



PROPOSED FORM OF
LEASE
TO BE UTILIZED IN CONNECTION WITH
CONSTRUCTION OF WESTFIELD AFFORDABLE HOUSING SITE

Between

The Town of Wareham (“Landlord”)

and

Developer (“Tenant”)

Dated as of

_____, 200__

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LEASE

This lease (this "Lease") is entered into as of this ____ day of _____, 200__, by and between the Town of Wareham, as empowered by Wareham Town Meeting and a body politic and corporate of the Commonwealth of Massachusetts (the "Landlord") and DEVELOPER, a Massachusetts limited liability company ("Tenant").

BACKGROUND

Pursuant to that certain Request for Proposals dated _____ (the "RFP"), the Landlord has accepted Tenant's proposal (the "RFP Response") for a lease of the Premises (as defined in Section 1.below) to construct new rental dwelling units and make certain improvements for use as an elderly (55 years of age and older) affordable housing rental facility, subject to the terms and conditions set forth herein.

The Landlord and Tenant now agree as follows:

ARTICLE I. PREMISES

Section 1.01 Lease of Premises. The Landlord, for and in consideration of the covenants and agreements hereinafter contained on the part of Tenant to be paid, kept and performed, hereby leases to Tenant, and Tenant hereby leases from the Landlord, for the Term (as defined in Section 2.below) upon the terms and conditions set forth herein, the following described premises (hereinafter called the "Premises"):

A certain parcel of land (the "Land") located at Charlotte Furnace Road, Wareham, Massachusetts, as more particularly described in Exhibit A attached hereto and made a part hereof and more particularly shown on the plan attached hereto as Exhibit B and made a part hereof; all of the improvements, buildings, structures, utility lines not owned by the respective utility company, parking areas and fixtures that are now or hereafter located on, installed in, or attached to, the Land (collectively, the "Improvements"); and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Land or the Improvements or the use or occupancy of the Land or the Improvements, whether or not of record.

Reserved Rights. The Landlord reserves the following rights and imposes upon Tenant the following obligations in connection with the Premises:

- (a) Upon reasonable prior notice to Tenant, the Landlord shall have the right to access and enter upon the Premises for the purposes of inspection, complying with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions and orders and requirements of all public authorities and exercising any right reserved to the Landlord by this Lease. The Landlord shall use commercially reasonable efforts to minimize interference with or disruption of Tenant, Tenant's business, its occupants, its operators and its lessees.

Section 1.02 Condition of the Premises. Tenant acknowledges that it has leased the Premises and agreed to perform the Initial Improvements (as defined in Section 3.below) after a full and complete examination of the Premises, including, without limitation, any encumbrances, subsurface conditions, existing structures thereon, if any, the presence of any asbestos or other Hazardous Materials (as defined in Section 12.below) located on, in or under the Premises or within such structures, legal title, their present uses and non-uses, and laws, ordinances, and regulations affecting the same and the ability of Tenant to use the Premises for their intended purposes, and accepts the same in the same condition in which they or any part thereof now are, and except as otherwise expressly provided in this Lease, waives all rights to object to the condition thereof and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of the Landlord, and without recourse to the Landlord.

ARTICLE II. TERM

Section 2.01 Term. The Premises are hereby leased unto Tenant and its successors and assigns for a term (the "Term"), commencing on _____ (the "Commencement Date") and unless extended or earlier

terminated in accordance with the provisions hereof, ending on 99 years from Commencement Date (the "Termination Date").

Section 2.02 Early Termination. Tenant agrees that if construction of the Initial Improvements has not commenced (as defined in Section 3.below) by the Outside Construction Start Date (as defined in Section 3.below), the Landlord may elect to terminate this Lease upon thirty (30) days' written notice to Tenant; provided, however, that if construction of the Initial Improvements commences within such 30-day period, such termination notice shall be null and void and this Lease shall continue in full force and effect.

ARTICLE III. TENANT'S IMPROVEMENTS

Section 3.01 Initial Improvements.

- (a) Tenant shall commence work on the project and improvements (the "Initial Improvements") described in Exhibit C attached hereto and incorporated herein (the "Schematic Design Plans") as soon as reasonably possible following the Commencement Date but not later than _____ [months] [year(s)] after the date hereof (the "Outside Construction Start Date"), which construction Tenant shall thereafter diligently and continuously prosecute to Final Completion (as defined below) in accordance with the Final Plans (as defined in Section 3.03 below). For purposes of this Lease, construction of the Initial Improvements shall be deemed to have "commenced" upon the commencement of actual physical work (including, without limitation, site work) on the Premises pursuant to a permit being issued by the appropriate agencyTown of MarionWareham pursuant to the State Building Code for the construction of the Initial Improvements, and "Final Completion" of the Initial Improvements will be deemed to have occurred upon the issuance of a permanent certificate of occupancy for the Initial Improvements. The date upon which Final Completion of the Initial Improvements occurs shall be referred to herein as the "Final Completion Date," which shall occur not later than [_____].
- (b) Notwithstanding the foregoing, if the commencement of the Initial Improvements is prevented or delayed beyond the Outside Construction Start Date because of strikes, lockouts, labor troubles, inability to procure materials, power failures, riots, insurrection, war, appeals or litigation relating to any comprehensive permit applications or other required permits, approvals or licenses necessary to construct, finance and use the Initial Improvements for the Permitted Uses (hereinafter defined), or other causes beyond Tenant's reasonable control (including without limitation relating to environmental issues or delays in obtaining financing) (collectively, "Force Majeure"), then the commencement of the Initial Improvements shall be excused for the period of delay and the Outside Construction Start Date and Final Completion Date shall be extended for an equivalent period; provided, however, that such extension shall not be for more than one year.

Section 3.02 Schedule of Performance. Subject to Force Majeure, the Initial Improvements shall be developed by Tenant in accordance with a time schedule approved by the Landlord (the "Schedule of Performance"), which approval shall not be unreasonably withheld, conditioned or delayed. Upon written request, Tenant shall submit to the Landlord on or before each deadline set forth in the Schedule of Performance satisfactory evidence that each deadline has been met. The satisfaction of the matters set forth in the Schedule of Performance by the dates set forth therefore is an essential part of this Lease. In the event that the Landlord grants an extension of any such date, which the Landlord may grant or withhold in its reasonable discretion, the Landlord shall not be deemed thereby to be waiving any other rights hereunder or implying the extension of any other dates.

Section 3.03 Approval and Delivery of Final Plans. On or before the date specified in the Schedule of Performance, Tenant shall demonstrate to the Landlord that the proposed construction drawings for the Initial Improvements are consistent with the plans submitted as part of the RFP Response (the construction drawings approved by the Landlord are hereinafter referred to as the "Final Plans"). The RFP plans may be altered in connection with the permitting process. Any disapprovals shall be accompanied by a written explanation setting forth in reasonable detail the reasons for disapproval. In the event the Landlord disapproves of any item, Tenant shall cause such item to be appropriately revised as soon as possible after receipt of a notice of disapproval and resubmit the same to the Landlord for approval pursuant to this Section 3.3, so long as such proposed revision does

not materially impact the feasibility of the project. The Landlord and Tenant agree to cooperate reasonably and in good faith with each other to resolve any objections of the other to such item and/or requested modifications by the other and agree to submit any unresolved dispute under this Section 3.03 to mediation. Landlord shall be deemed to have approved any plans contemplated by this Section 3.03 to which it fails to object within thirty (30) days after receipt of such plans.

Section 3.04 Required Permits.

- (a) Tenant shall obtain all permits, approvals and licenses from governmental authorities (“Required Permits”) required for construction and use of the Initial Improvements, and for any other alterations, removals, installations, additions, changes, replacements or improvements to the Premises (collectively with the Initial Improvements, “Tenant Work”), and shall provide the Landlord with a copy of each. Upon full or partial completion of the Initial Improvements and prior to occupying any part of the Premises for any purpose other than performing the Initial Improvements, and upon completion of any other Tenant Work, Tenant shall obtain from each authority granting the Required Permits such evidence of approval (“Required Approval”) as may be necessary to permit such part of the Premises to be used and occupied for the Permitted Uses (as defined in Section 8.below). Tenant may occupy all or part of the Premises under temporary or conditional certificates of occupancy, but shall not be relieved from the obligation of obtaining permanent certificates of occupancy for the Improvements or other similar licenses or permits required to permit the Premises to be used and occupied for the Permitted Uses.
- (b) The Landlord promptly shall execute and deliver any reasonable documents which may be necessary to obtain or maintain any Required Permit or Required Approval and shall further cooperate with Tenant in obtaining or maintaining any Required Permit or Required Approval, as Tenant may from time to time reasonably request; provided, however, that with the exception of zoning or other matters, where the Landlord’s execution of petitions, application, appeals or other documents or joinder in proceedings may be required as a condition to Tenant’s proposed action, the Landlord shall in no event be required to join in or become a party to any document or proceeding in which it will oppose the Town of Wareham or the Commonwealth of Massachusetts or any agency, authority, branch, Landlord, division, office or subdivision of or for the Town of Wareham or the Commonwealth of Massachusetts, nor shall the Landlord be required in connection with any such document or proceeding or otherwise to oppose in any way any policy previously established by the Landlord nor to take a position inconsistent with a position previously taken and made public by the Landlord. The Landlord shall not be required to incur any costs in connection with any documentation under this Section. Tenant agrees to reimburse the Landlord for any reasonable third party costs it may incur in connection with the review of such documentation.
- (c) Landlord fully understands that the permitting and/or financing of the project is a complex process that may result in schedule delays and the Landlord agrees to fully cooperate with the Tenant to help in expediting such process as permitted by law.
- (d) Tenant may contest, in good faith and on the same terms and conditions as provided in Section 8.4, the validity or applicability of any Legal Requirement (as defined in Section 8.below) which is the basis for any Required Permit or Required Approval.

