# **EXECUTION VERSION** (Building M Affordable Building Ground Lease)

## CONSTRUCTION AND GROUND LEASE AGREEMENT

by and between

BOSTON HOUSING AUTHORITY,

as Landlord

and

BUILDING M OWNER LLC, as Tenant

Dated as of June 30, 2023

for

40 Corey Street, Charlestown, Massachusetts, a/k/a Building M

# CONSTRUCTION AND GROUND LEASE AGREEMENT

# TABLE OF CONTENTS

ARTICLE I - DEFINITIONS	2
ARTICLE II - DEMISE OF PREMISES; CONDITION	16
2.1. Demise of Premises	16
2.2. Title and Condition of Premises	16
2.3. No Representations by Landlord	16
2.4. Easements	16
ARTICLE III - TERM	17
3.1. Commencement Date	17
3.2. Term	17
ARTICLE IV - RENT AND OTHER CHARGES	17
4.1. Fixed Rent for Premises.	17
4.2. Supplemental Rent	17
4.3. Participating Rent	17
4.4. Transaction Rent	18
4.5. Payment of Rent.	21
4.6. Books and Records; Audit Rights	22
4.7. Transaction Statement	24
4.8. Additional Rent	24
4.9. Net Lease	25
4.10. Taxes and Other Charges	25
4.11. Permitted Contests	26
4.12. Landlord Management Fee	27
ARTICLE V - USE AND QUIET ENJOYMENT; SURRENDER	27
5.1. Use; Conditions	27
5.2. Provisions Regarding Cuts to Section 8 Rental Subsidies	29
5.3. Owners' Association	30
5.4. Local Tenant Organization	30

5.5. No Waste	31
5.6. Permits and Approvals	31
5.7. Use Agreement, HAP Contract, Others	31
5.8. Quiet Enjoyment	32
5.9. Ownership of Improvements	32
5.10. Tenant's Property and Yield Up	32
5.11. Surrender of Premises	33
5.12. Construction and Maintenance Easements	33
5.13. Holder Agreement	33
5.14. Amendments to Approved Development Plan	33
ARTICLE VI - RIGHT TO MORTGAGE; PROTECTION OF PERMITTED LEASEHO	LD
MORTGAGEES	34
6.1. Right to Mortgage	34
6.2. No Subordination of Fee	35
6.3. Permitted Leasehold Mortgagee's Right to Take Possession	35
6.4. Right of Permitted Leasehold Mortgagee to Cure Defaults	35
6.5. Protection of Interests of Permitted Leasehold Mortgagee	37
6.6. Obligations and Rights of a Permitted Leasehold Mortgagee in Possession	38
6.7. No Modification or Termination By Tenant	39
6.8. Permitted Leasehold Mortgagee's Rights To New Lease	39
6.9. Limitation on Liability of Permitted Leasehold Mortgagee	39
6.10. Refinancing	40
6.11. Cooperation with Lenders	40
6.12. Estoppel Certificates	40
6.13. Recognition and Confirmation Agreement	41
6.14. Undertakings of Permitted Leasehold Mortgagee	41
6.15. Landlord's Right to Mortgage	41
ARTICLE VII - DESIGN AND CONSTRUCTION OF IMPROVEMENTS AND ANY	
MAJOR ALTERATIONS	41
7.1. The Improvements	41
7.2 Sahadula for Construction	11

7.3. Construction Requirements	42
7.4. Monthly Progress Reports	42
7.5. Certificate of Compliance	42
7.6. Coordination; Inspection	42
7.7. Delivery of Final Plans and Specifications to Landlord, Change Orders	43
7.8. Alterations of Improvements	43
7.9. Review Process	44
7.10. Record of Plans	46
7.11. Design Documents	46
7.12. Design Services Contract	46
7.13. Construction Contract	47
7.14. Final Construction Documents	47
7.15. Arbitration of Design Issues	49
7.16. Liens	49
7.17. Government Relations	49
7.18. Construction Representatives; Cooperation	51
ARTICLE VIII - MAINTENANCE, REPAIR AND OPERATION	51
8.1. Maintenance and Repair; Operation	51
8.2. Inspection by Landlord	51
8.3. Environmental Matters	52
ARTICLE IX – INDEMNITY AND INSURANCE	56
9.1. Indemnification	56
9.2. Insurance Requirements	57
9.3. Insurance Provisions	59
9.4. Insurance Primary; No Separate Insurance	60
ARTICLE X - CASUALTY	61
10.1. Collection of Claims	61
10.2. Special Account	61
10.3. Restoration	61
10.4. Original or Modified Plans	61
10.5. Commencement and Completion of Restoration	62

10.6. Determination of Whether or Not to Restore	62
10.7. Allocation of Proceeds	62
10.8. Tenant's Responsibilities on Termination	62
10.9. Rent Deferred if Improvements Unusable	63
10.10. Demolition and Debris Removal Insurance	63
ARTICLE XI - CONDEMNATION	63
11.1. A Taking	63
11.2. Special Account	64
11.3. Total Taking	64
11.4. Partial Taking: Procedures and Criteria for Course of Action	64
11.5. Restoration	65
11.6. Termination upon Non-Restoration	65
11.7. Temporary Taking	66
11.8. Demolition and Debris Removal Insurance	66
ARTICLE XII - DEFAULT; REMEDIES	66
12.1. Events of Default	66
12.2. Remedies for Default	68
12.3. Termination of Lease for Tenant's Default	69
12.4. Rights Upon Termination	69
12.5. Other Remedies; Management Control	70
12.6. Injunctive Relief	71
12.7. Performance by Landlord	71
12.8. Legal and Other Costs	71
12.9. Remedies Cumulative	71
12.10. Waiver as to Surety	72
12.11. Force Majeure	72
12.12. No Special Damages	72
ARTICLE XIII - RESTRICTIONS ON ASSIGNMENT AND TRANSFER	72
13.1. Selection of Tenant	72
13.2. Prohibited Transfers	73
13.3. Permitted Transfers	73

13.4. Landlord's Consent or Confirmation	76
13.5. Right of First Offer	76
13.6. Restrictions on Assignment by Landlord	81
ARTICLE XIV - SUBLETTING	81
14.1. Subletting	81
14.2. Utility Charges to Residents of Affordable Units	82
ARTICLE XV - CURE RIGHTS	82
15.1. Cure Rights	82
ARTICLE XVI - NON-DISCRIMINATION AND EMPLOYMENT OPPORTUNITIES	84
16.1. Compliance with Laws and Regulations	84
16.2. Information and Reports	85
16.3. MBE and WBE Participation; Minority and Women Employment	85
16.4. Resident Employment	86
ARTICLE XVII - REPRESENTATIONS AND WARRANTIES; AFFIRMATIVE	
COVENANTS	87
17.1. Representations and Warranties	87
17.2. No Disqualified Person	87
17.3. No Reliance	87
17.4. Maintenance of Business and Existence	87
17.5. Conduct of Business	88
17.6. Conduct of Business	88
17.7. Notification of Defaults	88
17.8. Notification of Disputes	88
17.9. Notification of Attachments	88
17.10. Access to Records and Premises	88
17.11. Agency Reports	89
17.12. Further Information	89
17.13. Further Assurances	89
17.14. Current Information	89
17.15. Legal Costs	89
17.16. Notice; Further Information and Assurances	89

17.17. Fee Ownership of Premises	. 89
ARTICLE XVIII – MISCELLANEOUS PROVISIONS	90
18.1. Designation of Authorized Representatives	. 90
18.2. Notice of Lease	90
18.3. No Merger of Title	90
18.4. No Waiver	90
18.5. No Broker	90
18.6. Arbitration	90
18.7. Consents and Approvals	91
18.8. Time of Essence	91
18.9. Due Diligence and Good Faith	. 91
18.10. Survival of Obligations	. 92
18.11. Supplemental Documents	. 92
18.12. Invalidity of Provisions	. 92
18.13. Binding Effect	. 92
18.14. Pronouns	. 93
18.15. Rights of Others	. 93
18.16. Covenants Running with the Premises	. 93
18.17. Amendments	. 93
18.18. Captions and Headings	. 93
18.19. Governing Law	. 93
18.20. Disclaimer of Relationship	. 93
18.21. Multiple Counterparts	. 93
18.22. Electronic Signatures	. 93
18.23. Entire Agreement	. 94
ARTICLE XIX - NOTICES AND PAYMENTS	. 94
19.1. Notices, Demands and Other Instruments	. 94
ARTICLE XX - EXHIBITS	. 95
20.1 Exhibits and Schedules	95

This CONSTRUCTION AND GROUND LEASE AGREEMENT, dated as of June 30, 2023 (this "Lease"), is made by and between the BOSTON HOUSING AUTHORITY, a public body politic and corporate organized and existing under Chapter 121B of the General Laws of the Commonwealth of Massachusetts and Chapter 88 of the Acts of 1989, with its principal office at 52 Chauncy Street, Boston, Massachusetts 02111, as Landlord ("Landlord"), and BUILDING M OWNER LLC, a Delaware limited liability company, having its principal place of business c/o Leggat McCall Properties LLC, 10 Post Office Square, 13<sup>th</sup> Floor, Boston, Massachusetts 02109, as Tenant ("Tenant"). Landlord and Tenant are sometimes individually referred to as a "Party" and, collectively, as the "Parties".

#### **RECITALS:**

All capitalized terms used in this Lease, unless otherwise expressly defined herein, shall have the meanings set forth in **Article I** hereof.

WHEREAS, Landlord is the owner of certain Premises as more particularly described in **Exhibit A** attached hereto and on the Plan attached hereto as **Exhibit B** (the "**Premises**").

WHEREAS, Developer (as defined below) and Landlord entered into that certain Development Agreement for the Redevelopment of the Charlestown/Bunker Hill Public Housing Site, dated as of April 28, 2021 (as amended, restated, replaced, modified, extended and/or supplemented from time to time, the "Development Agreement"), with respect to the development, construction, rehabilitation, leasing, operation, maintenance and management of up to 2,699 affordable and market-rate residential rental apartment units on the site owned by Landlord known as the Charlestown/Bunker Hill Public Housing Site containing approximately 25.7971 acres (the "Site") and, as of the date of the Development Agreement, 1,100 public housing units. The Premises constitute a portion of the Site. Developer has requested Landlord to enter into this Lease with Tenant pursuant to the Development Agreement. Landlord has approved Tenant as the tenant of the Premises. Tenant has agreed, pursuant to this Lease, to construct, operate, and manage on the Premises 102 Units (as defined below), all of which will be Affordable Units.

WHEREAS, Landlord wishes to lease to Tenant, and Tenant wishes to lease from Landlord, the Premises; and

WHEREAS, the execution and delivery of this Lease has been duly authorized by Landlord; and

WHEREAS, the execution and delivery of this Lease has been duly authorized by Tenant;

NOW, THEREFORE, in consideration of the rent and the mutual covenants and agreements and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

#### ARTICLE I - DEFINITIONS

In this Lease, the following words shall have the following meanings, respectively:

- 1.1. "Act" shall mean the United States Housing Act of 1937 (42 U.S.C. §1437, et seq), as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.
- 1.2. "<u>Additional Rent</u>" shall mean all amounts due and payable by Tenant under this Lease other than Rent.
- 1.3. "Affiliate" shall mean any Person which is a partner with or in, or a shareholder, or a member, or a beneficiary, of Tenant, or which owns or Controls Tenant, or a partner, or member, or shareholder, or beneficiary of any Person which owns or Controls Tenant; or any Person owned or Controlled, directly or indirectly, by Tenant or by any of the partners, or shareholders, or members, or beneficiaries of Tenant or which is under common ownership of any type with Tenant. CREA Bunker Hill Building M, LLC and CREA SLP, LLC shall not be deemed to be an Affiliate unless it or its affiliate is then acting as the Managing Member of Tenant.
- 1.4. "Affordable Unit" shall mean any of the 102 Units that are restricted to occupancy by Assisted Residents whose Total Tenant Payment is regulated by applicable Legal Requirements (currently 30% of the household's adjusted gross income).
  - 1.5. "Approvals" shall have the meaning set forth in **Section 5.6**.
- 1.6. "Approved Development Plan" shall mean the Master Development Plan (as defined in the Development Agreement) for the Project, as approved by Landlord, and as the same may be amended from time to time, subject to **Section 5.14** hereof. The Approved Development Plan, together with any approved amendments from time to time thereof, shall be kept on file by Landlord.
  - 1.7. "Architect" shall have the meaning set forth in **Section 7.12**.
  - 1.8. "Assisted Residents" shall mean BHA Residents and Income-Qualified Residents.
  - 1.9. "AUL" shall have the meaning set forth in Section 8.3(a).
  - 1.10. "Award" shall have the meaning set forth in Section 11.2.
  - 1.11. "Bankruptcy Laws" shall have the meaning set forth in Section 12.1.
- 1.12. "BHA Residents" shall mean residents who were in lawful occupancy at the Site as of or since September 12, 2019 (the date of the Letter of Assurance), including those who have temporarily relocated with the right to return to the Site and remain eligible to be rehoused

pursuant to the Letter of Assurance and Relocation Plan (as defined in the Local Tenant Organization Agreement).

- 1.13. "Books and Records" shall have the meaning set forth in Section 4.6.
- 1.14. "BPDA" shall mean the Boston Redevelopment Authority, a public body politic and corporate, organized and existing pursuant to Chapter 121B of the Massachusetts General Laws, as amended, d/b/a Boston Planning & Development Agency, its successor and assigns.
- 1.15. "BPDA Regulatory Agreement" shall mean that certain Development Regulatory Agreement, dated as of May 15, 2021 by and between the BPDA and Landlord.
- 1.16. "<u>Certificate of Compliance</u>" shall mean the certificate to be executed and delivered to Tenant by Landlord, substantially in the form attached hereto as <u>Exhibit F</u>, which Landlord shall issue pursuant to **Section 7.5** hereof.
- 1.17. "<u>Certificate of Occupancy</u>" shall mean the certificate issued by the City official having jurisdiction over the construction of the Improvements which provides that a particular affected portion of the Improvements may be legally occupied.
- 1.18. "<u>Change in Control</u>" shall mean the sale, transfer, conveyance, or assignment of beneficial interests in Tenant to a third party transferee, whether directly or by sale, transfer, conveyance or assignment of underlying beneficial interests, which also results in a change in Control of Tenant.
  - 1.19. "City" shall mean the City of Boston, Massachusetts.
- 1.20. "Commenced", when used in the context of construction of the Improvements, shall have the meaning set forth in **Section 7.2**.
  - 1.21. "Commencement Date" shall mean the date of this Lease.
- 1.22. "Common Areas" shall mean the portions of the Site now or hereafter ground leased by the Owners' Association from Landlord which may or will contain publicly accessible open spaces, the Community Center (as defined in the Owners' Association Agreement), certain parking areas and small retail pavilions, over which areas the Owners' Association holds the rights for common use and enjoyment by Tenant and the other ground tenants of the Site and their permittees, together with any other areas or services for which the Owners' Association has responsibility under the Owners' Association Agreement.
- 1.23. "Common Expense Assessments" shall have the meaning set forth in the Owners' Association Agreement.
  - 1.24. "Commonwealth" shall mean The Commonwealth of Massachusetts.
  - 1.25. "Compliance Period" shall have the meaning set forth in Section 13.5(a).

- 1.26. "Construction Management Plan" shall have the meaning set forth in Section 7.6.
- 1.27. "Construction Schedule" shall have the meaning set forth in Section 7.4.
- 1.28. "Contractor" shall have the meaning set forth in Section 7.13.
- 1.29. "Control", when used in connection with any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or polices of a Person, whether through the ownership of voting securities, general partnership, or managing member interests, by contract, or otherwise, which power may be subject to the granting of major decision consent rights to a third party having a direct or indirect ownership interest in such Person. "Controlling" and "Controlled" shall have correlative meanings.
  - 1.30. "Corrective Action Plan" shall have the meaning set forth in Section 8.3(f).
- 1.31. "<u>CRA</u>" shall mean the Charlestown Resident Alliance, Inc., a Massachusetts non-profit corporation, as of the date hereof, the Local Tenant Organization at the Site.
- 1.32. "<u>CRA Permanent Funding Assessments</u>" shall have the meaning set forth in the Owners' Association Agreement.
  - 1.33. "Curable Nonmonetary Default" shall have the meaning set forth in **Section 6.4**.
  - 1.34. "Curing Party" shall have the meaning set forth in **Section 15.1**.
- 1.35. "<u>Default Rate</u>" shall mean an interest rate equal to the Prime Interest Rate plus five (5) percent.
  - 1.36. "Deposit" shall have the meaning set forth in Section 13.5(d).
- 1.37. "<u>Design Development Submittal</u>" shall mean the drawings and other documents which fix and describe the size and character of the proposed Improvements or Major Alterations as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate, submitted by Tenant to Landlord in accordance with **Section 7.9**.
- 1.38. "<u>Developer</u>" shall mean Bunker Hill LandCo LLC, a Delaware limited liability company, or its permitted successor or assign.
  - 1.39. "Development Agreement" shall have the meaning set forth in the Recitals.
  - 1.40. "<u>Disqualified Person</u>" shall mean:
- (i) Any Person, or any Person whose operations are Controlled by a Person, who has been convicted of or has pleaded guilty in a criminal proceeding to a felony concerning organized crime; or

- (ii) Any Person organized in or Controlled from a country, the effects of the activities with respect to which are regulated pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. §2405, as amended; or
- (iii) Any Person with whom Landlord is restricted from doing business under the regulations of the Office of Foreign Asset Control of The Department of the Treasury of the United States of America ("OFAC") (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any other applicable statute, regulation (including, without limitation, 31 CFR Part 595, 31 CFR Part 596 and 31 CFR Part 597), or executive order (including, without limitation, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action promulgated by the United States of America prohibiting or restricting the Transfer of an interest in property to any person or entity; or
- (iv) Any Person (other than any direct or indirect owner of Investor Member or Special Member) who has ever owned property upon which Landlord, its affiliates, or the City foreclosed due to failure to pay (a) real estate taxes, (b) a loan secured by a mortgage to Landlord, its affiliates, or the City, or (c) other moneys owed to Landlord, its affiliates, or the City;
- (v) Any Person (other than any direct or indirect owner of Investor Member or Special Member) who is delinquent by more than twelve (12) months in the payment of real estate taxes, payments in lieu of taxes, water and sewer charges, rents or other indebtedness to the City or Landlord and is not contesting such payments in accordance with **Section 4.11** or applicable Legal Requirements;
- (vi) Any Person who has been convicted of violating any Legal Requirement regarding conditions of human habitation, fair housing, housing discrimination or tenant harassment;
- (vii) Any Person who has been debarred in accordance with Legal Requirements from transacting business with HUD, the Commonwealth or the City; or
- (viii) Any Controlled or Controlling affiliate of any of the Persons described in paragraphs (i)-(vii) above.
- 1.41. "Easement" shall mean that certain Drainage Easement Agreement between Landlord in favor of Tenant benefitting the Premises to be recorded with the Suffolk County Registry of Deeds contemporaneously with the recording of the Notice of Lease in the form of **Exhibit P** hereto.
  - 1.42. "Environmental Laws" shall have the meaning set forth in Section 8.3.

- 1.43. "Event of Default" shall mean those events defined in Article XII hereof.
- 1.44. "Excluded Environmental Liability" shall have the meaning set forth in **Section 8.3**.
  - 1.45. "Extended Completion Period" shall have the meaning set forth in Section 7.2.
- 1.46. "<u>Extrapolated</u>" or "<u>Extrapolation</u>"" shall have the meaning set forth in **Section** 13.5(c).
- 1.47. "<u>Final Plans and Specifications</u>" shall mean a complete set of construction drawings and specifications setting forth in detail the requirements for the construction of the Improvements or Major Alterations submitted by Tenant to Landlord in accordance with **Section 7.9**, as the same may be amended from time to time by a Limited Change Order or a Major Change Order.
  - 1.48. "Fixed Rent" shall have the meaning set forth in **Section 4.1**.
  - 1.49. "force majeure event" shall have the meaning set forth in Section 12.11.
  - 1.50. "Foreclosure Event" shall have the meaning set forth in Section 6.4(e).
  - 1.51. "GAAP" shall have the meaning set forth in Section 4.6(a).
- 1.52. "<u>HAP Contract</u>" shall mean a housing assistance payment contract between Landlord and Tenant entered into in accordance with Section 8 of the Act (as implemented by 24 CFR part 983).
  - 1.53. "Hazardous Materials" shall have the meaning set forth in **Section 8.3**.
  - 1.54. "Holders" shall have the meaning set forth in Section 5.13.
- 1.55. "<u>HUD</u>" shall mean the United States Department of Housing and Urban Development
- 1.56. "<u>Improvements</u>" shall mean the buildings, parking lots, driveways, sidewalks, landscaping and all other permanent structures, facilities, features, and infrastructure to be constructed on the Premises by Tenant in accordance with the Final Plans and Specifications.
- 1.57. "<u>IM/SM Interests</u>" shall mean the Investor Member's and Special Member's membership interests in Tenant, collectively.
- 1.58. "Income-Qualified Residents" shall mean Residents, other than BHA Residents, whose annual household income meets applicable Legal Requirements for occupancy of the Affordable Units, i.e., not exceeding fifty percent (50%) of the SMSA Income, on the Initial Occupancy Date, or whose annual household income may exceed that limit but who are

otherwise deemed eligible for Project-Based Vouchers pursuant to Legal Requirements or the Management Plan.

- 1.59. "Index" shall mean the Consumer Price Index All Items for All Urban Consumers (Unadjusted), for U.S. City Average (1982 1984 = 100), published by the Bureau of Labor Statistics, U.S. Department of Labor. If the Bureau of Labor Statistics should cease to publish the Index in its present form and calculated on the present basis, a comparable index or an index reflecting changes in prices determined in a similar manner shall be reasonably designated by Landlord in substitution. The Index for any month relevant to the application of this definition shall be that published by the Bureau of Labor Statistics for such month if computed for such month, or otherwise for the most recent month immediately preceding the month to which the application is to be made. Since an Index relevant to the application of this definition may not be available as of the date on which a determination of the applicability is to be made, necessary adjustments between Landlord and Tenant shall be made retroactively, within a reasonable time after required computations can readily be completed.
- 1.60. "<u>Initial Occupancy Date</u>" shall mean, with respect to any Resident, the date on which such Resident first occupies a Unit within the Improvements located on the Premises.
  - 1.61. "Insurable Property" shall have the meaning set forth in Section 9.2.
  - 1.62. "Insurance Proceeds" shall have the meaning set forth in **Section 10.2**.
  - 1.63. "Invested Capital" shall have the meaning set forth in **Section 4.4**.
- 1.64. "Investor Member" shall mean CREA Bunker Hill Building M, LLC, a Delaware limited liability company, and its successors and permitted assigns under the Operating Agreement (other than any assignee that is the Managing Member or an affiliate or designee thereof).
  - 1.65. "IRR" shall have the meaning set forth in **Section 4.4.**
- 1.66. "Junior Loans" shall mean any unsecured loans made to Tenant by its members, partners or beneficial owners or by third parties for the purpose of funding operating deficits, capital expenditures, required repairs and replacements, construction cost overruns, or other cash shortfalls in order for Tenant to fulfill its obligations under this Lease and the Operating Agreement, or any principal reduction on outstanding indebtedness owed to any Permitted Leasehold Mortgagee, provided that any such loans shall be permitted to bear interest at a then market rate, and solely for purposes of the calculation of Participating Rent, Transaction Rent, and Leveraged Operating Cash Flow, (i) the amount and purpose of, and interest rate applicable to, such loans shall be subject to the approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed and (ii) such loans will be listed, and included in the applicable computations described, on Exhibit J. In the event of a disagreement between the parties as to the characterization, terms or approval of a loan as a Junior Loan hereunder solely for purposes of the calculation of Participating Rent, Transaction Rent, and Leveraged Operating Cash Flow, the disagreement will be submitted to arbitration in accordance with Section 18.6. For the

avoidance of doubt, Landlord shall not have any right to object to or otherwise prohibit the funding of any Junior Loan required or permitted to be funded pursuant to the terms of the Operating Agreement and such funding shall not result in an Event of Default hereunder, but no Junior Loan shall be included in the calculation of Participating Rent, Transaction Rent or Leveraged Operating Cash Flow unless it has been approved by Landlord as provided in clause (i) above.

- 1.67. "Landlord" shall have the meaning set forth in the first sentence of this Lease.
- 1.68. "Landlord Management Fee" shall have the meaning set forth in Section 4.12.
- 1.69. "<u>Landlord Management Services</u>" shall have the meaning set forth in **Section 4.12**.
  - 1.70. "Landlord ROFO" shall have the meaning set forth in Section 13.5(a).
- 1.71. "<u>Landlord's Acceptance Notice</u>" shall have the meaning set forth in **Section** 13.5(d).
- 1.72. "<u>Lease</u>" shall mean this Construction and Ground Lease Agreement, as the same may be amended, restated, replaced, modified, extended and/or supplemented from time to time.
- 1.73. "<u>Legal Requirements</u>" shall mean all present and future laws, statutes, ordinances, orders, codes, rules and regulations of all federal, state, and local governmental entities, subdivisions, agencies, authorities, or instrumentalities, and the applicable departments, boards and commissions thereof, applicable to the Premises, the Improvements, the Units or to the use or manner of use of the same, or to Tenant.
- 1.74. "<u>Letter of Assurance</u>" shall mean the Relocation and Rehousing Rights Letter of Assurance dated September 12, 2019 by and among Landlord, the predecessor-in-interest to the Developer, and the CRA.
- 1.75. "Leveraged Operating Cash Flow" shall be calculated as follows using the Statement of Cash Flows from the audited GAAP financing statements of Tenant: net cash provided (used) by operating activities excluding the payment of Participating Rent plus net cash provided (used) in investing activities minus principal payments made on a Permitted Leasehold Mortgage note (or other Permitted Leasehold Mortgagee debt) and any Junior Loans funded from net cash provided by operating activities versus net cash provided by financing activities (i.e., a Refinancing, proceeds from Junior Loans or capital contributions). See **Exhibit J** for a sample calculation of Leveraged Operating Cash Flow.
  - 1.76. "Limited Change Order" shall have the meaning set forth in Section 7.7.
- 1.77. "LMP Transfer Event" shall mean the date on which Leggat McCall LLC, a Massachusetts limited liability company, no longer Controls, directly or indirectly, Tenant, whether on account of a Sale Transfer or some other transfer of ownership interests.

- 1.78. "Local Tenant Organization" shall mean the organization representing the Assisted Residents meeting the requirements set forth in the Local Tenant Organization Agreement.
- 1.79. "Local Tenant Organization Agreement" shall have the meaning set forth in **Section 5.4**.
- 1.80. "Lockout Period" shall mean the period commencing on the date hereof and expiring on the date that the IM/SM Interests are extinguished or are no longer owned by the Investor Member, Special Member and/or any of their affiliates as a result of having been purchased or acquired by the Managing Member, its affiliate or designee in accordance with the Operating Agreement by a Sale Transfer or some other transfer of ownership interests.
  - 1.81. "LTO" shall have the meaning set forth in **Section 5.4**.
- 1.82. "<u>LTO Standards</u>" shall have the meaning set forth in the Local Tenant Organization Agreement.
  - 1.83. "Major Alterations" shall have the meaning set forth in Section 7.8.
  - 1.84. "Major Change Order" shall have the meaning set forth in Section 7.7.
  - 1.85. "Management Agreement" shall have the meaning set forth in **Section 5.1(d)**.
- "Management Plan" shall mean the Management Plan for the Project dated as of 1.86. March 29, 2023, as the same may be amended, restated, replaced, modified, extended and/or supplemented from time to time in accordance with the Local Tenant Organization Agreement. The Management Plan shall be a commercially reasonable plan for the operations and management of the Improvements and other new buildings on the Site, including the Premises, in compliance with the Local Tenant Organization Agreement and all Legal Requirements applicable to the Affordable Units, which Management Plan shall cover issues such as the coordination of property operations and management, with uniform guidelines for managing the affordable units in residential buildings on the Site (including the Affordable Units) and Common Areas, and services for residents at the Site, and which may have attached as riders thereto: (a) the grievance procedure; (b) Affirmative Fair Housing Marketing Plan and Tenant Selection Plan; (c) the BHA form of rider to the Management Agreement, (d) a form of Occupancy Agreement for Affordable Units; and (e) a Resident Orientation Package for Assisted Residents in accessible, plain language, covering lease, rules and regulations, maintenance and repair policies and procedures, rent collection and enforcement policies, housekeeping and pet policies, parking policies, resident handbook and operation of equipment and appliances within their Affordable Unit.
- 1.87. "Managing Member" shall mean the manager, managing member, managing partner, general partner or equivalent of Tenant. As of the date hereof, the managing member of Tenant is BH Building M GP LLC, a Delaware limited liability company.
  - 1.88. "MBE" shall have the meaning set forth in **Section 16.3**.

- 1.89. "MCP" shall have the meaning set forth in **Section 8.3**.
- 1.90. "MWPP" shall have the meaning set forth in **Section 16.3**.
- 1.91. "New Lease" shall have the meaning set forth in **Section 15.1**.
- 1.92. "Noncurable Default" shall have the meaning set forth in **Section 6.4**.
- 1.93. "Occupant" shall mean a Resident, or lessee, sublessee, licensee, occupant or other user of a portion of the Premises or Improvements (or any parking rights relating thereto), whether under a lease, sublease, license, concession, or similar agreement ("Occupancy Agreement"), whether with Tenant or any other Person.
  - 1.94. "Offer Price" shall have the meaning set forth in Section 13.5(c).
- 1.95. "Operating Agreement" means, initially, that certain Amended and Restated Operating Agreement of Tenant dated on or about the date hereof, as the same may be amended, restated, replaced, modified, extended and/or supplemented from time to time, or at such time as there is any new or successor Tenant, by assignment of this Lease, succession or otherwise, the then applicable operating agreement, certificate of incorporation, certificate of formation, partnership agreement, by-laws, or other applicable governing organizational documents of Tenant, as the same may be amended, restated, replaced, modified, extended and/or supplemented from time to time.
  - 1.96. "Operating Budget" shall have the meaning set forth in **Section 4.6**.
  - 1.97. "Outside Completion Date" shall have the meaning set forth in Section 7.2.
  - 1.98. "Owners' Association" shall have the meaning set forth in Section 5.3.
- 1.99. "Owners' Association Agreement" shall mean that certain Owners' Association Agreement dated as of June 30, 2023 by and among Landlord, as special member, Developer, and the Owners' Association, and joined in by Tenant and other ground tenants of the Site, relating to the construction, operation and maintenance of the Common Areas within the Site, and other matters pertaining to the entire Site, as the same may be amended, restated, replaced, modified, extended and/or supplemented from time to time.
  - 1.100. "Partial Taking" shall have the meaning set forth in **Section 11.4**.
  - 1.101. "Participating Rent" shall have the meaning set forth in Section 4.3.
- 1.102. "Party" and "Parties" shall have the meaning set forth in the second sentence of this Lease.
- 1.103. "<u>Permitted Leasehold Mortgage</u>" shall mean a mortgage on Tenant's leasehold interest in the Premises to a Permitted Leasehold Mortgagee.

- 1.104. "<u>Permitted Leasehold Mortgagee</u>" shall mean (A) any mortgage lender approved by Landlord or (B) any one or combination of the following Persons:
- (i) a savings bank, commercial bank, savings and loan associations, trust company, a commercial credit corporation, credit union, industrial loan association, or national banking association, acting for its own account or in a fiduciary, agent, or trustee capacity, including a lender acting as an originator with respect to a conduit type securitized loan (including a real estate mortgage investment conduit or a financial asset securitization investment trust);
- (ii) an endowment of an educational institution, hospital, or other nonprofit institution, or charitable foundation;
  - (iii) an insurance company;
- (iv) a pension or retirement trust or fund for a corporation or other legal business entities, or of a religious or educational institution or for any trade union;
- (v) a government or public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds;
- (vi) an investment company, as defined in the Investment Company Act of 1940, as amended;
- (vii) a "real estate investment trust," as defined in Section 856 of the Internal Revenue Code of 1986, as amended (or like future provisions of the Internal Revenue Code);
  - (viii) a real estate debt or investment fund, whether domestic or offshore;
  - (ix) a sovereign wealth fund;
  - (x) a family office;
- (xi) an issuer of taxable or tax-exempt bonds and/or the trustees, fiduciary or similar party or parties for the bondholders under the applicable bond indenture or similar documents; or
- (xii) any government or quasi-governmental agency, entity or body politic and corporate incorporated or established under the laws of the Commonwealth or federal law or other applicable Legal Requirements.

provided that in each case (i)-(xi) above

(a) such Person is not an Affiliate;

- (b) such Person has, or manages, or is managed by an entity with, assets (or a combined capital and surplus account or equivalent) or net worth of not less than \$750,000,000.00;
- (c) such Person has, in the reasonable opinion of Landlord, the qualifications, experience and financial responsibility required to employ and administer the personnel and/or independent contractors necessary to fulfill the obligations contained herein for the continued management and operation of the Improvements in accordance with this Lease, were such Person to succeed to the interest of Tenant under this Lease;
  - (d) such Person is not a Disqualified Person; and
- (e) the information concerning such Person required pursuant to the provisions of **Section 6.1** has been submitted to Landlord in conformity with such provisions.

To be entitled to the rights set forth in **Article VI** and elsewhere in this Lease, any transferee of a Permitted Leasehold Mortgagee or other holder of a mortgage granted to a Permitted Leasehold Mortgagee must also be a Permitted Leasehold Mortgagee.

- 1.105. "Permitted Manager" shall have the meaning set forth in Section 5.1(d).
- 1.106. "Permitted Uses" shall have the meaning set forth in Section 5.1.
- 1.107. "<u>Person</u>" shall mean an individual, corporation, joint venture, partnership, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated association, or other organization, whether or not a legal entity, and any governmental authority.
  - 1.108. "Personal Data" shall have the meaning set forth in Section 5.13.
  - 1.109. "Per Unit Supplemental Rent" shall have the meaning set forth in Section 4.2.
- 1.110. "<u>Plan</u>" shall mean the plan made by Nitsch Engineering attached hereto as **Exhibit B** showing the Premises.
  - 1.111. "Premises" shall have the meaning set forth in the Recitals.
- 1.112. "<u>Prime Interest Rate</u>" shall mean the fluctuating rate of interest designated as such and published in the Wall Street Journal or successor newspaper during the respective periods of calculation of such interest hereunder.
- 1.113. "<u>Project</u>" shall mean the development, construction, rehabilitation, leasing, ownership, operation, maintenance and management of revenue-producing improvements constituting a mixed-income residential development on the Site in accordance with the Approved Development Plan containing up to a total of 2,699 Units, of which at least 1,010 will be Affordable Units, Common Areas, ancillary retail space, parking and open space, including, specifically, the construction and operation of the Improvements on the Premises.

- 1.114. "<u>Project-Based Vouchers</u>" shall mean rental subsidies awarded to Tenant or Units pursuant to a HAP Contract.
  - 1.115. "Put Option" shall have the meaning set forth in Section 13.5(a).
- 1.116. "Refinancing" shall mean any direct or indirect financing or refinancing of Tenant's interest in the Premises or any portion thereof, including without limitation any mortgage financing or refinancing, sale-leaseback, mezzanine financing, or other transaction of a similar nature, other than (A) the construction loan obtained by Tenant in connection with the initial development and construction of the Improvements and the Permitted Leasehold Mortgage which repays such construction loan, and (B) the first direct or indirect financing of Tenant's interest in the Premises if the initial development and construction of the Improvements is financed entirely with equity.
- 1.117. "Registry" shall mean the Suffolk County Registry of Deeds and/or Suffolk County Registry District of the Land Court, as applicable.
  - 1.118. "Remedial Work" shall have the meaning set forth in Section 8.3.
- 1.119. "Rent" shall mean, at any given time, Fixed Rent, Supplemental Rent, Participating Rent and Transaction Rent, as more particularly set forth in **Article IV**.
  - 1.120. "REP" shall have the meaning set forth in Section 16.4.
- 1.121. "Resident(s)" shall mean individuals or families occupying a Unit in the Improvements under an Occupancy Agreement for such Unit between such resident and Tenant.
- 1.122. "<u>Resident Employment Requirements</u>" shall have the meaning set forth in **Section 16.4**.
- 1.123. "<u>Restoration Criteria</u>" shall mean the criteria to be used to evaluate the Premises or the Improvements in the event of a Partial Taking as more particularly set forth in **Section 11.4(i)**.
  - 1.124. "Retail Strategic Plan" shall have the meaning set forth in **Section 14.1**.
  - 1.125. "Review Process" shall have the meaning set forth in **Section 7.9**.
- 1.126. "Sale Transfer" shall mean (i) a Transfer of all or substantially all of Tenant's interest in this Lease, the Premises and the Improvements to a third party transferee, or (ii) any sale, transfer, or assignment of more than an eighty percent (80%) direct or indirect equity interest in Tenant to a third party transferee in a single transaction or series of transactions in any twelve (12) month period; provided, however, neither the transactions set forth in **Section 6.5(b)** nor the last grammatical paragraph of **Section 6.5** shall be subject to any Transaction Rent even

though they constitute a Sale Transfer and provided further that "Sale Transfer" shall exclude those Transfers permitted under Section 13.3 (other than Sections 13.3(iii), (viii) and (xi)).

- 1.127. "Schematic Design Submittal" shall mean drawings and other documents submitted by Tenant to Landlord in accordance with **Section 7.9** illustrating the scale and relationship of the components of the Improvements or Major Alterations to the Project.
  - 1.128. "Section 3" shall have the meaning set forth in Section 16.4.
  - 1.129. "Site" shall have the meaning set forth in the Recitals.
- 1.130. "<u>Site Delivery Conditions</u>" shall have the meaning set forth in the Development Agreement.
- 1.131. "SMSA Income" shall mean the Standard Metropolitan Statistical Area median family income for the Boston area as determined by the United States Department of Labor, adjusted for family size, and published by HUD under Section 8 of the Act, or any equivalent measure, if such an index is no longer in effect.
- 1.132. "Special Member" shall mean CREA SLP, LLC, an Indiana limited liability company, and its successors and permitted assigns under the Operating Agreement (other than any assignee that is the Managing Member or an affiliate or designee thereof).
- 1.133. "Substantial Completion" shall mean (i) the completion of the Improvements located on the Premises in accordance with the Final Plans and Specifications, to the extent that only minor adjustments and punch list items remain to be performed, as evidenced by a certificate of such completion by Tenant's architect, and (ii) issuance of a permanent, full and unconditional Certificate of Occupancy for all or substantially all of the Units contained within the Improvements.
  - 1.134. "Supplemental Rent" shall mean the meaning set forth in Section 4.2.
  - 1.135. "Taking" shall have the meaning set forth in **Section 11.1** hereof.
  - 1.136. "Tax Agreement" shall have the meaning set forth in Section 13.6 hereof.
  - 1.137. "Temporary Taking" shall have the meaning set forth in Section 11.7 hereof.
  - 1.138. "Tenant" shall have the meaning set forth in the first sentence of this Lease.
  - 1.139. "Tenant Requirements" shall have the meaning set forth in Section 13.5(f).
  - 1.140. "Tenant Sale Notice" shall have the meaning set forth in Section 13.5(c).
  - 1.141. "Tenant's Property" shall have the meaning set forth in **Section 5.10** hereof.
  - 1.142. "Tenant's Property Interest" shall have the meaning set forth in Section 13.5(a).

- 1.143. "Term" shall mean the term of this Lease described in Section 3.2 hereof.
- 1.144. "Third Party Acquirer" shall have the meaning set forth in Section 13.5(b).
- 1.145. "Total Development Costs" shall mean all out-of-pocket bona fide so-called "hard costs", so-called "soft costs" and so-called "land costs" paid or incurred in developing, constructing and financing the Improvements and shall include the amount of Fixed Rent paid hereunder. Any amounts included in Total Development Costs based on transactions with Affiliates shall be on arm's-length, commercially reasonable terms. Any amounts included in Total Development Costs on account of activities allocable in part to those referred to above and in part to other costs shall be allocated in accordance with equitable cost accounting procedures.
  - 1.146. "Total Taking" shall have the meaning set forth in Section 11.3 hereof.
- 1.147. "Total Tenant Payment" shall mean the statutory amount a household will pay toward the gross rent (rent plus utilities) for occupancy of an Affordable Unit. Currently, the Total Tenant Payment for an Affordable Unit subject to a Project-Based Voucher HAP Contract is more particularly set forth in 24 C.F.R. 5.628 as the greater of (i) 30% of a household's monthly adjusted income, and (ii) 10% of the household's unadjusted monthly income, and (iii) the minimum rent Landlord must charge a family except in cases of financial hardship.
  - 1.148. "Transaction Rent" shall have the meaning set forth in Section 4.4 hereof.
- 1.149. "Transfer" shall mean any direct or indirect, voluntary or involuntary, (i) sale, transfer, or assignment, including without limitation, sales, transfers, and assignments by operation of law, by merger, or consolidation, or otherwise by Tenant of the Improvements or all or any portion of Tenant's leasehold interest in the Premises; (ii) any sale, transfer, or assignment of more than a fifteen percent (15%) equity interest in Tenant in a single transaction or series of related transactions; and (iii) in the case of any Affiliate that owns more than fifty percent (50%) of the direct equity interests in Tenant as its only material investment (other than cash or cash equivalents), any sale, transfer or assignment in a single transaction or series of related transactions of the direct equity interests in such Affiliate.
- 1.150. "<u>Units</u>" shall mean rental dwelling units to be occupied by individuals or families for residential purposes.
- 1.151. "<u>Use Agreement</u>" shall mean the Boston Housing Authority Charlestown Use Agreement among Landlord, Tenant and HUD dated as of June 30, 2023 pertaining to the Premises, as amended, restated, replaced, modified, extended and/or supplemented from time to time.
- 1.152. "Value Equivalent" shall mean the amount at a later or future time of a given sum of money in the present or at another earlier time, increased or decreased in accordance with the change in the Index over the intervening period so as to have the same value as such sum of money in the present or at such other earlier time.
  - 1.153. "WBE" shall have the meaning set forth in **Section 16.3**.

1.154. "Yield on Treasuries" shall have the meaning set forth in **Section 4.4**.

### ARTICLE II - DEMISE OF PREMISES; CONDITION

- 2.1. <u>Demise of Premises</u>. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term hereinafter described and upon the terms and conditions specified in this Lease, (i) the Premises; and (ii) all easements, rights and appurtenances relating to the Premises.
- 2.2. <u>Title and Condition of Premises</u>. The Premises are leased subject to all Legal Requirements now in effect or hereafter adopted by any governmental authority having jurisdiction, to the extent applicable to the Premises, including without limitation, the terms and conditions of the HAP Contract, the Use Agreement, the BPDA Regulatory Agreement, and any other agreements entered into by Tenant with HUD or other public agencies applicable to the Premises. Title to the Premises is subject to, and benefitted by, all matters of record and in fact existing as of the Commencement Date relating to the Premises. Landlord and Tenant acknowledge that the title to the Premises as of the Commencement Date is as set forth in the title insurance policy (or in a commitment to issue such policy or pro forma title insurance policy) attached hereto as <u>Exhibit I</u>.
- No Representations by Landlord. Tenant acknowledges that it is leasing the 2.3. Premises, and is agreeing to construct, operate and maintain the Improvements, after a full and complete examination of the Premises, is taking the Premises in their present "as-is" condition as of the Commencement Date, including without limitation, subsurface conditions, and assumes all risks associated with performance of its obligations under this Lease. Except for representations expressly set forth in this Lease or in any subsequent agreement executed in writing by Landlord, Landlord makes no representations to Tenant and Tenant may not rely upon any statement, whether written or oral, now or hereafter made by any officer, employee, agent or representative of Landlord, as to (a) the geotechnical, environmental or other conditions of the Premises, (b) the suitability of the Premises for the Improvements, (c) the existence or suitability of any on-Premises or off-Premises facilities, (d) the availability of governmental permits and approvals, (e) the practicality or capacity of plans and specifications heretofore or hereafter approved by Landlord to satisfy the performance requirements of any governmental and quasi-governmental agencies, and/or (f) the compliance by the Premises and Project, and the contemplated use thereof, with existing zoning requirements. Landlord hereby disclaims any statement or representation not consistent with this Section 2.3, except as expressly set forth in this Lease or in any subsequent agreement executed in writing by Landlord.
- 2.4. <u>Easements</u>. Landlord agrees to use reasonable efforts to assist Tenant in obtaining any and all easements and rights of way as may be necessary to construct and/or operate the Improvements and to relocate or terminate easements currently encumbering the Premises to the extent such relocation or termination is reasonably necessary for the construction of the Improvements; provided, however, Landlord shall not be subject to any expense, cost, fee or liability in connection therewith. Likewise, Tenant agrees to grant Landlord temporary easements for utilities and access necessary to operate the existing buildings on the Site owned

and managed by Landlord that do not interfere with Tenant's construction or use of the Premises. Landlord has granted Tenant the Easement contemporaneously with the entry into this Lease.

#### ARTICLE III - TERM

- 3.1. Commencement Date. This Lease shall commence on the Commencement Date.
- 3.2. <u>Term.</u> Subject to the terms, covenants, agreements and conditions contained herein, Tenant shall have and hold the Premises for a term (the "<u>Term</u>") of ninety-nine (99) years commencing on the Commencement Date.

## **ARTICLE IV - RENT AND OTHER CHARGES**

- 4.1. <u>Fixed Rent for Premises</u>. Tenant shall pay to Landlord as fixed rent ("<u>Fixed Rent</u>") a one-time lump sum amount of \$76,500.00 for the entire Term of this Lease for the Premises. Landlord acknowledges that it has received, on the Commencement Date, payment in full of the Fixed Rent for the entire Term.
- 4.2. <u>Supplemental Rent</u>. Commencing on the Commencement Date, Tenant shall pay to Landlord annually as supplemental rent ("<u>Supplemental Rent</u>"), the amount of \$59.07 per Unit (the "<u>Per Unit Supplemental Rent</u>"), which Per Unit Supplemental Rent shall be adjusted annually on each January 1 to reflect the year-over-year increase, if any, in the Index expressed as a percentage (i.e., the Index as of the current January 1 divided by the Index as of the prior January 1), provided that the Per Unit Supplemental Rent shall not be less than 100% of the Per Unit Supplemental Rent during the prior calendar year.

