

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

**ORDER NO:** 18-12-18-09

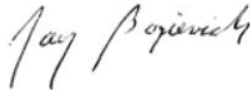
IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A 99-YEAR LEASE AGREEMENT WITH MD COMMONS, LLC FOR COUNTY OWNED PROPERTY IDENTIFIED AS MAP NO. 17-03-31-11-02100, PARKING LOT ON NW CORNER OF 6<sup>TH</sup> AND OAK ST.

**WHEREAS** this matter now coming before the Lane County Board of Commissioners and said Board deeming it in the best interest of Lane County to enter into a lease agreement with Homes for Good doing business as Market Commons, LLC for County owned property identified as Assessor's map no. 17-03-31-11-02100

**NOW, THEREFORE**, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. The County Administrator is authorized to execute a lease with MD Commons, LLC substantially similar to attached Exhibit "A".
2. The County Administrator is authorized to execute documents related to effecting the lease agreement and MD Commons development of the property.

**ADOPTED** this 18th day of Dec., 2018



Jay Bozievich, Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date

LANE COUNTY OFFICE OF LEGAL COUNSEL

**GROUND LEASE**

**Lane County, a political subdivision of the State of Oregon**

Lessor

**MD Commons LLC, an Oregon limited liability company**

Lessee

**Ground Lease  
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## GROUND LEASE

LESSOR: Lane County, a political subdivision of the State of Oregon

LESSEE: MD Commons LLC, an Oregon limited liability company

This Ground Lease is entered into by and between the Lessor and Lessee effective as of \_\_\_\_\_, 20\_\_ (the "Commencement Date").

### Recitals

A. Lessor owns that certain real property situated in Lane County Oregon and legally described on Exhibit A hereto (the "Real Property").

B. Lessor by virtue of Order No. 17-10-31-07 wishes to lease to Lessee, and Lessee wishes to lease from Lessor the Real Property for a term of ninety-nine (99) years.

C. Lessor and Lessee intend that this Ground Lease will set forth the terms and conditions upon which the Real Property will be leased to and developed by the Lessee.

D. Lessee intends to construct on the Real Property a mixed-use structure which will be subjected by Lessor and Lessee to a condominium regime under the Oregon Condominium Act and will contain two condominium units. One unit will consist of a low-income housing development and related facilities consisting of approximately 48,045 square feet and 50 residential apartments with associated common areas (the "Apartment Unit"). The second unit will consist of approximately 6,871 square feet of ground floor commercial space (the "Commercial Unit"). The owner of each Unit is referred to herein as a "Unit Owner." Each Unit will include certain rights to use common areas and common area improvements. The Unit Owners will own an undivided interest in the common areas and common area improvements and such common areas and common area improvements shall be managed by Market District Commons Condominium Owners Association (the "Condominium Association") all as set forth in the Condominium Documents. Together, the Apartment Unit, the Commercial Unit, and all other improvements built on, under, or over the Real Property are referred to herein as the "Project." Following assignment of this Ground Lease to the Condominium Association, as provided herein, the term "Lessee" shall mean such Condominium Association.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements of Lessor and Lessee set forth in this Ground Lease, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

### Lease

#### **Section 1. Lease and Term.**

1.1 Leased Real Property. Subject to the terms and conditions hereof, Lessor hereby leases to Lessee the Real Property subject to the encumbrances appearing in Exhibit B.

1.2 Term. The Real Property is leased for a term of Ninety-nine (99) years commencing on the Commenc

## **Section 2. Project Description.**

Lessee intends to construct the Project substantially as depicted on the plans and specifications attached as Exhibit C. The Project and any future alterations, additions, replacements, or modifications to the Project during the Term of this Ground Lease are referred to in this Ground Lease as the “Improvements.”

## **Section 3. Construction of the Project.**

### **3.1. Construction and Completion.**

3.1.1 Lessee shall construct the Project substantially in the accordance with the plans and specifications attached as Exhibit C. The work shall be performed in accordance with this Ground Lease (including the provision regarding Unavoidable Delay as herein defined) and all Legal Requirements and shall be completed in a good and professional manner. For the purposes of this Ground Lease, the term Legal Requirements includes all present and future laws, ordinances, orders, rules, and regulations which become applicable to the Project during the course of construction.

3.1.2 Lessee shall require that the general contractor or general contractors constructing the Improvements be bonded for the cost of such Improvements by a surety company or companies holding certificates of authority to transact surety business in Oregon. Lessee shall provide Lessor with a copy of such payment and performance bonds and a copy of the associated contract and construction documents upon the written request of the Lessor.

3.1.3 Lessee shall conform to the requirements of ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the Oregon Prevailing Wage Law), to the extent such law is applicable to its Project.

### **3.2 Unavoidable Delay**

3.2.1 Neither a Party nor a Party’s successor in interest shall be considered in breach of or in default with respect to any obligation under this Ground Lease if the delay in performance of such obligation (“Unavoidable Delay”) is a result of conditions unforeseeable, beyond the Party’s reasonable control, and without the Party’s fault or negligence, including, without limitation, events such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, shortages of labor or materials, strike, malicious mischief, or explosion.

3.2.2 A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party’s obligation must, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and estimated time of correction. The Party must thereafter do everything in its power to resume performance of the delayed obligation.

3.2.3 Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event will the time or times for performance of an obligation be extended for more than 180 days in the aggregate.

### 3.3 Condominium Regime.

3.3.1 Upon substantial completion of the Project, Lessee shall submit the Project to the leasehold condominium form of ownership in accordance with the Oregon Condominium Act. Lessee has prepared drafts of the condominium declaration, articles of incorporation, and bylaws for the Condominium Association (collectively, the "Condominium Documents"). The condominium plat will be prepared at or after substantial completion of the Project. Lessee has also prepared an assignment and assumption of this Lease to the Condominium Association which will be memorialized in the records of Lane County, Oregon by a recorded Memorandum of Lease Assignment. Forms of the foregoing are attached hereto as assignment of this Lease, forms of which are attached hereto as Exhibit D (Condominium Declaration), Exhibit E (Articles of Incorporation of Condominium Association), Exhibit F (By-Laws of the Condominium Association), and Exhibit G (Assignment and Assumption of Lease to Condominium Association). Lessee will pay all expenses necessary to establish and maintain the Project as a condominium, including, without limitation, legal fees for preparation of the Condominium Documents, surveying costs, costs to obtain Oregon Real Estate Agency approval of the final Condominium Documents and the approval of the Lane County Surveyor's Office of the Condominium plat, and all recording fees for recording the assignment of this Lease, the Condominium plat, Condominium declaration and bylaws, and filing fees for formation of the Condominium Association as an Oregon non-profit corporation.

3.3.2 Lessor agrees to join in any required Condominium Documents to properly create the Condominium if Lessor being joined as owner of the Real Property is legally required to permit the Condominiums to be formed.

3.3.3 Lessor agrees that, at or after substantial completion of the Project, Lessee may submit the Condominium Documents in substantially the form attached to this Lease to the Oregon Real Estate Agency for approval, and file the articles of incorporation of the Condominium Association with the Oregon Corporation Division.

3.3.4 Promptly upon receiving approval from the Oregon Real Estate Agency and Lane County Surveyor's Office, Lessee shall record an assignment of this Lease to the Condominium Association and the approved Condominium Declaration, Bylaws, and plat with the county recorder's office. The sale of a Unit shall not constitute an assignment of this Lease.

## **Section 4     **Rent; Triple Net.****

4.1 Basic Rent. Lessee covenants and agrees to pay to Lessor on the Commencement Date Rent for the Initial Term in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "Basic Rent") which shall constitute advance payment of the Basic Rent for the entire Term. Other costs, expenses, and payments required to be paid by Lessee under Section 4.3 and Section 9.2 shall constitute "Additional Rent."

4.2 Payment. Basic Rent and all other amounts payable by Lessee to Lessor under the terms of this Ground Lease, shall be paid at the office of Lessor set forth in Section 31 of this Ground Lease in lawful money of the United States.

4.3 Net Lease. It is intended that the Basic Rent provided for in this Section 4 shall be an absolutely net return to Lessor throughout the Term, free of any cost, expense, charge, or other deduction whatsoever with respect to the Real Property and the Project, except for those costs and expenses required to be paid by Lessor under this Lease, including all claims, demands, or setoffs of any nature whatsoever. Lessee shall also pay without notice, except as may be provided in this Ground Lease, and without abatement, deduction, or setoff, as Additional Rent, all sums, impositions, costs, expenses, charges, and other payments which Lessee in any of the provisions of this Ground Lease assumes or agrees to pay, and in the event of any nonpayment, Lessor shall have (in addition to all other rights and remedies) all the rights and remedies provided for in this Ground Lease or by law in the case of nonpayment of the Basic Rent.

4.4 Statutory Provisions Regarding Condominiums, Rent. After the initial sale of a Unit, no Unit Owner shall be liable for the acts, omissions, or defaults of the other Unit Owner under the terms of this Ground Lease. Any unpaid Unit rents will be an assessment lien held by the Condominium Association against the Unit and collected and paid to Lessor when the Unit is sold, as provided in Section 7.12. The interest of a Unit Owner in its Unit shall not be extinguished by Lessor until after at least ninety (90) days written notice to such Unit Owner of (a) the failure of Lessee (or the Condominium Association as assignee of Lessee) to perform any obligations of Lessee under this Lease, including failure to pay Lessor the Rent required for the entire Project; and (b) the Unit Owner's right to "cure" the Lessee's default by paying the Unit Owner's Unit Rent directly to Lessor or to commence action to cure any other default attributable solely to the Unit Owner's Unit under the Lease and cure such default within a reasonable time thereafter which shall in all events be no less than ninety (90) days and the failure of the Unit Owner and any of its lenders to so "cure" within such ninety (90) days. Provided, however, that if a Unit Owner cannot reasonably cure any default (other than payment of its Unit Rent to Lessor) attributable solely to the Unit Owner's Unit, there shall be no continuing default of the Lease as to a Unit Owner and its lienholder, but such Unit Owner, at Lessor's request, shall attorn directly to Lessor. Insolvency of Lessee shall not impair the rights of a Unit Owner, provided that such Unit Owners continues to pay Lessor its Unit Rent directly.