Section 3.05 General Contractor; Development Team. To the extent that the RFP Response did not include the names of each member of Tenant’s development team, Tenant shall provide to Landlord such information as may be reasonably requested by Landlord to assure Landlord that Tenant’s general contractor, architect and landscape architect for the design and construction of the Initial Improvements shall have sufficient experience and capacity to undertake and complete their respective portions of the Improvements.

Section 3.06 Ownership. During the Term, Tenant shall be the owner of the Improvements, and as such, Tenant shall be entitled to all depreciation deductions and low income housing tax credits and other tax benefits relating to the Improvements. Upon the expiration or earlier termination of this Lease, if Tenant does not remove

the Improvements, in accordance with the provisions of Section 15 hereof, title to the Improvements shall immediately vest in the Landlord and shall be surrendered at that time in accordance with Section 15 below.

Section 3.07 Reproducible Drawings. Within ninety (90) days after Final Completion of the Initial Improvements or any other Tenant Work affecting the exterior of the Premises, Tenant shall prepare at its expense and deliver to the Landlord one complete, legible and reproducible full-sized set of as-built plans showing the Initial Improvements or such Tenant Work, as the case may be, together with a certified survey plan.

Section 3.08 Manner of Construction; Cost of Initial Improvements. Tenant shall construct all Tenant Work in a good and workmanlike manner, in compliance with Legal Requirements and good engineering and construction practices. The Initial Improvements shall be constructed in material compliance with the Final Plans and in strict compliance with the Required Permits. Tenant shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by Tenant Work, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to properly police same. Dust, noise and other effects of such work shall be controlled using commercially accepted methods customarily utilized in order to control deleterious effects associated with construction projects in a populated or developed area. Tenant shall pay (or cause to be paid) all costs and expenses associated with any Tenant Work (including, without limitation, all architectural, engineering, construction, legal and consultant fees and costs) and shall defend, indemnify and hold the Landlord Parties (as defined in Section 7 below) harmless from and against any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) (collectively, "Claims") attributable to the performance of any Tenant Work.

Section 3.09 Tenant's Responsibility to Discharge Liens. If any mechanic's, laborer's or material man's lien shall at any time during the Term be filed against the Premises, the underlying fee, or any part thereof with respect to the performance of any labor or the furnishing of any materials to, by or for Tenant or anyone claiming by, through or under Tenant, Tenant, within thirty (30) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by the Landlord and all costs and expenses incurred by the Landlord in connection therewith, together with interest at the prime rate of interest reported from time to time in the Wall Street Journal or any successor publication plus two percentage points (the "Default Rate") from the respective dates of the Landlord's making of the payment or incurring of the cost and expense until paid in full, shall constitute Additional Rent (as defined in Section 4 below) under this Lease and shall be paid by Tenant to the Landlord on demand.

- (a) Notwithstanding the foregoing, Tenant may contest, in good faith by appropriate proceedings, at Tenant's sole expense, the amount or validity in whole or in part of any mechanic's, laborer's or material man's lien, and may defer the discharge of record thereof, provided that:
 - (i) Tenant shall provide the Landlord with security reasonably satisfactory to the Landlord or shall bond over to assure payment of contested items;
 - (ii) Tenant shall immediately pay or shall bond over such contested item or items if the protection of the Premises or of the Landlord's interest therein from any lien or claim shall, in the reasonable judgment of the Landlord, require such payment;
 - (iii) The Landlord shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of the Landlord. The Landlord shall not be subjected to any liability for the payment of any loss, costs or expenses in connection with any such proceedings, and Tenant shall defend, indemnify and save the Landlord Parties harmless from and against any such loss, costs and expenses; and
 - (iv) Notwithstanding the provisions of Subsection (iii) above, the Landlord shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it

will oppose the Town of Wareham or the Commonwealth of Massachusetts or any agency, authority, branch, Landlord, division, office or subdivision of or for the Town of Wareham or the Commonwealth of Massachusetts, nor shall the Landlord be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the Landlord nor to take any position inconsistent with a position previously taken and made public by the Landlord.

- (v) Subject to the foregoing, and without cost to it, the Landlord shall promptly execute and deliver any reasonable documents which may be necessary to permit Tenant so to contest any such lien and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

Section 3.10 No Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent to payment or request of the Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material man for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Premises or any part thereof.

ARTICLE IV. RENT

Section 4.01 Rent. Commencing on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to the Landlord annual base rent (“Base Rent”) in the amount of One Hundred Dollars which amount shall be paid on the Commencement Date and on or about the first day of each calendar year thereafter during the Term. Base Rent is not subject to any adjustments during the Term. In addition, Tenant shall pay any fee, charge or other amount required to be paid by Tenant to the Landlord under this Lease as additional rent (“Additional Rent”). Base Rent and Additional Rent (collectively, “Rent”) shall be paid without counterclaim, notice, demand, abatement or offset at the Landlord’s address set out in Section 18.2. It is the intention of the parties that the Rent payable hereunder shall be net to Landlord.

Section 4.02 Late Payments. Any payment of Rent due hereunder not paid when due shall bear interest for each month or fraction thereof from the due date until paid in full at the Default Rate.

ARTICLE V. TAXES AND UTILITIES

Section 5.01 Impositions. Tenant shall pay or cause to be paid as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, assessments, special use or assessment district taxes, water and sewer charges, excises, levies, license and permit fees and all other governmental charges of any kind and nature which during the Term may be assessed, levied, imposed upon or become due with respect to, or become a lien on the Premises or the leasehold, or any part thereof, or any appurtenance thereto, and payments in lieu of such taxes, assessments, charges or fees, whether such charges are made directly to Tenant or through or in the name of the Landlord. All such charges shall be referred to herein as “Impositions.” Tenant shall have the right to contest or object to the amount or validity of any Imposition but shall not withhold payment of any Imposition while any such contest or objection is pending. Tenant, upon request of the Landlord, shall furnish to the Landlord within thirty (30) days of the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to the Landlord, evidencing payment thereof.

Section 5.02 Personal Property Taxes. Tenant shall pay promptly when due all taxes which may be imposed upon personal property (including fixtures taxed as personal property) in, on or within the Premises directly to the assessing party.

Section 5.03 Utilities.

- (a) Tenant shall pay, or shall cause to be paid, directly to the utility provider, all charges by any public authority or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises, and service inspections made #therefore, whether called charge, rate,

tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of the Landlord (“Utility Charges”).

- (b) The Landlord agrees to provide reasonable access easements over the Premises to utility companies for the purposes of bringing and connecting utility service to the Premises.
- (c) Tenant shall design and build the water and sewer system to the site to plans approved by the Town of Wareham, but Landlord shall be responsible for maintaining the water and sewer system and shall have an easement over the Premises to do so.

Section 5.04 No Liability of the Landlord. The Landlord shall not be required to furnish to Tenant 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. The Landlord makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply the Improvements.

ARTICLE VI. REPAIRS AND MAINTENANCE

Section 6.01 Repair and Maintenance.

Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises (including all Improvements) and all roadways, sidewalks, curbs, landscaped areas, fences and entranceways adjoining the same, and shall keep the same in good order and condition (except for reasonable wear and tear and damage from a Taking (as defined in Section 11.below) or from fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to its obligations hereunder), and shall make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen in order to keep the Premises in safe, clean and sanitary condition throughout the Term. Without limitation, Tenant shall keep the common driveway and sidewalks shown on Exhibit B in good order and condition and shall be responsible for removing ice and snow therefrom. Tenant shall keep the Premises free of accumulations of dirt and rubbish, and shall use all reasonable precautions to prevent waste, damage or injury to the Premises.

Section 6.02 No Obligation of the Landlord. Except as otherwise expressly provided herein, the Landlord shall in no event be required to maintain or repair or to make any alterations, restoration, replacements, changes, additions or improvements to the Premises during the Term of this Lease.

ARTICLE VII. INSURANCE AND INDEMNITY

Section 7.01 Casualty Insurance. During the Term, Tenant, at its sole cost and expense, shall keep in full force and effect property insurance on the Improvements and other property installed or used in, on or about any Improvement in amounts sufficient at all times to prevent the Landlord or Tenant from becoming a co-insurer under the provisions of applicable policies of insurance, but, in any event, at least equal to the full replacement cost thereof (exclusive of cost of excavations, foundations and footings), without deduction for depreciation, against all risks of direct physical loss or damage as may from time to time be included within the definition of an “All Risks Insurance Policy” and extended to include coverage against earthquake, earth movement, flood (including back-up of sewers and drains), sprinkler leakage, breakdown of boilers, machinery and electrical equipment, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke and demolition. Such insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount endorsement satisfactory to the Landlord.

Section 7.02 Builder’s Risk. During the period of any construction or structural alteration of the Premises or the Improvements, Tenant shall also keep in full force and effect, at its sole cost and expense, “Builder’s All Risk” insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the Landlord may reasonably require.

