Fairfax

County, Virginia area), (vi) Capital Improvements, (vii) reasonable reserves for the Premises set aside by Tenant, and (viii) management fees payable by Tenant related to the Approved Property Manager, and (ix) any reasonable third-party out-of-pocket audit, accounting and legal costs and fees incurred by Tenant. Project Operating Expenses shall only include those expenses incurred by Tenant, as opposed to expenses incurred by the Tax Credit Project Owners.

“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 D, attached hereto and made a part hereof.

“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) Business Days after Final 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 Final 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 Landlord, 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 Final Completion or prior redetermination, whichever is latest.

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

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

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

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

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

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

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



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

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

“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 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.

“Sublease” shall mean a sublease from the Tenant, as sublandlord, to a Tax Credit Project Owner, as subtenant, as further described in Article 38.

“Sublease Gross Project Revenue” shall have the meaning provided in Article 38.

“Sublease Net Cash Flow” shall have the meaning provided in Article 38.

“Sublease Project Operating Expenses” shall have the meaning provided in Article  
38.

“Sublease Rent” shall have the meaning provided in Article 38.

“Tax Credit Project Owner” shall mean a Virginia limited partnership having APAH or an entity Controlled by APAH as its general partner and having a Tax Credit investor as its limited partner. The Tax Credit Project Owner will act as the subtenant under a Sublease, will receive an award of Tax Credits, and will own a portion of the Project for purposes of Section 42 of the Internal Revenue Code and the regulations promulgated thereunder, as further described in Section Article 38.

“Tax Credits” shall have the meaning provided in Article 38.

“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.

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

“Term” shall mean the term of this Lease as set forth in Article 2 hereof.

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

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

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

“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 Landlord or its obligations hereunder, delays incurred by Landlord due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions imposed by Landlord, in its governmental or regulatory capacity), enemy action, civil commotion, fire, unavoidable casualty or other similar causes beyond the control of Landlord (but not including Landlord’s insolvency or financial condition); in each case provided (x) such party shall have notified the other party reasonably promptly after such party knows of the occurrence of same and the effects of which a prudent Person in the position of the party asserting such delay could not have reasonably prevented and (y) such party takes reasonable steps to minimize the impact of such event upon the performance in question and keeps the other party reasonably informed, upon request, of the nature of the steps so taken and of the progress of the performance which is subject to Unavoidable Delay.

## ARTICLE 2

### PREMISES AND TERM OF LEASE

Section 2.01. Premises. Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, as more particularly described in Exhibit A, attached hereto and made a part hereof, 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 Landlord in and to the land lying in the streets, avenues, ways and roads in front of and adjoining said Premises;

(c) all existing Improvements (including without limitation, the storm-water sewer management system) 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. Landlord and Tenant agree that, upon execution of this Lease, Exhibit A may contain a visual depiction of the Land. Prior to Commencement of Construction under this Lease, Tenant shall conduct a survey of the Land which provides, *inter alia*, a metes and bounds description of the Land and Landlord 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 Landlord and Tenant.

Section 2.03. Term. The term of this Lease is seventy-five (75) years (the “Term”). Landlord 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 a senior living facility and for no other purpose.

Section 2.05. Ownership of the Improvements. During the Term, ownership and title to all Improvements and personal property located on the Premises (other than fee title to the land) 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 to the owners of real property. Immediately upon the expiration of the Term, all right, title, and interest in the Improvements and personal property of Tenant located on the Premises (excluding any personal property of Residential Tenants) shall vest in Landlord without further action of Landlord or Tenant being necessary or required.

Section 2.06. Landlord’s Right to Terminate. Subject to the rights of a Mortgagee under Section 10.04, in the event that Final Completion has not occurred by (or, in Landlord’s reasonable judgment, is not contemplated to occur by) the Final Completion Date, Landlord 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 Landlord’s intent to terminate (a “Termination Notice”) if the Final Completion of the Project does not occur by a date certain on or after the Outside Final Completion Date; provided, however, that expiration of the statutory lien period provided in Section 43-4 of the Code of Virginia shall not be an element to determine whether Final Completion has occurred prior to the Outside Completion Date (or such later date for Final Completion, as provided in the Termination Notice) if a Termination Notice is sent. Such Termination Notice must be provided not less than 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 against ninety (90) days to achieve Final Completion. Upon expiration of said notice period, if Final Completion has not yet occurred, Tenant shall provide to Landlord copies of the Plans and Specifications and such other similar materials related to the Project and assign any Construction Agreements to Landlord for the Project that are requested by Landlord, and this Lease shall terminate in accordance with Article 31 of this Lease.

### ARTICLE 3

#### RENT

Section 3.01. Base Rent. Commencing on the Commencement Date, Tenant shall pay Base Rent to Landlord with respect to each calendar year. The annual Base Rent shall be payable on May 1<sup>st</sup> of each year with respect to the preceding calendar year. The Base Rent shall be paid to Landlord, in currency which, at the time of payment, is legal tender for public and private debts in the United States of America, without notice or demand, in the manner set forth in this Section.

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

#### Section 3.03. Net Lease; Audit Rights.

(a) It is the purpose and intention of Landlord and Tenant, and the parties hereto agree that Base Rent shall be absolutely net to Landlord 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 Landlord or a Depository in accordance with this Lease, all such Additional Costs during the term of this Lease shall be reimbursed to Landlord on demand, except as otherwise specifically provided in this Lease.

(b) Tenant shall submit to Landlord with each annual payment of Base Rent, a complete statement made and certified by a duly authorized officer of Tenant, showing accurately in reasonable detail the calculation of Tenant's Other Net Cash Flow and Sublease Net Cash Flow made by Tenant and the Tax Credit Project Owners or other sublessees under Subleases, concessionaires, licensees, if any, upon and within the Premises during the preceding calendar year and following the expiration or termination of the Term a like statement (and all such statements under this clause with respect to the Tax Credit Project Owners shall also be audited by a certified public accountant reasonably acceptable to Landlord) covering the prior calendar year or then expired portion of the calendar year or fractional part thereof if at the end of the Term, as applicable.

(c) Tenant shall keep during the Term, for a period of three (3) consecutive years following the end of each calendar year, a permanent, complete and accurate record of all Gross Project Revenue, Sublease Gross Project Revenue, Project Operating Expenses, Sublease Project Operating Expenses and all other information necessary to determine Tenant's Other Net Cash Flow derived from the Premises for such calendar year. All such books and records kept by Tenant in relation to the Project and shall be open to the inspection and audit of Landlord and its representatives or agents at all reasonable times during ordinary business hours and upon reasonable prior notice. Tenant shall also submit to Landlord on or before the ninetieth (90<sup>th</sup>) day following the end of each calendar year, a complete statement showing accurately in reasonable detail the amount of Gross Project Revenue, Sublease Gross Project Revenue, Project Operating Expenses, Sublease Project Operating Expenses and all other information necessary to determine Tenant's Other Net Cash Flow derived from the Premises, each audited by a certified public accountant reasonably acceptable to Landlord covering the Lease Year (or Lease Years) that occurred (in whole or in part) during such calendar year. Upon the failure of Tenant to promptly supply Landlord with the statements required hereunder, Landlord shall be entitled, with at least one Business Day prior notice to Tenant, to conduct an audit of Tenant's books for such period or periods during which Tenant has failed to supply Landlord with statements at the cost and expense of Tenant together with an administrative fee of \$2,000.00, which shall be considered Additional Costs hereunder. If any audit by Landlord or its agents of Tenant's records shall reveal a deficiency in any payment of Base Rent, Tenant shall forthwith pay the Landlord the amount of the deficiency together with interest at the rate of ten (10%) percent per annum from the date when such payment of Base Rent should have been made, together with the reasonable cost of such audit.

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

Section 3.05. Reimbursement of Expenses. Tenant shall reimburse Landlord upon demand for all: (a) Additional Costs paid directly by Landlord in accordance with the terms of this Lease; and (b) expenses, including without limitation reasonable attorneys' fees and disbursements, paid or incurred by Landlord in connection with any Event of Default, or arising out of any indemnity or "hold harmless" agreement given or made by Tenant to Landlord in this Lease, or otherwise incurred by Landlord in connection with the successful enforcement of its rights and Tenant's obligations under this Lease. Upon Tenant's request, Landlord shall provide reasonable documentation of any Additional Costs paid by Landlord. 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 and permit fees; (f) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (g) fines, penalties and other similar 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 (vi) any amounts due to Landlord under this Lease, including Base Rent and Additional Costs (or any portion of either) payable by Tenant hereunder, each such Imposition, or installment thereof, during the Term to be paid not later than the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest 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.

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

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

Section 4.04. Impositions Beyond Term. Any Imposition relating to a period, a part of which is included within the Term and a part of which is included in a period 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 Landlord 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 Landlord 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; provided, however, that such apportionment shall be made at such time as there are no outstanding payment defaults.

Section 4.05. Tenant's Contest. Tenant may contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently that are conducted in good faith, and payment of any Imposition being contested may be postponed if, and only as long as:

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

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

(c) Upon the termination of such proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as finally determined in the proceedings, together with any costs, fees (including attorney's fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, Depository will return, with interest, if any, any amount deposited with it, *provided however*, that Depository, at Landlord's request, 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 any proceedings, Landlord, in its reasonable opinion, deems the amount deposited with Depository insufficient, Tenant, within fifteen (15) Business Days after Landlord's demand, shall make a deposit of additional sums or other security to Depository as Landlord requests, and if Tenant fails to make the additional deposit, Landlord may direct Depository to apply the amount already deposited with Depository to the payment, removal and discharge of any Imposition, plus interest and penalties on the Imposition and costs, fees (including attorney's fees and disbursements) or other liability accruing in any of the proceedings, and the balance of any deposit (plus interest earned thereon), if any, shall be returned to Tenant. If the amount held by Depository is insufficient to pay the Imposition in full, Tenant shall pay to Landlord (or directly to the Governmental Authority, as Landlord directs in writing) the amount of the deficiency within ten (10) Business 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. Landlord Cooperation in Proceedings. Landlord 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 Landlord, in which event, Landlord 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 Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. 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 Landlord, Landlord, 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 Landlord shall assign any such refund, credit, or other recompense to Tenant or as Tenant may direct, except that Landlord shall be entitled to any refund, credit, or other recompense in connection with amounts paid by Landlord for any Impositions or as reimbursement for any amounts paid by Landlord in connection with such proceedings, if any.

Section 4.08. Tax Bills. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition 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. Landlord, by written notice, may at any time after the occurrence and during the continuance of an Event of Default hereunder:

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

(b) require that Tenant provide to Landlord evidence of payment of any Impositions that Landlord allows Tenant to pay directly during such Event of Default, that are payable on a monthly or more frequent basis within ten (10) Business Days after the Due Date for such Impositions. Landlord may, at any time after the occurrence and during the continuance of an Event of Default, require that any Impositions that Landlord has allowed Tenant to pay directly



be subject to the monthly deposit requirements of Section 5.01(a) and the other provisions of this Article 5.

Section 5.02. Deposit of Impositions. After the occurrence and during the continuance of an Event of Default, Tenant, upon the demand of Landlord 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, Landlord 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 ensure 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.

