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(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

AFTER RECORDING, RETURN TO:

### GROUND LEASE

This GROUND LEASE (this "Lease") is made this \_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date") by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the Portland Housing Bureau ("Ground Lessor" or "PHB") and 72ND AND FOSTER LIMITED PARTNERSHIP, an Oregon limited partnership ("Lessee"). Ground Lessor and Lessee may be referred to jointly in this Lease as the "Parties" and individually as a "Party."

### RECITALS

- A. Ground Lessor owns certain unimproved real property located at \_\_\_\_\_ and situated in the County of Multnomah, Oregon and legally described on Exhibit A hereto (the "Property").
- B. Ground Lessor desires to lease to Lessee and Lessee desires to lease from Ground Lessor the Property for a period of ninety-nine (99) years pursuant to the terms of this Lease.
- C. Lessee intends to construct, develop and operate on the Property a mixed-use project including a 101-unit affordable housing component and approximately 9,000 square feet of commercial space (collectively, the "Project").
- D. Of the 101 residential housing units, 81 will be leased to occupants earning 60% or less of area median family income ("MFI") and 20 units will be leased to occupants earning 30% or less of MFI.

## AGREEMENT

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

### 1. THE LEASE

- 1.1. **Leased Property.** Subject to the terms and conditions hereof, Ground Lessor hereby leases to Lessee the Property.
- 1.2. **Term.** The term of this Lease shall commence on the Effective Date and unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a term (the "Term") expiring on \_\_\_\_\_, 2117 (the "Termination Date").
- 1.3. **Use.** Lessee shall use the Property solely for the development, construction and operation of the Project.
- 1.4. **Fixed Rent.** Ground Lessor and Lessee hereby acknowledge that Lessee has paid as rent for the entire Term the sum of One Dollar (\$1) in advance (the "Rent")
- 1.5. **Lessee Taking Property "As-Is-Where-Is".** Lessee acknowledges (1) that Lessee has entered into this Lease with the intention of making and relying upon its own investigation of the physical, structural and environmental condition of the Property, and (2) that Ground Lessor is not making and has not at any time made any representation or warranty of any kind or nature, either oral or written, directly or indirectly, expressed, implied, statutory or otherwise, with respect to the Property. Based on Lessee's familiarity with the Property, Lessee's due diligence relating to the Property and Lessee's experience and knowledge as to the market in which the Property are situated and as to the investment in and operation of real estate in the nature of the Property and commercial real estate in general, Lessee will take the Property on the Effective Date in its "AS IS, WHERE IS AND WITH ALL FAULTS" condition, with existing streets and street improvements, and without any representation or warranty whatsoever. Lessee fully assumes the risk that adverse latent or patent physical, structural, or environmental conditions may not have been revealed by Lessee's investigations. Ground Lessor and Lessee acknowledge that the Rent has taken into account the provisions of this Section 1.5.
- 1.6. **Regulatory Authority.** Nothing in this Lease shall obligate the City of Portland or any of its agencies with respect to any discretionary or regulatory action relating to development or operation of the Project, including, but not limited to, rezoning, variances, environmental clearances, regulatory plan reviews, code compliance or any other governmental agency approvals or regulatory actions which are or may be required or authorized.

### 2. DEVELOPMENT OF THE PROJECT

**2.1. Affordable Housing Requirement.** Lessee will develop the Project as a mixed-use multi-family housing development consisting of one hundred and one (101) units of affordable housing, as well as other site improvements on the Property in accordance with the Plans and Specifications attached hereto as Exhibit \_\_\_\_ (the "Drawings"). Eighty-one (81) residential units of the Project will be affordable to households for households earning 60% or less of median family income for the statistical Portland metropolitan area ("MFI"). Twenty (20) residential units will be affordable to households for households earning approximately 30% or less of MFI.

**2.2. Project Financing.** Lessee shall develop the Project consistent with the Project Budget attached hereto as Exhibit \_\_\_\_\_. Except as described in this Section, Lessee will be responsible for obtaining from third parties all funds and financing necessary to construct and operate the Project.

**2.2.1.** Prior to the Effective Date, PHB has provided REACH CDC a predevelopment loan in the amount of approximately \$1,000,000 for the purpose of undertaking predevelopment activities related to the Project, which loan shall be repaid at the close of construction financing for the Project in accordance with the documents governing their terms.

**2.2.2.** Subject to the approval of the City Council and PHB Director, as necessary, PHB may provide a portion of the construction and permanent financing for the Project, under the following terms and conditions:

<b>Borrower:</b>	72 <sup>nd</sup> and Foster LP
<b>Type:</b>	Cash Flow Share
<b>Source:</b>	Lents URA funds 2016-18
<b>Loan Amount:</b>	\$5,766,360
<b>Interest Rate:</b>	0% during construction 1% for years 1-15, 10 basis points thereafter during permanent
<b>Term:</b>	Construction Period: 15 months with one available extension of six months upon request by borrower.  Permanent period: 40 years
<b>Repayment:</b>	<ul style="list-style-type: none"> <li>• 50% of excess cash flow split requirement, after allowed Priority Payments</li> </ul>
<b>Priority Payments:</b>	<ul style="list-style-type: none"> <li>• Credit adjusters</li> <li>• Repay Any Limited Partner loans to the project</li> <li>• Investor services fee of \$5,000 per annum (may accrue if unpaid)</li> <li>• Replenish the operating reserve account</li> </ul>

	<ul style="list-style-type: none"> <li>• Limited Partner default cure through distribution</li> <li>• Deferred Developer Fee</li> </ul>
<b>Collateral:</b>	Subordinate Deed of Trust
<b>Cost Savings:</b>	75% hard cost savings to sponsor 25% hard cost savings to PHB, 100% of soft cost savings to PHB
<b>Replacement Reserve:</b>	Beginning with an \$300 per unit per annum deposit in the first stabilized year of operations and escalating at 3% per annum thereafter.
<b>Disbursements:</b>	PHB funding will be accelerated, with a 10% of PHB funding holdback until completion. TIF funding is expected to be disbursed at up to \$4.9 million this fiscal year, and up to a maximum of \$6,615,000 by August 2017, with the rest held back until completion. If required, the 10% holdback may be reduced to any capitalized developer fee remaining payable.
<b>Developer Fee:</b>	Total residential developer fee is \$1,970,150. The capitalized developer fee for the residential component only, of \$1,170,150, includes \$850,150 in LEED and development consultant fees and may be released up to \$680,000 at closing, \$320,000 at stabilization, with the remainder at closeout with PHB. Capitalized developer fee is 5.1% for the residential portion of the project, which is within guidelines. A total of \$800,000 is deferred, which is additional cushion.
<b>Change Orders:</b>	Change order amounts requiring PHB approval are \$10,000 per occurrence/\$25,000 cumulative

**2.3. PHB Access.** During the construction of the Project, and until the Certificate of Completion Is issued for the Project, Lessee's work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of PHB. PHB agrees not to interfere with the work occurring on the Project Land.

**2.4. Lessee Representations and Warranties.** Lessee hereby represents and warrants to PHB as of the Effective Date that:

**2.4.1.** This Lease has been duly authorized, executed and delivered by Lessee and all consents required under Lessee's organizational documents or by law have been obtained, that Lessee has full power and authority to enter into and perform this Lease in accordance with its terms, and all requisite action has been taken by Lessee in connection with the execution of this Lease and the transactions contemplated hereby. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.



