

STATE OF OREGON
LOCAL INNOVATION AND FAST TRACK HOUSING PROGRAM

GROUND LEASE

This GROUND LEASE (this “Lease”) is made and entered into on [Month~] [#~], 20[#~] (the “Commencement Date”), by and between the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns (“LANDLORD” or “Landlord”), and [Name of Lessee~], an Oregon [type of entity~] (“Lessee”).

RECITALS

A. Landlord desires to lease to Lessee, and Lessee desires to lease from Landlord, the real property described on attached Exhibit A, together with any and all rights, privileges, easements, and appurtenances (collectively, the “Premises” or “Property”).

B. Lessee intends to construct on the Premises an approximately [redacted] square-foot building (the “Building”) and related site improvements as generally depicted on the site plan attached hereto as Exhibit B designed to constitute affordable multifamily rental housing (collectively, the “Project”). The Project and any future alterations, additions, replacements, or modifications to the Project during the Term of this Lease are collectively referred thereafter as the “Improvements.”

LEASE

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

Article 1
PREMISES

Landlord does hereby demise, lease, and let unto Lessee, and Lessee does hereby take and lease from Landlord, the Premises for the term and on the rents, conditions, and provisions herein.

Article 2
LEASE TERM

Starting on the Commencement Date, the Premises will be leased for a term of [Number longhand~] [(#~)] years (the “Term”).

Article 3
RENT; PERFORMANCE

3.1 **Rent/Performance for Term.** The parties agree that Lessee’s full and timely performance of the covenants herein, and as herein incorporated, is good and sufficient

consideration, substituted for payment of rent, for the Premises other than as provide hereafter in Section 3.2.

3.2 Net Lease. This Lease is a totally net lease, and it is intended that the performance in lieu of rent referenced in Section 3.1 will be an absolutely net return to Landlord throughout the Term. Lessee will be responsible for paying all costs and expenses relating to the Premises and the Improvements, including real and personal property taxes, utilities, maintenance, repairs, interior and exterior structural repairs, interior and exterior nonstructural repairs, insurance, and all other costs and expenses relating to the Premises and the Improvements. Without notice or demand and without abatement, deduction, or setoff, except as may be otherwise provided in this Lease, Lessee is required to pay and perform, as additional consideration, all performance, sums, impositions, costs, and other payments (“**Payment**”) that Lessee assumes or agrees to perform or pay in any provision of this Lease. If Lessee fails to make timey and full Performance, Landlord will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonperformance of the required Payment, including but not limited to failure to timely pay all sums, impositions, costs, and other payments or failure to timely and satisfactorily operate and manage Project in accordance with the terms hereof.

Article 4 SECURITY

4.1 Deposit. Contemporaneously with Lessee’s execution and delivery of this Lease, Lessee must deliver to Landlord a cash security deposit in the amount of \$[Amount Longhand~] [#~] (the “**Deposit**”), such amount to be held by Landlord during the Term as security for the performance of Lessee’s obligations under this Lease. If Lessee fails to make any Payment when due under this Lease, or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply, or retain all or any portion of the Deposit for the Payment of such obligation or default, or for the Payment of any other sum to which Landlord may become obligated by reason of Lessee’s default, or to compensate Landlord for any loss or damage that Landlord may suffer thereby. If Landlord so uses or applies all or any portion of the Deposit, Lessee must, within 10 days after written demand therefor from Landlord, deposit cash with Landlord in an amount sufficient to restore the Deposit to the full amount stated above, and Lessee’s failure to do so constitutes a Payment default under this Lease. If Lessee performs all of Lessee’s obligations hereunder, Landlord must return the Deposit (or the amount that has not been applied by Landlord as permitted under this section) within 60 days following the expiration of the Term. Landlord is not required to keep the Deposit separate from its general funds, and Lessee is not entitled to interest on the Deposit. Landlord is entitled to deliver the funds constituting the Deposit to any purchaser of Landlord’s interest in the Premises, whether by sale, foreclosure, deed in lieu of foreclosure, or otherwise, and upon such delivery, Landlord will be discharged from any further liability with respect to the Deposit. Lessee hereby grants Landlord a security interest in the Deposit.

4.2 Guaranty. Contemporaneously with Lessee’s execution and delivery of this Lease, Lessee must deliver to Landlord a guaranty on Landlord’s standard form (the “**Guaranty**”), executed by [Name~] and [Name~], to be held by Landlord during the Term as security for the performance of Lessee’s obligations under this Lease.

Article 5 USE AND COMPLIANCE WITH LEGAL REQUIREMENTS

5.1 Permitted Use. Lessee will use and occupy the Premises during the Term for the development and construction of the Project and may use the Premises for any purpose in compliance with all applicable Legal Requirements (as defined in section 5.2 below).

5.2 Compliance with Legal Requirements. Lessee will observe and comply with all Legal Requirements that may apply to the Premises or Improvements, including the use or manner of use of the Premises or of the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises or the Improvements, and whether or not compliance with the Legal Requirements is required by reason of any condition, event, or circumstance existing before or after the Term commences. Lessee will pay all costs of compliance with Legal Requirements.

“**Legal Requirements**” means all applicable terms and conditions of this Lease (including incorporated terms and conditions, and including as this Lease or incorporated terms and conditions may be amended or replaced from time to time), and all applicable present and future laws, ordinances, orders, rules, regulations, codes, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, that now or hereafter apply to the Premises, the Improvements, the Project, or any component hereof or any activity conducted thereon, including but not limited to those pertaining (i) to Environmental Laws; (ii) to the use and storage of Hazardous Substances; and (iii) to the Operation and Management of the Project (as these terms are defined below).

“**Environmental Laws**” means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 *et seq.*), the Toxic Substances Control Act (15 USC § 2601 *et seq.*), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 *et seq.*), the Clean Air Act (42 USC § 7401 *et seq.*), amendments to the foregoing, and any rules and regulations promulgated thereunder.

“**Hazardous Substances**” means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

“**Operation and Management**” means all terms and conditions of this Lease with respect to the operation, use, condition, or management of the Premises, Improvements, or Project by Lessee or its Management Agent (if applicable), including the terms and conditions of the Local Innovation and Fast Track Housing Program Operating Agreement and Declaration of Restrictive Covenants of

even date between Landlord and Lessee (the “**Operating Agreement**”) and the Local Innovation and Fast Track Housing Program Project Management Agreement of even date [between/among~] Landlord[, /and] Lessee[, and Management Agent] (the “**Project Management Agreement**”), including as such Operating Agreement or Project Management Agreement may be amended or replaced from time to time. The Operating Agreement and the Project Management Agreement are incorporated herein by this reference. Any amended or replacement Operating Agreement or Project Management Agreement, when in effect by its terms, will be deemed to be incorporated herein by this reference.

5.3 Right to Contest. Lessee will have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Landlord or both, without cost or expense to Landlord, the validity or application of any Legal Requirement contained in paragraphs (i) or (ii) of the foregoing definition of Legal Requirements, but not the validity or application of any Legal Requirement contained in paragraph (iii). To the extent that there are common or overlapping Legal Requirements in paragraphs (i) or (ii) with the Legal Requirements in paragraph (iii) above, the exclusion from this Right to Contest subsection with respect to paragraph (iii) will apply - absent prior written approval of Landlord to allow a specific contest, which Landlord may give or withhold at its sole discretion. Any “right to contest” in this subsection is further subject to the following: (a) if, by the terms of any Legal Requirement, compliance may legally be delayed pending the prosecution of any such proceeding without the incurrance of any lien, charge, or liability of any kind against all or any part of the Premises or the Improvements and without subjecting Lessee or Landlord to any liability, civil or criminal, for failure to comply, Lessee may delay compliance until the final determination of the proceeding; or (b) 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 as long as the delay would not subject Landlord to criminal liability or fine, and Lessee furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of the contest or delay, and prosecutes the contest with due diligence. Landlord will (if permitted by the Oregon Department of Justice) execute and deliver any appropriate papers that may be necessary or proper to permit Lessee to contest the validity or application of any subject Legal Requirement as long as Lessee has satisfied all the requirements of this section and Landlord will incur no cost.