Section 7.03 Liability Insurance. Throughout the Term, Tenant shall maintain, for the benefit of the Landlord and Tenant, and identifying the Landlord and Tenant as additional insureds, commercial general liability insurance against claims for personal injury, death, and property damage occurring upon, in or about the Premises or the Improvements, and on, in or about the adjoining sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) for at least \$<_____> combined single limit, including bodily injury and death and for property damage. If Tenant has other locations that it owns or leases, the policy shall include an aggregate limit per location endorsement. Such liability insurance shall be primary and not contributing to any insurance available to the Landlord, and the Landlord's insurance shall be in excess thereto.

Section 7.04 [Intentionally Omitted]

Section 7.05 Personal Property Insurance. Throughout the Term, Tenant shall maintain personal property insurance insuring all equipment, trade fixtures, inventory, fixtures and personal property located on or in the Premises for perils covered by the cause of loss – special form (“special form”). Such insurance shall be written on a replacement cost basis in an amount equal to no less than eighty percent (80%) of the full insurable replacement value of the aggregate of the foregoing.

Section 7.06 Insurance Carried by Contractors .

During the construction of the Initial Improvements, Tenant shall also require the construction manager and/or general contractor for the Initial Improvements to maintain (i) for the benefit of Tenant and the Landlord, as additional insureds, commercial general liability insurance, including products and completed operations coverage, against any claims for personal injury, death and property damage occurring upon, in or about the Premises and on, in and about the adjoining sidewalks and passageways during the construction of the Initial Improvements for at least \$<_____> combined single limit; (ii) worker's compensation in amounts required by state statute; (iii) employer's liability insurance with limits of not less than <_____> Dollars (\$<_____>); and (iv) automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired or nonowned, in an amount not less than <_____> Dollars (\$<_____>) combined single limit.

Section 7.07 Insurance Coverage Increases. The minimum coverage stated in this Section shall be reviewed every five (5) years by the Landlord and Tenant, and shall be increased at such intervals if such increases are reasonably necessary to reflect inflation or changes in the nature or degree of risks insured or to protect against judgments from time to time being awarded in Massachusetts for injury, death and property damage.

Section 7.08 Insurance Carriers, Policies. All insurance provided for in this Section shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of “A:X” or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the Landlord. Any deductible amounts under any insurance policies required hereunder shall not exceed _____ Dollars (\$_____.00). Upon the execution of this Lease, and thereafter not less than fifteen (15) days prior to the expiration dates from time to time of the policies required pursuant to this Section 7, binders of such insurance or, upon written request of the Landlord, duplicate originals of the policies, shall be delivered by Tenant to the Landlord.

Section 7.09 Blanket Policy. Nothing in this Section shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Section under a blanket insurance policy or policies covering other properties as well as the Premises, provided, however, that any such policy or policies of blanket insurance (i) shall specify therein, or in a written statement from the insurers under such policy or policies specifying, the amount of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required by this Section 7, and (ii) such amounts so specified shall be sufficient to prevent any of the insureds from becoming a co-insurer within the terms of the applicable policy or policies, and provided further, however, that any such policy or policies of blanket insurance shall, as to the Premises, otherwise comply as to endorsements and coverage with the provisions of this Section.

Section 7.10 No Separate Insurance. Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this Section to be furnished by, or which may reasonably be required to be furnished by, Tenant unless the Landlord and Tenant are included therein as insureds, with loss payable as in this Lease provided. Tenant shall immediately notify the Landlord of the placing of any such separate insurance and shall cause the same to be delivered as in Section 7.08 hereof required.

Section 7.11 Adjustment. All policies of insurance provided for in Section hereof shall name the Landlord and Tenant as the insureds as their respective interests may appear. The loss, if any, under such policies shall be adjusted with the insurance companies by Tenant, and shall be payable to Tenant. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of any of the Tenant Parties (as defined in Section 13 below) shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

Section 7.12 Non-cancellation. Each policy or binder issued by an insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to the Landlord, Tenant and any Permitted Institutional Mortgagee (as defined in Section 13 below) named therein.

Section 7.13 Indemnification.

- (a) Tenant shall defend (with counsel reasonably acceptable to the indemnified party), indemnify and save the Landlord Parties (as defined below) harmless against and from any and all Claims which may be imposed upon or incurred by or asserted against the Landlord Parties by reason of any of the following occurrences:
 - (i) any work or thing done during the Term of this Lease in, on or about the Premises or any part thereof, including during construction of the Initial Improvements and any other Tenant Work, by Tenant or any other party other than the Landlord, its commissioners, employees, contractors, agents, servants, or licensees (collectively with the Landlord, the "Landlord Parties");
 - (ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, during the Term of this Lease by Tenant or any other party other than the Landlord Parties;
 - (iii) any negligence or willful misconduct on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, occupants, guests, licensees, operators, or invitees (together with Tenant, the "Tenant Parties");
 - (iv) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, unless the same occurs solely as a result of the gross negligence or wrongful act of any of the Landlord Parties; and
 - (v) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.
- (b) If the Landlord obtains separate counsel due to reasonable concerns that its interests and that of Tenant may be adverse or that counsel provided by Tenant may have a conflict in interest or is not providing effective representation of the Landlord, then the reasonable expenses of such separate counsel shall be at Tenant's expense.

- (c) The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Landlord which would exist at common law or under any other provision of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Section 7. This Lease is made on the express condition that the Landlord shall not be liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Premises, specifically including any damage or injury to the person or property of Tenant or any of the Tenant Parties, from whatever cause, in any way connected with the condition, use, occupational safety or occupancy of the Premises, unless caused by the gross negligence or willful misconduct of the Landlord.
- (d) The provisions of this Section 7.13 shall survive termination or expiration of this Lease.

ARTICLE VIII. ARTICLE USE OF PREMISES

Section 8.01 Permitted Uses. The Premises and the Improvements shall be used exclusively for purposes of affordable rental housing and uses which are ancillary thereto (collectively, the “Permitted Uses”), subject to the affordability commitments set forth in Article 9.

Section 8.02 Abandonment of Use. Subject to Force Majeure, except during construction of the Initial Improvements and thertter during reasonable periods of repair, remodeling and/or restoration, Tenant covenants and agrees to continuously and uninterruptedly use the Premises for the Permitted Uses. If the Premises shall be abandoned, deserted, or vacated by the Tenant (such decision to abandon, desert or vacate or discontinue construction or operation of the facilities located on the Premises shall be referred to as a decision to “Discontinue Operations”), or if less than ____ percent (__%) of the rental units located on the Premises are leased and occupied in accordance with Section 8.for a period of one hundred eighty (180) consecutive days or for more than one hundred eighty (180) days in any calendar year for any reason, the Landlord shall have the right to terminate the Lease and recover exclusive possession of the Premises by written notice to Tenant. In the event the Landlord exercises its right to terminate the Lease under this Section 8.02, the Lease shall terminate as of the date that is sixty (60) days after the date of the Landlord’s notice to Tenant thereof, and Tenant’s liability with respect to the Lease shall terminate as of such date, unless within such sixty (60) day period, more than ____ percent (__%) of the rental units located on the Premises are leased and occupied in accordance with Section 8.1 (in which event such termination notice shall have no effect).

Section 8.03 Legal Requirements. Throughout the Term of this Lease, Tenant, at its expense, shall promptly comply with and shall cause all Tenant Parties to promptly comply with, all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, housing authorities, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and the sidewalks and curbs adjoining the same, or to the use or manner of use of the same or to any of the Tenant Parties, whether or not such law, ordinance, rule, regulation or requirement is specifically applicable or related to the conduct of the Permitted Uses, or shall affect the interior or exterior of the Improvements or any Tenant Work, or shall necessitate structural changes or improvements, or shall interfere with the use and enjoyment of the Premises (collectively, “Legal Requirements”). Tenant shall, in the event of any violation or any attempted violation of this Section by any Tenant Party, take steps, immediately upon knowledge of such violation, as Tenant determines to be reasonably necessary to remedy or prevent the same as the case may be.

Section 8.04 Contests. Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to the Landlord, the validity or application of any Legal Requirement, subject to Tenant providing the Landlord with written notice thereof on or before the date of contesting same, and further subject to the following:

- (a) If, by the terms of any such Legal Requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrance of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or the Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

- (b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject the Landlord to criminal liability or fine, and provided that Tenant (i) bonds over such lien or furnishes to the Landlord security, reasonably satisfactory to the Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence; and
- (c) The Landlord shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the Town of Wareham or the Commonwealth of Massachusetts or any agency, authority, branch, division, office or subdivision of or for the Town of Wareham or the Commonwealth of Massachusetts, nor shall the Landlord be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the Landlord nor to take a position inconsistent with a position previously taken and made public by the Landlord.

Section 8.05 Compliance with Insurance Requirements. Throughout the Term of this Lease, Tenant, at its expense, shall observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises, and Tenant shall, without limiting any other requirements of this Lease, in the event of any violation or any attempted violation of the provisions of this Section by any Tenant Party, take all reasonable steps, immediately upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.

Section 8.06 Property Management. Tenant shall hire a reputable and experienced property management company to manage the Premises.