- 2.4.2. The execution and delivery of this Lease and documents referred to herein, the incurring of the obligations set forth herein, the consummation of the transactions herein contemplated, and compliance with the terms of this Lease and the documents referred to herein do not conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Lessee is a party.
- 2.4.3. Lessee enters into this Lease without reliance upon any verbal representation of any kind by PHB, its employees, agents or consultants regarding any aspect of the Property, the Project, its feasibility, financing or compliance with any governmental regulation.
- 2.4.4. No representation, warranty or statement of Lessee in this Lease or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.
- 2.5. PHB hereby represents and warrants to Lessee as of the Effective Date that PHB has the legal power, right, and authority to enter into and perform its obligations under this Lease and that all requisite action has been taken by PHB in connection with entering into this Lease.

### **3. THE IMPROVEMENTS**

- 3.1. **Construction.** Subject to the terms of this Lease, Lessee shall have the right to construct such improvements on the Property as Lessee shall determine necessary for the proper and efficient operation of the Project (the "Improvements"). If this Lease is terminated prior to the completion of the Improvements, or if construction of the Improvements is abandoned for any reason, and a Leasehold Mortgagee (as such term is defined in Section 7.1 below) does not exercise the rights pursuant to Article 7 or Section 11.5, Lessee shall be responsible for and shall bear all costs of removing all structures and debris from the Property and then surrendering possession of the Property to Ground Lessor.
- 3.2. **Permits, Licenses and Easements.**
  - 3.2.1. All building permits and other permits, licenses, permissions, consents, and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements and any subsequent improvements, repairs, replacements, or renewals to the Improvements shall be acquired as required by applicable laws, ordinances, or regulations by and at the sole cost and expense of Lessee. Lessee shall cause all work on the Property during the Term to be performed in accordance with all applicable laws and all directions and regulations of all

governmental agencies and representatives of such agencies having jurisdiction.

**3.2.2.** Ground Lessor agrees, at no expense to Ground Lessor and solely to the extent of its powers and authority as the Portland Housing Bureau, to use Ground Lessor's reasonable efforts to assist Lessee in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authority having jurisdiction over the Property, with respect to any construction or other work to be performed on the Property.

**3.2.3.** Ground Lessor agrees, at no expense to Ground Lessor, to grant to Lessee easements on, over and through the Property to construct, maintain and use certain common facilities, including, but not limited to, utility installations, access features, and landscaping.

**3.3. Ownership of Improvements.** Ground Lessor acknowledges and agrees that from the date of this Lease until the expiration of the Term, (i) the Improvements, including all additions, alterations and improvements thereto or replacements thereof and all appurtenances thereto, fixtures, machinery and equipment installed on the Property shall be owned solely by Lessee; and (ii) Lessee shall be entitled to any and all tax attributes of ownership of the Improvements including, without limitation, the right to claim depreciation or cost recovery deductions, the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and the right to amortize all capital costs and to claim any and all other federal or state tax benefits attributable to the Improvements. At the expiration or earlier termination of this Lease, the Improvements, additions, alterations, and improvements thereon and thereto or replacements thereof, and all appurtenant fixtures, machinery, and equipment installed therein, shall, at the option of Ground Lessor, be either (i) removed by Lessee (1) with the prior approval of State of Oregon, acting by and through its Housing and Community Services Department ("OHCS"), and (2) within a reasonable time determined by Ground Lessor pursuant to written notice to Lessee, but in no event to exceed 180 days from the date of such notice, or (ii) remain and become the property of Ground Lessor.

#### **4. LIENS**

**4.1. Liens Against Ground Lessor's Fee Interest.** Except as otherwise provided herein, Lessee shall not have any right, authority or power to bind Ground Lessor, Ground Lessor's estate or other assets or any interest of Ground Lessor in the Property, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Property, Project and Improvements or any change, alteration or addition thereto.

- 4.1.1. Ground Lessor expressly acknowledges that Lessee's development of the Property may require the recording of utility easements and other customary easements necessary and incidental to the development, construction and operation of the Improvements. Subject to Ground Lessor's prior review and written approval, which shall not be unreasonably withheld or delayed, Ground Lessor hereby agrees to the recording of such easements on the Property, at the sole expense of Lessee, as are required for the development and operation of the Improvements and shall provide such written consents as are necessary to the recording of such easements, provided that such easements are in locations on the Property reasonably satisfactory to Ground Lessor.
- 4.1.2. Ground Lessor expressly acknowledges that Lessee will be obtaining financing for the development and operation of the Property from a variety of private and governmental funding sources and that such financing may require restrictive covenants or regulatory agreements (collectively, "Restrictive Covenant") to be recorded not only against Lessee's leasehold interest, but also against Ground Lessor's fee interest. Subject to Ground Lessor's prior review and written approval, which shall not be unreasonably withheld or delayed, Ground Lessor hereby agrees to the recording, at Lessee's sole expense, of any Restrictive Covenant as is required for the development and operation of the Improvements including, but not limited to, covenants and regulatory agreements required by OHCS, at Lessee's sole expense, and shall provide such written consents as are necessary to the recording of any Restrictive Covenant.
- 4.1.3. Ground Lessor expressly acknowledges that Lessee will be entering into leases with low-income households for rental of the Improvements on the Property.
- 4.1.4. Ground Lessor expressly acknowledges that Lessee will be creating separate condominiums for the residential and commercial portions of the Project. Subject to Ground Lessor's prior review and written approval, which shall not be unreasonably withheld or delayed, Ground Lessor hereby agrees to the recording, at Lessee's sole expense, of both residential and commercial condominiums.
- 4.2. **Liens Against Lessee's Leasehold Interest.** Ground Lessor acknowledges that Lessee will be obtaining financing for the development and operation of the Project from a variety of private and governmental funding sources, that such financing shall require Lessee to provide security interests in its leasehold interest in the Property and the Improvements, and that such financing sources will further require Lessee to enter into various regulatory and other agreements restricting the use of the Property to the uses set forth in Section 1.3. Lessee may encumber its leasehold interest in the Property and the Improvements for the purposes of such financing

and Ground Lessor hereby expressly agrees and consents to Lessee entering into such financing arrangements and the resulting encumbrances of Lessee's leasehold interests in the Property and the Improvements, provided that such financing arrangements and resulting encumbrances shall be subject to the terms of this Lease and shall not affect Ground Lessor's rights or increase Ground Lessor's duties or obligations under this Lease. Lessee may, after the initial development of the Project, obtain additional financing (or refinancing) provided that such financing complies with the provisions of this Section 3.2.

- 4.3. Mechanics' Liens.** Lessee agrees that it will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against Ground Lessor's fee simple interest in the Property for work or materials furnished to Lessee in connection with any construction, improvements, maintenance, or repair thereof made by Lessee or its agents upon the Property. Lessee shall cause any such claim or lien to be fully discharged within sixty (60) days after the date of filing thereof; provided, however, that in the event Lessee, in good faith, disputes the validity or amount of any such claim of lien, and if Lessee shall give to Ground Lessor such security as Ground Lessor may reasonably require to ensure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment, Lessee shall not be deemed to be in breach of this Section 3.3, so long as Lessee is diligently pursuing a resolution of such dispute. Upon entry of final judgment resolving the dispute, if litigation or arbitration results therefrom, Lessee shall discharge said lien within thirty (30) days.

## **5. TAXES; UTILITIES**

- 5.1. Payment of Taxes.** Lessee shall pay before they become delinquent all real property taxes assessed or levied against the Property and Improvements. Lessee shall also pay all personal property taxes assessed or levied against the equipment, machinery, fixtures, furniture, and furnishings thereon and any and all other charges, fees or costs imposed by any governmental or quasi-governmental entity or utility. Lessee shall have the right in good faith, in a proper procedural manner, and at its sole cost, to contest and resist any taxes or assessments or other dispositions levied against or imposed upon the Property and Improvements. Lessee shall defend and indemnify Ground Lessor from any and all taxes incurred during the term of this Lease.
- 5.2. Utilities.** Lessee shall arrange for and pay before they become delinquent all charges for utility services furnished to the Property including, but not limited to, electricity, gas, water, sewer, telephone and trash collection charges. Ground Lessor shall have no responsibility for the payment of these utility costs. Lessee shall defend and indemnify Ground Lessor from any and all such charges incurred during the term of this Lease.