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 Landlord, 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 Landlord receives information from the entity or entities imposing such Imposition that an Imposition will be increased and the monthly deposits then being made by Tenant under this Section 5.01 would be insufficient to pay such Imposition thirty (30) days prior to the Due Date thereof, then upon notice from Landlord 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. Landlord's Rights During an Event of Default. At Landlord's option after the occurrence and during the continuance of an Event of Default by Tenant, Landlord may withdraw any monies deposited pursuant to Articles 4 or 5 for the cure of any monetary Event of Default. Landlord and Tenant 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 Landlord will have a unilateral right to withdraw money from the

Impositions Account after the occurrence and during the continuance of an Event of Default by Tenant to pay Impositions or to cure a monetary Event of Default under this Lease and Tenant 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 Landlord's direction, be paid and applied to Landlord in payment for such Event of Default and any and all other sums due under this Lease and Tenant 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

In the event that any payment of Base Rent, Additional Costs or Impositions (to the extent the amount of such Impositions is due to be paid to Landlord) 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 (or if with respect to Impositions, the Due Date for such Impositions)), a late charge on the sums so overdue equal to the Involuntary Rate, for the period from the due date to the date of actual payment, shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment. The late charges will be considered Additional Costs and shall be paid by Tenant within ten (10) Business Days after demand. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24, provided however, this Article 6 is subject to Tenant's right to contest certain Additional Costs or Impositions, and no such late charge will be incurred while Tenant is contesting any such matters in good faith and in accordance with the terms of this Lease.

## ARTICLE 7

### INSURANCE

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

(a) At all times during the Term after Substantial Completion of any Improvements on the Premises, Tenant shall maintain or cause to be maintained insurance for the Premises, and for any and all Improvements, equipment, motors and machinery owned or leased by Tenant and located, installed in or used in connection with the Premises, including all alterations, renovations, replacements, substitutions, changes and additions thereto, such insurance shall insure against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered) and such other hazards, casualties, risks and contingencies now covered by or that

may hereafter be considered as included within a standard “broad form” policy and against loss or damage by other risks and hazards covered by a standard extended coverage insurance policy (including without limitation, fire, lightning, hail, hurricane, windstorm, tidal wave, explosion, acts of terrorism, riot and civil commotion, vandalism, malicious mischief, strike, water damage, sprinkler leakage, burglary, theft, mold and microbial matter (to the extent available at commercially reasonable rates) in an amount equal to the Replacement Value, subject to commercially reasonable sub-limits. Tenant shall name Landlord and any Mortgagees as additional insureds on such policy or policies.

(b) At all times during the Term, Tenant shall maintain and keep in force commercial general liability insurance in standard form, protecting Tenant, and naming Landlord and any Mortgagees as additional insureds, against personal injury, including without limitation, bodily injury, death or property damage and elevator and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence, subject to adjustment every year after the end of the first Lease Year to reflect the increase, if any, in the Consumer Price Index from the end of the first Lease Year; provided however, that all such increases shall be deferred each year until the sum of the total increase in the Consumer Price Index equals at least One Million Dollars (\$1,000,000) in the aggregate, at which time Landlord shall provide written notice to Tenant setting forth such calculation and requiring that the applicable amount of commercial general liability insurance hereunder be correspondingly increased by One Million Dollars (\$1,000,000); provided further, however, this One Million Dollars (\$1,000,000) threshold will again be deferred each year until the One Million Dollars (\$1,000,000) threshold is reached again in the manner set forth hereinabove. All such policies shall cover the entire Premises.

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

(d) At all times during the Term, at its own cost and expense, Tenant shall provide and keep in force or cause to be provided and kept in force a policy covering business automobile liability which shall have minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability, subject to adjustment every year after the end of the first Lease Year to reflect any increases that are consistent with and customary for other comparable properties of comparable age and quality in the Northern Virginia area. This shall be an “any-auto” type of policy including owned, hired, non-owned and employee non-ownership coverage, if applicable. Landlord and Mortgagees shall be listed as additional insureds on such policy.

(e) Beginning when Tenant first commences to rent/sublease of any portion of the Premises (e.g., Residential Leases) and at all times thereafter during the Term,

Tenant shall maintain business or rental interruption insurance (including rental value) in form and substance reasonably acceptable to Landlord and any Mortgagee and in an annual aggregate amount equal to the estimated gross revenues from the Residential Leases (including, without limitation, the loss of all rental payable by all of the Residential Tenants under Residential Leases (whether or not such leases are terminable in the event of a fire or casualty)), such insurance to cover losses for a period from the time of loss until all repairs are fully completed with reasonable diligence and dispatch with an extended period of indemnity of one hundred eighty (180) days.

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

Section 7.02. Required Insurance During Construction Work. In addition to the insurance required to be carried in Section 7.01 or otherwise in this Lease, during any time that Tenant is performing or is causing the performance of Construction Work on the Premises, Tenant shall maintain (or cause to be maintained) the following insurance on the Premises:

(a) a complete value “all risk” builders risk insurance on the Premises and any and all Improvements for which Construction Work is being done in an amount equal to the Replacement Value thereof. Landlord and Mortgagees shall be listed as additional insureds on such policy;

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

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

(d) errors and omissions insurance policies for the architects, engineers and other professionals engaged by or on behalf of Tenant in connection with the Construction Work in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, subject to adjustment every year after the end of the first Lease Year to reflect any increases that are consistent with and customary for other comparable properties of comparable age and quality in the Northern Virginia area.

#### Section 7.03. Additional Insurance Requirements.

(a) All insurance policies required by this Article 7 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) Landlord 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 Landlord such proofs of loss and other instruments which may reasonably be required for the purpose of obtaining the recovery of any such insurance moneys.

(c) Tenant 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 Landlord and any other parties designated by Landlord with a bona fide insurable interest are included therein as additional insureds with respect to liability and loss payees with respect to property, as their interests may appear, with loss payable as provided in this Lease. Tenant shall immediately notify Landlord 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 Landlord 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 Landlord at least thirty (30) days before the expiration thereof. If Tenant shall fail to procure any such policies or renewals thereof in accordance herewith, Landlord may procure the same, and Tenant shall be obligated to reimburse Landlord as Additional Costs hereunder for all costs incurred by Landlord in connection therewith.

Section 7.04. Deposit of Insurance Premiums. Landlord, by written notice, may at any time after the occurrence and during the continuance of an Event of Default 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 Landlord may (a) require payment to be made on demand or (b) pay the same, Landlord may at any time after such Event of Default has occurred and is continuing, pay such insurance premiums, whereupon Tenant shall be obligated to reimburse Landlord 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 ensure payment of insurance premiums, 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 7.04.

Section 7.05. 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 Landlord of such payment, shall be delivered by Tenant to Landlord. Landlord 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 Landlord, obtain and deliver to

Landlord, within fifteen (15) Business Days after the date of any such request, a certificate from Tenant's insurer or independent insurance agent certifying to Landlord, as certificate holder, in reasonable detail the insurance policies then being maintained by Tenant in accordance with the requirements of this Article 7, and providing for the non-cancellation of such policies except upon thirty (30) days prior written notice to Landlord (or ten (10) Business Days in the case of non-payment of premium).

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

Section 7.07. Waiver of Subrogation. Tenant hereby waives any and every claim which arises or may arise in its favor and against Landlord during the Term, for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises or any portion thereof or any claims for loss for which Landlord may be liable under this Lease, which loss or damage is covered by valid and collectible insurance policies, to the extent that such loss or damage is recoverable under such policies. This waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss or damage to the Premises or any of Tenant's (or its Residential Tenants, subtenants or licensees) property located within or upon, or constituting a part of, the Premises. Inasmuch as the said waiver will preclude the assignment of any claim by way of subrogation (or otherwise) to an insurance company (or any other person), Tenant agrees immediately to give each insurance company which has issued to it policies of insurance, written notice of the terms of this waiver, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of coverage by reason of the waiver.

## ARTICLE 8

### USE OF INSURANCE PROCEEDS

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

(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 Landlord immediate notice thereof, except that no notice or related approvals from Landlord shall be required if the cost of repairs, alterations, restorations, replacements and rebuilding (collectively, "Restoration"), as reasonably estimated by Tenant, will be less than One Million Dollars (\$1,000,000) (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). 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 Landlord, 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 Landlord, 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 as required by this Article 8, 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, Landlord 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 Landlord for all amounts spent in connection with any Restoration which was undertaken and shall pay over to Landlord, within ten (10) Business Days after demand, the remainder, if any, of the Restoration Funds previously received by it. Tenant’s obligations for any Restoration which commenced (or which Tenant was obligated to commence) under this Section 8.01 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, or such longer period as may be reasonably required as agreed to by Landlord and Tenant, in each party’s reasonable judgement. 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 Landlord be obligated to Restore the Project or any portion thereof or to pay any of the costs or expenses thereof.

**Section 8.02. Restoration Approvals.** Prior to commencing any Restoration, Tenant shall submit completed final drawings and plans and specifications (which may be in the form of field marked copies of the original plans and specifications) for the Restoration prepared by an Architect which comply with the all Applicable Laws and, to the extent possible given the amount of damage and destruction to the Project, materially conform to the original Plans and Specifications approved by Landlord for the Initial Construction Work or with any changes as mutually agreed to by Tenant and Landlord, acting in their reasonable discretion (the “Restoration Plans and Specifications”).

Landlord shall review the proposed Restoration Plans and Specifications to determine whether they do so materially comply. If Landlord determines that they do so comply, Landlord shall so notify Tenant in writing. If Landlord reasonably determines that the Restoration Plans and Specifications, as so revised, do not materially comply with the first sentence of this Section (and any changes agreed to by the parties), Landlord shall so notify Tenant, specifying in writing in what respects they do not so comply. In such latter event, Tenant and Landlord shall reasonably cooperate with one another in addressing the comments of Landlord. 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 Landlord for review. The initial review by Landlord shall be carried out within twenty (20) Business Days of the date of submission of the Restoration Plans and Specifications; Landlord's review of revisions to the Restoration Plans and Specifications shall be carried out within twenty (20) Business Days of the date of submission of the revised Restoration Plans and Specifications. If Landlord has not notified Tenant of its determination within the applicable period, Landlord shall be deemed to have approved the Restoration Plans and Specifications and determined that they materially comply with this Section, with any changes mutually agreed to by Tenant and Landlord.

Section 8.03. Control of Proceeds. So long as a Mortgagee holds a Mortgage on the Premises, the proceeds of any fire or casualty insurance with respect thereto may be made payable to such Mortgagee or, if provided in the Mortgage, an insurance trustee, for application in accordance with the terms of the Mortgage, and such proceeds 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 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 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 Landlord therefrom to



the extent, if any, of the necessary, reasonable and proper expenses (including reasonable attorneys' fees) paid or incurred by Depository and Landlord in the collection of such monies. Depository 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 Landlord with an estimate of the cost of such Restoration, prepared by an Architect. Landlord, at Landlord's expense, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Restoration. If there is any dispute as to the estimated cost of the Restoration, such dispute 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 Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation in the Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant. If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration of the Premises is created or permitted to be created by Tenant and is filed against Landlord, or any assets of, or funds appropriated to, Landlord, Tenant 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) (A) all payments theretofore made to Tenant out of the Restoration Funds.

(e) Notwithstanding the foregoing, if Landlord makes the Restoration at Tenant's expense, as provided in Section 8.01(a), then Depository shall pay over the Restoration Funds to Landlord, upon request, to the extent not previously paid to Tenant pursuant to this Section 8.04, and Tenant shall pay to Landlord, within ten (10) Business Days after demand, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to complete the Restoration. Upon completion of the Restoration, Landlord shall deliver to Tenant a certificate, in reasonable detail, setting forth the expenditures made by Landlord for such Restoration.