This provision is intended to comply with the provisions of ORS 100.445 and all Unit Owners and their secured lenders shall have the benefit of this Section 4.4 and the provisions of ORS 100.445.

## **Section 5. Use.**

5.1 Permitted Uses. Subject to Section 5.2, Lessee may use the Real Property for any lawful use or purpose. Without limited the foregoing, permitted uses of the Real Property by the Lessee shall include the development, construction, and operation of the Project and ongoing residential uses in the Apartment Unit and, subject to the Prohibited Uses below and in the Condominium Documents, commercial uses within the Commercial Unit.



5.2 Prohibited Uses. Lessee, and following assignment of this Ground Lease to the Condominium Association, the Condominium Association, shall not use or occupy, or permit or suffer all or any part of the Real Property or the Improvements to be used or occupied (1) for any unlawful or illegal business, use, or purpose, (2) in any such manner to constitute a nuisance of any kind, or (3) for any purpose or in any way in violation of the certificate of occupancy, or of any Legal Requirements, including but not limited to Legal Requirements respecting Hazardous Substances. The term Hazardous Substance means any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection Legal Requirements, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by the United States Environmental Protection Agency (40 CFR pt. 302). Lessee, and following assignment of this Ground Lease, the Condominium Association, acknowledges that the term “Legal Requirements” includes but is not limited to all environmental protection laws such as the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §6901 et seq.), the Federal Water Pollution Control Act (33 USC §6901 et seq.), the Federal Water Pollution Control Act (33 USC §1257 et seq.), and the Clean Air Act (42 USC §2001 et seq.).

5.3 Compliance with Applicable Permits and Zoning Requirements. Lessee, and upon assignment of this Ground Lease to the Condominium Association, the Condominium Association, shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions that now apply to the Real Property or that have been granted to or contracted for by Lessor or Lessee in connection with any existing or presently contemplated use of the Real Property or the Improvements.

5.4 Requirements of Public Utilities. Lessor and Lessee agree that, if and when any governmental or any other public authority requires the execution and delivery of any instrument or any public utility company requires the execution and delivery of any rights of way, easements, and grants in, over, and along any streets adjoining or in, over, under, or through the Real Property (except any that may run directly under the Improvements) for the purpose of providing water, gas, steam, electricity, telephone, storm and sanitary sewer, or any other necessary or desirable service or facility for the benefit of the Real Property or the Improvements, then both parties, without cost to either party, will execute, acknowledge, and deliver any such instrument or document as may be required.

## **Section 6. Liens.**

6.1 Power to Create Liens Affecting Lessor’s Interest. Lessee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of Lessor or on any interest of Lessor in the Real Property, except: (i) as permitted herein with respect to Permitted Mortgage Lenders (as defined below); (ii) regulatory agreements, restrictive covenants, and other similarly restrictive agreements (which may affect the Lessor’s reversionary interest as well as the Lessee’s leasehold interest) as may be reasonably necessary to restrict rents or tenant incomes in a manner required to maintain the tax-exempt nonprofit status of the general partner (or member of the general partner) of Lessee, or commonly required or employed to qualify for low-income housing tax credits, tax abatements for low-income housing, construction and/or permanent financing, rental

assistance payments, development assistance, development grants, or other similar benefits which will assist in the development, construction and operation of the Project; (iii) to enter into leases of the Project; and (iv) to enter into easements, licenses and other agreements incidental to the development, construction and/or operation of the Project.

6.2 Lessor Acknowledgements, Consents. Lessor hereby agrees to the recording of such covenants, regulatory agreements, easements, licenses and other recordable documents, to the extent permitted under Section 6.1, at Lessee's sole expense; provided, however, that such documents shall be subject to Lessor's prior review and approval which approval shall not be unreasonably denied or delayed. Lessor agrees that, subject to its prior review and approval of such recordable documents (which approval shall not be unreasonably delayed or denied, it shall provide written consents in form and substance as may be reasonably required to permit recording of such documents. Lessor expressly consents to the execution and recording of a Low-Income Housing Tax Credit Declaration of Land Use Restrictive Covenants encumbering the Housing Unit.

6.3 Power to Create Liens Affecting Lessee's Interest. Except as expressly limited by this Ground Lease, and without further consent of the Lessor, the Lessee and each Unit Owner shall have authority to encumber its leasehold interest: (i) as required with respect to Permitted Mortgage Lenders (as defined below); (ii) regulatory agreements, restrictive covenants, and other similarly restrictive agreements as may be required or employed to qualify the Apartment Unit for low-income housing tax credits, tax abatements for low-income housing, construction and/or permanent financing, rental assistance payments, development assistance, development grants, or other similar benefits which will assist in the development, construction and operation of the Project; (iii) to enter into leases of the Project, including residential leases and laundry, trash compactor, and similar leases routinely employed in connection with the operation of multifamily residential properties; and (iv) to enter into easements, licenses and other agreements incidental to the development, construction and/or operation of the Project. Lessor hereby expressly agrees and consents to Unit Owners entering into such financing arrangements and the resulting encumbrances of Unit Owners' Condominium estates in the Project, provided that such financing arrangements and resulting encumbrances shall be subject to the terms of this Ground Lease and shall not affect Lessor's rights or increase Lessor's duties or obligations under this Ground Lease.

6.4 Duty to Remove or Bond Over. Lessee agrees that it will not permit any unsatisfied liens to attach to the interest of Lessee in all or any part of the Real Property by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee, the Condominium Association, any Unit Owner, or tenant of the Apartment Unit. If any such lien (or claim of lien) shall at any time be filed against the Real Property, Lessee shall cause any such claim or lien to be fully discharged within sixty (60) days after the date of filing thereof; provided, however, that in the event Lessee, in good faith, disputes the validity or amount of any such claim of lien, and if Lessee shall give to Lessor such security as Lessor may reasonably require to ensure payment thereof and prevent any sale, foreclosure, or forfeiture of the Real Property or any portion thereof by reason of such nonpayment, Lessee shall not be deemed to be in breach of this Section 6.4, so long as Lessee is diligently pursuing a resolution of such dispute. Upon entry of final judgment resolving the

dispute, if litigation or other legal proceeding results therefrom, Lessee shall discharge said lien within thirty (30) days.

6.5 Lessee not Agent of Lessor. Nothing in this Ground Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Lessor, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Real Property or to the Improvements, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Lessor's interest in the Real Property or against Lessor's interest, if any, in the Improvements. Lessee is not intended to be an agent of Lessor for the construction of Improvements on the Real Property. The foregoing shall not be construed to diminish or vitiate any rights of Lessee in this Ground Lease to construct, alter, or add to the Improvements.

6.6 Encumbrances by Lessor. Lessor shall not sell, assign, transfer, mortgage or otherwise encumber the fee interest in the Real Property (including, without limitation, Lessor's reversionary interest) nor sell, assign, transfer mortgage or otherwise encumber Lessor's interest in this Ground Lease (including, without limitation, Lessor's reversionary interest). Any such purported sale, assignment, transfer, mortgage or encumbrance shall be deemed void *ab initio*.

## **Section 7. Taxes and Other Charges.**

7.1 Lessee to Pay all Taxes, Charges. Lessee and the Unit Owners shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales charges, assessments (including, but not limited to, assessments for public improvements or benefits), and all other governmental impositions and charges of every kind and nature whatsoever which, at any time during the Term, shall be or become due and payable and which:

7.1.1 Shall be levied, assessed, or imposed against the Real Property or the Improvements or any interest of Lessor or Lessee or any Unit Owner under this Ground Lease; or

7.1.2 Shall be or become liens against the Real Property or the Improvements or any interest of Lessor or Lessee or any Unit Owner under this Ground Lease; or

7.1.3 Shall be levied, assessed, or imposed on or against Lessor by reason of any actual or asserted engagement by Lessor, Lessee, or Unit Owner directly or indirectly, in any business, occupation, or other activity in connection with the Real Property or the Improvements; or

7.1.4 Shall be levied, assessed, or imposed on or in connection with the ownership, leasing, operation, management, maintenance, repair, rebuilding, use, or occupancy of the Real Property or the Improvements or any Condominium Unit; under or by virtue of any Legal Requirement, it being the intention of the parties that, insofar as the same may lawfully be done, Lessor shall be free from all such expenses and all such real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions

and charges of every kind and nature whatsoever (all of such taxes, water charges, sewer charges, assessments, and other governmental impositions and charges that Lessee is obligated to pay being collectively called "Tax" or "Taxes").

7.2 Limitations. Nothing contained in this Ground Lease requires Lessee to pay any franchise, estate, inheritance, succession, capital levy, or transfer tax of Lessor, or any income, excess profits, or revenue tax, or any other tax, assessment, charge, or levy on the Rent payable by Lessee under this Ground Lease; provided, however, that if at any time during the Term the methods of taxation prevailing at the commencement of the Term are altered so that in lieu of any Tax under this Section there is levied, assessed, or imposed (1) a tax, assessment, levy, imposition, or charge, wholly or partially as a capital license fee measured by the Rent payable by Lessee under this Ground Lease, then all such taxes, assessments, levies, impositions, or charges or the part so measured or based, shall be deemed to be included within the term Tax for the purposes of this Ground Lease, to the extent that such Tax would be payable if the Real Property were the only property of Lessor subject to such Tax, and Lessee shall pay and discharge the same as provided in respect to the payment of Taxes.

7.3 Installments. If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Lessee and any Unit Owner may, whether or not interest shall accrue on the unpaid balance, pay the same, and any accrued interest on any unpaid balance, in installments as each installment becomes due and payable, but in any event before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.