The Property Management Company shall manage the physical Premises as well as all financial operations of the Project. The Property Manager and the Tennact shall have an agreement that defines services that will be provided to the residents by the Property Management Company and will be referred to as the Service Level Agreement (“SLAs”) included in Exhibit E of this agreement. Changes to the SLA may be initiated by either party at anytime during the term of the lease and must be approved in writing by both parties.

The Tenant shall submit to the Landlord for approval (a) the name of Tenant’s proposed property management company, (b) evidence that such company has (i) a good business and character reputation in the community, and (ii) proven property management experience with affordable housing developments, and (c) the identity, background and experience of the senior operational officer, and all agents and employees who will be engaged in the management of the Premises;

The Tennant will provide the Landlord within thirty (30) days of the close of the fiscal year a summary of the performance of the Property Manager to meet the requirements of the SLA. In the event the Landlord determines the Property Manager is not meeting the requirements of the SLA in some material respect, the Tenant shall be provided three (3) months to cure any reported deficiencies. If the deficiencies are not cured to the reasonable satisfaction of the Landlord within three (3), then subject to the requirements of any lender or equity provider, Tenant shall terminate the services of the Property Manager and retain a new Property Manager, subject to the reasonable approval of the Landlord.

ARTICLE IX. RESIDENT SELECTION; AFFORDABILITY COMMITMENTS

Section 9.01 Resident Selection. Prior to selecting residents, Tenant shall establish that its resident selection policies and criteria for the affordable rental housing facility are consistent with the RFP, (the resident selection policies and criteria approved by the Landlord are hereinafter referred to as the “Resident Selection Criteria”). The Resident Selection Criteria shall provide for a preference for residents of the Town of Wareham, to the extent allowed by Legal Requirements. Tenant shall select tenants for the Premises in a fair and impartial manner, based on the Resident Selection Criteria, which shall be made available to such tenants upon request.

Section 9.02 Affordability Commitments. From and after the Final Completion Date until the expiration or earlier termination of the Term of this Lease, Tenant covenants to operate multifamily housing on the Premises in

accordance with the affordability commitments (“Affordability Commitments”) set forth in this Section 9.02. Not fewer than ~~2~~ (2) units in the facility will be leased to low- and moderate-income households in accordance with the following schedule:

- (i) Twelve (12) units will be leased to households with annual income at or below Thirty percent (30%) of area median gross income; and
- (ii) Thirty-Six (36) units will be leased to households with annual income at or below Sixty percent (60%) of area median gross income.

For purposes of this Section 9.2, “area median gross income” shall mean the standard defined from time to time by the Department of Housing and Urban Development (or any successor thereto) as adjusted for household size, or, if defined differently in Section 42 of the Internal Revenue Code and regulations thereto (or any successor statute and/or regulations) (collectively, “Section 42”), then in accordance with the requirements, from time to time, of Section 42. For purposes of this Section 9.02, “household” shall mean one or more individuals occupying a unit and satisfying the standards adopted by HUD for the so-called Section 8 program under the United States Housing Act of 1937, as amended, and the regulations promulgated thereunder (the “Section 8 Program”). Notwithstanding the foregoing, a household comprised of a full-time student or students shall not qualify as a “household” except as permitted under the Low-Income Housing Tax Credit Program, Internal Revenue Code Section 42(I)(3)(D). A household’s annual income will be the anticipated total income from all sources received by the head of the household and such person’s spouse and by each additional member of the household (other than children under the age of 18). Annual income shall be determined in a manner consistent with the Section 8 Program.

If, after initial occupancy, the income of a tenant of an affordable housing unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Tenant shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted or (ii) if the tenant income does exceed one hundred forty percent (140%) of the maximum income permitted, the Tenant fills the next available unit with an income eligible tenant.

As a condition to occupancy, each potential tenant of a unit shall be required to sign and deliver to Tenant an income certification using a form adopted for such use by Tenant and reasonably approved by the Landlord.

The annual rental expense for each unit, including the provision of heat, electricity, water and hot water, shall not exceed thirty percent (30%) of the applicable income limit for such unit, adjusted for household size, based on 1.5 persons per bedroom. However, the maximum annual rent for any affordable housing unit shall not fall below the rent level set at the time that the Premises are first occupied in accordance with this Lease. Notwithstanding the foregoing, if an affordable housing unit has a subsidy commitment through the Section 8 Program, or any comparable rental assistance program, then the maximum rent shall be that permitted by the Section 8 Program, or the comparable program.

Tenant shall ensure that all housing units shall be of comparable quality to the other units in the Premises.

Tenant covenants and agrees to secure and maintain on file for inspection and copying by the Landlord such information, reports and certifications as the Landlord may reasonably require in writing in order to ensure that the Affordability Commitments are being complied with. Tenant further covenants and agrees to notify the Landlord in writing if Tenant discovers non-compliance with any restrictions hereunder.

ARTICLE X. DAMAGE OR DESTRUCTION

If the whole or any part of the Premises shall be damaged or destroyed by any cause whatsoever, whether insured or uninsured, at any time during the Term of this Lease, Tenant will, irrespective of insurance proceeds, promptly commence to replace or repair the portion of the Premises that is damaged or destroyed, and complete such repair and/or restoration with due diligence and at its sole cost and expense, with such changes, alterations or modifications as are reasonably determined by Tenant so long as such changes, alterations or modifications (a) do not diminish the overall utility for the Permitted Uses, and (b) comply with the design criteria contained in the RFP (as revised in

connection with the permitting process). The parties recognize that such damage or destruction may require emergency replacement or repair. Tenant will be entitled to all insurance proceeds in order to effect such replacement, modifications or alterations. However, if (i) Tenant reasonably determines that replacement and repair of the Premises is not in furtherance of the Permitted Uses or that the continued operation of the Premises after such replacement and repair in substantially the same manner as conducted prior to the damage or destruction will not be economic and feasible, and (ii) the damage to or destruction of the Premises was covered by such property insurance as may be required pursuant to Article VII hereof or by insurance otherwise carried by Tenant, and (iii) upon the Landlord's request, Tenant demolishes any destroyed buildings and secures any damaged buildings, in each case to a safe condition reasonably satisfactory to the Landlord and in compliance with Legal Requirements, then Tenant may elect, within one hundred eighty (180) days after the date of such casualty, not to repair or replace the portion of the Premises damaged and may terminate this Lease by giving notice to the Landlord (the "Casualty Termination Notice"). After delivery of the Casualty Termination Notice to the Landlord, (i) Tenant will vacate the Premises as soon as reasonably possible; and (ii) assign to the Landlord all of its right, title and interest in and to any and all insurance proceeds related to such casualty. Notwithstanding the foregoing, however, the Landlord shall not share in any casualty award with respect to the Improvements unless and until the unpaid balance of the Permitted Institutional Mortgage (as defined in Section 13.below) on the Premises, if any, is paid in full, all such casualty proceeds being used first to pay off and discharge such Permitted Institutional Mortgage. Tenant's obligations pursuant to Section 10.1(iii) shall survive the termination of the Lease.

ARTICLE XI. TAKING

Section 11.01 Award. In the event that the Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between the Landlord and Tenant and those authorized to exercise such right (any such matters being herein referred as a "Taking"), the Landlord and Tenant shall have the right to participate in any Taking proceedings or agreement for the purpose of protecting their interests hereunder. Each party so participating shall pay its own expenses therein.

Section 11.02 Termination.

- (a) If at any time during the Term of this Lease there shall be a Taking of the whole or substantially all of the Premises, this Lease shall terminate and expire on the earlier of
 - (i) the date upon which the condemning authority takes possession of the real estate subject to the Taking; or
 - (ii) the date title to the real estate is vested in the condemning authority. Rent hereunder shall be paid to the date of such Taking.
 - (iii) For the purpose of this Article, "substantially all of the Premises" shall be deemed to have been taken if the untaken part of the Premises shall be insufficient for the restoration of the Improvements such as to allow the economic and feasible operation thereof by Tenant. Tenant's interest in any Taking award will equal the value to Tenant of the remaining Term of this Lease, the value to Tenant of the use and enjoyment of the Improvements, and Tenant's relocation expenses insofar as relocation expenses are paid by the Taking authority (collectively, the "Tenant's Share"). The Landlord's interest in any taking by Condemnation will equal the value of its fee interest plus the remaining interest in the Improvements (the "Landlord's Share"). All awards from the Taking will be divided between Tenant and the Landlord in the proportion that Tenant's Share bears to the Landlord's Share. Notwithstanding the foregoing, however, the Landlord shall not share in any Taking award with respect to the Improvements unless and until the unpaid balance of the Permitted Institutional Mortgage (as defined in Section 13.below) on the Premises, if any, is paid in full, all such Taking proceeds being used first to pay off and discharge such Permitted Institutional Mortgage.
- (b) No such termination of this Lease under this Section shall release Tenant from any obligation hereunder for Rent accrued or payable for or during any period prior to the effective date of such

termination, and any prepaid rent and insurance premiums beyond the effective date of such termination shall be adjusted.

Section 11.03 Insubstantial Taking. If a portion of the Premises is taken and Section 11 does not apply, then this Lease will automatically terminate on the date of the Taking only as to the portion of the Premises Taken and this Lease will continue in full force and effect with respect to the remaining portion of the Premises with Base Rent proportionately reduced. In such event, any partial Taking award shall be paid first to the Tenant in an amount equal to the greater of (i) the unamortized cost of any Improvements constructed by Tenant on the portion of the Premises subject to the Taking; or (ii) the amount necessary to discharge or, if such amount is insufficient, to reduce any Permitted Institutional Mortgage. The balance, if any, of the Taking award shall be paid to the Landlord.