5.4 Prohibited Uses. Lessee will not use or occupy the Premises or the Improvements, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied: (a) in any manner inconsistent with the Operating Agreement or the Project Management Agreement; (b) for any unlawful or illegal business, use, or purpose; (c) in any manner so as to constitute a nuisance of any kind; (d) for any purpose or in any way in violation of the certificate of occupancy, or of any Legal Requirements, including Legal Requirements respecting Hazardous Substances; or (d) for any business, use, or purpose deemed disreputable.

5.5 No Waste. Lessee will not cause or permit any waste, damage, disfigurement, or injury to the Premises or the Improvements, but Lessee will have the right to demolish, remove, replace, or repair any and all the Improvements on the Premises pursuant to and in accordance with the terms of Article 6 below.

Article 6 IMPROVEMENTS

6.1 Construction, Maintenance, and Operation of Improvements and Premises. Lessee will construct, maintain, and operate the Improvements and Premises throughout the Term, at its cost and expense, including but not limited to as provided in the Operating Agreement or Project Management Agreement.

6.2 Title to Improvements. Title to all Improvements constructed by Lessee will be and will remain in Lessee during the Term of the Lease and such Improvements. During the Term, Lessee is entitled, for all taxation purposes, to claim cost-recovery deductions and the like on all Improvements constructed by Lessee. At the expiration or earlier termination of the Lease, title to any Improvements remaining on the Premises will automatically pass to, vest in, and belong to Landlord without further action on the part of either party and without cost or charge to Landlord, unless Lessee within the last year of the full Term of the Lease and subject to completion of that full Term, but not later than 6 months before its termination (i) notifies Landlord in writing of its desire to purchase the Property, (ii) obtains a commercially-reasonable appraisal acceptable to Landlord as to the value of the Property; (iii) binds itself to purchase the Property from Landlord for the appraised value upon conclusion of the Term; (iv) commits for a three-year period after conclusion of the Term not to evict Qualified Tenants except for cause and not to raise Rents for such Qualified Tenants in excess of amounts allowable under the Operating Agreement; and not later than the end of the Term (v) provides the full purchase amount to Landlord through escrow upon such terms and conditions as are satisfactory to Landlord.

6.3 Notice of Construction. Lessee agrees to notify Landlord in writing of Lessee's intention to commence construction of an Improvement at least 30 days before commencement of any such work or delivery of any materials. The notice must specify the approximate location and nature of the intended Improvements, and the anticipated date that work will be commenced. Landlord will have the right at any time and from time to time to post and maintain on the Premises notices of non-responsibility and such other notices as Landlord deems necessary to protect Landlord's interest in the Premises and the Improvements from the liens of mechanics, laborers, materialmen, suppliers, or vendors; and Landlord will have the right to inspect the Premises and the Improvements in relation to the construction at all reasonable times, and to take such other action with respect to construction as is permitted under the Loan Lease or otherwise available hereunder.

6.4 Landlord Cooperation. Landlord agrees to cooperate with Lessee in all reasonable respects in connection with Lessee's construction of any Improvements (subject to permission from the Oregon Department of Justice), including but not limited to, executing the applications and other instruments reasonably necessary for construction of the Improvements, provided that Landlord will not be required to pay any application fees or incur any other costs or liabilities in connection with the Improvements beyond Landlord's fees for any professional advice Landlord desires..

6.5 Easements and Dedications. Lessee and Landlord each recognize that in order to provide for the development of the Premises, it may be necessary, desirable, or required that street,

water, sewer, drainage, gas, power line, and other easements and dedications and similar rights be granted or dedicated over or within portions of the Premises. Landlord agrees that it will, upon request of Lessee and subject to permission from the Oregon Department of Justice, join with Lessee in executing and delivering such documents, from time to time, and throughout the Term of this Lease as may be appropriate, necessary, or required by any governmental agency or public utility company for the purpose of granting such easements and dedications.

Article 7 TAXES AND UTILITIES

7.1 Taxes Defined. As used in this Lease, the terms “Tax” and “Taxes” mean any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, or costs, general or special, ordinary or extraordinary, of any kind that are levied or at the direction of laws, rules, or regulations of any federal, state, or local authority on the Premises or the Improvements, or based on or otherwise in connection with the use, occupancy, or operations of the Premises or the Improvements, or with respect to services or utilities in connection with the use, occupancy, or operations of the Premises or the Improvements, or on Landlord with respect to the Premises or the Improvements, or on any act of leasing space in the Improvements, or in connection with the business of leasing space in the Improvements, including any tax on rents, whether direct or as a part of any “gross receipts” tax, and whether or not in lieu of, in whole or in part, ad valorem property taxes. Taxes will include, but not be limited to, state and local real-property taxes, levies, and assessments, and any tax, fee, or other excise, however described, that may be levied or assessed in lieu of, or as a substitute, in whole or in part, for, or as an addition to any other taxes, and all other governmental impositions and governmental charges of every kind and nature relating to the Premises or the Improvements, including, but not limited to, any road-user or transportation-system-maintenance fee and any charges or fees measured by trip generation or length, parking spaces, impervious surfaces, buildings, vehicle usage, or similar bases for measurement. Subject to the exceptions set forth below,

7.2 Payment of Taxes. Throughout the Term, Lessee will pay all Taxes as they become due. If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Lessee may pay the same in installments as each installment becomes due and payable, but in any event must do so before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest. Taxes for the year in which this Lease commences and expires will be prorated between the parties as of the Commencement Date or expiration date as the case may be and, on the Commencement Date, Lessee will pay its pro rata share of the current year’s taxes.

7.3 Contesting Taxes. If Lessee in good faith desires to contest the validity or the amount of any Tax, Lessee will be permitted to do so by giving to Landlord written notice thereof before commencement of such contest. Landlord will, at Lessee’s expense (including reimbursement of attorney fees reasonably incurred by Landlord), cooperate with Lessee in any such contest to the extent that Lessee may reasonably request, but Landlord will not be subject to any liability for the Payment of any costs or expenses in connection with any proceeding brought by Lessee, and Lessee will indemnify, defend (subject to ORS chapter 180), save, and hold Landlord harmless from any

such costs or expenses. Any rebates on account of the Taxes required to be paid and paid by Lessee under the provisions of this Lease will belong to Lessee.

7.4 Evidence of Payment. Promptly after Payment, Lessee will provide Landlord with evidence reasonably satisfactory to Landlord that all Taxes required to be paid by Lessee have been paid.

7.5 Personal-Property Taxes. Lessee must pay before delinquency all taxes assessed against and levied on improvements, fixtures, furnishings, equipment, and all other personal property of Lessee contained in the Premises, and when possible Lessee must cause said improvements, fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real property of Landlord.

7.6 Utilities and Services. Lessee will pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other utilities and services used by Lessee on the Premises as they become due, together with any taxes thereon, from and after the Commencement Date. Landlord must not be in default hereunder nor be liable in damages or otherwise for any failure or interruption of any utility or other service being furnished to the Premises, and no such failure or interruption will entitle Lessee to terminate this Lease or to abate Payment of any portion of Rent due hereunder.