## 4.3. Participating Rent.

Commencing on the date of the expiration of the Lockout Period and continuing through and including the date of any LMP Transfer Event (the "LMP Transfer Date"), Tenant shall pay to Landlord as "Participating Rent", an amount equal to (i) twenty-five percent (25%) of the Leveraged Operating Cash Flow from the Improvements after payment of Fixed Rent, Supplemental Rent and the Landlord Management Fee but before payment of Participating Rent, and (ii) twenty-five percent (25%) of gross proceeds (whether in cash, kind, mortgage notes, or otherwise) received by Tenant (before payment of Participating Rent) from any Refinancing of the Improvements, or any portion thereof, or Tenant's interest under this Lease, less only (W) the amounts outstanding on any prior Permitted Leasehold Mortgage note (or other Permitted Leasehold Mortgagee debt) and any Junior Loans immediately prior to the Refinancing, (X) actual, documented, customary closing costs of the Refinancing paid by Tenant to third parties who are not Affiliates of Tenant (such as brokerage commissions, financing/lender fees including any prepayment premiums or exit fees, mortgage/transfer taxes/fees, title insurance premiums, escrow fees, legal fees, and recording fees), (Y) any Transaction Rent payable under Section 4.4, and (Z) any reserves or escrows established under the new Permitted Leasehold Mortgage note or other loan documents (such as for tenant security deposits, real estate taxes, insurance, capital improvements and replacement reserves), plus any reserves or escrows released under the prior Permitted Leasehold Mortgage note or other loan documents. The

Participating Rent payable under (ii) above will be triggered either by a Refinancing obtained by Tenant where it continues to hold Tenant's interest under the Lease thereafter or by a Refinancing in conjunction with a Sale Transfer.

- On the LMP Transfer Date, in lieu of any Participating Rent that would otherwise be payable under Section 4.3(a)(ii) above in connection with any Refinancing occurring on the LMP Transfer Date, and after taking into account the Participating Rent due under Section 4.3(a)(i) above, Tenant shall pay to Landlord, as additional Participating Rent, an amount equal to twenty-five percent (25%) of the gross proceeds received by Tenant (whether in cash, kind, mortgage notes, or otherwise) from any Sale Transfer (net of any assumed debt) occurring on the LMP Transfer Date, either directly, or indirectly, <u>less</u> only (i) actual, documented, customary closing costs paid by Tenant to third parties who are not Affiliates (such as brokerage commissions, legal fees, escrow fees, title insurance premiums, recording fees and any transfer fees or excise taxes or similar assessments imposed on ground lessees by the City or Commonwealth), (ii) the amounts outstanding on any prior Permitted Leasehold Mortgage note (or other Permitted Leasehold Mortgagee debt) or Junior Loans immediately prior to the Sale Transfer that are not being assumed in connection with the Sale Transfer (and any prepayment premiums or exit fees payable in connection with the payoff of such debt or loans) and (iii) Transaction Rent. This Section 4.3(b) shall only apply if the LMP Transfer Date is after the end of the Lockout Period.
- (c) An example illustrating the calculation of Leveraged Operating Cash Flow is set forth in **Exhibit J**.
- (d) In the event of a disagreement between the parties as to the proper calculation of Participating Rent, the calculation will be submitted to arbitration in accordance with **Section 18.6**, and Tenant shall pay to Landlord, with a full reservation of rights, not later than ten (10) after the submission of such matter to arbitration, an amount equal to (i) one-half of Tenant's calculation of Participating Rent plus (ii) one-half of Landlord's calculation of Participating Rent, and upon the written decision of the arbitrators, Landlord shall promptly refund Tenant the amount of any overpayment of Participating Rent or Tenant shall promptly pay Landlord the amount of any underpayment of Participating Rent, as applicable. Tenant shall not be in default in its obligation to pay Participating Rent to Landlord on account of any disagreement between the parties as to the proper calculation of Participating Rent, so long as Tenant timely pays to Landlord the disputed amount set forth above in this paragraph during the pendency of the arbitration and, if applicable, pays any underpayment of Participating Rent promptly after the written decision of the arbitrators.
- (e) From and after the LMP Transfer Date, no further Participating Rent shall be due and payable under this Lease.

### 4.4. Transaction Rent.

(a) In addition to all other Rent payable hereunder during the Term, from and after the expiration of the Lockout Period, Tenant shall pay to Landlord as "<u>Transaction Rent</u>", an amount equal to one percent (1.0%) of the gross proceeds received by Tenant (whether in cash, kind, mortgage notes, or otherwise) from any Refinancing of the Improvements, or any

portion thereof, or Tenant's interest under this Lease, less only (i) the amounts outstanding on any prior Permitted Leasehold Mortgage note (or other Permitted Leasehold Mortgagee debt) or Junior Loans immediately prior to the Refinancing and (ii) actual, documented, customary closing costs of the Refinancing paid by Tenant to third parties who are not Affiliates of Tenant (such as brokerage commissions, financing/lender fees including any prepayment premiums or exit fees, mortgage/transfer taxes/fees, title insurance premiums, escrow fees, legal fees, and recording fees).

In addition to all other Rent payable hereunder during the Term (except that no Transaction Rent will be payable under Section 4.4(a) in the event of a Sale Transfer or a Refinancing as described in Section 4.4(c) or with respect to the transactions set forth in Section 6.5(b) or the last grammatical paragraph of Section 6.5), from and after the expiration of the Lockout Period, Tenant shall pay to Landlord, as Transaction Rent, an amount equal to the greater of (A) one percent (1.0%) of the gross proceeds received by Tenant (whether in cash, kind, mortgage notes, or otherwise) from any Sale Transfer from time to time, either directly, or indirectly, less only actual, documented, customary closing costs paid by Tenant to third parties who are not Affiliates (such as brokerage commissions, legal fees, escrow fees, title insurance premiums, recording fees and any transfer fees or excise taxes or similar assessments imposed on ground lessees by the City or Commonwealth); and (B) a participation in the profitability of Tenant's investment measured based on Tenant's achieved unleveraged Internal Rate of Return per annum ("IRR") at the date of the Sale Transfer, compared to three (3) tiers of hurdle rates of return on Tenant's investment calculated using discount rates equal to the five-year trailing average of the yield per annum on ten-year treasury notes (the "Yield on Treasuries"), calculated as described below, plus six (6) percent, nine (9) percent and twelve (12) percent, as follows:

Landlord's participation shall be computed as follows:

- A ten percent (10%) participation in Tenant's profits to the extent the achieved IRR on Tenant's Invested Capital is greater than the hurdle rate equal to the Yield on Treasuries plus six percent (6%), and less than the hurdle rate equal to the Yield on Treasuries plus nine percent (9%); plus
- A twenty percent (20%) participation in Tenant's profits to the extent the achieved IRR on Tenant's Invested Capital is greater than the hurdle rate equal to the Yield on Treasuries plus nine percent (9%) and less than the hurdle rate equal to the Yield of Treasuries plus twelve percent (12%); plus
- A thirty percent (30%) participation in Tenant's profits to the extent the achieved IRR on Tenant's Invested Capital is greater than the hurdle rate equal to the Yield on Treasuries, plus twelve percent (12%).

The achieved IRR on Tenant's Invested Capital shall be calculated net of all Fixed Rent, Supplemental Rent, the Landlord Management Fee, Participating Rent and Transaction Rent under **Section 4.4(b)(A)** paid or payable to Landlord in determining when Landlord's 20% and 30% participation in Tenant's profits begin.

The Yield on Treasuries shall be calculated as follows: sum the daily closing rate of the 10-year treasury bond as published by the U.S. Treasury for the preceding 5 years divided by the sum of the number of data points (which will exclude weekends and holidays when the bond market is closed). The first calculation of Yield on Treasuries will be done on or before the date this Lease is placed in escrow, as agreed to by Tenant and Landlord. Subsequent calculations of Yield on Treasuries will be done whenever a Transaction Rent payment to Landlord is triggered under this **Section 4.4(b)** using the date of the relevant transaction (i.e., the Sale Transfer, or a Refinancing described in **Section 4.4(c)** below).

For purposes of this **Section**, "**IRR**" shall mean (a) the discount rate at which the net present value of all quarterly unleveraged cash flows (positive and negative) from the Improvements (after subtracting the amount of any Fixed Rent, Supplemental Rent, the Landlord Management Fee, Participating Rent and Transaction Rent under **Section 4.4(b)(A)** paid or payable to Landlord with respect to the applicable period) over Tenant's holding period equals zero, (b) times four (4). "**Invested Capital**" shall mean, initially, with respect to the first Sale Transfer, the Total Development Costs recognized quarterly as negative cash flows during the construction period or, with respect to each subsequent Sale Transfer, the purchase price paid by the acquiring Tenant for its interest, plus actual, documented closing costs customarily paid by a purchaser, paid by the acquiring Tenant to third parties (including governmental authorities) who are not Affiliates of Tenant (such as brokerage commissions, legal fees, escrow fees, title insurance premiums, financing fees, recording fees and any transfer fees or excise taxes or similar assessments imposed on purchasers of ground lease interests by the City or Commonwealth) plus, in each case, capital expenditures incurred by Tenant during its ownership period, substantiated as hereinafter set forth.

An example illustrating the calculation of Transaction Rent is set forth in <u>Schedule 1-A</u>. The actual Excel Spread Sheet containing the formulas used for calculating Transaction Rent in such example accompanies this Lease as <u>Schedule 1-B</u>.

In the event of any foreclosure, assignment in lieu of foreclosure or other Transfer that is not subject to Transaction Rent as provided in **Section 6.5(b)** or the last grammatical paragraph of **Section 6.5**, then for purposes of calculating the Transaction Rent that would apply to any subsequent Sale Transfer or a Refinancing described in **Section 4.4(c)** below that triggers Transaction Rent, Invested Capital shall be reset to equal either the purchase price paid by the purchasing Tenant from a foreclosing Permitted Leasehold Mortgagee, or if acquired by the foreclosing Permitted Leasehold Mortgagee, the outstanding amount of the Permitted Leasehold Mortgage (including any unpaid interest, penalties and costs which Tenant then owes to the Permitted Leasehold Mortgagee) plus actual documented closing costs paid by the acquiring Tenant to third parties as of the date of such foreclosure, assignment in lieu of foreclosure or other Transfer.

(c) This **Section 4.4** will apply to each subsequent Sale Transfer and Refinancing of Tenant's interest in the Lease and the Improvements during the Term. If a Sale Transfer has not occurred in the prior ten (10) year period, then any Refinancing will be treated as a Sale Transfer pursuant to clause (b) above (and no Transaction Rent will be payable under

clause (a) above) with the Sale Transfer price to be determined by the appraisal performed by the Permitted Leasehold Mortgagee in connection with the Refinancing, provided that if either party disagrees with the results of such appraisal, the deemed Sale Transfer price will be submitted to arbitration in accordance with **Section 18.6**.

(d) In the event of a disagreement between the parties as to the proper calculation of Transaction Rent, the calculation will be submitted to arbitration in accordance with **Section 18.6**, and Tenant shall pay to Landlord, with a full reservation of rights, not later than ten (10) after the submission of such matter to arbitration, an amount equal to one-half of the sum of (i) Tenant's calculation of Transaction Rent and (ii) Landlord's calculation of Transaction Rent, and upon the written decision of the arbitrators, Landlord shall promptly refund Tenant the amount of any overpayment of Transaction Rent or Tenant shall promptly pay Landlord the amount of any underpayment of Transaction Rent, as applicable. Tenant shall not be in default in its obligation to pay Transaction Rent to Landlord on account of any disagreement between the parties as to the proper calculation of Transaction Rent, so long as Tenant timely pays to Landlord the disputed amount set forth above in this paragraph during the pendency of the arbitration and, if applicable, pays any underpayment of Transaction Rent promptly after the written decision of the arbitrators.

## 4.5. Payment of Rent.

- (a) All Rent shall be paid by Tenant to Landlord in lawful money of the United States of America at Landlord's address set forth herein or at such other place or to such other person as Landlord from time to time may designate.
- (b) Supplemental Rent shall be payable in annual installments, in arrears, on or before thirty (30) days after the end of each calendar year during the Term hereof on account of amounts due for the prior calendar year (or portion thereof).
- (c) Participating Rent from Leveraged Operating Cash Flow shall be payable in annual installments, in arrears, upon delivery of audited financial statements as required under **Section 4.6(b)**.
- Refinancing shall be provided to Landlord on or before thirty (30) days prior to the closing of any Sale Transfer or Refinancing occurring during the Term, supported by information provided by Tenant to Landlord in accordance with **Sections 4.6(b)** and **4.7**. For Transaction Rent, the calculation of Tenant's Invested Capital shall be based on unaudited statements of quarterly unleveraged cash flow prepared in accordance with the form attached as **Exhibit J** for each calendar quarter within the Term. The calculation of Invested Capital will commence on the first day of the calendar quarter in which the Commencement Date falls or the date a Tenant acquires an interest in the Premises. At such first day, Tenant's initial amount of Invested Capital will be recognized as a negative cash flow. All subsequent recognition of positive and negative cash flows shall occur at the end of each calendar quarter. The actual calculation for Transaction Rent and Participating Rent from a Refinancing shall be made on or before the date that is three (3) days prior to a closing date of a Sale Transfer or Refinancing and submitted to Landlord for

verification. Transaction Rent and Participating Rent from a Refinancing shall be paid upon such closing date. If any adjustments to Transaction Rent are required post-closing due to changes in the recognition of positive and negative cash flows made in Tenant's quarterly statements then, if such calculation results in a higher Transaction Rent than that which has been paid by Tenant, Tenant shall promptly pay to Landlord such shortfall amount; if such calculation results in a lower Transaction Rent than that which has been paid by Tenant, then Landlord shall promptly refund to Tenant such excess amount. Tenant shall submit to Landlord within ninety (90) days after receipt of a permanent Certificate of Occupancy for the initial Improvements a detailed statement of the Total Development Costs, as defined herein, certified as correct by Tenant's chief financial officer or chief operating officer, together with such invoices, contracts and other evidence substantiating such costs as Landlord may reasonably request.

### 4.6 Books and Records; Audit Rights

- Books and Records. At all times during the Term of this Lease, Tenant shall keep and maintain accurate and complete books and records pertaining to the Improvements, Total Development Costs, Invested Capital, dates of Sale Transfers and Refinancings, Leveraged Operating Cash Flow, consideration paid and received for Sale Transfers, Refinancings and to all other items related to the calculation of Rent and any other amounts coming due under this Lease or concerning the Improvements and the Premises (such books and records being herein the "Books and Records"). The Books and Records and each budget, report, financial statement or other item of financial information delivered to Landlord shall be maintained and presented in accordance with generally accepted accounting principles ("GAAP"), as consistently applied to the real estate industry, and consistent with the preparation of the financial statements referred to below. Tenant shall retain and keep available such Books and Records for not less than seven (7) years after the end of each calendar year in which any Rent was due, or in the case of Total Development Costs, Invested Capital and Leveraged Operating Cash Flow, seven (7) years after the Transaction Rent or Participating Rent, as applicable, based on such information is paid, including the seven (7) years after the expiration or earlier termination of this Lease, or, in the event of litigation or claims arising out of or relating to this Lease, until such litigation or claims are completely disposed of and all time limits for appeal have expired. Tenant shall make such Books and Records, including without limitation, rent rolls, available for inspection and audit by Landlord, HUD, the City, any other agency providing public funds to Landlord, the Comptroller General of the United States or their authorized representatives, upon not less than one (1) full business day's advance notice, at all reasonable times during regular business hours, either on the Premises or at another location within the City. Tenant shall provide copies of any Books and Records requested by Landlord or its representatives, within seven (7) calendar days from such request.
- (b) <u>Financial Statements</u>. (i) Tenant shall provide Landlord, within thirty (30) days of the end of each calendar quarter, during the Term, financial statements certified as correct by Tenant's chief financial officer or chief operating officer, prepared from the Books and Records in accordance with GAAP as consistently applied to the real estate industry, including, without limitation, a balance sheet, statement of income, statement of changes in Tenant's members' equity and statement of cash flows along with a supplement schedule for quarterly unleveraged cash flow and quarterly Leveraged Operating Cash Flow (see <u>Exhibit J</u>) to be used for the calculation of Transaction Rent and Participating Rent from Leveraged

Operating Cash Flow, and capital expenditures incurred during the quarter; (ii) for each calendar year during the Term, Tenant shall prepare from the Books and Records and cause to be audited by an independent certified public accountant of recognized standing selected by Tenant, an annual financial statement for Tenant incorporating the results of operations of the Improvements, including without limitation, a balance sheet, statement of income, statement of changes in Tenant's members' equity, statement of cash flows, and a certification of capital expenditures incurred with respect to the Premises during the year. Beginning with the first such annual financial statement, in anticipation of future Sale Transfer and Refinancing events, Tenant shall provide Landlord with a cumulative record of unleveraged cash flow and Leveraged Operating Cash Flow consistent with the computational illustration and formula set forth in Exhibit J. Such financial statements shall in form and substance contain all elements of statements prepared under GAAP as consistently applied to the real estate industry, including both generally accepted accounting principles and generally accepted audit standards. Such financial statements, including the certification by the auditors and all letters of such auditors to management in connection with the audit, shall be delivered to Landlord no later than April 1st of each year during the Term and the year following the expiration or earlier termination of this Lease; (iii) any discrepancy between the sum of the quarterly unleveraged cash flow and Leveraged Operating Cash Flow for a calendar year and the annual amounts set forth in the audited financial statements for the year shall be corrected in the cash flow for the fourth quarter of such calendar year.

- (c) <u>Audits</u>. If, as a result of Tenant's audit or an inspection or audit of Tenant's Books and Records by Landlord, HUD, the City, any other agency providing public funds to Landlord, the Comptroller General of the United States, or their authorized representatives, it is established that any calculation affecting the amount of Rent due hereunder was misstated, so that Landlord shall have been paid less Rent than it was entitled to receive under this Lease, Tenant shall pay to Landlord the difference between the Rent that should have been paid, including interest at the Default Rate, and the Rent that was paid. Such payment shall be made within 30 days of receipt of written notice from Landlord. Further, if the amount that should have been paid exceeds by two percent (2%) or more the amount that was paid, or if an audit reveals that the Books and Records of Tenant are in such a state that the Rent due Landlord cannot be properly determined, the entire expense of any audit performed by Landlord, HUD, the City, any other public agency providing public funds to Landlord, or the Comptroller General of the United States, shall be borne by Tenant. If Tenant's audit or Landlord's inspection and audit establishes that Tenant has overpaid Landlord, then such overpayment shall be credited to Tenant within thirty (30) days of the approval of such credit by Landlord.
- (d) <u>Warranty of Information</u>. Each delivery of quarterly and annual reports or statements under this **Section 4.6** or other financial information in regard to the Premises shall be accompanied by a signed statement of Tenant's chief financial officer or chief executive officer representing and warranting that such report, statement or items of information is presented in compliance in all material respect with this Section. No delivery of non-conforming reports, statement or items of information to Landlord under this Lease shall be effective to waive the right of Landlord to full performance of this Section or to waive any breach by Tenant in the delivery of reports, statement or other information.

- (e) <u>Projections</u>. As soon as available, but in no event later than thirty (30) days prior to the commencement of each calendar year, Tenant shall deliver to Landlord an information copy of a projected summary income and expense statement reflecting the budget of the estimated gross revenues, capital expenditures, operating costs (including, separately, administrative and general expense, utility expense and repair and maintenance expense), for such coming calendar year or Tenant's fiscal year, as applicable, in the form attached as the "Operating Budget" in Exhibit K.
- 4.7 <u>Transaction Statement</u>. Not later than three (3) days prior to a closing of any Sale Transfer or Refinancing (whether or not the Sale Transfer or Refinancing results in the payment of Transaction Rent or Participating Rent from a Refinancing), Tenant shall deliver a statement in reasonable detail to Landlord, certified as correct by Tenant's chief financial officer or chief operating officer, together with substantiating documentation, setting forth the amount of Transaction Rent or Participating Rent from a Refinancing then due, if any, and the calculation thereof. Such statement shall include an itemization of the following (to the extent applicable):
- (a) Gross proceeds of a Sale Transfer or gross proceeds of a Refinancing, broken down in reasonable detail;
- (b) With respect to a Refinancing, the portion of such gross proceeds used to repay any outstanding balance of a Permitted Leasehold Mortgage or any Junior Loans;
- (c) With respect to a Refinancing, the balances outstanding on any Permitted Leasehold Mortgage and any Junior Loans, if any, immediately preceding the completion of such Refinancing;
- (d) With respect to a Refinancing, (i) the appraised value of Tenant's leasehold interest in the Premises, as determined by an appraisal performed for the Permitted Leasehold Mortgagee which is Refinancing Tenant's leasehold interest in the Premises, and (ii) the principal amount of the new Permitted Leasehold Mortgage and any Junior Loans;
- (e) With respect to a Sale Transfer, the calculation of Tenant's Invested Capital and any other itemized information necessary to calculate IRR and the Yield on Treasuries calculation;
- (f) The transaction costs of the Sale Transfer or Refinancing transaction, if applicable; and
- (g) The calculation of one (1%) of gross proceeds received by Tenant from a Sale Transfer compared to the calculation of the participation in the profitability of Tenant's investment, as set forth in **Section 4.4(b)**.
- 4.8. <u>Additional Rent</u>. Tenant covenants to pay and discharge, when the same shall become due, as Additional Rent, all other amounts, liabilities and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added for non-payment or late payment thereof and, in the event

of any failure by Tenant to pay or discharge any of the foregoing, Landlord shall have all rights, powers and remedies provided herein or by law in the case of non-payment of Rent.

- Net Lease. It is understood and agreed by Tenant that this Lease is a triple net lease and the Rent, Additional Rent and all other sums payable hereunder shall be absolutely net to Landlord. Tenant shall be responsible for all real estate and personal property taxes, payments in lieu of taxes, assessments, utility charges, liens, insurance, maintenance, repairs and all other costs associated with the Premises and the Improvements which may arise or become due during the Term. Tenant shall pay all sums payable hereunder without notice or demand (except as otherwise provided in this Lease), set-off, abatement, suspension or deduction, and Tenant shall not interpose any counterclaim or defense of whatever nature or description in any proceeding by Landlord for the collection of money due hereunder, provided, however, that such agreement not to interpose any counterclaim or defense shall not be construed as a waiver of Tenant's right to assert a counterclaim or defense against any action seeking to declare an Event of Default or terminate this Lease or as a waiver of Tenant's right to assert claims against Landlord in any separate action. Tenant also reserves the right to commence and prosecute an independent action at law or in equity against Landlord to seek damages, injunctive or other relief or remedies with respect to any breach of this Lease on the part of Landlord. Tenant's covenants and obligations to construct and complete the Improvements, to pay Rent, Additional Rent and other amounts payable by Tenant and to perform its other obligations set forth in this Lease are separate and independent from any of Landlord's covenants or obligations in this Lease.
- 4.10. Taxes and Other Charges. Subject to Section 4.11 hereof, Tenant will pay or cause to be paid as Additional Rent, before any fine, penalty, or interest may be added thereto for the non-payment thereof, (i) all taxes, or payments in lieu thereof, assessments, levies, municipal fees, water and sewer rents and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time during the Term hereof, imposed or levied upon or assessed by a governmental authority against (A) the Premises, (B) any Rent, Additional Rent or other sum payable hereunder, or (C) Tenant's interest in this Lease or the leasehold estate hereby created, or which arise in respect of Tenant's operation, possession or use of the Premises; (ii) all gross receipts or similar taxes imposed or levied upon, assessed against or measured by any Rent, Additional Rent or other sum payable hereunder; (iii) all sales, use and similar taxes at any time levied, assessed or payable on account of Tenant's acquisition, leasing or use of the Improvements or the Premises; (iv) all charges to Tenant for utilities serving the Premises directly to the utility provider and (v) CRA Permanent Funding Assessments and Common Expense Assessments (each as determined in accordance with, the Owners' Association Agreement), and any other assessments assessed against Tenant or the Premises under the Owners' Association Agreement, payable to the Owners' Association. Any such taxes, assessments and other charges with respect to the Premises for the then current tax period shall be apportioned as of the Commencement Date, and the pro rata share thereof shall be paid to Landlord or credited to Tenant, as the case may be, so that Tenant shall pay only those portions thereof which correspond with the portion thereof as is within the Term hereby demised. Any such taxes, assessments and other charges with respect to the Premises for the fiscal year in which the Term of this Lease shall end shall be apportioned so that Tenant shall pay only those portions thereof which correspond with the portion of said year as is within the Term hereby demised. Tenant shall not be required to pay any franchise, transfer, income, capital levy or

similar tax of Landlord (other than any tax referred to in clause (ii) above) unless such tax is imposed, levied or assessed in substitution for any other tax, assessment, charge or levy which Tenant is required to pay pursuant to this Section 4.10, but only in an amount calculated as if Landlord owned only the Premises and Landlord's income consisted only of amounts payable as Rent hereunder. Tenant will furnish to Landlord, promptly after demand therefor, proof of payment of all items referred to above which are payable by Tenant. If any such assessment may legally be paid in installments, Tenant may pay such assessment in installments; in such event, Tenant shall be liable only for installments which are attributable to any period falling within the Term hereof. Subject to Section 4.11 hereof, during the continuance of any Event of Default, Landlord shall have the right to pay, discharge or remove any tax, assessment, levy, or other charges for which Tenant is responsible as set forth in this Section 4.10 on behalf of Tenant and charge Tenant therefor. To the extent that the Premises do not constitute a single, separate tax parcel as designated by the City, Landlord agrees to support Tenant's request to the assessors' office of the City to assess the Premises as a single tax parcel separately from all other land of Landlord, and to provide all information and material requested by the assessors in connection therewith. In the event that the Premises are not separately taxed or assessed for or with respect to any applicable taxation period, then, in that event, any tax, assessment, levy, and other charges shall be apportioned between the Premises and the remainder of the applicable tax parcels in such manner that Tenant shall pay only an equitable portion thereof properly apportioned or allocated to the Premises.

4.11. Permitted Contests. Tenant may seek a reduction in the valuation of the Premises or Tenant's leasehold interest under this Lease assessed for tax purposes. Landlord shall not require Tenant, nor shall Landlord have the right, to pay, discharge or remove any tax, assessment, levy, fee, rent, charge, lien or encumbrance, or to comply with any Legal Requirement applicable to the Premises or the use thereof, so long as Tenant shall contest the existence, amount, or validity thereof by appropriate proceedings which shall prevent the collection of or other realization upon the tax, assessment, levy, fee, rent, charge, lien or encumbrance so contested, and the sale, forfeiture or loss of the Premises or any Rent or any Additional Rent to satisfy the same, and which shall not affect the payment of any Rent, provided that such contest shall not subject Landlord to the risk of any criminal liability or civil penalty. If the amount of the tax, assessment, levy, fee, rent, charge, lien, encumbrance, liability or penalty being contested exceeds \$150,000, or, after the fifth year after the Commencement Date, the Value Equivalent of such amount, Tenant shall give such reasonable security as may be requested by Landlord to insure payment of such tax, assessment, levy, fee, rent, charge, lien, encumbrance, liability or penalty and to prevent any sale or forfeiture of the Premises by reason of such nonpayment, and Tenant hereby indemnifies Landlord for any such liability or penalty (regardless of amount). Upon the termination after final appeal of any proceeding relating to any amount contested by Tenant pursuant to this **Section**, Tenant shall promptly pay any amount determined in such proceeding to be due, and in the event Tenant fails to make such payment, Landlord shall have the right to make any such payment on behalf of Tenant and charge Tenant therefor. Subject to the foregoing, and provided that it shall incur no out-of-pocket costs, Landlord shall join in any proceeding or execute and deliver any appropriate papers which may be necessary to permit Tenant so to contest any valuation of the Premises or any tax, assessment, levy, fee, rent, charge, lien or encumbrance and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

4.12. Landlord Management Fee. During the Term, Landlord shall provide the following management services to Tenant with respect to the Improvements (collectively, the "Landlord Management Services"): all management and oversight services contemplated to be provided by Landlord with respect to the Improvements pursuant to the Local Tenant Organization Agreement and the Management Plan, including Landlord's membership on the committees and sub-committees established under the Local Tenant Organization Agreement and general oversight of community relations at the Project. Commencing on the Commencement Date, and for so long as Landlord provides the Landlord Management Services to Tenant to the reasonable satisfaction of Tenant, Tenant shall pay to Landlord annually as Additional Rent a management fee in an amount equal to ten percent (10%) of the property management fee paid by Tenant to its Permitted Manager under its Management Agreement (or, if self-managed, to its Affiliate under the corresponding management agreement) for the Improvements for the corresponding calendar year (pro-rated for partial calendar years) (the "Landlord Management Fee"). The Landlord Management Fee shall be payable in annual installments, in arrears, on or before thirty (30) days after the end of each calendar year during the Term hereof on account of amounts due for the prior calendar year (or portion thereof). In the event that Landlord fails to provide Landlord Management Services to Tenant to the reasonable satisfaction of Tenant, Tenant shall provide Landlord with a written notice indicating in reasonable detail in what respect Landlord has failed to provide the Landlord Management Services with respect to the Improvements, and what measures will be necessary, in the reasonable opinion of Tenant, for Landlord to take to meet its obligations to with respect to the performance of Landlord Management Services. Such notice shall contain the following legend placed in bold face large type prominently and conspicuously at the top of the transmittal letter: "THIS IS A NOTICE OF DEFAULT. IMPORTANT RIGHTS UNDER THE GROUND LEASE MAY BE SUSPENDED OR LOST BY FAILURE TO CURE THE STATED DEFAULT PROMPTLY." If such failure continues for more than thirty (30) days after such written notice, then Tenant may suspend the payment of the Landlord Management Fee until such time as Landlord fulfills its obligations to provide the Landlord Management Services, it being agreed that no Landlord Management Fee shall be payable with respect to any such period of suspension.

#### ARTICLE V - USE AND QUIET ENJOYMENT; SURRENDER

#### 5.1. Use; Conditions.

(a) Tenant covenants and agrees that the Improvements and Premises may only be used for the Permitted Uses as set forth herein in accordance with all Legal Requirements. Tenant shall use the Premises only for the construction, development, leasing, operation and maintenance of the Improvements, consisting of no fewer than 102 Affordable Units, accessory facilities, amenities, and improvements customary or desirable in connection therewith, including, without limitation, parking facilities and areas, ancillary retail and commercial space, property management office, community space (including, without limitation, a tech lounge, conference/training room, and communal spaces for independent and group connectivity), recreational areas and/or open space (the "Permitted Uses") and for no other uses. The initial Improvements shall be constructed as shown on the Final Plans and Specifications. Tenant shall exercise commercially reasonable efforts initially to lease and thereafter during the

Term to keep the Affordable Units at the Premises at all times leased to Assisted Residents pursuant to the requirements of this Lease (subject to casualty, condemnation and *force majeure events*), the HAP Contract, the Letter of Assurance and the Management Plan. For the avoidance of doubt, the Improvements shall not be converted to a condominium or cooperative form of ownership structure without the consent of Landlord, which consent may be withheld in Landlord's sole discretion. Without the prior consent of the BHA, Tenant shall not offer, and shall prohibit the Residents of the Units from offering, use of the Units on a short term rental or other time-sharing basis for a fee for a period of time that would trigger the Massachusetts room excise tax applicable to short-term rentals (which, as of the Commencement Date, is thirty-one (31) consecutive days or less), including without limitation, pursuant to an Airbnb or VRBO program. Tenant shall use good faith efforts to cause the uses by any retail subtenants to conform to the Retail Strategic Plan in accordance with Section 14.1.

- (b) Of the Affordable Units, approximately 31% shall be one-bedroom units, approximately 35% shall contain two bedrooms, approximately 24% shall contain three bedrooms and approximately 10% shall contain four bedrooms. The basic unit characteristic of the Affordable Units will be equal in finishes, fixtures, appliances and amenities to the marketrate units expected to be constructed in the first mixed-income building planned on another portion of the Site (provided that such mixed-income building may contain finishes for all units therein that are unique to such building for aesthetic reasons). The Improvements or Major Alterations, as applicable, will, to the extent feasible, conform to "green building", "well building" and "accessibility" standards, universal design principles and energy efficiency and sustainable practices in effect prior to commencement of construction thereof. The Affordable Units will at all times during the Term have the benefit of, and be subject to, all Legal Requirements, including without limitation, applicable federal, state and local rental subsidy programs, including HUD's Project-Based Voucher requirements. Landlord and Tenant agree to enter into HAP Contracts, to the extent such contracts are authorized by HUD. Landlord agrees to use reasonable efforts to work with HUD and any successor federal agency, and state and local agencies, to procure and maintain Project-Based Vouchers or comparable rental subsidies at a level that enables the operation and maintenance of the Affordable Units to be economically sustainable.
- (c) Tenant shall operate the Units, any retail space and all amenity space and common areas of the Improvements and Premises consistent with good business practices applicable to affordable housing rental buildings. Tenant shall, at Tenant's sole cost and expense, perform all of Tenant's activities on the Premises in compliance with all Legal Requirements affecting the Premises and the Improvements. Tenant shall also abide by such regulations, procedures and policies as may be contained in the Owners' Association Agreement, the Letter of Assurance and the Management Plan or adopted in accordance with the procedures set forth therein.
- (d) Landlord and Tenant intend that, unless and until Tenant has entered into a Management Agreement (as defined below) for the Improvements with a Permitted Manager in accordance with this Lease, the Units and any retail space, and all amenity space and common areas of the Improvements and Premises shall be self-managed by Tenant or an Affiliate. Tenant acknowledges that it has received and reviewed a copy of the Management Plan on or before the

Commencement Date. Tenant shall comply (and shall use commercially reasonable efforts to cause any Permitted Manager to comply) with the Management Plan to the extent applicable to the Affordable Units and, solely to the extent, if at all, located within the Premises, any temporary community center. If Tenant does not elect to self-manage (or retain an Affiliate to provide management services), subject to Landlord's prior written approval, which Landlord will not unreasonably withhold or delay, Tenant shall delegate the marketing and leasing of the Units and management of the Improvements to a professional management company routinely engaged in the management of mixed-income apartment buildings containing, in the aggregate, at least 2,000 residential apartment units similar to the Improvements for at least five (5) years prior to the date of initial delegation by Tenant ("Permitted Manager"). Landlord acknowledges that to the extent that Tenant causes the Permitted Manager to perform any of Tenant's obligations or covenants under this Lease, such obligations or covenants shall be deemed to have been performed by Tenant. A Permitted Manager may be engaged only pursuant to a commercially reasonable form of management agreement approved by Tenant (a "Management Agreement") which shall be expressly subject to the terms of this Lease, and shall be in a form reasonably required or approved by Landlord obligating the Permitted Manager to comply with the Management Plan to the extent applicable to the Affordable Units and, solely to the extent, if at all, located within the Premises, any temporary community center. Landlord hereby acknowledges and agrees that any Management Agreement shall be subject and subordinate to the rights of a Permitted Leasehold Mortgagee as may be provided in such Management Agreement or any subordination agreement relating thereto required by a Permitted Leasehold Mortgagee, provided that if a Permitted Leasehold Mortgagee (or its assignee) shall succeed to the interest of Tenant under this Lease by foreclosure, assignment in lieu of foreclosure or otherwise, such Permitted Leasehold Mortgagee or assignee shall be obligated to cause its Permitted Manager to agree to be bound by the Management Agreement reasonably required or approved by Landlord as described above.

- (e) If the Permitted Manager materially violates, breaches or fails to comply with any provision of, or obligation under, the Management Agreement, Landlord shall have the rights set forth in the Management Agreement to remove the then Permitted Manager and appoint a successor manager thereunder (or under a new Management Agreement), subject to the notice and cure provisions, if any, provided in the Management Agreement. Furthermore, in all events, Landlord shall have the right to approve any successor or assignee of the Permitted Manager in accordance with **Section 5.1(d)**. If Tenant is self-managing the Improvements and materially violates, breaches or fails to comply with any provision of, or obligation under, this Lease that relates to the management of the Premises, which violation, breach or failure is not cured within thirty (30) days after written notice thereof from Landlord, or such longer period so long as Tenant has commenced to cure such violation, breach or failure within such thirty (30) day period and is using diligent, reasonable and continuous efforts to cure such violation, breach or failure, then Landlord shall have the right to require that Tenant appoint a Permitted Manager.
- 5.2 <u>Provisions Regarding Cuts to Section 8 Rental Subsidies</u>. Landlord and the Developer have developed a plan for addressing shortfalls that arise if there are notable changes to the Section 8 program that affect the Project or any of the Improvements. The memorandum attached as **Exhibit G** hereto describes the plan for managing a loss or diminution of rental subsidy for Affordable Units that arises from a reduction in federal appropriations or change in

applicable law, regulation, or governmental policy at the federal, state, or local level. Landlord and Tenant agree to implement and comply with such plan with respect to the Premises and Improvements thereon.

Notwithstanding anything to the contrary in this Lease, the terms and provisions of this **Section 5.2** and **Exhibit G** shall supersede any contrary or inconsistent provision in this Lease (including, without limitation, with respect to Affordable Units and Assisted Residents and the definitions thereof), and in the event of any conflict or inconsistency between this **Section 5.2** and **Exhibit G** and any other section or provision of this Lease, this **Section 5.2** and **Exhibit G** shall govern. In circumstances where this **Section 5.2** and **Exhibit G** becomes applicable, each Party will execute and deliver, or cause to be executed and delivered, such further instruments, or amendments, modifications or clarifications to this Lease and do or cause to be done such further acts, as may reasonably be necessary or proper to carry out the intent and purpose of this **Section 5.2** and **Exhibit G**.

- 5.3 Owners' Association. Tenant has simultaneously herewith entered into or executed a joinder with respect to the Owners' Association Agreement and has, pursuant to and in accordance therewith, become a member of the Owners' Association. The Owners' Association is an organization of all ground tenants of the Site and, for the term of the Development Agreement, the Developer (the "Owners' Association"). Landlord is a special member of the Owners' Association. Tenant acknowledges and agrees that it (and its successors and assigns) will be bound by, and shall comply with, the terms of the Owners' Association Agreement, as it may be amended from time to time, during the Term. Tenant acknowledges and agrees that CRA Permanent Funding Assessments and Common Expense Assessments (each as defined in, and determined in accordance with, the Owners' Association Agreement) are charged to Tenant and other ground tenants of the Site and shall constitute Additional Rent. Tenant may also be assessed under the Owners' Association Agreement for other assessments, including without limitation, assessments for purposes of constructing the Common Areas and improvements thereon, which assessments shall constitute Additional Rent hereunder.
- Local Tenant Organization. The Local Tenant Organization Agreement for 5.4 Charlestown Development (as the same may be amended, restated, replaced, modified, extended and/or supplemented from time to time, the "Local Tenant Organization Agreement") is an agreement originally dated as of April 28, 2021 by and among the CRA, Landlord, Developer, and the Owners' Association which addresses the rights of the CRA, and successor LTO's, with respect to participation in certain decisions and operations relating to the Site. Tenant acknowledges that the CRA, or any successor as the local tenant organization ("LTO") recognized by Landlord at the Site as of the Commencement Date will act as the representative of the Assisted Residents of the Site, including without limitation, the Improvements, as and to the extent set forth in the Local Tenant Organization Agreement, so long as the CRA or such successor LTO meets the LTO Standards or, if the CRA only has conditional recognition status under the Local Tenant Organization Agreement, then it will act as the representative of the Assisted Residents of the Site only to the same extent that conditional recognition status affords the CRA with the right to do so under the Local Tenant Organization Agreement. Tenant acknowledges the rights of the LTO under the Local Tenant Organization Agreement and receipt of a copy of the Local Tenant Organization Agreement. In the event the CRA or any successor

LTO fails to meet the LTO Standards and is disqualified from representing the Assisted Residents, Tenant shall cooperate with the Owners' Association in its efforts to assist and support the efforts of the BHA to establish a new LTO, as more particularly described in the Owners' Association Agreement. Neither the Local Tenant Organization Agreement, nor any reference herein to the Local Tenant Organization Agreement and the rights of the LTO thereunder, shall create or imply any privity of contract or other direct legal relationship between the CRA or any successor LTO with Tenant under this Lease.

- 5.5. No Waste. Tenant shall not injure, overload, deface, or strip, or cause waste or damage to, the Premises or the underlying fee, or any part thereof, in violation of applicable Legal Requirements nor commit any nuisance or unlawful activity; nor permit the emission from the Premises of any objectionable noise or odor which constitutes a public or private nuisance or which may be reasonably expected to unreasonably disturb the quiet enjoyment of neighboring buildings or premises or those having business with them; nor permit any flashing or neon lights which cast light outside the Improvements (except as provided in the Approved Development Plan, as required in connection with the construction of the Improvements or as otherwise may be permitted by applicable Legal Requirements); nor permit or knowingly suffer any Occupant to do any of the foregoing.
- 5.6. Permits and Approvals. Tenant shall, at its sole cost and expense, obtain all permits, certificates, approvals, licenses and all other necessary or appropriate actions of any federal, state or municipal authorities required to enable the construction, leasing, maintenance, operation and use of the Improvements or any Major Alterations thereto (collectively, the "Approvals"). Upon the request of Tenant, Landlord shall cooperate with Tenant in obtaining the Approvals and hereby authorizes Tenant to file for and prosecute the same (and shall join in any application or proceeding with respect to the Approvals where the provisions of any Legal Requirement require that such application or proceeding be brought by or in the name of Landlord), provided that Landlord shall not be required to incur any unreimbursed costs or expenses in connection with such cooperation and shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the City or the Commonwealth, or any agency, authority, branch, commission, division, office or subdivision of or for the City or the Commonwealth (except as provided in Article XI in the event of a threatened eminent domain taking or condemnation), nor shall Landlord be required, in connection with any such proceeding or otherwise, to oppose in any way any policy previously established by Landlord nor to take any position inconsistent with a position previously taken and made public by Landlord. Nothing herein, however, shall prohibit Tenant from taking such lawful actions as it may deem necessary in seeking Approvals, consistent with the Approved Development Plan, as it may be modified, the design documents approved by Landlord, and this Lease (or defending the same in any appeal), and Landlord shall not appear in opposition to Tenant so long as the Approvals are consistent with the Approved Development Plan, as it may be modified in accordance with this Lease, the design documents approved by Landlord, and this Lease.
- 5.7. <u>Use Agreement, HAP Contract, Others</u>. Tenant shall comply with all material provisions of the Use Agreement, HAP Contract, and the BPDA Regulatory Agreement to the extent applicable to the Premises.

- 5.8. Quiet Enjoyment. If and so long as Tenant shall pay all Rent, Additional Rent and other charges herein provided, and shall observe and perform all covenants, agreements and obligations contained herein on its part to be kept, Landlord warrants peaceful and quiet occupation and enjoyment of the Premises by Tenant; provided, that Landlord may enter upon and examine the Premises and may review Books and Records related to the Premises and this Lease in accordance with **Section 17.10** and, if and to the extent required by applicable Legal Requirements, HUD, the Comptroller General of the United States, the City and any other governmental agency providing public funds to Landlord or any of their representatives, may enter upon and examine the Premises and may review Books and Records related to the Premises and this Lease in accordance with **Section 17.10**, in order to audit and examine such Books and Records related to any federal or City subsidies or approvals received by Tenant.
- 5.9. Ownership of Improvements. This Lease is intended to convey to Tenant all the burdens and benefits of ownership of the Premises and to cause Tenant to be treated as the owner of the Premises for federal and state income tax purposes as of the Commencement Date. Notwithstanding any provision in this Lease to the contrary, the Improvements and all other alterations, additions, equipment and fixtures built, made or installed by the Tenant in, on, or under or the Premises shall be the sole property of the Tenant until the expiration or other termination of the Term. Accordingly, at all times during the Term, Tenant shall be deemed to exclusively own the Improvements for federal income tax purposes, and Tenant alone shall be entitled to all of the tax attributes of ownership thereof, including, without limitation, the right to claim depreciation or cost recovery deductions, the right to claim the federal low-income housing tax credits available to Tenant under Section 42 of the Internal Revenue Code of 1986, as amended, with respect to the Improvements, and the right to amortize capital costs and to claim any other federal income tax benefits attributable to the Improvements. The parties agree to treat this Lease in a manner consistent with this intention, including filing all federal income tax returns and other reports consistently with such treatment. Landlord will not claim tax credits, depreciation or any other federal or state income tax benefits with respect to the Premises, or take any action which is inconsistent with this provision. Nothing contained in this Lease shall, however, require Tenant to pay any capital levy, franchise, income, corporate, estate, inheritance, succession, transfer or similar taxes, tax of Landlord, or any income, profits or revenue tax, assessment or charge upon the rent or other benefit received by Landlord under this Lease that may be imposed by any governmental authority.
- 5.10. Tenant's Property and Yield Up. Tenant shall have the right to remove furniture, equipment, and trade fixtures installed by Tenant on the Premises ("Tenant's Property") from the Premises at any time during the Term of this Lease and shall, upon the request of Landlord, remove or cause to be removed all furniture, equipment and trade fixtures belonging to Tenant at the expiration or earlier termination of the Term of this Lease. If any such Tenant's Property is removed, Tenant, at its expense, shall repair any damage resulting from such removal. If Tenant leases, or gives Landlord notice of its intention to lease, Tenant's Property for use in the Premises, Landlord agrees that it will, without undue delay, execute a written instrument for the benefit of any equipment lessor, on such form as shall be furnished by such equipment lessor or by Tenant wherein Landlord shall recognize that its rights to such leased Tenant's Property, if any, shall be subordinate to the rights of the equipment lessor. Any Tenant's Property remaining

on the Premises beyond ninety (90) days after the expiration or earlier termination of the Term of this Lease shall be deemed to be abandoned by Tenant and shall become the property of Landlord. Landlord may thereafter cause any Tenant's Property to be removed from the Premises and disposed of, but the cost of any such removal and disposition and the cost of repairing any damage caused by such removal shall be borne by Tenant.

- 5.11. Surrender of Premises. At the expiration or earlier termination of the Term of this Lease, Tenant shall peaceably leave, quit and surrender the Premises in good condition and repair, reasonable wear and tear excepted and subject to the provisions of **Article X** and **Article XI**. Subject to the rights of a Permitted Leasehold Mortgagee as provided in **Section 6.8**, upon such expiration or termination all Improvements on the Premises or portion thereof so terminated shall become the sole property of Landlord at no cost to Landlord and the Improvements and Premises shall be free of all liens and encumbrances except for occupancy by Residents and encumbrances existing as of the Commencement Date or caused or approved by Landlord.
- 5.12. Construction and Maintenance Easements. Landlord shall grant such reasonable rights of access, utility easements and construction easements to Tenant across portions of the Site now or hereafter owned by Landlord and not yet subject to a lease as are reasonably necessary for the construction and operation of the Improvements to the extent consistent with the Approved Development Plan for the entire Project. Subject to the approval of any Permitted Leasehold Mortgagee (which approval Tenant will use reasonable efforts to obtain within twenty (20) days of any request therefor) and solely to the extent consistent with the Approved Development Plan for the entire Project, Tenant shall grant similar easements in or over the Premises to Landlord or to tenants of other portions of the Site now or hereafter owned by Landlord as may be reasonable and required for the Project. In each case, the party exercising any right under this **Section 5.12** will indemnify the other party for any loss or damage arising out of such use and will restore any property damaged at its own expense.
- 5.13. Holder Agreement. Tenant agrees that, if Tenant requests and Landlord provides "Personal Data", as such term is defined by M.G.L. Chapter 66A, or Tenant otherwise obtains Personal Data, Tenant and its employees, representatives, subcontractors, subconsultants, contractors, and/or agents ("Holders") shall comply with M.G.L. Chapter 66A and all applicable regulations with respect to such Personal Data, and such Personal Data will be placed in a secure system that reasonably assures the confidentiality of the Personal Data. In its use and maintenance of Personal Data, Tenant shall not disseminate or publish any such Personal Data (except to Landlord's or Tenant's designated officers and employees or property manager in the ordinary course of business) without the informed consent of the data subject (as defined in M.G.L. Chapter 66A) and Landlord, or as permitted by law.
- 5.14. Amendments to Approved Development Plan. At such time as any amendment to the Approved Development Plan which affects the Premises is proposed, then unless the Developer has delivered a copy thereof to Landlord and Tenant, the proposing Party (or the Party that received the proposed amendment from the Developer) shall deliver a copy thereof to the other Party for its review and approval. No amendment to the Approved Development Plan which affects the Premises shall be binding upon Landlord or Tenant without the prior written consent of such Parties, which such consent shall not be unreasonably withheld, delayed or

conditioned provided such amendment (i) does not require (as opposed to permit) any deviation from (a) the Final Plans and Specifications previously approved by Landlord, or (b) the bulk, dimensions, square footage, use, or design of any Improvements now or later constructed on the Premises in compliance with the terms of this Lease; and (ii) does not adversely affect in any other manner the use, operation, financing, leasing, or occupancy permitted under this Lease or any Improvements then existing on the Premises or permitted under the terms of this Lease to be built on the Premises. Furthermore, no amendment to the Approved Development Plan shall be binding upon any Permitted Leasehold Mortgagee or any Curing Party at the time of such amendment, unless approved in writing by such Permitted Leasehold Mortgagee or Curing Party, as applicable. Any amendment to the Approved Development Plan that has been approved by Tenant and Landlord and such Permitted Leasehold Mortgagee and Curing Party, as applicable, shall thereupon become a part of the Approved Development Plan hereunder.