Section 11.04 Temporary Taking. If the whole or any part of the Premises shall be the subject of a temporary Taking of ninety (90) days or less, this Lease shall remain in full force, and Tenant shall be entitled to receive the entirety of any award so made for the period of the temporary Taking which is within the Term.

ARTICLE XII. ENVIRONMENTAL

Section 12.01 Environmental Laws Defined. “Environmental Laws” means, collectively, any federal, state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, U.S.C. §§ 960et seq. (“CERCLA”); the Resource Conservation and Recovery Act, U.S.C. §§ 690et seq. (“RCRA”); the Clean Water Act, U.S.C. §§ 125et seq.; the Clean Air Act, U.S.C. §§ 740et seq.; the Superfund Amendments and Reauthorization Act of 1986, U.S.C. §§ 960et seq. (“SARA”); the Toxic Substances Control Act, U.S.C. §§ 260et seq. (“TSCA”); the Hazardous Materials Transportation Act, 4U.S.C. Appx. §§ 180et seq.; the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C §§ et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E §§ et seq.; the Massachusetts Toxic Use Reduction Act, M.G.L. c. 21I §§ et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, M.G.L. c. 21J §§ et seq.; or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (as defined in Section 12.below) or providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.Tenant’s Environmental Representations, Warranties and Covenants. Tenant hereby represents, warrants and covenants as follows:

- (a) Except as may be permitted by and only in accordance with Environmental Laws, Tenant shall not allow any Hazardous Materials (as defined in Section 12.below) to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises. Without limiting the generality of the foregoing, Tenant is not, and will not become, involved in operations at the Premises involving Hazardous Materials, except as expressly permitted by Legal Requirements.
- (b) No activity shall be undertaken on the Premises by Tenant which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.
- (c) Tenant shall, with all due diligence, at its own cost and expense and in accordance with Environmental Laws (and in all events in a manner reasonably satisfactory to the Landlord), take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises including all

removal, containment and remedial actions. Tenant shall pay or cause to be paid at no expense to the Landlord all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Premises. Notwithstanding the foregoing, Tenant shall have no liability with respect to Existing Contamination (defined below) or other environmental conditions which were not caused by Tenant or by parties for whom Tenant is responsible "Existing Contamination" shall mean any and all pollution or contamination caused by any Hazardous Material that previously existed or exists in, or was released onto the Premises as of the Commencement Date, including without limitation, those conditions and Hazardous Materials disclosed in the environmental assessment reports described in Exhibit D.

- (d) Tenant, upon execution of this Lease, shall furnish the Landlord with a copy of any Material Safety Data Sheets and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to Mass. Gen. L. c. 111F which Tenant is required to prepare, file or maintain pursuant to said chapter for any substances used or stored on the Premises. If said Material Safety Data Sheets or lists should be changed or updated during the Term of this Lease, Tenant shall promptly furnish a copy of such updated or changed Material Safety Data Sheets or list to the Landlord.

Section 12.03 The Landlord's Environmental Representations, Warranties and Covenants. The Landlord hereby represents, warrants and covenants as follows:

- (a) Except as disclosed in the environmental assessment reports described in Exhibit D, neither the Landlord nor, to the Landlord's knowledge, the Premises (i) has received notice of any private or governmental lien or judicial or administrative notice, order or action relating to Hazardous Materials or environmental liabilities or violations with respect to the Premises, or (ii) is in, or with any applicable notice or lapse of time, or failure to take certain curative or remedial actions, will be in, either direct or indirect violation of any Environmental Laws.
- (b) No activity shall be undertaken on the Premises by the Landlord which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.
- (c) Landlord shall, with all due diligence, at its own cost and expense and in accordance with Environmental Laws take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all Existing Contamination, including all removal, containment and remedial actions. Landlord shall pay or cause to be paid at no expense to Tenant all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Premises relating to such Existing Contamination.

Section 12.04 Hazardous Materials Defined. For purposes of this Lease, "Hazardous Materials" shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials which are included under or regulated by any Environmental Law.

Section 12.05 Notices.

- (a) Tenant shall provide the Landlord with copies of any notices of releases of Hazardous Materials which are given by or on behalf of Tenant to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to the Landlord concurrently with mailing or delivery to the governmental agencies or authorities. Tenant also shall provide the Landlord with copies of any notices of responsibility or any other notices received by or on behalf of Tenant from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials or substances located on or about the Premises. In addition, in connection with any litigation or threat of litigation affecting the Premises, Tenant shall deliver to the Landlord any documentation or records as the Landlord may reasonably request and which are in Tenant's possession and may be lawfully delivered to the Landlord, and the Landlord shall deliver to Tenant any documentation or records as Tenant may reasonably request and which are in the Landlord's possession and may be lawfully delivered to Tenant.
- (b) Tenant or the Landlord shall immediately notify the other party in writing should Tenant or the Landlord become aware of (iii) any release or threatened release of Hazardous Materials or the occurrence of any other environmental problem or liability with respect to the Premises or any real property adjoining or in the vicinity of the Premises or such other property which could subject the Landlord, Tenant or the Premises to a Claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws; (iv) any lien filed, action taken or notice given of the nature described in Sections 12.2(b) or 12.3(b) above; (v) any notice given to Tenant from any occupant of the Premises or any notice from any governmental authority with respect to any release or threatened release of Hazardous Materials; or (vi) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Premises.

Section 12.06 Environmental Indemnity. Tenant hereby presently, unconditionally, irrevocably and absolutely agrees to pay, indemnify, defend with counsel acceptable to the Landlord and save harmless the Landlord Parties for, from and against any and all Claims (including, without limitation attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of CERCLA), of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of the Landlord Parties and arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described herein, relating to the Premises, or as a consequence of any of Tenant's or the Landlord's interest in or operation of the Premises, including, without limitation, matters arising out of any breach of Tenant's covenants, representations and warranties, other than with respect to Existing Contamination. Tenant does further agree and covenant that except as otherwise set forth in this Lease, none of the Landlord Parties shall assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions made or taken by the Landlord on such property or as a result of any re-entry by the Landlord onto the Premises or otherwise. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive termination of this Lease. In addition, the covenants and indemnities of Tenant contained herein shall survive any exercise of any remedy by the Landlord under the Lease. Tenant agrees that the indemnification granted herein may be enforced by any of the Landlord Parties; provided, however, that nothing contained herein shall prevent the Landlord from exercising any other rights under the Lease.

ARTICLE XIII. TRANSFER OF TENANT'S INTEREST

Section 13.01 Assignment by Tenant. Tenant will not assign this Lease or any interest in this Lease or sublet or permit any other person to occupy or use the Premises or any portion thereof (other than residential leases) without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned provided such assignee or transferee have, in the sole judgment of the Landlord, a respected reputation in the Commonwealth for managing affordable housing facilities and further that such assignee or transferee shall agree to use and are qualified to ensure, that the Premises be used solely for the Permitted Uses. The foregoing prohibition on transfers shall include any reorganization, dissolution or merger of Tenant or its manager or

managing member, whether by operation of law or otherwise, the admission of any manager or managing member, or the withdrawal of its current manager or managing member, a transfer of ten percent (10%) or more of the ownership interests in Tenant or any similar transaction, but shall not apply to the transfer of member interests to the Investor or SLP (as such terms are defined in Section 18.21), provided that, the assignment by Tenant include all terms, restrictions and limitations of this Agreement and requirements of any and all permits, approvals or financing requirements granted or imposed by any federal, state or local governmental agency. Any such consent shall not be unreasonably withheld, conditioned or delayed.

Section 13.02 Leasehold Mortgages.

- (a) Notwithstanding anything to the contrary contained in this Lease, Tenant may, upon prior written notice to the Landlord, from time to time, encumber, hypothecate or mortgage its interest in the Premises with one or more mortgages, assignments of leasehold interest or any other security instruments in favor of an institutional lender or lenders as partial security for a loan or loans (a “Permitted Institutional Mortgage” and the holder of such Permitted Institutional Mortgage, a “Permitted Institutional Mortgagee”). Each such Permitted Institutional Mortgage shall be expressly subject to the terms and conditions of this Lease and the requirements of any and all permits, approvals or financing requirements granted or imposed by any federal, state or local governmental agency. Tenant shall promptly deliver to the Landlord a true copy of the Permitted Institutional Mortgage and any assignment thereof. Tenant shall notify the Landlord of the address of the Permitted Institutional Mortgagee to which notices may be sent. The Landlord and Tenant hereby agree that there shall be no cancellation, surrender or any modification of this Lease that would adversely affect such Permitted Institutional Mortgagee’s rights hereunder without the prior consent in writing of the Permitted Institutional Mortgagee.

- (b) Permitted Institutional Mortgages not Assignment. For the purpose of this Section 13, the making of a Permitted Institutional Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any Permitted Institutional Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Permitted Institutional Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of the leasehold interest created by this Lease in any proceedings for the foreclosure of any Permitted Institutional Mortgage, or the assignee or transferee of such leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Institutional Mortgage, shall be deemed to be an assignee or transferee (without requiring the consent of the Landlord pursuant to Section 13.1) and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, and shall execute a written instrument assuming Tenant’s obligations hereunder promptly upon request by the Landlord.