(f) There shall be submitted to Depository and Landlord the certificate of Architect in industry standard form to the effect that (i) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses 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 Landlord an official search, or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien with respect to the Premises or the Restoration created or permitted to be created by Tenant affecting Landlord, or the assets of, or funds appropriated to, Landlord, which had not been satisfied or discharged (by bonding or otherwise) except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn; and

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

#### Section 8.05. Major Casualty.

(a) If any loss, damage or destruction occurs, the cost of Restoration of which equals or exceeds Two Million Dollars (\$2,000,000) in the aggregate, determined as provided in Section 8.04(b) (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, 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 Two Million Dollars (\$2,000,000) (as such amount is increased as provided in Section 8.05(a)), such cost to be determined as provided in Section 8.04(b), to the extent that any portion of the Restoration involves, (i) a material changes to the exterior of the Project, or (ii) a change in the height, bulk or setback of the Project from the height, bulk or setback existing immediately prior to the damage or destruction, then Tenant shall furnish to Landlord 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 Landlord'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 Landlord theretofore has approved pursuant to Sections 8.02 or Article 11, Tenant shall submit the proposed modifications to Landlord. Landlord 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 Landlord 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 Landlord's objections and shall deliver same to Landlord for review. Each review by Landlord shall be carried out within twenty (20) Business Days of the date of delivery of the plans and specifications, as so revised (or one or more portions thereof), by Tenant, and if Landlord shall not have notified Tenant of its determination within such twenty (20) Business Day period, Landlord shall be deemed to have determined that the proposed changes are satisfactory.

Section 8.06. Deposit of Proceeds. If the cost of any Restoration, determined as provided in Section 8.04(b), exceeds both (i) Two Million Dollars (\$2,000,000) (as such amount shall be increased as provided in Section 8.05(a)) and (ii) the Restoration Funds, after all required payments to Mortgagees are made, then, prior to the commencement of such Restoration, Tenant shall deposit with Depository, as security for completion of the Restoration, a bond, cash or other security reasonably satisfactory to Landlord in the amount of such excess, to be held and applied by Depository in accordance with the provisions of Section 8.04; *provided however*, that if Tenant has made arrangements for additional financing from a Mortgagee for portions of the cost of the Restoration then such portion of the Restoration costs expected to be advanced by the Mortgagee for such purpose need not be deposited with the Depository, and the new Mortgagee may act as the Depository with respect to disbursement of the insurance proceeds then available.

Section 8.07. No Abatement. This Lease 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 waives any and all rights available at law or in equity to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of all Base Rent, Additional Costs and Impositions required by this Lease 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 Two Million Dollars (\$2,000,000) (as such amount shall be increased as provided in Section 8.05(a)), Tenant has not theretofore delivered same to Landlord, Tenant shall deliver to Landlord, within ninety (90) days of the completion of such Restoration, a complete set of "as built" plans therefore (which may be in the form of field marked copies of the original plans and specifications) together with a statement in writing from Tenant or its Architect that such plans are complete and correct in all material respects.

Section 8.09. Casualty Where Restoration is Impossible or at End of Term. In the event of substantial damage or destruction by a casualty at any time after the seventieth (70<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 Landlord, 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 Base Rent, Additional Costs or other amounts owed by Tenant to Landlord under this Lease; and fourth, to be divided between Tenant and Landlord in relation to the loss sustained by each, taking into consideration the remaining Term and the discounted value of Landlord's remainder interest in the Improvements destroyed by such destruction, Tenant's interest in the remainder of the Term and the Improvements and such other matters as shall be appropriate to determining the amount of such loss after any taxes or other charges have been paid. If the parties are unable to agree on such division at the end of the immediately preceding sentence, then the division shall be made pursuant to dispute resolution in the manner provided in Article 34 hereof. Tenant, at its sole expense, shall deliver to Landlord any plans or other technical materials related to the design and construction of the Improvements and, at the request of Landlord, 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 Landlord and the payment of such portion of any such insurance proceeds due to Landlord pursuant to the terms of this Section 8.09, and provided that no Tenant Event of Default exists hereunder, this Lease shall be terminated without liability or further recourse to the parties hereto, provided that any Base Rent and Additional Costs owed by Tenant to Landlord as of the date of said termination 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 Landlord, 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 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 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 Landlord 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 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 remaining with Depository after completion of the Restoration and Landlord receiving its Respective Allocation pursuant to Section 9.04 below, 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, Landlord and Tenant each agree to cooperate in obtaining the highest award possible and agree to request that separate awards be made for Landlord’s and Tenant’s interests in the Premises and the Improvements. In the event that separate awards are not made for Landlord’s and Tenant’s interests in the Premises and the Improvements, any compensation which may be awarded on account of the taking of all of the Premises, and Improvements by eminent domain shall be fairly allocated between the ownership of the fee and the remainder of the leasehold estate in accordance with the loss and damage suffered by each, taking into consideration all the relevant facts and circumstances, including, but not limited to, the then present value of the Premises and all of the Improvements and the present value of Landlord’s remainder interest in such Improvements as well as the value of Landlord’s interest in the fee and Tenant’s interest in the Lease for the remainder of the Term (i.e. from the date the Premises is taken until the Fixed Expiration Date). If the parties are unable to agree on the allocation of the condemnation award between Landlord and Tenant (the “Respective Allocations”) within 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, Landlord and Tenant shall each designate in writing, within five (5) Business 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 Landlord or Tenant or their respective affiliates. Within fifteen (15) Business 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. Landlord 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 Landlord 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) Landlord and Tenant shall each bear the cost of its Appraiser and Landlord 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 Landlord 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 Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay all Base Rent and Additional Costs and Impositions payable by Tenant hereunder without reduction or abatement and perform all of Tenant’s other obligations under this Lease, and Tenant 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 Landlord and Tenant as of the Expiration Date; and further *provided however*, that the amount of any award or payment allowed or retained for the Restoration of the

Project and not previously applied for such purpose shall remain the property of Landlord, 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. Landlord, 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 Residential Tenants) 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 Residential Tenants (but not including any Fixtures) and for relocation expenses of Tenant or its Residential Tenants, and all awards and damages in respect thereof shall belong to Tenant or its Residential Tenants, as applicable, and Landlord hereby waives any and all claims to any part thereof; *provided however*, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant and its Residential Tenants, or awards and damages, 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 Landlord 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 all or any portion of the Premises (except in connection with a Residential Lease or other subleases typically entered into in connection with ancillary or incidental uses typically found in affordable senior living facility projects, and except in accordance with Article 38 below);

(iii) nor 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) in accordance with Article 38 below, so long as Control of Tenant does not change (i.e. the possession of power to direct or cause the direction of the management and policy of Tenant remains the same as prior to such transfer of interests or capital stock) and such transfer made in accordance with this proviso shall not constitute a Transfer.

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

(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 Landlord, which Landlord may grant or withhold in its sole and absolute discretion (subject to Section 10.01(e) below), *provided however*, that Landlord’s consent will not be unreasonably withheld, conditioned or delayed so long as (i) no Event of Default 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, the County of Fairfax, Virginia or any agency, department, political subdivision (including without limitation, the Fairfax County Redevelopment and Housing Authority), public authority or public benefit corporation of either, or (iii) with respect to whom any notice of substantial monetary default which remains uncured has been given by the Commonwealth of Virginia, the County of Fairfax, Virginia or any agency, department, public authority or any public benefit corporation of either.

(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 Landlord of the proposed transaction and submit to Landlord 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 Landlord may reasonably require:



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

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

(iii) a certificate of the assignee or subtenant (or an authorized officer, general partner or managing member thereof), setting forth (x) in the case of a partnership or limited liability company, the names and addresses of all partners (general and limited (if applicable)) or members thereof of the assignee having a five percent (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 Landlord may reasonably request to permit Landlord to evaluate whether the proposed transferee or sublessee meets the criteria set forth in Section 10.01(e).

Landlord 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 Landlord denies its consent to such transaction or determines that the information provided in the applicable certificate is insufficient to determine whether or not Landlord's consent may not be unreasonably withheld, conditioned or delayed, then Landlord shall notify Tenant in writing specifying the reasons for such denial or determination. If Landlord shall not have notified Tenant of such denial or determination within such period, Landlord shall be deemed to have consented to the proposed transaction and to have determined that the documents and the information submitted establish compliance with the applicable provisions of this Section 10.01. Tenant agrees to bear and shall pay or reimburse Landlord on demand for all out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection with the review, approval and documentation of any Transfer under this Article 10. If Landlord has consented (or be deemed to have consented) to the proposed Transfer or has determined that the documents and information establish compliance with the applicable provisions of this Section 10.01, such consent or determination will still be conditioned upon the delivery to Landlord of the applicable executed documents of Transfer, assignment, or conveyance and receipt of payment or reimbursement by Landlord as set forth in the preceding sentence. Any attempted or purported Transfer, if made in contravention of this Article 10, 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, Landlord will not unreasonably withhold its consent to any proposed Transfer provided no Event of Default is then existing hereunder (or such Event of Default is cured simultaneously with such Transfer) and that the proposed transferee satisfies the following conditions:

(i) the proposed transferee 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 Landlord (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 shall have or shall be Controlled by an entity 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 pay all of Landlord's reasonable out-of-pocket costs and expenses related to its review and approval of the Transfer.

(f) Subject to compliance by a Mortgagee with the provisions of Sections 10.04 hereof, the requirements in this Section 10.01 of consent by Landlord 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 Landlord a written notice advising that such a subsidiary should be so deemed and certifying (i) that such subsidiary is wholly owned (directly or indirectly) by such Mortgagee or its direct parent and (ii) that such subsidiary is authorized to act in the place and stead of such Mortgagee.

(g) Any Transfer approved by Landlord in accordance with, or otherwise allowed (with or without Landlord's approval) pursuant to the terms of this Article 10 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 or Article 38.

(i) Any assignment of this Lease will not be effective for purposes of this Lease unless and until the assignee, in the case of an assignment, executes, acknowledges and

delivers to Landlord an agreement that provides that the assignee (A) assumes the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such assignment, and (B) agrees that the provisions of this Article 10 will continue to be binding upon assignee in the future. Tenant covenants that, if Tenant engages in an assignment or transfer in violation of the provisions of this Lease, Tenant shall remain fully and primarily and jointly and severally liable for the payment of all Base Rent, Additional Costs and Impositions due and to become due under this Lease and for the performance and observance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Tenant to be performed or observed until a Permitted Transfer occurs.

(j) Notwithstanding anything to the contrary in this Section 10.01 to the contrary, 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 Landlord'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 F and Section 26.04 below.

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

Section 10.02. Consent Limited to Transaction. Any consent by Landlord 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 Landlord to any further Transfer of this Lease or the interests of Tenant.

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

(a) Tenant shall offer (the "Offer") to transfer to Landlord the Proposed Transfer Premises pursuant to terms determined in Tenant's sole and absolute discretion (the "Offer Terms"). The Offer 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 Landlord during the Offer Period, Landlord 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 as a result of a default by Landlord after acceptance, then Tenant shall be entitled to Transfer the Proposed Transfer Premises to any third party in accordance with this Section 10.03(c). Landlord 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 Landlord does not elect to accept the Offer, Landlord may, at its election, make a counteroffer (“Counteroffer”) setting forth the price and other material terms on which Landlord would be willing to purchase the Proposed Transfer Premises, but Tenant has no obligation to accept or otherwise address any such Counteroffer. If Tenant elects to accept the Counteroffer, the parties shall close on the Proposed Transfer Premises in accordance with this Section 10.03(c).

(c) If the Offer is not accepted by Landlord (or a proposed Counteroffer is not accepted by Tenant) in the manner hereinabove provided, Tenant may transfer the Proposed Transfer Premises at any time within nine (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 Landlord 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 Landlord during such nine (9) month period, the procedures in subsections 10.03(a) and (b) shall apply.

(d) The Landlord’s right of first offer set out in this Section 10.03 is intended to apply only to the sale of the Proposed Transfer Premises by Tenant and is not intended to apply to a Mortgagee or another purchaser of the Premises pursuant to a foreclosure of a Mortgage or through a deed or instrument of transfer delivered in lieu of such foreclosure, which is not subject to this Section 10.03, *provided however*, 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 which at any time and from time to time during the Term, *provided however*, that (x) until Final Completion has occurred, all proceeds from any loan secured by Tenant’s interest in this Lease 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 Section 10.05 and such other rights as are expressly granted to Mortgagees in this Lease. 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 in substance the following provisions:

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

"The purchaser or transferee of said Lease 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 after the foreclosure or transfer and, that no further or additional mortgage or assignment of the Lease hereby mortgaged may be made except in accordance with the provisions contained in Article 10 of the Lease.