# ARTICLE VI - RIGHT TO MORTGAGE; PROTECTION OF PERMITTED LEASEHOLD MORTGAGES

6.1. Right to Mortgage. Notwithstanding any other provisions of this Lease to the contrary, Tenant shall have the right at all times and from time to time to mortgage, encumber, pledge and/or conditionally assign this Lease and its interest in the Premises, the Improvements and Tenant's Property with a Permitted Leasehold Mortgage (and, where required by a Permitted Leasehold Mortgagee, by grant of a security interest under the applicable Uniform Commercial Code and conditional or collateral assignment of rents and/or Occupancy Agreements with respect to the Premises). Tenant shall give prior notice to Landlord of its intent to enter into a Permitted Leasehold Mortgage and shall seek confirmation from Landlord that the proposed mortgagee is a Permitted Leasehold Mortgagee. Such notice and request for confirmation shall be made to Landlord in writing and shall be accompanied by such information as is reasonably necessary for Landlord to determine whether the proposed mortgagee falls within the definition of a Permitted Leasehold Mortgagee set forth in Article I. Within fifteen (15) days of its receipt of such written request, Landlord shall either determine that the proposed mortgagee satisfies the criteria set forth in the definition of Permitted Leasehold Mortgagee in Article I or it shall notify Tenant of the specific respects in which such mortgagee does not satisfy such criteria or it shall indicate with reasonable specificity what further information it requires to make its determination. If Landlord does not notify Tenant in writing within said fifteen-day period of all specific respects in which the proposed mortgagee does not satisfy the criteria set forth in the definition of Permitted Leasehold Mortgagee in Article I or of the further information it requires to make its determination, such proposed mortgagee shall be deemed to be a Permitted Leasehold Mortgagee. If Landlord requests further information concerning the proposed mortgagee, within fifteen (15) days of the receipt of such additional information, Landlord shall confirm that the proposed mortgagee is a Permitted Leasehold Mortgagee or it shall notify Tenant of the specific respects in which such mortgagee does not satisfy the criteria set forth in the definition of Permitted Leasehold Mortgagee in Article I. If Landlord does not so notify Tenant within said fifteen-day period, such proposed mortgagee shall be deemed to be a Permitted Leasehold Mortgagee. Unless (i) a financing transaction is closed with the proposed mortgagee to which confirmation or consent is given or deemed given hereunder within 180 days of the date such confirmation or consent is given or deemed given, or (ii) Tenant enters into a legally binding commitment with respect to a financing with the proposed mortgagee within such

180-day period, then such consent shall be void. Upon request by Landlord, Tenant shall furnish Landlord with copies of the signed commitment letter or term sheet from the proposed mortgagee, the proposed mortgage documents (when available), and such other information pertaining to the proposed loan that is relevant to this Lease as Landlord may reasonably request and shall also furnish Landlord, following the closing of the applicable financing, with a copy of the mortgage as executed and recorded; provided that Landlord agrees to treat all of such documentation and information as confidential. Any other mortgages or encumbrances or security interests in Tenant's leasehold interest in the Premises or the Improvements may be entered into only with the prior approval of Landlord except that financing of Tenant's Property secured by a security interest in goods and governed by Article 9 of the Massachusetts Uniform Commercial Code shall not require such approval. Purchase money second mortgages taken back by Tenant in connection with a Transfer permitted pursuant to Article XIII shall be permitted, provided that any such mortgage contains reasonable terms generally conforming to second mortgages being granted by commercial lenders and provided, further, that Tenant has complied with the provisions of Section 4.4 hereof. Tenant shall not mortgage, pledge, hypothecate or otherwise use its interest in this Lease, the Premises, the Improvements, or any direct equity interests in Tenant to secure the performance of activities, projects, financings or endeavors except those which (i) relate to obligations under this Lease (or activities, projects, financings and endeavors related to carrying out rights or obligations of any Affiliate of Tenant relating to the Project), (ii) secure an obligation to repay money evidenced by a note or notes for which this Lease, the Premises and the Improvements (and/or any other lease, premises or improvements relating to the Project) constitute the only real property serving as security and which note or notes and mortgage or other security agreement do not contain cross default or cross collateralization provisions relating to any other note, security or obligation (other than a note, security or obligation, including, without limitation, in respect of any mezzanine financing, relating to any other lease, premises or improvements relating to the Project), and (iii) secure an obligation which becomes due prior to the expiration of the Term. Any mortgage granted by Tenant shall permit the disbursement of casualty Insurance Proceeds and Awards in connection with Partial Takings, or conveyances under threat thereof, to be used for the repair and restoration of the Premises on the terms and conditions set forth in this Lease.

- 6.2. <u>No Subordination of Fee</u>. At no time shall Landlord's fee title in the Premises or Landlord's interest in this Lease be subjected or subordinated in any manner to the interests of a Permitted Leasehold Mortgagee or any other mortgagee or lienholder of Tenant.
- 6.3. Permitted Leasehold Mortgagee's Right to Take Possession. A Permitted Leasehold Mortgagee, during the term of its Permitted Leasehold Mortgage and subject to **Section 6.6**, shall have the right to enter upon and take possession of the Premises upon the happening of any Event of Default as specified herein or for any default in or breach of Tenant's obligations to such Permitted Leasehold Mortgagee. Notice thereof shall be sent to Landlord. Such entry, by itself, shall not be deemed to be a default hereunder.
- 6.4. <u>Right of Permitted Leasehold Mortgagee to Cure Defaults</u>. A Permitted Leasehold Mortgagee shall have the benefit of the following provisions in addition to those elsewhere provided in this Lease, provided that such Permitted Leasehold Mortgagee shall have

given written notice to Landlord of the address in the United States to which notices are to be sent:

- (a) all notices or copies of notices which are by the terms of this Lease to be sent to such Permitted Leasehold Mortgagee shall be in writing and shall be sent in the manner set forth in **Section 19.1** to such Permitted Leasehold Mortgagee at its address designated by notice to Landlord;
- (b) no notice of default or termination given by Landlord to Tenant shall be effective until a copy thereof shall also be sent to such Permitted Leasehold Mortgagee;
- (c) after the occurrence of an Event of Default and receipt from Landlord of a notice of the occurrence of an Event of Default, a Permitted Leasehold Mortgagee shall have the same time period subsequent to the receipt of such notice to cure any default hereunder or cause the same to be cured as shall be permitted hereunder to Tenant after notice to Tenant of a default, plus (a) in the case of a default in the payment of any Rent, an additional period of sixty (60) days, and (b) in the case of any other default, an additional period of ninety (90) days, and if such default cannot with due diligence be cured within such additional ninety (90) day period, an additional time thereafter, provided that such cure is initiated during such additional ninety (90) day period and thereafter, the curing of the same is prosecuted with diligence;
- (d) after the occurrence of any Event of Default by Tenant which is not capable of being cured by the payment of money, but which is capable of being cured following obtaining possession and control of the Premises (a "Curable Nonmonetary Default"), Landlord agrees that it will not terminate or cancel this Lease by reason of such default without first giving to a Permitted Leasehold Mortgagee such time as may reasonably be required to obtain possession of the Premises (including possession by a receiver) and to cure such default, provided that such Permitted Leasehold Mortgagee shall prosecute with diligence and continuity its efforts to obtain such possession and to cure such default by Tenant; and
- after the occurrence of any Event of Default which is not reasonably within the power of such Permitted Leasehold Mortgagee to cure (a "Noncurable Default"), (including, without implied limitation, a violation by Tenant of Section 13.2), Landlord agrees that it will not terminate or cancel this Lease by reason of such default without first giving to such Permitted Leasehold Mortgagee such time as may reasonably be required to complete foreclosure proceedings or otherwise to acquire the interests of Tenant under this Lease (provided that such forbearance by Landlord shall extend for only so long as such Permitted Leasehold Mortgagee shall be pursuing such remedies with diligence and continuity and shall be sending notices to Landlord at least monthly informing Landlord of its actions in pursuing such remedies) and upon the Transfer of the interest of Tenant under this Lease, any Noncurable Default shall be deemed to have been waived as to any Permitted Leasehold Mortgagee or any purchaser at a foreclosure sale. Notwithstanding anything to the contrary in this Lease, any failure to pay Participating Rent shall be deemed a Noncurable Default; provided, however, if an Event of Default hereunder exists as a result of a failure to pay Participating Rent when due that is not cured within the applicable notice and cure periods hereunder, then, if the Permitted Leasehold Mortgagee forecloses or accepts an assignment in lieu of foreclosure (collectively, a

"Foreclosure Event") on its Permitted Leasehold Mortgage and recovers net Foreclosure Event proceeds in excess of the outstanding indebtedness then owed to such Permitted Leasehold Mortgagee plus actual, out-of-pocket costs incurred by it in connection with the Foreclosure Event, and after payment to any members of Tenant of any amounts owed to such members to repay any Junior Loans approved by Landlord in accordance with the definition thereof made by them under the Operating Agreement, the Permitted Leasehold Mortgagee shall pay (or cause Tenant to pay) to Landlord twenty-five percent (25%) of any remaining Foreclosure Event proceeds, whereupon, notwithstanding anything to the contrary in this Lease, the Participating Rent provisions of this Lease shall no longer apply and shall be deemed null and void; provided that Landlord reserves its right to pursue a claim for damages against the prior Tenant whose interest was subject to the Foreclosure Event for any failure of such prior Tenant to have paid to Landlord any Participating Rent when due.

Landlord shall accept cure by a Permitted Leasehold Mortgagee as a cure by Tenant, and shall not terminate this Lease if a Permitted Leasehold Mortgagee in fact effects such cure within the applicable aforesaid period. Nothing contained in this **Section 6.4** shall require a Permitted Leasehold Mortgagee to begin or continue such possession or foreclosure proceedings or preclude Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant (for which the cure rights of the Permitted Leasehold Mortgagee under this Lease have already been exhausted) during any period of such forbearance or preclude Landlord from exercising any rights or remedies under this Lease other than termination or cancellation of the Lease during any period of such forbearance. The foregoing provisions of clauses (d) and (e) to the contrary notwithstanding, Landlord shall have no obligation to refrain from terminating this Lease unless Tenant or such Permitted Leasehold Mortgagee shall have paid, or caused to be paid, all Rent, Additional Rent and other sums due and payable by Tenant hereunder within the cure period set forth in clause (c) and shall be diligently and continually prosecuting the cure of any default by Tenant which is capable of being cured by the payment of money or without being in possession or control of the Premises.

- 6.5. <u>Protection of Interests of Permitted Leasehold Mortgagee</u>. If a Permitted Leasehold Mortgagee, through the operation of its contract to finance or refinance the Improvements, or by entry as a mortgagee in possession, or by foreclosure, or by acceptance of an assignment in lieu of foreclosure, acquires Tenant's interest in the Premises or the Improvements, such Permitted Leasehold Mortgagee shall have the right, at its option, to:
- (a) by itself, its agent, designee or nominee, complete construction of such Improvements substantially in accordance with the Final Plans and Specifications and operate the Improvements itself and in all respects comply with the provisions of this Lease;
- (b) Transfer Tenant's interest in the Premises, the Improvements and this Lease to (i) a Controlled affiliate of such Permitted Leasehold Mortgagee, or (ii) any other assignee or transferee, which Controlled affiliate or other assignee or transferee shall expressly assume (subject to the terms of this **Article VI**) all of the covenants, agreements, and obligations of Tenant under this Lease, and shall be entitled to all the rights and benefits of Tenant under this Lease in respect of the Premises, by written instrument, reasonably satisfactory to Landlord to be recorded in the Registry, and the mortgagee of such assignee or transferee shall be entitled to all

of the rights of a Permitted Leasehold Mortgagee of Tenant provided the mortgagee is a Permitted Leasehold Mortgagee; provided that, with respect to any assignment or Transfer to such assignee or transferee that is not a Controlled affiliate of such Permitted Leasehold Mortgagee, the Transfer must comply with the provisions of **Section 13.3(iii)**; and/or

(c) terminate the leasehold interest created by this Lease, thereby permitting Landlord to determine the future of the Premises, including the right to relet the Premises; in the event of such termination, Landlord shall have no obligation to compensate such Permitted Leasehold Mortgagee for any losses.

No such action by the Permitted Leasehold Mortgagee shall relieve Tenant of any of its obligations hereunder. If a Permitted Leasehold Mortgagee shall elect to complete construction or shall so Transfer its interest, Landlord shall extend such time limits set forth in **Section 7.2** hereof as shall be reasonably necessary to allow for the completion of construction of the Improvements, and upon such completion, such Permitted Leasehold Mortgagee or its transferee, as the case may be, shall be entitled to a Certificate of Compliance pursuant to **Section 7.5**.

No entry by a Permitted Leasehold Mortgagee (or its affiliate) as a mortgagee in possession, or any acquisition by a Permitted Leasehold Mortgagee (or its affiliate) of Tenant's interest in the Premises or the Improvements by foreclosure, or by acceptance of an assignment in lieu of foreclosure or otherwise, or any assignment or Transfer in accordance with clause (b) above, or any purchase by a purchaser at a foreclosure sale of a Permitted Leasehold Mortgage, shall be subject to or trigger any Transaction Rent, nor shall any acquisition financing obtained by a purchaser at a foreclosure sale be deemed a Refinancing that shall be subject to or trigger any Transaction Rent. For the avoidance of doubt, without the consent of Landlord, a Permitted Leasehold Mortgagee may transfer its interest in any Permitted Leasehold Mortgage to its affiliate in connection with exercising its remedies under such Permitted Leasehold Mortgage, including foreclosure or acceptance of an assignment in lieu of foreclosure or otherwise, which affiliate shall be deemed a Permitted Leasehold Mortgagee and which transfer shall not trigger any Transaction Rent.

Obligations and Rights of a Permitted Leasehold Mortgagee in Possession. If the 6.6. Permitted Leasehold Mortgagee shall enter upon and take possession of the Premises, but not otherwise, it shall be bound thereafter to keep and perform all duties and covenants and agreements of Tenant under this Lease; provided, however, that if any default or breach of covenant or other condition justifying termination or cancellation of this Lease by Landlord shall have been cured within the period provided in this Lease and Tenant shall resume possession and shall not then be in default under this Lease, the Permitted Leasehold Mortgagee, upon restoring Tenant to full possession of the Premises and its rights under this Lease, shall thereafter not be so bound; and provided further, however, that if after such entry upon and taking possession of the Premises, Landlord and the Permitted Leasehold Mortgagee shall accept, in writing, another tenant in place of Tenant, or if after such entry and taking possession, the Permitted Leasehold Mortgagee shall assign its Permitted Leasehold Mortgagee, the mortgage note secured thereby and its possession of the Premises to another lender (qualifying as a Permitted Leasehold Mortgagee) in place of the Permitted Leasehold Mortgagee, the Permitted Leasehold Mortgagee shall not be so bound.

- 6.7. No Modification or Termination By Tenant. During the term of any Permitted Leasehold Mortgage, this Lease shall not be (i) amended or modified or (ii) terminated, surrendered or cancelled by reason of the exercise of any option or election by Tenant hereunder, or by the giving of any notice by Tenant hereunder, or by joint action of Landlord and Tenant, unless such amendment, modification, termination or cancellation is assented to in writing by the Permitted Leasehold Mortgagee. Any such attempted amendment or modification, termination, surrender or cancellation without such assent shall be void.
- Permitted Leasehold Mortgagee's Rights To New Lease. Landlord agrees that (i) if the Permitted Leasehold Mortgagee has acquired Tenant's interest in the Premises or the Improvements pursuant to Section 6.5, or (ii) upon any termination of this Lease with Tenant, at the request of the Permitted Leasehold Mortgagee, Landlord will, upon compliance with the requirements of this Section 6.8, enter into a new lease with the Permitted Leasehold Mortgagee or a Controlled affiliate of the Permitted Leasehold Mortgagee upon the same terms and conditions contained in this Lease, with appropriate revisions to reflect the rights of such Permitted Leasehold Mortgagee or Controlled affiliate, for the remainder of the Term of this Lease; said new lease shall have the same priority as this Lease with Tenant and shall provide that title to the Improvements shall automatically vest in the Permitted Leasehold Mortgagee or such Controlled affiliate, and that Landlord shall assign to the Permitted Leasehold Mortgagee or such Controlled affiliate any Occupancy Agreements whose Occupants have attorned to Landlord. Landlord shall not be required to enter into such a new lease unless, prior to the execution and delivery of such new lease, the Permitted Leasehold Mortgagee shall have paid, or caused to be paid, Rent, Additional Rent and other sums due and payable by Tenant to the date of commencement of the new lease, together with Landlord's reasonable expenses, including, without limitation, attorneys' reasonable fees in terminating the Lease and preparing and delivering the new lease, and shall have cured all existing monetary and insurance defaults under the Lease and all other defaults under the Lease (other than Noncurable Defaults, as defined in clause (e) of Section 6.4), and shall have performed all the covenants and obligations of Tenant which are reasonably within the power of such Permitted Leasehold Mortgagee to perform (any Noncurable Defaults shall be deemed waived as to such Permitted Leasehold Mortgagee or Controlled affiliate, its successors and assigns).
- 6.9. <u>Limitation on Liability of Permitted Leasehold Mortgagee</u>. Nothing herein shall require any Permitted Leasehold Mortgagee to cure any default by Tenant or to begin or continue possession or foreclosure proceedings. No Permitted Leasehold Mortgagee shall have any liability for Tenant's obligations hereunder unless and until such Permitted Leasehold Mortgagee shall take possession of the Premises, or acquire Tenant's leasehold interest hereunder by foreclosure, assignment in lieu of foreclosure or otherwise. Upon any such possession, foreclosure or acquisition, such Permitted Leasehold Mortgagee, and any other purchaser at foreclosure or party acquiring by, through or under such Permitted Leasehold Mortgagee, shall only be liable for Tenant's obligations under this Lease accruing from and after the date of such possession, foreclosure or acquisition, not those accruing before, and shall be relieved from liability for Tenant's obligations under this Lease upon any subsequent assignment or Transfer of its interest in this Lease to any transferee who agrees to become fully liable for such obligations, including those arising and accruing after such assignment or Transfer. Any of Permitted

Leasehold Mortgagee's obligations hereunder, and those of any purchaser at foreclosure sale or other party acquiring by, through or under such Permitted Leasehold Mortgagee, shall be binding upon the assets of such Permitted Leasehold Mortgagee or other party which comprise the Premises, but not any other assets of such Permitted Leasehold Mortgagee or other party, and Landlord shall look solely to such Permitted Leasehold Mortgagee's or other party's interest in the Premises in satisfaction of any remedies which it might have against such Permitted Leasehold Mortgagee or other party.

- 6.10. <u>Refinancing</u>. Upon prior notice to Landlord, Tenant shall have the right to refinance the Premises at any time, provided that no Event of Default then exists (unless such refinancing will cure any such Event of Default), that such refinancing (including any Refinancing) is by means of a Permitted Leasehold Mortgage, that all Rent, Additional Rent and other sums due and payable by Tenant shall have been paid on or before the date of such refinancing and that any Rent payments required by **Section 4.4(a)** are made to Landlord.
- 6.11. Cooperation with Lenders. Landlord agrees to cooperate reasonably with any Permitted Leasehold Mortgagee and with Tenant in Tenant's negotiations with prospective lenders for the Premises and Improvements, and to accommodate the reasonable requirements of such lenders. Landlord agrees to make reasonable modifications to this Lease to accommodate the requirements of a prospective Permitted Leasehold Mortgagee, provided that Landlord shall never be required to enter into any amendment to this Lease which would (a) subordinate Landlord's fee interest in the Premises; (b) reduce, defer or subordinate the payment of Rent; (c) relieve Tenant of any material obligation, monetary or otherwise, under this Lease; (d) extend the Term of this Lease; or (e) permit Tenant to construct Improvements other than those permitted under this Lease; or (f) otherwise materially adversely affect Landlord's rights under this Lease; or (g) materially adversely affect the rights of Assisted Residents under their Occupancy Agreements.
- 6.12. Estoppel Certificates. Landlord and Tenant, as the case may be, will execute, acknowledge and deliver to each other or to any actual or prospective Permitted Leasehold Mortgagee, or a permitted transferee under **Section 13.3**, or any actual or prospective Occupant of a portion of the Premises other than a Unit, or any other actual or prospective purchaser, assignee, transferee or similar party, within fifteen (15) days after a written request therefor, a certificate certifying:
- (i) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications);
- (ii) the dates, if any, to which Rent, Additional Rent and other sums payable hereunder have been paid;
- (iii) whether or not, to the knowledge of Landlord or Tenant, as the case may be, there are then existing any defaults under this Lease (and if so, specifying the same); and
  - (iv) such other matters relating to this Lease as may be reasonably requested.

- 6.13. Recognition and Confirmation Agreement. At the request of a Permitted Leasehold Mortgagee or Tenant, Landlord agrees to execute and deliver to such Permitted Leasehold Mortgagee a commercially reasonable recognition, non-disturbance and/or consent agreement in a form mutually agreeable to Landlord and such Permitted Leasehold Mortgagee, which agreement may also contain, without limitation, such confirmations and consents from Landlord as may be reasonably requested by such Permitted Leasehold Mortgagee with respect to matters set forth in this Lease as to which the rights, instruments or agreements of, or in favor of, Landlord are stated in this Lease to be subject and subordinate to the rights, instruments or agreements of, or in favor of, such Permitted Leasehold Mortgagee.
- 6.14. <u>Undertakings of Permitted Leasehold Mortgagee</u>. All Permitted Leasehold Mortgages shall provide that:
- (a) <u>Notices</u>. Promptly after the giving to Tenant of any notice of process in any action or proceeding brought for foreclosure of a Permitted Leasehold Mortgage or any notice of acceleration under a Permitted Leasehold Mortgage, or a foreclosure of a Permitted Leasehold Mortgage, the Permitted Leasehold Mortgage will give duplicate copies thereof to Landlord by certified mail, return receipt requested, or by a nationally recognized overnight courier.
- (b) <u>Amendment</u>. A Permitted Leasehold Mortgage shall not be amended in any manner that would cause it to no longer qualify as a Permitted Leasehold Mortgage without the prior written consent of Landlord.
- 6.15. Landlord's Right to Mortgage. Nothing in this Lease shall restrict or prevent Landlord's right to mortgage its fee interest in the Premises for a governmental purpose provided that any such mortgage is subject and subordinate to this Lease, and Landlord shall cause any such mortgagee to execute and deliver such instruments as may be reasonably requested by Tenant, Curing Party or any Permitted Leasehold Mortgagee to confirm such subordination to this Lease and to provide non-disturbance protections to Tenant. Landlord shall provide Tenant with reasonable advance notice of any such mortgage.

# ARTICLE VII - DESIGN AND CONSTRUCTION OF IMPROVEMENTS AND ANY MAJOR ALTERATIONS

- 7.1. <u>The Improvements</u>. Tenant hereby agrees to use diligent efforts to construct on the Premises, at its sole cost and expense, the Improvements in accordance with the Final Plans and Specifications.
- 7.2. Schedule for Construction. Subject to force majeure events, Tenant shall Commence construction of the Improvements within thirty (30) days after the Commencement Date, shall prosecute such construction diligently and continuously in accordance with the construction schedule provided by Tenant to Landlord, and shall Substantially Complete such construction no later than thirty (30) months after the Commencement Date (the "Outside Completion Date") all in accordance with the Final Plans and Specifications; provided that

Tenant shall have the right to extend the Outside Completion Date for an additional period of two hundred seventy (270) days (the ("<u>Extended Completion Period</u>") so long as Tenant continues to diligently pursue Substantial Completion. For purposes of this Lease, construction of the Improvements shall be deemed to have "<u>Commenced</u>" upon commencement of actual physical work on the Premises pursuant to a full, unconditional building permit.

- 7.3. <u>Construction Requirements</u>. Tenant shall construct the Improvements, and any Major Alterations, at its sole cost and expense, and at its sole risk, in a good and workmanlike manner, using new or good quality materials, in conformity with this Lease, and all applicable permits and approvals and other Legal Requirements.
- 7.4. <u>Monthly Progress Reports</u>. Tenant shall submit to Landlord a detailed estimated construction schedule at the time construction is begun, in a format then currently in use in the multi-family construction industry (the "<u>Construction Schedule</u>"). The Construction Schedule shall be resubmitted each calendar quarter until the construction of the Improvements has been completed, with actual progress shown. This quarterly submission shall be accompanied by a written report by Tenant citing any adjustments to the schedule forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts.
- 7.5. Certificate of Compliance. Promptly upon Substantial Completion of the Improvements, Tenant shall give to Landlord written notice thereof. Not later than fifteen (15) days after the receipt of such notice, Landlord will either (i) issue to Tenant a Certificate of Compliance, in recordable form as set forth in **Exhibit F** attached hereto or (ii) provide Tenant with a written statement indicating in reasonable detail in what respect Tenant has failed to complete the Improvements, and what measures will be necessary, in the reasonable opinion of Landlord, for Tenant to take to obtain such Certificate (and, if clause (ii) is applicable, then at such time as Tenant believes it has completed the measures set forth in clause (ii), Tenant may give Landlord written notice of Substantial Completion, in which case Landlord shall then have seven (rather than fifteen) days to respond under clause (i) or (ii) above). Such Certificate of Compliance from Landlord shall be conclusive determination of satisfaction and termination of the agreements and covenants in this Lease with respect to the obligations of Tenant and its successors and assigns to Commence and complete the Improvements. If Landlord shall refuse or fail to provide Tenant with such a Certificate of Compliance or written statement within fifteen (or seven if applicable) days of a request therefor by Tenant, the Improvements shall be deemed to have been completed in accordance with the Final Plans and Specifications, the Certificate of Compliance shall be deemed to have been issued, and Tenant shall be entitled to record or file (as appropriate) an affidavit to such effect with the Registry.
- 7.6. <u>Coordination; Inspection</u>. Tenant acknowledges that the Premises constitute a portion of the Site, which contains occupied multi-family residences and that the comfort and safety of Residents and Occupants of other premises in the Project and BHA Residents in existing buildings on the Site are of primary importance. Tenant shall provide to Landlord, for Landlord's approval, not to be unreasonably withheld, delayed or conditioned, plans for coordination and management of Tenant's construction of the Improvements and its relationship to activities of Landlord, Developer, any other tenants of the Site in the vicinity of the Premises and the BHA Residents in existing buildings on the Site (the "Construction Management"

- <u>Plan</u>"). Such Construction Management Plan shall include, without limitation, planning for traffic, parking, pest control, noise, dirt/dust control, staging, safety, and other matters required for the safe and orderly construction of the Improvements and safe operations of adjacent activities by Landlord and other parties. The Construction Management Plan shall include a communications plan, including without limitation, a 24-hour telephone number which Residents, other Occupants, and neighbors can call or text with questions, concerns, and complaints. Tenant shall provide Landlord's construction representative with a copy of the Construction Schedule and any amendments thereto and with reasonable access to the reports, logs and other systems in which Tenant records or notes the daily progress of construction. Tenant shall inform Landlord's construction representative of any deviation from the Construction Schedule which, in Tenant's good faith determination, is likely to cause a material delay in the Substantial Completion of the Improvements promptly after such deviation becomes apparent to Tenant. All construction work of Tenant hereunder shall be subject to inspection by representatives of Landlord at reasonable times upon reasonable advance notice to Tenant. Such representatives shall abide by all reasonable and usual rules of the workplace established by the general contractor, including, without limitation, safety requirements and compliance with applicable Legal Requirements.
- Delivery of Final Plans and Specifications to Landlord; Change Orders. Pursuant to the Review Process established in Section 7.9 hereof, Landlord has approved Final Plans and Specifications for the initial Improvements, a list of which is attached hereto as Exhibit E. If Tenant desires to modify the Final Plans and Specifications in any material respect, Tenant shall submit any such modification to Landlord for its review. A modification of the Final Plans and Specifications that (i) does not impair or weaken the structure or mechanical systems of the residential apartment building included in the initial Improvements, or include the construction of any other buildings or structures or involve additional floors, (ii) complies with standards for Affordable Units previously approved by Landlord, including without limitation, building sustainability, energy efficiency and wellness standards, (iii) does not impair the use of the Improvements or the Premises for the Permitted Uses, (iv) does not involve a material change in the grade of the land constituting the Premises, or (v) does not materially affect in any way the exterior appearance or function of the residential apartment building included in the initial Improvements, shall be deemed a "Limited Change Order." Modifications of the Final Plans and Specifications which are not a Limited Change Order shall be deemed a "Major Change Order." Tenant shall provide copies of all change orders relating to modifications of the Final Plans and Specifications to Landlord. If Landlord, acting reasonably, deems such a change order to be a Major Change Order, it shall so notify Tenant in writing within fifteen (15) days of its receipt of the change order, and such change order shall be treated as a Major Alteration under the provisions of Section 7.8. If Landlord does not notify Tenant in writing that it considers such change order to be a Major Change Order within fifteen (15) days after its receipt thereof, then it shall be deemed to be a Limited Change Order, provided that in submitting a change order for Landlord's review, Tenant shall have placed the legend required by Section 18.7 prominently at the top of the transmittal letter. Landlord shall have no approval rights over Limited Change Orders. Landlord shall have approval rights over Major Change Orders, subject to, and in accordance with, Section 18.7 and Section 7.8.
- 7.8. <u>Alterations of Improvements</u>. After the Final Plans and Specifications shall have been approved, except for Limited Change Orders, Tenant shall not make or permit to be made

any alterations, additions, or changes to the Improvements or Major Change Orders, except as set forth herein and in Section 7.7, which (a) in the case of alterations, additions or other changes to the Improvements or the Premises, either individually, or collectively as part of one integrated project, (i) cost in excess of TWO MILLION and NO/100 DOLLARS (\$2,000,000.00) or, after the fifth year after the Commencement Date, the Value Equivalent of such amount, or (ii) are in the nature of capital improvements to more than twenty percent (20%) of the total gross floor area of the residential apartment building included in the initial Improvements; (b) in the case of additions to the residential apartment building included in the initial Improvements, exceed five thousand (5,000) square feet of new gross floor area of the residential apartment building included in the initial Improvements; (c) in the case of the construction of a new residential apartment building or structure on the Premises subsequent to the initial Improvements, exceed one thousand (1,000) square feet of new gross floor area; (d) involve any material demolition of the exterior structure of the residential apartment building included in the Improvements (other than in accordance with Articles X or XI and other than in connection with routine maintenance, repairs and replacements); or (e) adversely affect the number of bedrooms, the square footage or the quality of the finishes or the indoor air quality of any of the Affordable Units in any material respect (each of which, "Major Alterations"), without, in each case, the prior written consent of Landlord. Landlord's approval shall be subject to, and in accordance with, Section 18.7. Any request for such consent shall be accompanied by graphic, financial and other materials sufficient to illustrate the nature and extent of the proposed Major Change Order or Major Alterations, its impact upon the Improvements or the Premises, improvements existing upon, or planned for under the Approved Development Plan, and other portions of the Site, and shall be submitted to Landlord in accordance with the Review Process established in Section 7.9 hereof. Upon any reasonable disapproval thereof by Landlord, Tenant shall have no right, within six (6) months after such disapproval, to resubmit for approval any request for substantially the same Major Alterations unless so permitted by Landlord (or unless they have been altered in an effort to remove the basis for such disapproval). Tenant may make Minor Change Orders and ordinary repairs and replacements and other changes which do not constitute a Major Change Order or Major Alterations without Landlord's consent. All alterations, additions and other work made in accordance with this Section 7.8 shall be constructed in a good and workmanlike manner, using new or good quality materials, and in conformity with all applicable Legal Requirements and shall be completed with all due diligence. If Tenant shall fail to comply with the foregoing requirement to obtain the consent of Landlord to such Major Change Orders or Major Alterations, Landlord may, within a reasonable time after its discovery thereof, direct in writing that Tenant so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended without the prior approval of Landlord in violation of the provisions of this Lease. Tenant shall promptly comply with such directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition or extension until such directive is complied with.

7.9. <u>Review Process</u>. Tenant shall cause Improvements or Major Alterations to be constructed upon the Premises only in accordance with the Approved Development Plan and (unless the nature of the Major Alterations are such that design plans would not reasonably be required) with a Schematic Design Submittal, a Design Development Submittal, and Final Plans and Specifications, each with accompanying financial analysis showing sources and uses and financial commitments, that have been approved by Landlord pursuant to the requirements of the

Development Agreement or the following Review Process, as applicable (the "<u>Review Process</u>"):

- (i) All subsequent submissions shall be consistent with the Approved Development Plan.
- Within a reasonable time but not later than fifteen (15) days after (ii) submission by Tenant of any materials which require approval in accordance with this Review Process, Landlord, in writing, shall either approve such materials or notify Tenant of the specific respects in which it finds such materials to be unacceptable, or notify Tenant that it requires an additional period of up to fifteen (15) days to review such materials, during which extended time it shall either approve such materials or notify Tenant of the specific respects in which it finds such materials to be unacceptable. Landlord shall be entitled to one (1) such additional fifteen (15) day review period for each new submission made by Tenant of any materials which require approval in accordance with this Review Process. The criteria which Landlord shall use in the Review Process are set forth in Exhibit L attached hereto. If Landlord does not notify Tenant in writing within said fifteen (15) day period, as it may be extended one time for an additional time period of up to fifteen (15) days as set forth herein, of all specific respects in which materials are unacceptable, such materials shall be treated as having been approved by Landlord, as will all elements within such submission which are not so specified as unacceptable. In regard to any specific matters of which Landlord disapproves, Tenant shall, within fifteen (15) days (or such additional time as may be requested by Tenant and reasonably approved by Landlord) after Tenant receives written notice of such disapproval, resubmit appropriate material, altered in an effort to remove the basis for such disapproval. All resubmissions and subsequent approvals or disapprovals thereof shall be made and given in accordance with the procedure hereinabove provided for the original submission, until the relevant materials shall be approved or shall be treated as having been approved by Landlord as set forth above.
- (iii) In connection with the foregoing, the Parties contemplate and agree that submission and review of design and financial materials will be a continuing process with the Parties working cooperatively, expeditiously, reasonably, and in good faith with respect to the construction of the Improvements or any Major Alterations.
- (iv) Either Party may notify the other that it deems any action, delay, or submission or disapproval unreasonable or in bad faith, and describing the consequences of such action and requesting accelerated review of the submission to ameliorate such consequences or other relief. Failure to give written notice within fifteen (15) days of any such action, delay, submission or disapproval shall be deemed acquiescence in the reasonableness thereof. Failure of the Party receiving a notice requesting relief to make written protest of any such notice within ten (10) days thereof shall constitute acquiescence to the requested relief.
- (v) In submitting any design document to Landlord (or any modifications or changes thereto) for its review, Tenant shall place the legend required by **Section 18.7** in bold face large type prominently at the top of the transmittal letter.

- 7.10. Record of Plans. Tenant shall keep complete, accurate, up-to-date and permanent records of all material changes made to the Improvements during the Term of this Lease, including changes made to the Final Plans and Specifications during construction of the Improvements and in connection with any alterations and additions constructed pursuant to Section 7.7 or 7.8 or Article X or XI and, upon request of Landlord, shall provide copies of such records to Landlord in a format reasonably approved by Landlord.
- 7.11. Design Documents. At all stages of the design process set forth in Section 7.9 hereof, Landlord shall have access to all design documents and technical backup information supporting such documents. Tenant shall disclose to Landlord the existence of all design contracts and other technical contracts. All architectural, engineering or other contracts entered into by Tenant relating to the design of Major Alterations (including without limitation all plans, specifications, renderings, engineering data, soil reports and other technical documents) are, to the extent assignable and to the extent permitted by such contracts, hereby collaterally assigned to Landlord (which collateral assignment Landlord agrees shall be subject and subordinate to any assignment now or hereafter granted to any Permitted Leasehold Mortgagee, and Landlord agrees to execute such documentation reasonably requested by Tenant or such Permitted Leasehold Mortgagee to confirm such subordination). All documents produced for Tenant in connection with the design and construction of the Improvements and any Major Alterations, to the extent assignable, shall become the property of Landlord if this Lease is terminated as a result of an Event of Default by Tenant (subject and subordinate to the rights of any Permitted Leasehold Mortgagee if such Permitted Leasehold Mortgagee exercises a right to receive a new Lease pursuant to Section 6.8 and the rights of a Curing Party if such Curing Party exercises a right to receive a New Lease pursuant to Section 15.1).
- 7.12. Design Services Contract. Tenant and a responsible architectural, planning, design, engineering and consulting firm or firms (the "Architect"), or the Contractor under a design-build arrangement, which firm or firms shall be approved by Landlord, such approval not to be unreasonably withheld, conditioned, or delayed, shall enter into a contract or contracts, reasonably satisfactory in form to Landlord, for the design of the Improvements and (if the nature of such Major Alterations involves design work) any Major Alterations and, where appropriate, for supervision of construction of the Improvements or Major Alterations. Tenant may, at any time thereafter, change such firm or firms or enter into contracts with new firms with the approval of Landlord, such approval not to be unreasonably withheld, conditioned, or delayed. Without limitation of the foregoing, Landlord hereby agrees that Stantec Architecture and Engineering P.C. is an approved Architect and Suffolk Construction Company, Inc. is an approved Contractor. Pursuant to Chapter 231 of the Acts of 2020, Tenant and its Affiliates shall not be subject to any general or special law of the Commonwealth related to the procurement and award of contracts for the planning, design, construction management, construction, reconstruction, installation, demolition, maintenance or repair of buildings or public works by a public agency but shall be subject to Sections 26 – 27H, inclusive, of Chapter 149 of the General Laws of the Commonwealth. Tenant may elect to cause one of its Affiliates (which may be a special purpose entity) to be the party in lieu of Tenant that contracts directly with an approved Architect or Contractor with respect to any design or construction work. Landlord acknowledges and agrees that it has approved the contract between Stantec Architecture and Engineering P.C.

and Tenant dated as of November 5. 2021 relating to the provision of design services with respect to the Improvements.

- 7.13. <u>Construction Contract</u>. Tenant and a financially responsible general contracting firm or firms (the "Contractor"), which firm or firms shall be approved by Landlord, such approval not to be unreasonably withheld, conditioned, or delayed shall enter into a contract or contracts, reasonably satisfactory in form to Landlord, for the construction of the Improvements and (if the nature of such Major Alterations involves construction work) any Major Alterations, in accordance with the Final Plans and Specifications referred to in Section 7.7, and Tenant may, at any time thereafter, change such firm or firms or enter into contracts with new firms with the approval of Landlord, such approval not to be unreasonably withheld, conditioned, or delayed. Without limitation of the foregoing, Landlord hereby agrees that Suffolk Construction Company, Inc. is an approved Contractor. Pursuant to Chapter 231 of the Acts of 2020, Tenant and its Affiliates shall not be subject to any general or special law of the Commonwealth related to the procurement and award of contracts for the planning, design, construction management, construction, reconstruction, installation, demolition, maintenance or repair of buildings or public works by a public agency but shall be subject to Sections 26 – 27H, inclusive, of Chapter 149 of the General Laws of the Commonwealth. Tenant agrees not to accept bids or proposals from, or enter into any contract with, any person or firm for the construction of the Improvements if such person or firm is debarred or suspended from contracting with Landlord, with the government of the United States of America, or under any applicable Legal Requirements. Tenant agrees to require each person and firm with whom Tenant contracts for the construction of the Improvements or any Major Alterations to agree with Tenant not to accept bids or proposals from, or enter into any contract with, any such debarred or suspended person or firm for all or any part of the construction of the Improvements or Major Alterations, and Tenant shall strictly enforce each such agreement. Tenant may enter into a project labor agreement in connection with all construction on the Premises. In connection with construction on the Premises, including Major Alterations, Tenant shall comply at all times with prevailing wage laws, and to the extent required under applicable Legal Requirements, with Davis-Bacon requirements. Unless otherwise required by applicable Legal Requirements, Tenant shall have no obligation to comply with prevailing wage laws in connection with any operational, maintenance or service contracts with respect to the Project. Tenant may elect to cause one of its Affiliates (which may be a special purpose entity) to be the party in lieu of Tenant that contracts directly with an approved Contractor with respect to any construction work. Landlord acknowledges and agrees that it has approved the contract between Suffolk Construction Company, Inc. and Tenant dated as of June 29, 2023 relating to the construction of the Improvements.
- 7.14. <u>Final Construction Documents</u>. Prior to Commencing construction of the Improvements or Major Alterations, Tenant shall furnish Landlord with:
- (i) Final Plans and Specifications approved by Landlord and by any Permitted Leasehold Mortgagee or other lenders of Tenant requiring approval;

- (ii) The design services contract(s) and construction contract(s) referred to in **Sections 7.12** and **7.13** above, based upon the Final Plans and Specifications, with any change orders as of the start of construction;
- With respect to the initial Improvements or any Major Alterations having an estimated cost in excess of the greater of (a) \$5,000,000 and (b) 5% of the initial Total Development Costs for the initial Improvements, or, after the fifth year after the Commencement Date, the Value Equivalent of such higher amount, reasonable assurance that the Contractor will perform satisfactorily, which reasonable assurance shall be: (i) either (A) the Contractor providing payment and performance bonds of a surety company licensed to do business in the Commonwealth whose financial condition is reasonably satisfactory to Landlord (provided that if such financial condition is satisfactory to an Permitted Leasehold Mortgagee, then such financial condition shall be deemed satisfactory to Landlord) in the amount of the estimated hard costs of such initial Improvements or Major Alterations naming Tenant, the Permitted Leasehold Mortgagee(s), if any, and Landlord, as multiple obligees, as their respective interests may appear (provided that Landlord agrees that its rights under such bonds shall be subject and subordinate to the rights of any Permitted Leasehold Mortgagee), and Landlord shall execute a confirmatory agreement with respect thereto as may be reasonably requested by any Permitted Leasehold Mortgagee; or (B) evidence that the Contractor has implemented a subguard insurance program with respect to such initial Improvements or Major Alterations that is reasonably satisfactory to Landlord; and (ii) Tenant arranging for a guarantor reasonably acceptable to Landlord to provide for the benefit of Landlord a construction completion guaranty substantially in the form of **Exhibit Q** attached hereto, guaranteeing the lien free completion of such initial Improvements or Major Alterations (provided that, without limitation of Tenant's rights to propose a different guarantor, any guarantor acceptable to the Permitted Leasehold Mortgagee shall be deemed acceptable to Landlord for purposes of this provision) (provided that Landlord agrees that its rights under such completion guaranty shall be subject and subordinate to the rights of any Permitted Leasehold Mortgagee under its corresponding completion guaranty, and Landlord shall execute a confirmatory agreement with respect thereto as may be reasonably requested by any Permitted Leasehold Mortgagee). If a Permitted Leasehold Mortgagee requires a completion guaranty, Tenant, at its option, shall have the right to provide a completion guaranty to Landlord in substantially the same form in lieu of the form of **Exhibit Q** attached hereto;
- (iv) Evidence reasonably satisfactory to Landlord that Tenant has the equity capital and final commitments for mortgage or other financing adequate for the construction of the Improvements or Major Alterations;
- (v) All licenses, permits, approvals, certificates and all other necessary or appropriate actions of any federal, state or municipal authorities required to enable construction of the Improvements or Major Alterations in accordance with the Final Plans and Specifications and reasonably obtainable given the status of the Project. Tenant shall provide Landlord with all applications for such permits, approvals, licenses, zoning relief, and other entitlements at least fifteen (15) days prior to submission for Landlord review and comments. The failure of Landlord to comment within fifteen (15) days of receipt shall be deemed an approval of such application provided the legend required by **Section 18.7** is placed in bold face large type

prominently at the top of the transmittal letter. Landlord will cooperate with Tenant in obtaining all such Approvals in accordance with **Section 5.6**.