Article 8 INSURANCE

8.1 Property Insurance. Lessee, at its cost and expense, will keep all Improvements insured against loss or damage by property insurance written on the standard Insurance Services Office (ISO) “special-form” policy, or its nearest equivalent in use at the time. Lessee will obtain endorsements to its special-form policy to maintain the following types of coverage to the extent required by Landlord and available at commercially reasonable rates: (a) flood, (b) earthquake, (c) business interruption, (d) indirect loss, (e) boiler and machinery perils, and (f) ordinance and law. The property insurance must cover the full replacement value of the Improvements (excluding foundation and excavation cost), less a deductible not to exceed \$ [REDACTED], and require that all losses are payable to Landlord and Lessee as their interests may appear. Any loss adjustment must require written consent of both parties, which will not be unreasonably withheld, conditioned, or delayed. The amount of the insurance policy will be increased from time to time as the full replacement value of the Improvements increases.

8.2 Liability Insurance. Lessee, at its cost and expense, will maintain commercial general liability insurance covering the Premises, the Improvements, and the conduct or operation of its business with limits of loss of at least \$2 million combined, single-limit coverage for personal injury and property damage. The insurance policy must be primary to any insurance available to Landlord, contain a severability-of-interest or cross-liability clause, include contractual-liability coverage for Lessee’s indemnification obligations contained in this Lease, and name Landlord as an additional insured. Landlord has the right from time to time to increase the amount of liability

insurance required under this Lease based on then-current market conditions for properties comparable to the Premises.

8.3 Additional Requirements. Lessee's insurance carriers must be reputable insurance companies reasonably acceptable to Landlord, licensed to do business in the State of Oregon, and have a minimum A-VIII rating as determined by the then-current edition of *Best's Insurance Reports* published by A.M. Best Co. Lessee will provide Landlord with certificates of insurance concurrently with the execution of this Lease and upon each renewal thereafter to establish that Lessee's insurance obligations have been met and that the policies are not subject to cancellation or material change without at least 30 days advance written notice to Landlord; provided, however, that Landlord reserves the right to inspect and require full copies of all insurance policies to be provided to Landlord.

Article 9

RELEASE AND INDEMNIFICATION

9.1 Release. Lessee is and will be in exclusive control of the Premises and the Improvements, and Landlord will not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements, or any injury or damage to the Premises 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 on any part of the Premises or the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or because of 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 Premises or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise; and Lessee hereby releases Landlord from and against any and all liabilities resulting from any such injuries and damages. Landlord acknowledges that it remains responsible for liability to any third party to the extent that the liability arises from Landlord's gross negligence or willful misconduct.

9.2 Indemnification. Except to the extent caused by the willful misconduct of Landlord, Lessee agrees to indemnify, defend (subject to ORS chapter 180, save, and hold Landlord harmless from and against any and all liabilities, obligations, damages, fines, penalties, claims, costs, charges, and expenses (including, without limitation, reasonable attorney fees and costs at trial and on appeal; environmental response and remedial costs; environmental consultant and laboratory fees; and natural resource damages) that may be imposed on or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term:

- (a) Any work or thing done in, on, or about all or any part of the Premises or the Improvements by Lessee or any party other than Landlord;
- (b) Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space;
- (c) Any negligence on the part of Lessee or any of its agents, contractors, servants, employees, sub-lessees, licensees, or invitees;

- (d) Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements, even if caused in whole or in part by the negligence of Landlord;
- (e) Any misuse or failure to adequately account for the use of funding provided to Lessee by Landlord for development of the Premises or Improvements;
- (f) Any failure to comply with the terms and conditions of the then-current Operating Agreement or Project Management Agreement;
- (g) Any failure to comply with the terms and conditions associated with funding (i) provided to Lessee by Landlord for development of the Premises or Improvements, or (ii) used by Landlord for purchase of the Property or provision of this lease of said Property to Lessee; and
- (h) Any failure of Lessee to comply with or to perform any other covenant, term, provision, condition, or limitation that this Lease requires Lessee to comply with or to perform, including without limitation Lessee's compliance with the Legal Requirements (including restrictions on the release of Hazardous Substances in violation of Environmental Laws).

Article 10 LIENS

10.1 No Liens. Lessee will not suffer or permit any construction liens to attach to or be filed against any part the Premises or the Improvements 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 or any person occupying or holding an interest in any part of the Premises or the Improvements. If any such lien is filed against any portion of the Premises or the Improvements, Lessee will cause the same to be discharged of record within 15 days after the date of its filing by Payment, deposit, or bond.

10.2 Landlord Right to Post Notices. Landlord will have the right to post and keep posted at all reasonable times on the Premises and the Improvements notices of non-responsibility and any other notices that Landlord desires or is required to post for the promotion or protection of Landlord's interest in the Premises and the Improvements.

10.3 No Right to Lien Landlord's Interest. Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, 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 Premises 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 Landlord's interest in the Premises or against Landlord's interest, if any, in the Improvements. Lessee is not intended to be an agent for the Landlord.

Article 11 REPAIRS AND MAINTENANCE

11.1 Lessee Obligation. Lessee must maintain, repair and replace the Premises and the Improvements as and when needed so as to keep them in a clean and attractive condition, and in good condition and repair, throughout the entire Term. Lessee's obligations extend to both structural and nonstructural items and to all maintenance, repair, and replacement work.

11.2 Landlord Obligation. Landlord is not required to furnish to Lessee, the Premises, or the Improvements any facilities, utilities, or services of any kind whatsoever during the Term, such as, but not limited to, water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, or any other utilities or services used by Lessee. Landlord is not required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs to any portion of the Premises or the Improvements during the Term.

11.3 Limited Assignment of Rights. Landlord assigns to Lessee, without recourse, any rights that Landlord may have against any parties causing damage to the Improvements on the Premises to sue for and recover amounts expended by Lessee as a result of the damage.

Article 12 SIGNAGE

Lessee is permitted to install signage on the Premises and the Improvements as long as Lessee complies with all applicable Legal Requirements.

Article 13 INSPECTION AND ACCESS

Subject to applicable law, Lessee will permit Landlord or its authorized representative to enter the Premises and the Improvements at all reasonable times during normal business hours for purposes of inspecting them for compliance with the terms of this Lease and making any repairs or performing any work that Lessee has neglected or refused to make in accordance with the terms of this Lease. Nothing in this Lease implies any duty or obligation, however, on Landlord's part to make such inspections or perform such work (including, but not limited to, repairs and other restoration work made necessary because of any fire or other casualty or partial condemnation, irrespective of the sufficiency or availability of any property or other insurance proceeds, or any award in condemnation, that may be payable). Landlord's performance of any work will not constitute a waiver of Lessee's default in failing to perform the same.

Article 14 DAMAGE AND DESTRUCTION

If any Improvements on the Premises are damaged or destroyed by fire or other casualty, Rent will not abate and Lessee must (a) promptly restore the damaged Improvements to substantially the same condition existing before the casualty, or if restoration is financially infeasible – as established by Lessee to Landlord's reasonable satisfaction (b) promptly remove all damaged Improvements (including foundations) and leave the Premises in a clean, attractive, and safe condition. The proceeds available from Lessee's property insurance policy (the "**Proceeds**") must be used for restoring or removing the damaged Improvements as provided above, and any Proceeds not used for such restoration or removal will be delivered to Lessee. If the Proceeds are not sufficient for Lessee to restore or remove the damaged Improvements, Lessee must pay the difference.