Ground Lessor will not be required to furnish to Lessee any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam heat, gas, hot water, electricity, light, and power. Lessee will arrange for the provision of utilities and telecommunication services to the Project, and Lessee shall pay all charges for such utilities when due. Nothing in this Lease authorizes the installation of any telecommunications tower, structure, or facility on the Property without Ground Lessor's consent.

## **6. INSURANCE**

**6.1. Lessee's Insurance.** During the Term, Lessee shall keep and maintain in force, at no cost or expense to Ground Lessor, the following insurance, all of which shall be provided by companies and/or agencies licensed to do business in the State of Oregon:

**6.1.1. Property Insurance.** All risk of direct physical loss or damage to any of the Improvements. Improvements shall be insured with limits of not less than one hundred percent (100%) of the "full replacement value" thereof. Such policies shall name Ground Lessor as a loss payee and any Leasehold Mortgagees as mortgagees.

**6.1.2. Liability Insurance.** Commercial General Liability insurance, with coverage limits not less than:

- (a) \$2,000,000.00 per occurrence, bodily injury and property damage; and
- (b) \$4,000,000.00 general aggregate, bodily injury and property damage.

Such coverage will be equivalent to or better than the Insurance Service Office (ISO) standard coverages, conditions, and extensions, and shall not contain limitations or exclusions for Blanket Contractual, Broad Form Property Damage, Personal Injury, Premises-Operations, Products and-Completed Operations, Independent Contractors, Fire Legal Liability, and Explosion, Collapse, and Underground (XCU).

The General Liability policy shall be endorsed with CG 2010 1185 or CG 2010 1001 and CG 2037 1001 or equivalent, naming Ground Lessor and its directors, officers, representatives, agents, and employees as additional insured.

**6.1.3. Business Auto Liability Insurance.** Automobile bodily injury and property damage liability insurance covering all motor vehicles, whether owned, non-owned, leased, or hired, with not less than the following limits:

- (a) Bodily injury: \$2,000,000.00 per person; \$2,000,000.00 per accident; and
- (b) Property damage: \$2,000,000.00 per accident.

The Automobile policy shall be endorsed with CA 20 48 02 99 or equivalent, naming Ground lessor and its directors, officers, representatives, agents, and employees as additional insured.

**6.2. General Requirements.** All policies described in Section 5.1 shall contain: (a) Lessee agrees to give the Ground Lessor and each Leasehold Mortgagee, as applicable, at least thirty (30) days' written notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (b) all insurance as required under this Lease shall be primary and non-contributing with any insurance that may be carried by the Ground Lessor; (c) a provision that no act or omission of the Lessee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (d) a waiver by the insurer of all rights of subrogation against the Ground Lessor and its authorized parties in connection with any loss or damage thereby insured against; and (e) terms providing that any loss covered by such insurance shall be adjusted with the Ground Lessor and Lessee, but shall, to the extent required by the loan documents of any leasehold mortgage, be payable to the holder of any leasehold mortgage, who shall agree to receive and disburse all proceeds of such insurance, subject to the duty of the Lessee to repair or restore the Improvements.

**6.3. Evidence of Insurance.** Within 10 days of this Lease being duly accepted by all parties, Lessee agrees to provide Ground Lessor a certificate of insurance for all insurance required to be maintained by Lessee under this Article 6 and each year thereafter until the Lease is terminated.

## **7. MAINTENANCE AND ALTERATIONS**

**7.1. Maintenance of Leased Property.** During the Term, at Lessee's sole cost and expense, Lessee shall keep and maintain the Property, the Project, all Improvements, and all appurtenances thereunto belonging, in good and safe order, condition and repair. Lessee shall be responsible for any repairs and replacements, whether structural or nonstructural, ordinary or extraordinary, necessary to maintain the Property and the Improvements thereon. At Lessee's own expense, Lessee shall keep and maintain the Property in compliance with all applicable laws, rules, regulations and ordinances of all federal, state, county, municipal and other public authorities having or claiming jurisdiction. Additionally, Lessee shall protect against and refrain from creating or allowing the creation of a recognized hazardous environmental condition. During the Term, Lessee, at Lessee's sole cost and expense, shall take all actions necessary to eliminate, remove, remediate or otherwise clean up any recognized hazardous environmental condition.

**7.2. Alterations to Leased Property.** Subject to the permitted uses of the Property set forth in Section 1.3 and the restriction on the use of financing proceeds set forth in Section 3.2, Lessee may make any additions, alterations or changes in or to the Improvements.



- 7.3. Prohibited Uses of Leased Property.** In addition to any other prohibitions or limitations on Lessee's use of the Property contained in the Lease, Lessee shall not:
- i) use the Property in any illegal manner; ii) create any damage, nuisance or waste to the Property, including any objectionable noise, vibration, or odor to be emitted or escape from the Property; iii) cause damage or injury to nearby properties or property owners; iv) create any condition which would constitute a fire or environmental hazard, or be dangerous to persons or property; v) sell any alcoholic beverages or alcoholic liquors on the Property excepting upon Ground Lessor's prior written consent and pursuant to the limitations of state issued permit(s) or license(s); vi) sell any controlled substances on or about the Property; vii) store gasoline or other highly combustible materials on the Property except for commercially reasonable amounts of gasoline or fuel for yard equipment; viii) permit the sale of any pornographic material on the Property; ix) permit any cash, credit card, or coin-operated novelty or gaming machines on the Property without the prior written consent of Ground Lessor; x) permit the use of the Property for a second-hand store, pawnshop, or for conducting auction, distress or fire sale, or bankruptcy or going-out-of-business sale or the like; xi) maintain disabled vehicles, or engage in automotive repair or maintenance on parking lots, in garages, or elsewhere on the Property; xii) operate a mortuary, funeral parlor or home or similar service establishment on the Property; xiii) allow any industrial use or processing or rendering use on the Property; or xiv) operate any facility for the dumping, disposing, incinerating or reducing of garbage on the Property.

## **8. PERMITTED MORTGAGES**

- 8.1. Leasehold Mortgage Provisions.** Lessee intends that the development of the Improvements be financed with various public and private debt and/or grants, including but not limited to a loan from Ground Lessor ("Subordinate Lender"); a construction loan from KeyBank and a permanent loan from KeyBank/Freddie Mac (FM"), all of which in their capacities as such lenders are referred to collectively herein as "Lenders." For purposes of this Lease, a "Leasehold Mortgage" is any mortgage, deed of trust, security agreement or collateral assignment in favor of KeyBank, any assignees or successor thereof that are Institutional Lenders and any other mortgages, deeds of trust, security agreements or collateral assignments permitted by Ground Lessor hereunder encumbering Lessee's leasehold interest in the Property and the Improvements. A "Leasehold Mortgagee" is a holder of a Leasehold Mortgage. For purposes hereof, an "Institutional Lender" shall mean and entity that is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial (including multi-family residential) real estate loans, including any Affiliate thereof. Any Leasehold Mortgagee or designee thereof that acquires title the leasehold estate or any part thereof, any person that acquires title to the leasehold estate through any judicial or nonjudicial foreclosure sale, deed or assignment in lieu thereof, or any sale or transfer made under any order of any court



to satisfy wholly or in part obligations secured by any Leasehold Mortgage, and the successors and assigns of any such Leasehold Mortgagee, is referred to as a "Transferee". Each Leasehold Mortgagee and Transferee is an intended beneficiary of the terms of this Lease.