7.4 Evidence of Payment. Lessee covenants to furnish to Lessor, within 30 days after the last date when any Tax must be paid by Lessee as provided in this Section, official receipts, if such receipts are then available to Lessee, of the appropriate taxing authority, or other proof satisfactory to Lessor, evidencing payment.

7.5 Contest of Tax. Lessee and the Unit Owners shall have the right at their own expense to contest or review the amount or validity of any Tax or to seek a reduction in the assessed valuation on which any Tax is based, by appropriate legal proceedings.

7.6 Utilities. The Condominium Association and/or each Unit Owner, as provided in the Condominium Documents shall arrange for and pay before they become delinquent all charges for utility services furnished to the Real Property including, but not limited to, electricity, gas, water, sewer, telephone and trash collection charges.

## **Section 8. Insurance.**

8.1 Project Insurance. During the Term, Lessee shall maintain, or cause the Condominium Association to maintain, without cost to the Lessor:

(a) During construction of the Improvement, all-risk builder's risk insurance providing replacement cost coverage in an amount equal to completed construction value of the Improvements;

(b) Throughout the Term, casualty insurance covering loss or damage by fire, vandalism, malicious mischief, storm and other risks as may be embraced within "all-risk" (not "named peril") insurance insuring the full replacement value (excluding foundation and excavation cost) of the Improvements. All casualty insurance policies shall include contractual

liability, severability of interest, and cross-liability endorsements. If “all-risk” insurance becomes unavailable, then Lessee shall insure the Improvements with such coverage as is customary from time to time for comparable buildings in the Eugene, Oregon area. The amount of such insurance policy shall be modified from time to time as the full replacement value of the Improvements changes.

(c) During the Term, Lessee shall maintain insurance coverage in the amounts and types required under Lessee’s Amended and Restated Operating Agreement and in the event of any conflict between the insurance coverage required under this Ground Lease and the insurance coverage required under Lessee’s Amended and Restated Operating Agreement, the higher amount of coverage shall apply.

8.2 Public Liability Insurance. Lessee, at its expense, shall maintain at all times during the Term of this Ground Lease public liability insurance in respect of the Real Property and the conduct or operation of its business, with Lessor as additional insured, with \$1,000,000 minimum combined single-limit coverage, or its equivalent. Lessor may from time to time, but not more frequently than once every three years, require that the amount of public liability insurance to be maintained by Lessee under this Section 8.2 increased so that the amount adequately protects Lessor's interest based on amounts of coverage required of comparable tenants in comparable buildings.

8.3 Policy Requirements. All insurance policies shall be written as primary policies and shall not be contributing with or be in excess of the coverage that either Lessor or Lessee may carry. All such insurance policies shall be issued in the name of Lessee, with Lessor, Lessor’s officials, employees, agents and volunteers, and any Permitted Leasehold Mortgagee being included in the insurance policy definition of who is an additional insured, shall contain a standard mortgagee's clause in form satisfactory to the Permitted Leasehold Mortgagees, and shall be primary to any insurance available to Lessor. Lessee shall deliver to Lessor and any additional named insured such fully paid-for policies or certificates of insurance, in a form satisfactory to Lessor, issued by the insurance company or its authorized agent, at least ten (10) days before the Commencement Date. Lessee shall procure and pay for renewals of such insurance from time to time before the expiration, and Lessee shall deliver to Lessor and any additional named insured such renewal policy or certificate at least thirty (30) days before the expiration of any existing policy.

8.4 Insurer Requirements, Delivery to Lessor of Policies. All policies of insurance shall be issued by good, responsible companies, reasonably acceptable to Lessor, Lessee’s limited partner, and any Permitted Leasehold Mortgagee and that are qualified to do business in the State of Oregon. Executed copies of such policies of insurance shall be delivered to any Permitted Leasehold Mortgagee and certificates shall be delivered to Lessor within **30** days after the Improvements are completed and thereafter within **30** days before the expiration of the term of each such policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. Lessee shall endeavor to have all policies of insurance contain a provision that the company writing the policy will give Lessor and any Permitted Leasehold Mortgagee thirty (30) days' written notice in advance of any cancellation, substantial change of coverage, or the effective date of any reduction in amount of insurance.

8.5 Blanket Policies. The obligations of Lessee to carry the insurance provided for may be brought within the coverage of a so-called blanket policy or policies of insurance; provided, however:

8.5.1 That the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance;

8.5.2 That the requirements set forth are otherwise satisfied; and

8.5.3 That, as to all insurance, Lessor and any Permitted Leasehold Mortgagee shall be named as additional insured.

8.6 Casualty Losses, Claims for Damages to Improvements, Use of Proceeds. In the event of any casualty damage to the Improvements, Lessor may make proof of loss if Lessee fails to do so within sixty (60) days of the casualty and after thirty (30) days' written notice from Lessor of its intent to do so. The insurance proceeds (the "Proceeds") of any insurance on the Improvements shall be paid as provided in any applicable Permitted Leasehold Mortgage, then, as provided in any applicable Legal Requirement and as provided in this Ground Lease. Unless the casualty occurs within five years of the Expiration Date of this Ground Lease, the Proceeds (unless required to be paid and used differently pursuant to the preceding sentence), shall be delivered to Lessee and Lessee shall promptly repair or replace the damaged and destroyed Improvements to substantially the condition existing the day prior to the casualty or in a manner reasonably satisfactory to Lessor. Lessee's obligation to repair or replace Improvements under this Section 8.6 is limited to the amount of such repair or replacement for which adequate Proceeds are made available to Lessee or such additional funds as may be made available to Lessee from other sources. Subject to the first sentence of this Section 8.6, any Proceeds not used for the repair, restoration, or replacement of the Improvements shall be distributed on the same basis as any condemnation proceeds pursuant to the provisions of Section 16 below. If the damage occurs within five (5) years of the Expiration Date of this Ground Lease, then Lessor shall have the option of Terminating this Ground Lease and, subject to the first sentence of this Section 8.6, retaining all the Proceeds in excess of the amount required to pay the remaining balance, if any, on any Permitted Leasehold Mortgages.

## **Section 9. Lessor's Right to Perform Lessee's Covenants.**

9.1 Tax Payments. Subject to the rights of the Permitted Leasehold Mortgagees contained in Section 18, below, if Lessee at any time fails to pay any Tax in accordance with the provisions of this Ground Lease or fails to make any other payment or perform any other act on its part to be made or performed, then Lessor, after ten (10) business days' notice to Lessee (or without notice in case of an emergency) and without waiving or releasing Lessee from any obligation of Lessee contained in this Ground Lease or from any default by Lessee and without waiving Lessor's right to take such action as may be permissible under this Ground Lease as a result of such default, may (but shall be under no obligation to):

9.1.1 Pay any Tax payable by Lessee pursuant to the provisions of this Ground Lease; or

9.1.2 Make any other payment or perform any other act on Lessee's part to be made or performed as provided in this Ground Lease.

9.2 Interest, Payments as Additional Rent. All sums so paid by Lessor and all costs and expenses incurred by Lessor, including reasonable attorney fees, in connection with the performance of any such act, together with, if Lessee does not pay the same within the 30-day period after notice from Lessor, interest from the date of such payment or incurrence by Lessor of such cost and expense until paid, at the annual rate of **6%**, shall constitute Additional Rent payable by Lessee under this Ground Lease and shall be paid by Lessee to Lessor on demand.

## **Section 10. Compliance with Legal Requirements.**

10.1 Compliance Required. Throughout the Term, Lessee shall promptly comply with all Legal Requirements that may apply to the Real Property or to the use or manner of uses of the Real Property or the Improvements, including but not limited to Oregon Landlord-Tenant law as defined in Oregon Revised Statutes.

10.2 Lessee's Right to Contest. Lessee shall have the right, after prior written notice to Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Lessor or both, without cost or expense to Lessor, the validity or application of any Legal Requirement subject to the following:

10.2.1 If, by the terms of any Legal Requirement, compliance may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien, charge, or liability of any kind against all or any part of the Real Property or the Improvements and without subjecting Lessee or Lessor to any liability, civil or criminal, for failure to comply, Lessee may delay compliance until the final determination of such proceeding; or

10.2.2 If any lien, charge, or civil liability would be incurred by reason of any such delay, Lessee nevertheless may contest the matter and delay compliance, provided that such delay would not subject Lessor to criminal liability or fine, and Lessee

10.2.2.1 Furnishes to Lessor security, reasonably satisfactory to Lessor, against any loss or injury by reason of such contest or delay, and

10.2.2.2 Prosecutes the contest with due diligence.

10.3 Lessor to Cooperate. Lessor shall execute and deliver any appropriate papers that may be necessary or proper to permit Lessee to contest the validity or application of any Legal Requirement, provided all the requirements of this Section have been satisfied by Lessee and Lessor will incur no cost.

## **Section 11. Repairs and Maintenance.**

11.1 Throughout the Term, Lessee shall maintain the Real Property and any Improvements to the extent necessary to comply with the Legal Requirements as set forth in Section 10 above.

11.2 Except as otherwise provided in this Ground Lease, and other than in its capacity as a municipal corporation and except to the extent Lessor provides utilities to the public, Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam heat, gas, hot water, electricity, light, and power. Lessor shall in no event be required by this Ground Lease to make any alterations, rebuilding, replacements, changes, additions, improvements, or repairs during the Term.

11.3 Lessor assigns to Lessee, without recourse, such rights, if any, as Lessor may have against any parties causing damage to the Improvements on the Real Property to sue for and recover amounts expended by Lessee as a result of such damage.

**Section 12. Alterations, Additions, and New Improvements.**

Subject to the permitted uses of the Real Property set forth in Section 5.1, Lessee may make any additions, alterations or changes in or to the Improvements, provided, however, in all events the Improvements shall constitute a residential housing development and, provided, further, that any alteration to exterior walls or roof of the Improvements during the final ten (10) years of the Extended Term, shall require the consent of the Lessor which consent shall not be unreasonably denied or delayed. All salvage material in connection with any such alteration shall belong to Lessee.