Article 15 CONDEMNATION

15.1 Total Taking. If all the Premises and the Improvements are taken or condemned by right of eminent domain or by purchase in lieu of condemnation (a “**Taking**”), or if established by Lessee Landlord’s reasonable judgment that the Taking of any portion of the Premises or the Improvements renders the portion remaining insufficient and unsuitable to permit the restoration of the Improvements following the Taking, then Lessee may terminate this Lease by providing written notice thereof to Landlord within 30 days after Lessee is notified of the Taking, in which case the Lease will cease and terminate (except those provisions intended to survive the expiration or termination of the Lease) as of the date on which the condemning authority takes possession (any Taking in this section being called a “**Total Taking**”) and the Rent will be apportioned and paid to the date of the Total Taking.

15.2 Award for Total Taking. If this Lease terminates as a result of a Total Taking, the rights and interests of the parties will be determined as follows:

(1) The total award or awards for the Total Taking will be apportioned and paid in the following order of priority:

(a) Landlord will have the right to receive directly from the condemning authority, in its entirety and not subject to any trust, a portion of the award that is defined and referred to as the Land Award (as defined below), and neither Lessee nor any Permitted Leasehold Mortgagee will be entitled to receive any part of the Land Award. The term “**Land Award**” means that portion of the award in the condemnation proceeding that represents the fair market value of the Premises, which should be considered as vacant, unimproved but encumbered by this Lease; the consequential damage to any part of the Premises that may not be taken; the diminution of the assemblage or plottage value of the Premises not so taken; and all other elements and factors of damage to the Premises; but in all events the damage or valuation will take into consideration that the Premises are encumbered by this Lease.

(b) Lessee will have the right to receive directly from the condemning authority that portion of the award referred to as the Leasehold Award (as defined below), subject, however, to the rights of any Permitted Leasehold Mortgagee. The term “**Leasehold Award**” means that portion of the award in the condemnation proceeding that represents the fair market value of Lessee’s interest in the Improvements and the fair market value of Lessee’s leasehold estate as so taken and, if this Lease is not terminated as a result of the Taking, the consequential damages to any part of the Improvements.

(c) It is the intent of the parties that the Land Award and the Leasehold Award will equal the total amount of the awards respecting the Total Taking.

(2) If a court or another lawful authority that is authorized to fix and determine the awards fails to fix and determine, separately and apart, the Land Award and the Leasehold Award, the awards will be determined and fixed by written Lease mutually entered into by and among Landlord, Lessee, and First Leasehold Mortgagee, if any, and if an Lease is not reached within 30 days after the judgment is entered in the proceeding, the controversy will be resolved in the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the controversy; and

(3) If the condemning authority refuses or otherwise fails to deduct from the Leasehold Award any Rent or other money due from Lessee to Landlord and to pay the same directly to Landlord, then Lessee and the First Leasehold Mortgagee, if any, will execute and deliver to Landlord a written and acknowledged assignment of the amount payable out of the Leasehold Award, and if, nevertheless, the full amount of the Leasehold Award is paid to Lessee or any First Leasehold Mortgagee, the recipient will hold in trust for Landlord and pay over to Landlord forthwith on the receipt of the award the amount so due

15.3 Partial Taking and Award for Partial Taking. If, during the Term, there is a Taking of the Premises or the Improvements, but the Taking is not a Total Taking and not a temporary taking of the kind described in section 15.4, or if a change occurs in the grade of the streets or avenues on which the Premises abuts, this Lease will not terminate but will remain in full force and effect with respect to the portion of the Premises and the Improvements not taken (any Taking or change of grade of the kind described in this section being referred to as a “**Partial Taking**”), and in that event the total award or awards for the taking will be apportioned and paid in the following order of priority:

(a) Landlord will have the right to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award, and neither Lessee nor any Permitted Leasehold Mortgagee will be entitled to receive any part of the award; and

(b) If at the time of the Taking, a First Leasehold Mortgage is held by a Lending Institution, then that Lending Institution, or, if there is no First Leasehold Mortgage, then Lessee, will have the right to receive directly from the condemning authority the balance of the award, to be applied by the recipient as it deems appropriate.

15.4 Temporary Taking. If there is a Taking of all or a part of the Premises or the Improvements for temporary use, this Lease will continue without change, as between Landlord and Lessee, and Lessee will be entitled to the entire award made for that use. Lessee will also have the right to file and prosecute any claim against the condemnor for damages, and to recover the same, for any negligent use, waste, or injury to the Premises or the Improvements throughout the balance of the then-current Term. The amount of damages so recovered will belong to Lessee.

15.5 Dispute Resolution. In the event of any dispute between Lessee and Landlord regarding any issue of fact arising out of a Taking mentioned in this Article, the dispute will be resolved by the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the dispute.

Article 16 ASSIGNMENT AND SUBLETTING

16.1 Limitations on Transfers. Except as permitted under sections 16.2 and 18 below, Lessee must not, voluntarily or by operation of law, sell, assign, or transfer this Lease or any interest therein, sublet the Premises or any part thereof, or grant any right to use the Premises, the Improvements, or any respective part thereof (each a “**Transfer**”) without the prior written consent of Landlord. Transfer without such prior written consent will be void. Landlord’s consent to a

Transfer will in no event release Lessee, any assignee, or any guarantor from their respective liabilities or obligations under this Lease or any guaranty of this Lease, nor relieve Lessee from the requirement of obtaining Landlord's prior written consent to any further Transfer. Landlord's acceptance of Rent from any other person will not be deemed to be a waiver by Landlord of any provision of this Lease or consent to any Transfer.

If Lessee is a corporation, partnership, limited liability company, or other entity or unincorporated association, then any Transfer of this Lease by merger, consolidation, liquidation, or change in the ownership of or power to vote the majority of the ownership interest of Lessee, will constitute a Transfer for the purposes of this Article.

16.2. Assignments Prohibited. An assignment prohibited within the meaning of subsection 16.1 includes, without limitation, one or more sales or transfers, direct or indirect, by operation of law or otherwise, or the creation of new stock or ownership interests, by which ownership or control of an aggregate of more than 50 percent of Lessee's stock or ownership interests must vest in a party or parties who are non-stockholders, partners, or members, as applicable, as of the Commencement Date. Prohibited assignments also and expressly include any Transfer, including of the general partner or managing manager interest of Lessee, not in compliance with the terms and conditions of the Operating Agreement.

16.3 Lessee's Right to Sublet. Lessee has the right to sublet portions of the Premises or the Improvements at any time and from time to time, but only for a term or terms that will expire before the expiration of the Term, and subject to the requirements set forth in subsection 16.4 below.

16.4 Sublease Terms. Each sublease will conform with Exhibit C and further conform with the following terms and conditions:

(a) The sublease will incorporate the terms, conditions, and covenants set forth in, and state that it is subject and subordinate to, this Lease and to any extensions, modifications, or amendments of this Lease, unless Landlord specifically requires that the sublease be prior and superior to this Lease;

(b) That rents due under the sublease (i) have been assigned to Landlord (and Lessee hereby assigns the rents to Landlord), subject to the rights of any leasehold mortgagee, to support performance of Lessee's covenants under this Lease, which assignment will be effective only on the occurrence of any event of default by Lessee under this Lease; (ii) will not be paid more than one month in advance; and (iii) will, on receipt of written notification from Landlord that an event of default has occurred under this Lease, be paid by the sublessee directly to Landlord until the sublessee receives written notice from Landlord that Lessee has cured the event of default or is in the process of curing the event of default in a manner reasonably satisfactory to Landlord;

(c) That if this Lease is canceled or terminated before the expiration of the Term, the sublessee will make full and complete attornment to Landlord for the balance of the term of the sublease with the same force and effect as though the sublease were originally made directly from Landlord, as long as the sublessee has received a Sublease Nondisturbance Lease from Landlord, as provided below; and

(d) If any act or omission of Lessee would give subLessee the right, immediately or after lapse of a period of time, to cancel or terminate the sublease, or to claim a partial or total eviction,

sublessee will not exercise that right: (i) until it has given written notice of the act or omission to Landlord; and (ii) until a reasonable period of time for Landlord to cure the condition has passed.