- (vi) A building permit for the Improvements or (if the nature of the Major Alterations requires a building permit) Major Alterations based upon the Final Plans and Specifications approved by Landlord which permit shall conclusively be deemed to be satisfactory evidence that such portion of the Improvements or Major Alterations complies with applicable zoning and building code requirements.
- 7.15. Arbitration of Design Issues. If either Party believes the other Party is being unreasonable in its position with respect to any substantial issue of design during the design and development review process established in this **Article VII**, and a reasonable attempt has been made to resolve said issue between the Parties, said Party may submit the issue for arbitration in accordance with **Section 18.6** hereof by giving notice thereof to the other Party. Landlord and Tenant shall divide equally all expenses of arbitration. This Section is expressly limited to design issues.
- 7.16. Liens. Tenant shall (unless Tenant contests the same pursuant to **Section 4.11**), within forty-five (45) days after the date on which Tenant receives notice of the same, bond or cause to be bonded, with surety companies reasonably satisfactory to Landlord, or pay or cause to be paid or discharge or cause to be discharged of record, any mechanic's, materialmen's or other lien or encumbrance filed against the Premises arising from any non-payment of any monies due and legally owing to any Persons doing any work for Tenant, furnishing any materials or supplies or renting any equipment to Tenant or any of its contractors or subcontractors in connection with the development, construction, reconstruction, alteration, furnishing, repair, maintenance or operation of the Improvements, other than mortgages, collateral assignments and security interests permitted by Section 6.1 hereof; provided, however, that Tenant shall have the right to contest any such lien or encumbrance in accordance with Section 4.11 hereof. Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, expressed or implied, to or for the performance of any labor or services or the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises, or the Improvements, or of any part thereof. Notice is hereby given that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Premises, or the Improvements, or any part thereof through or under Tenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Premises or the Improvements.
- 7.17. Government Relations. It is understood between the Parties that they must develop joint strategies and positions with respect to approvals and other actions of various levels of government necessary or desirable for the implementation, operation and management of the Improvements or any portion thereof. At different stages of such implementation, and with respect to different governmental entities and issues, one or the other Party shall take the lead, following full discussion, consultation and an attempt to establish a joint position by mutual agreement, in dealings with such governmental entity. The Party taking the lead shall be known, in this **Section**, as the Party with Primary Responsibility. The other Party, known as the Party

with Secondary Responsibility, shall have the obligation to follow such lead and provide such support and cooperation as may be reasonably required under all the circumstances. Reference to governmental entity in this **Section** shall include any agency, board or department thereof. The following sets forth the agreement of the Parties with respect to their respective roles pursuant to this **Section**:

City		Primary Responsibility	Secondary Responsibility
•	Basic zoning matters (rezoning, PDA's, variances, special permits etc.)	Tenant	Landlord
•	Basic street and traffic matters	Tenant	Landlord
•	Implementation matters (licenses, building permits, curb cuts, subdivision applications, etc.)	Tenant	Landlord
•	City grants and public funding	Landlord	Tenant
•	Property tax matters, including tax relief	Tenant	Landlord
•	Fees – building permit, water & sewer	Tenant	Landlord
•	All other	Tenant	Landlord
Commonwealth			
•	Environmental approvals	Tenant	Landlord
•	Tax credits, affordable housing loans and grants, other funding	Tenant	Landlord
•	All other	Tenant	Landlord
Federal Government			
•	Environmental approvals, if any	Tenant	Landlord
•	Tax credits and other funding	Tenant	Landlord
•	Tenant relocation, tenant protection vouchers, disposition	Landlord	Tenant

approval and other HUD matters

7.18. Construction Representatives; Cooperation. Landlord and Tenant shall each designate, by written notice from time to time to the other, a construction representative for the construction of the Improvements and after notice thereof to the other Party and until such designation is changed or withdrawn, such construction representative shall deliver and receive all notices, approvals, communications, plans and specifications or other materials required to be delivered or received under this **Article VII**. Each Party hereby pledges to provide the other Party with such information and other support and cooperation as may be reasonably required by the other Party (i) to carry out the responsibilities set forth, respectively, in **Section 7.17** hereof, (ii) to keep the other Party reasonably informed of its activities pursuant to this **Article VII** hereof, and (iii) to take such other steps as may reasonably be required for the accomplishment of the Improvements.

# ARTICLE VIII - MAINTENANCE, REPAIR AND OPERATION

- 8.1. Maintenance and Repair; Operation. Tenant agrees that it will, during the Term, at its expense, keep, maintain, use and operate the Premises and the Improvements, including Major Alterations and any altered, rebuilt, additional or substituted buildings, structures and other improvements thereto, in good repair and appearance and tenantable condition, and subject to Articles X and XI, will promptly make all structural and non-structural, foreseen and unforeseen, and ordinary and extraordinary changes and repairs of every kind and nature which may be required to be made upon or in connection with the Premises and the Improvements or any part thereof in order to keep and maintain the Premises and the Improvements in such condition. Tenant shall, at its own expense, keep the Premises and Improvements in a clean, neat and sanitary condition and shall make good faith efforts to keep the Units leased to the extent reasonably practicable, subject to customary lease roll-over periods, force majeure events and Articles X and XI; provided, however, that nothing herein shall require Tenant to enter into leases for Affordable Units with Residents that do not meet the requisite standards for Assisted Residents. Landlord shall not be required to maintain, repair or rebuild, or to make any alterations, replacements, renewals or improvements of any nature or description to the Premises or the Improvements or any part thereof, whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen, or to maintain the Premises or the Improvements or any part thereof in any way. Landlord shall not be liable for any loss, damage or injury of whatever kind of caused by, resulting from, or in connection with (i) the supply or interruption of water, gas, electric current, or any other utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or surface or subsurface area or from any part of the Premises, (iii) other leakage from pipes, appliances, sewer or plumbing works therein, or from any other place, or (iv) for interference with air, light or similar interests by anybody or caused by any public or quasi-public work. Tenant hereby expressly waives any right to make repairs at the expense of Landlord.
- 8.2. <u>Inspection by Landlord</u>. To the extent allowed or required by applicable Legal Requirements, Landlord, HUD, the City, the BPDA and any other governmental agency providing public funds to Landlord with respect to the Premises, and the Comptroller General of

the United States, and their authorized representatives shall have the right to inspect the Premises during regular business hours upon not less than 24 hours' prior oral notice, provided that such inspections are conducted in accordance with applicable Legal Requirements and do not unreasonably interfere, and are conducted so as to minimize to the extent practicable any interference, with the operations of, and use and enjoyment of the Premises by, Tenant or any Occupant. In the event of any emergency conditions, such inspection by Landlord may take place at any time without prior notice.

#### 8.3. Environmental Matters

#### (a) Certain Definitions.

- (i) " $\underline{AUL}$ " shall mean an activity and use limitation now or hereafter applicable to the Premises.
- (ii) "Environmental Laws" shall mean, collectively, all applicable federal, state or local statutes, laws, rules, regulations, codes, ordinances, directives, orders or decrees (whether now existing or hereafter enacted, promulgated or issued), with respect to the existence, assessment, release, remediation, removal or disposal of Hazardous Materials including those identified in the definition of "Hazardous Materials", and the regulations promulgated under each of such statutes or laws, all as amended from time to time.
- "Hazardous Materials" shall mean, collectively, all substances defined or classified as a "hazardous substance", "hazardous material", "hazardous waste", "pollutant", or otherwise denominated as a regulated or hazardous substance, waste or material, toxic or pollutant in any of the following: (i) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) the federal Hazardous Materials Transportation Uniform Safety Act of 1990; (iii) the federal Toxic Substances Control Act; (iv) the federal Resource Conservation and Recovery Act; (v) Massachusetts General Laws, Chapter 21D; (vi) Massachusetts General Laws, Chapter 21E; (vii) Massachusetts General Laws, Chapter 21C; (viii) Massachusetts General Laws, Chapter 21I; (ix) any other federal, state or local law addressing itself to environmental contamination, waste or health and safety; or (x) any regulations promulgated under any of the foregoing, including the Massachusetts Contingency Plan (310 CMR 40.0000) ("MCP"); as any of the foregoing may be promulgated or amended from time to time. "Hazardous Materials" shall specifically include, but not be limited to, oil, asbestos, asbestos containing materials, lead, mold, radon, explosives, polychlorinated biphenyls, petroleum and petroleum-based derivatives, urea formaldehyde, and perfluoro-alkyl and perfluoro-alkyl substances.
- (iv) "<u>Remedial Work</u>" shall mean containment, monitoring, response actions, removal actions, remedial actions or interim cleanup actions, or AUL relating to known or suspected Hazardous Materials.

#### (b) Remedial Work.

(i) <u>Hazardous Materials Remedial Work</u>. From and after the time when all of the Site Delivery Conditions have been fully satisfied, Tenant shall be solely

responsible (at its cost and expense) for performing all investigations and assessments, and all Remedial Work and all special handling of soils or other materials at or emanating during the Term from the Premises, which is required by the MCP or other applicable Environmental Laws with respect to any reportable concentrations of Hazardous Materials identified or discovered on the Premises at any time (including, without limitation, during construction of the Improvements), regardless of whether such Hazardous Materials were first released upon or otherwise first became present upon or beneath the surface of the Premises or in any of the existing improvements located thereon before or after the Commencement Date of this Lease. Tenant's obligations under this subsection (b)(i) shall not include the performance of any investigation, assessment or Remedial Work with respect to Hazardous Materials which (I) are first discovered at the Premises after the expiration or earlier termination of this Lease, and which were not generated or released, prior to such expiration or earlier termination of this Lease, by Tenant or any employee, contractor, servant or agent of Tenant, or by any Occupant of the Premises or (II) were released, discharged, stored, generated, transported, managed, used, disposed or caused by Landlord or its agents, representatives, employees or contractors on or after the Commencement Date (the "Excluded Environmental Liabilities").

- (ii) <u>Manner of Remedial Work</u>. All Remedial Work required to be performed by Tenant hereunder shall be performed in accordance with all applicable Environmental Laws. Remedial Work may include reuse of excavated soils on the Premises. The Parties agree that no AUL or similar engineering and/or institutional control may be implemented by Tenant without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, so long as such AUL or other similar engineering and/or institutional control will not unreasonably interfere with or limit the use of the Premises for multi-family residential use.
- (c) <u>Environmental Covenants</u>. From and after the Commencement Date, Tenant hereby covenants with Landlord as follows (except, in each case, for the Excluded Environmental Liabilities):
- (i) Except as may be permitted by, and only in compliance with, all applicable Environmental Laws, Tenant shall not allow, and shall use commercially reasonable efforts to cause Occupants not to allow, any Hazardous Materials to be stored, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall comply, and shall use commercially reasonable efforts to cause all Occupants to comply, with all Environmental Laws affecting the Premises.
- (ii) Except to the extent it may be permitted by and only in accordance with applicable Environmental Laws, no activity shall be undertaken by Tenant (or knowingly permitted 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 threat of release of Hazardous Materials at, on, under or from the Premises, including without limitation into any watercourse, surface or subsurface water or wetlands, or (iii) the discharge into the environment of any Hazardous Materials.
- (iii) Tenant shall notify Landlord in writing promptly following Tenant becoming aware of any of the following occurrences: (i) any release or threat of release of

Hazardous Materials at, upon, under, within or from the Premises or the occurrence of any other environmental problem or liability with respect to the Premises which, in any such event, reasonably could be expected to subject Tenant, Landlord, the Premises or any portion of the Site to a claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws, (ii) any lien filed, action taken or notice given of the nature described below in **Section 8.3(d)**, (iii) any written notice given to Tenant by any governmental authority with respect to any release or threat of release of Hazardous Materials at, upon, under, within or from the Premises in violation of any Environmental Laws, or (iv) the commencement of any litigation relating to any alleged release or threat of release of any Hazardous Materials at, under, from or affecting the Premises.

- (iv) Tenant shall, with reasonable due diligence, and at its sole cost and expense, take all actions and perform all investigation and assessment activities, and all Remedial Work, to the extent and at the time or from time to time, as shall be required by applicable Environmental Laws for the remediation of all releases of Hazardous Materials at or from the Premises, and shall further pay or cause to be paid at no expense to Landlord all clean up, administrative and enforcement costs of applicable governmental authorities, or the parties protected by such Environmental Laws, which may be asserted against the Premises due to any releases of Hazardous Materials at or from the Premises which are Tenant's responsibility under this Lease. All reasonable out-of-pocket costs, damages, liabilities, losses, claims, expenses (including attorneys' reasonable fees and disbursements) which are incurred by Landlord due to Tenant's breach of its obligations under this **Section 8.3(c)**, without the requirement that Landlord wait for the ultimate outcome of any litigation, claim or proceeding, shall be paid as Additional Rent, by Tenant to Landlord, within thirty (30) days after notice to Tenant from Landlord itemizing the amounts incurred, with interest thereon at the Default Rate if not paid by Tenant within such thirty (30) day period.
- (v) In the event that at any time Tenant becomes aware that notice to any governmental authority pursuant to **Section 8.3(d)** below of a condition at, on or under the Premises is required by any applicable Environmental Law, Tenant shall promptly notify Landlord and prepare a draft notice. All such notifications to Landlord and the draft notices shall be subject to review and comment by Landlord prior to the giving of any notice to the applicable governmental authority, except in situations (x) in which any applicable Environmental Law requires such notice to be given within less than two (2) business days after the discovery of a condition or the occurrence of an event, or (y) if any delay in providing notice would expose Tenant to criminal or civil liability or increase in the costs of performing the required investigation, assessment or Remedial Work; and in either such case Tenant's Licensed Site Professional (as defined by the MCP) shall make such notice and shall provide a copy thereof to Landlord concurrently with giving such notice to the applicable governmental authority.
- (d) Environmental Notices. Unless otherwise agreed by the Parties, Tenant shall provide the notices set forth in Section 8.3(c)(v) to the applicable governmental authority. Tenant shall provide Landlord with copies of any notices of releases of Hazardous Materials or other filings pursuant to Environmental Laws sent 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 Landlord concurrently with being mailed or delivered to the governmental agencies or authorities. Tenant also shall provide 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 noncompliance with Environmental Laws on or about the Premises, including notices regarding Hazardous Materials located on or about the Premises.

- Environmental Indemnity. Tenant shall indemnify, defend with counsel reasonably acceptable to Landlord, and save harmless Landlord for, from and against any and all damages, losses, liabilities, obligations, claims, litigation, demands, defenses, judgments, suits, proceedings, fines, penalties, costs, disbursements and expenses (including without limitation, penalties and fines within the meaning of any Environmental Law), of any kind or nature whatsoever, which may at any time be imposed upon, incurred by, or asserted or awarded against Landlord and arising from (i) any violation of Environmental Laws at the Premises during the Term other than Excluded Environmental Liabilities, or (ii) any breach of Tenant's covenants contained in this Section 8.3. Tenant shall have no obligation to indemnify, defend or save Landlord harmless from and against Excluded Environmental Liabilities or any third-party bodily injury or property damage claims arising from exposure to any environmental conditions existing on the Premises prior to the Commencement Date. The indemnification obligations of Tenant set forth in this Section 8.3(e) shall be deemed to be continuing and shall survive the expiration or termination of this Lease for the duration of the applicable statute of limitations. A Party shall give prompt written notice to the other Party of any claims threatened or made or suit instituted against it which could result in a claim of indemnification hereunder.
- Landlord's Right to Inspect. Upon reasonable advance notice to Tenant from time to time, Landlord and its officers, employees, contractors or agents shall have the right, but not the duty or obligation, to enter upon the Premises during usual business hours for the purposes of non-invasive inspections of the same and, to the extent Tenant has not complied with the terms and conditions of this Section 8.3 after notice and the expiration of any grace periods available to Tenant under this Lease, for purposes of performing any environmental investigation, assessment or Remedial Work that Tenant has failed to make or perform that is required in order to comply with applicable Environmental Laws and the terms and conditions of this **Section 8.3**. All such investigations shall be conducted in compliance with applicable Legal Requirements, following reasonable prior notice to Tenant (except in an emergency situation, in which case Landlord shall give to Tenant such telephonic, email or other notice, if any, as may be appropriate in the circumstances), in a commercially reasonable manner designed to minimize interference with any ongoing environmental investigation, assessment or Remedial Work or with the business operations or activities of Tenant or the Occupants and subject to reasonable site safety rules established by Tenant or the Contractor. Provided it complies with the foregoing requirements of this **Section**, and excluding any loss, damage or injury arising out of any negligence, misconduct or default of Landlord or its officers, employees, contractors or agents in connection therewith, Landlord shall not be liable to Tenant in any manner for any expense, loss or damage occurring by reason of the aforesaid entries, nor shall the exercise of any such right be deemed an eviction or disturbance of Tenant's use or possession. If any such inspection, investigation or testing reveals non-compliance by Tenant or any other party claiming by, through or under Tenant (other than Landlord or its officers, employees, contractors or agents) with any Environmental Laws on the Premises, then Tenant shall deliver to Landlord for its approval, such approval not to be unreasonably withheld, delayed or conditioned, within thirty (30) days of the submission to Tenant of a written report describing such non-compliance, a corrective action plan ("Corrective Action Plan") containing an explanation of the non-

compliance, the proposed corrective action and a schedule for the implementation of the proposed corrective action. If Landlord disagrees with any portion of the Corrective Action Plan, Tenant and Landlord shall attempt to resolve the disagreement through informal good faith negotiations. If the Parties are unable to reach an agreement through informal negotiations, either Party may request that the matter be arbitrated in accordance with Section 18.6 hereof. Tenant shall commence within thirty (30) days after approval of a Corrective Action Plan, and shall thereafter diligently proceed to complete at its cost and expense, the remediation plan set forth therein subject to the conditions, if any, of Landlord's approval or the arbitrators' decision, as applicable. Notwithstanding the foregoing, if any governmental authority with jurisdiction over the Premises establishes a remediation plan or schedule for the Premises, such governmental authority's plan or schedule shall control subject to Tenant's contest rights under Section 4.11. If Tenant does not commence the required actions promptly, or thereafter fails to diligently complete the required actions substantially within the time periods set forth in the Corrective Action Plan, Landlord shall have the right, but not the obligation, upon reasonable advance notice, to enter upon the Premises without abatement of Rent and implement any remediation actions which it reasonably deems necessary or prudent to address such noncompliance. If Landlord implements any action pursuant to the foregoing sentence, Tenant shall pay Landlord's entire reasonable cost of performing such work (including an amount for reasonably allocated administrative charges), within thirty (30) days after the date of demand by Landlord, plus interest on such amount if not paid within such thirty (30) day period at the Default Rate until paid in full. Any such amounts shall be due from Tenant without limitation of other claims or damages that Landlord may have against Tenant. The provisions of this Section shall survive the termination or earlier expiration of this Lease.

## ARTICLE IX - INDEMNITY AND INSURANCE

- 9.1. <u>Indemnification</u>. Tenant agrees to pay and to defend, indemnify and hold harmless Landlord from and against any and all liabilities, losses, damages, costs, expenses (including all attorneys' reasonable fees and expenses of Tenant and Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever arising from:
- (i) any injury to or death of or claim of injury to or death of any Person or any damage to or loss of or claim of damage to or loss of property on the Premises, or on adjoining sidewalks, streets or ways, in each case arising out of or connected with the use, non-use, possession, ownership, condition or occupation of the Premises, the Improvements, or any part thereof occurring during the Term of this Lease;
  - (ii) violation by Tenant of any agreement or condition contained in this Lease by Tenant on its part thereof to be performed or complied with; and
    - (iii) any contest by Tenant referred to in **Section 4.11** hereof.

provided, however, that, Tenant does not hereby indemnify Landlord, nor shall Tenant be obligated to defend Landlord or hold Landlord harmless, from any liabilities, losses, damages, costs, expenses (including all attorneys' reasonable fees and expenses of Tenant and Landlord), causes of action, suits, claims, demands or judgments to the extent arising out of the negligence

or willful misconduct of Landlord or its employees, servants, agents, contractors, licensees, invitees and any other parties claiming by, through or under Landlord, or arising out of acts or events occurring prior to the Commencement Date.

Landlord shall give Tenant prompt and timely notice of any claim made or suit instituted against it or any other party of which it has knowledge, relating to any matter which in any way may result in indemnification pursuant to this **Section 9.1**.

Subject to the prior rights, if any, of insurers, Tenant shall be entitled to control the defense and any compromise of any such claim or suit to the extent of any actual or potential claim for indemnification made or reserved by Landlord (as well as any claim made against Tenant or any of those for whom it is legally responsible), provided that Landlord, at its expense, may participate in the defense to the extent of its interest therein, Landlord shall have a right to advance notice of any settlement, and Tenant shall not execute or otherwise agree to any consent decree or settlement which requires Landlord to admit to any negligence or fault or provides for other than monetary payment within Tenant's sole ability to pay without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord and Tenant shall cooperate fully with each other in connection with the defense, negotiation or settlement of any such claim or suit. The obligations of the Parties under this **Section 9.1** shall survive the expiration or any earlier termination of the Term of this Lease.

- 9.2. <u>Insurance Requirements</u>. Beginning on the Commencement Date and continuing until the expiration or earlier termination of the Term, Tenant shall at all times carry such liability, workers' compensation, property and other insurance coverage with respect to the Premises and the Improvements (but not including Tenant's Property, and any other insurable property and equipment of Tenant therein or thereon, which insurance arrangements shall not involve Landlord) (the Premises and the Improvements sometimes referred to as "<u>Insurable</u> <u>Property</u>") as may be reasonably required from time to time by Landlord (but not in excess of such insurance coverage as then may be customarily carried by owners of comparable properties in the City) or a Permitted Leasehold Mortgagee, but in no event shall Tenant carry less than the following:
- (i) commercial general liability insurance (or equivalent) applicable to the Insurable Property for death and bodily and other personal injury and property damage with a combined single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate, any or all of which may be increased or decreased, as the case may be, from time to time to reflect changes in amounts of such insurance customarily carried by owners of comparable properties in the City (portions of which coverage may be provided under an umbrella policy);
- (ii) commercial automobile liability insurance covering all owned or hired and non-owned automobiles for bodily injury and property damage in the amount of Two Million Dollars (\$2,000,000) combined single limit;
- (iii) workers' compensation insurance required by law and employer's liability insurance in the amount of One Million Dollars (\$1,000,000) for bodily injury for each accident,

One Million Dollars (\$1,000,000) for disease in respect of any work performed by Tenant's employees on or about the Premises (portions of which employer's liability coverage may be provided under an umbrella policy);

- (iv) umbrella liability insurance in the amount of Ten Million Dollars (\$10,000,000) per occurrence, covering losses in excess of the primary commercial general liability, commercial automobile liability, and employer's liability coverage, provided that from and after the date which is three (3) months after Substantial Completion, the amount of umbrella liability insurance required shall be reset to such amount as is customarily carried by owners of comparable operating properties in the City from time to time;
- (v) demolition and debris removal insurance (if not included as part of the insurance carried pursuant to clause (vi) below) payable in the event that the debris or demolition is occasioned by damage to or destruction of the Improvements or any portion thereof, including any casualty pursuant to **Article X** hereof, or, to the extent such insurance is available, by condemnation pursuant to **Article XI** hereof, in each case sufficient to pay for the removal of any portion of the Improvements if required pursuant to **Article X** or **XI** hereof;
- (vi) causes of loss special form property insurance with extended coverage (or equivalent) for the full replacement cost of the Improvements (excluding excavation costs), with an agreed upon value endorsement, adjusted annually to take into account any inflation in the replacement cost of the Improvements (excluding excavation costs and costs of foundations, footings and underground installations), and with ordinance and law coverage;
- (vii) during any construction periods, builder's risk coverage in amounts appropriate for the construction work undertaken on a completed value basis, covering the full insurable replacement cost (excluding excavation costs and costs of foundations, footings and underground installations);
- (viii) with respect to contractors, subcontractors, management agents, or other parties working on the Premises, such as cleaning companies, security companies or landscaping companies, commercial general liability, commercial automobile liability, workers' compensation and employer's liability and umbrella coverages, with limits, scope of coverage, and other provisions as described herein or as may be reasonably required by Landlord and determined to be consistent with other similar projects in the City of Boston;
- (ix) with respect to architects, engineers or other Persons providing professional services to Tenant and/or employed in connection with the Premises, professional liability (errors and omissions) insurance in the amount of One Million Dollars (\$1,000,000), or such higher amount reasonably required by Landlord, covering acts, errors, or omissions committed in, or arising out of, the provision of services performed in connection with the Improvements and the Premises. In addition, Tenant shall require any architect or engineer providing services to Tenant in connection with the Premises to carry insurance for valuable papers and records, computations, field notes, and other data pertinent to the Premises in the amount of One Hundred Thousand Dollars (\$100,000), or as reasonably required by Landlord;

- (x) contractor's pollution liability insurance including coverage for environmental contamination, bodily injury and property damage arising out of pollution conditions resulting from acts of Tenant or its Contractor, or subcontractors, or their employees or agents in carrying out the construction of the Improvements or any other activities or failures to act at the Premises in the amount of not less than One Million Dollars (\$1,000,000.00) for each claim and Three Million Dollars (\$3,000,000.00) in the aggregate;
- (xi) flood insurance if at any time the Premises are located in any federally designated "special hazard area" (including any area having special flood, mudslide and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary map or a Flood Insurance Rate Map published by the Federal Emergency Management Agency as Zone A, AO, A1-30, AE, A99, AH, V0, V1-30, VE, V, M or E) in an amount equal to the full replacement cost of the Improvements (excluding excavation costs and costs of foundations, footings and underground installations) or the maximum amount then available under the National Flood Insurance Program; and
- (xii) from and after the date that seventy-five percent (75%) of the Improvements are occupied by any Occupants, rent loss insurance on an all-risk and agreed amount basis, with the amount being sufficient to recover at least the total estimated gross revenues from all sources of income for the Premises, or any part thereof, including, without limitation, rental income, for a twelve-month period.

The amount and types of coverages stated in this **Section 9.2** shall be reviewed once every three (3) years by Landlord and Tenant and shall be modified at such intervals (but not more often than once every three (3) years), to such reasonable degree, and according to Landlord's reasonable determination, if increases or changes are necessary to reflect inflation or changes in the nature or degree of risks insured, provided Landlord shall not require insurance coverages or amounts in excess of those customarily carried by owners of comparable properties in the City or those then required by the then Permitted Leasehold Mortgagee, and provided such coverages are available at commercially reasonable rates. Landlord agrees that Tenant shall be afforded a reasonable period of time to obtain any such additional insurance or increased amounts as may then become applicable to Tenant.

Any insurance required to be furnished by Tenant hereunder may be effected by a policy or policies of blanket insurance, provided, however, that the amount of the total insurance allocated to the Premises shall be such as to furnish in protection the equivalent of separate policies in the amounts herein required.

- 9.3. <u>Insurance Provisions</u>. Insurance maintained by Tenant and its contractors and consultants pursuant to the requirements of **Section 9.3** shall:
- (i) be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts rated at least A -/VIII or better in Best's Rating Guide or, if such rating is no longer available, an equivalent or better rating by a successor insurance carrier rating service reasonably acceptable to Landlord;

- (ii) make proceeds payable to Tenant, any Permitted Leasehold Mortgagee, and Landlord as their respective interests as loss payees may appear and payable as set forth in **Article X** hereof, in the case of property insurance, and naming Landlord as an additional insured, in the case of liability insurance;
- (iii) be written to become effective on the Commencement Date unless otherwise noted, and shall be continued in full force and effect for the Term (except that builder's risk or similar construction-related insurance shall only be required during the period construction is being undertaken); all liability policies shall be written on an occurrence basis;
- (iv) contain such contingent liability endorsements as shall make such insurance congruent with the causes of loss-special form, extended coverage and demolition and debris removal insurance required by clauses (v) and (vi) of **Section 9.2**;
- (v) insofar as and to the extent that the following provision may be effective without invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in the Commonwealth, provide, in all property insurance policies whatsoever where Tenant is the named insured, a waiver of all rights of recovery, by subrogation or otherwise, against Landlord, and all other parties designated by Landlord, and provide for payment of losses to Tenant, the Permitted Leasehold Mortgagee and Landlord, respectively, notwithstanding any act of negligence of Tenant or Landlord; and
- (vi) provide that any cancellation, nonrenewal or material modification thereof shall not be effective with respect to Landlord until after at least thirty (30) days' prior notice has been given to Landlord at the address set forth in **Article XIX** to the effect that such insurance policies are to be cancelled, not renewed or modified at a particular time.

Certificates of insurance, or at the request of Landlord, copies of such policies and renewals, showing the issuance and effectiveness of each such policy and the amount of coverage afforded thereby, shall be sent to Landlord to the following address:

Boston Housing Authority Attention: Director of Risk Management 52 Chauncy Street Boston, MA 02111

9.4. <u>Insurance Primary; No Separate Insurance</u>. All insurance carried by Tenant shall be primary to any insurance carried by Landlord. Neither Landlord nor Tenant shall take out separate insurance concurrent in form or contributing in the event of loss with that required in this **Article IX** to be furnished by, or which may reasonably be required to be furnished by, Tenant unless Landlord and Tenant are included therein as the insured, with loss payable as in this Lease provided. Each party shall immediately notify the other of the placing of any such separate insurance and shall cause the same to be delivered as in **Section 9.3** hereof required. Nothing contained in this **Section 9.4** shall be applicable to or shall be construed by Tenant or any party, entity, or claimant of any nature that Landlord herein is waiving any and all rights it

may enjoy whether actual or perceived in M.G.L. Chapter 258 and commonly known as the Massachusetts Tort Claims Act.

# <u>ARTICLE X - CASUALTY</u>

- 10.1. <u>Collection of Claims</u>. If the Improvements or any portion thereof shall be damaged or destroyed by fire or other casualty prior to the expiration of the Term, Tenant shall proceed promptly to establish and pursue collection of all valid claims which may have arisen against insurers or others based upon any such damage or destruction.
- 10.2. Special Account. If the total amount of all proceeds of any such claims (hereinafter called "Insurance Proceeds") and any other monies provided for the reconstruction, restoration or repair of the Improvements, minus the reasonable out-of-pocket costs, fees and expenses incurred by Tenant in the collection thereof, shall exceed TWO MILLION and NO/100 DOLLARS (\$2,000,000), or, after the fifth year after the Commencement Date, the Value Equivalent of such amount, the same shall be paid into an escrow account, with a single escrow agent which shall be appointed by the Permitted Leasehold Mortgagee. The Permitted Leasehold Mortgagee shall have the right to appoint itself such escrow agent. If there shall be no such Permitted Leasehold Mortgagee, such escrow agent shall be appointed jointly by Landlord and Tenant, both parties agreeing to use reasonable efforts to agree on such appointment. Payments from such escrow account shall conform to the requirements of this Article and, in the event of restoration, shall be made on a progress payment basis against vouchers certified by a registered architect selected by Tenant and supervising the work of restoration and shall be subject to reasonable retainage and made in accordance with usual and reasonable disbursement requirements of the Permitted Leasehold Mortgagee.
- 10.3. Restoration. Unless otherwise determined in accordance with Section 10.6, Tenant shall repair and reconstruct the Improvements to substantially their condition at the time of such damage or destruction (subject however, to any changes necessary to comply with applicable building and zoning codes and ordinances and other applicable Legal Requirements) and the Insurance Proceeds and any other funds so collected (minus the reasonable out-of-pocket costs, fees and expenses incurred by Tenant in the collection thereof) shall be used and expended by Tenant for such purpose. Any deficiency shall be paid by Tenant. Tenant's obligations hereunder shall not be affected by the unavailability or insufficiency of insurance proceeds. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by Tenant, subject to the rights of any Permitted Leasehold Mortgagee, and subject to the rights of Landlord to require that such excess be applied to the extent necessary to pay any then outstanding and unpaid Rent, Additional Rent and other amounts owed by Tenant to Landlord pursuant to this Lease.
- 10.4. Original or Modified Plans. Any restoration undertaken pursuant to the provisions of this **Article X** shall substantially conform to the provisions of the Final Plans and Specifications for the damaged Improvements, incorporating any alterations or modifications approved by Landlord prior to the casualty, or shall be built in accordance with such new or modified plans and specifications as Tenant, Landlord and, at its election, the Permitted Leasehold Mortgagee may at the time agree upon and approve (such approval of Landlord not to

be unreasonably withheld, delayed or conditioned), subject to any applicable building and zoning laws or other similar Legal Requirements then in existence.

- 10.5. Commencement and Completion of Restoration. When reconstruction or repair of the Improvements, or any portion thereof, which have been destroyed or damaged, is required by the provisions of this **Article X**, such reconstruction or repair shall be commenced within a period not to exceed ninety (90) days after the final settled amount of the Insurance Proceeds, and any applicable final, unappealable Approvals required for such reconstruction and repair, have been received by Tenant (or, if the conditions then prevailing require a longer period, such longer period as shall reasonably be required by Tenant proceeding with due diligence), and Tenant shall diligently prosecute such reconstruction or repair to completion, Tenant agreeing to use commercially reasonable efforts to complete such reconstruction or repair within thirty (30) months after the commencement thereof, subject to extension for any *force majeure events*.
- 10.6. <u>Determination of Whether or Not to Restore</u>. In the event of substantial damage or destruction by a casualty insured against occurring during the last five (5) years of the Term, then Tenant, subject to the rights of any Permitted Leasehold Mortgagee, shall have the right to terminate this Lease upon not less than thirty (30) days' notice to Landlord in which event the Insurance Proceeds minus the reasonable out-of-pocket costs, fees and expenses incurred by Tenant in the collection thereof (or a sum equivalent to such amount) shall be payable as set forth in **Section 10.7**. Upon such termination, Landlord shall have the right but not the obligation to use its portion of the Insurance Proceeds to restore the Improvements.
- 10.7. Allocation of Proceeds. If such casualty occurs and Tenant elects to terminate the Lease in accordance with Section 10.6, the Insurance Proceeds shall be allocated between and paid to Landlord and Tenant in order that, following the disbursement of the Insurance Proceeds, each has an amount of the Insurance Proceeds bearing the same proportion to the aggregate Insurance Proceeds as its respective interest in the Improvements bears to the aggregate value of the Improvements immediately prior to the casualty giving rise to termination of this Lease. Landlord and Tenant shall attempt to allocate the Insurance Proceeds between Landlord and Tenant fairly to effect such allocation. If the parties are unable to agree on such allocation, the allocation shall be made pursuant to arbitration in the manner provided in Section 18.6. In determining the value of Tenant's interest in the Improvements, the parties or the arbitrators, as the case may be, shall take into account the present value of Tenant's leasehold estate for the remainder of the Term unencumbered by any mortgages, subject to all of the terms and conditions of this Lease. In determining the value of Landlord's interest in the Improvements, the parties or the arbitrators, as the case may be, shall take into account the present value of (i) the right to receive Rent, Additional Rent and other charges and payments required to be paid under this Lease for the balance of the Term, and (ii) the projected residual value of the Improvements as of the originally scheduled expiration of the Term. Notwithstanding the foregoing, a Permitted Leasehold Mortgagee shall have a claim to the Insurance Proceeds prior to that of Tenant and Landlord to pay outstanding amounts secured by a Permitted Leasehold Mortgage to the extent required under such Permitted Leasehold Mortgage.
- 10.8. <u>Tenant's Responsibilities on Termination</u>. If Tenant terminates this Lease following a casualty in accordance with **Section 10.6**, then Tenant, at its sole expense, shall

deliver to Landlord any plans or other technical materials related to the design and construction of the Improvements and, at the request of Landlord and so long as Landlord makes available to Tenant sufficient Insurance Proceeds therefor, shall remove any remaining Improvements and restore the Premises to a cleared and safe condition and at a grade approximately level with abutting land. Upon the completion of any such demolition or other site preparation work to the reasonable satisfaction of Landlord and the payment of Landlord's allocable share of any remaining Insurance Proceeds (after application of such Insurance Proceeds to the costs of completion of any such demolition or other site preparation work to the reasonable satisfaction of Landlord) as provided in **Section 10.7** to Landlord, Tenant shall surrender the Premises to Landlord in accordance with **Section 5.11** of this Lease and this Lease shall be terminated without liability or further recourse to the parties hereto, except as expressly set forth in this Lease, provided that any Rent, Additional Rent, and other amounts payable or obligations owed by Tenant to Landlord as of the date of said termination shall be paid or otherwise carried out in full.

- 10.9. Rent Deferred if Improvements Unusable. During the time that the Improvements or portions thereof are unusable by Tenant or any of the Occupants (or if the use thereof has been materially impaired) because of such damage or destruction, to the extent not covered by rent or business interruption insurance carried by Tenant as required pursuant to **Article IX**, Rent reasonably allocable to the damaged portion of the Improvements may, at Tenant's election, be deferred and accrued to reflect such impairment of use; however, there shall be no abatement of Rent on account of any damage or destruction by fire or other casualty. Any such deferred Rent shall be paid in full to Landlord within 12 months of the date on which the Improvements are able to be put fully into use. In all matters where this **Section 10.9** shall become applicable, Tenant shall provide Landlord with quarterly status reports as to the progress of any such restoration of the Improvements where Rent is deferred. Landlord may assess a reasonable late fee or penalty on such deferred Rent where the delay to put the Improvements fully into use is greater than 24 months.
- 10.10. <u>Demolition and Debris Removal Insurance</u>. Proceeds of demolition and debris removal insurance, if separately obtained pursuant to **Section 9.2(v)** hereof, shall be separately accounted for by the escrow agent and shall be used to the extent available to pay the cost of any such demolition and debris removal occasioned by a casualty unless otherwise agreed by Landlord, Tenant and any Permitted Leasehold Mortgagee named as a loss payee on the policy of demolition and debris removal insurance, with Tenant responsible for paying any shortfall between such proceeds and the cost of such demolition and debris removal.

# ARTICLE XI - CONDEMNATION

11.1. <u>A Taking</u>. This Article shall apply to any taking of the title to, access to, or use of the Premises, or the Improvements, or any portion thereof by any governmental authority or any conveyance under the threat thereof, for any public or quasi-public use or purpose (a "<u>Taking</u>"). Takings may be total or partial, permanent or temporary, as provided below. If so requested by Tenant, Landlord agrees to use commercially reasonable efforts to oppose, in consultation and cooperation with Tenant, any Taking. Landlord shall not exercise any right of eminent domain or condemnation it may have under applicable Legal Requirements to cause, or seek to cause, a

Taking of any portion of the Premises or Improvements or Tenant's leasehold estate hereunder without the prior written consent of Tenant in Tenant's sole and absolute discretion. Without limitation of the foregoing, Landlord hereby waives the right to any share of the award of damages to Landlord's interest in the Premises or Improvements arising out of any taking made by or at the direction of Landlord.

- 11.2. Special Account. The full amount of any award whether pro tanto or final for any Taking (the "Award"), shall, notwithstanding any allocation made by the awarding authority, be paid into an escrow account in accordance with the procedures established in Section 10.2 above, provided that there shall first be deducted from the Award all reasonable fees and expenses of collection incurred by Tenant or Landlord, including but not limited to, attorneys' reasonable fees and experts' reasonable fees. Landlord and Tenant shall then attempt to fairly allocate (taking into account any restoration obligation of Tenant) the Award between Landlord's interest in the Premises as encumbered by this Lease and Tenant's interest in the Premises and the Improvements for the remainder of the Term of this Lease, taking into account their respective interests, any existing appraisals used to determine (or to contest) the amount of the Award and any other relevant information and analysis. If the parties are unable to agree on such allocation, the allocation shall be made pursuant to arbitration in the manner provided in **Section** 18.6 hereof. Upon determination of the allocation of the Award between Landlord and Tenant, either by agreement of the parties or by decision of the arbitrators, Landlord's portion thereof shall be paid forthwith to Landlord, and Tenant's portion shall be paid as provided in this Article XI. The portion of the Award so allocated to Landlord shall be known herein as Landlord's Award, and the portion so allocated to Tenant shall be known herein as Tenant's Award. Notwithstanding the foregoing, A Permitted Leasehold Mortgagee shall have a claim to the Award prior to that of Tenant and Landlord to pay outstanding amounts secured by a Permitted Leasehold Mortgage to the extent required under such Permitted Leasehold Mortgage.
- 11.3. <u>Total Taking</u>. In the event of a permanent Taking of the fee title to, or control of, the entire Premises, or the entire Improvements, or of the entire leasehold estate hereunder (a "<u>Total Taking</u>"), this Lease shall thereupon terminate as of the effective date of such Total Taking (but shall not terminate as to the application of the Award as provided herein), without liability or further recourse to the parties, except as otherwise expressly provided in this Lease, provided that any Rent, Additional Rent, or other charges payable or obligations owed by Tenant to Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full. Tenant's Award for a Total Taking shall be applied first, to the extent necessary to pay any outstanding Rent, Additional Rent and other amounts owed by Tenant to Landlord pursuant to this Lease, and then to Tenant.
- 11.4. <u>Partial Taking: Procedures and Criteria for Course of Action</u>. In the event of a permanent Taking of less than all of the Premises or the Improvements (a "<u>Partial Taking</u>"),
- (i) if , in Tenant's good faith judgment, the continued use and occupancy of the remainder of the Premises by Tenant is or can reasonably be made to be economically viable, structurally sound and otherwise feasible (the "<u>Restoration Criteria</u>"), then the Premises and the Improvements shall be restored pursuant to **Section 11.5** hereof;

(ii) if, in Tenant's good faith judgment, the continued use and occupancy of the remainder of the Premises by Tenant is not or cannot reasonably be made to be economically viable, structurally sound and otherwise feasible, then this Lease may be terminated pursuant to **Section 11.6** hereof.

After consultation with Landlord and the Permitted Leasehold Mortgagee, Tenant shall within ninety (90) days after the effective date of the Partial Taking give notice to Landlord, together with back-up analysis, as to whether it elects to restore the Premises or terminate the Lease pursuant to this **Section**. If Landlord disagrees with Tenant's election, then the decision shall be made by arbitration pursuant to **Section 18.6**.

- 11.5. Restoration. If a decision is made pursuant to **Section 11.4** to restore the remainder of the Premises and the Improvements, Tenant, Landlord and, at its election, the Permitted Leasehold Mortgagee, shall reasonably agree upon and approve plans and specifications to modify the remaining Improvements, which plans and specifications shall be, as nearly as possible, substantially in accordance with the original Final Plans and Specifications, amended to take account of the Taking and incorporating alterations or modifications approved (if and to the extent required by this Lease) by Landlord prior to the Taking, subject to any applicable building and zoning laws or other Legal Requirements then in existence. Upon approval of said plans, Tenant shall promptly proceed, at its expense, to commence and complete the restoration pursuant to the provisions of Section 10.5 hereof. Subject to the procedures of the escrow account set forth in Section 10.2 hereof, Tenant may use the entire Tenant's Award for such restoration, and may retain for its own use any portion of Tenant's Award remaining after the completion of the restoration, subject to the rights of Landlord to require that any such excess be applied first to the extent necessary to pay any outstanding Rent, Additional Rent and other amounts owed by Tenant to Landlord pursuant to this Lease. If the cost of the restoration shall exceed the amount of Tenant's Award, the deficiency shall be paid by Tenant. Tenant's obligation hereunder shall not be affected by the unavailability or insufficiency of Tenant's Award.
- 11.6. <u>Termination upon Non-Restoration</u>. Following a Partial Taking, if a decision is made pursuant to Section 11.4 hereof that the remaining portion of the Premises and Improvements is not to be restored, Tenant, upon the request of Landlord and at Tenant's sole expense, shall deliver to Landlord any plans used for the design and construction of the Improvements and, at the request of Landlord made within thirty (30) days after Tenant's election not to restore, shall demolish and remove or stabilize any Improvements not taken and restore the remaining Premises to a cleared and safe condition and at a grade approximately level with abutting land, provided that the Landlord Award and Tenant Award shall be applied ratably to the costs incurred by Tenant in connection with such demolition, stabilization or other site preparation work. Upon completion of any such demolition, stabilization or other site preparation work to the reasonable satisfaction of Landlord, Tenant shall surrender the Premises to Landlord in accordance with Section 5.11 hereof and this Lease shall thereupon be terminated without liability or further recourse to the parties hereto, except as otherwise expressly provided in this Lease, provided that any outstanding Rent, Additional Rent, and other amounts payable or obligations owed by Tenant to Landlord as of the date of the Taking shall be paid in full. Tenant's Award shall be applied to the extent necessary to pay such amounts.

- 11.7. <u>Temporary Taking</u>. If the use or occupancy of the Premises or any part thereof shall be temporarily requisitioned or taken by any government authority, civil or military (including, without limitation, any requisition or Taking arising out of the exercise of governmental war powers or any other emergency governmental powers) (a "<u>Temporary</u> <u>Taking</u>"), then any Award made as a result of such Temporary Taking shall be payable solely to Tenant and this Lease shall continue in full force and effect and there shall be no abatement of Rent as a result thereof.
- 11.8. <u>Demolition and Debris Removal Insurance</u>. Proceeds of demolition and debris removal insurance required pursuant to **Section 9.2(v)** hereof shall be used to the extent available to pay the cost of any such demolition and debris removal occasioned by a Taking or Partial Taking, with Tenant responsible for paying any shortfall between such proceeds and the cost of such demolition and debris removal.

#### ARTICLE XII - DEFAULT; REMEDIES

- 12.1. <u>Events of Default</u>. An event of default ("<u>Event of Default</u>") by Tenant shall occur:
- (i) if Tenant fails to pay when due the Rent, any Additional Rent or any other payments required under this Lease or the Owners' Association Agreement and any such default shall continue for thirty (30) days after the receipt of written notice thereof by Tenant from Landlord; or
- (ii) if Tenant shall fail to maintain any insurance required by **Sections 9.2(i)**, **(iv)**, **(vi)** or **(vii)** (provided such required insurance is then available on commercially reasonable terms and conditions) and such default shall continue for a period of five (5) days after written notice from Landlord to Tenant; or
- (iii) if Tenant fails to use commercially reasonable efforts to cause Substantial Completion of the Improvements to occur on or before the Outside Completion Date, subject only to (a) *force majeure events*, (b) extension for any additional time granted to Landlord under **Sections 7.7**, **7.8** or **18.7** (beyond the initial fifteen (15) day period) for Landlord's review of Tenant's materials, Limited Change Orders, Major Change Orders or consideration of Tenant's request for consent or approval, and (c) Tenant's rights to extend the Outside Completion Date for the Extended Completion Period, and such failure shall not be cured within ninety (90) days after written notice thereof from Landlord, except that, where such failure could not reasonably be cured within said ninety (90) day period, Tenant shall not be in default, and no Event of Default shall exist, unless Tenant shall have failed (a) to commence to cure such default within said ninety (90) days, or (b) thereafter to make diligent, reasonable and continuous efforts to cure such failure as soon as practicable; or
- (iv) if any Transfer of Tenant's interest in the Premises, the Improvements or this Lease, or any Transfer of equity interests in Tenant, in violation of this Lease shall have

occurred, and Tenant fails to cure the same within ten (10) business days after written notice from Landlord; or

- (v) if Tenant fails in any material respect to observe or perform any material covenant, condition, agreement or obligation hereunder other than those referred to in clauses (i) (iv), (vi) -(x) of this **Section**, and shall fail to cure, correct or remedy such failure within ninety (90) days after the receipt of written notice thereof from Landlord, unless such failure cannot be cured by the payment of money and cannot with due diligence be cured within a period of ninety (90) days, in which case such failure shall not be deemed to continue if Tenant proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof as soon as reasonably practicable; or
- (vi) if Tenant abandons all or substantially all of the Premises, it being agreed that the Premises shall be deemed abandoned if, after Substantial Completion, the Improvements are not operated in accordance with the provisions of **Article V** for a period of more than six (6) consecutive months for any reason other than a *force majeure event*, a casualty or a Partial Taking (or any restoration following a casualty or Partial Taking); or
- (vii) if the representation and warranty of Tenant set forth in **Section 17.2** of this Lease shall prove to be incorrect in any material and adverse respect as of the time when the same shall have been made and the same shall not have been remedied to the satisfaction of Landlord within thirty (30) days after receipt of written notice thereof by Tenant (provided that Landlord agrees that the removal of any Disqualified Person from the chain of ownership of Tenant shall be deemed to be a satisfactory remedy); or
- (viii) if Tenant shall be adjudicated bankrupt or be declared insolvent pursuant to a final, unappealable order under the Federal Bankruptcy Code or any other federal or state law (as now or hereafter in effect) relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts (hereinafter collectively called "Bankruptcy Laws"), or if Tenant shall (a) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, United States Trustee or liquidator (or other similar official) of Tenant or of any substantial portion of Tenant's property; (b) admit in writing its inability to pay its debts generally as they become due; (c) make a general assignment for the benefit of its creditors; or (d) file a petition commencing a voluntary case under or seeking to take advantage of any Bankruptcy Law; or
- (ix) if an order for relief or similar order against Tenant shall be entered in any involuntary case under any Bankruptcy Law, or if a petition commencing an involuntary case against Tenant or proposing the reorganization of Tenant under the Federal Bankruptcy Code shall be filed in and approved by any court of competent jurisdiction and not be discharged, stayed or denied within ninety (90) days after such filing, or if a proceeding or case shall be commenced in any court of competent jurisdiction seeking (a) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of Tenant, (b) the appointment of a receiver, custodian, trustee, United States Trustee or liquidator (or other similar official of Tenant or of any substantial portion of Tenant's property), or (c) any similar relief as to Tenant pursuant to any Bankruptcy Law, and any such proceeding or case shall continue undismissed for a period of

ninety (90) days, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect for ninety (90) days; or

(x) if there is a material violation of the HAP Contract or the Use Agreement on the part of Tenant which Tenant fails to cure, correct or remedy within the applicable notice and cure period set forth in such agreements or provided by applicable Legal Requirements and on account thereof such agreement has been or may be terminated; or

This Lease and any other ground lease with Landlord for any portion of the Site, and the obligations of any ground tenant or the Owners' Association, as the case may be, thereunder, shall be separate and independent from the other. The Development Agreement, the Owners' Association Agreement and the obligations of Developer, the other ground tenants of the Site and the Owners' Association thereunder shall be separate and independent from this Lease, and this Lease shall not contain (or be deemed to contain) any cross-default or cross-collateralization provisions with any other agreements or any other portions of the Site. A default by Developer under the Development Agreement, the Owners' Association Agreement, or under any other agreement entered into by Developer or its affiliate in connection with the Development Agreement shall not affect any of the rights or obligations of Tenant under this Lease or be deemed a default or Event of Default under this Lease. A default by another ground tenant under a ground lease with respect to the Site or portion thereof, the Owners' Association Agreement or any other agreement entered into by such ground tenant in connection with its ground lease shall not affect any of the rights or obligations of Tenant under this Lease or be deemed a default or Event of Default under this Lease. A default by the Owners' Association under a ground lease with respect to the Site or portion thereof, the Owners' Association Agreement or any other agreement entered into by the Owners' Association Agreement in connection with its ground lease shall not affect any of the rights or obligations of Tenant under this Lease or be deemed a default or Event of Default under this Lease.