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

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

"In the event of foreclosure, the mortgagee 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.

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

(b) Tenant or the Mortgagee shall give to Landlord 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) Landlord 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 Landlord to Tenant hereunder (including any notices of Event(s) of Default under the Lease) at the same time as and whenever any such notice shall thereafter be given by Landlord to Tenant, and no such notice by Landlord 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. Landlord 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. Landlord 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 Landlord within the applicable period afforded to Mortgagee hereunder.

(d) During any period in which Mortgagee, in good faith and acting with reasonable diligence and continuity, is attempting or in the process of curing (or caused to be commenced such cure) a non-monetary Event of Default within the time periods provided in Section 10.04(c), Landlord will not exercise any remedies to terminate this Lease or dispossess Tenant of possession thereof. At any time prior to the expiration of the additional cure period afforded Mortgagee under Section 10.04(c) to cure (or caused to be cured) the Event of Default, Mortgagee may send Landlord notice of its intention to institute foreclosure proceedings, and thereafter, provided Mortgagee commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Unavoidable Delays) and, upon obtaining such possession, commences promptly to cure the Event of Default and prosecutes the same to completion with all reasonable diligence and continuity (subject to Unavoidable Delays), Landlord will not exercise any remedies to terminate this Lease or dispossess Tenant of possession thereof; *provided however*, that: (i) Mortgagee shall have first delivered to Landlord, in writing, its agreement to cure (or caused to be cured), and (ii) during the period in which Mortgagee is curing (or causing such cure of) such Event of Default (and any foreclosure proceedings are pending), all of the other obligations of Tenant under this Lease are being duly performed (including, without limitation, payment of all Base Rent, Additional Costs and Impositions due hereunder (including further, without limitation, the payment of any Impositions or payments of installments for Impositions are being made to a Depository in accordance with Article 5 above)) within any applicable grace periods. However, at any time after the delivery of the aforementioned agreement, the Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord (except for any obligations assumed by the Mortgagee and accruing prior to the date it delivers such notice), and, thereupon, Landlord shall have the unrestricted right to terminate this Lease, dispossess Tenant of the Premises and to take any other action Landlord deems appropriate by reason of any uncured Event of Default by Tenant.

(e) Notwithstanding anything in this Section 10.04 to the contrary, a Mortgagee 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 Landlord may continue to pursue any and all remedies at law or in equity against the defaulting Tenant unless Tenant was released of such obligations, *provided further*, that any such remedies may not involve the disturbance of quiet possession of any Mortgagee, assignee or transferee of the Premises under this Lease or a New Lease).

(f) With respect to any non-monetary Event of Default, so long as a Mortgagee 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, Landlord 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 “Landlord’s Termination Rights”). In addition, with respect to any monetary Event of Default, Landlord shall not exercise any of Landlord’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, Landlord may exercise any of Landlord’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, Landlord further agrees that:

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

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



(iii) the holder of the Mortgage most senior in lien priority on this Lease 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, Landlord 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 Landlord'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, which New Lease shall become effective upon the termination of this Lease.

(a) Mortgagee shall send written notice to Landlord in accordance with Article 25 of its exercise of the option to obtain a New Lease at any time during which Mortgagee is exercising its cure rights within the applicable cure periods provided in Section 10.04 above and prior to Landlord exercising Landlord's Termination Rights and Landlord 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 commencing from the date of termination of this Lease and continuing for the remainder of the Term and upon all of the same agreements, terms, covenants and conditions of this Lease. Upon the execution of a New Lease, the New Tenant shall pay any and all sums which would at the time of the execution of the New Lease be due under this Lease but for its termination and New Tenant shall commence to remedy any non-monetary Events of Default from this Lease (that remains uncured in the New Lease) and that are of a nature or type that are capable of being cured by a party other than Tenant and New Tenant (or Mortgagee, on New Tenant's behalf) shall pay all costs and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with the Events of Default and termination of this Lease, the recovery of possession of said Premises and the preparation, execution and delivery of such New Lease. In the event of a dispute between the parties as to the reasonability of New Tenant's diligence in remedying non-monetary Events of Default as provided in the preceding sentence, such dispute shall be determined by dispute resolution as provided in Article 34. Landlord 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 Landlord has not previously have recovered possession of same. As between Landlord and such New Tenant, any such New Lease and the leasehold estate thereby created,

subject to the same conditions contained in this Lease, 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, Landlord 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 Landlord, Tenant or any Mortgagee, effect the transfer of Tenant's interest hereunder to the senior Mortgagee or its nominee or designee. Such Mortgagee may reject the transfer of this Lease upon such transfer upon giving notice thereof to Landlord no later than sixty (60) days after notice from Landlord 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 as described in the Plans and Specifications listed on Exhibit C. Tenant shall cause Final Completion of the Project on or before the Final Completion Date; provided, however, that an Event of Default shall not be deemed to have occurred with respect to Tenant's failure to cause Final Completion in a timely manner, until the Outside Final Completion Date has occurred. Until Final Completion of the Project, Tenant 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 Landlord with a copy of Tenant's Project Schedule, but Tenant is entitled to modify such Project Schedule from time to time as Tenant deems appropriate (except that Tenant may not modify the Project Schedule in a manner that would reflect Final Completion of the Project occurring after the Final Completion Date). Tenant shall promptly provide a copy of any revised Project Schedule to Landlord.

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) Two Million Dollars (\$2,000,000) (subject to adjustment as provided in Section 8.05(a)), 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 Landlord for such Construction Work, which consent shall not be unreasonably withheld, which request shall be accompanied by sufficient information to permit Landlord to fairly evaluate the request. Following any request by Tenant to Landlord to approve any proposed modifications to the Construction Work as set forth herein, Landlord shall, subject to the terms set forth hereinabove in this Section, review the information submitted to Landlord and notify Tenant in writing of Landlord's approval or disapproval of such submission within twenty (20) Business Days after its receipt of the same from Tenant. If Landlord disapproves any such modifications, Landlord's notice to Tenant shall set forth in reasonable detail the reasons for such disapproval. If Landlord fails to notify Tenant in writing of either its approval or disapproval of any such submission within twenty (20) Business Days after its receipt of the same from Tenant, then such submission shall be deemed approved by Landlord (but such deemed approval shall not extend to any agency, regulator or authority of Landlord's right to review and approve any proposed modifications to the Construction Work in its governmental capacity, if applicable). Landlord shall bear the costs for the reasonable fees and expenses of any registered architect or licensed professional engineer selected by Landlord to review the information provided by Tenant to Landlord in connection with such Construction Work and to inspect the Construction Work on behalf of Landlord or may request to rely on the inspecting architects or engineers selected by the Mortgagee for such purposes.

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

Section 11.04. Modification of Approved Plans and Specifications. Prior to the Commencement Date, Tenant has submitted and Landlord has approved the Plans and Specifications for the Project. If Tenant desires to modify the Plans and Specifications after they have been approved by Landlord in any way which will materially affect any aspect of the exterior of any Building or result in a change in the height, bulk or setback of any Building, Tenant shall submit the proposed modifications to Landlord. Landlord shall review the proposed changes to determine whether they materially conform to the Plans and Specifications originally approved by Landlord. A modification will be "material" or will "materially affect" the exterior of the Building if the costs associated with such modification exceed: (a) Three Hundred Thousand Dollars (\$300,000) on an occurrence basis; or (b) Six Hundred Thousand Dollars (\$600,000) in the aggregate in any twelve (12) month period, and in such event, Landlord shall have the review and approval rights set forth herein for each modification over the Six Hundred Thousand Dollars (\$600,000) aggregate that costs more than One Hundred Thousand Dollars (\$100,000) in any instance. The initial review by Landlord shall be carried out within twenty (20) Business Days of the date of submission of the proposed modifications to the Plans and Specifications. If Landlord

determines that they do so conform, Landlord shall so notify Tenant. If Landlord reasonably determines that the Plans and Specifications, as so revised, do not materially conform to the Plans and Specifications originally approved by Landlord, Landlord 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 Landlord, or (ii) revise the proposed modifications to so conform and resubmit them to Landlord for review. Each review by Landlord after the initial review shall be carried out within ten (10) Business Days of the date of submission of the proposed modifications to the Plans and Specifications. If Landlord has not notified Tenant of its determination within the time period for Landlord's review as outlined above, Landlord shall be deemed to have determined that they materially conform to the Plans and Specifications previously approved by Landlord. Landlord and Tenant agree that the ten (10) Business Day review period outlined above shall only apply to modifications previously reviewed and commented on by Landlord. To the extent Tenant submits new or additional modifications outside the scope of Tenant's original submission to Landlord or in addition to any changes requested by Landlord as a result of its initial review, Landlord shall have twenty (20) Business Days to review and comment on such new or additional modifications thereto. It is understood and agreed that any consent or approval by Landlord to a modification under this Section 11.04 is a consent or approval by Landlord 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 Board of Supervisors of Fairfax County in its governmental or regulatory capacity or the County of Fairfax, Virginia, or its agencies, departments or divisions (including without limitation the Department of Planning and Zoning) thereof with respect to any actions the foregoing may require or be requested to undertake that pertain in any manner to, any approval requests, inspections or other matters involving Governmental Authorities.

Section 11.05. Payment for Construction Work; Contested Matters. Tenant 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. Landlord's Right to Use Field Personnel. Landlord reserves the right to maintain, at its sole cost and expense, its field personnel at the Premises to observe Tenant's construction methods and techniques and Landlord 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 Landlord's personnel or designees shall impose upon Landlord responsibility for any failure by Tenant to observe appropriate safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with the provisions of this Lease.

Section 11.07. Commencement and Completion of all Construction Work. All Construction Work, once commenced, shall be completed within the time periods required in this Lease (subject to Unavoidable Delays), in a good and workmanlike manner and, with respect to

Construction Work for which this Lease requires Tenant to prepare plans and specifications, in substantial accordance with such plans and specifications, and all Applicable Laws.

Section 11.08. Supervision of Architect. All: (a) Initial Construction Work; and (b) Construction Work, the estimated cost of which (determined as provided in Section 8.04(b) hereof) is ten percent (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"). Landlord shall not unreasonably refuse to join or otherwise cooperate in the application for any such Improvement Approvals, provided such application is made without cost, expense or liability (contingent or otherwise) to Landlord. True copies of all such Improvement Approvals shall be delivered by Tenant to Landlord 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 Landlord, 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 Landlord, (iii) all Applicable Laws.

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

Section 11.10. Submissions to Landlord for Capital Improvements. If the estimated cost of any proposed Capital Improvements exceed Six Hundred Thousand Dollars (\$600,000) (as such

amount shall be increased as provided in Section 8.05(a)), either individually or in the aggregate with other Capital Improvements which are a related portion of a program or project of Capital Improvements constructed in any twelve (12) month period during the Term, Tenant shall comply with the following requirements:

(a) Intentionally omitted.

(b) Tenant shall furnish to Landlord 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 (if the services of an Architect are necessary), for Landlord'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 Landlord 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 Landlord a complete set of "as-built" plans (which may be field marked copies of the construction plans) for such Capital Improvements, together with a permanent Certificate of Occupancy therefor issued by County of Fairfax, Virginia, to the extent a modification thereof was required.