16.5 Sublease Nondisturbance Leases. Landlord will issue a commercially reasonable nondisturbance and attornment Lease (each a “Sublease Nondisturbance Lease”) to each sublessee requesting the same within 30 days after receipt of a request therefor, as long as the rent under the sublease is fair market rent, the other terms of the sublease are consistent with then-current market conditions, and the sublease complies with the requirements of section 16.3 above. The Sublease Nondisturbance Lease will require the sublessee to acknowledge in writing that this Lease is prior to and paramount to the sublease, and will provide that Landlord will recognize the sublease and not disturb the sublessee’s possession under the sublease as long as subLessee is not in default under its sublease and agrees to attorn to Landlord for the balance of the term of the sublease with the same force and effect as though said sublease were originally made directly from Landlord to sublessee, except Landlord will not: (a) be liable for any previous act or omission of Lessee under the sublease; (b) be subject to any offset, deficiency, or defense that will have accrued to sublessee against Lessee; (c) be bound by any previous modification of the sublease or by any previous prepayment of more than one month’s rent under the sublease, unless the modification or prepayment will have been expressly approved in writing by the Landlord; or (d) be liable for the return of any security deposit on the sublease that was not actually transferred to the Landlord.

16.6 Sublease Copies. Upon written request by Landlord, Lessee will promptly deliver to Landlord complete copies of any and all subleases.

Article 17

LANDLORD MORTGAGES AND SUBORDINATION

17.1 Landlord Mortgages. Landlord may not encumber its interest in the Premises or the Improvements without the prior written consent of Lessee, which consent may be withheld in Lessee’s sole discretion

17.2 Subordination. This Lease will at all times be subject and subordinate to any mortgage or deed of trust (an “**Encumbrance**”) now existing or hereafter placed on Landlord’s interest in the Premises or the Improvements or any portion thereof, and to any and all modifications, renewals, or extensions of an Encumbrance. If Landlord’s interest in the Premises and the Improvements are sold or transferred in connection with the judicial or nonjudicial foreclosure of any Encumbrance, or by deed in lieu of foreclosure, Lessee will attorn to the purchaser as Landlord (the “**Successor Landlord**”), and any such Successor Landlord will recognize this Lease and will not disturb the quiet enjoyment and possession of the Premises and the Improvements by the Lessee under this Lease as long as Lessee is not in default of the Lease, except that the Successor Landlord will not: (a) be liable for any previous act or omission of Landlord under this Lease; (b) be subject to any offset, deficiency, or defense that will have accrued to Lessee against Landlord; (c) be bound by any previous modification of this Lease or by any previous prepayment of more than one month’s Rent, unless the modification or prepayment will have been expressly approved in writing by the Encumbrance holder; or (d) be liable for the return of any security deposit that was not actually transferred to the Successor Landlord. Within 15 days after request by Landlord or any existing or

prospective lender of Landlord, Lessee will execute a commercially reasonable form of subordination, nondisturbance, and attornment Lease that is consistent with this section 17.2. If any act or omission of Landlord would give Lessee the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Lessee will not exercise such right: (i) until it has given written notice of the act or omission to Landlord and each Encumbrance holder whose name and address have previously been furnished to Lessee, and (ii) until a reasonable period of time for the parties to cure the condition has passed.

Article 18 LEASEHOLD MORTGAGES

18.1 Right to Mortgage Leasehold. In addition to any other rights granted and without any requirement to obtain Landlord’s consent, Lessee has the right to mortgage or grant a security interest in Lessee’s interest in this Lease, the Premises, and the Improvements under one or more leasehold mortgages to one or more Lending Institutions (as defined in section 18.2 below), and to assign this Lease as collateral security for those leasehold mortgages, on the condition that all rights acquired under the leasehold mortgages are subject to every covenant, condition, and restriction set forth in this Lease, and to all rights and interests of Landlord, none of which covenants, conditions, restrictions, rights, or interests is or may be waived by Landlord by reason of the right given to mortgage or grant a security interest in Lessee’s interest in this Lease and the Premises and the Improvements, except as expressly provided otherwise.

18.2 Defined Terms. Lessee may only allow a mortgage, deed of trust, financing statement, security Lease, or other financing instrument with respect to its leasehold interest under this Lease in an amount not in excess of \$ _____ and only to the then primary construction or mortgage lender to Lessee with respect to the Improvements (a “**Permitted Leasehold Mortgage**”). The beneficiary of such a Permitted Leasehold Mortgage is herein known as the “**Permitted Leasehold Mortgagee**.”

18.3 Lender Protections. If a Permitted Leasehold Mortgagee sends to Landlord a true copy of its Permitted Leasehold Mortgage, together with written notice specifying the name and address of the Permitted Leasehold Mortgagee, then as long as the Permitted Leasehold Mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions will apply (in respect of the Permitted Leasehold Mortgage and of any other Permitted Leasehold Mortgage):

(a) This Lease may not be (i) amended or modified, or (ii) terminated or canceled by reason of the exercise of any option or election by Lessee, or by the giving of any notice by Lessee, unless such amendment, modification, termination, or cancellation by Lessee is assented to in writing by the Permitted Leasehold Mortgagee. Any such attempted amendment or modification, termination, or cancellation by Lessee without the Permitted Leasehold Mortgagee’s assent is void. Furthermore, no mergers will result from the acquisition by, or devolution upon, any one entity of the fee and the leasehold estates in the Premises or the Improvements.

(b) Upon serving Lessee with any notice under this Lease, whether of default or any other matter, Landlord will simultaneously serve a copy of the notice on the Permitted Leasehold

Mortgagee, and no notice to Lessee will be deemed given unless a copy is so served on the Permitted Leasehold Mortgagee in the manner provided in this Lease for giving notices.

(c) In the event of any default by Lessee under this Lease, the Permitted Leasehold Mortgagee has the same period as Lessee has to remedy or cause to be remedied or commence to remedy and complete the remedy of the default complained of, and Landlord must accept that performance by or at the instigation of the Permitted Leasehold Mortgagee as if the same had been done by Lessee.

(d) If Landlord elects to terminate this Lease because of any default of Lessee, the Permitted Leasehold Mortgagee will have, in addition to the rights granted under the preceding section, the right to postpone and extend the specified date for the termination of this Lease as fixed by Landlord in its notice of termination, for a period of 12 months, as long as the Permitted Leasehold Mortgagee (i) cures or causes to be cured any then-existing defaults by Lessee and meanwhile performs under the Lease, and (ii) forthwith takes steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Permitted Leasehold Mortgage or otherwise and prosecutes the same to completion with reasonable diligence and continuity. If, at the end of the 12-month period, the Permitted Leasehold Mortgagee is actively engaged in steps to acquire or sell Lessee's interest, the time of the Permitted Leasehold Mortgagee to comply with the provisions of this section will be extended for a period that is reasonably necessary to complete those steps with reasonable diligence and continuity.