#### 12.2. Remedies for Default.

- (a) If there exists and is continuing an Event of Default on the part of Tenant, except with respect to an Event of Default under Section 12.1(v) relating to covenants and obligations of Tenant set forth in Article XVI, and no condition precedent to any obligation of Tenant exists unfulfilled or unwaived, then Landlord, subject to the rights of a Permitted Leasehold Mortgagee set forth in Article VI and a Curing Party as set forth in Article XV, may terminate this Lease pursuant to Section 12.3 and may exercise its other remedies set forth in this Article XII.
- (b) If there is an Event of Default on the part of Tenant under Section 12.1(v) relating to the covenants and obligations of Tenant set forth in Article XVI, as Landlord's sole and exclusive remedies under this Lease and at law or in equity, Landlord may require Tenant to submit a plan of correction and monthly reports indicating how it intends to use good faith efforts or to try to the greatest extent feasible, as applicable, to meet the goals set forth in Article XVI. If Tenant continues to fail to use good faith efforts or to try to the greatest extent feasible, as applicable, to meet the goals set forth in Article XVI, Landlord may require Tenant to hire a firm experienced in achieving such goals to assist in the efforts and cause the Contractor or

Permitted Manager (if the Contractor or Permitted Manager has failed to comply with any agreed plan of correction) to cooperate with such firm. If such failure to meet the good faith efforts and greatest extent feasible standards set forth in **Article XVI** persists, Landlord may impose fines in an amount not to exceed \$500 per day until Tenant produces evidence that it is seeking to meet such standards, and Landlord shall have the right to commence a specific performance action against Tenant to seek to cause Tenant to replace the Contractor or Permitted Manager who has failed to comply with any such agreed plan of correction or to cause Tenant to otherwise comply with the covenants and obligations of Tenant set forth in **Article XVI**. For the avoidance of doubt, Landlord shall not have any right to seek any damages against Tenant, terminate or rescind this Lease in whole or in part or dispossess Tenant of any of its rights or interest under this Lease on account of any Event of Default on the part of Tenant under **Section 12.1(v)** relating to the covenants and obligations of Tenant set forth in **Article XVI**.

12.3. Termination of Lease for Tenant's Default. Subject to any rights of a Permitted Leasehold Mortgagee under Article V or a Curing Party under Article XV, Landlord may, when permitted by Section 12.2, terminate this Lease upon not less than thirty (30) additional days' written notice to Tenant, and any Permitted Leasehold Mortgagee and Curing Party of which it has notice, setting forth Tenant's uncured, continuing Event of Default and Landlord's intent to exercise its rights to terminate under this Section 12.3, whereupon this Lease shall terminate on the termination date therein set forth unless Tenant's Event of Default has been cured before such termination date.

Upon such termination, Tenant's interest in the Premises shall automatically revert to Landlord without the necessity for any deed or conveyance from Tenant to Landlord, Tenant shall promptly quit and surrender the Premises and the Improvements to Landlord, without cost to Landlord, and Landlord may, without demand and further notice, re-enter and take possession of the Premises and the Improvements, or any part thereof and repossess the same as Landlord's former estate by summary proceedings, ejectment or otherwise in conformance with applicable Legal Requirements without being deemed guilty of any manner of trespass and without prejudice to any remedies which Landlord might otherwise have for arrears of Rent or for a prior breach of the provisions of this Lease. All obligations of Tenant under this Lease which accrued prior to termination shall survive such termination.

- 12.4. <u>Rights Upon Termination</u>. Upon termination of this Lease pursuant to **Section 12.3**, Landlord may:
- (i) retain, at the time of such termination, any Rent, Additional Rent or other fees or payments made hereunder which have been earned by Landlord up to and including the time of termination, without any deduction, offset or recoupment whatsoever; and
- (ii) subject to any rights of a Permitted Leasehold Mortgagee or a Curing Party, enforce its rights under any performance, payment or lien bond outstanding at the time of such termination; and
- (iii) require Tenant to deliver to Landlord, or otherwise effectively transfer to Landlord, subject to any rights of a Permitted Leasehold Mortgagee, without any representation

or warranty from Tenant, and to the extent transferable, any and all rights of possession, ownership or control Tenant may have in and to, any and all plans, specifications, renderings, engineering data, soils or water report and other technical documents or material related to the design and construction of the Improvements and architect's and construction contracts relating to the Improvements; and

- (iv) relet the Premises for such term or terms, on such conditions as Landlord, in its reasonable discretion, may determine provided Landlord shall in no way be responsible or liable for any failure to relet the Premises or to collect any rent due upon such reletting; and
- (v) recover from Tenant on the dates on which Rent would otherwise be payable, the Rent and charges which would be payable if this Lease were still in effect, less the net proceeds of any reletting after deducting Landlord's reasonable expenses in connection therewith, or at any time, in lieu of collecting such payments as aforesaid, collect as liquidated and agreed final damages for Tenant's default a sum equal to the amount by which the Rent called for hereunder for what would have been the earlier of (i) the remainder of the Term or (ii) the date which is ten (10) years after the termination of this Lease, exceed the fair rental value of the Premises reasonably achievable for the same period, minus amounts previously collected, discounted to present value by discounting or increasing such amounts at an annual rate equal to the Prime Interest Rate on the business day immediately preceding the date of calculation or award, plus two percent (2%).

In addition to the above remedies of Landlord (but not in addition to the liquidated damages described in the clause (v) above), Tenant agrees to reimburse Landlord for any and all actual expenditures incurred, and for any and all actual damages suffered, by Landlord proximately caused by reason of such Event of Default or termination. Landlord covenants to use commercially reasonable efforts to mitigate its damages under this Lease arising from any default of Tenant.

- 12.5. Other Remedies; Management Control. If there exists and is continuing an Event of Default on the part of Tenant, and no condition precedent to any obligation of Tenant exists unfulfilled or unwaived, Landlord shall, in addition to any other remedies herein provided, have the right to take one or more of the following actions without terminating the Lease:
- (i) re-enter and take possession of the Premises and the Improvements, or any part thereof and repossess the same by summary proceedings, ejectment, appointment of a receiver or otherwise in conformance with applicable Legal Requirements and complete construction of the Improvements, if it so elects, and otherwise operate the Improvements;
- (ii) subject to the prior written approval of any Permitted Leasehold Mortgagee, if the cause of the Event of Default was a failure of performance by the then-existing Permitted Manager for the Premises, require Tenant to replace such then-existing Permitted Manager with a new Permitted Manager reasonably acceptable to Landlord; and

(iii) if the cause of the Event of Default was a failure of Tenant to timely pay Rent to Landlord or to provide required services to Residents, impose reasonable management procedures to assure the timely payment of Rent to Landlord and required services to Residents.

The rights of Landlord under this **Section** shall be subject and subordinate to any similar rights of any Permitted Leasehold Mortgagee under **Article VI** or a Curing Party under **Article XVI**.

- 12.6 <u>Injunctive Relief</u>. In the event of any breach by either Party of any of the agreements, terms, covenants or conditions in this Lease, the non-breaching Party shall be entitled to petition or initiate one or more actions for equitable relief, including without limitation, preliminary or permanent injunction, specific performance or any other equitable relief.
- 12.7. Performance by Landlord. If Tenant shall fail to make any payment or perform any act required under this Lease and such failure matures into an Event of Default, Landlord may (but need not) after giving not less than fifteen (15) additional days' notice to Tenant and without waiving any default or releasing Tenant from any obligations, cure such default for the account of Tenant. Tenant shall promptly pay Landlord the amount of such reasonable out-of-pocket charges, costs and expenses (plus a 10% surcharge for Landlord's overhead) Landlord shall have incurred in curing such Event of Default, together with interest at the Default Rate.
- 12.8. <u>Legal and Other Costs</u>. Tenant shall be liable for the reasonable expenses incurred (including, without limitation, reasonable legal expenses) by Landlord in connection with any collection of Rent, Additional Rent or other funds owed by Tenant under this Lease, the remedying of any Event of Default under this Lease or any termination of this Lease where such collection, remedying or termination results from an Event of Default.
- 12.9. <u>Remedies Cumulative</u>. Unless otherwise specifically provided in this Lease, no remedy herein shall be exclusive of any other remedy or remedies to which Landlord or Tenant may be lawfully entitled in case of any breach or threatened breach by Landlord or Tenant, as the case may be, of any provision of this Lease, and each such remedy shall be cumulative and in addition to every other remedy; and every power and remedy given by this Lease may be exercised from time to time and as often as may be deemed expedient by either Party. No delay or omission by Landlord to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. No delay or omission by Tenant to exercise any right or power accruing upon any breach by Landlord of any of its obligations under this Lease shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein. The absence in this Lease of any enumeration of events of default by Landlord or remedies of either party with respect to money damages or specific performance shall not constitute a waiver by either Party of its right to assert any claim or remedy available to it under law or in equity (except to the extent this Lease provides for liquidated damages as the exclusive remedy of a Party).

- 12.10. Waiver as to Surety. Tenant and Landlord, for themselves and their successors and assigns, and all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Lease, hereby waive, to the fullest extent permitted by law and equity, all claims or defenses otherwise available on the grounds of its or their being or having become a person in the position of a surety, whether real, personal, or otherwise, or whether by agreement or operation of law. Such waiver shall include, but shall not be limited to, all claims and defenses based upon extensions of time, indulgence, or modification of terms of this Lease.
- 12.11. Force Majeure. If either Party shall be delayed in performing any obligation under this Lease, except any obligation to pay Rent, Additional Rent or any other sums of money payable hereunder, the time for such performance shall be extended by a period of time equal to such delay, and the Party shall not be deemed to be in default, when such delay or default results from or is caused by war; civil or military disturbance; an act or threat of terrorism; insurrection; riot; sabotage; cyberattack; strike; a lock-out; other labor dispute; inability to obtain labor, material, or equipment; freight or commercial embargo; trade restrictions or other supply chain disruption causing a shortage of materials or energy; government or utility moratorium; flood; earthquake; tornado; hurricane; other unusually severe weather; fire; other casualty; act of God; epidemic; pandemic; public health emergency; quarantine restrictions; government order; or similar causes beyond the control of the Party claiming the delay (each of the foregoing, a "force majeure event"); provided that the Party whose performance is delayed shall pursue all reasonable and commercially practicable available means and measures necessary to minimize or eliminate such delay resulting from any such causes or conditions; and provided further that a Party claiming a delay due to a *force majeure event* shall give written notice of any such delay to the other Party within twenty (20) days of such party's knowledge of a delay attributable to the occurrence of such force majeure event.
- 12.12. No Special Damages. In no event will either Landlord or Tenant be entitled to any special, consequential, lost opportunity or lost profits damages as a remedy in the event of the other Party's default or in connection with, arising out of or in any way related to the transactions contemplated by this Lease or any act or omission or event occurring in connection therewith, and each Party hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

#### ARTICLE XIII - RESTRICTIONS ON ASSIGNMENT AND TRANSFER

- 13.1. <u>Selection of Tenant</u>. The Parties have entered into this Lease to permit and encourage the development of the Premises in accordance with the terms hereof. Tenant acknowledges that:
- (i) The qualifications and identity of Tenant and its management personnel are of particular concern to Landlord; and

- (ii) It is because of such qualifications and identity that Landlord is entering into this Lease; and
- (iii) In doing so, Landlord is willing to accept and rely upon the obligations of Tenant for the faithful performance of all undertakings and covenants to be performed by it under this Lease.

Tenant also acknowledges that Landlord has a unique interest in determining and approving (to the extent such approval is required pursuant to this **Article XIII**) Tenant, in accordance with the terms hereof. This interest arises out of Landlord's mission of providing stable, quality affordable housing for low and moderate income persons; to deliver these services with integrity and accountability and to create healthy living environments which serve as catalysts for the transformation from dependency to economic self-sufficiency.

- 13.2. <u>Prohibited Transfers</u>. For the reasons set forth in **Section 13.1** hereof and except as otherwise provided in **Sections 6.1**, **6.5**, **6.8**, **13.3**, and **14.1**, and only to the extent the same would constitute a Change in Control of Tenant, Tenant shall not Transfer all or any of its rights under this Lease or its title to any Improvements or to the Premises, or any equity interest in Tenant, or in any entity which holds equity interests in Tenant to any Person unless the consent thereto of Landlord (and HUD, if required by the Use Agreement or applicable Legal Requirements) has first been obtained, which consent of Landlord shall not be unreasonably withheld, conditioned or delayed. Specifically, and not in limitation of the foregoing, Tenant shall not knowingly Transfer all or any of its rights under this Lease, or any equity interest in Tenant or any entity which holds equity interest in Tenant, to a Disqualified Person.
- 13.3. <u>Permitted Transfers</u>. So long as the consent of HUD to such Transfer has been obtained if and to the extent required by the Use Agreement or applicable Legal Requirements, the restrictions set forth in **Section 13.2** hereof shall not apply to any Transfer:
- (i) of direct or indirect equity interests in Tenant, among co-venturing Persons or their Affiliates (or among the entities and persons, at any level, who hold ownership interests in Tenant, and their respective heirs, executors, administrators, permitted successors and assigns from time to time), so long as Tenant or any Controlled Affiliate of Tenant, retains legal and effective operating Control of the development and operation of the Premises and the Improvements;
- (ii) of Tenant's interest in this Lease, the Premises, the Improvements or portions thereof or equity interests in Tenant to a Controlled Affiliate of Tenant, provided that Tenant shall maintain its existence and shall remain obligated to carry out the undertakings and covenants to be performed by it under this Lease;
- (iii) of Tenant's interest in this Lease, the Premises, or the Improvements (such that the then Tenant would no longer be the tenant under this Lease) or of a Controlling direct or indirect interest in Tenant to a third party transferee, from and after the earlier of (x) stabilization of the Improvements (which shall mean 90% of the Units leased) and (y) eighteen (18) months after the date of Substantial Completion of the Improvements, provided that Tenant shall obtain

Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided that (a) there shall be no uncured Event of Default under this Lease except as otherwise permitted by Article VI or Article XV; (b) in the case of a transfer of Tenant's interest in this Lease, the proposed transferee of Tenant's interest under this Lease, by instrument in writing reasonably satisfactory to Landlord and such proposed transferee and recordable at the Registry, shall for itself and its successors and assigns, for the benefit of Landlord, have expressly assumed all the obligations of Tenant under the Lease relating to the period from and after the date of the Transfer, and agreed to be subject to all of the conditions and restrictions under this Lease to which Tenant is subject; (c) Tenant has paid all reasonable, out-of-pocket expenses incurred by Landlord, including without limitation, attorneys' reasonable fees in connection with such a proposed Transfer, (d) any such transferee has complied with M.G.L. Chapter 7C, Section 38 and any other Legal Requirements that are expressly applicable to such a Transfer; (e) the proposed transferee is not a Disqualified Person; (f) the consent of HUD has been obtained, if and to the extent required by applicable Legal Requirements; and (g) the proposed transferee (or its Control party(ies)), if such transferee will be Tenant or the Managing Member of Tenant, shall have, in the reasonable opinion of Landlord, the qualifications, experience and financial responsibility (taking into account any commitments from any lender(s) to provide financing) required to fulfill the obligations contained herein for the continued management and operation of the Improvements or, if the proposed transferee (or its Control party(ies)) does not have the qualifications and experience required to manage and operate the Improvements, it shall, in the reasonable opinion of Landlord, be financially responsible and shall have a contract (or cause Tenant to have a contract) with an entity which has, in the reasonable opinion of Landlord, qualifications and experience required to fulfill the obligations contained herein; provided, however, that, without limitation, if Tenant and the proposed transferee, as the case may be, satisfy the applicable conditions set forth in clauses (a)-(f) above, it shall be unreasonable for Landlord to withhold consent or object if the proposed transferee (or its Control party(ies)) or its proposed manager shall have at least five (5) years' experience owning, operating or managing mixed-income residential buildings, at the time of Transfer owns, operates or manages not less than 2,000 residential units and does not have a reputation in the multi-family business community that could reasonably result in a material adverse impact on Landlord or the Premises. In the event of a transfer of Tenant's entire leasehold interest as provided in this clause (iii), Tenant shall be relieved from liability for Tenant's obligations under this Lease and the transferee shall become completely and fully liable for such obligations, including those arising and accruing after such assignment, in Tenant's place and stead, such assignee thereupon solely and completely succeeding and replacing Tenant as the tenant hereunder, except only as provided in Article VI regarding the liability of Permitted Leasehold Mortgagees;

(iv) of any leasehold, license or other occupancy interest in the Premises or Improvements or any portion thereof pursuant to an Occupancy Agreement between Tenant and an Occupant; provided, however, that any such Transfer is made pursuant to the requirements of **Article XIV** and complies with the provisions of **Section 5.1** and all other provisions of this Lease applicable to such a Transfer; or of any subleasehold, license or other occupancy interest in the Premises or Improvements or any portion thereof pursuant to any assignment, sublease, sub-sublease, license, occupancy agreement or similar transfer that may be permitted under such an Occupancy Agreement and that is not prohibited by this Lease;

- (v) of Tenant's interest in this Lease, the Premises, the Improvements, or any part thereof, to any Permitted Leasehold Mortgagee or its affiliate, as security or pursuant to the granting of a Permitted Leasehold Mortgage in accordance with **Section 6.1**, or pursuant to a foreclosure of a Permitted Leasehold Mortgage, or pursuant to the granting of a deed or assignment in lieu of such foreclosure or other similar Transfer to a Permitted Leasehold Mortgagee;
- (vi) of Tenant's interest in this Lease, the Premises, the Improvements, or portions thereof to any transferee of a Permitted Leasehold Mortgagee or its affiliate after any assignment in lieu of foreclosure, entry as a mortgagee in possession or foreclosure or as a tenant under a new lease entered into in accordance with **Section 6.5(b)** or **Section 6.8**, provided that any such transferee that is not a Controlled affiliate of a Permitted Leasehold Mortgagee shall meet the requirements of **Section 13.3(iii)**;
- (vii) of any interest in the Premises, or any part thereof, for utility or like easements necessary to permit the construction, operation and use of the Improvements (and Landlord covenants to join in, if required, and execute and deliver such easement and other agreements in form and substance reasonably satisfactory to Landlord);
- (viii) of direct or indirect interests in any publicly-traded company, or interests in a pension plan, institutional endowment, foundation, family office, sovereign wealth fund, or other types of institutional investors, including without limitation, co-mingled funds, which may be a direct or indirect owner of Tenant, provided such transfer does not result in a Change of Control of Tenant;
- (ix) of direct or indirect equity interests in Tenant, or a member or partner of Tenant, for estate planning purposes or as a result of death, disability or incapacity of any of the principals of Tenant, Leggat McCall Properties LLC or Joseph J. Corcoran Company, LLC (or Tenant's then Managing Member) so long as such Transfer does not result in a Change in Control of Tenant;
- (x) that is permitted or contemplated pursuant to **Article XV** or that are Transfers between the Curing Party and the then Managing Member of Tenant (or their respective affiliates) or that are Transfers after which the Curing Party or its designated managing member, manager, general partner or equivalent Controls Tenant;
- (xi) of direct or indirect interests in Tenant to effectuate a qualified opportunity zone structuring in compliance with applicable Legal Requirements, provided such Transfer does not result in a Change in Control of Tenant;
- (xii) of Investor Member and/or Special Member's interest in Tenant to any affiliate of the Investor Member or Special Member, or transfers of any direct or indirect ownership interests in Investor Member and/or Special Member provided that an affiliate of CREA, LLC continues to be either the sole member, managing member or manager of the Investor Member or Special Member, as applicable; or

- (xiii) of Investor Member and/or Special Member's interest in Tenant pursuant to any provision of the Operating Agreement (including, without limitation, in connection with the Put Option or any rights or obligations of the Managing Member under the Operating Agreement to purchase or repurchase the interests of Investor Member and/or Special Member).
- 13.4. Landlord's Consent or Confirmation. If the consent of Landlord to any Transfer is required by this Article XIII, or if Tenant desires Landlord to confirm that a Transfer complies with the requirements of this Article XIII, Tenant shall notify Landlord of the entity to whom a Transfer is proposed, and such notice shall provide reasonably sufficient information to enable Landlord to evaluate the acceptability of the proposed transferee. Within fifteen (15) days of its receipt of a request for (a) confirmation that a proposed Transfer satisfies the applicable criteria set forth in Section 13.3 or (b) consent to a Transfer requiring consent of Landlord under this **Article XIII**, Landlord shall either determine that the proposed transferee satisfies the applicable criteria, or is otherwise satisfactory to Landlord, or it shall notify Tenant of the specific respects in which such proposed transferee does not satisfy the applicable criteria, or is not otherwise acceptable to Landlord, or it shall indicate with reasonable specificity what further information it requires to make its determination. If Landlord does not notify Tenant in writing within said 15day period of all specific respects in which the proposed transferee does not satisfy the applicable criteria or does not otherwise satisfy Landlord in accordance with Section 13.3, or of the further information Landlord requires to make its determination, (and subject to Tenant's compliance with the legend requirements set forth in Section 18.7) the Transfer to such proposed transferee shall be deemed approved. If Landlord requests further information concerning a proposed transferee, within fifteen (15) days of receipt of such additional information, Landlord shall either consent to such Transfer or it shall notify Tenant of the specific respects in which such proposed transferee does not satisfy the applicable criteria, or is not otherwise acceptable to Landlord in accordance with Section 13.3. If Landlord does not so notify Tenant within said 15day period, then (subject to compliance with the legend requirements set forth in Section 18.7) the Transfer to such proposed transferee shall be deemed approved. The recording of an affidavit by Tenant to the effect that such approval has been deemed to have been received by the passage of such a period shall be conclusive evidence thereof. If an assignment or other agreement to Transfer is not entered into with the proposed transferee to which consent is given or deemed given hereunder within one hundred eighty (180) days of the date such consent is given or deemed given, then such consent shall be void. Except as otherwise specifically provided in this Lease or with respect to Transfers that do not require the consent of Landlord by the terms of this Lease, the consent of Landlord to any proposed transferee shall be required but shall not be unreasonably withheld, delayed or conditioned.

#### 13.5. Right of First Offer.

(a) From and after the expiration of the Compliance Period (as hereinafter defined), Landlord shall have the right of first offer (the "Landlord ROFO") to purchase Tenant's interest in this Lease, the Premises and the Improvements (collectively, the "Tenant's Property Interest") on the terms and conditions set forth in this Section 13.5. The Landlord ROFO will apply from and after the expiration of the Compliance Period to any Sale Transfer contemplated by Tenant and any purchase by the Managing Member of the IM/SM Interests, in

each case, other than pursuant to the Put Option (as hereinafter defined). In that connection, from and after the expiration of the Compliance Period, Tenant agrees that Tenant will not effectuate a Sale Transfer and the Managing Member agrees that it will not exercise any option it may have pursuant to the terms of the Operating Agreement, or otherwise enter into any agreement, to purchase the IM/SM Interests (in each case, other than pursuant to the Put Option), without complying with the provisions and conditions of this Section 13.5. Notwithstanding the foregoing, the Parties acknowledge that the Landlord ROFO shall not apply to any exercise by the Investor Member and/or the Special Member of its option to put its respective IM/SM Interests to the Managing Member pursuant to the terms of the Operating Agreement (the "Put **Option**"), which Put Option may be exercised and effectuated without any consent or approval of Landlord. Nothing in this Lease grants, or shall be deemed to grant, any right to Landlord to compel (i) Tenant or Managing Member to sell Tenant's Property Interest, (ii) Managing Member to purchase the IM/SM Interests or (iii) the Investor Member or Special Member to sell the IM/SM Interests. The term "Compliance Period" shall mean the entire period during which the "compliance period" in Section 42(i)(1) of the Internal Revenue Code shall be applicable to any building comprising the Improvements.

- (b) Notwithstanding anything in this **Section 13.5** to the contrary, Landlord acknowledges and agrees that (i) a Taking shall not be subject to the Landlord ROFO and (ii) in the event that a Permitted Leasehold Mortgagee acquires the Tenant's Property Interest by judicial or non-judicial foreclosure, exercise of the power of sale or acceptance of an assignment in lieu of foreclosure, then (A) such Permitted Leasehold Mortgagee may Transfer the Tenant's Property Interest one or more times to a Controlled affiliate that is a Permitted Leasehold Mortgagee without such Transfer being subject to the Landlord ROFO and (B) such Permitted Leasehold Mortgagee or such Controlled affiliate may Transfer the Tenant's Property Interest to any unrelated third party subject to **Sections 6.5(b)** and **13.3(iii)** ("**Third Party Acquirer**") without such Transfer being subject to the Landlord ROFO, provided that any Sale Transfer subsequently effectuated by such Third Party Acquirer shall be subject to the Landlord ROFO.
- If, from and after the expiration of the Compliance Period, (i) Tenant desires to accept an unsolicited offer for a Sale Transfer or otherwise desires to effectuate a Sale Transfer, or (ii) if the Managing Member desires to exercise any purchase option it may have pursuant to the terms of the Operating Agreement to purchase, or otherwise desires to purchase (other than pursuant to the Put Option) the IM/SM Interests, Tenant or the Managing Member, as the case may be, shall deliver to Landlord a notice (the "Tenant Sale Notice") stating that (I) Tenant desires to effectuate a Sale Transfer, in its sole and absolute discretion, or (II) the Managing Member desires to purchase the IM/SM Interests for a price that would yield to the Investor Member and Special Member no less than the price required to be paid to them under the Operating Agreement (unless otherwise agreed in writing by the Investor Member and Special Member), and therefore in the case of either (I) and (II), as required by this Section 13.5, Tenant desires to offer Tenant's Property Interest for sale to Landlord. The Tenant Sale Notice shall state the all-cash purchase price for the sale of Tenant's Property Interest as determined by Tenant in its sole and absolute discretion (extrapolated to equate to a sale of the entire Tenant's Property Interest or 100% of the direct or indirect ownership interests in Tenant, as applicable ("Extrapolated" or "Extrapolation") (the "Offer Price"). For the avoidance of doubt and notwithstanding anything herein to the contrary, the Offer Price, as Extrapolated for the IM/SM

Interests, shall not be less than an amount that will yield distributions of net sale proceeds to the Investor Member and the Special Member pursuant to the Operating Agreement that are at least equal to the amount that each would have received had the Managing Member or its affiliates acquired the IM/SM Interests pursuant to the call option rights set forth in the Operating Agreement. The Tenant Sale Notice shall constitute an offer by Tenant, or the Managing Member as the case may be, to transfer Tenant's Property Interest to Landlord at the Offer Price contained in the Tenant Sale Notice and subject to the terms and conditions set forth herein. Any Extrapolation set forth in this Section 13.5(c) or in Section 13.5(f) shall (i) in the case of a Sale Transfer of less than 100% of Tenant's Property Interest (e.g., the sale of a 50% tenant-incommon interest), be based on the sale of 100% of Tenant's Property Interest, and (ii) in the case of a Sale Transfer of less than 100% of the direct or indirect ownership interests in Tenant, be based upon the percentage of distributions to which the applicable exiting holder of a direct or indirect ownership interest in Tenant would be entitled to upon a Sale Transfer of the entire Tenant's Property Interest under the Operating Agreement as compared to the percentage of distributions to which the remaining holder(s) of ownership in Tenant would be entitled on account of such a capital event.

By way of example of such Extrapolation, assume that after the Compliance Period (a) the Managing Member is willing to pay \$10 to the Investor Member and Special Member, collectively, to purchase the IM/SM Interests, (b) the Investor Member and Special Member, collectively, are entitled to 10% of the net distributable proceeds from a sale of the Tenant's Property Interest, and (c) the Permitted Leasehold Mortgage has an outstanding balance of \$500. Then, before the Managing Member may exercise any option to purchase, or enter into an agreement to purchase, the IM/SM Interests for \$10, Tenant and the Managing Member must first offer to sell the Tenant's Property Interest to Landlord for \$600 (\$10/10% + \$500). If Landlord accepts the offer, then upon a sale of the Tenant's Property Interest, the Managing Member would receive \$90 and the Investor Member and Special Member, collectively, would receive \$10, after repayment of the \$500 Permitted Leasehold Mortgage balance. If Landlord declines the offer, then the Managing Member may buy the IM/SM Interests for \$10.

Notice to accept the offer by giving Tenant within such period written notice of such acceptance ("Landlord's Acceptance Notice"), accompanied by a good faith, earnest money deposit (together with interest earned thereon, the "Deposit") in an amount equal to one percent (1%) of the Offer Price, which Deposit shall be non-refundable to Landlord except in the event of a default by Tenant in its obligation to sell Tenant's Property Interest to Landlord at the Offer Price subject to the terms and conditions set forth herein. If Landlord timely provides Landlord's Acceptance Notice and the Deposit, the closing of the sale of Tenant's Property Interest shall occur on the date that is ninety (90) days after the Landlord's Acceptance Notice (unless otherwise agreed by the parties) and in connection with such closing Landlord and Tenant shall execute commercially reasonable escrow instructions with a mutually acceptable third party escrow agent and such other commercially reasonable conveyance instruments (including an assignment and assumption agreement with respect to Tenant's interest under this Lease) as may

be reasonably necessary or appropriate to consummate the sale of Tenant's Property Interest to Landlord. The sale of Tenant's Property Interest shall be on an "AS-IS, WHERE IS, WITH ALL FAULTS" basis and Tenant shall not be required to provide any representations or warranties to Landlord as to the Premises or Improvements or the condition thereof; provided that (1) nothing in this Section 13.5 shall be deemed to waive or limit Landlord's inspection and access rights or Tenant's obligation to maintain the Premises and the Improvements as expressly set forth in this Lease (and the closing of the sale of Tenant's Property Interest shall be contingent upon a satisfactory inspection of the Premises and Improvements by Landlord to confirm Tenant's compliance with such maintenance obligation) and (2) as of such closing Landlord and Tenant shall be deemed to have remade the representations and warranties set forth in Section 17.1 but only in respect of the sale transaction and the conveyance documents to be executed in connection therewith as contemplated by this Section 13.5 rather than in respect of the Lease. On the closing date of the sale of Tenant's Property Interest, Tenant shall convey to Landlord the Tenant's Property Interest free and clear of all liens and encumbrances other than those created by Landlord or its employees, agents or contractors, those of record or in existence as of the Commencement Date, and those which are permitted by the terms and conditions of this Lease (including, without limitation, any permitted Occupancy Agreements), provided, however, that Tenant shall cause any Permitted Leasehold Mortgage to be paid off and/or discharged as of the closing date of the sale of Tenant's Property Interest (or, if not discharged on the closing date, thereafter promptly discharged in accordance with customary conveyancing practice), unless Tenant and Landlord have agreed that the Permitted Leasehold Mortgage will be assumed by Landlord as of the closing date of the sale of Tenant's Property Interest on terms and conditions mutually acceptable to Tenant and Landlord (including a release executed by the Permitted Leasehold Mortgagee of the Tenant and its Affiliates with respect to the Permitted Leasehold Mortgage financing and any associated guaranties, indemnification agreements or loan documents, on terms and conditions satisfactory to Tenant), in which case the outstanding principal amount of the Permitted Leasehold Mortgage that is assumed by Landlord shall be credited against the Offer Price. There shall be no holdbacks, escrows or indemnifications from Tenant required in connection with the sale of Tenant's Property Interest. The Offer Price shall be payable in cash, by wire transfer or other immediately available funds, at the closing of the sale of Tenant's Property Interest, with customary prorations in accordance with applicable REBA standards (or, in the absence thereof, local custom) and, if applicable, credit for the outstanding balance of any indebtedness secured by Tenant's Property Interest that is either assumed or taken subject to by Landlord. Any transfer or recordation taxes payable in connection with the sale of Tenant's Property Interest shall be paid in accordance with applicable REBA standards (or, in the absence thereof, local custom). Landlord shall be responsible for the costs of any title insurance it desires to procure in connection with the sale of Tenant's Property Interest. Each party shall be responsible for its own attorneys' fees incurred in connection with the sale of Tenant's Property Interest. The costs of any escrow agent for the sale of Tenant's Property Interest shall be evenly split by the parties.

(e) If the sale of Tenant's Property Interest is not consummated in accordance with the terms and conditions set forth in this **Section 13.5** due to a default by Landlord, Tenant shall be entitled to retain the Deposit as liquidated damages as its sole remedy for the default of Landlord and, notwithstanding anything to the contrary in this Lease, the Landlord ROFO rights under this Lease shall be forever extinguished and of no further force or effect. If the sale of

Tenant's Property Interest is not consummated in accordance with the terms and conditions set forth in this **Section 13.5** due to a default by Tenant, Landlord shall be entitled, as its sole remedies therefor, the right to either (i) bring an action for specific performance for conveyance of the Tenant's Property Interest at the Offer Price and on the terms and conditions set forth in this **Section 13.5** (which action must be commenced within sixty (60) days after such default of Tenant or Landlord shall be deemed to have irrevocably elected to proceed under clause (ii)); or (ii) receive the entire Deposit (including accrued interest) from Tenant, provided that unless the sale of Tenant's Property Interest to Landlord is consummated in accordance with any such specific performance action by Landlord, the Landlord ROFO and the rights and the obligations of Landlord under this **Section 13.5** shall not terminate but shall continue to apply in accordance with the terms hereof as though no Tenant Sale Notice had been delivered.

- In the event that Landlord rejects an offer by Tenant pursuant to a Tenant Sale Notice, or fails to timely deliver Landlord's Acceptance Notice and Deposit after receipt of a Tenant Sale Notice, then (1) the Managing Member or its designee may purchase the IM/SM Interests or (2) Tenant may enter into an agreement for the Sale Transfer with any Person(s), subject to Sections 13.2 and 13.3, in the case of each of (1) and (2), for a price (as Extrapolated) of not less than ninety-eight percent (98%) of the Offer Price and on other financial terms and conditions (as Extrapolated) not materially better to the buyer than those set forth in the Tenant Sale Notice (the "Tenant Requirements"). If such purchase of the IM/SM Interests or Sale Transfer does not close within two-hundred seventy (270) days of the date Landlord rejects (or is deemed to have rejected on account of failing to have timely delivered Landlord's Acceptance Notice and Deposit after receipt of a Tenant Sale Notice) an offer by Tenant pursuant to a Tenant Sale Notice, or does not meet the Tenant Requirements, then Landlord's right to acquire the Tenant's Property Interest shall revive, and the process described above shall start again. In the event that Tenant pursues a Sale Transfer after Tenant's Property Interest has been previously offered to Landlord in accordance with this Section 13.5 and subsequently receives counteroffers (as Extrapolated) less than ninety-eight percent (98%) of the Offer Price, and Tenant desires to accept such lower price, then Tenant shall be obligated to re-offer the Tenant's Property Interest to Landlord at such lower price that Tenant desires to accept in accordance with this **Section** 13.5 and Landlord shall be obligated to deliver Landlord's Acceptance Notice and Deposit within thirty (30) days of such re-offer, or Landlord shall be deemed to have waived its rights hereunder as to such Sale Transfer.
- (g) This **Section 13.5** and the Landlord ROFO shall continue in effect during the Term of this Lease and shall be binding on all of Tenant's and Managing Member's successors in interest and apply to all subsequent Sale Transfers of Tenant's Property Interest, except as otherwise expressly provided in this **Section 13.5**.
- (h) Landlord may assign the Landlord ROFO to a Person that includes the CRA or any successor Local Tenant Organization representing the Assisted Residents of the Site or Improvements, subject to compliance with applicable Legal Requirements, provided that such partnership or joint venture shall have, in the reasonable opinion of Landlord and the Owners' Association, the qualifications, experience and financial capability and responsibility required to fulfill any remaining unfulfilled obligations contained in this Lease with respect to the management and operation of the Improvements and the continuing obligations of Tenant under

the Owners' Association Agreement, or if the proposed transferee (or its Control party(ies)) does not have the qualifications and experience required to manage and operate the Improvements, it shall have a firm contractual arrangement with an entity which has, in the reasonable opinion of Landlord and the Owners' Association, the qualifications and experience required to fulfill such management and operating obligations contained in this Lease and the Owners' Association Agreement. Landlord shall provide Tenant with reasonable advance written notice of any proposed assignment of the Landlord ROFO and the proposed assignee.

13.6. Restrictions on Assignment by Landlord. Landlord acknowledges and agrees that, in connection with this Lease, Tenant has entered into, or intends to enter into, a payment in lieu of taxes agreement or other real estate tax relief or payment agreement with the City of Boston with respect to the Premises and Improvements (the "Tax Agreement"). Landlord agrees that, during the term of any Tax Agreement, Landlord shall not sell, assign or otherwise transfer, directly or indirectly, all or any portion of Landlord's interest in the Premises, the Improvements or this Lease, unless the City of Boston agrees in a written instrument satisfactory to Tenant and any Permitted Leasehold Mortgagee that the Tax Agreement will remain unchanged and in full force and effect, notwithstanding any such sale, assignment or transfer by Landlord.

#### ARTICLE XIV - SUBLETTING

<u>Subletting</u>. Tenant may, as a matter of right and without having to obtain Landlord's consent, sublease Units to Residents, pursuant to Occupancy Agreements, as determined by Tenant from time to time; provided, however, that all Occupancy Agreements with Residents shall comply with the provisions of Section 5.1, shall not permit sub-subleasing without the Tenant's consent, and provided further, that any subleases of Affordable Units shall comply with the provisions of the Management Plan, the Letter of Assurance, any applicable HAP Contract, other applicable Legal Requirements of HUD or any other governmental agency providing subsidies, funding or approvals to Tenant, all other Legal Requirements, and the provisions of this Lease regarding maintaining the Affordable Units. All subleases for Affordable Units shall be in a form that is consistent with the requirements of the Management Plan. All Affordable Units are subject to and have the benefit of the terms and conditions of the Project-Based Voucher requirements for the term of the applicable HAP Contract. Tenant acknowledges that the Affordable Units constitute low-income housing as defined in the Act and that Landlord, as the provider of the Project-Based Vouchers, will prescreen applicants for Affordable Units and refer them to Tenant. Tenant acknowledges that BHA Residents have certain rehousing rights as set forth in the Letter of Assurance which Tenant is required to recognize. In the event of any conflict between a provision of this Lease that affects the Affordable Units and a Project-Based Voucher Legal Requirement, or HUD or other governmental agency Legal Requirement applicable to the Affordable Units, then the Project-Based Voucher or HUD or other government agency Legal Requirements shall govern, subject, however, to Section 5.2. Tenant agrees to provide such reports regarding the Affordable Units and the Assisted Residents as are required by Landlord, HUD, or any governmental agency providing subsidies for Assisted Residents or funding for the Improvements.

Tenant may, as a matter of right and without having to obtain Landlord's consent, sublet or license any part or parts of the Premises or Improvements (other than the Units) at any time

and from time to time to such Occupants (including commercial subtenants) and upon such terms and conditions (including pursuant to such Occupancy Agreements) as Tenant shall deem fit and proper, provided that any uses by such Occupants must be for Permitted Uses allowed by this Lease, and Tenant shall use good faith efforts to cause the uses by any retail subtenants to conform to the retail strategic plan for the Premises (the "Retail Strategic Plan") approved prior to the Commencement Date by Landlord (or as such Retail Strategic Plan may be modified from time to time with Landlord's approval, including to take into account evolving consumer preferences and retail formats during the Term), such approval not to be unreasonably withheld, delayed or conditioned. To attract certain retail tenants who may not be able to pay market rental rates, if the Improvements contain more than 5,000 square feet of retail space, Tenant will agree to offer a 50% discount off the then market rents for up to twenty percent (20%) of the retail space located within the Improvements, if necessary and unless otherwise approved by Landlord.

No sublease made as permitted by this **Section 14.1** shall impose any obligations on Landlord or otherwise affect any rights of Landlord under this Lease.

At the request of Tenant, Landlord agrees to execute and deliver to any retail and/or commercial Occupant at the Premises a commercially reasonable recognition, non-disturbance and/or consent agreement in a form mutually agreeable to Landlord and such Occupant; provided that Landlord has approved the Occupancy Agreement with such Occupant, such approval not to be unreasonably withheld, delayed or conditioned.

14.2. <u>Utility Charges to Residents of Affordable Units</u>. Tenant shall not impose any charge for the delivery of non-telecommunication utilities (cold and hot water, sewer, gas, electricity, light, heat or power) to Affordable Units, regardless of how such utilities may be tracked or metered. The cost of such non-telecommunication utility related charges shall be included in the gross rent on which the Total Tenant Payment is calculated for an Assisted Resident's occupancy of an Affordable Unit pursuant to the Occupancy Agreements, subject to changes in the Legal Requirements related to Project-Based Vouchers that mandate otherwise. Policies and rules to promote energy efficiency and conservation behavior and deter waste of utilities shall be included in the Management Plan, in particular in the resident handbook.

#### ARTICLE XV - CURE RIGHTS

- 15.1. <u>Cure Rights</u>. Provided Landlord has approved the Transfer of an equity interest in Tenant to an investor pursuant to the provisions of **Section 13.4** (whether or not such approval is required pursuant to **Sections 13.2** and **13.3**), such approved investor, for so long as it holds an equity interest in Tenant, and upon notifying Landlord in writing of its desire to obtain the protections set forth below, and providing Landlord with an address for notices (the "<u>Curing Party</u>"), shall have the following rights:
- (a) The Curing Party (or any affiliate thereof) may exercise its rights under the Operating Agreement to become or designate a new Managing Member upon the occurrence of the conditions set forth in such Operating Agreement, such exercise to be deemed a permitted Transfer under **Article XIII** hereof. In furtherance of the foregoing, Landlord agrees that it will take no action to effect a termination of this Lease by reason of any Event of Default without first giving to Curing Party one hundred twenty (120) calendar days to replace Tenant's

Managing Member, and cause the new Managing Member to cure such Event of Default (but such requirement to cure shall only apply if the applicable Event of Default is capable of cure by such substitute or additional Managing Member); provided, that (a) as a condition of such forbearance, Landlord must receive notice of the substitution of a new Managing Member of the Tenant within sixty (60) calendar days following Landlord's notice of Event of Default to the Curing Party, and (b) Tenant, following such substitution of Managing Member, shall thereupon proceed with due diligence to cure such Event of Default to the extent curable by such substitute or additional Managing Member.

- (b) Except as may be expressly otherwise provided herein, this Lease shall not be amended, modified, terminated, or cancelled by Tenant, nor shall Landlord accept a surrender of this Lease by Tenant, without the prior written consent of the Curing Party.
- (c) Landlord agrees to give copies to the Curing Party of any notice of an Event of Default hereunder or notice of any default or matter which, if left uncured will become an Event of Default, or of a termination of this Lease, in accordance with the requirements for the giving of notices as provided herein. Landlord acknowledges that no event will constitute an Event of Default for which this Lease may be terminated by Landlord, unless the Curing Party shall have been given notice thereof and an opportunity to cure as provided herein.
- (d) The Curing Party may elect, in its sole and absolute discretion, to cure or cause to be cured any default by Tenant under this Lease. The Curing Party shall have the same period after the receipt of notice for remedying the default as is given Tenant, plus an additional sixty (60) days, and Landlord agrees to accept performance by the Curing Party (or any affiliate thereof) as though it had been done or performed by Tenant.
- (e) If this Lease is terminated as a result of a default on the part of Tenant or rejected or disaffirmed in a bankruptcy proceeding, Landlord shall, subject to the satisfaction of all the conditions provided below, on written request of the Curing Party made at any time within thirty (30) days after Landlord has given notice of such termination to the Curing Party, enter into a new lease ("New Lease") with such Curing Party (or its designee) in accordance with the following provisions:
- (i) The term of any such New Lease shall be the remainder of the Term of this Lease;
- (ii) Such New Lease shall be upon the exact terms and conditions as this Lease (with only those revisions necessary to reflect the substitution of the Curing Party or its designee for, or as the Managing Member of, Tenant);
- (iii) The Curing Party or its designee shall, contemporaneously with the delivery of such request for a New Lease, pay to Landlord all Rent, fees, charges, and other amounts owed by Tenant to Landlord which then remain unpaid or which have accrued, together with all expenses, including attorneys' reasonable fees, actually incurred by Landlord in connection with the termination of this Lease and the execution and delivery of such New Lease; and

- (iv) The Curing Party or its designee shall have performed all unfulfilled covenants and agreements required as of that date to be performed by Tenant under this Lease (except for defaults not capable of being cured by the Curing Party, including, without limitation, any failure by Tenant to pay Participating Rent; provided, however, if Curing Party enters into a New Lease, then the Curing Party shall be responsible to pay when due any Participating Rent first accruing from and after the date of such New Lease).
- (f) Landlord agrees that, as of the date of this Lease, the Investor Member and the Special Member shall each be a Curing Party, and their address is as follows:

CREA Bunker Hill Building M, LLC 30 South Meridian Street, Suite 400 Indianapolis, Indiana 46204 Attention: Asset Management – Bunker Hill Building M Email: CREAAM@creallc.com

CREA SLP, LLC

30 South Meridian Street, Suite 400 Indianapolis, Indiana 46204 Attention: Asset Management – Bunker Hill Building M Email: CREAAM@creallc.com

- (g) Landlord agrees to enter into a commercially reasonable recognition, non-disturbance, standstill and/or consent agreement with a Curing Party, provided that Landlord has reviewed and approved the Operating Agreement pursuant to which such Curing Party has acquired an equity interest in Tenant.
- (h) The provisions of this **Article XV** shall survive the termination of this Lease.