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

Section 11.11. Completion of Construction Work. Upon Final Completion of the Project, Tenant shall furnish Landlord with (a) a certification of the Architect (certified to Landlord) 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 completed in accordance with the plans and specifications applicable thereto and, as constructed, the Project complies with all Applicable Laws, (b) if required, a copy or copies of the temporary or permanent certificate(s) of occupancy for the Project issued by the Fairfax County Department of Planning and Development (or such other appropriate Governmental Authority), and (c) with respect to the Initial Construction Work (or a Restoration for which "as built" plans will be issued) of the Project, within ninety (90) days after Substantial Completion, a complete set of "as built" plans and a survey showing the Project. Landlord shall have an unrestricted non-exclusive license to use such "as built" plans and survey in connection with any Restoration of the Project without paying any additional cost or compensation therefor, which license 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; provided, however, that Landlord shall not unreasonably withhold its consent to any revisions to such language reasonably requested by a contractor or materialman:

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

(c) Landlord 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 Landlord.

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

Section 11.13. Demolition of the Project. Except as hereinafter provided, Tenant 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 Landlord's vesting of all right, title, and interest in such materials located on the Premises at the expiration or earlier termination of the Term.

Section 11.15. Landlord Approval of Financing of Construction Work. Prior to Commencement of Construction (or commencement of a Restoration that is subject to Section 8.05(a)), Tenant shall provide Landlord with a detailed financing plan for the Construction Work to be completed and any and all other costs and expenses which may be necessary to achieve Final Completion (the "Financing Plan"). The Financing Plan shall be subject to the prior written approval of Landlord (including, without limitation, Tenant's proposed Mortgagee and any member or investor of Tenant providing equity funding as part of Tenant's Financing Plan), which approval 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 Landlord in accordance with the terms of this Lease. To the extent that Tenant determines that any modifications to the Financing Plan for the Project are necessary after such Financing Plan has been approved by Landlord, Tenant shall make

such modifications to such Financing Plan and submit the revised Financing Plan to Landlord for informational purposes, provided however, that if Section 11.04 allows for Landlord's right to approve changes to the Plans and Specifications thereunder, Landlord shall also have the right to approve modifications to the Financing Plan under this Section 11.15. Landlord will review and approve the Financing Plan in writing, or disapprove such Financing Plan, provided Landlord sends with any notice of disapproval sufficient details and explanation for the reason of such disapproval and any requested changes to the modifications of such Financing Plan necessary to obtain Landlord's approval, within ten (10) Business Days after receipt of the proposed Financing Plan. If Landlord fails to notify Tenant in writing of either its approval or disapproval of the proposed modifications to such Financing Plan within ten (10) Business Days after its receipt of the same from Tenant, then such proposed modifications to such Financing Plan shall be deemed approved by Landlord. As used in the preceding two sentences, "Financing Plan," means the initial Financing Plan or any modifications of the Financing Plan which require Landlord's approval 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 market rate 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. 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 \$250.00/Residential Unit per annum, escalating each year by the increase in the Consumer Price Index for the year in question.

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

(e) Landlord 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 Landlord.

Section 12.03. Maintenance Capital Reserve in the Event of a Transfer. In the event of a sale or transfer by either party of its interest in the Premises, such party 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 Maintenance Capital Reserve.

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.

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

## ARTICLE 13

### FIXTURES

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

Section 13.02. Maintenance, Repair and Replacement. Tenant shall keep all 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 all Applicable Laws, including without limitation, requiring the removal of any encroachment, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, or whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put, and without regard to the fact that Tenant is not the fee owner of the Premises. Tenant also 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 Landlord, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Applicable Laws, provided that: (a) Landlord 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 Landlord the bond of a surety company reasonably satisfactory to Landlord, or other deposit or security in each case in form, substance and amount reasonably satisfactory to Landlord, and shall indemnify Landlord against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest; (c) Tenant shall keep Landlord 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) 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 Landlord is in danger of being subject to criminal liability or penalty, or civil liability, in connection with such contest. Landlord shall be deemed subject to prosecution for a crime if Landlord or any of its respective officers, directors, partners, shareholders, agents or employees is charged with a crime of any kind whatever unless such charge is withdrawn ten (10) Business 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 Landlord 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. Landlord shall have the right, upon reasonable advanced notice and in cooperation with the Tenant, from time to time and at Landlord's expense to conduct an environmental audit of the Premises during regular business hours, and Tenant shall reasonably cooperate in the conduct of such environmental audit. Landlord shall provide a copy of any such audit to Tenant. Landlord 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 Landlord 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 Landlord under this Lease or otherwise at law or in equity, Landlord may require Tenant to take all actions, or to reimburse Landlord for the costs of any and all actions taken by Landlord, as are necessary or reasonably appropriate to cure such breach. Tenant shall not be responsible for and shall have no liability in connection with any Environmental Activity undertaken or permitted by Landlord, its agents, employees, representatives, licensees, or invitees. 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 mechanic's, laborer's or materialman's lien upon the Premises or any part thereof, a lien upon the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not suffer any other encumbrance, matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 15.02. Discharge of Liens. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by Landlord) at any time 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, Landlord, 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 45-day period, and if such lien continues for an additional ten (10) Business Days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but is not obligated to, discharge the lien either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of Landlord's making of the payment or incurring of the costs and expenses, shall constitute Additional Costs and shall be paid by Tenant to Landlord within ten (10) Business Days after demand. Notwithstanding the foregoing provisions of this Section 15.02, Tenant shall not be required to discharge (and Landlord 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 Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 15.03. No Authority to Contract in Name of Landlord. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the

performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given that Landlord 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 Landlord in and to the Premises or any part thereof or any assets of, or funds appropriated to, Landlord. 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, Landlord or of any interest of Landlord in the Premises.

## ARTICLE 16

### DELIVERY OF POSSESSION

Landlord 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 Landlord in respect of the Land, the Premises, the status of title thereof, the physical condition thereof, including, without limitation, the zoning or other laws, regulations, rules and orders applicable thereto, Taxes, or the use that may be made of the Premises, that Tenant has relied on no such representations, statements or warranties, and that Landlord 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 Landlord harmless from and against any claim for commission or other compensation in connection herewith that is asserted by any broker, finder or other agent which claims to have dealt with Tenant, together with the cost of defending any such claim; and

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

## ARTICLE 18

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

Section 18.01. No Liability for Injury. Landlord 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 gross negligence, or intentional misconduct of Landlord, its officers, agents, employees or licensees.

Section 18.02. No Liability for Utility Failure. Landlord, 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 gross negligence or intentional misconduct of Landlord, its officers, agents, employees or licensees.

Section 18.03. No Liability for Soil Conditions. In addition to the provisions of Sections 18.01 and 18.02, Landlord 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 Landlord on the Premises or an land adjacent to the Premises.

## ARTICLE 19

### INDEMNIFICATION OF LANDLORD 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 Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Applicable Laws, and shall use its reasonable efforts to exercise such control over the Premises so as to fully protect Landlord against any such liability. Tenant, to the fullest extent permitted by law, shall indemnify and save Landlord and its respective agents, directors, officers and employees (collectively, the “Indemnitees”), harmless from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including without limitation engineers’, architects’ and reasonable attorneys’ fees and charges), which may be suffered by, imposed upon or incurred by or asserted against any of the Indemnitees, by reason of any of the following occurring prior to the Expiration Date, except to the extent that the same 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 in or on the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof;

(c) any negligent or tortious act or failure to act within the Premises on the part of Tenant or any agent, contractor, servant or employee of Tenant;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof;

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

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

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

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

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

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

Section 19.02. Not Affected by Insurance. The obligations of Tenant under this Article 19 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 indemnity obligation to the extent of the amount actually recovered from one or more of the insurance carriers of either Tenant or Indemnitee, and (a) paid to Indemnitee, or (b) paid for Indemnitee's benefit in reduction of any such liability, penalties, damage, expense, or charges imposed upon Indemnitee.

Section 19.03. Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 19.01, then, upon demand by Landlord, Tenant 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 Landlord shall approve, which approval shall not be unreasonably withheld. Additionally, except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, Landlord may, following consultation with Tenant, if reasonable under the circumstances, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding and Tenant shall pay the reasonable fees and disbursements of such attorneys. Tenant shall control the settlement of any such claim, action, or proceeding. Landlord'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 Landlord; otherwise Landlord's consent to a proposed settlement will be required, provided such consent will not be unreasonably withheld.

Section 19.04. Survival. The provisions of this Article 19 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

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

Section 20.01. Landlord Right of Inspection. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice, subject to the rights of Residential Tenants and other permitted subtenants under this Lease, if any (and except in cases of emergency) for the purpose of (a) inspecting the same, (b) determining whether or not Tenant is in compliance with its obligations hereunder, and (c) making any necessary repairs to the premises and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work, provided that, except in any emergency, Landlord 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. Landlord Right to Cure. If Tenant at any time shall be in an Event of Default, after notice thereof and after applicable grace periods, if any, provided under this Lease for Tenant or a Mortgagee, respectively, to cure or commence to cure same, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf. If Tenant disputes a claim by Landlord that Tenant is failing to comply with the terms of this Lease regarding the maintenance and repair of the Premises the parties shall resolve such dispute resolution pursuant to Article 34 below before Tenant is obligated to perform the disputed obligations.

Section 20.03. Reimbursement of Landlord. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with its performance of any obligation pursuant to Section 20.02, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within ten (10) Business Days after Landlord shall have submitted to Tenant a statement, in reasonable detail, substantiating the amount demanded by Landlord. Any payment or performance by Landlord pursuant to Section 20.02 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 Landlord to terminate this Lease, institute summary proceedings or take such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force as required by this Lease to the amount of the insurance premium or premiums not paid, but Landlord also 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 Landlord shall not be entitled to reimbursement for any work they may have performed.

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

## ARTICLE 21

[RESERVED]

## ARTICLE 22

### NO ABATEMENT OF BASE RENT OR ADDITIONAL COSTS

Except as may be otherwise expressly provided herein, there shall be no abatement, offset, 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 Landlord to Tenant specifying such failure, Landlord is hereby irrevocably authorized to take all such actions in Tenant's name and on Tenant's behalf, Tenant hereby appointing Landlord as Tenant's attorney-in-fact coupled with an interest for all such purposes. If Tenant disputes Landlord's claim as to the existence of such unpermitted, unlawful, illegal or extra hazardous use or Tenant's actions with respect thereto, then the parties 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 Landlord'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 Landlord 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 Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such 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 Tenant shall abandon the Premises;

(d) 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;

(e) 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 Landlord'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 Landlord to Tenant;

(f) 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; and

(g) 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;

(h) 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 F 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(h) 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 Landlord 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"); and

(i) 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(i)(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, Landlord (subject to Section 24.14 below) may, at any time thereafter, at its option, give notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall not be less than fifteen (15) 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 specified in the notice and such date shall be the Expiration Date and Tenant immediately shall quit and surrender the Premises.

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

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

(a) Tenant shall pay to Landlord all Base Rent, Additional Costs and Impositions payable by Tenant under this Lease to the Expiration Date or to the date of re-entry upon the Premises by Landlord, as the case may be;

(b) Landlord may, (i) complete all construction required to be performed by Tenant hereunder and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing all funds, if any, then held by Depository pursuant to Articles 8, 9, 11 or 12) without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, (ii) let or relet the Premises for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, or (iii) any combination of (i) and (ii), as Landlord determines; and out of any Base Rent, Additional Costs, Impositions and other sums collected or received as a result of such reletting Landlord 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 Landlord 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 Landlord; Landlord 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 Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 24.06. Leasing Default.

(a) If any Leasing Default shall occur, Landlord may (subject to Section 24.14 below), at its option, give notice to Tenant stating that Landlord is terminating any Management Agreement then in effect for the Project and removing the Approved Property Manager from the Premises. Thereafter, Landlord, without further notice, may re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor, and undertake any leasing and property management duties, responsibilities or obligations that Landlord deems necessary or desirable for the Project, provided such actions are commercially reasonable and consistent with the management of comparable market rate apartment projects in Fairfax County, Virginia. During any period that Landlord undertakes leasing or property management duties as the result of a Leasing Default, Landlord shall use good faith efforts to cure the Residential Criteria Defaults that resulted in the Leasing Default. Landlord shall not be liable to indictment, prosecution or damages for any actions or failure to act by Landlord in its leasing or property management capacity, except to the extent such action or failure to act was not commercially reasonable. Any sums expended by Landlord in connection with Landlord's duties set forth in this Section 24.06(a) 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.