**Section 13. Title to Improvements.**

As between Lessor and Lessee, legal and beneficial title to Improvements shall be and remain in Lessee and/or the Unit Owners, as the case may be, until the expiration of the Term, unless this Ground Lease is terminated sooner as provided. Upon such expiration or sooner termination, title to the Improvements shall automatically pass to, vest in, and belong to Lessor without further action on the part of either party and without cost or charge to Lessor. During the Term, Lessee (and following the assignment of the Ground Lease and the establishment of the condominium regime, the Unit Owners) shall be entitled for all taxation purposes to claim cost recovery deductions and the like on the Improvements. Notwithstanding anything to the contrary set forth in this Lease, Lessee (and following the assignment of the Ground Lease and the establishment of the condominium regime, the Unit Owners) is and shall be deemed to be the sole owner of (i) legal and beneficial title to the Improvements; and (ii) all attachments, appliances, equipment, machinery and other articles used in connection with the Property or the Improvements (the "Personal Property"); and Lessee (and following the assignment of the Ground Lease and the establishment of the condominium regime, the Unit Owners) shall be the sole party entitled to all of the tax attributes of ownership of the Improvements and Personal Property during the term of this Lease including, without limitation, the right to claim deductions for depreciation or cost recovery thereof and the right to claim any low-income housing tax credits described in Section 42 of the Internal Revenue Code, as amended (the "IRC") and the right to amortize capital costs and to claim any other federal tax benefits attributable to the Project.

**Section 14. No Waste.**

Lessee shall not do or suffer any waste or damage, disfigurement, or injury to the Real Property or the Improvements. Demolition of all or any part of the Improvements done in accordance with the requirements of Section 12 above shall not be considered prohibited by the terms of this Section.

**Section 15. Lessor's Exculpation and Indemnity.**

15.1 Lessee's Control of Real Property. Lessee is and shall be in exclusive control of the Real Property and of the Improvements, and Lessor, in its capacity as such, shall not be liable for any injury or damage to any property or to any person happening on, in, or about the Real Property or the Improvements or any injury or damage to the Real Property or the Improvements or to any property, whether belonging to Lessee or to any other person, caused by any fire,



breakage, leakage, defect, or bad condition in any part or portion of the Real Property or of the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Real Property or the Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of all or any of the Improvements or from any kind of injury that may arise from any other cause whatsoever on the Real Property or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise. The foregoing shall not constitute a release of Lessor for its act, omissions or liabilities undertaken or incurred by Lessor in its capacity as a municipal corporation.

15.2 Indemnification by Lessee. Lessee shall indemnify and hold Lessor and its officials, employees, agents and volunteers harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees, that may be imposed on or incurred by or asserted against Lessor by reason of any of the following occurrences during the Term:

15.2.1 Any work or thing done in, on, or about all or any part of the Real Property or the Improvements by Lessee or any party other than Lessor;

15.2.2 Any use, non-use, possession, occupation, condition, operation, maintenance, or management of all or any part of the Real Property or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space;

15.2.3 Any negligence on the part of Lessee or any of its agents, contractors, servants, employees, sublessees, licensees, or invitees;

15.2.4 Any accident, injury, or damage to any person or property occurring in, on, or about the Real Property or the Improvements; or

15.2.5 Any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Ground Lease on its part to be performed or complied with.

15.3 In case any action or proceeding is brought against Lessor by reason of any such claim, Lessee upon written notice from Lessor shall, at Lessee's expense, resist or defend such action or proceeding by counsel approved by Lessor in writing, which approval shall not be unreasonably withheld. Lessor shall not make any claim against Lessee with respect to any of such risks as to which Lessee has furnished Lessor with insurance policies or certificates of insurance evidencing coverage of such risks unless and until the insurer fails or refuses to defend and/or pay all or any part of a third-party claim.

## **Section 16. Condemnation.**

16.1 Total Condemnation. If the whole of the Real Property, the Improvements, or such portion thereof as renders it infeasible, in Lessee's sole discretion, for Lessee to continue to operate and maintain the Improvements, shall be appropriated or condemned under power of eminent domain during the Term, then subject to the terms and conditions of any First Leasehold Mortgage, and the consent of the Tax Credit Investor, Lessee reserves unto itself the right to prosecute its claim for an award for damages for the termination of this Ground Lease caused by such appropriation or taking, together with damages based on the value of Lessee's Improvements on the Real Property and damages Lessee may sustain caused by such

appropriation and taking of, or the injury to, Lessee's leasehold interest. Lessor shall be entitled to prosecute its claim for the fee interest in the Real Property, subject to the Ground Lease and damages Lessor may sustain caused by such appropriation and taking of, or the injury to, Lessor's fee interest. In such event, this Ground Lease shall terminate when Lessee can no longer use the Real Property in the manner herein intended, or when possession thereof shall be required by the appropriating or condemning authority, whichever shall first occur; but such termination of this Ground Lease shall not preclude nor restrict Lessee's right to an award as herein before provided.

16.2 Partial Condemnation. In the event that a part of the Real Property shall be taken or condemned under circumstances in which Lessee desires to continue the Ground Lease, this Ground Lease shall continue in full force and effect and shall terminate only as to that part of the Real Property so taken. In that event Lessee shall, at its own cost and expense and subject to the terms and conditions of any First Leasehold Mortgage, make all repairs to Improvements on the Real Property affected by such taking or condemnation to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase). Compensation available or paid to Lessor or Lessee upon such a partial taking or condemnation shall be paid to Lessee, subject to the terms and conditions of any First Leasehold Mortgage, to the extent that such compensation is attributable to the taking of Lessee's leasehold interest and the remainder shall be paid to Lessor.

16.3 Temporary Taking. If there shall be a temporary taking with respect to all or any part of the Improvements or of Lessee's interest in this Ground Lease, then the Term shall not be reduced and Lessee shall continue to pay in full all rents, and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Lessee shall not be required to perform such obligations that Lessee is prevented from performing by reason of such temporary taking.

16.4 Disputes. In the event of any dispute between Lessee and Lessor with respect to any issue of fact arising out of a taking mentioned in this Section 16, such dispute shall be resolved by the same court in which the condemnation action is brought, in such proceedings as may be appropriate for the adjudicating the dispute. If any Permitted Leasehold Mortgage exists, the Permitted Leasehold Mortgagees, to the extent permitted by law, shall be made parties to any taking proceeding and all rights of Lessee shall be subject to the terms of the Permitted Leasehold Mortgages.

## **Section 17. Assignment and Subletting.**

17.1 Assignment of Lease to Condominium Association. Lessor acknowledges that, at or near substantial completion of the Improvements on the Real Property, the Project will be submitted to a Condominium form of ownership and this Ground Lease will be assigned to the Condominium Association. Lessor and Lessee agree to cooperate as may reasonably be required to accomplish the foregoing.

17.2 Right to Sublet. Lessee shall have the right to sublet all or any portion of the Real Property, the Improvements, and/or the Apartment Unit at any time and from time to time, for a term or terms that shall expire before the expiration of the Term, and provided that each such sublease shall be in writing.

## **Section 18. Leasehold Mortgages.**

18.1 Right to Mortgage Leasehold Interest. Lessee, and following assignment of this Ground Lease to the Condominium Association, each Unit Owner, shall have the right, in addition to any other rights granted and without any requirement to obtain Lessor's consent, to mortgage or grant a security interest in Lessee's interest, or, as applicable the Unit Owner's interest, in this Ground Lease and the Real Property and the Improvements and any residential or similar subleases, under one or more leasehold mortgages to one or more Lending Institutions, as defined, and/or under one or more purchase money leasehold mortgages, and to assign Lessee's or each Unit Owners' interest in this Ground Lease and any subleases as collateral security for such leasehold mortgages, on the condition that all rights acquired under such leasehold mortgages shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Ground Lease, and all other agreements referenced in this Ground Lease, and to all rights and interests of Lessor, none of which covenants, conditions, restrictions, rights, or interests is or shall be waived by Lessor by reason of the right given to mortgage or grant a security interest in Lessee's interest in this Ground Lease and the Real Property and the Improvements, except as expressly provided otherwise. Notwithstanding the foregoing or anything to the contrary set forth herein, the common areas and common elements established under the Condominium Documents shall not be transferred, pledged, mortgaged or encumbered with any lien or security interest without the prior written consent of the Tax Credit Investor.

18.2 Permitted Mortgages. Any mortgage made pursuant to this Section 18 is referred to as a "Permitted Leasehold Mortgage," and the holder of, or secured party under, a Permitted Leasehold Mortgage is referred to as a "Permitted Leasehold Mortgagee." The Permitted Leasehold Mortgage that is prior in lien or interest among those in effect is referred to as the "First Leasehold Mortgage," and the holder of or secured party under the First Leasehold Mortgage is referred to as the "First Leasehold Mortgagee." If a First Leasehold Mortgage and a Permitted Leasehold Mortgage that is second in priority in lien or interest among those in effect are both held by the same Permitted Leasehold Mortgagee, the two Permitted Leasehold Mortgages are collectively referred to as the "First Leasehold Mortgage." A "Permitted Leasehold Mortgage" includes, without limitation, mortgages and trust deeds as well as financing statements, security agreements, sale-leaseback instrumentation, and other documentation that the lender may require. The term "Lending Institution," as used in this Ground Lease, means any commercial, national, or savings bank, savings and loan association, trust company, pension trust, foundation, or insurance company, and any other entity, person, corporation, partnership, governmental body or otherwise making a loan on the security of Lessee's interest in this Ground Lease or all or any part of the Improvements, including an entity affiliated with Lessee. Any Permitted Leasehold Mortgagee or designee thereof that acquires title to the leasehold estate or any part thereof, any person that acquires title to the leasehold estate through any judicial or nonjudicial foreclosure sale, deed or assignment in lieu thereof, or any sale or transfer made under any order of any court to satisfy wholly or in part obligations secured by any Leasehold Mortgage, and the successors and assigns of any such Permitted Leasehold Mortgagee, is referred to as a "Transferee". For the avoidance of doubt, Wells Fargo Bank, National Association is a "Lending Institution" and a "Permitted Leasehold Mortgagee" hereunder. That certain leasehold deed of trust executed by Lessee in favor of Wells Fargo Bank, National Association on or about the date hereof (the "Wells Fargo Mortgage") is a "Permitted Leasehold Mortgage" hereunder, and so long as the loan secured by such mortgage

remains outstanding, such mortgage is also a "First Leasehold Mortgage" and such lender is a "First Leasehold Mortgagee," as such terms are used hereunder.