# ARTICLE XVI - NON-DISCRIMINATION AND EMPLOYMENT OPPORTUNITIES

- 16.1. Compliance with Laws and Regulations. Tenant shall comply in all material respects with all applicable Legal Requirements and any commercially reasonable requirements of Landlord set forth in its written policies in effect from time to time, of which Tenant has been given written notice, that are applicable to all of Landlord's properties, pertaining to civil rights, equal opportunity, anti-discrimination and employment opportunities, including executive orders and rules and regulations of appropriate federal, state and local agencies unless otherwise exempt therefrom. Specifically, Tenant covenants that Tenant shall:
- (a) Not discriminate against any individual because of membership in any legally protected class, including, without limitation, race, color, religion, creed, national origin, ancestry, age being greater than forty years, gender, sexual orientation, gender expression and identity, genetic information, disability, or Vietnam-era veteran status, nor because of membership in, or due to any obligation to perform service in, a uniformed military service of the United States, including the National Guard, in the use of the Premises, including the hiring

and discharging of employees (if any), the provision or use of services, and the selection of suppliers and contractors;

- (b) Conspicuously post notices to its employees and prospective employees (if any) setting forth the Fair Employee Practices Law of the Commonwealth;
- (c) Not discriminate against any person because of race, color, religion, creed, national origin, ancestry, age, gender, sexual orientation, gender expression and identity, genetic information, disability, or veteran status in the subleasing or refusing to sublease of any Unit or providing or refusing to provide any services or use of any facility, and shall comply in all material respects with all Legal Requirements pertaining to fair housing practices and the leasing of any portion of the Premises for residential dwelling purposes.
- 16.2. <u>Information and Reports</u>. During the initial construction of the Improvements, until the same are Substantially Completed, and thereafter during any Major Alterations, and with respect to the Management Agreement and other material service contracts entered into by Tenant pertaining to the Premises, Tenant will provide all information and reports required by HUD, the City or Landlord and set forth in Legal Requirements, the HAP Contract, and in commercially reasonable written policies of Landlord in effect from time to time, of which Tenant has been given written notice, that are applicable to all of Landlord's properties, in each case pertaining to civil rights, equal opportunity, anti-discrimination and employment opportunities, and will permit access in accordance with Section 17.10 to the Premises and Improvements and any of its books, records, accounts, or other sources of information which may reasonably be determined by Landlord to affect Tenant's obligation hereunder. Without limiting the foregoing, Tenant shall maintain (a) all financial information required for HUD reports, including any applicable Certified Payroll Reporting Requirements, for the preceding month; (b) all documentation showing compliance with all MBE/WBE and minority and women employment and Section 3 requirements under this Lease, including but not limited to compliance plans and employee lists, which may be required under this Lease and any project labor agreement that is binding on Tenant; and (c) all additional information regarding compliance with all MBE/WBE requirements pursuant to Section 16.3 and Section 3 requirements pursuant to Section 16.4 that Landlord may otherwise reasonably request in order to enable Landlord to comply in all respects with HUD reporting requirements. Tenant shall deliver to Landlord such of the above-mentioned reports as Landlord requests in writing within ten (10) days of its receipt of such request.

#### 16.3. MBE and WBE Participation; Minority and Women Employment.

To achieve greater participation of minority business enterprises ("<u>MBEs</u>") and women's business enterprises ("<u>WBEs</u>") in contracts administered directly or indirectly by Landlord pursuant to Executive Orders 11625 and 12138, and Landlord's Minority and Women Participation Provision ("<u>MWPP</u>"), attached hereto as <u>Exhibit N</u>, Tenant agrees to use its good faith efforts to:

(a) place qualified MBEs and WBEs and small business concerns on solicitation lists;

- (b) divide the services relating to the Improvements into smaller tasks or quantities to permit maximum participation by MBEs and WBEs and small business concerns;
- (c) use the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, any local minority assistance organizations, and various state and local government small business agencies;
- (d) achieve the following numeric goals with respect to the Improvements: twenty-five percent (25%) for MBE utilization, and fifteen percent (15%) for WBE utilization, forty percent (40%) of worker hours for minority workers, and twelve percent (12%) of worker hours for women workers; and
- (e) comply with such additional requirements relating to MBEs and WBEs as set forth in the MWPP and hiring and training plans developed by Tenant and approved by Landlord.
- 16.4. **Resident Employment**. Tenant shall ensure, to the greatest extent feasible, that all requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended are followed ("Section 3") with respect to resident employment opportunities pertaining to the Improvements. Section 3 shall apply, to the extent provided in this Section 16.4, to resident employment opportunities pertaining to the Improvements as a matter of Landlord policy regardless of whether Section 3 applies as a matter of law. The goal behind Section 3 is to ensure that employment and other economic opportunities generated by governmental financial assistance for housing and community development programs is, to the greatest extent feasible, directed toward low- and very low-income persons, particularly recipients of government assistance. Tenant shall ensure, to the greatest extent feasible, that employment and training opportunities generated as a result of the development of, or other work on, the Improvements be directed to qualified Section 3 workers. Tenant shall ensure, to the greatest extent feasible, that the Section 3 hiring and training preferences are followed with respect to the Improvements when such opportunities arise, directing opportunities in the order of priority set forth Landlord's Resident Employment Provision ("REP") attached hereto as Exhibit O. Additionally, Tenant shall also commit to enforcing that 25% or more of the total hours goal for the Improvements shall be worked by Section 3 Workers and 5% or more labor hours shall be worked by Targeted Section 3 Workers, as these terms are defined in the REP, to greatest extent feasible. Tenant shall also ensure, to the greatest extent feasible, that contracting opportunities are directed to Section 3 business concerns.

The REP sets out in detail the requirements of Section 3, codified as Landlord's policy. Specific resident employment obligations and procedures are detailed in the REP and the REP shall govern additional aspects of resident employment compliance and are incorporated herein by reference.

## ARTICLE XVII - REPRESENTATIONS AND WARRANTIES; AFFIRMATIVE COVENANTS

- 17.1. <u>Representations and Warranties</u>. The Parties hereto each represent and warrant with respect to themselves:
- (a) Each Party is duly organized or qualified and in good standing under the laws of the Commonwealth and has the power and authority to own or hold its properties.
- (b) The execution hereof and the performance of the obligations herein described, and of any acts which may be reasonably necessary or appropriate to accomplish the purposes set forth herein, have been duly authorized by each of the respective Parties.
- (c) Each Party has full power and authority to enter into this Lease. This Lease has been duly executed. This Lease constitutes the legal, valid and binding obligations of each of the respective Parties, and is enforceable in accordance with its terms as the same may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally and the effect of general equitable principles.
- (d) The execution, delivery and performance of this Lease (i) does not conflict with any judgment, order, Legal Requirement, joint venture agreement, charter, or any indenture agreement or other instrument to which it is a party or by which it is bound; (ii) does not constitute a default under any agreement or instrument to which it is a party or by which it is bound; and (iii) does not result in the creation of any lien, change or encumbrance or security upon, its assets.
- (e) To the Party's actual knowledge, there is no litigation or administrative proceeding pending or threatened in writing which would in any way affect the ability of the Party making the warranty to carry out its obligations under this Lease or which would otherwise adversely affect the construction and operation of the Improvements or the transactions contemplated by this Lease.
- 17.2. <u>No Disqualified Person</u>. Tenant represents and warrants to Landlord that neither Tenant, nor to the actual knowledge of Tenant, the holder of any equity interest in Tenant, or in any Person which holds equity interests in Tenant or in any other Person in the chain of ownership of Tenant, is a Disqualified Person.
- 17.3. <u>No Reliance</u>. Tenant represents and warrants that it has made or will make an independent investigation and inquiry into all matters relevant to the performance of its obligations hereunder without reliance on any statement, whether written or oral, made by any officer, employee, agent or representative of Landlord, except for representations and warranties of Landlord expressly set forth in this Lease.
- 17.4. <u>Maintenance of Business and Existence</u>. Tenant will continue to engage in business of the same general type as now conducted by it so that its principal business shall continue to be substantially the same as it is on the date of execution of this Lease and to do all things necessary to preserve, renew, and keep in full force and effect its existence in its state of

formation or organization and rights and franchises necessary to continue such business and preserve and keep in force and effect all licenses and permits necessary for the proper conduct of its business, unless prior written approval of Landlord is obtained.

- 17.5. <u>Conduct of Business</u>. Tenant will conduct and maintain its business in compliance with all applicable Legal Requirements and in accordance with this Lease.
- 17.6. <u>Cordial Relationships</u>. Tenant shall endeavor to maintain cordial relationships with the City and the neighbors of the Premises and to be sensitive to the concerns of Landlord and the neighborhood; provided, however, that Tenant's failure to comply with this **Section 17.6** covenant shall not constitute a default or breach of Tenant.
- 17.7. <u>Notification of Defaults</u>. Tenant will promptly notify Landlord of any material default in the payment or performance of any of its obligations under or pursuant to this Lease of which Tenant becomes aware, whether or not any requirement or notice or lapse of time, or both, or any other condition has been satisfied or has occurred.
- 17.8. <u>Notification of Disputes</u>. Tenant will promptly notify Landlord of any materially adverse claims, actions or proceedings against Tenant affecting the Premises or the Improvements or Tenant's performance of this Lease of which Tenant becomes aware.
- 17.9. <u>Notification of Attachments</u>. Tenant will promptly notify Landlord of any unpaid levy, attachment, execution or other legal process against its assets, in excess of THREE HUNDRED THOUSAND and NO/100 DOLLARS (\$300,000.00) or, after the fifth year after the Commencement Date, the Value Equivalent of such amount, or any less amount which will materially, adversely affect the Premises, the Improvements or Tenant's performance of this Lease.
- 17.10. Access to Records and Premises. Tenant will afford reasonable access by Landlord, its accountants, attorneys or agents, during normal business hours of Tenant and not less than two (2) business days' advance notice, at Landlord's expense, to the Premises and to Tenant's Books and Records, leases, subleases, other agreements, plans, drawings, specifications and any other documents relating to this Lease, the Premises or the Improvements to inspect and make and take away copies of any and all of the same as Landlord, HUD, the City, the BPDA and any other agency providing subsidies, funding or approvals to Tenant or funds to Landlord, the Comptroller General of the United States, and any of their authorized representatives may reasonably request for a governmental purpose in order to determine Tenant's compliance with the provisions of this Lease or Tenant's obligations to such parties; provided that such inspections do not unreasonably interfere with, and are conducted in accordance with applicable Legal Requirements and so as to minimize, to the extent practicable, any interference with the operations of, and use and enjoyment by, Tenant or any Occupant of the Improvements or the Premises. Tenant will promptly deliver to Landlord, HUD, the City, the BPDA and any other agency providing subsidies, funding or approvals to Tenant or funds to Landlord, the Comptroller General of the United States, and any of their authorized representatives, such certificates and documents as any of them may reasonably request to ensure compliance with Tenant's reporting obligations under applicable Legal Requirements, the Use Agreement, the

- HAP Contract, and any other contracts between Tenant and such governmental authority to the extent pertaining to the Improvements or the Premises, and will use commercially reasonable efforts to cause any contractor engaged by Tenant with respect to the Improvements or the Premises to do the same. (Landlord recognizes that any data contained in such Books and Records constitutes important business records and trade secrets of Tenant and therefore agrees to treat such information as confidential to the maximum extent permitted by law.)
- 17.11. <u>Agency Reports</u>. Upon Landlord's reasonable request, Tenant will provide Landlord with copies of any reports it has furnished to any City, state or federal agency or regulatory body relative to the Premises or the Improvements.
- 17.12. <u>Further Information</u>. Tenant will promptly furnish Landlord from time to time such other information regarding its operations, business affairs and financial condition concerning the Premises as Landlord may reasonably request.
- 17.13. <u>Further Assurances</u>. Upon request, each Party will execute and deliver, or cause to be executed and delivered, such further instruments and do or cause to be done such further acts, as may reasonably be necessary or proper to carry out the intent and purpose of this Lease, provided that such instruments shall not increase a Party's obligations or decrease a Party's rights under this Lease.
- 17.14. <u>Current Information</u>. Tenant will use commercially reasonable efforts to promptly furnish Landlord from time to time with current information which changes in any material adverse manner information previously submitted to Landlord by Tenant.
- 17.15. <u>Legal Costs</u>. Tenant will reimburse Landlord for all reasonable out-of-pocket legal expenses incurred by Landlord in connection with all requests by Tenant for consent, approval or review hereunder, recognition agreements, estoppel certificates, easements, licenses, mortgages, amendments to this Lease and other agreements relating to this Lease or to the Premises.
- 17.16. <u>Notice</u>; <u>Further Information and Assurances</u>. Landlord will provide notice, further information and assurances to Tenant with respect to matters under the control or within the knowledge of Landlord in a manner identical with obligations imposed on Tenant pursuant to **Sections 17.7**, **17.8**, **17.9**, **17.12**, **17.13**, and **17.14** above.
- 17.17. Fee Ownership of Premises. Landlord shall not enter into, consent to, suffer or permit any lien or other encumbrance to title to the Premises, and shall refrain from taking or suffering any action that would impose any encumbrance or lien on title to the Premises, or that would interfere with or adversely affect (a) Tenant's ability to exercise its rights and fulfill its obligations under this Lease, including, without limitation, the development of the Improvements, or (b) Landlord's ability to lease the Premises, without in each case Tenant's prior express written consent in Tenant's sole and absolute discretion, provided that Landlord may grant a fee mortgage on its fee interest in the Premises for a governmental purpose, so long as such mortgage is expressly subject and subordinate to this Lease and subject to compliance with the requirements set forth in **Section 6.15**.

#### ARTICLE XVIII – MISCELLANEOUS PROVISIONS

- 18.1. Designation of Authorized Representatives. Landlord and Tenant shall each designate an authorized representative to be responsible for granting the approvals and concurrences required pursuant to this Lease and for maintaining communications between the Parties. The authorized representative for Landlord shall be Joseph Bamberg and/or such other persons as Landlord may designate from time to time. The authorized representative for Tenant shall be Adelaide Grady and/or such other persons as Tenant may designate from time to time. Each Party shall be entitled to rely on concurrences or approvals of the other Party's authorized representative until such time as a Party receives notice from the other Party revoking the authority of such authorized representative and designating a replacement.
- 18.2. <u>Notice of Lease</u>. Landlord and Tenant agree that this Lease shall not be recorded and that, upon the execution and delivery hereof, each will execute and deliver to the other a notice of lease substantially in the form attached hereto as <u>Exhibit P</u>, which Tenant shall be entitled to record.
- 18.3. No Merger of Title. There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Premises by reason of the fact that the same person or entity may own or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate, and (b) the fee estate in the Premises or any interest in such fee estate; and no such merger shall occur unless and until all persons, including Landlord if it then owns the fee estate, having any interest in (i) the leasehold estate created by this Lease, or (ii) the fee estate in the Premises, shall join in a written instrument effecting such merger and shall duly record the same.
- 18.4. <u>No Waiver</u>. The failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, option or election unless this Lease specifies otherwise. The receipt by Landlord of Rent with knowledge of the breach of any covenant herein shall not be deemed a waiver of such breach.
- 18.5. <u>No Broker</u>. Landlord and Tenant each represent to the other that there was no broker involved in consummating this Lease and that, to the best of their knowledge, there is no broker entitled to a commission in connection with this Lease.
- 18.6. <u>Arbitration</u>. Whenever, pursuant to the terms of this Lease, Tenant and Landlord cannot agree upon issues of the characterization, terms or approval of any loan as a Junior Loan solely for purposes of the calculation of Participating Rent, Transaction Rent, and Leveraged Operating Cash Flow; the calculation of the amount of Participating Rent under Section 4.3; the Sale Transfer price under Section 4.4(c); the calculation of the amount of Transaction Rent under Section 4.4; design under Section 7.15; a Corrective Action Plan under Section 8.3(f); the allocation of Insurance Proceeds under Section 10.7; the allocation of an Award under Section 11.2; or Tenant's election to restore the Premises or terminate the Lease under Section 11.4, then the matter for determination, upon the election of either Landlord or Tenant, shall be submitted

Tenant, one to be chosen by Landlord, and a third to be selected as below provided. Such arbitrators shall be qualified, independent real estate professionals with experience in transactions of a size and character similar to the transaction contemplated by this Lease and shall be technically competent in the subject matter of the dispute. The written decision of a majority of three arbitrators chosen as herein provided shall be conclusive and binding upon Landlord and Tenant. Landlord and Tenant shall each notify the other of its chosen arbitrator within ten (10) days following the call for arbitration and the chosen arbitrators shall then select an impartial third arbitrator within fifteen (15) days of the designation of the initially chosen arbitrators. The arbitrators shall receive submissions from both Parties. The three arbitrators shall render a written decision within thirty (30) days following the date of appointment of the third arbitrator and shall notify Landlord and Tenant thereof. Judgment may be entered in any court of competent jurisdiction upon an award reflecting the decision of such arbitrators. Landlord and Tenant shall divide equally all expenses of arbitration. Arbitration under this Section is expressly limited to the matters set forth herein

- 18.7. Consents and Approvals. Except as herein otherwise expressly provided, wherever in this Lease the consent or approval of Landlord or Tenant is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned and shall be in writing signed by an authorized officer (designated pursuant to the provisions of Section 18.1) of the Party granting such consent or giving such approval, which may be delivered electronically or be executed with a digital signature. Unless a different time frame is specified in this Lease, the Party requesting consent or approval is entitled to a decision from the other Party either granting or denying (with reasons for any denial specified) such request within fifteen (15) days the receipt of such request, and any such request which has not been responded to within said fifteen (15) day period shall be deemed to have been granted, provided that the following legend has been placed in bold face large type prominently and conspicuously at the top of the transmittal letter: "IMPORTANT RIGHTS MAY BE LOST BY FAILURE TO ACT PROMPTLY. THIS SUBMISSION WILL BE DEEMED APPROVED 15 DAYS AFTER RECEIPT UNLESS WRITTEN NOTICE IS GIVEN TO TENANT WITHIN SUCH PERIOD THAT A ONE-TIME ADDITIONAL PERIOD OF UP TO 15 DAYS OF TIME IS NEEDED." unless the Party receiving such letter notifies the other Party in writing within such time period that it requires a one-time additional period of up to fifteen (15) days to review a matter, in which case the Party's failure to disapprove or object to such matter within such additional period shall be deemed such Party's consent and approval thereto.
- 18.8. <u>Time of Essence</u>. Time is of the essence of this Lease, and the Parties hereto shall punctually perform the obligations required to be performed by each of them and attempt to fulfill the conditions applicable to each of them as and when the time for performance is due under this Lease, it being understood that the date by which either Party is required to perform any obligation under this Lease shall be determined by taking into account the *force majeure event* provisions of **Section 12.11**, if applicable.
- 18.9. <u>Due Diligence and Good Faith</u>. Both Parties agree to pursue in good faith and with due diligence the purposes set forth herein and all acts in furtherance thereof, specifically including all acts required of either Party by the terms hereof.

- 18.10. <u>Survival of Obligations</u>. All of the obligations, representations, warranties and covenants made in this Lease shall be deemed to have been relied upon by the Party to which they were made and to be material and shall survive the execution and performance of any agreements between the Parties related hereto to the extent that they are by their terms, or by a reasonable interpretation of the context, to be performed or observed or relied upon after the execution or performance of such agreements.
- 18.11. Supplemental Documents. Recognizing that the implementation of the provisions hereof may require the execution of supplemental documents the precise nature of which cannot now be anticipated, each of the Parties agrees to assent (subject, in the case of Tenant, to the consent of any Permitted Leasehold Mortgagee) to, execute and deliver such other and further documents (including, without limitation, votes and certificates) as may be reasonably requested or required by the other Party hereto (or any Permitted Leasehold Mortgagee) so long as such other and further instruments and documents are consistent with the terms and provisions hereof, shall not impose additional obligations on any Party, shall not deprive any party of the privileges herein granted to it and shall be in furtherance of the intent and purposes of this Lease. To the extent any provisions of any agreement hereafter executed by the Parties hereto pursuant to this Lease are inconsistent with the provisions of this Lease, the terms of such agreement shall govern, but such agreements shall be interpreted, if possible, to implement the spirit of this Lease, and shall not be used to frustrate the purposes set forth herein.
- 18.12. <u>Invalidity of Provisions</u>. If any one or more of the phrases, sentences, clauses or paragraphs contained in this Lease shall be declared invalid by the final and unappealable order, decree or judgment of any court, this Lease shall be construed as if it did not contain such phrases, sentences, clauses or paragraphs, provided that such construction does not substantially alter the material benefits and burdens of the respective parties as set forth in this Lease, and provided further, that in place of such invalid provision, there shall be substituted a valid and enforceable provision which comports to the findings of the court and most nearly accomplishes the original intention of the Parties.
- 18.13. Binding Effect. Except as otherwise provided in this Lease, all of the covenants, conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective authorized successors and assigns of Landlord and Tenant to the same extent as if each such successor and assign were in each case named as a party to this Lease. Any Person acquiring any or all of the rights, title and interest of Tenant in and to the leasehold estate in the Premises, (i) under any judicial sale made under a Permitted Leasehold Mortgage or as the result of any action or remedy provided therein; (ii) by foreclosure proceeding or action in lieu thereof, in connection with any such Permitted Leasehold Mortgage; or (iii) as a result of any legal process or proceedings (other than eminent domain proceedings by public authority), shall thereby become liable under and be fully bound by all of the provisions of this Lease (except as otherwise provided in this Lease, including **Article VI** hereof) and, with the prior written consent of Landlord, Tenant may be fully or partially released from its obligations under this Lease.

- 18.14. <u>Pronouns</u>. Whenever the context may require, any pronouns used in this Lease shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
- 18.15. <u>Rights of Others</u>. Nothing in this Lease, express or implied, is intended to confer upon any person other than the Parties hereto and their authorized successors and assigns (and, where so stated in this Lease, any Permitted Leasehold Mortgagee or Curing Party), rights or remedies under or by reason of this Lease. Each Permitted Leasehold Mortgagee and each Curing Party shall be a third-party beneficiary of the provisions of this Lease that reference the Permitted Leasehold Mortgagees and the Curing Party, and each such party shall have rights to enforce such terms, as applicable.
- 18.16. <u>Covenants Running with the Premises</u>. The Parties intend that the covenants and the provisions of this Lease, and the rights contained in this Lease, shall run with the Premises for the Term hereof.
- 18.17. <u>Amendments</u>. This Lease may not be amended, changed, modified or discharged except by an instrument in writing signed by Landlord and Tenant and consented to by any Permitted Leasehold Mortgagee and any Curing Party in their sole discretion.
- 18.18. <u>Captions and Headings</u>. The captions and headings throughout this Lease are for convenience and reference only, and they shall in no way be held or deemed to define, modify or add to the meaning, scope or intent of any provisions of this Lease.
- 18.19. <u>Governing Law</u>. This Lease shall be governed by and interpreted under the laws of the Commonwealth.
- 18.20. <u>Disclaimer of Relationship</u>. Nothing contained in this Lease, nor any act of Landlord, Tenant, HUD, or the City, shall be deemed or construed to create any joint venture, partnership, association, or principal/agent relationship between Tenant and Landlord, HUD, or the City, except as expressly set forth herein.
- 18.21. <u>Multiple Counterparts</u>. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall constitute a fully executed Lease, and it shall not be necessary in making proof of this Lease or the terms hereof, to produce or account for more than one such counterpart, provided that the counterpart produced bears the signature of the Party sought to be charged. Facsimile and/or digitally transmitted signatures shall be sufficient to bind the Parties and shall in all respects be treated in court proceedings or otherwise as the legal equivalent of an original signature.
- 18.22. <u>Electronic Signatures</u>. Each of the Parties agrees on behalf of itself, and any Person acting or claiming by, under or through such Party, that any written instrument or approval delivered in connection with this Lease or any related document, including without limitation any amendments or supplements to this Lease, may be executed by electronic methods (whether by faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature or utilization of an electronic or digital signature

platform or application). Any electronic signature document delivered via email from a Person shall be considered signed or executed by such Person on behalf of the applicable Party. Each of the Parties agree to assume all risks arising out of the use of electronic methods for all purposes including the authorization, execution, delivery, or submission of documents, instruments, notices, and approvals, including without limitation the risk of interception and misuse by third parties. Any electronic signature shall have the same legal validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the Massachusetts Uniform Electronic Transactions Act, or any similar federal or state law, rule or regulation, as the same may be in effect from time to time, and the parties hereby waive any objection to the contrary. Any document or approval accepted, executed or agreed to in conformity with such laws will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any third party electronic signature capture service providers as may be reasonably chosen by a party hereto.

18.23. <u>Entire Agreement</u>. This Lease contains the entire agreement between the Parties relating to the transactions contemplated hereby and any prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein, except as expressly provided herein.

#### ARTICLE XIX - NOTICES AND PAYMENTS

- 19.1. <u>Notices, Demands and Other Instruments</u>. Unless otherwise expressly permitted by the terms of this Lease, all notices, demands, submissions, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been properly given if delivered by email (provided that any notices of termination or default sent by email shall also be sent at the same time by one of the other following means provided herein) by hand delivery, or nationally recognized overnight courier service, or sent by certified United States mail, postage prepaid, return receipt requested, to the addressee, and
  - (1) if directed to Landlord addressed to:

Boston Housing Authority 52 Chauncy Street Boston, MA 02111 ATTN: Administrator Email:

with a copy to:

Boston Housing Authority 52 Chauncy Street Boston, MA 02111 ATTN: General Counsel; and Email:

#### (2) if directed to Tenant addressed to:

Building M Owner LLC c/o Leggat McCall Properties LLC 10 Post Office Square 13th Floor Boston, Massachusetts 02109

Attention: Eric B. Sheffels and Adelaide Grady

Email: eric.sheffels@lmp.com and adelaide.grady@lmp.com

#### with a copy to:

Morgan, Lewis & Bockius LLP One Federal Street Boston, MA 02110 Attention: James L. Black, Jr., Esq. Email: james.black@morganlewis.com

and until Substantial Completion has occurred, with a copy to:

Leggat McCall Properties LLC 10 Post Office Square 13th Floor Boston, Massachusetts 02109

Attention: Eric B. Sheffels and Adelaide Grady

Email: eric.sheffels@lmp.com and adelaide.grady@lmp.com

or to such other address as may from time to time be specified in writing by any party hereto. Unless otherwise specified in writing, each party shall direct all sums payable to another party to said party's address for notice purposes. Notices may be sent by counsel on behalf of a Party. As a matter of convenience, but not as a requirement, the sending Party, where possible, will also transmit to the other Party a copy of the communication by electronic means. Notices concerning emergency situations may be orally communicated in person or by telephone, but shall be promptly confirmed by supplemental written notice (including email) as provided herein.

#### ARTICLE XX – EXHIBITS AND SCHEDULES

20.1. <u>Exhibits and Schedules</u>. The following Exhibits and Schedules are hereby made a part hereof.

Exhibit A – Description of the Premises

Exhibit B - Plan of Premises
Exhibit C - Intentionally Deleted
Exhibit D - Intentionally Deleted

Exhibit E – Final Plans and Specifications

Exhibit F - Certificate of Compliance

Exhibit G – Provisions Regarding Cuts to Section 8 Rental Subsidies

Exhibit H – Intentionally Deleted

Exhibit I – Title Insurance

Exhibit J – Form of Statement of Unaudited Quarterly Unleveraged Cash Flow and

Leveraged Operating Cash Flow

Exhibit K – Form of Operating Budget

Exhibit L – Design Review Process

Exhibit M – Intentionally Deleted

Exhibit N – BHA Minority & Women Participation Provision

Exhibit O – BHA Resident Employment Provision

Exhibit P – Notice of Lease

Exhibit Q - Form of Construction Completion Guaranty

Schedule 1-A Transaction Rent Calculation Illustration

Schedule 1-B Transaction Rent Calculation Formulas

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as a sealed instrument by their respective duly authorized agent or representative. as of the date and year first set forth above.

#### LANDLORD

**BOSTON HOUSING AUTHORITY** 

By: Kathryn Bennett
Title: Administrator

**TENANT** 

BUILDING M OWNER LLC, a Delaware limited liability company

By:

Name: Adelaide Grady
Title: Authorized Signatory

The Managing Member joins this Lease for the sole purpose of agreeing to be bound by the provisions of Section 13.5(a), (c), (f) and (g) which are stated therein to apply to the Managing Member (individually and not on behalf of Tenant).

BH BUILDING M GP LLC, a Delaware limited liability company

By:
Name: Adelaide Grady

Title: Authorized Signatory

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as a sealed instrument by their respective duly authorized agent or representative, as of the date and year first set forth above.

LANI	DLORD	
BOST	ON HOUSING AUTHORITY	
By:		
	Kathryn Bennett Administrator	

**TENANT** 

BUILDING M OWNER LLC, a Delaware limited liability company

By: Adelaide Grady
Title: Authorized Signatory

The Managing Member joins this Lease for the sole purpose of agreeing to be bound by the provisions of Section 13.5(a), (c), (f) and (g) which are stated therein to apply to the Managing Member (individually and not on behalf of Tenant).

BH BUILDING M GP LLC, a Delaware limited liability company

By: Name: Adelaide Grady
Title: Authorized Signatory

#### **EXHIBIT A**

#### **DESCRIPTION OF THE PREMISES**

The land located in that part of Boston called Charlestown, Suffolk County, Massachusetts, being Lot M on a plan entitled, "Subdivision Plan of Land Lot 'M' & Open Space, Boston Housing Authority - Charlestown Campus; prepared for Leggat McCall Properties, 10 Post Office Square, Boston MA 02109" recorded with the Suffolk County Registry of Deeds as Plan 249 of 2023, to which plan reference is made for a more particular description. Lot M contains 35,934± S.F. according to said plan.

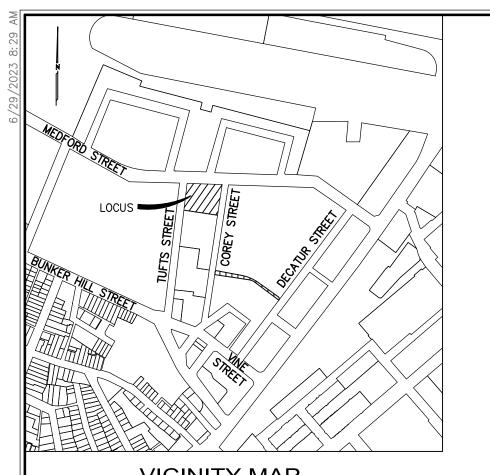
The above described land has the benefit of the following:

Easement as set forth in the Drainage Easement Agreement between the Boston Housing Authority and Building M Owner LLC to be recorded herewith in the Suffolk County Registry of Deeds.

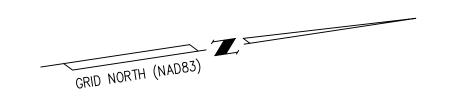
#### **EXHIBIT B**

#### **PLAN OF PREMISES**

# [SURVEY OR SUBDIVISION PLAN FOR PREMISES TO BE ATTACHED AT TIME OF LEASE EXECUTION]



**VICINITY MAP** 



## **GRAPHIC SCALE**

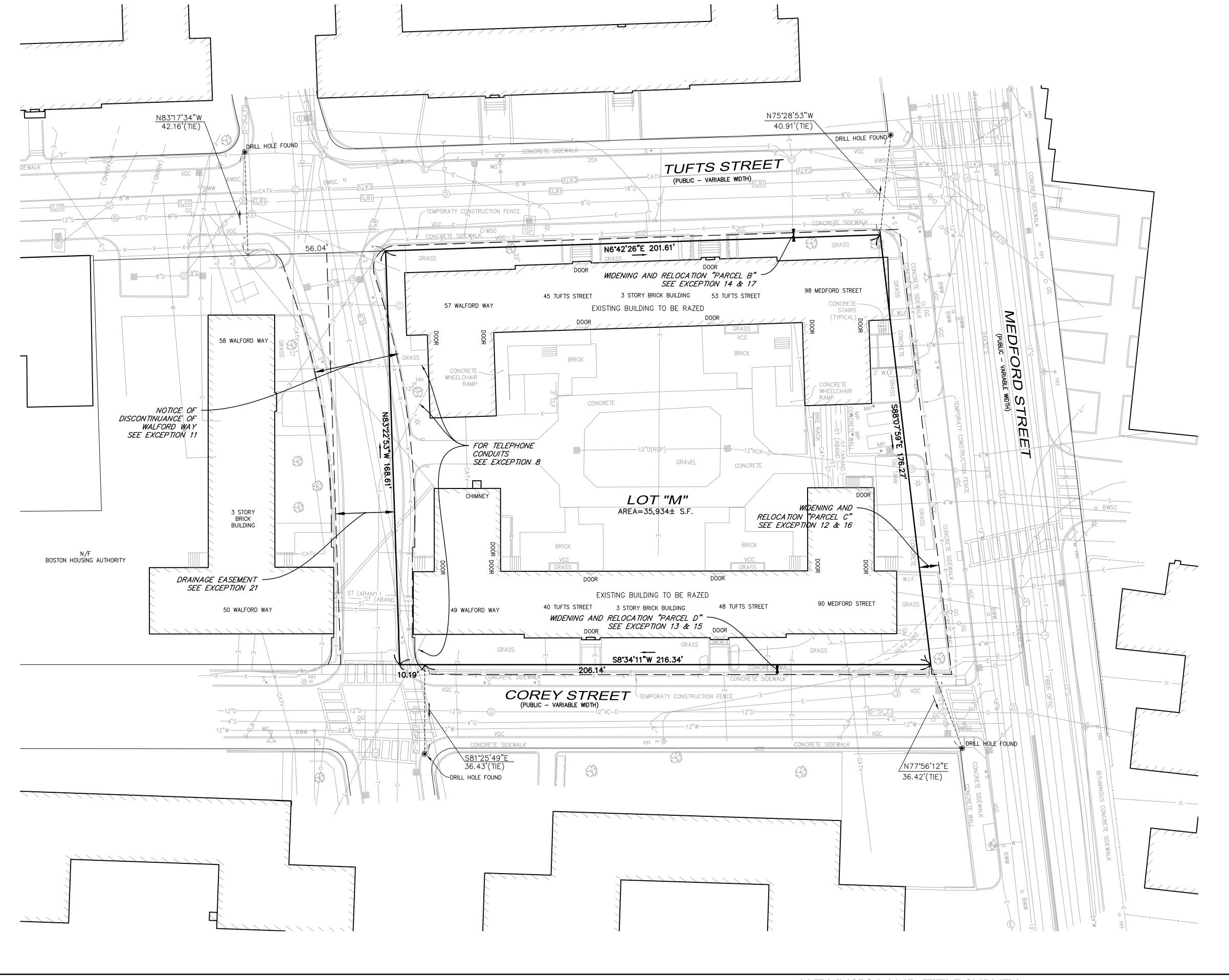
20	10	Q	20	40	60
			SCALE: 1"= 20	)'	

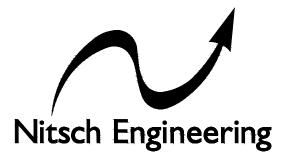
### LEGEND

CATCH BASIN CABLE TELEVISION MANHOLE DRAIN MANHOLE ELECTRIC MANHOLE MISCELLANEOUS MANHOLE SEWER MANHOLE TELEPHONE MANHOLE WATER MANHOLE GAS SHUT-OFF WATER SHUT-OFF GAS GATE GG O WG O WATER GATE IRRIGATION CONTROL VALVE CLEANOUT O CLEANOUT BWW□ BOSTON WATER WORKS FIRE HYDRANT DOWN SPOUT UP D UTILITY POLE UTILITY POLE WITH CONDUIT LINE TO GROUND UP W/ UE P LIGHT POLE LIGHT BOLLARD LB-¢-LL-¢-LANDSCAPE LIGHT HH  $\square$ HAND HOLE TC O TRASH CAN FIRE ALARM CALL BOX FACB 🗖 METAL POST MP • CP • CONCRETE POST PARKING METER PM • S • SIGN POST DECIDUOUS TREE WITH TRUNK DIAMETER CHAIN LINK FENCE CLF VGC VERTICAL GRANITE CURB VCC VERTICAL CONCRETE CURB WHEELCHAIR RAMP WCR UNDERGROUND CABLE TELEVISION LINE UNDERGROUND DRAIN LINE UNDERGROUND ELECTRIC LINE UNDERGROUND GAS LINE UNDERGROUND SEWER LINE UNDERGROUND TELEPHONE LINE UNDERGROUND WATER LINE

SEE SHEET 2 FOR NOTES, EXCEPTIONS, AND CERTIFICATION

OVERHEAD WIRES





www.nitscheng.com

2 Center Plaza, Suite 430 Boston, MA 02108 T: (617) 338-0063

F: (617) 338-6472

➤ Civil Engineering Land Surveying

➤ Transportation Engineering Structural Engineering

► Green Infrastructure ➤ Planning

► GIS

PROJECT # 11231.5 FILE: 11231.5\_ALTA-PARCEL-M.dwg SCALE: 1"= 20' DATE: 3/17/2023 PROJECT MANAGER: JCC FIELD BOOK: DRAFTED BY: JCC

CHECKED BY:

REMOVED ALL REFRENCES TO PARCEL M 6/28/2023 RECORD PLAN REFERENCE AND CERTIFICATION 6/23/2023 ADDED ADDITIONAL EXCEPTION REFERENCES 6/20/2023 **UPDATED COMMITMENT** 6/13/2023 REV. COMMENTS DATE REVISIONS

## ALTA/NSPS LAND TITLE SURVEY

LOT M - BOSTON HOUSING AUTHORITY CHARLESTOWN CAMPUS BOSTON, SUFFOLK COUNTY, MASSACHUSETTS

> PREPARED FOR: LEGGAT MCCALL PROPERTIES 10 POST OFFICE SQUARE, BOSTON MA 02109

SHEET:

OF 2

REV. D

2. HORIZONTAL BASIS OF BEARING IS IN RELATION TO MASSACHUSETTS STATE PLANE (NAD83) GRID NORTH BASED ON GPS RTK OBSERVATIONS.

3. THE ENTIRE SITE IS WITHIN THE ZONE X (UNSHADED) - AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS SHOWN ON THE FLOOD INSURANCE RATE MAP NUMBER 25025C0018JM, REVISED MARCH 16, 2016.

4. NO CLEARLY IDENTIFIABLE PARKING SPACES WERE OBSERVED ON THE

5. EXISTING BUILDINGS DEPICTED TO BE DEMOLISHED. AT THE TIME OF SURVEY THE BUILDINGS ON SITE HAD THEIR INTERIORS DEMOLISHED. THE COURTYARD AREA IN THE MIDDLE OF THE BUILDINGS HAD OBSERVABLE EVIDENCE OF DEMOLITION/CONSTRUCTION.

6. NO PORTION OF THE AREA DESCRIBED IN THE RECORD DESCRIPTION LIES WITHIN THE LIMITS OF TUFTS STREET. COREY STREET. OR MEDFORD

7. THE SITE IS AT THE INTERSECTION OF TUFTS STREET AND MEDFORD STREET AND AT THE INTERSECTION OF COREY STREET AND MEDFORD STREET.

8. NO GAPS, GORES, OR OVERLAPS BETWEEN LOCUS AND THE ABUTTING PARCELS OF LAND OR PUBLIC STREETS EXIST.

9. NO CEMETERIES WERE OBSERVED WITHIN 100 FEET OF THE BOUNDARY LINE OF THE LOCUS SITE.

10. THE LEGAL DESCRIPTION MATHEMATICALLY CLOSES.

11. NO PARTY WALLS WERE OBSERVED.

12. THE STREET RIGHT OF WAY LINES WERE CHANGED RECENTLY. SEE SCHEDULE B SECTION 2 ITEMS 11, 12, AND 13.

# OWNERSHIP (LEASEHOLD)

CREATED BY A GROUND LEASE BY AND BETWEEN THE BOSTON HOUSING AUTHORITY, AS LESSOR, AND BUILDING M OWNER LLC, AS LESSEE, NOTICE OF WHICH IS DATED \_\_\_\_\_, 2023 AND RECORDED IN BOOK \_\_\_\_, *PAGE* \_\_\_\_.

# RECORD DESCRIPTION

THE LEASEHOLD ESTATE IS THE LAND LOCATED IN THAT PART OF BOSTON CALLED CHARLESTOWN, SUFFOLK COUNTY, MASSACHUSETTS, BEING LOT M ON A PLAN ENTITLED, "SUBDIVISION PLAN OF LAND LOT 'M' & OPEN SPACE, BOSTON HOUSING AUTHORITY - CHARLESTOWN CAMPUS; PREPARED FOR LEGGAT MCCALL PROPERTIES, 10 POST OFFICE SQUARE, BOSTON MA 02109" RECORDED WITH THE SUFFOLK COUNTY REGISTRY OF DEEDS AS PLAN 249 OF 2023, TO WHICH PLAN REFERENCE IS MADE FOR A MORE PARTICULAR DESCRIPTION. LOT M CONTAINS 35.934+ S.F. ACCORDING TO SAID PLAN.

THE ABOVE DESCRIBED LAND HAS THE BENEFIT OF THE FOLLOWING:

EASEMENT AS SET FORTH IN THE DRAINAGE EASEMENT AGREEMENT BETWEEN THE BOSTON HOUSING AUTHORITY AND BUILDING M OWNER LLC RECORDED IN BOOK \_\_\_\_, PAGE \_\_\_\_.

PARCEL ID: 200152000

# **ZONING**

THE FOLLOWING ZONING INFORMATION WAS PROVIDED VIA EMAIL DATED 3/23/2023 BY THE DAVID LINHART AT GOULSTON & STORRS.

# ZONING DISTRICT

MULTI-FAMILY RESIDENTIAL SUBDISTRICT OF THE CHARLESTOWN NEIGHBORHOOD DISTRICT, AS AFFECTED BY (i) "U\*" OVERLAY DISTRICT APPROVED BY THE ZONING COMMISSION AS MAP AMENDMENT NO. 665 ON FEBRUARY 10, 2021, EFFECTIVE UPON MAYORAL EXECUTION ON FEBRUARY 12, 2021, AND (ii) DEVELOPMENT REGULATORY AGREEMENT BETWEEN THE BOSTON PLANNING & DEVELOPMENT AGENCY AND THE BOSTON HOUSING AUTHORITY AS OF JULY 28, 2021, PROVIDING APPLICABLE ZONING **PARAMETERS** 

# DIMENSIONAL REQUIREMENTS

\* PHASE ONE/BUILDING M MAX. BUILDING HEIGHT: 7—STORIES, EXCEPT 4-STORIES WITHIN 25' OF MEDFORD STREET LOT LINE

\* SITEWIDE MAX. FLOOR AREA RATIO: 3.0 \* SETBACKS: N/A

### SITEWIDE PARKING

\* VEHICLES: APPROX. 950 ONSITE SURFACE AND STRUCTURED \* BICYCLE STORAGE: UP TO 2,699 ONSITE, PROVIDED WITH 1:1 RESIDENTIAL UNIT TO BICYCLE STORAGE RATIO FOR EACH NON-ELDERLY RESIDENTIAL BUILDING

# SCHEDULE B - SECTION 2

1. INTENTIONALLY OMITTED.

2. INTENTIONALLY OMITTED.

3. INTENTIONALLY OMITTED.

4. INTENTIONALLY OMITTED.

5. LIENS FOR TAXES AND ASSESSMENTS, WHICH BECOME DUE SUBSEQUENT TO THE DATE OF POLICY. (NOT SHOWN)

NOTE: THE INSURED LAND IS EXEMPT FROM THE PAYMENT OF REAL ESTATE TAXES THROUGH FISCAL YEAR 2023 ENDING JUNE 30, 2023.