(b) In addition to the remedies set forth in this Section 24.06, Landlord may avail itself to any other remedies set forth in this Article 24, except those remedies set forth in Section 24.02 and Section 24.03 above (but subject to Section 24.06(d) below) if Tenant commits an Leasing Default.

(c) Landlord may continue to operate and manage the Project for so long as any of the Residential Criteria Defaults that caused the Leasing Default that resulted in Landlord undertaking any leasing or property management responsibilities for the Project remain uncured. Once all such Residential Criteria Defaults have been cured and Tenant is no longer in a Leasing Default, Tenant 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 Landlord's rights under this Section 24.06, Landlord may avail itself to any other remedies set forth in this Lease, including the termination of this Lease pursuant to Section 24.02 and Section 24.03 above. Any Residential Criteria Defaults that occurred during any period in which Landlord was responsible for the leasing and management of the Property shall not be considered in determining whether Tenant has committed a Leasing Default. All of Landlord's rights set forth in this Section 24.06 shall be subject to the rights of Tenant's (or its subtenants') Mortgagees and Tax Credit investors set forth in this Lease or set forth in any agreements between Tenant (or its subtenants) and those parties.

#### Section 24.07. Bankruptcy Defaults and Remedies.

(a) If any Bankruptcy Default shall occur, Landlord may (subject to Section 24.14 below), at its option, give notice to Tenant stating that Landlord is terminating any Management Agreement then in effect for the Project and removing the Approved Property

Manager from the Premises. Thereafter, Landlord, without further notice, may re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor, and undertake any leasing and property management duties, responsibilities or obligations that Landlord deems necessary or desirable for the Project, provided such actions are commercially reasonable and consistent with the management of comparable market rate apartment projects in Fairfax County, Virginia. Landlord shall not be liable to indictment, prosecution or damages for any actions or failure to act by Landlord in its leasing or property management capacity, except to the extent such action or failure to act was due to the gross negligence or willful misconduct of Landlord. Any sums expended by Landlord in connection with Landlord's duties set forth in this Section 24.07(a) 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, Landlord 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, Landlord and Tenant agree that, in the event a Bankruptcy Default hereunder results in a liquidation of Tenant's assets under Chapter 7 of the Bankruptcy Code, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, 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) day period this Lease shall cease and expire and Tenant, Tenant as debtor-in-possession or trustee shall immediately quit and surrender the Premises.

(d) Nothing contained in this Article 24 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount 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 Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless such receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Base Rent, Additional Costs or Impositions payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise

expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 24.09. Waiver of Notice of Re-Entry; Waiver of Jury Trial. Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Landlord and Tenant waive and 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 Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease are not restricted to their technical legal meaning.

Section 24.10. No Waiver by Landlord. No failure by Landlord or any prior Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial amounts due to Landlord from Tenant under this Lease during the continuance of any such breach, 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 Landlord. 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 actual or threatened Event of Default by Tenant with respect to any of the covenants, agreements, terms or conditions contained in this Lease, Landlord 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 Landlord 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 Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 24.13. Enforcement Costs. If Landlord is the prevailing party, Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. If Landlord is the prevailing party, Tenant also



shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, and all such costs, expenses, and reasonable attorneys' fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord hereunder, with interest at the Involuntary Rate, shall be paid by Tenant to Landlord within fifteen (15) Business Days after demand by Landlord.

Section 24.14. Mortgagee Protections. Landlord's rights contained in this Article 24 are subject to the rights of Mortgagee set forth in Section 10.04 and Section 10.05 and nothing contained in this Articles 24 shall be deemed to modify or limit Mortgagee's rights thereunder.

## ARTICLE 25

### NOTICES

Section 25.01. Notice Addresses. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication (each of which is herein referred to as "Notice") shall or may be given to or served upon either of the parties by the other, and whenever either of the parties desire to give or serve upon the other any Notice with respect this Lease or the Premises, each Notice shall be in writing. No Notice will be effective for any purpose unless the Notice is given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, (c) sent by registered or certified United States mail, postage prepaid, or (d) sent by using the most current business technology at the time of giving such notice, provided that such use is a generally accepted practice at the time, with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a), (b) or (c) above, in each case to the parties as follows:

If to APAH, to:

APAH Oakwood LLC  
c/o Arlington Partnership for Affordable Housing, Inc.  
Attention: Nina Janopaul, President  
4318 N. Carlin Springs Road  
Arlington, Virginia 22203  
e-mail: [njanopaul@apah.org](mailto:njanopaul@apah.org)

With a copy to:

Gallagher Evelius & Jones LLP  
Attention: Benjamin Rubin  
218 N. Charles Street, Suite 400  
Baltimore, Maryland 21201  
e-mail: [brubin@gejlaw.com](mailto:brubin@gejlaw.com)

And a copy to:

[TAX CREDIT EQUITY INVESTOR]

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

If to FCRHA, to:

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

-and-

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

With a copies to:

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

-and-

Arent Fox LLP  
Attention: Jeffrey A. Mitchell, Esq.  
1717 K Street N.W.  
Washington, D.C. 20006  
e-mail: [Jeffrey.Mitchell@arentfox.com](mailto:Jeffrey.Mitchell@arentfox.com)

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) Business Days written notice of such change(s) to the other party in accordance with the provisions of this Section 25.01.

Section 25.02. When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight mail, upon delivery thereof, (b) if given by the

most current business technology at the time of giving such notice, at the time confirmation of such transmission is received by the sender provided that a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a), (b) or (c) in Section 25.01 above, and (c) if given by certified or registered mail, on the third (3rd) business day after the posting the same, postage prepaid; in each case with failure to accept delivery to constitute delivery for such purpose.

Section 25.03. Notices to Mortgagees. If requested in writing by any Mortgagee (which request shall be made in the manner provided in Section 25.01 and shall specify an address to which Notices shall be given), any 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 Landlord if such party is an Affiliate of Tenant or such parties satisfies the following requirements: (a) such proposed property manager, or the officer or manager having supervisory responsibility for the Project has at least ten (10) years' experience operating low income/affordable senior living facility projects similar in size to or larger than the Project, (b) such proposed property manager is not one against whom any action or proceeding is pending to enforce rights of the Commonwealth of Virginia or any agency, department, public authority or public benefit corporation thereof arising out of a mortgage obligation to the Commonwealth of Virginia or to any such agency, department, public authority or public benefit corporation, and (c) such proposed property manager is not one with respect to whom any notice of default which remains uncured has been given by the Commonwealth of Virginia or any agency, department, public authority or any public benefit corporation thereof arising out of a contractual obligation to the Commonwealth of Virginia or to any such agency, department, public authority or public benefit corporation. Tenant shall, prior to the effective date of any such management agreement, notify Landlord of the proposed management agreement and submit to Landlord all information and documents Landlord may reasonably require for its review with respect to the criteria set forth above. If Landlord determines that the third-party manager does not comply with the foregoing criteria, Landlord 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 Landlord's review in accordance with the terms of this Section or provide evidence reasonably satisfactory to Landlord that such third-party property manager has satisfied the criteria set forth above. Each review by Landlord shall be carried out within twenty (20) Business Days of the date of delivery of the information requested hereunder, and if Landlord does not notify Tenant of its determination within such twenty (20) Business Day period, Landlord 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 foregoing, S.L. Nusbaum Realty Co., or 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 covenant and agrees at all times to comply with Exhibit F (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. Landlord shall have the right to require the replacement of an Approved Property Manager with a Person chosen by Landlord 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 Landlord 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. Landlord's rights set forth in this Section 26.03 shall be subject to the rights of Mortgagees set forth in this Lease.

#### Section 26.04. Residential Leases.

(a) Notwithstanding anything else herein to the contrary, Tenant may, without Landlord's consent, enter into residential tenant leases which meet the lease criteria set forth on Exhibit F 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 F (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 Applicable Laws, the financial and reporting conditions set forth on Exhibit F 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 subject to the rights of any Mortgagee, if there is a termination of this Lease, or if Landlord 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 Landlord's election, attorn to Landlord and Landlord will have all rights of a landlord under such Residential

Lease, including without limitation, the right to enforce those rights by court proceeding or otherwise;

(iii) the receipt by Landlord 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 Landlord'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. Landlord, after an Event of Default by Tenant, may, subject to the rights of any Mortgagee under this Lease, collect rent and all other sums due under the Residential Leases, and apply the net amount collected to any amounts due to Landlord under this Lease (including without limitation, Base Rent, Additional Costs and Impositions), but no such collection shall be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease or the acceptance by Landlord of any Residential Tenant as tenant hereunder, or a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 26.08. Record Keeping. At all times during the Term, Tenant shall maintain at its principal place of business or such other place as agreed to by Landlord and Tenant, a complete and accurate set of files, books and records in connection with the Project and with respect to the operation and maintenance of the Project, including without limitation, compliance with any and all requirements of Exhibit F of this Lease. At all times during the Term, Landlord may, at such reasonable times during normal business hours and upon reasonable advanced notice, inspect Tenant's files, books, records and related material pertaining to compliance with requirements of Exhibit F of this Lease and pertaining to maintenance of the Project. Tenant agrees that Landlord, 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 F 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 F 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 Landlord's request therefor, certify such files, books and records to Landlord as true, complete, and accurate in all material respects.

Section 26.09. Rent Roll. Upon Landlord's request (which will be limited to no more than two (2) times in any calendar year and at any time when Tenant is in an Event of Default under this Lease), Tenant will provide: (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; LANDLORD MORTGAGES

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

Section 27.03. No Impairment of Title. Nothing contained in this Lease or any action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance other than this Lease upon the estate of Landlord in the Premises. In amplification and not in limitation of the foregoing, Tenant 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 Landlord's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises or any part thereof.

Section 27.04. Easements. Notwithstanding the provisions of Section 27.03 to the contrary, Tenant 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. Landlord shall review any proposed easement (or modification thereof) within fifteen (15) Business Days of its receipt of such easement from Tenant. If Landlord has not notified Tenant of its determination within the applicable period,

Landlord shall be deemed to have approved such easement. Landlord agrees that if required by the applicable utility provider or other easement grantee, Landlord shall join in the execution of such easements as approved by Landlord in accordance with the provisions of this Section 27.04.

## ARTICLE 28

### GUARANTY

Concurrently with the execution of this Lease, Tenant shall cause Guarantor or another creditworthy entity satisfactory to Landlord in its sole discretion to enter into the Guaranty in the form annexed hereto as Exhibit E, pursuant to which Guarantor guaranties to Landlord: (i) the complete performance of all of Tenant's obligations in this Lease necessary to achieve Final Completion; and (ii) the timely payment and performance of all of Tenant's other obligations under this Lease from the Commencement Date through Final Completion. 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 meeting the Guarantor Net Worth Requirement and cause such entity to enter into the Guaranty in the form annexed hereto as Exhibit E.

## ARTICLE 29

### CERTIFICATES BY LANDLORD AND TENANT

Section 29.01. Tenant Estoppels. At any time and from time to time upon not less than ten (10) Business Days' notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Base Rent and Additional Costs have been paid, stating whether or not to the knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge, and certifying as to any other matter with respect to this Lease as Landlord or such other addressee may reasonably request.

Section 29.02. Landlord Estoppels. At any time and from time to time upon not less than ten (10) Business Days' notice by Tenant, Landlord 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 and Additional Costs have been paid, and stating whether or not to the best knowledge of Landlord, Tenant is in an Event of Default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such Event of Default of which Landlord may have knowledge, and certifying as to any other matter with respect to this Lease as Tenant or such other addressee may reasonably request.