- (c) Permitted Institutional Mortgagee Cure Rights. In the event of any default in the payment of money, Permitted Institutional Mortgagee, without being under any obligation to do so, shall have the right to cure such monetary default within ninety (90) days after the giving of notice to it by the Landlord. In the case of any default by the Tenant other than in the payment of money hereunder, the Landlord will take no action pursuant to Article hereunder by reason of any such default without first giving to the Permitted Institutional Mortgagee notice thereof simultaneously with notice given to Tenant, and the right, but not the obligation, for a period of one hundred twenty (120) days after notice of such Tenant default, to cure such default, or, if such default cannot reasonably be cured within such one hundred and twenty (120) days, such longer period as is required to cure such default, including such period of time as may reasonably be required for Permitted Institutional Mortgagee to obtain possession of the Premises or title to the Tenant’s leasehold estate created hereby, provided, that the Permitted Institutional Mortgagee shall have commenced cure or appropriate measures to obtain possession of the Premises or title to the Tenant’s leasehold estate created hereby, within such one hundred and twenty (120) day period and thereafter continues diligently to effect such cure, or obtain such possession or title. The Permitted Institutional Mortgagee shall not be required to continue such foreclosure proceedings if

the default shall be cured by Tenant; provided, further, that nothing herein shall preclude the Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance, provided the exercise of such rights or remedies are subject to the same cure rights of the Permitted Institutional Mortgagee as set forth herein. Upon the expiration of any applicable cure period, the Landlord shall notify the Permitted Institutional Mortgagee whether or not Tenant has effectuated a cure within said cure period. The provisions of this Section 13.2(c) are conditioned on the following provisions:

- (i) Acquisition of Possession. The Permitted Institutional Mortgagee shall, within sixty (60) days after notice of such Tenant non-monetary default, notify the Landlord of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Institutional Mortgage or otherwise to obtain ownership of Tenant's interest in this Lease. Such notice from the Permitted Institutional Mortgagee shall be accompanied by an instrument in writing wherein such Permitted Institutional Mortgagee agrees that:
 - (A) during the period that such Permitted Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this Lease shall terminate or such proceeding shall be discontinued, it will pay or cause to be paid to the Landlord all sums from time to time becoming due hereunder during such period; and
 - (B) if delivery of possession of the Premises shall be made to such Permitted Institutional Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Permitted Institutional Mortgagee shall, promptly following such delivery of possession, perform all the covenants and agreements thereafter arising and herein contained on Tenant's part to be performed (including, but not limited to the Affordability Commitments and the payment of Rent and Additional Rent) except such covenants and agreements which cannot with the exercise of due diligence be performed by such Permitted Institutional Mortgagee. Nothing in this subclause (B) shall be construed to require such Permitted Institutional Mortgagee to perform any of the Tenant's obligations hereunder accruing after such Permitted Institutional Mortgagee ceases to be in possession.
- (d) Additional Rights of Permitted Institutional Mortgagee and Landlord's Covenants. In addition to the matters set forth above, the Landlord agrees, for so long as a Permitted Institutional Mortgage is outstanding, as follows:
 - (i) Notwithstanding anything to the contrary contained in this Lease, in the event that the Landlord would otherwise have the right to terminate this Lease by reason of any Event of Default by Tenant which cannot be cured by a Permitted Institutional Mortgagee, e.g., an Event of Default under Section 14.1(e), or if a Permitted Institutional Mortgagee, its successors or assigns shall acquire Tenant's interest in this Lease, the Landlord will enter into an amendment or other agreement naming the Permitted Institutional Mortgagee or its nominee as Tenant hereunder for the remainder of the Term effective as of the date of such termination, upon the same terms, provisions, covenants, and agreements as herein contained, provided the Permitted Institutional Mortgagee or its nominee shall make written request upon the Landlord for such amendment or other agreement within sixty (60) days after the later of (a) the date of such termination or acquisition, or (b) date of receipt of notice of the termination;
 - (ii) The Landlord and Tenant shall not (i) consent to any action taken or to be taken, the result of which would diminish or impair the priority of a Permitted Institutional Mortgage; or (ii) subordinate or consent to the subordination of this Lease to any

subsequent, underlying lease or mortgage. If this Lease is rejected or disaffirmed by the Landlord or Tenant pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law, the Landlord shall offer the Permitted Institutional Mortgagee a new lease upon the same terms and conditions within ten (10) days after the date of such rejection; and

- (iii) The fee title to the Premises and the leasehold estate of Tenant therein shall not merge but shall remain separate and distinct notwithstanding the acquisition of said fee title by the Landlord, Tenant, or any third party by purchase or otherwise.
- (iv) Notwithstanding anything to the contrary contained in this lease, in the event that a Permitted Institutional Mortgagee, its nominee successors or assigns, shall acquire Tenant's interest in this Lease, (whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, or as purchaser at any sale of the leasehold interest created by this Lease or as assignee or transferee of such leasehold interest under any instrument of assignment or transfer in lieu of foreclosure) said Permitted Institutional Mortgagee or its nominee shall not be required to perform the Affordability Commitments if it reasonably determines that performance of some or all of the Affordability Commitments is financially infeasible, as defined below, in which event the Landlord shall enter into an amendment or other agreement adjusting or eliminating the Affordability Commitment to the extent deemed necessary by the Permitting Institutional Mortgagee. In such case, said Permitted Mortgagee or its nominee shall nevertheless use its best efforts to maintain as affordable as many units of the Premises as it economically feasible.
- (v) "Financially infeasible" shall mean that, on an annualized basis, the rent and other income from the Premises, including rents (or proposed rents) paid by the occupants, rental subsidies and utility charges, is, or is reasonably projected to be, less than the reasonable expenses required for the Tenant to maintain and operate the Premises in the condition required by this Lease and by law, including, without limitation, debt service of mortgages approved by the Landlord, taxes, repairs and maintenance, necessary improvements amortized over the expected useful life of such improvement, management services and funding of reasonable reserves and all other costs necessary for Tenant to perform its other obligations under this Lease.

ARTICLE XIV. TERMINATION AND DEFAULT

Section 14.01 Events of Default. Each of the following events shall be deemed an "Event of Default" hereunder:

- (a) if Tenant shall fail to pay, as and when due, any payment of Rent or other sums payable under this Lease, and such failure shall continue for a period of sixty (60) days after notice from the Landlord to Tenant;
- (b) if Tenant shall fail to comply with the provisions of Sections 8.or 9.hereof;
- (c) if Tenant shall fail to maintain any insurance required to be maintained by Tenant hereunder;
- (d) if Tenant shall fail to perform or comply with any other of the agreements, terms, covenants or conditions in this Lease, other than those referred to in Subsections (a) - (c) of this Section 14.01, for a period of ninety (90) days after notice from the Landlord to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such ninety (90) day period, within such additional time reasonably necessary provided Tenant commences to cure the same within such 90-day period and thereafter prosecutes the curing of such default with diligence; and

- (e) if Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant's leasehold estate for whatever reason, or Tenant shall make an assignment for the benefit of creditors, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Tenant any such proceedings which are not dismissed or stayed on appeal or otherwise within ninety (90) days, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated or stayed on appeal.

Section 14.02 Remedies. Upon an Event of Default, the Landlord at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least ninety (90) days after the giving of such notice. Upon the date specified in such notice, this Lease and the Term hereby demised and all rights of Tenant under this Lease shall expire and terminate (unless prior to the date specified for termination the Event or Events of Default shall have been cured, in which case this Lease shall remain in full force and effect), and Tenant shall remain liable as hereinafter provided and all Improvements shall become the property of the Landlord without the necessity of any deed or conveyance from Tenant to the Landlord. Tenant agrees upon request of the Landlord to immediately execute and deliver to the Landlord any deeds, releases or other documents deemed necessary by the Landlord to evidence the vesting in the Landlord of the ownership of all Improvements. Upon such termination, the Landlord may re-enter the Premises and dispossess Tenant and anyone claiming by, through or under Tenant by summary proceedings or other lawful process.

Section 14.03 Landlord's Right to Perform Tenant's Covenants.

- (a) Upon an Event of Default, the Landlord may, but shall be under no obligation to, cure such default. The Landlord may enter upon the Premises (after five (5) days' written notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.
- (b) The Landlord shall not be liable for inconvenience, annoyance, disturbance or other damage to Tenant or any operator or occupant thereof by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, and the obligations of Tenant under this Lease shall not be affected thereby. The Landlord shall use commercially reasonable efforts to minimize interference with or disruption of Tenant or Tenant's business, occupants, operators and or lessees.
- (c) All reasonable sums so paid by the Landlord and all reasonable costs and expenses incurred by the Landlord, including reasonable attorneys' fees and expenses, in connection with the performance of any such act, together with interest at the Default Rate from the date of such payment or incurrence by the Landlord of such cost and expense until the date paid in full, shall be paid by Tenant to the Landlord, as Additional Rent, on demand. If the Landlord shall exercise its rights under Section 14.3(a) to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and the Landlord shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such obligation to the Landlord upon demand. All costs incurred by the Landlord hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear error, or fraud.