- 8.2. Leasehold Mortgages and Transfers Authorized.** Ground Lessor acknowledges that Lessee's financing for the Project will require Lessee to provide security interests in Lessee's leasehold interest in the Property, and its interests in the Improvements. Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder or any part thereof and Lessee's interest in the Improvements and other rights hereunder, or any part thereof, to any Leasehold Mortgagee or other person through, or in lieu of, foreclosure, trustee's sale or other proceedings in the nature thereof, shall not require the consent of Ground Lessor or constitute a breach of any provision of or a default under the Lease, and upon such foreclosure, sale or conveyance Ground Lessor shall recognize the purchaser or other direct or indirect transferee in connection therewith as the Lessee hereunder to the extent of the interest so transferred. The preceding sentence notwithstanding, each Leasehold Mortgagee acknowledges that Ground Lessor has agreed to enter into this Lease because Lessee has unique experience and qualification to perform under the Lease and that, before completing any foreclosure proceeding or any sale or transfer of Lessee's leasehold interest in the Property, it will notify Ground Lessor and will cooperate with Ground Lessor in good faith for a reasonable period of time to reach a solution that would prevent foreclosure or to ensure that the potential transferee has the requisite experience and qualification to perform under the Lease.
- 8.3. Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Ground Lessor shall give each Leasehold Mortgagee at the address set forth in this Lease or at the last address of such Leasehold Mortgagee provided in a written notice to Ground Lessor pursuant to the terms hereof, a duplicate copy of all notices of default or other notices that Ground Lessor may give to or serve in writing upon Lessee pursuant to the terms of the Lease, at the same time as such notice is given to or served upon Lessee, provided that such notice shall be duly given when sent to the Leasehold Mortgagee at the notice address set forth herein (or the last address of such Leasehold Mortgagee provided in a written notice to Ground Lessor pursuant to the terms hereof), by US Mail, registered, return receipt requested or by a recognized overnight commercial delivery service; and provided, further, that the failure of Ground Lessor to send a copy of such notice to Leasehold Mortgagee shall not subject Ground Lessor to any liability hereunder. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Ground Lessor.
- 8.4. Right of Leasehold Mortgagee to Cure.** Any Leasehold Mortgagee, at its option at any time within thirty (30) days, or such longer period as may be applicable as

provided below, following the expiration of the right of Lessee to cure any default under the Lease, may pay any amount or do any act or thing required of Lessee by the terms of the Lease. Payments made and acts performed by such Leasehold Mortgagee within such thirty (30) day period, or such longer period as may be applicable as provided below, shall be effective to prevent a termination of the rights of Lessee hereunder, if such payments and acts conform to the terms of such notice from Ground Lessor or if, together with any performance by Lessee or any other person with any cure rights, they are sufficient, except as to timing, to exercise the Lessee's right to cure that so expired, but in order to prevent termination of the Lease, a Leasehold Mortgagee shall not be required to cure (A) default on obligations of Lessee to satisfy or otherwise discharge any lien, charge, or encumbrance against Lessee's interest in the Lease caused by a wrongful act of Lessee; or (B) defaults on obligations of Lessee under any indemnity provision in this Lease arising from acts or omissions of Lessee; or (C) other past monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (it being understood that the lack of funds of the Lessee or the Leasehold Mortgage shall not excuse performance by Lessee or Leasehold Mortgagee); or (D) any default resulting from the acts or omissions of the Ground Lessor ("Excluded Defaults"). For purposes of clarification and illustration, it is the intention of the parties hereto that Excluded Defaults shall include (but not as an exclusive list) claims, damages, liability and expenses, including personal injury and property damage arising or alleged to be arising from actions or inactions of Lessee such as failure to pay insurance premiums, allowing dangerous conditions to exist at the Property or failure to operate the Property in accordance with regulatory restrictions. Accordingly, in such event Leasehold Mortgagee shall not be required to cure such Excluded Defaults to avoid termination of the Lease, but Leasehold Mortgagee would be required to remediate, ameliorate, or eliminate such continuing conditions to Ground Lessor's reasonable satisfaction to avoid such termination. If the default by Lessee is of such nature that it cannot practicably be cured without possession of the Property, then the thirty-day period set forth above shall be extended for so long as a Leasehold Mortgagee shall be proceeding with reasonable diligence to foreclose on the Lessee's interest or otherwise obtain possession of the Property for itself or a receiver.

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

Without limiting the rights of Leasehold Mortgagees as stated above, and whether or not there shall be any notice of default hereunder, each Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of the Lease to pay all of the rent due hereunder, with all due interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee hereunder, and to do any act or thing which may be necessary and proper to be done in the performance

and observance of the agreements, covenants and conditions hereof to prevent termination of the Lease. Any Leasehold Mortgagee and its agents and contractors shall have full access to the Property for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Leasehold Mortgagee shall be as effective to prevent a termination of the Lease as the same would have been if done by Lessee.

- 8.5. Right to New Lease.** If the Lease terminates for any reason, including the rejection of the Lease in a bankruptcy proceeding, then Ground Lessor shall give written notice of such fact to each Leasehold Mortgagee, and if one or more Leasehold Mortgagees gives written notice to Ground Lessor within thirty (30) days following delivery of such notice of termination by Ground Lessor, Ground Lessor agrees in such case to enter into a new ground lease for the Property (a "New Lease") with the most senior Leasehold Mortgagee or its affiliated designee providing such notice for the remainder of the term of the Lease (including any option terms) effective as of the date of such termination, at the rent and additional rent and upon the other terms, conditions, covenants and agreements contained in the Lease and with equal priority thereto, on the conditions set forth in this Article 7. Notwithstanding anything to the contrary contained herein, no termination of the Lease shall become effective until, and the lien of each Leasehold Mortgage on the Property shall remain effective until, either a New Lease has been made pursuant to this Article 7 or no Leasehold Mortgagee has timely accepted (or caused to be accepted) a New Lease, upon the expiration of the 30-day period as set forth above. Upon entering into a New Lease, such Leasehold Mortgagee or its affiliated designee shall cure any monetary default by Lessee hereunder, except Excluded Defaults.

The Lessee under the New Lease shall have the same right, title and interest in and to all Improvements and all obligations as Lessee had under the terminated Lease (other than with respect to Excluded Defaults) and the Ground Lessor and the new Lessee shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest or obligations.

Nothing in this Article or the Lease shall be construed to imply that the Lease may be terminated by reason of rejection in any bankruptcy proceeding of the Lessee. The parties intend, for the protection of Leasehold Mortgagees, that any such rejection shall not cause a termination of the Lease.

If the Ground Lessor shall, without termination of the Lease, evict the Lessee, or if the Lessee shall abandon the Property, then any reletting thereof shall be subject to the liens and rights of Leasehold Mortgagees, and in any event Ground Lessor shall not relet the Property or any part thereof, other than renewal of occupancies of residential Lessees and leases or other occupancy agreements with new residential Lessees consistent with any covenants of record for low-income housing, without sixty (60) days' advance written notice to all Leasehold Mortgagees of the intended



reletting and the terms thereof, and if any Leasehold Mortgagee shall, within thirty days of receipt of such notice, give notice to the Ground Lessor of such Leasehold Mortgagee's intent to pursue proceedings to foreclose on the Property or otherwise cause the transfer thereof, then so long as the Leasehold Mortgagee shall diligently pursue such proceedings the Ground Lessor shall not proceed with such reletting without the written consent of such Leasehold Mortgagee.

If a Leasehold Mortgagee shall elect to demand a New Lease under this Article and only in the event that such Leasehold Mortgagee is not recognized as a proper plaintiff, Ground Lessor agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove the original Lessee from the Property, and those subLessees actually occupying the Property, or any part thereof, as designated by the Leasehold Mortgagee, subject to the rights of non-defaulting residential Lessees in occupancy of apartment units at the Property. Leasehold Mortgagees shall cooperate with Ground Lessor in connection with any such actions. Nothing herein contained shall require any Leasehold Mortgagee to accept a New Lease.