18.3 Mortgagee Protection Provisions. Lessor acknowledges that is has received a copy of the Wells Fargo Mortgage and that the address for notice purposes hereunder of Wells Fargo Bank, National Association, as a Permitted Leasehold Mortgagee, is:

Wells Fargo Bank, National Association  
Community Lending Division (AU #07490)  
1300 S.W. Fifth Avenue, 12<sup>th</sup> floor P6101-121  
Portland, Oregon 97201  
Attention: Amy Mandell  
Loan No. [\_\_\_\_\_]

With a copy to be provided to:

Wells Fargo Bank, National Association  
Minneapolis Loan Center  
600 South 4<sup>th</sup> Street, 9<sup>th</sup> floor  
MAC: N9300-91  
Minneapolis, Minnesota 55415  
Attention: Roxanne Swanson  
Loan No. [\_\_\_\_\_]

No notice to Lessee under this Ground Lease shall be effective unless and until each Permitted Leasehold Mortgage also receives a copy of such notice. As long as the Wells Fargo Mortgage and any other Permitted Leasehold Mortgage (of which Lessor has received from Lessee or a Permitted Leasehold Mortgagee a true copy together with written notice specifying the name and address of such Permitted Leasehold Mortgagee) remains unsatisfied of record or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply (in respect of such Permitted Leasehold Mortgage and of any other Permitted Leasehold Mortgages):

18.3.1 Except as expressly provided otherwise below, there shall be no cancellation, termination, surrender, acceptance of surrender, amendment, or modification of this Ground Lease without in each case the prior consent in writing of the Permitted Leasehold Mortgagee, which consent shall be the responsibility of Lessee to obtain. Nor shall any merger result from the acquisition by, or devolution upon, any one entity of the fee and the leasehold estates in the Real Property.

18.3.2 At the time that Lessor sends any notice to Lessee hereunder, Lessor shall simultaneously send a copy of such notice to the Permitted Leasehold Mortgagees.

18.3.3 In the event of any default by Lessee under this Ground Lease, each Permitted Leasehold Mortgagee has the same period as Lessee has, plus 30 days for monetary defaults and plus 90 days for all other defaults (the "Lender Cure Period"), after service of notice on Lessee and Permitted Leasehold Mortgagees of such default, to remedy or cause to be remedied or commence to remedy and complete the remedy of the default complained of for

such default, and Lessor shall accept such performance by or at the instigation of such Permitted Leasehold Mortgagee as if the same had been done by Lessee, provided that no Permitted Leasehold Mortgagee shall be obligated to undertake or perform such cure. Each notice of default given by Lessor will state the amounts of whatever Rent are then claimed to be in default and the nature of any non-monetary default.

18.3.4 Any Permitted Leasehold Mortgagee, at its option at any time within the Lender Cure Period, or such longer period as may be applicable as provided below, following the expiration of the right of Lessee to cure any default under the Ground Lease, may pay any amount or do any act or thing required of Lessee by the terms of the Ground Lease. Payments made and acts performed by such Permitted Leasehold Mortgagee within the Lender Cure Period, or such longer period as may be applicable as provided below, shall be effective to prevent a termination of the rights of Lessee hereunder, if such payments and acts conform to statement of the amounts of Rent claimed to be in default and the nature of any non-monetary default as provided in the notice from Lessor described in Section 18.3.3 or if, together with any performance by Lessee or any other person with any cure rights, they are sufficient, except as to timing, to exercise the Lessee's right to cure that so expired. However, in order to prevent termination of the Ground Lease, a Permitted Leasehold Mortgagee shall not be required to cure (A) defaults on obligations of Lessee to satisfy or otherwise discharge any lien, charge, or encumbrance against Lessee's interest in the Ground Lease caused by a wrongful act of Lessee; or (B) defaults on obligations of Lessee under any indemnity provision in this Ground Lease arising from acts or omissions of Lessee; or (C) other past monetary obligations then in default and not reasonably susceptible of being cured by such Permitted Leasehold Mortgagee (it being understood that the lack of funds of the Lessee shall not excuse performance by Lessee); or (D) other defaults personal to Lessee and not reasonably susceptible of being cured by such Permitted Leasehold Mortgagee; or (E) any default resulting from the acts or omissions of the Lessor ("Excluded Defaults"). For purposes of clarification and illustration, it is the intention of the parties hereto that Excluded Defaults shall include (but not as an exclusive list) claims, damages, liability and expenses, including personal injury and property damage arising or alleged to be arising from actions or inactions of Lessee such as failure to pay insurance premiums, allowing dangerous conditions to exist at the Improvements or failure to operate the Improvements in accordance with regulatory restrictions. Accordingly, in such event, Permitted Leasehold Mortgagee shall not be required to cure such Excluded Defaults to avoid termination of the Ground Lease, but Permitted Leasehold Mortgagee may be required to use commercially reasonable efforts to remediate, ameliorate, or eliminate such continuing conditions to Lessor's reasonable satisfaction to avoid such termination. If the default by Lessee is of such nature that it cannot practicably be cured without possession of the Improvements, then the Lender Cure Period set forth above shall be extended for so long as a Permitted Leasehold Mortgagee shall be proceeding with reasonable diligence to foreclose on the Lessee's interest or otherwise obtain possession of the Improvements for itself or a receiver. Following a foreclosure, acceptance of a deed-in-lieu of foreclosure or other legal proceeding to obtain title to Lessee's interest in the Real Property under a Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee who held such mortgage shall have no obligation to cure, and shall not be liable for, any default that arose under the Ground Lease prior to such Permitted Leasehold Mortgagee taking title to Lessee's interest in the Real Property except as set forth in Section 18.3.20.

Prior to the expiration of the cure rights of Permitted Leasehold Mortgagees, the Lessor shall not effect or cause any purported termination of the Ground Lease nor take any action to deny Lessee or any subtenant possession, occupancy, or quiet enjoyment of the Improvements or any part thereof.

Without limiting the rights of Permitted Leasehold Mortgagees as stated above, and whether or not there shall be any notice of default hereunder, each Permitted Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of the Ground Lease to pay all of the rent due hereunder, with all due interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of the Ground Lease. Any Permitted Leasehold Mortgagee and its agents and contractors shall have full access to the Improvements for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Permitted Leasehold Mortgagee shall be as effective to prevent a termination of the Ground Lease as the same would have been if done by Lessee.

18.3.5 Lessor agrees that the name of the Permitted Leasehold Mortgagee may be added as an additional insured or a mortgagee to any endorsement of any and all insurance policies required to be carried by Lessee or Lessor, as may be required by such Permitted Leasehold Mortgagee.

18.3.6 Lessor agrees that in the event of termination of this Ground Lease for any reason, Lessor will enter into a new lease of the Real Property with the First Leasehold Mortgagee or its nominee (with the written consent of the Tax Credit Investor as to the terms of the new Ground Lease), for the remainder of the original term period, effective on the date of such termination, at the Rent and on the terms, provisions, covenants, and agreements contained in this Ground Lease (provided that such Rent and other obligations are prorated with respect to the Residential Unit and the Commercial Unit following the submission of the Real Property to a condominium regime) and all documents referenced in this Ground Lease, subject only to the same conditions of title as this Ground Lease is subject to on the date this Ground Lease is executed, and to the rights, if any, of any parties then in possession of any part of the Real Property, provided:

18.3.6.1 The First Leasehold Mortgagee or its nominee shall make written request on Lessor for such new lease within 30 days after the date of termination indicated in the notice of termination delivered to First Leasehold Mortgagee and such written request shall be accompanied by payment to Lessor of Rent then due to Lessor under this Ground Lease.

18.3.6.2 The First Leasehold Mortgagee or its nominee shall pay to Lessor, at the time the new lease is executed and delivered, any and all Rent that would be due at the time of the execution and delivery of the new lease pursuant to this Ground Lease but for such termination.

18.3.6.3 The First Leasehold Mortgagee or its nominee shall perform and observe all covenants contained in the new Ground Lease on lessee's part to be performed, provided that the First Leasehold Mortgagee shall have no obligation to cure, and shall not be liable for, any default that arose under the terminated lease except as set forth in Section 18.3.20. On execution and delivery of such new lease, any subleases that may have been assigned and

transferred previously by Lessee to Lessor, as security under this Ground Lease, shall then be held by Lessor as security for the performance of all the obligations of First Leasehold Mortgagee or its nominee under the new lease. Notwithstanding anything to the contrary contained herein, no termination of the Ground Lease shall become effective until, and the lien of each Permitted Leasehold Mortgage shall remain effective until, either a new lease has been made pursuant to this Section 17 or First Leasehold Mortgagee has not timely requested (or caused to be requested) a new lease, upon the expiration of the 30-day period as set forth above.

18.3.6.4 New lessee under such new lease shall have the same right, title, and interest in and to the Improvements on the Real Property as Lessee had under the terminated lease.

18.3.7 Nothing contained in this Ground Lease requires the Permitted Leasehold Mortgagee or its nominee to cure, and the Permitted Leasehold Mortgagee shall not be liable for, any default that occurs as a result of the status of Lessee, such as Lessee's bankruptcy or insolvency, or to discharge any lien, charge, or encumbrance against Lessee's interest in this Ground Lease junior in priority to the line of the Permitted Leasehold Mortgage. Nothing herein shall be construed to imply that the Ground Lease may be terminated by reason of rejection in any bankruptcy proceeding of the Lessee. The parties intend, for the protection of Permitted Leasehold Mortgagees, that any such rejection shall not cause a termination of the Ground Lease.