## ARTICLE 30

### CONSENTS AND APPROVALS

Section 30.01. Consent Not a Waiver. It is understood and agreed that the granting of any consent or approval by Landlord to Tenant to perform any act of Tenant requiring Landlord's consent or approval under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent or approval (except in any instance where Landlord has been deemed to have consented to or deemed to have approved something as expressly provided in this Lease), Landlord shall not be deemed to have granted such consent or approval for any further similar act by Tenant for which approval or consent is required. Tenant hereby expressly covenants and warrants that as to all matters requiring Landlord's consent or approval under the terms of this Lease, Tenant 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 Landlord of the requirement to secure such consent or approval.

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

Section 30.03. Landlord Not Liable for Money Damages. Whenever in this Lease Landlord's consent or approval is required and this Lease provides that Landlord's consent or approval shall not be unreasonably withheld and Landlord shall refuse such consent or approval, or in any instance in which Landlord 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 Landlord unreasonably withheld or unreasonably delayed its consent or approval, unless Tenant's claim is based upon an assertion that Landlord acted in bad faith. Tenant's sole remedy 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 Landlord reasonably withheld its consent 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 Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall well and truly surrender and deliver up to Landlord the Premises and the Project in good order, condition and repair, reasonable wear and tear and damage by casualty or condemnation excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof, created by or consented to by Landlord, Residential Leases the term of which extends beyond the Expiration Date, or which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date, and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date, without any



payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 31.02. Delivery of Residential Leases and Other Agreements. On the last day of the Term or upon any earlier termination of the Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall deliver to Landlord Tenant's executed counterparts of all Residential Leases and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Occupancy then in effect for the Project, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Fixtures installed in the Project, together with a duly executed assignment thereof to Landlord and all records required by Section 26.08.

Section 31.03. Abandonment of Property. Any personal property of Tenant or of any Residential Tenant, or subtenant of a Residential Tenant which shall remain on the Premises for ten (10) Business Days after the termination of this Lease and after the removal of Tenant or such Residential Tenant, or subtenant of a Residential Tenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Residential Tenant, or subtenant of a Residential Tenant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord 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

This Lease, together with the Exhibits hereto, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

## ARTICLE 33

### QUIET ENJOYMENT

Landlord covenants that so long as this Lease is full force and effect and Tenant is not in default beyond notice and grace hereunder, Tenant 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 Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered

by Landlord, except those encumbrances, liens or defects of title, created or suffered by Tenant and the Title Matters.

## ARTICLE 34

### DISPUTE RESOLUTION

Section 34.01. Mediation. If, after the Effective Date, a dispute occurs between Landlord and Tenant with respect to any matter arising under this Lease that is subject to this Article 34, the party raising a dispute or claim 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, Landlord and Tenant shall proceed diligently and in good faith in an effort to resolve the dispute to their mutual satisfaction. If Landlord and Tenant fail to resolve the dispute prior to the expiration of the 15-day period, then mediation may be commenced by a written demand made by either party upon the other. As part of such demand, the moving party 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 Landlord'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 Landlord 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 Landlord and Tenant.

Section 34.02. Intentionally Omitted.

Section 34.03. Non-Binding Presumption. The decision and award of the mediator, if any, will not be binding on Landlord or Tenant (but may be introduced into evidence in any court or proceeding between the parties) unless Landlord and Tenant enter into a written agreement memorializing the decision and award of the mediator.

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

## ARTICLE 35

### INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances 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

Tenant, at Tenant's sole cost and expense, may record a memorandum of (a) this Lease, or (b) any amendment or modification of this Lease. Landlord 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.

## ARTICLE 37

### MISCELLANEOUS

Section 37.01. Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 37.02. Table of Contents. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 37.03. Pronouns. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 37.04. Depository Charges. Depository may pay to itself out of the monies held by Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant 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, Landlord may require the signatures of all such entities in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such entity shall designate another such entity as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Landlord 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 Landlord 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, Landlord agrees to send copies of all notices to that entity.

Section 37.06. Limitation of Liability.

(a) None of Landlord's members, directors, officers, employees, agents or servants shall have any liability (personal or otherwise) hereunder, and no property or assets of such Persons 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 Landlord or Tenant in connection with this transaction, the party for whom the Person claims to represent will pay the brokerage commission, fee or other compensation to which such Person is entitled and 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, Landlord and Tenant and their respective successors and assigns that are permitted under this Lease.

Section 37.13. Sections. All references in this Lease to "Articles" or "Sections" 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 Landlord under this Lease and in any and all other plans, drawings, specifications or models prepared in connection with construction of the Project, any Restoration or Capital Improvements, shall become the sole and absolute property of Landlord upon the Expiration Date or any earlier termination of this Lease. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date or any earlier termination of this Lease. Tenant's obligation under this Section 37.14 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 Landlord at the expiration or earlier termination of the New Lease.

Section 37.15. Licensed Professionals. All references in this Lease to "licensed professional engineer," "licensed surveyor" or "registered architect" 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. Landlord 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 Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 37.18. Tax Benefits. To the extent permitted by law, Tenant 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. Landlord, 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 Landlord's reasonable costs and expenses thereof. Landlord makes no representations as to the availability of any such deductions, credits or tax benefits.

Section 37.19. [Intentionally Omitted.]

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

## ARTICLE 38

### TAX CREDIT SYNDICATION

Landlord hereby acknowledges that the right to syndicate the low-income housing tax credits ("Tax Credits") allocated to the Project is a material benefit bargained for by Tenant. Therefore, Landlord agrees that Tenant shall have the right to syndicate the Tax

Credits allocated to the Project and Landlord shall cooperate with Tenant in connection with any syndication of the Tax Credits. To effectuate any syndication, Tenant shall: (a) subject the Premises to a condominium regime (including a land condominium regime) such that one or more condominium units (the "Condominium Units") contain all of the low-income units that generate the Tax Credits, (b) enter into one or more Subleases pursuant to which Tenant subleases the Condominium Units to the Tax Credit Project Owners, (c) in furtherance of items (a) and (b), cause the Tax Credit Project Owners to operate the Project as two separate tax credit projects with two separate Subleases, with one Sublease used in connection with 4% Tax Credits and the other Sublease used in connection with 9% Tax Credits, and (d) cause the Tax Credit Project Owners to grant their interest in the Subleases as collateral to the Mortgagees or (e) use a different structure for the leasing, operation and management of the Project and to maximize the Tax Credits; so long as any such structure does not materially adversely affect the rights and obligations of Landlord or violate any of the provisions of this Lease. Furthermore, Tenant shall not be charged any fee by Landlord in connection with a syndication of the Tax Credits allocated to the Project.

The Subleases will describe the calculation of net cash flow ("Sublease Net Cash Flow"), gross project revenue ("Sublease Gross Project Revenue") and project operating expenses ("Sublease Project Operating Expenses"). The base rent due to Tenant under the Subleases ("Sublease Rent") will be based upon such calculations, and the Subleases will require that fifty percent (50%) of the Sublease Net Cash Flow will be paid to the Tenant as Sublease Rent. The Sublease to the 9% Tax Credit Project Owner will also include a one-time capitalized rent payment to the Tenant (the "Capitalized Rent Payment"), and Tenant intends to use the proceeds of such capitalized rent payment to make a loan to the 4% Tax Credit Project Owner. Landlord and Tenant agree that the Capitalized Rent Payment will be treated separately from Sublease Net Cash Flow and Sublease Rent and not a part of their calculations. Further, the Capitalized Rent Payment will not be a part of the calculations of Tenant's Other Net Cash Flow. Landlord shall have the right to review and approve the provisions of any Sublease, which approval shall not be unreasonably withheld; provided however, that any provisions related to the calculation of Sublease Rent under any Sublease, including without limitation, definitions and calculations of Sublease Net Cash Flow, Sublease Gross Project Revenue and Sublease Project Operating Expenses shall be subject to Landlord's approval, which Landlord may grant or withhold in its sole and absolute discretion. Tenant shall not amend any provisions of the Subleases that affect Landlord's rights, including any provisions affecting the calculation of Sublease Rent (and the other definitions set forth in this paragraph), without Landlord's approval, which Landlord may grant or withhold in its sole and absolute discretion.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

[SIGNATURE BLOCKS TO BE INSERTED PRIOR TO CLOSING]

**Exhibit A**

[Legal Description of Land]

[Attached]



All those lots or parcels of land, together with the improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the County of Fairfax, Virginia and more particularly described as follows:

**Parcel 1:**

Beginning at an iron pipe found on the easterly variable width right of way line of South Van Dorn Street, Route 613, and said point marking a corner to the administrator of Ronald L. Collins.

Thence, departing said variable width right of way of South Van Dorn Street, Route 613 and running with said the administrator of Ronald L. Collins N 78° 41' 20" E, 383.95 feet to an iron pipe found and said point marking a corner of Brookland Estates First Addition.

Thence, departing said the administrator of Ronald L. Collins and running with said Brookland Estates First Addition and N/F Barlow S 04° 24' 20" E, 183.65 feet to an iron pipe set.

Thence, continuing with said N/F Barlow N 78° 38' 40" E, 75.54 feet to an iron pipe found and said point being a corner of Brookland Estates First Addition.

Thence, departing said N/F Barlow and running with said Brookland Estates First Addition S 06° 51' 57" E, 407.70 to an iron pipe found.

Thence continuing with said Brookland Estates First Addition S 62° 45' 10" W, 93.86 feet to an iron pipe set and said point marking a corner of N/F Barden.

Thence, departing said Brookland Estates First Addition and running with said N/F Barden S 89° 34' 37" N, 398.07 feet to an iron pipe found on the easterly side of the variable width right of way of South Van Dorn Street, Route 613.

Thence, departing said N/F Barden and running with said easterly side of the variable width right of way of South Van Darn Street, Route 613 N 03° 21' 27" W, 544.55 feet to the point of beginning.

LESS AND EXCEPT the land conveyed by the Deed of Dedication and Conveyance (A) recorded in Deed Book 9836 at page 1996, among the Land Records of Fairfax County, Virginia.

**NOTE FOR INFORMATIONAL PURPOSES ONLY:**

Tax Map No. 081-2-01-0017C

**Parcel 2:**

Beginning at an iron pipe found on the easterly right-of-way line of South Van Dorn Street, said pipe marking a corner to Lynch Limited Partnership. Thence, with said Partnership, N 89° 34' 37" E, 398.07 feet to a point a corner to Lot 7, Brookland Estates. Thence, with Lot 7, the same course continued with Lot 6, S 03° 24' 19" E, 103.89 feet to a point a corner to Orange. Thence, with said Orange, S 89° 34' 10" W, 398.26 feet to a point on the aforementioned right-of-way line of South Van Dorn Street. Thence, with said Street, N 03° 21' 27" W, 103.93 feet to the beginning.

LESS AND EXCEPT the land conveyed by the Deed of Dedication and Conveyance (A) recorded

in Deed Book 9837 at page 39, among the land records of Fairfax County, Virginia.

**NOTE FOR INFORMATIONAL PURPOSES ONLY:**

Tax Map No. 081-4-01-0032

**Parcel 3:**

Beginning at a point on the easterly right-of-way line of South Van Dorn Street, said point marking a corner to Barden. Thence, with said Barden, N 89° 34' 10" E, 398.26 feet to a point in the line of Lot 6, Brookland Estates. Thence, with said Lot 6, the same course continued with Lot 5, S 03° 24' 19" E, 103.86 feet a corner to Lytle. Thence, with said Lytle, S 89° 34' 10" W, 398.35 feet to a point on the aforementioned right-of-way line of South Van Dorn Street. Thence, with said right-of-way line, N 03° 21' 27" W, 103.86 feet to the beginning.