- 8.6. Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be liable to Ground Lessor unless it expressly assumes such liability in writing. In the event any Leasehold Mortgagee or other Transferee becomes the Lessee under the Lease or under any new lease obtained pursuant to this Article, the Leasehold Mortgagee or other Transferee shall not be liable for the obligations of the Lessee under the Lease that do not accrue during the period of time that the Leasehold Mortgagee or such other Transferee, as the case may be, remains the actual Lessee under the Lease or new lease, holding record title to the leasehold interest thereunder. In no event shall any Leasehold Mortgagee or other Transferee be (i) liable for the erection, completion or restoration of any improvements; (ii) liable for any condition of the Improvements that existed prior to the date of its acquisition of Lessee's interest in the Improvements, or for any damage, loss, or injury caused by such preexisting condition, or for the correction thereof or the compliance with any law related thereto; (iii) bound by any amendment of the Lease made without the prior written consent of the Leasehold Mortgagee; or (iv) liable for any act or omission of any prior lessee of any portion of the Improvements (including Lessee). Any liability of any Leasehold Mortgagee or other Transferee shall be limited to its interests in the leasehold and the Property, and shall be enforceable solely against those interests.
- 8.7. Estoppel Certificates; Nondisturbance Agreements.** Ground Lessor and Lessee agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or a permitted assignee, Ground Lessor or Lessee will execute, acknowledge and deliver to the other party or to such Leasehold Mortgagee a statement in writing certifying (a) that the Lease is unmodified and in full force and effect if such be the case or, if not, the extent to which the Lease has been modified;

(b) the date through which the Rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Ground Lessor or Lessee, as applicable, other than those, if any, so specified under the provisions of the Lease or such statement. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Ground Lessor, Lessee or any Leasehold Mortgagee, as the case may be, in the Lease or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgage.

- 8.8. Actions not Effective Without Leasehold Mortgagee Consent.** No cancellation, surrender, or modification or amendment of the Lease, and no waiver of any of Lessee's rights thereunder, shall be effective as to any Leasehold Mortgagee unless consented to in writing by each Leasehold Mortgagee. No subordination of the Lessee's interest in the leasehold or the Property, or the rents or income therefrom, to any encumbrance or assignment granted by Ground Lessor, and no joinder by Lessee in any such encumbrance or assignment, shall be valid without the express written consent of each Leasehold Mortgagee. No consent or waiver of any Lender as Leasehold Mortgagee shall be effective for purposes of the Lease unless it is made in writing.
- 8.9. No Merger.** Any acquisition of the fee interest in the Property by Lessee (or any fee interest in the Improvements by Ground Lessor), or other event by which the leasehold estate hereunder or any part thereof and the fee interest in the Improvements shall come into common ownership, shall not cause a merger of the leasehold interest hereunder or the fee interest in the Improvements with the fee interest in Property, without the express written consent of each Leasehold Mortgagee. Any merger of fee and leasehold estates that may occur, whether voluntary or involuntary, in whole or in part, shall not result in termination of this Lease or extinguishment of any Leasehold Mortgage, in whole or in part, without the express written consent of each Leasehold Mortgagee.
- 8.10. Bankruptcy of Ground Lessor.** If the Lease is rejected by Ground Lessor or Ground Lessor's trustee in bankruptcy following the bankruptcy of Ground Lessor under the United States Bankruptcy Code (Title 11 U.S.C.), as now or hereafter in effect, Lessee shall not have the right to treat the Lease as terminated except with the prior written consent of all Leasehold Mortgagees, and the right to treat the Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Lessee and each Leasehold Mortgagee shall be required as a condition to treating the Lease as terminated in connection with any such bankruptcy proceeding.
- 8.11. Encumbrances by Ground Lessor.** Ground Lessor shall not encumber the fee interest in the Land, nor assign or encumber Ground Lessor's interest in the Lease, unless the assignment or encumbrance is required or imposed by law or by its

express terms is subject and subordinate to this Lease and the rights and interests of the Lessee and Leasehold Mortgagees hereunder.

**8.12. Registration of Leasehold Mortgagees.** Lessee shall provide written notice to Ground Lessor of the name and address of each Leasehold Mortgagee under this Lease.

**8.13. Rights of Investor and Notice.** Key Community Development Corporation ("KCDC", the "Tax Credit Investor") shall have the same notice and cure rights as any Leasehold Mortgagee, which rights shall run concurrently with those of the Leasehold Mortgagee for so long as it is limited partner of the Lessee. The initial addresses for any notices to Tax Credit Investor, as of the date hereof, are:

Tax Credit Investor:       Key Community Development Corporation.  
                                          c/o

with copies to:

The initial addresses for notice to the Leasehold Mortgagees pursuant to this Article are set forth in Section 17.11 of the Lease.

**8.14. Rights of OHCS.** For so long as OHCS is the beneficiary of a Restrictive Covenant burdening the Property, a copy of all notices to the Lessee shall also be delivered to OHCS and OHCS shall be entitled to the cure rights of a "Leasehold Mortgagee" pursuant to Section 7.4 of the Lease.

**8.15. Waiver of Ground Lessor's Lien.** Ground Lessor hereby waives its statutory Ground Lessor's lien under ORS 87.162 and any other lien right that Ground Lessor may now or in the future have at law or in equity in the Improvements and all trade fixtures and other personal property owned by Lessee.

## **9. REPRESENTATIONS AND WARRANTIES**

**9.1. Representations and Warranties of Ground Lessor.** As an inducement to Lessee to enter into and proceed under this Lease, Ground Lessor warrants and represents to Lessee as follows, which warranties, representations and covenants are true and correct as of the date of this Lease and will be true and correct as of the Effective Date, to the best knowledge of the Ground Lessor:

**9.1.1.** The execution and delivery of this Lease and the performance of all acts heretofore or hereafter made or taken or to be made or taken, pertaining to the Ground Lessor or the Property by the Ground Lessor have been or will be duly authorized by all necessary agency or other action, and the consummation of any such transactions with or on behalf of the Ground Lessor will not constitute a breach or violation of, or a default under, the

charter or by laws or other governing documents of the Ground Lessor or any agreement by which Ground Lessor, nor constitute a violation of any law, administrative regulation or court decree; and

**9.1.2.** Ground Lessor has received no written notice and has no knowledge, nor has Ground Lessor been otherwise advised, of any pending or threatened taking relating to all or any part of the Property.

**9.2. Representations, Warranties and Covenants of Lessee.** As an inducement to Ground Lessor to enter into and to proceed under this Lease, Lessee warrants and represents to Ground Lessor as follows, which warranties, representations and covenants are true and correct as of the date of this Lease:

**9.2.1.** Lessee has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease; and

**9.2.2.** The entry by Lessee into this Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which Lessee is a party or by which it is bound.

## **10. EMINENT DOMAIN**

**10.1. Total Condemnation.** If the whole of the Property and the Improvements, (or such portion of the Property and Improvements as renders it infeasible, in Lessee's sole discretion, for Lessee to continue to operate and maintain the Property and Improvements), shall be appropriated or condemned under power of eminent domain during the Term, Lessee reserves unto itself the right to prosecute its claim for an award for damages for the termination of this Lease caused by such appropriation or taking, together with damages based on the value of Lessee's Improvements on the Property and damages Lessee may sustain caused by such appropriation and taking of, or the injury to, Lessee's leasehold interest. Ground Lessor shall be entitled to prosecute its claim for the fee interest in the Property, subject to the Lease and damages Ground Lessor may sustain caused by such appropriation and taking of, or the injury to, Ground Lessor's fee interest. In such event, this Lease shall terminate when Lessee can no longer use the Property in the manner herein intended, or when possession thereof shall be required by the appropriating or condemning authority, whichever shall first occur; but such termination of this Lease shall not preclude nor restrict Lessee's right to an award as herein before provided.