Section 14.04 No Waiver. No failure by either the Landlord or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the Landlord or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by the Landlord or Tenant of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 14.05 Injunctive Relief. In the event of any breach or threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, the Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

Section 14.06 Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the 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 XV. SURRENDER; HOLD-OVER

Section 15.01 Surrender.

- (a) Tenant shall on the last day of the Term, or upon any earlier termination of this Lease, quit and peacefully surrender and deliver up the Premises, subject to the rights of a Permitted Institutional Mortgagee hereunder, to the possession and use of the Landlord without delay [and in good order, condition and repair (excepting only reasonable wear and tear and damage from a Taking or from a fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant, all as provided under this Lease)]. Tenant, at Tenant's sole cost and expense shall have the right, but not the obligation, to remove the Initial Improvements from the Premises. The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of the Term, those permitted under this Lease or created or suffered by the Landlord and shall be surrendered without any payment by the Landlord on account of the Improvements. Upon or at any time after the expiration or earlier termination of this Lease, the Landlord shall have, hold and enjoy the Premises and the right to receive all income from the same.
- (b) Tenant shall remove from the Premises all personal property within thirty (30) days after the termination of this Lease and shall repair at Tenant's sole cost any damage to the Premises caused by such removal, unless the Landlord permits such property to remain.
- (c) Holdover. If Tenant or any party claiming by, through or under Tenant, retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, then the Landlord may, at its option, serve written notice upon Tenant that such holding over constitutes (i) an Event of Default under the Lease, or (ii) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (iii) the creation of a tenancy-at-sufferance, in any case upon the terms and conditions set forth in this Lease. Tenant shall also pay to the Landlord all damages sustained by the Landlord resulting from retention of possession by Tenant. The provisions of this Section 15 shall not constitute a waiver by the Landlord of any right of re-entry as set forth in this Lease; nor shall receipt of any Rent or any other act in apparent affirmation of the tenancy operate as a waiver of the Landlord's right to terminate this Lease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be performed.

ARTICLE XVI. ESTOPPEL CERTIFICATES

The Landlord and Tenant promptly shall execute and deliver to each other or to any Permitted Institutional Mortgagee, within fifteen (15) business days after request, a certificate as to matters customarily requested in connection with estoppels certificates, including, without limitation, whether or not (i) the Lease is in full force and effect, (ii) the Lease has been modified or amended in any respect and describing such modifications or amendments, if any, and (iii) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any. Any such certificate may be relied upon by the

Landlord, Tenant, any Permitted Institutional Mortgagee, and any transferee or assignee of a Permitted Institutional Mortgagee.

ARTICLE XVII. NON-DISCRIMINATION COVENANTS

Section 17.01 Non-Discrimination. With respect to its exercise of all rights and privileges granted herein, Tenant agrees that Tenant, its successors in interest, subleases, licensees, operators, and assigns shall not discriminate against any person, employee, or applicant for employment because of race, color, creed, religion, national origin, age, sex, sexual orientation, marital status, handicap, veteran status or any other basis prohibited by law in Tenant's use of the Premises, including the hiring and discharging of employees, the provision or use of services, and the selection of suppliers and contractors.

Section 17.02 Non-Compliance. Tenant shall defend, indemnify and hold the Landlord Parties harmless from and against any and all Claims of third persons resulting from Tenant's non-compliance with any of the provisions of this Article 17.

ARTICLE XVIII. MISCELLANEOUS

Section 18.01 Amendments to Lease. This Lease may not be amended, modified, supplemented or extended except by a written instrument executed by the Landlord and Tenant.

Section 18.02 Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be delivered by hand, nationally recognized overnight express commercial service such as "Federal Express" (in either case with evidence of delivery or refusal thereof) or by registered or certified mail, return receipt requested, addressed if to Tenant to:

With a copy to:

or to such other address as Tenant may from time to time designate by written notice to the Landlord, or if to the Landlord addressed to:

with a copy to:

or to such other address as the Landlord may from time to time designate by written notice to Tenant, or to such other agent or agents as may be designated in writing by either party. The earlier of: (i) the date of delivery by overnight express commercial service, or (ii) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt shall be deemed to be the date such notice or other submission was given.

Section 18.03 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 18.04 WAIVER. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS OR ASSIGNS UNDER OR CONNECTED WITH THIS LEASE OR ANY OF ITS PROVISIONS, ANY NEGOTIATIONS IN CONNECTION THEREWITH, OR TENANT'S USE OR OCCUPATION OF THE PREMISES.

Section 18.05 Quiet Enjoyment. Tenant, upon paying the Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by anyone claiming by, through or under the Landlord, subject, however, to the exceptions, reservations and conditions of this Lease and matters of record. The foregoing shall not create any liability on the part of the Landlord for any defects in or encumbrances on the Landlord's title existing as of the date hereof.

Section 18.06 Integration. All prior understandings and agreements between the parties with respect to this Lease are merged within this Lease, which alone fully and completely sets forth the understanding of the parties.

Section 18.07 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of the Landlord, its successors and assigns, and Tenant, its successors and assigns.

Section 18.08 Notice of Lease. The Landlord and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable form with respect to this Lease, which shall be recorded forthwith with the Plymouth County District Registry of Deeds, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with said Registry of Deeds.

Section 18.09 Enforcement of the Landlord's Liability. Anything contained in this Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, the Landlord's liability under this Lease shall be enforceable only out of the Landlord's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against, the Landlord, nor shall there be any personal liability on the part of the Landlord or any member of its board of directors, or any officer or employee of the Landlord, with respect to any obligations to be performed hereunder. Without limitation of the foregoing, other than regarding Landlord's obligation to repair the sewer system, Landlord shall not be liable for any loss, damage or injury of whatever kind caused by, resulting from, or in connection with (i) the supply or interruption of water, gas, electric current, oil or any other utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or subsurface area or from any part of the Premises, or (iii) other leakage from pipes, appliances, sewer or plumbing works therein or from any other place. In no event shall the Landlord be liable to Tenant for any indirect, special or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Lease.

Section 18.10 No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that the Landlord may acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless the Landlord executes and records an instrument affirmatively electing otherwise.

Section 18.11 Captions. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

Section 18.12 Table of Contents. The Table of Contents preceding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

Section 18.13 Massachusetts Law Governs. This Lease shall be governed exclusively by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

Section 18.14 Time of the Essence. Time shall be of the essence hereof.

Section 18.15 Excavation and Shoring. If any excavation shall be made or contemplated to be made by Tenant for building or other purposes upon property or streets adjacent to or nearby the Premises, Tenant shall do or cause to be done all such work as may be necessary to preserve any of the walls or structures of the Improvements from injury or damage and to support the same by proper foundations. All such work done by Tenant shall be at Tenant's sole cost and expense.

Section 18.16 No Partnership or Joint Venture. Nothing contained under this Lease shall be construed to create a partnership or joint venture between the Landlord and Tenant or to make the Landlord an associate in any way of Tenant in the conduct of Tenant's business, nor shall the Landlord be liable for any debts incurred by Tenant in the conduct of Tenant's business, and it is understood by the parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

Section 18.17 Tenant Request for Consent. Tenant shall reimburse the Landlord for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by Tenant for the Landlord's consent hereunder.

Section 18.18 Prevailing Party. In any litigation between the parties arising out of this Lease, or in connection with any other actions taken or notices delivered in relation to a default by any party to this Lease, the non-prevailing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees and costs incurred in connection with the enforcement of the terms of this Lease. Brokers. The Landlord and Tenant each warrants and represents to the other that it has had no dealings or negotiations with any broker or agent in connection with this Lease. Each agrees to pay, and shall hold the other harmless and indemnified from and against any and all costs, expenses (including without limitation counsel fees) or liability for any compensation, commissions and charges claimed by any broker or agent resulting from any such dealings by the indemnifying party with respect to this Lease or the negotiation therefor.

Section 18.20 Covenants Running with the Land. Tenant intends, declares, and covenants, on behalf of itself and all future holders of Tenant's interest hereunder, that this Lease and the covenants and restrictions set forth in this Lease regulating and restricting the use, occupancy, and transfer of the Premises (a) shall be and are covenants running with the Premises, encumbering the Premises for the term of this Lease, binding upon Tenant and Tenant's successors-in-interest; (b) are not merely personal covenants of Tenant; and (c) the benefits shall inure to the Landlord.

Section 18.21 Investor Protections.

- (a) Notwithstanding anything to the contrary in this Lease, neither _____, _____, nor any affiliate of either of them who become the investor member ("Investor") and/or special members ("SLP") of the Tenant, nor the partners, members, successors or assigns of any of them shall have

any personal liability hereunder, so long as the Investor and the SLP both continue to act as a members under the Amended and Restated Operating Agreement of Tenant (the “Operating Agreement”) intended to be entered into prior to the commencement of construction of the Property.

- (b) Notwithstanding anything to the contrary herein, the Investor and SLP shall have the right to sell, transfer or pledge their interests in Tenant (or in their respective entities) pursuant to the terms of the Operating Agreement and any such sale, transfer or pledge shall not (i) be an event of default hereunder, or (ii) entitle Landlord to raise the rent hereunder or impose any transfer fee.
- (c) Notwithstanding anything to the contrary herein, if an Event of Default shall have occurred hereunder, Landlord shall deliver to SLP (at c/o _____, Attention: _____) copies of any notices of default which are to be sent to Tenant hereunder, and shall afford SLP the same opportunities to cure any such defaults as are offered to Tenant hereunder, provided, that all such rights shall run concurrently with the rights of Tenant hereunder.
- (d) Notwithstanding anything to the contrary herein, if the manager or managing member of Tenant is removed pursuant to the terms of the Operating Agreement, such removal shall not (i) be an event of default under this Lease, or (ii) entitle Landlord to raise the Base Rent under this Lease, or impose any transfer fee, provided that the new manager or managing member is either the SLP, Investor, or another entity reasonably acceptable to Landlord, and is appointed pursuant to the terms of the Operating Agreement.