(e) Landlord agrees that if this Lease is terminated by reason of any default by Lessee, Landlord will enter into a new lease for the Premises and the Improvements, substantially similar to this Lease, with a nominee of the holder of the Permitted Leasehold Mortgage so long as such nominee demonstrates to Landlord's reasonable satisfaction that it has the capacity to manage and operate the Premises and Improvements consistent with the Legal Requirements and subject only to the same conditions of title as this Lease was subject on the date of the execution hereof, and to the rights, if any, of any parties then in possession of the Premises or any portion thereof, provided as follows: (i) The holder will request the new lease within 30 days after the date of termination of the Lease; (ii) the holder will pay to Landlord at the time of execution and delivery of the new lease all sums as to which the First Leasehold Mortgagee will have been provided with prior notice and which would at the time of execution and delivery thereof be due under this Lease had it not terminated, together with any expenses, including reasonable attorney fees, to which Landlord will have been subjected by reason of the default; (iii) Landlord will not warrant possession of the Premises to the Lessee under the new lease; (iv) the new lease will be expressly made subject to the rights, if any, of Lessee under this terminated Lease; (v) Lessee under the new lease will have the same right, title, and interest in and to the Premises as Lessee had under this Lease (except as otherwise provided herein); and (vi) the holder will not be obligated to perform any obligations of Lessee hereunder until the holder actually acquires possession of the Premises.

(f) Nothing herein contained will require any holder of a Permitted Leasehold Mortgage or its nominee or designee to cure any default of Lessee arising out of its bankruptcy, insolvency, reorganization, or other proceeding under the bankruptcy or insolvency laws of the United States or the State of Oregon or otherwise.

(g) Landlord agrees to amend this 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, as long as such proposed amendments do not materially and adversely affect the rights, obligations, or liabilities of Landlord or Landlord's interest in the Premises or the

Improvements. All reasonable expenses Landlord incurs in connection with any such amendment will be paid by Lessee.

(h) Landlord agrees that the name of the Permitted Leasehold Mortgagee may be added to the “loss payable endorsement” of any or all insurance policies required to be carried by Lessee.

Article 19 ESTOPPEL CERTIFICATE

Within 15 days after a request is made by Landlord, Lessee will, without charge, give a certification in writing to any person, firm, or corporation reasonably specified by the requesting party stating (a) that this Lease is then in full force and effect and unmodified, or if modified, stating the modifications; (b) that Lessee is not in default in the Payment of Rent to Landlord, or if in default, stating the default; (c) that as far as Lessee knows, neither party is in default in performing or observing any other covenant or condition to be performed or observed under this Lease, or if either party is in default, stating the default; (d) that as far as Lessee knows, no event has occurred that authorized, or with the lapse of time will authorize, Lessee to terminate this Lease, or if such an event has occurred, stating the event; (e) that as far as the Lessee knows, neither party has any offsets, counterclaims, or defenses, or, if so, stating them; (f) the dates to which Rent has been paid; and (g) any other matters that may be reasonably requested by Landlord.

Article 20 DEFAULT

The occurrence of any one or more of the following constitutes an event of default under this Lease:

(a) Failure by Lessee to pay any amount required to be paid by Lessee to Landlord under this Lease within 10 days after written notice of such nonpayment is given to Lessee; provided, however, that Landlord is not required to give Lessee more than one such notice in any consecutive 12-month period. After giving the first such notice to Lessee during a consecutive 12-month period, Lessee will be deemed in default under this Lease for failure to pay such amount within 10 days after the same becomes due, without notice or opportunity to cure.

(b) Failure by Lessee to obtain and maintain any insurance or provide evidence of insurance as required by the terms of this Lease and such failure continues and is not remedied within 10 days after written notice thereof is given to Lessee.

(c) Lessee becomes insolvent; Lessee makes an assignment for the benefit of creditors; Lessee files a voluntary petition in bankruptcy; Lessee is adjudged bankrupt or a receiver is appointed for Lessee’s properties; the filing of any involuntary petition of bankruptcy and Lessee’s failure to secure a dismissal of the petition within 75 days after filing; or the attachment of or the levying of execution on the leasehold interest and Lessee’s failure to secure discharge of the attachment or release of the levy of execution within 30 days.

(d) Failure by Lessee, whether by action or inaction, to comply with any term or condition or fulfill any obligation under this Lease (other than as set forth in subsections (a) through (c) above) and such failure continues and is not remedied within 30 days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that Landlord determines relate to material health or safety needs of Project occupants) after notice thereof will have been

given by Landlord, or if such default runs for a period of thirty (30) days from the date the Lessee should, with due diligence, have discovered such default, then Landlord may declare an **"Event of Default"** to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or within any lesser notice period provided by Landlord, Landlord may, in its sole discretion, extend the correction period for up to six (6) months, but only if Landlord determines there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Land, the correction period for the successor for an existing default will be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the Lessee of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by Landlord, an Event of Default will be deemed to occur and Landlord may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder Landlord may, at its option, take any one or more of the following Remedies provided in Article 21 (except that itemized remedies in Article 21.3(b) always must be preceded by notice of default to the Investor in Lessee and Primary Lender to Lessee (as defined in the Operating Agreement), if any, in accordance with this subsection while Investor is a member of Lessee or Lessee remains indebted to Primary Lender), in addition to all other remedies provided in this Lease, by law, or in equity:

Article 21 REMEDIES

21.1 Remedies. Upon the occurrence of an Event of Default, Landlord may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

(a) Landlord may terminate this Lease by written notice to Lessee.

(b) Landlord or Landlord's agent or employee may immediately or at any time thereafter, without terminating the Lease, reenter the Premises and the Improvements 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 Premises and the Improvements, to the end that Landlord may have, hold, and enjoy the Premises and the Improvements. RE-ENTRY OR TAKING POSSESSION OF THE PREMISES OR THE IMPROVEMENTS BY LANDLORD WILL NOT BE CONSTRUED AS AN ELECTION ON ITS PART TO TERMINATE THIS LEASE UNLESS A WRITTEN NOTICE OF SUCH INTENTION IS GIVEN TO LESSEE.

(c) Landlord may, without terminating the Lease, relet the whole or any part of the Premises and the Improvements from time to time, either in the name of Landlord or otherwise, to any persons, for any terms ending before, on, or after the expiration date of the Term, at any rentals and on any other conditions (including concessions and free rent) that Landlord determines to be appropriate. To the extent allowed under Oregon law, Landlord will have no obligation to relet all or any part of the Premises or the Improvements and will not be liable for refusing to relet the Premises or the Improvements, or, in the event of reletting, for refusing or failing to collect any rent due on such reletting; and any action of Landlord will not operate to relieve Lessee of any liability under this Lease or otherwise affect such liability. Landlord at its option may make any physical change to the Premises or the Improvements that Landlord, in its sole discretion, considers advisable and

necessary in connection with any reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.

(d) Whether or not Landlord retakes possession of or relets the Premises and the Improvements, Landlord has the right to recover its damages, including without limitation all lost Payments, all legal expenses, all costs incurred by Landlord in restoring the Premises or otherwise preparing the Premises and the Improvements for reletting, and all costs incurred by Landlord in reletting the Premises and the Improvements.

(e) To the extent permitted under Oregon law, Landlord may sue periodically for damages as they accrue without barring a later action for further damages. Landlord may in one action recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Payments reserved in this Lease for the balance of the Term after the time of award and the fair rental value of the Premises and the Improvements for the same period, discounted at the time of award at a reasonable rate not to exceed 10 percent per annum. If Landlord relets the Premises and the Improvements for the period that otherwise would have constituted all or part of the unexpired portion of the Term, the amount of Payments reserved on the reletting will be deemed to be the fair and reasonable Payment value for the part or the whole of the Premises and the Improvements so relet during the term of the reletting.