**10.2. Partial Condemnation.** In the event that a part of the Property shall be taken or condemned under circumstances in which Lessee desires to continue the Lease, this Lease shall continue in full force and effect and shall terminate only as to that part



of the Property so taken. In that event Lessee shall, at its own cost and expense, make all repairs to the buildings and Improvements on the Property affected by such taking or condemnation to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase). Compensation available or paid to Ground Lessor or Lessee upon such a partial taking or condemnation shall be paid to Lessee to the extent that such compensation is attributable to the taking of Lessee's leasehold interest in the Property or the Improvements, and the remainder shall be paid to Ground Lessor.

- 10.3. Temporary Taking.** If there shall be a temporary taking with respect to all or any part of the Property or of Lessee's interest in this Lease, then the Term shall not be reduced and Lessee shall continue to pay in full all rents, and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Lessee shall not be required to perform such obligations that Lessee is prevented from performing by reason of such temporary taking.
- 10.4. Joinder.** If a Leasehold Mortgage exists, the Leasehold Mortgagees, to the extent permitted by law, shall be made parties to any taking proceeding and all rights of Lessee shall be subject to the terms of the Leasehold Mortgages.

## **11. DAMAGE OR DESTRUCTION**

**11.1. Damage or Destruction to Leased Property.** Lessee shall give prompt written notice to Ground Lessor after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Property, the Improvements or any portion thereof (hereinafter sometimes referred to as a "Casualty"). Subject to Section 10.2 below, if during the Term the Improvements shall be damaged or destroyed by casualty, Lessee shall, subject to the terms of the Leasehold Mortgages, promptly and with all due diligence, apply for and collect all applicable insurance proceeds recoverable with respect to such casualty to fully repair or restore the Improvements.

**11.2. Right to Terminate.** In the event Lessee shall determine, subject to the rights of the Leasehold Mortgagees, by notice to Ground Lessor given within thirty (30) days after receipt by Lessee of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Property to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Lessee may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. However, notwithstanding anything to the contrary in the foregoing, Lessee shall not have the right to terminate this Lease pursuant to this Section 10.2 without Ground Lessor's prior written consent, which may be withheld in Ground Lessor's sole discretion, if there are, at the time of such Casualty or at the time Lessee desires to exercise such right of termination, any encumbrances on the fee interest of Ground Lessor (including, without limitation, any Extended Use Regulatory Agreement required under Section 42 of the Internal Revenue Code). If Lessee terminates this Lease pursuant to this Section 10.2, Lessee shall be responsible for and shall bear all costs of removing the remaining Improvements and debris from the Property and then surrendering possession of the Property to Ground Lessor immediately.

**11.3. Damage or Destruction near the end of the Term.** If, during the last ten (10) years of the Term, the Improvements shall be damaged by casualty, then Lessee shall have the option, to be exercised within one hundred twenty (120) days after such casualty:

**11.3.1.** To repair or restore the Improvements as provided in Section 10.1; or

**11.3.2.** Subject to the rights of Leasehold Mortgagees, to terminate this Lease by notice to Ground Lessor, which termination shall be deemed to be effective as of a date not less than thirty (30) days after the date such notice is received by Ground Lessor. If Lessee terminates this Lease pursuant to this Section 10.3, Lessee shall surrender possession of the Leased Property to Ground Lessor upon the effective date of termination and assign to Ground Lessor (or, if same has already been received by Lessee, pay to Ground Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Property, subject to the prior rights of any Leasehold Mortgage therein, as referenced in Section 10.4 below.

**11.4.** Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to this Article 10, the insurance proceeds received as the result of such casualty shall be distributed as follows: (a) if any Leasehold Mortgages are in place, to the Leasehold Mortgagee to the extent of any indebtedness then owed to such Leasehold Mortgagees; and (b) to Lessee or Ground Lessor pursuant to Section 10.3.

## **12. EVENTS OF DEFAULT AND REMEDIES**

**12.1. Default By Lessee.** Each of the following is a material default and breach of this Lease by Lessee:

**12.1.1.** Failure to make any required Rent or any other payment as and when due, if the failure continues for a period of ten (10) business days after written notice from Ground Lessor.

**12.1.2.** Failure to comply with any of the covenants or provisions of this Lease, if the failure continues for a period of sixty (60) days after written notice from Ground Lessor. If the nature of Lessee's default reasonably requires more than sixty (60) days for its cure, Lessee will not be in default if it commences to cure within the sixty (60) day period and thereafter diligently pursues its completion.

**12.2. Remedies Upon Default By Lessee.** If any material default or breach by Lessee occurs, Ground Lessor may, subject in all respects to the provisions of this Lease with respect to Ground Lessor's rights to cure defaults by Lessee and to the rights of any Leasehold Mortgagees, and subject further to the provisions of Section 11.3 and 11.5 of this Lease, do any or all of the following:

**12.2.1.** Except as set forth in Section 11.7, upon ninety (90) day's written notice to Lessee, terminate Lessee's right to possession of the Property, and this Lease shall terminate. Ground Lessor may re-enter and take possession of and remove, at Lessee's costs and expense, all persons or property, and Lessee shall immediately surrender possession of the Property to Ground Lessor.

- 12.2.2.** Maintain Lessee's right to possession, and this Lease shall continue in force whether or not Lessee has abandoned the Property. Ground Lessor shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due.
- 12.2.3.** Pursue any other remedy available to Ground Lessor under the law or equity. These remedies are not exclusive.

Notwithstanding any other provision herein, in the event Ground Lessor exercises its remedies pursuant to Section 11.2(a) or (c) and terminates this Lease, Lessee may, within thirty (30) days following such termination reinstitute this Lease for the balance of the term, by paying to Ground Lessor an amount equal to the actual damages incurred by Ground Lessor as a result of such breach and payment of any actual costs or expenses incurred by Ground Lessor, including reasonable attorneys' fees and disbursements, as a result of such breach or reinstatement of this Lease.

Further notwithstanding anything to contrary herein, Ground Lessor agrees that it will take no action to effect a termination of this Lease by reason of any breach or default by Lessee under this Lease at any time that Lessee or any affiliate of Lessee is the general partner of the Lessee without first giving to the Tax Credit Investor reasonable time, not to exceed sixty (60) days, to replace the Lessee's general partner and/or to admit an additional general partner of the Lessee and cause such new general partner to cure the breach or default hereunder; provided, however, that as a condition of such forbearance, Ground Lessor must receive notice from the Tax Credit Investor of the substitution of a new general partner of the Lessee within twenty (20) days following receipt of Ground Lessor's notice of the breach or default, and Lessee, following such substitution of general partners, shall thereupon proceed with reasonable diligence to cure such breach or default.



**12.3. Default by Ground Lessor.** Ground Lessor shall be in default of this Lease if it fails to perform any material provision of this Lease that it is obligated to perform or if any of Ground Lessor's representations or warranties is untrue in any material respect and if the failure to perform is not cured within thirty (30) days after written notice of the default has been given to Ground Lessor. If the default cannot reasonably be cured within thirty (30) days, Ground Lessor shall not be in default of this Lease if Ground Lessor commences to cure the default within such thirty-day period and thereafter diligently pursues its completion.

**12.4. Remedies Upon Default by Ground Lessor.** Lessee may upon Ground Lessor's default pursue any remedy available to Lessee under the law or equity.