LESS AND EXCEPT the land conveyed by the Deed of Dedication and Conveyance (A) recorded in Deed Book 9837 at page 51, among the Land Records of Fairfax County, Virginia.

**NOTE FOR INFORMATIONAL PURPOSES ONLY:**

Tax Map No. 081-4-01-0033

**Parcel 4:**

Beginning at an iron pipe found on the easterly right-of-way line of South Van Dorn Street, said pipe marking a corner to Orange. Thence, with said Orange, N 89° 34' 10" E, 398.35 feet to a point in the line of Brookland Estates. Thence, with Brookland Estates S 03° 24' 19" E, 103.89 feet to a point a corner to Willow Creek. Thence, with said Willow Creek, S 89° 19' 02" W, 398.24 feet to a point on the aforementioned right of way line of South Van Dorn Street. Thence, with said right of way line, N 03° 21' 27" W, 105.65 feet to the beginning.

LESS AND EXCEPT the land conveyed by the Deed of Dedication and Conveyance recorded in Deed Book 9837 at page 63, among the Land Records of Fairfax County, Virginia.

**NOTE FOR INFORMATIONAL PURPOSES ONLY:**

Tax Map No. 081-4-01-0034

Parcels 1 through 4, inclusive LESS AND EXCEPT the land conveyed by Deed dated April 27, 1966 and recorded July 21, 1966 in Deed Book 2795 at page 292; by Deed dated April 27, 1966 and recorded August 4, 1966 in Deed Book 2801 at page 745; by Deed dated February 4, 1966 and recorded September 12, 1966 in Deed Book 2818 at page 142; and by Deed dated April 28, 1966 and recorded March 17, 1967 in Deed Book 2873 at page 328.

**(End of Exhibit "A")**

## **Exhibit B**

### Project Description

The Oakwood Senior Housing development is the creation of 150 units of new independent senior affordable homes in the Lee District. This project leverages an approximately 6.21 acre site area and current storm water retention pond at the intersection of Oakwood Road and S. Van Dorn Street on or about 5815 South Van Dorn Street.

This affordable housing development is 100% committed affordable, senior housing with a mix of one- and two-bedroom apartments designed to meet the needs of the target senior population.

This development will feature ample community amenities, such as landscaped areas, resident services offices and meeting space, in addition to services and programs that support the whole resident.

APAH has included communal multipurpose spaces in the design to allow for computer/library and meeting areas, wellness programs and activities for the senior residents. APAH will also be exploring indoor/outdoor greenhouse programming and free wi-fi access in community spaces.

In addition to the rental homes and community amenities, the new development will provide improved storm water protection with a comprehensive set of new measures that meet modern requirements for on-site quantity and quality controls. This allows APAH to add housing and maintain the current storm water drainage.

**Exhibit C**

[List of Plans and Specifications]

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

**Exhibit D**

[Project Schedule]

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

**Exhibit E**

Form of

**GUARANTY OF COMPLETION**

THIS GUARANTY OF COMPLETION (this "Guaranty") is made this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, a \_\_\_\_\_ (the "Guarantor") in favor of FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia, its successors and assigns ("FCRHA").

**RECITALS**

WHEREAS, APAH OAKWOOD LLC, a Virginia limited liability company ("Tenant"), and FCRHA, as landlord, have entered into the Deed of Lease, dated \_\_\_\_\_, 20\_\_ by and between FCRHA and Tenant (the "Lease"), covering real property located in the county of Fairfax, Virginia, as more particularly described in Exhibit A attached hereto and made a part thereof (the "Premises");

WHEREAS, Tenant is obligated to deliver a payment and performance guaranty for the Final Completion (as defined in the Lease) of the Project (as defined in the Lease), and Tenant has caused the delivery of this Guaranty by Guarantor, to satisfy Tenant's obligations with respect to the delivery of such guaranty; and

WHEREAS, the Guarantor will receive material benefit from the execution of this Guaranty and the execution of the Lease by Tenant;

NOW, THEREFORE, IN CONSIDERATION of the agreement by FCRHA to enter into the Lease with Tenant and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees with FCRHA as follows:

1. The Recitals set forth above are hereby incorporated in this Guaranty by this reference. Capitalized terms used in this Guaranty and not otherwise defined herein shall have the meanings as are set forth in the Lease.

2. If Tenant shall (a) fail to achieve Final Completion, within the period or periods required by the Lease, and in accordance with all laws, rules, regulations and requirements of all governmental authorities having jurisdiction, or (b) fail to keep the Premises free from all liens and claims which may be filed or made for performing work and labor thereon or furnishing materials therefor in connection with the construction of the Initial Construction Work; then Guarantor hereby guarantees to FCRHA that it shall:

(i) cause the Final Completion to occur, in the manner and within the period of time required by the Lease and in accordance with the Plans and Specifications, amended only as approved in writing by FCRHA, and in accordance

with all laws, rules, regulations and requirements of all governmental authorities having jurisdiction;

(ii) cause any such mechanics' or materialmen's liens and claims related to the Initial Construction Work to be removed or bonded and thereafter keep the Premises thereon free from all such liens and claims;

(iii) make payment in full to any contractor(s) to which Tenant is obligated in accordance with the Lease for any and all contracts related to the Initial Construction Work; and

(iv) pay all costs and expenses incurred in doing (i), (ii) and (iii) of this Section; provided however, that if Guarantor fails to timely take the actions described in (i), (ii) and (iii) of this Section and pay the costs and expenses incurred in connection therewith, then FCRHA may take the actions described in (i), (ii) and (iii) of this Section and Guarantor shall pay to or reimburse FCRHA for all such costs and expenses incurred by FCRHA in connection therewith.

Guarantor further agrees to indemnify and hold harmless FCRHA from any loss (including reasonable attorney's fees) resulting from any default by Guarantor under the terms of this Guaranty

3. Guarantor hereby waives (to the extent permitted by applicable laws) notice of acceptance of this Guaranty by FCRHA and any and all notices and demands of every kind and description which may be required to be given by any statute or rule or law (other than notices required by the terms of the Lease), and agrees that the liability of Guarantor hereunder shall in no way be affected, diminished or released (a) by any forbearance which may be granted to Tenant (or to any successor to it or to any person or entity which shall have assumed the obligations of Tenant under the Lease), (b) by any waiver by FCRHA of any term, covenant or condition in any of the Lease, (c) by reason of any change or modification in any construction contract with any contractor or any of the construction contracts, or (d) by the acceptance of additional security for the obligations under the Lease or the release by FCRHA of any security or of any party primarily or secondarily liable under the Lease, including one or more of the undersigned (if applicable).

4. Guarantor hereby agrees that the Plans and Specifications, and any other terms, covenants and conditions contained in the Lease or any construction contract with any contractor may be altered, extended, changed, modified or released by Tenant, with the approval of FCRHA (when required under the Lease), and without notice to or the consent of Guarantor, without in any manner affecting the obligations of Guarantor under this Guaranty or releasing Guarantor therefrom. Guarantor specifically acknowledges and agrees that change orders approved by Tenant shall in no manner release Guarantor from the obligations evidenced by this Guaranty.

5. Guarantor agrees that this Guaranty may be enforced by FCRHA without the necessity at any time of resorting to or exhausting any other remedies under the Lease and without the necessity at any time of having recourse under the Lease. Guarantor further agrees that nothing herein contained shall prevent FCRHA from suing under the Lease or terminating the Lease or from exercising any other right available to it under the Lease, and the exercise of any of the

aforementioned rights shall not constitute a legal or equitable discharge of Guarantor, it being the purpose and intent of Guarantor that its obligations under this Guaranty be released therefrom upon payment of all sums due hereunder and achievement of Final Completion in accordance with the terms and conditions of the Lease and this Guaranty. Notwithstanding anything to the contrary herein, this Guaranty shall terminate and be of no further force or effect and Guarantor shall be released of all obligations hereunder upon the achievement of Final Completion, as set forth in the Lease.

6. Nothing contained in this Guaranty shall operate as a release or discharge in whole or in part, of any claim of Guarantor against Tenant by subrogation or otherwise, by reason of any act done or any payment made by Guarantor pursuant to the provisions of this Guaranty; provided, however, all such claims shall be subordinate to the claims of FCRHA and Guarantor assigns all of its right, title and interest in all claims of Guarantor as security for the fulfillment of all of Guarantor's obligations under this Guaranty.

7. Guarantor acknowledges, consents and agrees (a) that the provisions of this Guaranty and the rights of all parties to this Guaranty are governed by the laws of the Commonwealth of Virginia and interpreted and construed in accordance with such laws and (b) that the United States District Court for the Eastern District of Virginia or any court of competent jurisdiction of the Commonwealth of Virginia will have jurisdiction in any proceeding instituted to enforce this Guaranty and any objections to venue are waived by Guarantor.

**8. GUARANTOR AND FCHRA HEREBY, JOINTLY AND SEVERALLY, WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GUARANTOR AND FCHRA MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS GUARANTY OR THE LEASE. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTY. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GUARANTOR FURTHER REPRESENTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

9. The rights, powers, privileges and discretions (the "Rights") to which FCRHA may be entitled hereunder shall inure to the benefit of its successors and assigns. All the Rights of FCRHA are cumulative and not alternative and may be enforced successively or concurrently. Failure of FCRHA to exercise any of its Rights shall not be deemed a waiver thereof and no waiver of any of its Rights shall be effective unless in writing and signed by FCRHA. The terms, covenants and conditions of or imposed upon Guarantor herein shall be binding upon his respective heirs, personal representatives, successors and assigns.



10. Guarantor represents and warrants that it has examined or has had an opportunity to examine the Lease, and that it has full power, authority and legal right to execute and deliver this Guaranty, and that this Guaranty is a binding legal obligation of Guarantor.

11. In case any provision contained in this Guaranty shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Guaranty but this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

*[SIGNATURES APPEAR ON THE FOLLOWING PAGE]*

WITNESS the signature and seal of Guarantor as of the day and year first above written.

**GUARANTOR:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_[SEAL]

Name:

Title:

## **EXHIBIT A**

### Description of the Premises

## **Exhibit F**

### **Exhibit F 9%/4% 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 150 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 F thereto. Notwithstanding anything herein to the contrary, so long as an AHU Unit is subject to the regulatory restrictions of the LIHTC Program, then Tenant 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 F 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 F 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% 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 from the property manager as of the first of such quarter providing for:

- (1) The address and name of the Premises and the name of the Tenant.
- (2) The number of AHUs by bedroom count and floor area, which are vacant.
- (3) The number of AHUs by bedroom count and floor area that are leased. For each such unit, the statement 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 (e.g. IRS W-2 Form) at such Affordable Housing Tenant's most recent (re)certification.

(v) The current monthly rent.

(vi) The Area Median Income (“**AMI**”) level.

(4) That to the best of the Tenant's information and belief, the tenant households who lease AHUs meet the eligibility criteria established in accordance with the Lease, including, but not limited to, the terms of this Exhibit F 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 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 that is under-represented based on the table below.

<b>Number of Units</b>	<b>Area Median Income (AMI)</b>
15	30%
60	50%
75	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 F, 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 Tenant shall be in default with respect to the Affordable Housing Lease. Tenant shall

take appropriate enforcement action when necessary with respect to such default. Provided Tenant has acted in accordance with the foregoing, a failure by an Affordable Housing Tenant to vacate a unit if evicted as a result of such default 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 F, 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 F), 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. Tenant shall take appropriate enforcement action when necessary with respect to such default. Provided Tenant has acted in accordance with the foregoing, a failure by an Affordable Housing Tenant to vacate a unit if evicted as a result of such default 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; provided however, that all of the AHUs are senior living facilities only.

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 F.

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 F 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 F.

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 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 F 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.