18.3.8 Lessor agrees to amend this Ground Lease from time to time to the extent reasonably requested by a Lending Institution proposing to make Lessee a loan secured by a Permitted Leasehold Mortgage, provided that such proposed amendments do not materially or adversely affect the right of Lessor or Lessor's interest in the Real Property in Lessor's discretion. All reasonable expenses incurred by Lessor in connection with any such amendment shall be paid by Lessee.

18.3.9. If the Lessor shall, without termination of the Ground Lease, evict the Lessee, or if the Lessee shall abandon the Improvements, then any reletting thereof shall be subject to the liens and rights of Leasehold Mortgagees, and in any event Lessor shall not relet the Improvements or any part thereof, other than renewal of occupancies of residential tenants and leases or other occupancy agreements with new residential tenants consistent with any covenants of record for low-income housing, without sixty (60) days' advance written notice to all Permitted Leasehold Mortgagees of the intended reletting and the terms thereof, and if any Permitted Leasehold Mortgagee shall, within thirty (30) days of receipt of such notice, give notice to the Lessor of such Permitted Leasehold Mortgagee's intent to pursue proceedings to foreclose on the Improvements or otherwise cause the transfer thereof, then so long as the Permitted Leasehold Mortgagee shall diligently pursue such proceedings the Lessor shall not proceed with such reletting without the written consent of such Permitted Leasehold Mortgagee.

18.3.10 Lessee shall give the First Leasehold Mortgagee notice of any litigation or other proceeding or dispute by or between the parties, and the First Leasehold Mortgagee shall have the right to intervene and be made a party to any such litigation or other proceeding. In any event, Lessee shall provide each Permitted Leasehold Mortgagee notice of, and a copy of, any award or decision made in the litigation or other proceeding.

18.3.11 Any award or payment in condemnation or eminent domain in respect of the Real Property or Improvements shall be addressed in the manner set forth in the First Leasehold Mortgage.

18.3.12 No fire or casualty loss claims shall be settled, and no agreement will be made in respect of any award or payment in condemnation or eminent domain without in each case the prior written consent of the First Leasehold Mortgagee.

18.3.13 No liability for the payment of Rent or the performance of any of Lessee's covenants and agreements shall attach to or be imposed on the Permitted Leasehold Mortgagee (other than any obligations assumed by the Permitted Leasehold Mortgagee), all such liability (other than any obligations assumed by the Permitted Leasehold Mortgagee) being expressly waived by Lessor.

18.3.14 Lessor, within 10 days after a request in writing by Lessee or any Permitted Leasehold Mortgagee, shall furnish a written statement, duly acknowledged, (i) that this Ground Lease is in full force and effect and unamended, or if there are any amendments, such statement will specify the amendments, (ii) that there are no defaults by Lessee that are known to Lessor, or if there are any known defaults, such statement shall specify the defaults Lessor claims exist, (iii) and with such other information or representations as the Permitted Leasehold Mortgagee shall reasonably require.

18.3.15 No payment made to Lessor by any Permitted Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Ground Lease; and the Permitted Leasehold Mortgagee having made any payment to Lessor pursuant to Lessor's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment or portion, provided it shall have made demand not later than one year after the date of its payment.

18.3.16 Lessor, on request, shall execute, acknowledge, and deliver to each Permitted Leasehold Mortgagee an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to the Permitted Leasehold Mortgagee and Lessor, among Lessor, Lessee, and the Permitted Leasehold Mortgagee, agreeing to all the provisions of this Section.

18.3.17 Lessor shall at no time be required to subordinate its fee simple interest in the Real Property to the lien of any leasehold mortgage, nor to mortgage its fee simple interest in the Real Property as collateral or additional security for any leasehold mortgage.

18.3.18 If Lessee is declared bankrupt or insolvent and this Ground Lease is thereafter lawfully cancelled or rejected, Lessor shall immediately execute a new lease, under the same Rent, terms and other conditions as this Ground Lease (provided that such Rent and other obligations are prorated with respect to the Residential Unit and the Commercial Unit following the submission of the Real Property to a condominium regime), with the First Leasehold Mortgagee or its nominee (subject to the written approval of the Tax Credit Investor as to the terms of the new Ground Lease). In connection with such new lease, the First Leasehold Mortgagee or its nominee must pay any due but unpaid Rent under the terminated lease but shall have no obligation to cure, and shall not be liable for, any default that arose under the terminated lease except as set forth in Section 18.3.20. For the avoidance of doubt, the First Leasehold Mortgagee shall not be obligated to cure any other uncured default that arose under the terminated lease with Lessee.

18.3.19 Each Permitted Leasehold Mortgagee (and its transferee) shall be considered an intended third-party beneficiary of this Ground Lease with rights of enforcement.



18.3.20 No Leasehold Mortgagee shall be liable to Lessor unless it expressly assumes such liability in writing. In the event any Permitted Leasehold Mortgagee or other Transferee becomes the new lessee under the Ground Lease or under any new lease obtained pursuant to this Section, the Permitted Leasehold Mortgagee or other Transferee shall not be liable for the obligations of the Lessee under the Ground Lease that do not accrue during the period of time that the Permitted Leasehold Mortgagee or such other Transferee, as the case may be, remains the new lessee under the Ground Lease or new lease, holding record title to the leasehold interest thereunder. In no event shall any Permitted Leasehold Mortgagee or other Transferee be; (i) liable for any condition of the Improvements that existed prior to the date of its acquisition of Lessee's interest in the Improvements, or for any damage, loss, or injury caused by such preexisting condition, or for the correction thereof or the compliance with any law related thereto; (ii) bound by any amendment of the Ground Lease made without the prior written consent of the Permitted Leasehold Mortgagee; or (iii) liable for any act or omission of any prior lessee of any portion of the Improvements (including Lessee); *provided, however*, that Lessor may require, as a condition of permitting a Permitted Leasehold Mortgagee or other Transferee to become a new lessee under the Ground Lease or a new lease, that any existing casualty damage to the Improvements which remains unrepaired, be repaired by the new lessee. Any liability of any Permitted Leasehold Mortgagee or other Transferee shall be limited to its interests in the leasehold and the Real Property and shall be enforceable solely against those interests.

18.4 Certain Actions Not Effective Without Mortgagee Consent. No cancellation, surrender, or modification or amendment of the Ground Lease, and no waiver of any of Lessee's rights thereunder, shall be effective as to any Permitted Leasehold Mortgagee unless consented to in writing by each Permitted Leasehold Mortgagee. No subordination of the Lessee's interest in the leasehold or the Improvements, or the rents or income therefrom, to any encumbrance or assignment granted by Lessor, and no joinder by Lessee in any such encumbrance or assignment, shall be valid without the express written consent of each Permitted Leasehold Mortgagee.

#### **Section 19. Default; Remedies.**

19.1 Events of Default. The occurrence of any one or more of the following events of default constitutes a breach of this Ground Lease by Lessee:

19.1.1 If Lessee (a) fails to commence construction of the Improvements within two (2) years of the Commencement Date of this Ground Lease, or (b) defaults in the payment of the Basic Rent due and payable by Lessee, and such default continues for 30 days after Lessor has given Lessee a notice specifying the same; or

19.1.2 If Lessee, or, as applicable a Unit Owner, whether by action or inaction, is in default of any of its obligations under this Ground Lease (other than a default described in Section 19.1.1, above) or any of the documents referenced in this Ground Lease and such default continues and is not remedied within sixty (60) days after Lessor has given Lessee a notice specifying the same, or, in the case of a default that can be cured but not within a period of 60 days, if Lessee has not (1) commenced curing such default within such 60-day period; (2) notified Lessor of Lessee's intention to cure the default; or (3) continuously and diligently completed the cure of the default.

## 19.2 Remedies.

19.2.1 Upon the occurrence of an event of default described in Section 19.1.1, above, Lessor may exercise any one or more of the remedies set forth in this Section 19.2.1 or any other remedy available under applicable law or contained in this Ground Lease:

19.2.1.1 Lessor or Lessor's agents and employees may immediately or at any time thereafter re-enter the Real Property either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Real Property, to the end that Lessor may have, hold, and enjoy the Real Property.

19.2.1.2 Lessor may relet the whole or any part of the Real Property from time to time, either in the name of Lessor or otherwise, to such Lessees, for such terms ending before, on, or after the expiration date of the Ground Lease Term, at such rentals and on such other conditions (including concessions and free rent) as Lessor may determine to be appropriate. To the extent allowed under Oregon law, Lessor shall have no obligation to relet all or any part of the Real Property and shall not be liable for refusal to relet the Real Property, or, in the event of such reletting, for refusal or failure to collect any rent due on such reletting; and any action of Lessor shall not operate to relieve Lessee of any liability under this Ground Lease or otherwise affect such liability. Lessor at its option may make such physical changes to the Real Property as Lessor, in its sole discretion, considers advisable and necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Ground Lease or otherwise affecting Lessee's liability.

19.2.1.3 Whether or not Lessor retakes possession or re-lets the Real Property, Lessor has the right to recover its damages, including without limitation all lost rentals, all legal expenses, all costs incurred by Lessor in restoring the Real Property or otherwise preparing the Real Property for reletting, and all costs incurred by Lessor in reletting the Real Property.

19.2.1.4 To the extent permitted under Oregon law, Lessor may sue periodically for damages as they accrue without barring a later action for further damages. Lessor may in one action recover accrued damages plus damages attributable to the remaining Lease Term equal to the difference between the Rent reserved in this Ground Lease for the balance of the Ground Lease Term after the time of award, and the fair rental value of the Real Property for the same period, discounted at the time of award at a reasonable rate not to exceed 10% per annum. If Lessor has relet the Real Property for the period that otherwise would have constituted all or part of the unexpired portion of the Term, the amount of rent reserved on such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Real Property so relet during the term of the reletting.