Section 18.22 Change of Ownership. In the event of a change in ownership of the Tenant or that any owner of the managing member of the Tenant is removed or changed, the Landlord will have six months to meet the offer of any other party to purchase the ownership in the Tenant.

EXECUTED as of the date first set forth above.

LANDLORD:

<>

By:
Its:

TENANT:

<>

By:
Its:

Exhibits

- Exhibit A – Legal Description of Premises
- Exhibit B – Plot Plan of Premises
- Exhibit C – Schematic Design Plans
- Exhibit D – Environmental Reports
- Exhibit E— Service Level Agreement (SLA)

Exhibit A – Legal Description of Premises

Exhibit B – Plot Plan of Premises

Exhibit C – Schematic Design Plans

The Schematic Plans for this project are as described in the decision of the TOWN OF WAREHAM, MASSACHUSETTS ZONING BOARD OF APPEALS in case Number _____ FOR A COMPREHENSIVE PERMIT issued to the Applicant _____, LLC, whose address is _____. A copy of which is attached to this decision.

Exhibit D – Environmental Reports

Exhibit E

Service Level Agreement (SLA)

As Defined in Section 8.06, The Property Management Company shall manage the physical Premises as well as all financial operations of the Project. The Property Manager and the Tennact shall have an agreement that defines services that will be provided to the residents by the Property Management Company and will be referred to as the Service Level Agreement (“SLAs”) included in Exhibit E of this agreement. Changes to the SLA may be initiated by either party at anytime during the term of the lease and must be approved in writing by both parties.

Service Level Objectives (SLA’s) defines those services critical to resident retention, responsible fiscal management and protection of the physical asset, PROPERTY MANAGER will provide the staffing, policies, procedures and systems necessary to successfully manage the administrative, financial, compliance and physical operations of Westfield Affordable Housing Site.

- PROPERTY MANAGER will assign a professional Management Team to Westfield Affordable Housing Site. The members of this team will be qualified to respond to the needs of the resident.
- PROPERTY MANAGER will maintain financial accounting records and adhere to established reporting requirements, ensuring that the property is operated within budgetary parameters.
- PROPERTY MANAGER will ensure that the units are leased and occupied by qualified applicants, in accordance with the established Tenant Selection Plan, and in strict adherence to the eligibility requirements of the LIHTC program.
- PROPERTY MANAGER will ensure that preventive, routine and emergency maintenance procedures are established in accordance with the needs of the property, and are implemented.
- The Management Plan will describe in detail the procedures that PROPERTY MANAGER will use to ensure the SLA’s are achieved.
- The Management Agreement will additionally contain the SLA’s, including provisions requiring that the prompt cure of any reported deficiencies in meeting the SLA’s, as well as the stipulation that failure to achieve the predefined SLA’s could result in contract termination. The Landlord will annually to evaluate PROPERTY MANAGER’s performance in this manner.

On Site Management Personnel

A Regional Property Manager will be assigned to the property. This position shall have the authority to make decisions within the scope of this Plan. The Regional Property Manager has the responsibility for the senior-level oversight of property operations, and communicates with the Landlord as necessary regarding all property operational issues.

A Property Manager will be assigned to the property, allocated at no less than 20 hours per week, and will operate under the direction of the Regional Property Manager. The Property Manager is the on-site authority that enforces established policies, inspects the property on a regular schedule, communicates with residents and commercial tenants, enforces lease terms, implements PROPERTY MANAGER procedures, oversees rent collection, resident relations and oversees the contracting of maintenance and capital work. The Property Manager is responsible for the overall day to day operation of the property, and will communicate weekly with the Regional Property Manager and advise of any issues that require additional assistance. Property Manager will meet with Landlord on a quarterly basis.

A Maintenance Superintendent will be allocated 32 hours per week, and works under the supervision of the Property Manager. This position will be responsible for the day to day maintenance and janitorial services of the physical

structures. The Superintendent will conduct daily site inspections, clean common areas, oversee the processing and completion of routine maintenance, implement preventive maintenance procedures and directly supervise all contract services at the property. The Superintendent will be skilled in one or more of the following disciplines - carpentry, plumbing, basic wiring, HVAC.

A Resident Services Coordinator (RSC) will be allocated 8 hours per week. The RSC will be responsible for providing supportive services to residents in coordination with community-based provider agencies in the areas of wellness, educational, cultural and other enrichment programs to enhance the overall quality of life for all residents of the community.

Rent Collection

Rents will be collected on site, and check or money order is accepted.

Rent is due on the first (1st) day of the month and no later than the fifth (5th) day of each month. Any unpaid balances after the 5th are subject to collection by all lawful methods.

In instances where the implementation of a reasonable accommodation to the resident may alleviate a nonpayment situation, the Property Manager will work with the Resident Service Coordinator assigned to the property in the offering of applicable third party services to the resident.

Financial Management SLA

Within 90 days of the beginning of each fiscal year, an annual operating and capital budgets will be prepared by the PROPERTY MANAGER and presented to the Landlord.

At the end of each fiscal year, an independent firm of Certified Public Accountants will conduct and prepare a review of the Certified Financial Statement. The format will comply with all generally accepted accounting principles. The report will be submitted to the Landlord within 90 days after the end of the fiscal year. This service will be paid from the property operating account.

The Annual Operating Budget

Ninety days prior to the beginning of the upcoming fiscal year, Property Manager will submit to the Landlord a set of proposed operating and capital budgets. The preparation process of the annual budget is extensive and includes the following:

- Consideration of the current cost needs and financial resources of the Property
- A review of all existing and upcoming service contracts
- A review of staffing needs, salaries, and projected changes in salaries or benefits
- A review of utility consumption to forecast upcoming, incorporating projected cost changes in utility rates.
- Capital improvements are evaluated based upon the property's capital needs assessment.

Resident Relations

The Property Manager will conduct monthly resident meetings complete with agenda and action items. From time to time outside speakers will be invited to discuss items of interest to the residents.

Informational and educational programs will also be regularly scheduled. Resident and community volunteer groups will be supported in coordinating social events, arts and crafts, holiday gatherings, and other recreational activities.

A report will be provided to the Landlord at the end of each fiscal year outlining the results of resident relations.

Preventive Maintenance

Preventive Maintenance includes a system of scheduled inspections of all building systems, fixtures and equipment, by both staff and third party contract professionals as required, to mitigate the occurrence of equipment failure, to extend the useful life of the equipment or system and to ensure that all systems operate as intended for the safety and convenience of residents. Preventive Maintenance inspection schedules will be maintained at the property for all equipment and systems, in accordance with PROPERTY MANAGER policy.

Typical systems and fixtures subject to preventive maintenance inspection and scheduling include the following:

- Fire Safety Systems (alarms, sprinklers, extinguishers, etc.)
- Elevators
- Common Area Interior and Exterior Lighting
- HVAC and Domestic Hot Water Systems and Components
- Waste Management Components
- Building Envelope Systems (Windows, Siding, Roofing, Doors, etc.)
- Landscaped Areas
- Paving and Walkways
- Motors, Generators, Power Tools and Equipment

Routine Maintenance - Work Orders

All routine requests for service are to be documented on written work order forms, in accordance with PROPERTY MANAGER policy. All work orders are to be completed within 24 hours after reporting unless otherwise scheduled with the resident. Upon completion of each work order, Management staff will make follow up contact with each resident household within the subsequent 24 hour period to confirm that work had been completed to the satisfaction of the resident.

Emergency Maintenance Service

Emergency maintenance service is provided 24 hours per day, 7 days per week. PROPERTY MANAGER requires that all sites contract with a reliable answering service who will be instructed to page out ALL calls received after business hours. The Superintendent or Technician on-call will make the determination as to whether or not the work request fits the definition of an emergency.

In all cases, the resident will be called back by the Superintendent or Technician on-call as a follow up to determine the scope and nature of the maintenance request called in as an emergency. Those requests determined to be urgent as defined below will be addressed immediately. Other requests will be scheduled for completion the next business day.

Emergency work orders or urgent service needs can be defined as any one of the following:

- Restoration of heat, hot water, water and sewer, electricity or any other service when disrupted
- Repair of broken windows
- Repair of locks and other security devices
- Clearing of backups in any drainage system
- Correction of any condition permitting significant entry of water or snow into a living area
- Any other circumstances causing health or safety hazards to residents.

An Emergency Evacuation Plan is to be implemented for this purpose within 30 days of the effective date of engagement, and will include all necessary instructions and procedures to protect the safety of residents and staff in case of natural disaster (fire, flood, hurricane, earthquake, etc.) or man-made emergency (police matter, terrorist threat, etc.).

Unit History

Records of equipment and fixture upgrades and replacements are to be maintained by the Superintendent in accordance with PROPERTY MANAGER policy. These unit history reports are to remain a permanent record, regardless of unit occupant.