**12.5. Reversion.** Upon expiration of the term of the Lease or earlier termination or cancellation of the Lease and subject to Article 7, the Property shall revert to and become the sole property of Ground Lessor and all rights of the Lessee shall terminate.

### **13. QUIET ENJOYMENT AND POSSESSION, INSPECTIONS**

Ground Lessor covenants and warrants that Lessee, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Property during the Term, subject only to the provisions of this Lease and all applicable laws, ordinances and regulations.

### **14. VACATION OF LEASED PROPERTY**

Lessee covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Lessee will peaceably and quietly yield and surrender possession of the Property and, if required under Section 2.3, the Improvements to Ground Lessor, subject to reasonable wear and tear and damage by casualty and condemnation. An action of forcible detainer shall lie if Lessee holds over after a demand for possession is made by Ground Lessor.

### **15. TRANSFERS**

Except as otherwise provided in this Article 15 and subject to all statutory and regulatory requirements applicable to this leasehold, Lessee shall have no right to transfer any legal or beneficial interest in Lessee's estate hereunder without Ground Lessor's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Ground Lessor consents to: (i) a transfer by Lessee to any Leasehold Mortgagee in compliance with Article 7 hereof, and to an assignment or other transfer by any Leasehold Mortgagee to a third party purchaser following a foreclosure sale or acceptance by the Leasehold Mortgagee or its designee of a deed-in-lieu of foreclosure; (ii) any residential Lessee lease by Lessee to households qualifying; (iii) any transfer of a partnership interest

in the Lessee; and (iv) any transfer of a partnership interest in Lessee that occurs in connection with the exercise of general partner removal rights by the Tax Credit Investor. Furthermore, notwithstanding the foregoing, following completion of construction of the Improvements, Ground Lessor acknowledges that Ground Lessor will not unreasonably withhold, delay or condition a request by Lessee for Ground Lessor's consent to an internal reorganization of the corporate or partnership structure of Lessee or the general partner of Lessee.

Upon the granting of any consent (deemed or otherwise) by Ground Lessor with respect to a transfer by Lessee, this Lease shall be binding upon the assignee, Leasehold Mortgagees and other transferees.

## **16. GENERAL INDEMNIFICATIONS**

### **16.1. Indemnifications**

**16.1.1. By Ground Lessor.** Subject to the Oregon Tort Claims Act and the Oregon Constitution, Ground Lessor agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Lessee) the Lessee, its officers, commissioners, directors, affiliates, agents and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees and expenses), arising out of the performance of, or arising from or relating to Ground Lessor's obligations under this Lease, except to the extent caused by the negligence or willful misconduct of Ground Lessor.

These indemnities shall survive the termination of the Lease.

**16.1.2. By Lessee.** Notwithstanding any other provision of this Lease, the Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Ground Lessor) the Ground Lessor, its officers, commissioners, directors, affiliates, agents and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees and expenses), arising directly or indirectly out of the performance of, or arising from or relating to Lessee's obligations under, this Lease or the construction or operation of the Project, except to the extent caused by the negligence or willful misconduct of Ground Lessor. In addition, if any contractor or subcontractor which performed any construction work for the Lessee or the Lessee's affiliates on the Improvements shall assert any claim against the Ground Lessor on account of any damage alleged to have been caused by the Lessee or the Lessee's

affiliates, their members, partners, officers, commissioners, directors, affiliates (other than Ground Lessor), agents or employees, or their construction contractors, the Lessee shall defend at its own expense any suit based upon such claim; and if any judgment or claim against the Ground Lessor shall be allowed, the Lessee shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith.

These indemnities shall survive the termination of the Lease.

## **17. MISCELLANEOUS PROVISIONS**

- 17.1. Headings.** Titles of the sections of this Lease are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 17.2. Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and other-wise mentioned.
- 17.3. Notices.** All, notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express, or another recognized, reputable overnight courier service, or by hand delivery by a recognized, reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other party any notices, requests, demands or other communications required or permitted to be given hereunder by such party.

(a) To Ground Lessor: City of Portland  
 Portland Housing Bureau  
 421 SW 6<sup>th</sup> Ave., Suite 500  
 Portland, OR 97204  
 Attn: Asset Management

With a copy to: City Attorney's Office



1221 SW 4<sup>th</sup> Avenue, suite 430  
 Portland, OR 97201  
 Attn: Lisa Gramp

(b) To Lessee: 72ND AND FOSTER  
 LIMITED PARTNERSHIP  
 c/o REACH Community Development, Inc.  
 4150 SW Moody Avenue  
 Portland, OR 97239  
 Attention: Executive Director

With a Copy to: Kantor Taylor Nelson Evatt & Decina PC  
 901 Fifth Ave, Suite 4000  
 Seattle, WA 98164  
 Attn:

(c) To Key Bank: KeyBank National Association  
 Community Development Lending

Attention: Loan Administration

With a Copy to:

(d) To OHCS: Oregon Housing and Community  
 Services Department  
 725 Summer St. NE, Suite B  
 Salem, OR 97301

(e) To KEYBANK:

(f) For so long as the Tax Credit Investor is a limited partner of Lessee, a copy of all notices to the Lessee shall also be delivered to the Tax Credit Investor at the address set forth in Section 7.13. For so long as OHCS is the beneficiary of a Restrictive Covenant burdening the Property, a copy of all notices to the Lessee shall also be delivered to OHCS at the address set forth above.

- 17.4. Contact Information.** If either Party's notice contact person or address changes, then that Party shall provide the other Party with the updated contact information.
- 17.5. Counterparts.** This Lease may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 17.6. Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Lease shall be considered a waiver of any other rights of the Party making the waiver. No waiver by PHB or Lessee of any provision of this Lease or any breach thereof, shall be of any force or effect unless in writing and no such waiver shall be construed to be a continuing waiver.
- 17.7. Governing Law, Venue, Consent to Jurisdiction.** This Lease shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Lease by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Lease, hereby consents to the *in personam* jurisdiction of said courts.
- 17.8. Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 17.9. Construction.** In construing this Lease, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
- 17.10. Severability.** If any clause, sentence or any other portion of the terms and conditions of this Lease becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- 17.11. Entire Agreement.** This Lease and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Lease.

- 17.12. Amendments and Modifications.** Any modifications to this Lease must be made in writing and executed by all Parties, with the approval of Council, if required. Notwithstanding this general requirement, the PHB Director may approve minor modifications to this Lease without Council approval. Any modifications to this Lease made without the approval of Council must include an acknowledgement by PHB's legal counsel that such approval is not necessary.
- 17.13. Successors and Assigns.** Subject to the provisions of Sections 9.1 and 9.2, the benefits conferred by this Lease, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.
- 17.14. No Partnership.** Nothing contained in this Lease or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties.
- 17.15. Non-waiver of Government Rights.** Subject to the terms and conditions of this Lease, by making this Lease and delivery of the Deed, PHB is specifically not obligating itself, the City, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Property, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.
- 17.16. Approvals.** Where this Lease requires the approval of PHB, PHB will approve or disapprove in writing within thirty (30) days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary, and further excepting construction change orders, to the extent governed by applicable loan documents, which will be processed according to the applicable loan documents. Failure by PHB to approve or disapprove within said period of time shall be deemed an approval. Any disapproval shall state the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to PHB's sole discretion in this Lease. Lessee, upon receipt of such disapproval, shall revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to PHB within forty-five (45) days after receipt of the notice of disapproval.
- 17.17. Approval by PHB Director.** Except as provided for elsewhere in this Lease, whenever consent or approval by PHB is required under the terms of this Lease, all such consents or approvals shall be given in writing from the Director of PHB or her designee.
- 17.18. Time of Essence.** Time is of the essence of this Lease.