19.2.2 Upon the occurrence of an event of default described in Section 19.1.2, above, Lessor may exercise any one or more of the remedies set forth in this Section 19.2.2:

19.2.2.1 Subject to the limitation in ORS 100.445, and in Section 19.2.3 below, Lessor, by action against Lessee or, as applicable, a Unit Owner, for specific performance, mandatory injunctive relief, or other legal or equitable remedy, enforce the terms, covenants, and/or conditions set forth in this Ground Lease.

19.2.2.2 Subject to the limitation in ORS 100.445, Lessor may bring an action or actions to recover its damages, including without limitation all legal expenses and all costs incurred by Lessor as a result of a default by Lessee or, as applicable, a Unit Owner. Lessor may sue periodically for damages as they accrue without barring a later action for further damages; provided that no judgment in favor of Lessor may be enforced by foreclosure of the Lessor's leasehold interest nor any interest of a Unit Owner or the Condominium Association.

19.2.3 Lessor acknowledges that, following payment of all Basic Rent due under this Ground Lease, Lessor's remedies in the event of an event of default will not include cancellation or termination of the Ground Lease, eviction of the Lessee or any Unit Owner, or any right to re-take possession of Real Property or Improvements prior to the end of the Term.

19.3 No Waiver. No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Ground Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, shall be waived, altered, or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Ground Lease, but each and every agreement, term, covenant, and condition of this Ground Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

**Section 20. No Claims Against Lessor for Encroachments by Adjoining Structures.**

Unless caused by Lessor, if any adjoining building or structure encroaches on the Real Property, no claim, demand, or objection of any kind shall be made by Lessee against Lessor by reason of such encroachments; no claim for abatement of Rent due under this Ground Lease shall be made by reason of such encroachments or acts of, or in connection with, removal of the encroachments. The rights, liabilities, and obligations of the parties shall be the same as if there were no encroachments. In any related legal proceedings, the Real Property may properly and without prejudice be described according to the description previously used without reference to any such encroachments. Lessor agrees to cooperate with Lessee in any proceedings sought by Lessee to remove such encroachments, provided such cooperation does not cause Lessor to incur any expense.

**Section 21. Transfer of Interest by Lessor.**

Lessor may not sell, exchange, assign, transfer, convey, contribute, distribute, or otherwise dispose of all or any part of its interest (called "Lessor's Interest") in the Real Property or this Ground Lease (including but not limited to Lessor's reversion).

**Section 22. Reserved.**

**Section 23. Lessor's Right to Encumber.**

Lessor, during the Term, shall not sell, assign, encumber, mortgage, pledge, or otherwise hypothecate its fee simple interest in the Real Property or the Ground Lease including, without limitation, Lessor's reversionary interest.

**Section 24. Nonmerger.**

There shall be no merger of this Ground Lease, or of the leasehold estate created by this Ground Lease, with the fee estate in the Real Property by reason of the fact that this Ground Lease, the leasehold estate created by this Ground Lease, or any interest in this Ground Lease or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Real Property or any interest in such fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Real Property and all persons (including all Permitted Leasehold Mortgagees, all Unit Owners, and the Condominium Association) having an interest in this Ground Lease, or in the leasehold estate created by this Ground Lease, shall join in a written instrument effecting such merger and shall duly record the same.

### **Section 25. Quiet Enjoyment.**

Lessee, on paying the Rent and observing and keeping all its covenants, agreements, and conditions of this Ground Lease and all documents referenced in this Ground Lease, shall quietly have and enjoy the Real Property during the Term without hindrance or molestation by anyone claiming by, through, or under Lessor as such, subject, however, to the exceptions, reservations, and conditions of this Ground Lease.

### **Section 26. Surrender.**

26.1 Delivery by Lessee. Except as otherwise provided, Lessee, on the last day of the Term, shall surrender and deliver up the Real Property and all Improvements to the possession and use of Lessor without fraud or delay, free and clear of all lettings and occupancies other than subleases then terminable at the option of Lessor or subleases to which Lessor shall have specifically consented, and free and clear of all liens and encumbrances other than any government-imposed covenant regarding the affordability of residential units in the Project and those, if any, presently existing or created or suffered by Lessor, without any payment or allowance whatever by Lessor on account of any Improvements on the Real Property.

26.2 Lessee Furnishings. When furnished by or at the expense of Lessee or any sublessee, furniture, fixtures, and equipment may be removed by Lessee (or any sublessee) at or before this Ground Lease terminates, provided, however, that the removal will not injure the Real Property or the Improvements or necessitate changes in or repairs to the same. Lessee shall pay or cause to be paid to Lessor the cost of repairing any damage arising from such removal and restoration of the Real Property and/or the Improvements to their condition before such removal.

26.3 Personal Property. Any personal property of Lessee or any sublessee or Unit Owner that shall remain on the Real Property after the termination of this Ground Lease and the removal of Lessee or such sublessee from the Real Property may, at the option of Lessor, be deemed to have been abandoned by Lessee or such sublessee and may either be retained by Lessor as its property or be disposed of, without accountability, in such manner as Lessor may see fit, or if Lessor gives written notice to Lessee to such effect, such property shall be removed by Lessee at Lessee's sole cost and expense. If this Ground Lease terminates early for any reason other than the default of Lessee then, anything to the contrary notwithstanding, Lessee or any sublessee shall have a reasonable time thereafter to remove its personal property.

26.4 Lessor Not Responsible. Lessor shall not be responsible for any loss or damage occurring to any property owned by Lessee or any sublessee.

26.5 Survival. The provisions of this Section shall survive any termination of this Ground Lease.

### **Section 27. Invalidity of Particular Provisions.**

If any term or provision of this Ground Lease or the application of the Ground Lease to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Ground 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, and each term and provision of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

### **Section 28. Representations, Warranties, and Indemnity.**

28.1. Lessor Representations and Warranties. The Lessor's representations and warranties under this Ground Lease are limited to the following specific representations and warranties. The Lessor hereby warrants and represents to Lessee throughout the Term the following: (1) The Lessor has the legal power, right, and authority to enter into this Ground Lease and the instruments referred to herein and to consummate the transactions contemplated herein; and all requisite action has been taken by the Lessor in connection with entering into this Ground Lease, the instruments referred to herein, and the consummation of the transactions contemplated herein; (2) To the Lessor's knowledge, except as has been disclosed to Lessee, the Lessor has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, released or produced hazardous substances on or under the Real Property, and no underground storage tanks exist on the Real Property, except in compliance with environmental laws currently in effect, and the Lessor has not received notice of the release of any hazardous substances on the Real Property; (3) To the Lessor's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Real Property or the Lessor's ability to perform its obligations under this Ground Lease (including all Legal Requirements with respect to Hazardous Substances); (4) To the Lessor's knowledge and except as otherwise disclosed in writing to Lessee before the Commencement Date, during the Lessor's ownership of the Real Property, the Real Property has been operated in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements; (5) The Lessor is the legal and beneficial fee simple titleholder to the Real Property and the Real Property is free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, or judgments, except for the Encumbrances listed on Exhibit B attached hereto; (6) This Ground Lease and all documents required to be executed by the Lessor are and shall be valid, legally binding obligations of and enforceable against the Lessor in accordance with their terms, and the persons executing this Ground Lease and the instruments referred to herein on behalf of the Lessor have the legal power, right and actual authority to bind the Lessor to the terms and conditions of this Ground Lease; (8) Neither the execution and delivery of this Ground Lease and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Ground Lease and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership

agreement, lease, or other agreements or instruments to which the Lessor is a party; (9) No representation, warranty or statement of the in this Ground Lease or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.

To the extent limited by the Oregon Constitution and the Oregon Tort Claims Act, Lessor shall indemnify and hold Lessee harmless from and against any and all damage resulting from any material misrepresentation or breach of warranty. If any claim is asserted against Lessee that would give rise to a claim by Lessee against Lessor for indemnification under the provisions of this Section, then Lessee shall promptly give written notice to Lessor concerning such claim and Lessor shall, at no expense to Lessee, defend the claim. Lessor shall not be required to indemnify Lessee for an amount that exceeds the total Rent under this Ground Lease.

28.2 Lessee Representations and Warranties. Lessee's representations and warranties under this Ground Lease are limited to the following specific representations and warranties. Lessee hereby warrants and represents to the Lessor throughout the Term the following: (1) Lessee has full power and authority to enter into and perform this Ground Lease in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Lessee in connection with entering into this Ground Lease, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required; (2) this Ground Lease and all documents required to be executed by Lessee are and shall be valid, legally binding obligations of and enforceable against Lessee in accordance with their terms; (3) Neither the execution and delivery of this Ground Lease and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Ground Lease and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Lessee is a party; (4) No representation, warranty or statement of Lessee in this Ground Lease or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading; (5) Lessee enters into this Ground Lease without reliance on verbal representations by the Lessor, its employees, agents, officials or consultants, regarding any aspect of the Real Property, the Project, its feasibility, financing, or compliance with any governmental regulation; (6) As of the Commencement Date, Lessee is not in default under this Ground Lease and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of Lessee under this Ground Lease; (7) The persons executing this Ground Lease and the instruments referred to herein on behalf of Lessee have the legal power, right and actual authority to bind Lessee to the terms and conditions of this Ground Lease; (8) Lessee shall diligently pursue completion of the Project as further described in the Ground Lease.

Lessee shall indemnify and hold Lessor harmless from and against any and all damage resulting from any material misrepresentation or breach of warranty. If any claim is asserted against Lessor that would give rise to a claim by Lessor against Lessee for indemnification under the

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provisions of this Section, then Lessor shall promptly give written notice to Lessee concerning such claim and Lessee shall, at no expense to Lessor, defend the claim. Lessee shall not be required to indemnify Lessor for an amount that exceeds the total Rent under this Ground Lease.