6. TITLE TO AND RIGHTS OF THE PUBLIC AND OTHERS ENTITLED THERETO IN AND TO THOSE PORTIONS OF THE LAND LYING WITHIN THE BOUNDS OF TUFTS STREET, COREY STREET AND MEDFORD STREET (SEE NOTE 6)

7. THE EXACT ACREAGE OR SQUARE FOOTAGE BEING OTHER THAN AS STATED IN EXHIBIT A ANNEXED OR THE PLAN(S) THEREIN REFERRED TO. (NOT SHOWN)

8. EASEMENT FROM BOSTON HOUSING AUTHORITY TO NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY DATED APRIL 9, 1941, RECORDED IN BOOK 5932, PAGE 24. (SHOWN)

9. TERMS AND PROVISIONS OF DEVELOPMENT REGULATORY AGREEMENT BY AND BETWEEN BOSTON PLANNING & DEVELOPMENT AGENCY AND BOSTON HOUSING AUTHORITY DATED JULY 15, 2021, RECORDED IN BOOK 68791, PAGE 98. (NOT SHOWN)

10. CONDUIT LICENSE AGREEMENT BY AND BETWEEN CITY OF BOSTON PUBLIC IMPROVEMENT COMMISSION, AS LICENSOR, AND BOSTON HOUSING AUTHORITY, AS LICENSEE, DATED JUNE 22, 1990, RECORDED IN BOOK 16444, PAGE 236. (SHOWN)

11. NOTICE OF DISCONTINUANCE OF A SEGMENT OF WALFORD STREET BY THE CITY OF BOSTON PUBLIC IMPROVEMENTS COMMISSION DATED JANUARY 27, 2022 RECORDED IN BOOK 68999, PAGE 40. (SHOWN)

12. NOTICE OF THE WIDENING AND RELOCATION OF A PORTION OF MEDFORD STREET BY THE CITY OF BOSTON PUBLIC IMPROVEMENTS COMMISSION DATED FEBRUARY 17, 2022, RECORDED IN BOOK 68999, PAGE 42. (SHOWN)

13. NOTICE OF THE WIDENING AND RELOCATION OF A PORTION OF COREY STREET BY THE CITY OF BOSTON PUBLIC IMPROVEMENTS COMMISSION DATED FEBRUARY 17, 2022, RECORDED IN BOOK 68999, PAGE 49. (SHOWN)

14. NOTICE OF THE WIDENING AND RELOCATION OF A PORTION OF TUFTS STREET BY THE CITY OF BOSTON PUBLIC IMPROVEMENTS COMMISSION DATED FEBRUARY 17, 2022, RECORDED IN BOOK 68999, PAGE 58. (SHOWN)

15. GRANT OF HIGHWAY EASEMENT — COREY STREET, CHARLESTOWN, BY AND BETWEEN BOSTON HOUSING AUTHORITY AND THE CITY OF BOSTON. BY AND THROUGH ITS PUBLIC IMPROVEMENT COMMISSION DATED FEBRUARY 17, 2022, RECORDED IN BOOK 68999, PAGE 52. (SHOWN)

16. GRANT OF HIGHWAY EASEMENT - MEDFORD STREET - BY AND BETWEEN BOSTON HOUSING AUTHORITY AND THE CITY OF BOSTON, BY AND THROUGH ITS PUBLIC IMPROVEMENT COMMISSION DATED FEBRUARY 17, 2022, RECORDED IN BOOK 68999, PAGE 44. (SHOWN)

17. GRANT OF HIGHWAY EASEMENT -TUFTS STREET - BY AND BETWEEN BOSTON HOUSING AUTHORITY AND THE CITY OF BOSTON. BY AND THROUGH ITS PUBLIC IMPROVEMENT COMMISSION DATED FEBRUARY 17, 2022, RECORDED IN BOOK 68999, PAGE 60. (SHOWN)

18. TERMS AND PROVISIONS OF MASTER LICENSE AGREEMENT FOR SPECIFIC REPAIRS BY AND BETWEEN BUNKER HILL LANDCO LLC AND THE CITY OF BOSTON ACTING BY AND THROUGH ITS PUBLIC IMPROVEMENT COMMISSION DATED FEBRUARY 17, 2022, RECORDED IN BOOK \_\_\_\_, PAGE \_\_\_ (NOT SHOWN)

19. OWNERS' ASSOCIATION AGREEMENT FOR BUNKER HILL REDEVELOPMENT PROJECT AMONG THE BHA. BUNKER HILL LANDCO LLC. AND BUNKER HILL OWNERS ASSOCIATION INC. DATED \_\_\_\_\_, 2023, RECORDED IN BOOK \_\_\_\_, PAGE \_\_\_, AS AFFECTED BY JOINDER AGREEMENT BY AND AMONG BHA, BUNKER HILL LANDCO LLC, BUNKER HILL OWNERS ASSOCIATION INC. AND BUILDING M OWNER LLC DATED JUNE \_\_\_\_, 2023, RECORDED IN BOOK \_\_\_\_\_, PAGE \_\_\_\_. (NOT SHOWN)

20. TERMS AND PROVISIONS OF GROUND LEASE BY AND BETWEEN THE BOSTON HOUSING AUTHORITY, AS LESSOR, AND BUILDING M OWNER LLC, AS LESSEE, NOTICE OF WHICH IS DATED \_\_\_\_\_, 2023 AND RECORDED IN BOOK \_\_\_\_\_, PAGE \_\_\_\_. (NOT SHOWN)

21. TERMS AND PROVISIONS OF DRAINAGE EASEMENT AGREEMENT BETWEEN THE BOSTON HOUSING AUTHORITY AND BUILDING M OWNER LLC RECORDED IN BOOK \_\_\_\_, PAGE \_\_\_\_. (SHOWN)

22. TERMS AND PROVISIONS OF USE AGREEMENT (BUNKER HILL APARTMENTS PHASE 1B) DATED \_\_\_\_\_, 2023 BY AND BETWEEN THE BOSTON HOUSING AUTHORITY, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND BUILDING M OWNER LLC RECORDED IN BOOK \_\_\_\_, PAGE \_\_\_\_. (NOT SHOWN)

23. RESIDENTIAL COMPLIANCE AGREEMENT BETWEEN MASSACHUSETTS HOUSING FINANCE AGENCY AND BUILDING M OWNER LLC, DATED \_\_, 2023, AND RECORDED IN BOOK \_\_\_\_, PAGE \_\_\_. (NOT SHOWN)

24. FIRST LEASEHOLD MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT (FIXTURE FILING) AND ASSIGNMENT OF LEASES AND RENTS, DATED AS OF \_\_\_\_\_, 2023, FROM BUILDING M OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY TO THE MASSACHUSETTS HOUSING FINANCE AGENCY, RECORDED ON \_\_\_\_\_, 2023 IN BOOK \_\_\_\_, PAGE \_\_\_\_, WHICH INCORPORATES BY REFERENCE THAT CERTAIN REGULATORY AGREEMENT, DATED AS OF \_\_\_\_\_, 2023,

BETWEEN BUILDING M OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY AND THE MASSACHUSETTS HOUSING FINANCE AGENCY. RECORDED ON \_\_\_\_\_, 2023 IN BOOK \_\_\_\_, PAGE \_\_\_\_. (NOT SHOWN)

25. BRIDGE LEASEHOLD MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT (FIXTURE FILING) AND ASSIGNMENT OF LEASES AND RENTS, DATED AS OF \_\_\_\_\_, 2023, FROM BUILDING M OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY TO THE MASSACHUSETTS HOUSING FINANCE AGENCY, RECORDED ON \_\_\_\_\_, 2023 IN BOOK

\_\_\_\_\_, PAGE \_\_\_\_. AS AFFECTED BY PRIOR RECORDED LIEN HOLDER CONSENT BY THE MASSACHUSETTS HOUSING FINANCE AGENCY. (NOT

26. SECOND BRIDGE LEASEHOLD MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT (FIXTURE FILING) AND ASSIGNMENT OF LEASES AND RENTS, DATED AS OF \_\_\_\_\_\_\_\_, 2023, FROM BUILDING M OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY TO THE MASSACHUSETTS HOUSING FINANCE AGENCY, RECORDED ON \_\_\_\_\_\_, 2023 IN BOOK \_\_\_\_\_, PAGE \_\_\_\_ AS AFFECTED BY PRIOR RECORDED LIEN HOLDER CONSENT BY THE MASSACHUSETTS HOUSING FINANCE AGENCY. (NOT SHOWN)

27. TAX CREDIT REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS BETWEEN THE EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES AND BUILDING M OWNER LLC DATED AS OF \_\_\_\_\_, 2023, RECORDED ON \_\_\_\_\_, 2023 IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_. (NOT SHOWN)

28. PRIOR RECORDED LIENHOLDER CONSENT FROM MASSACHUSETTS HOUSING FINANCE AGENCY DATED AS OF \_\_\_\_\_, 2023, RECORDED ON \_\_\_\_\_, 2023 IN BOOK \_\_\_\_, PAGE \_\_\_\_. (NOT SHOWN)

29. SURVEY ENTITLED "ALTA/NSPS LAND TITLE SURVEY — LOT M — BOSTON HOUSING AUTHORITY CHARLESTOWN CAMPUS BOSTON, SUFFOLK COUNTY, MASSACHUSETTS, PREPARED FOR LEGGAT MCCALL PROPERTIES 10 POST OFFICE SQUARE, BOSTON MA 02109"; PREPARED BY NITSCH ENGINEERING DATED MARCH 17, 2023, LAST REVISED \_\_\_\_\_, 2023 (THE "SURVEY") DISCLOSES THE FOLLOWING MATTERS:

A. ENCROACHMENT BY BUILDING AT 98 MEDFORD STREET INTO MEDFORD STREET (BUILDING TO BE DEMOLISHED);

B. PROPERTY IS SURROUNDED BY TEMPORARY CONSTRUCTION FENCING THAT ENCROACHES ONTO ADJACENT STREETS; C. PROPERTY IS PARTIALLY DEMOLISHED AND UNDER CONSTRUCTION.

6/28/2023

6/23/2023

6/20/2023

6/13/2023

DATE

# POSSIBLE ENCROACHMENTS

A. ENCROACHMENT BY BUILDING AT 98 MEDFORD STREET INTO MEDFORD STREET (BUILDING TO BE DEMOLISHED);

B. PROPERTY IS SURROUNDED BY TEMPORARY CONSTRUCTION FENCING THAT ENCROACHES ONTO ADJACENT STREETS;

C. PROPERTY IS PARTIALLY DEMOLISHED AND UNDER CONSTRUCTION.

# CERTIFICATION

MASSACHUSETTS HOUSING FINANCE AGENCY; THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT;

EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES; BUILDING M OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY, ISAOA ATIMA:

LEGGAT MCCALL PROPERTIES LLC, BOSTON HOUSING AUTHORITY

CREA BUNKER HILL BUILDING M LLC, A DELAWARE LIMITED LIABILITY COMPANY, ISAOA ATIMA;

CREA SLP LLC. AN INIDANA LIMITIED LIABILITY COMPANY. ISAOA

COMMONWEALTH LAND TITLE INSURANCE COMPANY, ISAOA ATIMA; AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS. AND INCLUDES ITEMS 1, 2, 3, 4, 6A, 6B, 7A, 7C, 8, 9, 10, 11A, 12, 13, 14, 16, 17, 18, AND 19 OF TABLE A THEREOF.

THE FIELDWORK WAS PERFORMED JANUARY THROUGH MARCH 2016 AND LAST UPDATED ON MARCH 17. 2023.



HUSETTS REG. No. 53407 REGISTERED PROFESSIONAL LAND SURVEYOR

SHEET:

**ALTA/NSPS LAND TITLE SURVEY** 

LOT M - BOSTON HOUSING AUTHORITY CHARLESTOWN CAMPUS BOSTON, SUFFOLK COUNTY, MASSACHUSETTS

> PREPARED FOR: LEGGAT MCCALL PROPERTIES

Nitsch Engineering

www.nitscheng.com 2 Center Plaza, Suite 430 Boston, MA 02108 T: (617) 338-0063

F: (617) 338-6472

➤ Civil Engineering

► Land Surveying ➤ Transportation Engineering

➤ Structural Engineering ► Green Infrastructure

➤ Planning ➤ GIS

FIELD BOOK: DRAFTED BY: JCC CHECKED BY:

PROJECT MANAGER: JCC

PROJECT # 11231.5

SCALE: 1"= 20'

DATE: 3/17/2023

FILE: 11231.5 ALTA-PARCEL-M.dwg

D С REV.

ADDED ADDITIONAL EXCEPTION REFERENCES **UPDATED COMMITMENT** COMMENTS REVISIONS

REMOVED ALL REFRENCES TO PARCEL M

RECORD PLAN REFERENCE AND CERTIFICATION

10 POST OFFICE SQUARE, BOSTON MA 02109

### **EXHIBIT C**

# INTENTIONALLY DELETED

### **EXHIBIT D**

# INTENTIONALLY DELETED

### **EXHIBIT E**

# FINAL PLANS AND SPECIFICATIONS [LIST TO BE ATTACHED AT TIME OF LEASE EXECUTION]

**DRAWING LIST DRAWING NAME** NO. G-001 DRAWING INE G-010 UNIT MATRIX G-030 SITE PLAN DRAWING INDEX
UNIT MATRIX IFE SAFETY
LS-101 LIFE SAFETY GROUND FLOOR PLAN
LS-102 LIFE SAFETY LEVEL 2 PLAN
LS-103 LIFE SAFETY LEVEL 3 PLAN
LS-104 LIFE SAFETY LEVEL 4 PLAN
LS-105 LIFE SAFETY LEVEL 5 PLAN
LS-106 LIFE SAFETY LEVEL 6 PLAN
LS-107 LIFE SAFETY ROOF PLAN PH-101 LEVEL 1 - PASSIVE HOUSE BOUNDARY PLAN
PH-102 LEVEL 2 - PASSIVE HOUSE BOUNDARY PLAN
PH-103 LEVEL 3 - PASSIVE HOUSE BOUNDARY PLAN PH-104 LEVEL 4 - PASSIVE HOUSE BOUNDARY PLAN
PH-105 LEVEL 5 - PASSIVE HOUSE BOUNDARY PLAN
PH-106 LEVEL 6 - PASSIVE HOUSE BOUNDARY PLAN PH-107 ROOF LEVEL - PASSIVE HOUSE BOUNDARY PLAN PH-251 PASSIVE HOUSE BOUNDARY BUILDING SECTIONS
PH-252 PASSIVE HOUSE BOUNDARY BUILDING SECTIONS ISD PLOT PLAN BUILDING M CIVIL NOTES, LEGEND & ABBREVIATIONS BUILDING M SITE UTILITY DEMOLITION PLAN BUILDING M SITE PREPARATION PLAN BUILIDNG M SITE EROSION AND SEDIMENTATION CONTROL PLAN BUILDING M SITE LAYOUT & GRADING PLAN GRADING DETAILS BUILDING M SITE UTILITY PLAN BUILDING M CIVIL CONSTRUCTION DETAILS I BUILDING M CIVIL CONSTRUCTION DETAILS II LANDSCAPE ARCHITECTURE LANDSCAPE PLAN BUILDING M MATERIALS PLAN LAYOUT PLAN LAYOUT PLAN COURTYARD SOILS PLAN PLANTING PLAN PLANING PLAN COURTYARD IRRIGATION PLAN BUILDING M IRRIGATION DETAILS IRRIGATION DETAILS LANDSCAPE DETAILS LANDSCAPE DETAILS LANDSCAPE DETAILS LANDSCAPE DETAILS L-704 LANDSCAPE DETAILS
L-705 LANDSCAPE DETAILS LANDSCAPE DETAILS A-000'S GENERAL DETAILS & TYPES A-001 STANDARD LEGENDS, ABBREVIATIONS, NOTES
A-010 EXTERIOR MOCK-UP PLAN, ELEVATIONS, AND SECTIONS A-011 PARTITION TYPES

A-021 DOOR SCHEDULE, DOOR &
A-022 INTERIOR DOOR DETAILS

A-023 EXTERIOR DOOR DETAILS

A-031 FLOOR / CEILING ASSEMBL

A-041 INTERIOR SCHEDULES DOOR SCHEDULE, DOOR & FRAME TYPES INTERIOR DOOR DETAILS EXTERIOR DOOR DETAILS FLOOR / CEILING ASSEMBLY TYPES A-100'S FLOOR PLANS & RCPS A-100 TYPICAL DEMISING PLAN
A-101 LEVEL 1 FLOOR PLAN
A-102 LEVEL 2 FLOOR PLAN
A-103 LEVEL 3 FLOOR PLAN A-104 LEVEL 4 FLOOR PLAN
A-105 LEVEL 5 FLOOR PLAN
A-106 LEVEL 6 FLOOR PLAN A-107 ROOF PLAN

A-141 EDGE OF SLAB PLAN - LEVEL 1

A-142 EDGE OF SLAB PLAN - LEVEL 2

A-143 EDGE OF SLAB PLAN - LEVEL 3

A-144 EDGE OF SLAB PLAN - LEVEL 4 A-145 EDGE OF SLAB PLAN - LEVEL 5 A-146 EDGE OF SLAB PLAN - LEVEL 6
A-147 ROOF EDGE OF SLAB PLAN A-171 LEVEL 1 REFLECTED CEILING PLAN
A-172 LEVEL 2 REFLECTED CEILING PLAN
A-173 LEVEL 3 REFLECTED CEILING PLAN
A-174 LEVEL 4 REFLECTED CEILING PLAN A-175 LEVEL 5 REFLECTED CEILING PLAN
A-176 LEVEL 6 REFLECTED CEILING PLAN A-200'S BUILDING ELEVATIONS & SECTIONS A-201 BUILDING ELEVATIONS - SOUTH BUILDING ELEVATIONS - WEST BUILDING ELEVATIONS - NORTH & EAST PENTHOUSE ELEVATIONS AXON VIEWS PERSPECTIVE VIEWS BUILDING SECTIONS - THRU COREY ST BUILDING SECTIONS - THRU MEDFORD ST. ENLARGED/PARTIAL ELEVATIONS & WALL SECTIONS - SOUTH ENLARGED/PARTIAL ELEVATIONS & WALL SECTIONS - SOUTH ENLARGED/PARTIAL ELEVATIONS & WALL SECTIONS - WEST ENLARGED/PARTIAL ELEVATIONS & WALL SECTIONS - WEST ENLARGED/PARTIAL ELEVATIONS & WALL SECTIONS - WEST ENLARGED/PARTIAL ELEVATIONS & WALL SECTIONS - NORTH ENLARGED/PARTIAL ELEVATIONS & WALL SECTIONS - NORTH ENLARGED/PARTIAL ELEVATIONS & WALL SECTIONS - EAST A-269 ENLARGED/PARTIAL ELEVATIONS & WALL SECTIONS - EAST A-280 ENLARGED BAY ELEVATIONS & ACCENT BRICK A-300'S EXTERIOR A-300 EXTERIOR FINISH SCHEDULE
A-301 EXTERIOR WALL SYSTEM TYPES EXTERIOR WALL SYSTEM TYPES WINDOW CONFIGURATIONS AND WINDOW TYPES A-303 ROOF TYPES AND TYPICAL DETAILS A-304 ROOF PARAPET DET
A-310 WINDOW DETAILS
A-311 WINDOW DETAILS ROOF PARAPET DETAILS WINDOW DETAILS A-411 A-412 A-413 A-414 ENLARGED SECTION DETAILS A-416 ENLARGED SECTION DETAILS ENLARGED SECTION DETAILS A-418 ENLARGED SECTION DETAILS ENLARGED SECTION DETAILS TYPICAL WALL PENETRATION DETAILS ENLARGED PLAN DETAILS A-431 A-432 A-433 ENLARGED PLAN DETAILS ENLARGED PLAN DETAILS ENLARGED PLAN DETAILS A-434 ENLARGED PLAN DETAILS ENLARGED PLAN DETAILS ENLARGED SECTION DETAILS AT GRADE ENLARGED SECTION DETAILS AT BRICK ENLARGED SECTION DETAILS AT FIBER CEMENT ENLARGED SECTION DETAILS AT ROOF A-444 ENLARGED SECTION DETAILS AT ROOF

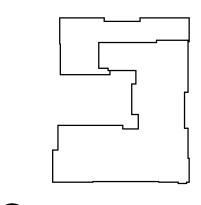
	DRAWING LIST	
NO.	DRAWING NAME	
A-500'S EXTERIOR : A-511	MAIN ENTRY PLANS, ELEVATIONS & WALL SECTIONS	
A-512 A-513	SECONDARY ENTRY ELEVATIONS & WALL SECTIONS  MAIN ENTRY AND BIKE ENTRY DETAILS	
A-600'S STAIRS, SH A-601	AFTS & ELEVATIONS STAIR A PLANS AND SECTIONS	
A-602 A-605	STAIR B & MISC. STAIRS PLANS AND SECTIONS ENLARGED ELEVATOR PLANS, ELEVATIONS AND SECTIONS	
A-621 A-622 A-631	TYPICAL CONCRETE PAN STAIR DETAILS - ALIGNED TREAD  ELEVATOR PLANS, SECTIONS & DETAILS  TRASH ROOM PLANS AND SECTIONS	
A-650 A-651	TYPICAL HORIZONTAL PARTITION DETAILS  TYPICAL HORIZONTAL PARTITION DETAILS	
A-652 A-653	HORIZONTAL PARTITION DETAILS TYPICAL VERTICAL PARTITION DETAILS	
A-654	VERTICAL PARTITION DETAILS	
A-700 S INTERIOR F A-700 A-710	PLANS, ELEVATIONS & SECTIONS  AMENITY SCHEDULES  ENLARGED AMENITY PARTITION PLANS	
A-720 A-730	AMENITY POWER & SIGNAL PLAN	
A-740 A-741	AMENITY FINISH PLAN LEVEL 1 CORRIDOR FINISH PLAN & TYPICAL ELEVATIONS	
A-742 A-743 A-760	LEVELS 2-4 CORRIDOR FINISH PLAN  LEVEL 5 & 6 CORRIDOR FINISH PLAN  AMENITY RESTROOMS	
A-760 A-770 A-780	AMENITY RESTROOMS  AMENITY INTERIOR ELEVATIONS  AMENITY CEILING DETAILS	
A-781 A-790	FINISH TRANSITION DETAILS  AMENITY MILLWORK DETAILS	
A-791 A-792	AMENITY MILLWORK DETAILS INTERIOR DETAILS	
A-900'S TYPICAL UN A-900	UNIT GENERAL NOTES, LEGENDS & DIAGRAMS	
A-900B A-901	UNIT SCHEDULES  TYPICAL UNIT PLANS - TYPE A1, A1_2, A2	
A-902 A-903	TYPICAL UNIT PLANS - TYPE B3, B3a, B3_2 TYPICAL UNIT PLANS - TYPE B5, B6	
A-904 A-905 A-906	TYPICAL UNIT PLANS - TYPE C1, C2 TYPICAL UNIT PLANS - TYPE C3, C3_2 TYPICAL UNIT PLANS - TYPE C4	
A-907 A-920	TYPICAL UNIT PLANS - TYPE D1, D1_2 TYPICAL UNIT KITCHEN PLANS & ELEVATIONS	
A-921 A-922	TYPICAL UNIT KITCHEN PLANS & ELEVATIONS  TYPICAL UNIT KITCHEN PLANS & ELEVATIONS - GROUP 2A	
A-923 A-924 A-930	TYPICAL UNIT KITCHEN DETAILS  TYPICAL UNIT KITCHEN AND CLOSET DETAILS  TYPICAL UNIT BATHROOM PLANS	
A-931 A-933	TYPICAL UNIT BATHROOM PLANS - GROUP 2A TYPICAL UNIT BATHROOM DETAILS	
/ERTICAL TRANSP		
M-VT1 STRUCTURAL	BUILDING M ELEVATOR DETAILS	
S-000 S-001	COVER SHEET GENERAL NOTES I	
S-002 S-003	GENERAL NOTES II GENERAL NOTES III	
S-004 S-005 S-006	PLAN NOTES AND LEGENDS  LOADING PLANS I  LOADING PLANS II	
S-101 S-102	LEVEL 1 FOUNDATION PLAN LEVEL 2 FRAMING PLAN	
S-103 S-105	LEVEL 3-4 FRAMING PLAN LEVEL 5 FRAMING PLAN	
S-106 S-107 S-200	LEVEL 6 FRAMING PLAN  ROOF FRAMING PLAN  SHEAR WALL ELEVATIONS I	
S-201 S-300	SHEAR WALL ELEVATIONS II  TYPICAL CONCRETE DETAILS I	
S-301 S-302	TYPICAL CONCRETE DETAILS II TYPICAL CONCRETE DETAILS III	
S-303 S-304 S-400	TYPICAL CONCRETE SHEAR WALL DETAILS I  TYPICAL CONCRETE SHEAR WALL DETAILS II  TYPICAL STEEL DETAILS I	
S-401 S-402	TYPICAL STEEL DETAILS II  TYPICAL STEEL DETAILS II  TYPICAL STEEL DETAILS III	
S-500 S-501	TYPICAL MASONRY DETAILS I TYPICAL MASONRY DETAILS II	
S-600 S-601 S-610	FOUNDATION SECTIONS AND DETAILS I FOUNDATION SECTIONS AND DETAILS II SECTIONS AND DETAILS	
FIRE PROTECTION	OLOTIONO NAD BLIMLO	
FP-001 FP-101	FIRE PROTECTION LEVEL 1	
FP-102 FP-103 FP-104	FIRE PROTECTION LEVEL 2 FIRE PROTECTION LEVEL 3 FIRE PROTECTION LEVEL 4	
FP-104 FP-105 FP-106	FIRE PROTECTION LEVEL 4  FIRE PROTECTION LEVEL 5  FIRE PROTECTION LEVEL 6	
FP-107 FP-201	FIRE PROTECTION LEVEL 7 FIRE PROTECTION TYPICAL UNIT PLANS	
FP-202 FP-203 FP-204	FIRE PROTECTION TYPICAL UNIT PLANS FIRE PROTECTION TYPICAL UNIT PLANS FIRE PROTECTION TYPICAL UNIT PLANS	
FP-204 FP-205 FP-206	FIRE PROTECTION TYPICAL UNIT PLANS  FIRE PROTECTION TYPICAL UNIT PLANS  FIRE PROTECTION TYPICAL UNIT PLANS	
FP-207 FP-301	FIRE PROTECTION TYPICAL UNIT PLANS FIRE PROTECTION DETAILS	
PLUMBING P-001	PLUMBING BASIS OF DESIGN	I
P-001 P-100 P-101	PLUMBING BASIS OF DESIGN PLUMBING UNDERSLAB PLAN PLUMBING LEVEL 1	
P-102 P-103	PLUMBING LEVEL 2 PLUMBING LEVEL 3	
P-104 P-105 P-106	PLUMBING LEVEL 4 PLUMBING LEVEL 5 PLUMBING LEVEL 6	
P-106 P-107 P-201	PLUMBING LEVEL 6 PLUMBING LEVEL 7 PLUMBING TYPICAL UNIT PLANS	
P-202 P-203	PLUMBING TYPICAL UNIT PLANS PLUMBING TYPICAL UNIT PLANS	
P-204 P-205 P-206	PLUMBING TYPICAL UNIT PLANS PLUMBING TYPICAL UNIT PLANS PLUMBING TYPICAL UNIT PLANS	
P-206 P-207 P-301	PLUMBING TYPICAL UNIT PLANS PLUMBING TYPICAL UNIT PLANS PLUMBING SCHEDULES	
P-401 P-501	PLUMBING DETAILS PLUMBING WATER SUPPLY RISER DIAGRAMS	
P-502 P-503	PLUMBING WATER SUPPLY RISER DIAGRAMS PLUMBING DWV RISER DIAGRAMS PLUMBING DWA DISER DIAGRAMS	
P-504 P-505	PLUMBING DWV RISER DIAGRAMS PLUMBING DWV RISER DIAGRAMS	
MECHANICAL H-001	HVAC BASIS OF DESIGN	
H-101 H-102	HVAC LEVEL 1 DUCTWORK PLAN HVAC LEVEL 2 DUCTWORK PLAN	
H-103 H-104	HVAC LEVEL 3 DUCTWORK PLAN  HVAC LEVEL 4 DUCTWORK PLAN	
H-105	HVAC LEVEL 5 DUCTWORK PLAN	

H-107 HVAC ROOF PLAN

HVAC LEVEL 6 DUCTWORK PLAN

	DRAWING LIST	
<b>NO.</b> H-201	DRAWING NAME  HVAC LEVEL 1 PIPING PLAN	
H-202	HVAC LEVEL 2 PIPING PLAN	
H-203 H-204	HVAC LEVEL 3 PIPING PLAN HVAC LEVEL 4 PIPING PLAN	
H-205 H-206	HVAC LEVEL 5 PIPING PLAN HVAC LEVEL 6 PIPING PLAN	
H-301 H-302	HVAC TYPICAL UNIT PLANS HVAC TYPICAL UNIT PLANS	
H-303 H-304	HVAC TYPICAL UNIT PLANS HVAC TYPICAL UNIT PLANS	
H-305 H-306	HVAC TYPICAL UNIT PLANS HVAC TYPICAL UNIT PLANS	
H-307	HVAC TYPICAL UNIT PLANS	
H-401 H-402	HVAC SCHEDULES HVAC SCHEDULES	
H-501 H-502	HVAC DETAILS HVAC DETAILS	
LECTRICAL		_
E-001 E-002	ELECTRICAL LEGEND ELECTRICAL SITE DETAILS	
E-101 E-102	ELECTRICAL LIGHTING LEVEL 1  ELECTRICAL LIGHTING LEVEL 2	
E-103	ELECTRICAL LIGHTING LEVEL 3	
E-104 E-105	ELECTRICAL LIGHTING LEVEL 4  ELECTRICAL LIGHTING LEVEL 5	
E-106 E-107	ELECTRICAL LIGHTING LEVEL 6 ELECTRICAL LIGHTING LEVEL 7	
E-201 E-202	ELECTRICAL POWER LEVEL 1 ELECTRICAL POWER LEVEL 2	
E-203 E-204	ELECTRICAL POWER LEVEL 3 ELECTRICAL POWER LEVEL 4	
E-205 E-206	ELECTRICAL POWER LEVEL 5  ELECTRICAL POWER LEVEL 6	
E-207	ELECTRICAL POWER LEVEL 7	
E-301 E-302	ELECTRICAL TYPICAL UNIT PLANS ELECTRICAL TYPICAL UNIT PLANS	
E-303 E-304	ELECTRICAL TYPICAL UNIT PLANS ELECTRICAL TYPICAL UNIT PLANS	
E-305 E-306	ELECTRICAL TYPICAL UNIT PLANS ELECTRICAL TYPICAL UNIT PLANS	
E-307 E-401	ELECTRICAL TYPICAL UNIT PLANS POWER RISER DIAGRAM	
E-402 E-501	INTERCOM & 2-WAY ELEVATOR COMM. RISER DIAGRAMS ELECTRICAL LIGHTING FIXTURE SCHEDULE	
E-502 E-503	ELECTRICAL MECH. EQUIPMENT SCHEDULE ELECTRICAL PANELBOARD & WIRE SCHEDULES	
E-504 E-505	ELECTRICAL LOADCENTER SCHEDULES ELECTRICAL LOADCENTER SCHEDULES	
E-506 E-507	ELECTRICAL LOADCENTER SCHEDULES  ELECTRICAL PANEL SCHEDULES	
E-508	ELECTRICAL PANEL SCHEDULES	
E-601	ELECTRICAL DETAILS	
FA-001	FIRE ALARM LEGEND & DETAILS	
FA-101 FA-102	FIRE ALARM LEVEL 1 FIRE ALARM LEVEL 2	
FA-103 FA-104	FIRE ALARM LEVEL 3 FIRE ALARM LEVEL 4	
FA-105 FA-106	FIRE ALARM LEVEL 5 FIRE ALARM LEVEL 6	
FA-107	FIRE ALARM ROOF FIRE ALARM RISER DIAGRAM	
FA-201	I INL ALANNI NIJEN DIAUKANI	
ECURITY TY-001	SECURITY LEGEND	
TY-101 TY-102	SECURITY LEVEL 1 SECURITY LEVEL 2	
TY-103 TY-104	SECURITY LEVEL 3 SECURITY LEVEL 4	
TY-105 TY-106	SECURITY LEVEL 5 SECURITY LEVEL 6	
TY-107	SECURITY ROOF PLAN	
TY-201 TY-202	SECURITY RISER INTERCOM RISER	
TY-301	SECURITY DETAILS	
ELECOMMUNICA <sup>-</sup> T-001	TIONS TELECOMMUNICATIONS LEGEND	
T-101 T-102	TELECOMMUNICATIONS LEVEL 1 TELECOMMUNICATIONS LEVEL 2	
T-103 T-104	TELECOMMUNICATIONS LEVEL 3 TELECOMMUNICATIONS LEVEL 4	
T-105	TELECOMMUNICATIONS LEVEL 5	
T-106 T-107	TELECOMMUNICATIONS LEVEL 6 TELECOMMUNICATIONS ROOF PLAN	
T-201 T-202	TELECOMMUNICATIONS PART PLANS TELECOMMUNICATIONS PART PLANS	
T-203 T-301	TELECOMMUNICATIONS PART PLANS TELECOMMUNICATIONS BUILDING NETWORK RISER	
T-302 T-401	TELECOMMUNICATIONS WIRING RISER TELECOMMUNICATIONS DETAILS	
T-402	TELECOMMUNICATIONS DETAILS  TELECOMMUNICATIONS DETAILS	

BUNKER HILL HOUSING
BUILDING M
40 COREY STREET
BOSTON, MA 02129



Leggat N

Boston, MA, 02109 www.lmp.com

ARCHITECT/INTERIOR:

LEGGAT MCCALL PROPERTIES

10 Post Office Square



Stantec Architecture and Engineering P.C. 311 Summer Street Boston, 02210-1723 Tel: (617) 234-3100 www.stantec.com

Consultants:

LANDSCAPE: COPLEY WOLFF DESIGN GROUP 10 Post Office Square, Suite 1315 Boston, MA 02109

MCNAMARA SALVIA STRUCTURAL ENGINEERS

NITSCH ENGINEERING 2 Center Plaza, Suite 430 Boston, MA 02108-1928

STRUCTURAL:

101 Federal Street, Suite 1100
Boston, MA, 02110

MEP/FP/PASSIVE HOUSE:
PETERSEN ENGINEERING
Petersen Engineering, Inc.
127 Parrott Ave.
Portsmouth, NH 03801
ENVELOPE:
RDH BUILDING SCIENCE INC.
18 Tremon St #530,

ACOUSTICAL:
ACENTECH
33 Moulton Street
Cambridge, MA 02138
LIGHTING:
LAM PARTNERS
84 Sherman Street

Cambridge, MA 02140

Boston, MA 02108

SUSTAINABILITY: INTEGRATED ECO STRATEGY, LLC 85 Main Street, Suite 212 North Adams, MA 01247

CODE CONSULTANT:
HOWE ENGINEERS
101 Longwater Circle, Suite 203

Norwell, MA 02061
Notes

CONSTRUCTION DOCUMENTS 02.04.2022

Issued/Revision YYYY,MM.DD

Permit/Seal



Project No. 218421

DRAWING INDEX

G-001

# **PROJECT MANUAL - VOLUME 1**

# **BUNKER HILL HOUSING BUILDING M**

BOSTON, MA

CONSTRUCTION DOCUMENTS February 04, 2022



#### PROJECT MANUAL

#### TABLE OF CONTENTS

#### **GENERAL DOCUMENTS**

Document 000110 Table of Contents

#### VOLUME 1 of 3

#### <u>DIVISION 00 - PROCUREMENT AND CONTRACTING REQUIREMENTS</u>

Issued by Owner and CM

#### **DIVISION 01 - GENERAL REQUIREMENTS**

Section 011000	General Requirements
Section 014330	Mock-Ups
Section 014525	Air Sealing Requirements
Section 015739	Temporary Tree And Plant Protection
Section 016200	Substitution Request Form
Section 017400	Construction Waste Management
Section 018110	Sustainable Design Requirements
Section 018115	Passive House Requirements
Section 018120	Construction Indoor Air Quality (IAQ) Management
Section 019100	General Commissioning Requirements (not issued, by owner)

#### **DIVISION 02 - EXISTING CONDITIONS**

Section 023000 Subsurface Investigation

#### **DIVISION 03 - CONCRETE**

Section 033000	Cast-In-Place Concrete
Section 033045	CIP Concrete – Sitework
Section 034100	Structural Precast Concrete
Section 035412	Gypsum Cement Underlayment

Section 036000 Grout

#### **DIVISION 04 - MASONRY**

Section 042000	Unit Masonry
Section 042010	Thin Brick Veneer
Section 042300	Reinforced Unit Masonry
Section 047200	Cast Stone Masonry

#### **DIVISION 05 - METALS**

Section 051200	Structural Steel
Section 053000	Metal Decking

Section 054000	Cold-Formed Metal Framing
Section 055000	Metal Fabrications
Section 055100	Metal Stairs and Railings
Section 055213	Exterior Metal Handrails And Railings
Section 057300	Decorative Metal Railings

#### **DIVISION 06 - WOOD, PLASTICS AND COMPOSITES**

Section 061000	Rough Carpentry
Section 061543	Cross Laminated Timber
Section 061600	Sheathing
Section 064020	Interior Architectural Woodwork
Section 066400	FRP Paneling

#### **DIVISION 07 - THERMAL AND MOISTURE PROTECTION**

Section 071100	Bituminous Dampproofing
Section 071300	Sheet Waterproofing
Section 071400	Fluid-Applied Waterproofing
Section 071610	Crystalline Waterproofing
Section 072100	Thermal Insulation
Section 072419	Exterior Insulation Finish System (EIFS)
Section 072600	Subslab Vapor Retarder
Section 072700	Air Barriers
Section 074200	Metal Wall and Roof Panels
Section 074210	Metal Composite Material Panels
Section 074610	Fiber-Cement Siding
Section 075400	Thermoplastic Membrane Roofing
Section 076200	Sheet Metal Flashing and Trim
Section 077100	Roof Specialties
Section 077700	Wall Cladding Support System
Section 078100	Applied Fireproofing
Section 078410	Penetration Firestopping
Section 078440	Fire-Resistive Joint Systems
Section 079200	Joint Sealants

#### **DIVISION 08 - OPENINGS**

Section 081110	Hollow Metal Doors and Frames
Section 081400	Wood Doors
Section 083110	Access Doors and Frames
Section 084110	Aluminum-Framed Entrances and Storefront
Section 085310	UPVC Windows
Section 087100	Door Hardware
Section 088000	Glazing
Section 089000	Louvers and Vents

#### **DIVISION 09 - FINISHES**

Section 090140	Subfloor Preparation
Section 092110	Gypsum Board Assemblies
Section 092120	Gypsum Board Shaft-Wall Assemblies
Section 093000	Tiling
Section 095100	Acoustical Ceilings

Section 096510	Resilient Flooring and Accessories
0	Danis Elemente

Section 096710 Resinous Flooring
Section 096800 Carpeting
Section 097200 Wall Coverings Painting and Coating Section 099000

#### **DIVISION 10 - SPECIALTIES**

Section 101100	Visual Display Surfaces
Section 101400	Signage
Section 102610	Corner Guards
Section 102800	Toilet Accessories
Section 104100	Emergency Access and Information Cabinets
Section 104400	Fire Protection Specialties
Section 105500	Postal Specialties

#### **DIVISION 11 - EQUIPMENT**

Section 113100	Appliances
Section 118129	Facility Fall Protection
Section 118220	Waste Compactors
Section 119200	Dog Washing Unit

#### **DIVISION 12 - FURNISHINGS**

Section 122110	Horizontal Louver Blinds
Section 122400	Shades
Section 123910	Bicycle Racks

#### **DIVISION 14 - CONVEYING EQUIPMENT**

Section 142123	Electric Traction Elevators
Section 149100	Trash Chutes

#### VOLUME 2 of 3

#### **DIVISION 21 - FIRE PROTECTION**

21 00 00 Wet Pipe Sprinkler Systems

#### **DIVISION 22 – PLUMBING**

22 05 00	Common	Work	Results	for	Plumbine	a

- 22 05 16 Expansion Fittings and Loops for Plumbing Piping
- 22 05 19 Meters and Gages for Plumbing Piping
- 22 05 23 General Duty Valves for Plumbing Piping
- 22 05 29 Hangers and Supports for Plumbing Piping and Equipment
- 22 05 48 Vibration and Seismic Control for Plumbing Piping and Equipment
- 22 05 53 Identification For Plumbing Piping and Equipment
- 22 07 19 Plumbing Piping Insulation
- 22 11 16 Domestic Water Piping
- 22 11 19 Domestic Water Piping Specialties
- 22 13 16 Sanitary Waste and Vent Piping
- 22 13 19 Sanitary Waste and Vent Specialties
- 22 14 13 Storm Drainage Piping
- 22 15 00 Natural Gas Piping
- 22 34 30 Domestic Hot Water Storage Tanks
- 22 34 36 Condensing Boilers
- 22 34 37 Combustion Venting Systems
- 22 34 38 DHW Generation Pumps
- 22 41 00 Plumbing Fixtures and Trim

#### DIVISION 23 – HEATING, VENTILATING AND AIR CONDITIONING (HVAC)

- 23 05 00 Common Work Results for HVAC
- 23 05 23 General Duty Valves for HVAC Piping
- 23 05 29 Hangers and Supports for HVAC Piping and Equipment
- 23 05 48 Vibration and Seismic Control for HVAC Piping and Equipment
- 23 05 53 Identification For HVAC Piping and Equipment
- 23 05 93 Testing, Adjusting and Balancing for HVAC
- 23 07 13 HVAC Duct Insulation
- 23 07 19 HVAC Piping Insulation
- 23 08 00 Commissioning of HVAC
- 23 09 00 Instrumentation and Control for HVAC
- 23 09 93 Sequence of Operations for HVAC Controls
- 23 23 00 Refrigerant Piping
- 23 31 13 Metal HVAC Ducts
- 23 33 00 Air Duct Accessories
- 23 37 13 Diffusers, Registers and Grilles
- 23 41 00 Air Filters
- 23 72 00 Central Energy Recovery Ventilators
- 23 81 26 Split System Heat Pump Units
- 23 82 39 Unit Heaters

#### **DIVISION 26 - ELECTRICAL**

26 05 00 - Electrical General Requirements

26 05 10 - Basic Materials and Methods

26 05 20 - Wiring Methods

26 20 00 - Low Voltage Distribution

26 32 10 - Diesel Generator and Automatic Transfer Switches

26 43 00 - Surge Protection Devices

26 50 00 - Light Fixtures

#### **DIVISION 27 – TELECOMMUNICATIONS**

27 00 00 – Communications General

27 05 26 - Grounding and Bonding

27 05 28 - Pathways for Communications Systems

27 05 53 - Identification for Telecommunications Systems

27 08 13 - Testing Copper Cables

27 10 00 - Structured Cabling

27 11 00 – Communications Equipment Room and Fittings

27 15 00 - Communications Horizontal Cabling

27 16 00 - Communications Connecting Cords, Devices and Adapters

27 60 10 - Emergency Responder Radio Coverage System

#### **DIVISION 28 - FIRE ALARM**

28 00 00 - Security 28 46 00 - Fire Alarm

#### **DIVISION 31 - EARTHWORK**

Section 311000 Site Clearing

Section 312500 Erosion and Sedimentation Controls

#### **DIVISION 32 - EXTERIOR IMPROVEMENTS**

CID Congrete Devement
CIP Concrete Pavement
Precast Concrete Unit Pavement
Resilient Surfacing
Site Improvements
Site Stonework
Aluminum Fences and Gates
Soil Preparation
Planting

#### **DIVISION 33 - UTILITIES**

Section 331000	Water Utilities
Section 333000	Sanitary Sewerage Utilities
Section 334000	Storm Drainage Utilities

#### **VOLUME 3 of 3**

#### **APPENDICES**

Building Code Report
Soil management Plan (not issued, by owner)
Foundation Engineering Report
Acoustical report
Energy Narrative \_WUFI Model results
Hydraulic Calculation
FP-FA Narrative (Fire protection and Fire Alarm Narrative)
Mass Timber Moisture Protection Plan
Light Fixture Schedule - Alternates

**END OF TABLE OF CONTENTS** 

### **EXHIBIT F**

# FORM OF CERTIFICATE OF COMPLIANCE

### **CERTIFICATE OF COMPLIANCE**

The BOSTON HOUSING AUTHORITY (the "BHA"), relying in part on the Certificate
of Occupancy issued by the City of Boston Inspectional Services Department with respect to the
Improvements and in part on the Certificate of Completion, dated,, issued
by [insert name of Architect], and such other certificates and inspections as the BHA has deemed
relevant, hereby certifies in accordance with the provisions of that certain Construction and
Ground Lease Agreement for the Building M premises located at 40 Corey Street, Charlestown,
Massachusetts between the BHA, as Landlord and Building M Owner LLC, as Tenant dated as
of June 30, 2023, notice of which is recorded with the Suffolk County Registry of Deeds at Book
, Page (the "Ground Lease"), that the construction of the Improvements (as defined in
the Ground Lease) has been completed in compliance with all of the terms and conditions of the
Ground Lease.

[Signature on next page]

# [Signature Page to Certificate of Compliance]

	has caused these presents to be signed, on its behalf, this day of,
В	BOSTON HOUSING AUTHORITY
В	By: Name:
	Name: Title:
COMMONWEALTH	I OF MASSACHUSETTS
Suffolk, ss.	
identification, which was personal knowledge,	owledged to me that she signed it voluntarily for
$\overline{N}$	Notary Public
N	My commission expires:

### **EXHIBIT G**

# PROVISIONS REGARDING CUTS TO SECTION 8 RENTAL SUBSIDIES [SEE ATTACHED]

EXHIBIT G Update 2-20-21

#### **Provisions Regarding Cuts to Section 8 Rental Subsidies**

The Bunker Hill development needs preservation but the federal public housing program will not provide the required investment. Due to a persistent lack of federal funding that shows no indication of changing, the Bunker Hill public housing development in the Charlestown neighborhood of Boston is obsolete and in urgent need of investment. There are no national proposals to fund the capital or operating needs of public housing developments such as Bunker Hill in a manner that will appreciably extend the useful life of the units and provide the high-quality housing residents deserve. Instead, the U.S. Department of Housing and Urban Development ("HUD") has urged public housing authorities ("PHAs") to look to private capital markets to repair or replace their deteriorated housing stock and is expediting its reviews of proposals to demolish and replace units that have outlived their useful life. Also, HUD now allows PHAs to replace public housing units with units supported by Project-Based Housing Choice Vouchers ("PBV Subsidies") under Section 8 of the U.S. Housing Act of 1937 ("Section 8"), which represents a significant policy change.

The existing Bunker Hill buildings will be demolished and a new, more economically diverse community will be constructed in its place. Accordingly, to preserve the 1,100 affordable units at Bunker Hill for the long term, the Boston Housing Authority ("BHA") applied to HUD to dispose of and demolish the existing obsolete buildings and to replace them with newly constructed low-income units, in a mixed-income setting that will include market-rate units and community amenities. In addition to the replacement of the 1,100 obsolete housing units with newly constructed units, the redevelopment will end the relative isolation experienced by current residents of Bunker Hill and enable their full inclusion in a vibrant new community (the entire Bunker Hill revitalization is referred to as the "Redevelopment" in the rest of this document). The Redevelopment will be at least a \$1.5 Billion endeavor, generating enormous economic activity including jobs and contracting opportunities for low-income public housing residents and other low-income people who live nearby as required by Section 3 of the Housing Act of 1968.

The Redevelopment's plan replaces all Bunker Hill affordable units on a one-for-one basis, although one hundred (100) of the replacement units may be constructed off-site. BHA, the City of Boston ("City"), the Charlestown Resident Alliance ("CRA"), and the development team of Joseph J. Corcoran Co. and Leggat McCall Properties LLC (the "Developer" and, collectively, with Joseph J. Corcoran Co., the "Development Team") have been planning the Redevelopment against this backdrop of federal disinvestment. The Redevelopment's plan must manage the tension between attracting and maintaining the private investment required to rebuild the community and honoring the affordable housing needs of current and future Bunker Hill residents. Toward that end, the parties have agreed to a plan that rebuilds 1,010 Affordable Units on the Bunker Hill site, builds one hundred (100) Affordable Units throughout the neighborhood, together with up to 1,689 market-rate units, retail space, and other community amenities. For this memorandum, "Affordable Unit" means a unit that is set aside for households with incomes at or below fifty percent (50%) of Area Median Income ("AMI"). In furtherance of the goal of preserving

Affordable Units, notwithstanding the uncertainties of PBV Subsidies and the Section 8 program for the next 99 years, the Development Team has agreed that despite a Subsidy Shortfall (defined below) reducing or eliminating such subsidies, no more than fifty percent (50%) of the Affordable Units in any building (the "Minimum Commitment") will ever be converted from being Affordable Units.

There will be Affordable Buildings and Mixed-Income Buildings. As currently envisioned, the parties have agreed that there will be two types of housing developments. While all buildings will include Affordable Units, there will be "Affordable Buildings" and "Mixed-Income Buildings." The Affordable Buildings will consist predominantly of Affordable Units. Current Bunker Hill residents have the right to return pursuant to the approved Relocation Plan, which means that the occupants at initial lease-up will have incomes closer to thirty percent (30%) of AMI. In addition, the Project-Based Housing Assistance Payments Contract for the PBV Subsidies will be in place to allow returning residents and subsequent occupants to pay no more than thirty percent (30%) of their income towards rent. The Mixed-Income Buildings will include up to seventy-eight percent (78%) market-rate units (i.e. units that are not income-restricted) and at least twenty-two percent (22%) Affordable Units.

Affordable Buildings and Mixed-Income Buildings will be financed differently. The parties anticipate that the financing for the Affordable Buildings will come from typically available affordable housing development sources, including but not limited to equity generated by four percent (4%) Low Income Housing Tax Credits ("LIHTCs"), soft loans from public and private lenders, along with commercial construction financing and taxexempt permanent loans. The Mixed-Income Buildings will be financed conventionally. Practically, this means that the Affordable Buildings will have customary operating reserves plus Section 8 transition reserves of at least six (6) months of rental income to accommodate fluctuations in occupancy and/or subsidies (though the BHA is requesting that the Developer consider larger reserves if economically feasible, to guard against concerns of a Subsidy Shortfall (defined below) as discussed in greater detail later in this document), but the Mixed-Income Buildings will not provide similar reserves because, following industry norms, the risks of fluctuating occupancy or income will be accounted for in the project underwriting. As such, the Mixed-Income Buildings will only carry such reserves as determined appropriate by their owners, private sector lenders, and investors. There is no regulatory or statutory requirement or industry standard that reserves be explicitly set aside for privately-financed projects like the Mixed-Income Buildings. In addition, any requirement for reserves to address possible Subsidy Shortfalls would compromise the economic viability of Mixed-Income Buildings and thus make attracting private capital increasingly difficult.