**17.19. No Third-Party Beneficiary Rights.** No person not a party to this Lease is an intended beneficiary of this Lease, and no person not a party to this Lease shall have any right to enforce any term of this Lease.

**17.20. Incorporation.** The exhibits attached to this Lease are incorporated into and made a part of this Lease.

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

Executed in multiple counterparts as of the Effective Date.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, this Lease is made and entered into in multiple original counterparts on the Effective Date.

“GROUND LESSOR”

CITY OF PORTLAND, a municipal corporation  
in the State of Oregon, acting by and through the  
Portland Housing Bureau as the duly designated  
housing agency of the City of Portland

**DO NOT EXECUTE**

\_\_\_\_\_  
Kurt Creager, Director

APPROVED AS TO FORM:

**DO NOT EXECUTE**

\_\_\_\_\_  
Lisa Gramp, Attorney  
City Attorney's Office

“LESSEE”

72ND AND FOSTER LIMITED  
PARTNERSHIP

By: 72nd and Foster GP LLC  
Its: General Partner

By: REACH Community Development, Inc.  
Its: Manager and Sole Member

By: **DO NOT EXECUTE**  
Name:  
Title:



STATE OF OREGON           )  
                                           ) ss.  
 County of Multnomah       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Kurt Creager, Director of the Portland Housing Bureau, duly designated housing agency of the City of Portland, on its behalf.

**DO NOT EXECUTE**  
 \_\_\_\_\_  
 Notary Public for Oregon

STATE OF OREGON           )  
                                           ) ss.  
 County of \_\_\_\_\_       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_, \_\_\_\_\_ of REACH Community Development, Inc., Manager and Sole Member of 72nd and Foster GP LLC, General Partner of 72ND AND FOSTER LIMITED PARTNERSHIP, an Oregon limited partnership, on its behalf.

\_\_\_\_\_  
 Notary Public for Oregon

**EXHIBIT A****EXHIBIT A TO GROUND LEASE****Legal Description****EXHIBIT B TO GROUND LEASE****Property****NOT INCLUDED IN THE LEASEHOLD ESTATE****GROUND LEASE ADDENDUM**

(Provisions Regarding Senior Loans)

Lessee's ownership interest in the Project and its leasehold interest in the Property pursuant to this Lease have been pledged to KeyBank, a national banking association ("**KeyBank**"), as security for a loan to be made by KeyBank to Lessee in the principal amount of up to \$17,168,571, as construction financing for the Project. The parties anticipate that Lessee's ownership interest in the Project and its leasehold interest in the Property pursuant to this Lease will ultimately be pledged to the KeyBank, as security for a loan to be made by KeyBank to Lessee in the principal amount of up to approximately \$7,215,492, as permanent financing for the Project. The terms "**Senior Lender**" and "**Senior Loan**" shall initially apply to KeyBank. The Senior Loan will be evidenced and/or secured by a leasehold deed of trust (the "**Senior Deed of Trust**"), a promissory note and other security documents in favor of the Senior Lender (collectively, the "**Senior Loan Documents**"). Ground Lessor and Lessee hereby agree that, notwithstanding any other provision of this Lease, the following provisions shall apply for so long as the Senior Loan is outstanding:

1. Leasehold Mortgage. The Senior Loan, as evidenced by the Senior Deed of Trust and the other Senior Loan Documents, is or will be deemed a "Leasehold Mortgage" for all purposes under the Lease, and Key Bank will be deemed a "Leasehold Mortgage" for all purposes under the Lease.

2. Use of Property Following a Foreclosure. In the event Senior Lender, its successors or assigns, takes title to Lessee's leasehold interest in the Property pursuant to a foreclosure of the Senior Deed of Trust, or a conveyance in lieu of foreclosure (in either case, a "**Foreclosure**"), or Senior Lender or a successor or assign enters into a new Lease of the Property with Ground Lessor pursuant to Section 7.5 of the Lease (a "**New Lease**"), then in either case Section 1.3 of the Lease shall be deemed to be amended to read as follows in its entirety, as of the date that the Foreclosure is completed or a New Lease is executed:

Section 1.3. Use. Lessee shall use the Property solely for the operation of a multi-family residential development containing approximately 101 units of housing for occupancy by individuals or families whose income is 80% or less of the area family



adjusted median gross income ("AMI"), as determined from time to time by the U.S. Department of Housing and Urban Development.

3. Ground Lessor Restrictive Covenant. Any Restrictive Covenant (as defined in Section 3.1.2 of the Lease) recorded by Ground Lessor with respect to the Project shall expressly recite that, notwithstanding any Lessee income restrictions set forth in such Restrictive Covenant, in the event of a Foreclosure or the execution of a New Lease following a Foreclosure all income restrictions applicable to the Project pursuant to such Restrictive Covenant shall automatically increase to 80% of AMI as of the date that the Foreclosure is completed or a New Lease is executed.

4. Insurance. In the event of any conflict between the provisions of Article 5 of the Lease, pertaining to insurance, and the provisions of the Senior Deed of Trust and other Senior Loan Documents pertaining to insurance, the provisions in the Senior Deed of Trust and the other Senior Loan Documents shall control for so long as the Senior Loan is outstanding.

5. Eminent Domain. In the event of any conflict between the provisions of Article 9 of the Lease, pertaining to eminent domain and condemnation, and the provisions of the Senior Deed of Trust and other Senior Loan Documents pertaining to any condemnation or eminent domain, the provisions in the Senior Deed of Trust and the other Senior Loan Documents shall control for so long as the Senior Loan is outstanding.

6. Damage or Destruction. In the event of any conflict between the provisions of Article 10 of the Lease, pertaining to fire or other damage or destruction of the Project, and the provisions of the Senior Deed of Trust and other Senior Loan Documents pertaining to any damage destruction, or other casualty with respect to the Project, the provisions in the Senior Deed of Trust and the other Senior Loan Documents shall control for so long as the Senior Loan is outstanding.

7. Transfers. The provisions of Article 15 of the Lease, pertaining to transfers of interests in Lessee and in Lessee's constituent partners, are subject to the provisions of the Senior Deed of Trust and other Senior Loan Documents pertaining to permitted transfers by Lessee and by Lessee's general partner and limited partner(s), and shall be deemed superseded by such provisions in the Senior Loan Documents for so long as the Senior Loan is outstanding.

8. Cross Default. Ground Lessor and Lessee hereby acknowledge that a default by Lessee under the Lease shall constitute a default under the Senior Loan Documents.

9. Attornment by Ground Lessor. In the event that Senior Lender acquires Lessee's interest under the Lease by foreclosure or conveyance in lieu of foreclosure, then Ground Lessor shall attorn to Senior Lender and recognize Senior Lender as Ground Lessor's lawful Lessee under the Lease. In addition, following any such foreclosure or conveyance in lieu of foreclosure and Senior Lender's subsequent sale of its interest in the Lease to a third-party purchaser, Ground Lessor shall attorn to such third-party purchaser and recognize such third-party purchaser as Ground Lessor's lawful Lessee under the Lease. Ground Lessor shall execute

and deliver any reasonable document or instrument required by Senior Lender or such third-party purchaser confirming the attornments agreed to hereunder.

10. References to Senior Lender. All references to Senior Lender in this Addendum shall be deemed to include Senior Lender's successors, assigns, transferees, and participating lenders.

11. Notice Address. For purposes of any notices to KeyBank under the Lease, the following address shall be used in accordance with the provisions of Section 17.11 of the Lease:

Network for Oregon Affordable Housing  
1020 SW Taylor, Suite 585  
Portland, OR 97205  
Attn: Executive Director

12. Non-Funding of Senior Loan. In the event the Senior Loan is not funded, for any reason, this Addendum shall be deemed null and void and of no effect whatsoever.

[End.]