**Section 29. Estoppel Certificate.**

Either party, within 10 days after a request from time to time made by the other party and without charge, shall give a certification in writing to any person, firm, or corporation reasonably specified by the requesting party stating (1) that this Ground Lease is then in full force and effect and unmodified, or if modified, stating the modifications; (2) that Lessee is not in default in the payment of Rent to Lessor, or if in default, stating such default; (3) that as far as the maker of the certificate knows, neither party is in default in the performance or observance of any other covenant or condition to be performed or observed under this Ground Lease, or if either party is in default, stating such default; (4) that as far as the maker (if Lessor) of the certificate knows, no event has occurred that authorized, or with the lapse of time will authorize, Lessee to terminate this Ground Lease, or if such event has occurred, stating such event; (5) that as far as the maker of the certificate knows, neither party has any offsets, counterclaims, or defenses, or, if so, stating them; (6) the dates to which Rent have been paid; and (7) any other matters that may be reasonably requested by the requesting party. The Tax Credit Investor shall be permitted to rely on any such Estoppel Certificate given by Lessor.

**Section 30. Force Majeure.**

If the performance by either of the parties of their respective obligations under this Ground Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any Legal Requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged, and released of performance to the extent such performance or obligation (excluding any monetary obligation) is so limited or prevented by such occurrence without liability of any kind.

**Section 31. Notices.**

31.1 Where delivered. Any notice required or permitted by the terms of this Ground Lease shall be deemed given if delivered personally to an officer of the party to be notified or sent by United States registered or certified mail, postage prepaid, return-receipt requested, and addressed as follows:

**If to Lessor:**

Lane County  
125 E. 8<sup>th</sup> Avenue  
Eugene, OR 97401  
Attn: County Administrator

**with copy to:**

**If to Lessee:**

Homes for Good Housing Agency  
177 Day Island Road  
Eugene, OR 97401  
Attn: Executive Director

**with copy to Tax Credit Investor:**

Wells Fargo Affordable Housing  
Community Development Corporation  
MAC D1053-170  
301 South College Street, 17<sup>th</sup> Floor  
Charlotte, NC 28202  
Attention: Director of Tax Credit Asset  
Management

**And copies to Mortgagee:**

Wells Fargo Bank, National  
Association  
Community Lending Division (AU  
#07490)  
1300 S.W. Fifth Avenue, 12th floor  
P6101-121  
Portland, Oregon 97201  
Attention: Amy Mandell  
Loan No. [\_\_\_\_\_]

And

Wells Fargo Bank, National  
Association Minneapolis Loan  
Center  
600 South 4th Street, 9th floor  
MAC: N9300-91  
Minneapolis, Minnesota 55415  
Attention: Roxanne Swanson  
Loan No. [\_\_\_\_\_]

or such other addresses as may be designated by either party by written notice to the other. Except as otherwise provided in this Ground Lease, every notice, demand, request, or other communication shall be deemed to have been given or served on the date received.

31.2 Copy to Permitted Mortgage Lenders of Notices from Lessor. A copy of each notice from Lessor to Lessee shall be delivered to each Permitted Leasehold Mortgagee by Lessee.

31.3 Copy to Lessor of Notices from Lenders. Lessee shall immediately send to Lessor, in the manner prescribed above for giving notice, copies of all notices given by it to any



Permitted Leasehold Mortgagee or received by it from such Permitted Leasehold Mortgagee, and copies of all notices that it receives with respect to the Real Property or Improvements from any government authorities, fire regulatory agencies, and similarly constituted bodies, and copies of its responses to such notices.

#### 31.4 Tax Credit Investor Rights.

(i) Transfers of membership interests of Lessee or of the Unit Owners shall be permitted hereunder without the approval or consent of Lessor and shall not be a default under this Ground Lease.

(ii) A copy of any notice permitted or required to be given to Lessee hereunder shall also be given to Lessee's investor member, Wells Fargo Affordable Housing Community Development Corporation (together with its successors in interest, the "Tax Credit Investor") at the address set forth in Section 31.1 of this Ground Lease. Tax Credit Investor shall have the same rights as Lessee to cure any default hereunder on behalf of Lessee; provided that Tax Credit Investor shall have an additional ninety (90) days to cure beyond the cure period afforded to Lessee to cure such default (with additional time as needed in the event that the cure of such default has been commenced and is being diligently prosecuted to completion); provided further that in the event that the Tax Credit Investor cures such default by removing and replacing the managing member of Lessee, the Tax Credit Investor shall use commercially reasonable efforts to prosecute the cure during the pendency of the replacement of the managing member. No notice or demand given to Lessee under this Lease shall be effective until and unless a copy of such notice is given to the Tax Credit Investor. Any notices of default shall describe the default(s) with reasonable detail. Lessor agrees to accept performance by the Tax Credit Investor of any cures, conditions and covenants as though performed by Lessee, and agrees to permit the Tax Credit Investor to take all such actions and may be necessary or useful to perform any condition or covenants of this Lease or to cure any default of Lessee. Prior to the expiration of the cure rights of the Tax Credit Investor hereunder, the Lessor shall not effect or cause any purported termination of the Ground Lease nor take any action to deny Lessee or any subtenant possession, occupancy, or quiet enjoyment of the Improvements or any part thereof. Notwithstanding anything to the contrary set forth in this Lease, City shall not terminate the Ground Lease, evict any Unit Owner or exercise any right to possess the Real Property or the Project without the Tax Credit Investor's prior written consent (which consent the Tax Credit Investor may withhold in its sole discretion) during the 15-year compliance period described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(iii) There shall be no cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Ground Lease without in each case the written consent of the Tax Credit Investor (which consent the Tax Credit Investor can withhold in its sole discretion).

(iv) No notice to Lessee under this Ground Lease shall be effective unless and until Tax Credit Investor also receives a copy of such notice.

(v) Lessee shall give the Tax Credit Investor notice of any litigation or other proceeding or dispute by or between Lessor and Lessee, and the Tax Credit Investor shall have the right to intervene and be made a party to any such litigation or other proceeding. In any event, Lessee shall provide the Tax Credit Investor with notice of, and a copy of, any award or decision made in the litigation or other proceeding.

(vi) No fire or casualty loss claims shall be settled, and no agreement will be made in respect of any award or payment in condemnation or eminent domain without in each case the prior written consent of the Tax Credit Investor.

(vii) Lessor, on request, shall execute, acknowledge, and deliver to the Tax Credit Investor an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to the Tax Credit Investor and Lessor, among Lessor, Lessee, and the Tax Credit Investor, agreeing to all the provisions of this Section.

(viii) Tax Credit Investor shall be considered an intended third-party beneficiary of this Ground Lease with rights of enforcement.

(ix) Lessee's liability under this Lease shall be limited to its interest in the Premises and no member of Lessee (including, without limitation, Tax Credit Investor) shall be liable to Lessor.

31.5 Changes of Address. Notwithstanding anything in this Section to the contrary, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Ground Lease or this Section shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

**Section 32. [Intentionally Omitted.]**

**Section 33. Costs and Attorney Fees.**

If either party brings an action to recover any sum due or for any breach and obtains a judgment or decree in its favor, the court may award to such prevailing party its reasonable costs and reasonable attorney fees, specifically including reasonable attorney fees incurred in connection with any appeal, review, or petition for review (whether or not taxable as such by law).

**Section 34. Relationship to Other Agreements, Incorporation, Amendment.**

Lessor and Lessee are parties to the Parking Lease as defined in Recital E. Lessor and Lessee agree that, to the extent there exists a conflict between this Ground Lease and the Parking Lease, they shall be interpreted so as to give effect to both documents while preserving parking for tenants of the Building. All recitals appearing in, and exhibits attached to, this Ground Lease are hereby incorporated in and made part of this Ground Lease.

This Ground Lease may be changed, modified, amended, or terminated only by an instrument in writing executed by the parties.

**Section 35. Applicable Law, Jurisdiction.**

This Ground Lease shall be governed by, and construed in accordance with, the laws of the state of Oregon. Any action to interpret or enforce this Ground Lease shall be brought in the state or federal courts sitting in Lane County, Oregon.

**Section 36. Interest on Rent Arrearages.**

All arrearages in the payment of Rent that Lessee fails to pay within the 30-day period after notice from Lessor shall bear interest from the date due until paid, at the rate defined in Section 9.2 above.

**Section 37. Brokerage.**

Lessor and Lessee represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Ground Lease but have negotiated directly with each other.

**Section 38. Covenants to Bind and Benefit Parties.**

The covenants and agreements contained in this Ground Lease shall bind and inure to the benefit of Lessor, its successors and assigns, and Lessee, its successors and assigns.

**Section 39. Captions.**

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

**Section 40. Recordation of Lease.**

Lessee may elect that a copy of this Ground Lease or a memorandum, executed and acknowledged by both parties, be recorded in the public records of Lane County, Oregon. Lessee shall pay the recording costs. The form of Memorandum of Ground Lease is attached hereto as Exhibit H.

**Section 41. Statutory Warning.**

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

*[Signatures appear next page]*

IN WITNESS WHEREOF, Lessee and Lessor have caused this Ground Lease to be executed by their duly authorized officers.

**LESSEE:**

MD COMMONS LLC, an Oregon limited liability company

By: MD Manager LLC, an Oregon limited liability company

By: Housing Authority and Community Services Agency of Lane County dba Homes for Good Housing Agency.

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

Its: Executive Director

**LESSOR:**

LANE COUNTY, a political subdivision of the state of Oregon

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

Its: County Administrator

**Exhibit A**

***The Real Property***

Lots 5 and 8, Block 2, SKINNER'S DONATION TO LANE COUNTY, as platted and recorded in Book "A", Page 122, Lane County Oregon Plat Records, in Lane County, Oregon.

Together with, [add easement description]

**Exhibit B**

***Encumbrances***

[to be inserted based on current title report as of execution]

**Exhibit C**  
*Plans and Specifications*

**Exhibit D**  
*Condominium Declaration*



**EXHIBIT E**

**Articles of Incorporation of Condominium Association**

**EXHIBIT F**

***By-Laws of Condominium Association***

**EXHIBIT G**  
*Assignment of Lease*

**EXHIBIT H**

**Memorandum of Ground Lease**