21.2 Landlord's Self-Help Right. If Lessee at any time (a) fails to pay any Tax in accordance with the provisions of this Lease, (b) fails to make any other Payment required under this Lease, or (c) fails to perform any other obligation on its part to be made or performed under this Lease, then after 10 days' written notice to Lessee (or without notice in the event of an emergency) and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Landlord's right to take any action that is permissible under this Lease as a result of the default, Landlord may, but is under no obligation to, (i) pay any Tax or make any other Payment required of Lessee under this Lease, and (ii) perform any other act on Lessee's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take any action that may be necessary. All Payments so made by Landlord and all costs and expenses incurred by Landlord, including reasonable attorney fees, in connection with the performance of any such act will constitute additional rent payable by Lessee under this Lease and must be paid to Landlord on demand.

21.3 Other Affirmative Remedies of Landlord. Upon an occurrence of any Event of Default, Landlord also may exercise one or more of the following remedies:

(a) By mandamus or other suit, action or proceeding at law or in equity, require Lessee specifically to perform its obligations under this Lease or enjoin any acts or things that may be unlawful or in violation of the rights of Landlord under this Lease;

(b) Obtain the appointment of a receiver to operate the Project in compliance with this Lease;

(c) Require a change in the General Partner or Managing Member of Lessee to Landlord's satisfaction;

(d) Require termination of the Management Agent, if any, and its replacement to Landlord's satisfaction;

(e) Require Lessee to cease management of the Project and to engage a Management Agent acceptable to Landlord;

(f) Declare Lessee, its Lessees, principals, officers, employees, and agents ineligible to receive further Landlord financial assistance for such period as Landlord determines in its sole discretion;

(g) Have access to, and inspect, examine and make copies of, all of the books and records of Lessee or its agents pertaining to the Project, to inspect the Project at any time, and to inspect Dwelling Units of the Project upon reasonable notice;

(i) Enter onto the Property and correct Events of Default with respect to the Project at Lessee's expense, which expense Lessee will repay to Landlord within ten (10) days of any presentment of charges for same;

(j) Require Lessee, its Lessees, principals, officers, employees, and agents to undertake training, at Lessee's expense, as directed by Landlord.

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

21.4 Remedies Cumulative and Nonexclusive. Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise, and Landlord's or Lessee's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Article 22

SALE BY LANDLORD AND LIMITATION OF LANDLORD'S LIABILITY

22.1 Sale by Landlord. If the original Landlord under this Lease, or any successor Lessee of the Premises, sells or conveys the same, and the new Lessee assumes the obligations of Landlord under this Lease, all liabilities and obligations on the part of the original Landlord or the successor Lessee under this Lease accruing thereafter will terminate, and thereupon all such liabilities and obligations will be binding on the new Lessee. Lessee agrees to attorn to the new Lessee.

22.2 Nonrecourse Obligation. Lessee agrees that, regarding any claim against Landlord, including any claim of default by Landlord under this Lease or in any claim or cause of action arising under this Lease or arising out of the landlord-Lessee relationship created by this Lease, the sole and exclusive remedy of Lessee will be against the interests of Landlord in the Premises and its reversionary interest in the Improvements and Landlord will have no other liability hereunder. Lessee will not enforce any judgment against Landlord except against the interest of Landlord in the

Premises and its reversionary interest in the Improvements. In no event will any shareholder, member, partner, officer, employee, or agent of Landlord have any personal liability to Lessee. Lessee agrees that this provision will apply to any and all liabilities, claims, and causes of action whatsoever, including those based on any provision of this Lease, any implied covenant, or any statute or common-law principle. Notwithstanding any other provision of this Lease, in no event whatsoever will Landlord be responsible for any consequential or incidental damages or for any action that Landlord believes in good faith is necessary to comply with Legal Requirements with respect to the Premises or the Improvements.

Article 23 SURRENDER AND HOLDOVER

23.1 Condition of Premises and Improvements. Upon expiration of the Term or earlier termination of this Lease, unless Lessee has purchased the Property in the manner provided in Article 6 above, Lessee will deliver all keys to Landlord and surrender the Premises and the Improvements in good condition and repair and broom clean (reasonable wear and tear excepted), free and clear of all occupancies other than subleases to which Landlord has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Landlord. Lessee's obligations under this Article will be subject to the provisions of Article 14 relating to damage or destruction and Article 15 relating to condemnation.

23.2 Lessee's Property. Before the expiration or earlier termination of this Lease, Lessee will remove all furnishings, furniture, and trade fixtures that remain Lessee's property (the "**Lessee's Property**"). If Lessee fails to do so, at Landlord's option, (a) the failure to remove Lessee's Property will be deemed an abandonment of Lessee's Property, and Landlord may retain Lessee's Property and all rights of Lessee with respect to it will cease; or (b) by written notice given to Lessee, Landlord may elect to hold Lessee to Lessee's obligation of removal, in which case Landlord may effect the removal, transportation, and storage of Lessee's Property and Lessee will reimburse Landlord for the costs incurred in connection therewith on demand.

23.3 Holding Over. Any holding over after the expiration of the Term with the written consent of Landlord will be construed to be a tenancy from month-to-month, with full continued performance of Lease obligations. If Landlord consents to Lessee holding over, either party may thereafter terminate the tenancy at any time on 30 days' advance written notice to the other party.

Any holding over after the expiration of the Term without the written consent of Landlord will be construed as a tenancy at sufferance (which Landlord may terminate at any time without notice) and Lessee will be liable for any and all damages resulting from such unauthorized holdover (including, but not limited to, any and all damages that Landlord is required to pay a new Lessee for failing to timely deliver any portion of the Premises or the Improvements).

**Article 24
CONDITION OF PREMISES**

Lessee acknowledges that it [has examined the physical condition of the Premises (including whether the Premises contain any Hazardous Substances or fails to comply with any Environmental Laws) and as a result agrees to accept the Premises in “as-is” condition, with all faults. Lessee further acknowledges that no representations or warranties regarding the condition of the Premises have been made by Landlord or any agent or person acting for Landlord.

**Article 25
QUIET ENJOYMENT**

While making timely Payments and adhering to all covenants, Leases, and conditions of this Lease, Lessee will have quiet enjoyment of the Premises during the Term without hindrance or disturbance by any person claiming by, through, or under Landlord, subject, however, to the Permitted Exceptions, including Lessee monitoring and exercise of remedies actions.

**Article 26
NOTICES; NO THIRD-PARTY BENEFICIARIES**

26.1 Notice Parties and Means of Delivery.

(a) **Notice to Parties.** Except as otherwise expressly provided in this Lease, any notices required or permitted to be given under this Lease will be given in writing, by personal delivery, or mailing the same, postage prepaid, to Landlord or Lessee at the following addresses:

Landlord: Oregon Housing and Community Services Department
Attn: Multifamily Housing Finance Section Manager
725 Summer Street N.E., Suite B
Salem, Oregon 97301-1266
Facsimile: [REDACTED]

Lessee: [Name~]
Attn: [Name, Title~]
[Address~]
Facsimile: [#~]
Email: [Address~]

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

(b) **Notice to Investor and Primary Lender.** If written notice of a default to the Lessee is required under this Lease, then Landlord also will deliver written notice of such default to

the Investor, if applicable, and the primary lender, if applicable, at their respective addresses given below (or such other single address as may be provided in writing) for as long as the Investor has an ownership interest in Lessee or the primary lender qualifies as a Permitted Leasehold Mortgagee.

Investor: **[Name~]**
 Attn: **[Name, Title~]**
 [Address~]
 Facsimile: **[#~]**
 Email: **[Address~]**

Primary Lender: **[Name~]**
 Attn: **[Name, Title~]**
 [Address~]
 Facsimile: **[#~]**
 Email: **[Address~]**

(c) **Investor/Primary Lender Cure Right.** In addition to any other cure provisions contained in this Lease, the Investor (and any special member or special limited partner affiliated therewith) and the Primary Lender will have the right to cure all Events of Default for which delivery of written notice to the Lessee or Investor is required under this Lease within the same time periods allowed to Lessee.

26.3 Copies of Certain Notices to Lessee. Lessee will immediately send to Landlord, in the manner prescribed in this Article, copies of all notices that Lessee gives to or receives from any Permitted Leasehold Mortgagee as well as copies of all notices that it receives with respect to the Premises or the Improvements from any government authority, fire regulatory agency, or similarly constituted body, and copies of its responses to those notices.

26.4 Failure to Notify of Change of Address or Refusal to Accept a Notice. Notwithstanding anything in this Article 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 Lease or this Article will not be deemed ineffective if actual delivery cannot be made because of a change of address of the person or party to which the notice is directed or the failure or refusal of such a person or party to accept delivery of the notice.

26.5 No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Lease, Landlord and Lessee are the only parties to this Lease and are the only parties entitled to rely on and enforce the terms of this Lease. Nothing in this Lease gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Lease and only to the degree they are expressly described as intended beneficiaries of particular terms of this Lease and only with such remedies as expressly given herein with respect to such interests.

Article 27

STATUTORY DISCLOSURE

Statutory Disclosure. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY LESSEES, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

**Article 28
MISCELLANEOUS**

28.1 Survival. All Leases (including, but not limited to, indemnification Leases) set forth in this Lease, the full performance of which are not required before the expiration or earlier termination of this Lease, will survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

28.2 Invalidity. If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

28.3 Force Majeure. If either party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of

performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.

28.4 Nonmerger. There may be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease, may be held, directly or indirectly, by or for the account of any person who owns the fee estate in the Premises or any interest in such fee estate. No merger will occur unless and until all persons having an interest in the fee estate in the Premises and all persons (including all Permitted Leasehold Mortgagees) having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting the merger and duly record the same.

28.5 Costs and Attorney Fees. If any suit, action, arbitration, or other proceeding of any nature whatsoever, including (without limitation) any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action seeking a declaration of rights or an action for rescission, is instituted to interpret or enforce this Lease or any provision of this Lease, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees as well as reasonable fees for paralegals, accountants, and other experts and professionals and all other fees, costs, and expenses actually incurred and reasonably necessary in connection with the proceeding as determined by the judge or arbitrator at trial or other proceeding, or on any appeal or review, in addition to all other amounts provided by law. Reasonable attorney fees and reasonable fees for paralegals shall not exceed the rate charged Landlord by its counsel.

28.6 Entire Lease; Counterparts. This Lease contains the entire Lease between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Lessee and Landlord mutually acknowledge and agree that there are no verbal Leases or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

28.7 Governing Law; Venue: Consent to Jurisdiction. This Lease shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law and the laws of the United States of America, as applicable. Any claim, action, suit or proceeding (collectively, "Claim") among Landlord, and Lessee, or with any third-party beneficiary related to this Lease or the Project shall be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the Premises is located) or, if necessary, the United States District Court for the District of Oregon. In no event shall this provision be construed as a waiver by the State of Oregon or Landlord of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. LESSEE, BY EXECUTION OF THIS LEASE, HEREBY EXPRESSLY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

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

28.9 Binding Effect. The covenants and Leases contained in this Lease are binding on and inure to the benefit of Landlord, Lessee, and their respective successors and assigns.

28.10 Recordation of Lease. Lessee may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both parties, be recorded in the public records of _____ County, Oregon. Lessee will pay the recording costs.

28.11 Time Is of the Essence. Time is of the essence as to the performance of all the covenants, conditions, and Leases of this Lease.

28.12 Interpretation. In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon must be given equal weight, and there must be no inference, by operation of law or otherwise, that any provision of this Lease may be construed against either party hereto. Landlord and Lessee acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party will not be used in the interpretation of this Lease or any exhibit or amendment hereto.

28.13 Headings, Captions, and References. The headings and captions contained in this Lease are for convenience only and do not in any way define, describe, limit, or amplify the scope or intent of this lease or any term or provision in it. The use of the term “Herein” refers to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of a masculine or neuter gender in this Lease includes the masculine, feminine, and neuter genders and the singular form includes the plural when the context so requires.

28.14 Relationship of Parties. Nothing contained in this Lease is to be deemed or construed, either by the parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Landlord and Lessee.

28.15 USA PATRIOT Act Compliance. Lessee represents to Landlord that Lessee is not (and is not engaged in this transaction on behalf of) a person or entity with which Landlord is prohibited from doing business pursuant to Antiterrorism Laws. “Antiterrorism Laws” means any law, regulation, or executive order pertaining to national security and specifically includes, but is not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the PATRIOT Act) (Pub L 107-56, 115 Stat 272); the Bank Secrecy Act (31 USC § 5311 *et seq.*); the Trading with the Enemy Act (50 USC App § 1 *et seq.*); the International Emergency Economic Powers Act (50 USC §§ 1701–1706); sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws related to the prevention and detection of money laundering in 18 USC sections 1956 to 1957. Lessee hereby agrees to indemnify, defend, and hold Landlord harmless from and against any and all

claims, damages, losses, risks, liabilities, and expenses (including attorney fees and costs at trial and on appeal) arising from or related to any breach of the foregoing warranty, representation, and certification. Following a Transfer, Lessee will cause the transferee (including, but not limited to, an assignee, sublessee, and licensee), for the benefit of Landlord, to reaffirm, on behalf of such transferee, the representations of, and to otherwise comply with the obligations set forth in this section 29.15, and it is reasonable for Landlord to refuse to consent to a Transfer in the absence of such reaffirmation and compliance.

28.16 No Limitations on Actions of Landlord in Exercise of Its Governmental Powers.

Nothing in this Agreement is intended, nor will it be construed, to in any way limit the actions of Landlord in the exercise of its governmental powers. It is the express intention of the parties hereto that Landlord will retain the full right and ability to exercise its governmental powers with respect to the Lessee, the Premises, the Improvements, the Project, this Lease, and the transactions contemplated by this Lease and applicable Program Requirements to the same extent as if it were not a party to this Lease or the transactions contemplated hereby, and in no event will Landlord have any liability in contract arising under this Lease, the Application, the Reservation, the Program Requirements, or otherwise by virtue of any exercise of its governmental powers.

28.17 Cross Default. Landlord may treat an Event of Default hereunder as an Event of Default under the Bond Documents (as described in the Operating Agreement), and under the Financing Documents (as described in the Operating Agreement). Landlord may treat an Event of Default under the Bond Documents, under the Financing Documents, under the Operating Agreement, under the Project Management Agreement, under any other of the Lease Documents (as defined in the Operating Agreement), or under any other of the Program Requirements (as defined in the Operating Agreement) as an Event of Default hereunder.

[Signature Pages Follow]

IN WITNESS WHEREOF, Lessee and Landlord have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

Landlord:

STATE OF OREGON, acting by and through its
Housing and Community Services Department

By:

Heather Pate
Manager, Multifamily Housing Financing Section

[The balance of this page is intentionally left blank.]

Lessee:

[Name~],
an Oregon **[type of entity~]**
Tax ID No. _____

By: _____
[Name~]
[Title~]

[The balance of this page is intentionally left blank.]

EXHIBIT A
Property Description

DRAFT

EXHIBIT B
Site Plan

DRAFT