The Redevelopment involves extensive public funding commitments to catalyze the required private investment. To generate the capital needed to construct the on-site Affordable Units, the City has initially committed \$30 Million to the first two phases (and has discussed a long-term commitment as high as \$125 Million in current dollars), which investment the City will more than recapture over time through collecting real estate taxes

on the Affordable and Mixed-Income Buildings. In addition, the BHA has committed to providing PBV Subsidies for the Affordable Units. The BHA has agreed to base the PBV Subsidies on Small Area Fair Market Rents ("SAFMRs"), which allows BHA to set voucher amounts at the higher neighborhood level rather than at the lower metropolitan statistical area level.

**PBV Subsidies are critical to the creation and maintenance of the Affordable Units in the Redevelopment.** The success of the Redevelopment depends upon PBV Subsidies flowing through the BHA to each of the Affordable Units in the Redevelopment. The PBV Subsidies will serve two important purposes. First, they play a critical role in making it possible for the Owners of the Affordable Buildings and the Mixed-Income Buildings to sufficiently capitalize the development. Second, the PBV Subsidies will allow returning public housing residents of Bunker Hill, and new eligible families in the future, to pay only thirty percent (30%) of their incomes toward rent, just as they do in public housing.

Most public housing redevelopments include "back up" plans for significant subsidy reductions. Federal appropriations for PBV Subsidies have historically been very stable and do not vary as much as the appropriations for public housing operating and capital funds (although large and fast growing federal deficits due to Covid-19 may cause investors to question future stability). However, it is customary in these long-term redevelopments that rely heavily on private investment for the owners and PHAs to develop a back-up plan—often called "transformation plans" or "alternative management plans"—to adopt if there is a change at the federal government level that significantly reduces or eliminates the stream of subsidy to the project. These plans provide comfort to private lenders and investors as well as to returning residents. As public/private partnerships navigate these issues alongside HUD, transformation plans to address the elimination of federal public housing subsidy are evolving to reflect certain common themes, including:

- Owners must first review their budgets for potential savings before taking any actions that would impact the residents, without compromising quality,
- Owners of Affordable Buildings and PHAs are creating project reserves designed to be used to protect in-place Income-Qualified Residents,
- Owners can make incremental changes to rents or the percentage of rents paid by Income-Qualified Residents, but solely in the amount needed to remedy the loss,
- Owners are required to reinstate the previous affordable arrangements once subsidies increase again sufficient to fully resolve the Subsidy Shortfall and the Income-Qualified Residents resume their normal payment arrangements or, if Income-Qualified Residents are displaced due to the loss, another unit will need to be made available to an eligible low-income family.

As a private development, the new Bunker Hill community will have to remain financially sustainable at all times. To appreciate the overall financial context for the Redevelopment, it is important to note that in the master development agreement between BHA and the Developer, the parties have agreed to certain economic "return thresholds" to enable the Developer and its investors to set clear parameters on the minimum return they

expect for the Redevelopment to be financially feasible. Due to the long-term nature of the Redevelopment, the parties acknowledge that there will be unforeseeable economic changes over time that will affect the progress of the Redevelopment both positively and negatively. It is understood that throughout those changes, the Developer will need to meet its economic return thresholds and cannot be expected to cover losses caused by the federal government's abandonment of the public housing and/or Section 8 programs. At the same time, BHA is a PHA that derives its income predominantly from federal sources. This means that BHA also lacks resources to make up for any further reduction in federal housing funds in the future.

Given this background, there needs to be a plan for addressing shortfalls that arise if there are notable changes to the Section 8 program that affect the Redevelopment or any of the individual buildings. BHA, the CRA, and the Developer recognize that they need to develop an approach to address the possibility, however remote, that the federal government cuts or eliminates the funding for PBV Subsidies during the life of the Redevelopment. The remainder of this memorandum initiates discussions for managing a loss or diminution of rental subsidy for Affordable Units (a "Subsidy Shortfall") that arises from a reduction in federal appropriations or change in applicable law, regulation, or governmental policy at the federal, state, or local level (a "Policy Change"). The measures discussed in this memo will not be triggered by normal reductions in Section 8 rents caused by a decline in market rents used in determining rent for PBV Subsidies. The Developer recognizes that the application of other standard Section 8 requirements as articulated in the Project-Based Housing Assistance Payments Contract for the PBV Subsidies ("PBV Contract") is not in itself a Policy Change, so long as any modification of the form of PBV Contract does not thereby create the loss or diminution of rental subsidy for Affordable Units provided such units remain habitable as defined in the PBV Contract.

Governing documents will continue to apply to the Developer and Owners. To the extent that the Subsidy Shortfall necessitates an adjustment in affordability requirements applicable to the Redevelopment, any plan devised to manage a Subsidy Shortfall will be implemented in phases and will be limited by the restrictions imposed by:

- 1. Conditions required by the HUD Disposition for the Redevelopment, which requires 1,110 units of housing to be developed in multiple phases on or near the site to be operated as affordable housing for families with incomes at or below eighty percent (80%) percent of AMI for at least thirty (30) years (the Redevelopment contemplates 1010 on-site Affordable Units);
- 2. The allocation of LIHTC by the Massachusetts Department of Housing and Community Development ("DHCD") for the Affordable Buildings, which will require the Developer to limit occupancy to households with incomes at or below sixty percent (60%) of AMI for at least thirty (30) years; and
- 3. The City's zoning requirements under the City's Inclusionary Development Policy ("IDP") outlined in the initial City zoning approvals for the Redevelopment (approximately 350 units to remain affordable) to families

with incomes at or below seventy percent (70%) of AMI for at least thirty (30) years.

Thus, for the first thirty (30) years of the ground lease, if there is a Subsidy Shortfall, the building owners ("Owners") will not be able to rent the Affordable Units to households with incomes over 70% or 80% of AMI in Mixed-Income Buildings or to households having incomes of more than 60% of AMI in Affordable Buildings without consent of the agencies above. The chart at Exhibit A depicts the actions permitted to address a Subsidy Shortfall depending on what requirements are in effect in a given lease year based on the discussion below.

How will the stakeholders determine that a Subsidy Shortfall has occurred? The determination of whether a Subsidy Shortfall has occurred will vary by building type.

For Mixed-Income Buildings, the methodology for determining when a Subsidy Shortfall occurs is to compare (a) the ratio of Section 8 rent levels to market rent levels on a building-by-building basis in the three months immediately before the date the Policy Change becomes effective (the "Prior Rent Ratio"), to (b) the ratio of Section 8 rents levels to market rent levels in subsequent three-month periods (the "Subsequent Rent Ratio") until the Subsidy Shortfall is substantially eliminated. The comparison is done by dividing the Subsequent Rent Ratio by the Prior Rent Ratio to determine the "Shortfall Quotient." The rent levels for the Section 8 units and the market-rate units will be calculated using the weighted average monthly rent for each type of unit contained in a building.

For Affordable Buildings, the Shortfall Quotient is calculated by dividing (a) the Section 8 rent levels in three-month periods after the date of the Policy Change by (b) the Section 8 rent levels in the three months immediately before the date the Policy Change becomes effective.

What actions will the parties take if a Subsidy Shortfall occurs? Due to the nature of the federal appropriations process, the stakeholders will have notice of the possibility of a Subsidy Shortfall. In light of this, the stakeholders will begin a consultative process to develop a plan to address the potential financial loss by pursuing alternative sources of rental, operating and capital subsidies, grants, or other funding from governmental and non-governmental sources ("Alternative Subsidies"). The goal in seeking Alternative Subsidies is to maintain the Redevelopment at as close to a status quo level as possible without displacing residents, eliminating opportunities for affordable housing, or causing undue financial hardship on the Developer and Owners.

What if there are no Alternative Subsidies? If the stakeholders are unable to secure Alternative Subsidies, the following equal principles will form the framework for any transformation plan devised by the parties to address the Subsidy Shortfall:

- 1. Preserve the Affordable Units for households with very low incomes (i.e., at or below 30% of AMI) to the greatest extent possible,
- 2. Minimize displacement of in-place residents with very low incomes,

- 3. Ensure the continued financial viability of each building that includes avoidance of foreclosure or recapture of LIHTC,
- 4. Treat tenants in Affordable Units as consistently as practically possible whether they reside in an Affordable Building or a Mixed-Income Building, and
- 5. In any event, maintain the Minimum Commitment referenced above and detailed further below.

Any transformation plan developed by the stakeholders will follow a tiered approach outlined below to manage the Subsidy Shortfall:

- 1. **Tier 1 Owner Actions.** The first step will be:
  - a. The Owners absorb the Subsidy Shortfall until the Shortfall Quotient drops below 90%.
  - b. Owners, together with BHA and the CRA, look for means to replace the subsidy via other federal, state, or local programs or charities or to restructure the capital stack.
- 2. **Tier 2 BHA Actions**. When the Shortfall Quotient falls below 90%, the BHA will review its available funding sources to evaluate whether it can make any funds available to the Affordable Units, recognizing that it is unlikely that BHA will have any sources available that do not derive from the Redevelopment transactional documents. Notwithstanding the foregoing, the BHA agrees that while the Shortfall Quotient remains below 90%, the BHA will forgo Base Rent, Fixed Rent, Percentage Rent and Transaction Rent and other payments due under any Ground Lease.
- 3. **Tier 3 Incremental Operating Changes**. If there are no funds available to restore the Shortfall Quotient to ninety percent (90%), then the following affordability modifications shall be taken until the Shortfall Quotient for an individual building is restored to ninety percent (90%):
  - a. Residents whose incomes are above eighty percent (80%) of AMI will be required to pay a higher tenant contribution towards rent for the Affordable Unit.
  - b. Residents with incomes up to eighty percent (80%) of AMI in the Mixed Income Buildings will be required to pay more than thirty percent (30%) of income for rent. The parties recognize that such increases in this subsection and those below may be subject to the rents permitted by the initial IDP affordability levels outlined in the initial zoning permits issued by the Boston Planning and Development Agency ("BPDA") for units that are not subject to LIHTC rules (the "IDP Rents"), and the parties will seek consent to such increases as are necessary to restore the Shortfall Quotient.

- c. Residents of the Affordable Buildings will be required to pay more than thirty percent (30%) of income for rent up to the applicable LIHTC rents for the unit occupied (if the unit is then subject to LIHTC rules) or the IDP Rents.
- d. After the expiration of any applicable LIHTC rent restrictions or under agreements reached with DHCD allowing for relief from LIHTC restrictions, rents may be raised to the IDP Rents, if higher, assuming an IDP restriction still applies under the original zoning approvals for the Redevelopment.
- e. If the foregoing modifications cannot reasonably be projected to achieve a Shortfall Quotient of not less than 90% within six (6) months of the occurrence of a Subsidy Shortfall, then up to fifty percent (50%) of the Affordable Units in any building may be converted to market-rent units free of any affordability restrictions, with (a) any then-vacant units or then occupied units that become vacant converted to market immediately, and (b) the balance of the conversion happening at the end of the three-year phase-in period described in section (e) below.
- f. The increase in rent for a tenant then in occupancy as described in subsections (b), (c), and (d) above will be phased in proportionally over three (3) years to minimize dislocation of residents with incomes at or below eighty percent (80%) of AMI. If and when an Affordable Unit becomes vacant, however, the rent paid by the next tenant can be increased to the highest permitted rent. Rent increases will commence upon the annual renewal of the lease for any in-place tenant.
- g. Affordable Units included in the Minimum Commitment will be subject to the LIHTC rent restrictions or the IDP Rents, if higher, for the first thirty years and thereafter subject to the HUD allowable rents for the balance of the 99-year term of the applicable ground lease.

What if PBV Subsidies are later restored at the Federal level? If the PBV Subsidies are restored, either partially or fully, due to a Policy Change (e.g. the federal government restores funding for Section 8 vouchers) or if a successor program providing operating subsidy becomes available, then any actions taken according to the above methodology will be reversed incrementally, subject to the Developer/Owners and BHA agreeing to a plan whereby the Developer/Owners are "made-whole" concerning the financial shortfall they experienced. "Made-whole" shall mean the recovery of the actual accrued Developer/Owner shortfall (including the time value of money) from the point that the Shortfall Quotient drops below 90% to the point that PBV Subsidies are restored.

The tiered actions described above shall be incrementally reversed if, after a Policy Change creates a Subsidy Shortfall, a subsequent Policy Change reduces/eliminates a Subsidy Shortfall, in the following manner and order:

- 1. Reverse changes made to the number of Affordable Units, starting with undoing the conversion of Affordable Units to market-rate units, followed by reducing the rental payments of tenants from the LIHTC/IDP/HUD then applicable level to the original level of thirty percent (30%) of tenant income.
- 2. Note that the restoration of project affordability will not be preconditioned on recovery of the actual accrued shortfall. The mechanism(s) for recovering the accrued shortfall will be determined by the Developer/Owners and BHA at the relevant time based on the specific facts and circumstances and may include such strategies as managing the degree and timing of the reversal, deferring BHA ground rents, or otherwise finding sources to cover the identified Developer/Owner shortfall.

What are the community's guarantees that the Bunker Hill site will not transform completely into a market-rate development? For the first thirty (30) years, the HUD restrictions imposed by the HUD Disposition Approval require the site to include more than 1,000 units that are geared toward families with incomes at or below eighty percent (80%) of median income. After that, if a Subsidy Shortfall is so severe as to warrant converting a significant number of the Affordable Units to market, as noted above, the Owners have agreed to commit to the Minimum Commitment of never converting more than fifty percent (50%) of the Affordable Units in any building, which means that fifty percent (50%) of the units in the Affordable Buildings would remain affordable and eleven percent (11%) of the Mixed-Income Buildings would remain affordable assuming a 22% affordable/78% market mix.

#### **Example of Subsidy Shortfall for a Mixed-Income Building**

#### Key Assumptions/Clarifications for Illustration Using Mixed-Income Building F:

- 1. Assumes a Policy Change becomes effective in the 11th year after a 2021 ground-breaking for Building F.
- 2. In year 11 the ave. rent per market unit \$4,514/month and the ave. rent per Section 8 unit is \$4,096/month for the 3 month period immediately before the Policy Change. Prior Rent Ratio is thus 90.7%.
- 3. The Policy Change causes Section 8 rents to be reduced by 3% in the 1st subsequent 3-month period; subsequent reductions occur of 4% in period 3, 5% in period 5 and 6% in period 7.
- 4. Thus, the Policy Change causes the Subsequent Rent Ratio to be reduced to 88.0% in subsequent 3-month periods 1-2, to 84.4% in periods 3-4, 77.5% in periods 5-6, and 72.2% in periods 7-8.
- 5. The Shortfall Quotient (Prior Rent Ratio/Subsequent Rent Ratio) becomes 97.0% in subsequent periods 1-2, 93.0% in 3-4, 85.4% in periods 5-6, 79.6% in periods 7-8.
- 6. With the Shortfall Quotient > 90% in periods 1-4, the Building absorbs all of the reduction in Section 8 rent = Subsidy Shortfall.
- 7. With the Shortfall Quotient < 90% in periods 5-8, the Subsidy Shortfall is shared by the Building and the BHA/Section 8 residents.
- 8. The Subsidy Shortfall shown below as an annualized figure, with the Building absorbing the first "10%" and the BHA/Section 8 residents the balance.
- 9. The BHA/Section 8 residents' share is to be funded by the BHA Responses and Affordability Modifications described in Sections C. and D. of the Memo. Examples shown below are funding from any BHA Affordability Reserve established from prior payments made by the Owner Entities, offsetting current ground rent payments due to the BHA, and increasing the tenants' share of rental payments.

							Rental R	ate Change				
				3 Month								
			Base Prior to	Period	1	2	3	4	5	6	7	8
			Effective				Re	eduction in Section	n 8			
		Annual	<b>Policy Change</b>	Change	-3.0%	0.0%	-4.0%	0.0%	-5.0%	0.0%	-6.0%	0.0%
	Units	Escalation	in YR 11	Cumulative	-3.0%	-3.0%	-7.0%	-7.0%	-12.0%	-12.0%	-18.0%	-18.0%
Market Rent	204	3.0%	4,514		4,514	4,514	4,514	4,514	4,649	4,649	4,649	4,649
Section 8 without Reduction	58	3.0%	4,096		4,096	4,096	4,096	4,096	4,219	4,219	4,219	4,219
Section 8 with Reduction	58		4,096		3,973	3,973	3,809	3,809	3,604	3,604	3,358	3,358
Prior Rent Ratio			90.7%		90.7%	90.7%	90.7%	90.7%	90.7%	90.7%	90.7%	90.7%
Subsequent Rent Ratio					88.0%	88.0%	84.4%	84.4%	77.5%	77.5%	72.2%	72.2%
Shortfall Quotient					97.0%	97.0%	93.0%	93.0%	85.4%	85.4%	79.6%	79.6%
<b>Annualized Reduction in Section</b>	8 Rent = Subsid	y Shortfall			85,519	85,519	199,543	199,543	427,593	427,593	598,630	598,630
Subsidy Shortfall Absorbed by Bu	uilding				85,519	85,519	199,543	199,543	293,614	293,614	293,614	293,614
Additional Subsidy Required to N	Maintain Shortfa	II Quotient at 90	t at 90% 133,979 133,979 305,016 305					305,016				
Examples of Potential Actions Be	eyond Obtaining	Replacement Su	bsidies:									
1. Funding from Any BHA Afford	Any BHA Affordability Reserve established from Prior Payments Received from Owner Entities						-					
2. Offset of Ground Rent Payme	nt Due BHA								133,979	133,979	133,521	133,521
3. Increasing Tenants' Share of R									-	-	171,496	171,496
or mercasing remaines smare or n	cincar i ayınıcınıs										1,1,430	1,1,430

# Exhibit A

	Affordable Buildings						
Lease Year	Applicable Requirements	Possible Actions					
Years 1-30	<ol> <li>HUD Disposition Approval – 1,010¹ units for tenants with incomes at or below 80% of AMI; covenant survives foreclosure.</li> <li>LIHTC Covenants – LIHTC units to remain affordable for 30 years for people at and below 60% of AMI; does not survive foreclosure.</li> <li>BPDA IDP – requires 13% of units (350 units) to be for households at and below 70% of AMI (based on the number of permitted units which is 2,699) for 30 years with the right to extend for an additional 20 years</li> </ol>	<ul> <li>Seek replacement subsidies and capital restructuring to ensure compliance with applicable requirements without PBV Subsidies.</li> <li>If Shortfall Quotient falls below 90%, BHA to forego rent/payments as set forth above.</li> <li>Upon Affordable Unit turnover, admit higher income low income residents whose incomes do not exceed 60% of AMI.</li> <li>Access owner-created operating reserves to make up for lost subsidy.</li> <li>Require residents in Affordable Units to pay a greater percentage of income toward rent up to the LIHTC rent maximum.</li> </ul>					
Years 30 - 99	City of Boston – As noted, BPDA has a right to extend IDP requirements for up to an additional 20 years.	<ul> <li>Same as above, except that LIHTC rent would not be an option and requiring residents to pay IDP rents is a possible action.</li> <li>As units become vacant, convert up to 50% of the Affordable Units to market-rate units, while maintaining 50% of the units as affordable. Protect existing tenants to extent feasible.</li> </ul>					

<sup>&</sup>lt;sup>1</sup> HUD is allowing some units to be "near" the site.

	Mixed-Income Buildings						
Lease Year	Applicable Requirements	Possible Actions					
Years 1-30	<ol> <li>HUD Disposition Approval – 1,010 units for tenants with incomes at or below 80% of AMI; covenant survives foreclosure.</li> <li>BPDA IDP– requires 13% of units (350 units) to be for households at and below 70% of AMI (based on the number of permitted units which is 2,699) for 30 years with the right to extend for an additional 20 years .</li> </ol>	<ul> <li>Owners alone bear the Subsidy Shortfall if Shortfall Quotient is equal to or greater than 90%.</li> <li>Owners, along with BHA and the CRA, look for means to replace the subsidy via other federal, state, or local programs or charities or to restructure the capital stack.</li> <li>If the Shortfall Quotient falls below 90%, then the BHA to forego rent/payments as set forth above.</li> <li>Over income residents in Affordable Units (those with incomes over 80% of median) pay market rent.</li> <li>Upon Affordable Unit turnover, admit higher-income lowincome residents whose incomes do not exceed 80% of AMI.</li> </ul>					
Years 30-99	1. City of Boston As noted, BPDA has a right to extend IDP requirements for up to an additional 20 years.	<ul> <li>All of the above.</li> <li>Convert up to 50% of the Affordable Units to market-rate units incrementally and only as needed to eliminate the Subsidy Shortfall, while maintaining at least 50% of the designated Affordable Units as affordable. Protect existing tenants to the extent feasible.</li> </ul>					

#### **EXHIBIT I**

### TITLE INSURANCE

[TO BE ATTACHED AT TIME OF LEASE EXECUTION. OWNER'S PRO FORMA TITLE INSURANCE POLICY IS BEING REVISED BY TITLE COMPANY]

### COMMONWEALTH LAND TITLE INSURANCE COMPANY

### **OWNER POLICY**

### SCHEDULE A

File N 23-610	umber 646	Date of Policy June, 2023 At	Amount of Insurance \$101,601,393.00		
Policy	Number: Proforma				
1.	Name of Insured:				
	Building M Owner LLC, a	Delaware limited liability com	pany		
2.	The estate or interest referred to herein is at Date of Policy vested in the Insured				
3.	The estate or interest in the policy is:	land described in this Schedu	ale and which is covered by this		
	<b>LEASEHOLD</b> , created by a Ground Lease by and between the Boston Housing Authority, as Lessor, and Building M Owner LLC, as Lessee, Notice of which is dated June 30, 2023 and recorded in Book, Page				
			ent by and between the Boston June 30, 2023 and recorded in		
	<u> </u>	ecorded in Book 5793 Page 4	ne Boston Housing Authority by 25, Book 5806 Page 119, Book		
4.		County, Massachusetts all	ord Street, Tufts Street and Corey more particularly described in		
Note:		nall mean, "recorded with the S n, "filed with the Suffolk Cour	Suffolk County Registry of nty Registry District of the Land		
	This policy i	s valid only if Schedule B is a	attached.		

This is a Pro Forma Title Policy for review purposes only which provides <u>no insurance coverage</u> to or on behalf of the proposed insured. This Pro Forma Policy does not necessarily reflect the present status or condition of title and is not a Commitment to insure the estate or interests or to provide any affirmative coverage shown herein. This Pro Forma Policy solely indicates the form and content of the policy which the Company may issue if:

- 1. All requirements of the Commitment and any additional requirements as requested by the Company are met to the satisfaction of the Company;
- 2. All necessary documents are furnished;
- 3. The Company receives recordable and insurable documents evidencing the interest to be insured;
- 4. Satisfactory title rundown from effective date of commitment though recording of instruments creating the interest to be insured, or satisfactory gap indemnity;
- 5. All premiums, charges and fees due to the Company are paid in full.

#### **SCHEDULE B -- Section 1**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

- 1. Intentionally Omitted.
- 2. Intentionally Omitted.
- 3. Intentionally Omitted.
- 4. Intentionally Omitted.
- 5. Liens for taxes and assessments, which become due subsequent to the Date of Policy.
  - Note: The Insured Land is exempt from the payment of real estate taxes through fiscal year 2023 ending June 30, 2023.
- 6. Title to and rights of the public and others entitled thereto in and to those portions of the Land lying within the bounds of Tufts Street, Corey Street and Medford Street
- 7. The exact acreage or square footage being other than as stated in Exhibit A annexed or the plan(s) therein referred to.
- 8. Easement from Boston Housing Authority to New England Telephone and Telegraph Company dated April 9, 1941, recorded in <u>Book 5932</u>, <u>Page 24</u>.
- 9. Terms and provisions of Development Regulatory Agreement by and between Boston Planning & Development Agency and Boston Housing Authority dated July 15, 2021, recorded in Book 68791, Page 98.
- 10. Conduit License Agreement by and between City of Boston Public Improvement Commission, as Licensor, and Boston Housing Authority, as Licensee, dated June 22, 1990, recorded in <u>Book 16444, Page 236</u>.
- 11. Notice of Discontinuance of a segment of Wolford Street by the City of Boston Public Improvements Commission dated January 27, 2022 recorded in Book 68999, Page 40.
- 12. Notice of the Widening and Relocation of a portion of Medford Street by the City of Boston Public Improvements Commission dated February 17, 2022, recorded in Book 68999, page 42.
- 13. Notice of the Widening and Relocation of a portion of Corey Street by the City of Boston Public Improvements Commission dated February 17, 2022, recorded in Book 68999, page 49.

14. Notice of the Widening and Relocation of a portion of Tufts Street by the City of Boston Public Improvements Commission dated February 17, 2022, recorded in Book 68999, page 58. Grant of Highway Easement - Corey Street, Charlestown, by and between Boston 15. Housing Authority and the City of Boston, by and through its Public Improvement Commission dated February 17, 2022, recorded in Book 68999, Page 52. 16. Grant of Highway Easement - Medford Street - by and between Boston Housing Authority and the City of Boston, by and through its Public Improvement Commission dated February 17, 2022, recorded in Book 68999, Page 44. 17. Grant of Highway Easement -Tufts Street - by and between Boston Housing Authority and the City of Boston, by and through its Public Improvement Commission dated February 17, 2022, recorded in Book 68999, Page 60. 18. Intentionally Omitted. 19. Owners' Association Agreement for Bunker Hill Redevelopment Project among the BHA, Bunker Hill LandCo LLC and Bunker Hill Owners Association Inc. dated June 30, , Page , as affected by Joinder Agreement by and 2023, recorded in Book among BHA, Bunker Hill LandCo LLC, Bunker Hill Owners Association Inc. and Building M Owner LLC dated June 30, 2023, recorded in Book , Page . 20. Terms and provisions of Ground Lease by and between the Boston Housing Authority, as Lessor, and Building M Owner LLC, as Lessee, Notice of which is dated June 30, 2023 and recorded in Book , Page . 21. Terms and provisions of Drainage Easement Agreement between the Boston Housing Authority and Building M Owner LLC dated June 30, 2023, recorded in Book , Page 22. Terms and provisions of Use Agreement (Bunker Hill Apartments Phase 1B) dated June 30, 2023 by and between the Boston Housing Authority, United States Department of Housing and Urban Development and Building M Owner LLC recorded in Book, Page . 23. Residential Compliance Agreement between Massachusetts Housing Finance Agency and Building M Owner LLC, dated June 30, 2023, and recorded in Book , Page .

First Leasehold Mortgage, Security Agreement, Financing Statement (Fixture Filing) and

Assignment of Leases and Rents, dated as of June 30, 2023, from Building M Owner LLC, a Delaware limited liability company to the Massachusetts Housing Finance Agency, recorded on June \_\_\_\_, 2023 in Book \_\_\_\_\_\_, Page \_\_\_\_\_, which incorporates by reference that certain Regulatory Agreement, dated as of June 30, 2023, between

24.

	Building M Owner LLC, a Delaware limited liability company and the Massachusetts Housing Finance Agency, recorded on June, 2023 in Book, Page			
25.	Bridge Leasehold Mortgage, Security Agreement, Financing Statement (Fixture Filing and Assignment of Leases and Rents, dated as of June 30, 2023, from Building M Owne LLC, a Delaware limited liability company to the Massachusetts Housing Finance Agency recorded on June, 2023 in Book, Page, as affected by Prior Recorded Lien Holder Consent by the Massachusetts Housing Finance Agency dated as of June 30 2023, recorded on June, 2023 in Book, Page			
26.	Second Bridge Leasehold Mortgage, Security Agreement, Financing Statement (Fixture Filing) and Assignment of Leases and Rents, dated as of June 30, 2023, from Building Mowner LLC, a Delaware limited liability company to the Massachusetts Housing Finance Agency, recorded on June, 2023 in Book, Page, as affected by Prior Recorded Lien Holder Consent by the Massachusetts Housing Finance Agency dated as of June 30, 2023, recorded on June, 2023 in Book, Page			
27.	Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants between the Executive Office of Housing and Livable Communities and Building M Owner LLC dated June 30, 2023, recorded in Book, Page			
28.	Prior Recorded Lienholder Consent from Massachusetts Housing Finance Agency dated as of June 30, 2023, recorded on June, 2023 in Book, Page			
29.	Survey entitled "ALTA/NSPS LAND TITLE SURVEY - LOT M - BOSTON HOUSING AUTHORITY CHARLESTOWN CAMPUS BOSTON, SUFFOLK COUNTY, MASSACHUSETTS, Prepared for LEGGAT MCCALL PROPERTIES 10 POST OFFICE SQUARE, BOSTON MA 02109"; prepared by Nitsch Engineering dated March 17, 2023, most recently updated June 28, 2023 (the "Survey") discloses the following matters:			
	a. Encroachment by building at 98 Medford Street into Medford Street (building to be demolished);			
	b. Property is surrounded by temporary construction fencing that encroaches onto adjacent streets;			
	c. Property is partially demolished and under construction.			
	t J. Moriarty, Jr.			
Autho	orized Signatory			

#### EXHIBIT A

The Leasehold Estate is the land located in that part of Boston called Charlestown, Suffolk County, Massachusetts, being Lot M on a plan entitled, "Subdivision Plan of Land Lot 'M' & Open Space, Boston Housing Authority - Charlestown Campus; prepared for Leggat McCall Properties, 10 Post Office Square, Boston MA 02109" recorded with the Suffolk County Registry of Deeds as Plan 249 of 2023, to which plan reference is made for a more particular description. Lot M contains 35,934+S.F. according to said plan.

The above described land has the benefit of the following:

Easement as set forth in the Drainage Easement Agreement between the Boston Housing Authority and Building M Owner LLC dated June 30, 2023, recorded in Book , Page .

Parcel ID: 200152000

# ALTA 3.2-06 ZONING – LAND UNDER DEVELOPMENT ENDORSEMENT Attached to Policy No.

#### **Issued By**

#### COMMONWEALTH LAND TITLE INSURANCE COMPANY

- 1. For purposes of this endorsement:
  - a. "Improvement" means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.
  - b. "Plans" means those site and elevation plans made by Stantec Architecture and Engineering P.C. designated as "Project Manual Volume 1 Bunker Hill Housing Building M Boston, MA Construction Documents dated February 4, 2022.
- 2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy
  - a. according to applicable zoning ordinances and amendments, the Land is not classified Zone Charlestown Urban Renewal Area, Urban Renewal Area "U\*" Overlay District.
  - the following use or uses are not allowed under that classification:
     Multi-family Residential; Parking; Commercial including but not limited to Retail,
     Restaurant, Services; Health Clinic; Community, Cultural and Recreational Uses; Open Space; and Accessory Uses
  - c. There shall be no liability under paragraph 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.c. does not modify or limit the coverage provided in Covered Risk 5.
- 3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing Improvement, as specified in paragraph 2.b. or requiring the removal or alteration of the Improvement, because, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:
  - a. Area, width, or depth of the Land as a building site for the Improvement
  - b. Floor space area of the Improvement
  - c. Setback of the Improvement from the property lines of the Land
  - d. Height of the Improvement, or

- e. Number of parking spaces.
- 4. There shall be no liability under this endorsement based on:
  - a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
  - b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated:

#### **ALTA 5.1-06 Planned Unit Development—Current Assessments**

Attached to Policy No	
<b>Issued By</b>	

#### COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

- 1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
- 2. Any charges or assessments in favor of any association of owners, that are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.
- 3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
- 4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated:

# ALTA 8.2-06 COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT

Attached to Policy No	
<b>Issued By</b>	
issueu dy	

#### COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company insures the insured against loss or damage sustained by reason of any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, except as set forth in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

# ALTA 9.8-06 COVENANTS, CONDITIONS AND RESTRICTIONS ENDORSEMENT

# LAND UNDER DEVELOPMENT

Attached to Policy No	
Issued By	

### COMMONWEALTH LAND TITLE INSURANCE COMPANY

- 1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
- 2. For purposes of this endorsement only:
  - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
  - b. "Future Improvement" means a building, structure, road, walkway, driveway, curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
  - c. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
  - d. "Plans" means those site and elevation plans made by Stantec Architecture and Engineering P.C. designated as "Project Manual Volume 1 Bunker Hill Housing Building M Boston, MA Construction Documents dated February 4, 2022.
- 3. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;
  - b. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or
  - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the

Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

- 4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
  - a. any Covenant contained in an instrument creating a lease;
  - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
  - c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

### ALTA 13-06 LEASEHOLD OWNER'S ENDORSEMENT

Attached to Policy No	
Issued By	

#### COMMONWEALTH LAND TITLE INSURANCE COMPANY

- 1. As used in this endorsement, the following terms shall mean:
  - a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
  - b. "Lease": the lease described in Schedule A.
  - c. "Leasehold Estate": the right of possession granted in the Lease for the Lease Term.
  - d. "Lease Term": the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
  - e. "Personal Property": property, in which and to the extent the Insured has rights, located on or affixed to the Land on or after Date of Policy that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.
  - f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted.
  - g. "Tenant Leasehold Improvements": Those improvements, in which and to the extent the Insured has rights, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.
- 2. Valuation of Estate or Interest Insured:

If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction of the Insured, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of the value for the Remaining

Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(ii) of the Conditions:

- a. The reasonable cost of (i) removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, (ii) transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, (iii) repairing the Personal Property damaged by reason of the removal and relocation, and (iv) restoring the Land to the extent damaged as a result of the removal and relocation of the Personal Property and required of the Insured solely because of the Eviction.
- b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
- c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
- e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
- f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

- g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.
- 4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

# **ALTA Endorsement Form 15.1**

# (Non-imputation-Additional Insured)

Attached to Policy No.	
•	
Issued By	

## COMMONWEALTH LAND TITLE INSURANCE COMPANY

For purposes of the coverage provided by this endorsement,

CREA Bunker Hill Building M, LLC, a Delaware limited liability company and CREA SLP, LLC, an Indiana limited liability company (collectively, the "Additional Insured")

is added as an insured under the policy. By execution below, the insured named in Schedule A acknowledges that any payment made under this endorsement shall reduce the amount of insurance as provided in Section 10 of the Conditions and Stipulations.

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b) or (e) to deny liability to the Additional Insured for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or knowledge, as of Date of Policy, of

BH Building M GP LLC, a Delaware limited liability company,

whether or not imputed to the Additional Insured by operation of law, to the extent of the percentage interest in the insured acquired by Addition Insured as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of the endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

AGREED AND CONSENTED TO: Building M Owner, LLC	
INSURED	
	COMMONWEALTH LAND TITLE INSURANCE COMPANY
	By:

## ALTA 17-06 ACCESS AND ENTRY ENDORSEMENT

Attached to Policy No
Issued By

### COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from Medford Street, Tufts Street and Corey Street (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

#### ALTA 17.2-06 UTILITY ACCESS ENDORSEMENT

Attached to Policy No	
Issued Rv	

#### COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services:

Water service
 Natural gas service
 Electrical power service
 Sanitary sewer
 Storm water drainage

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

- (1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;
- (2) a gap between the boundaries of the rights-of-way or easements; or
- (3) a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

# ALTA 18-06 SINGLE TAX PARCEL ENDORSEMENT

Attached to Policy No	
Issued By	

### COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

Parcel: 0200152000

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

#### **ALTA 19.2 CONTIGUITY MULTIPLE PARCELS**

Attached to Policy No.	
<b>Issued By</b>	

### COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of there being any gaps, strips, or gores lying within or between Lot M and the area described in the Drainage Easement Agreement, both as described in Exhibit A to Schedule A.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

	. 1	
1 10	tad	٠
Da	tea	

#### ALTA 25-06 SAME AS SURVEY ENDORSEMENT

Attached to Policy No	
<b>Issued By</b>	

### COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the Survey shown in Schedule B as Item 29, first paragraph.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

D . 1	
Dated	٠
Daicu	

## ALTA 26-06 SUBDIVISION ENDORSEMENT

Attached to Policy No.	
Issued By	

# COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is made a part of the commitment or policy. It is subject to all of the terms of the commitment or policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amount of the commitment or policy and prior endorsements are not changed.

#### ALTA 28-06 EASEMENT- DAMAGE OR ENFORCED REMOVAL ENDORSEMENT

Attached to Policy No	
Issued By	

# COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured if the exercise of the granted or reserved rights to use or maintain the easement(s) referred to in Exception(s) 8, 10, 11, 15, 16, 17, 18, 19 and 21 of Schedule B results in:

- (1) damage to an existing building located on the Land, or
- (2) enforced removal or alteration of an existing building located on the Land,

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

# **ALTA 28.3-06 – (Encroachments - Boundaries and Easements - Land Under Development)**

Attached to Policy No	
-	
<b>Issued By</b>	

# COMMONWEALTH LAND TITLE INSURANCE COMPANY

- 1. The insurance provided by this endorsement is subject to the exceptions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
- 2. For purposes of this endorsement only:
  - (a) "Improvement" means a building, structure, or paved area, including any road, walkway, parking area, driveway, or curb located on the surface of the Land or the surface of adjoining land at Date of Policy that by law constitutes real property.
  - (b) "Future Improvement" means any of the following to be constructed on the Land after Date of Policy in the locations according to the Plans and that by law constitutes real property:
    - (i) a building;
    - (ii) a structure; or
    - (iii) a paved area, including any road, walkway, parking area, driveway, or curb.
  - c. (c) ""Plans" means those site and elevation plans made by Stantec Architecture and Engineering P.C. designated as "Project Manual Volume 1 Bunker Hill Housing Building M Boston, MA Construction Documents dated February 4, 2022.
- 3. The Company insures against loss or damage sustained by the Insured by reason of:
  - (a) An encroachment of any Improvement or Future Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an Exception in Schedule B of the policy identifies the encroachment;
  - (b) An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an Exception in Schedule B of the policy identifies the encroachment:
  - (c) Enforced removal of any Improvement or Future Improvement located on the Land as a result of an encroachment by the Improvement or Future Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement,

compel removal or relocation of the encroaching Improvement or Future Improvement; or

- (d) Enforced removal of any Improvement or Future Improvement located on the Land that encroaches onto adjoining land.
- 4. Sections 3(c) and 3(d) of this endorsement do not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the following Exceptions, if any, listed in Schedule B: 25a and 25b

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

# **ALTA 34-06 Identified Risk Coverage Endorsement**

Attached to Policy No.	
Issued By	

# COMMONWEALTH LAND TITLE INSURANCE COMPANY

- 1. As used in this endorsement "Identified Risk" means: the easement rights in favor of New England Telephone Company described in Exception 8 of Schedule B.
- 2. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. A final order or decree enforcing the Identified Risk in favor of an adverse party; or
  - b. The release of a prospective purchaser or lessee of the Title or lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk, but only if
    - i. there is a contractual condition requiring the delivery of marketable title, and
    - ii. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement.
- 3. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.
- 4. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk, but if the Company does establish the Title free of the Identified Risk or removes it, Section 9(a) of the Conditions applies.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

D	9	tρ	A	
L	а	te	u	

### WAIVER OF ARBITRATION ENDORSEMENT

Attached to Policy No	
Issued By	

### COMMONWEALTH LAND TITLE INSURANCE COMPANY

The above referenced policy is amended in the following manner:

Paragraph 14 of the Conditions of the policy is hereby deleted.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

## ALTA 39-06 POLICY AUTHENTICATION ENDORSEMENT

Attached to Policy No	
Issued By	

## COMMONWEALTH LAND TITLE INSURANCE COMPANY

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

# **ALTA Endorsement 40-06 (Tax Credit - Owner's Policy)**

<b>Attached to Polic</b>	y No
Issu	ed By

# COMMONWEALTH LAND TITLE INSURANCE COMPANY

- 1. This endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
- 2. For purposes of this endorsement only:
  - a. "Tax Credit Investor" means CREA Bunker Hill Building M, LLC, a Delaware limited liability company and CREA SLP, LLC, an Indiana limited liability company.
  - b. "Tax Credit" means a tax credit in effect at Date of Policy pertaining to the Land that is available to the Tax Credit Investor under an applicable section of the Internal Revenue Code or other applicable law.
- 3. The Company insures against loss or damage, not exceeding the Amount of Insurance, sustained by the Tax Credit Investor by a reduction in a Tax Credit that is caused solely by a defect, lien, encumbrance, or other matter insured against by the policy, subject to the limitations in Section 8(a) of the Conditions. The Company has no liability to the Tax Credit Investor under this endorsement until:
  - a. its liability and the extent of a loss insured against by the policy have been definitely fixed in accordance with the Conditions; and
  - b. the Tax Credit Investor establishes the reduction in the amount of a Tax Credit.
- 4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) incurred in defending or establishing:
  - a. the eligibility of the Tax Credit Investor or the Land for a Tax Credit;
  - b. that the Tax Credit Investor or the Land is entitled to a Tax Credit; or
  - c. the existence, ownership, or amount of a Tax Credit.
- 5. The calculation of loss or damage under this endorsement shall be subject to Section 11 of the Conditions. In addition, the Company shall not be liable for duplicate recoveries of loss or damage to the Insured and Tax Credit Investor.

### 6. The Insured:

- a. assigns to the Tax Credit Investor the right to receive any payment or portion of a payment for loss or damage otherwise payable to the Insured under Section 12 of the Conditions, but only to the extent of the reduction in the amount of a Tax Credit; and
- b. acknowledges that any payment made by the Company to the Tax Credit Investor under this endorsement shall reduce the Amount of Insurance as provided in Section 10 of the Conditions.

This endorsement is issued as part of the policy. Except to the extent expressly stated, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Agreed and Consented to:
Insured
Building M Owner LLC By:
[Tax Credit Investor]
CREA Bunker Hill Building M, LLC, a Delaware limited liability company
By: Michael M. Murray, Authorized Representative
CREA SLP, LLC, An Indiana limited liability company
By: Michael M. Murray, Authorized Representative  COMMONWEALTH LAND TITLE INSURANCE COMPANY
By:Authorized Signatory

## MAXIMUM ACTUAL LOSS ENDORSEMENT

Attached to Policy No	
Issued By	

# COMMONWEALTH LAND TITLE INSURANCE COMPANY

The Company hereby agrees that for purposes of determining the maximum liability of the Company under this Policy, the maximum actual loss of the insured shall include all funds paid by or on behalf of the insured for the development of the Land and related costs, both "hard" and "soft", which costs may include, without limitation, materials, labor, and/or fees, as evidenced by a sworn statement of the owner and substantiated by receipts for costs incurred in connection with the development as shown on the attached (schedule, exhibits, etc., which shows proposed uses of proceeds). [Please note that information will be required to complete this Endorsement.]

This endorsement, when countersigned by an authorized signatory, is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

# TAX DEED ENDORSEMENT

Attached to Policy No	
Issued By	

## COMMONWEALTH LAND TITLE INSURANCE COMPANY

This policy affirmatively insures against loss or damage sustained by the Insured as a result of the entry of a final judgment extinguishing the appurtenant easement described in Schedule A, or denying or limiting the use thereof by reason of the foreclosure of a tax title or a mortgage against the land subject to that easement

This endorsement, when countersigned by an authorized signatory, is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

The total liability if the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

# **EXHIBIT J**

# FORM OF STATEMENT OF UNAUDITED QUARTERLY UNLEVERAGED CASH FLOW AND LEVERAGED OPERATING CASH FLOW

# **Balance Sheets**

	3	31-Mar-20	31-Dec-19
Assets			
Property and equipment:			
Land and land improvements	\$	- \$	-
Building and building improvements		-	_
		-	-
Accumulated depreciation		-	
	-	-	
Other assets:			
Cash and cash equivalents		-	-
Tenant security deposits		-	-
Deferred financing Costs, net of amortization)		-	-
Accounts receivable		-	
Total other assets		-	
Total assets	\$	- \$	
Liabilities and Members' Equity			
Liabilities:			
Mortgage note payable, net of unamortized deferred financing costs	\$	- \$	-
Accrued expenses		-	-
Accrued interest		-	-
Deferred income		-	-
Security deposit liability		-	
Total liabilities		-	-
Members' equity		-	
Total liabilities and members' equity	\$	- \$	-
See notes to financial statements.			
Check	F	PΥ	
	\$	-	

# **Balance Sheets**

	3	30-Jun-20	31-Dec-19
Assets			
Property and equipment:			
Land and land improvements	\$	- \$	-
Building and building improvements		-	
		-	-
Accumulated depreciation		-	-
		-	
Other assets:			
Cash and cash equivalents		-	-
Tenant security deposits		-	-
Deferred financing costs, net of accumulated amortization		-	-
Accounts receivable		-	-
Total other assets		-	
Total assets	\$	- \$	
Liabilities and Members' Equity			
Liabilities:			
Mortgage note payable, net of unamortized deferred financing costs	\$	- \$	-
Accrued expenses		-	-
Accrued interest		-	-
Deferred income		-	-
Security deposit liability		-	-
Total liabilities		-	-
Members' equity		-	
Total liabilities and members' equity	\$	- \$	

# **EXHIBIT J-1**

# **Balance Sheets**

		Q2	Q1 Prior	Yr End
Assets				
Property and equipment:				
Land	\$	- \$	- \$	-
Building and building improvements		-	-	-
Accumulated depreciation		-	-	-
/ localitation depressation		-	-	-
Other assets:				
Unrestricted cash and cash equivalents		-	-	-
Restricted cash for tenant security deposits		-	-	-
Other restricted cash		-	-	-
Deferred financing costs, net of amortization		-	-	-
Accounts receivable		-	-	-
Prepaid expenses		-	-	-
Total other assets		-	-	-
Total assets	\$	- \$	- \$	-
Liabilities and Members' Equity				
Liabilities:				
Mortgage note payable, net of unamortized deferred financing costs	\$	- \$	- \$	-
Junior note payable		-	-	-
Accrued expenses		-	-	-
Accrued interest		-	-	-
Deferred income		-	-	-
Tenant security deposits		-	-	-
Total liabilities		-	-	-
Members' equity		-	-	-
Total liabilities and members' equity	\$	- \$	- \$	-
Check w/Members' Equity Sheet	-	-	-	-

See notes to financial statements.

# **EXHIBIT J-1**

### **Statements of Operations**

	YTD	Q	2 Q	1
Revenues:				
Rental income	\$	- \$	- \$	-
Other income		-	-	_
		-	-	
Operating expenses:				
Real estate taxes		-	-	-
Repairs and maintenance		-	-	-
General and administrative		-	-	-
Utilities		-	-	-
Audit Expense		-	-	-
Management fees		-	-	-
Supplemental rent (Ground Lease Per Unit Charge)		-	-	-
Additional rent (Ground Lease % Management Charge)		-	-	-
Legal and administration fees		-	-	-
Insurance		-	-	-
Bank fees		-	-	
		-	-	
Income before interest, depreciation and amortization				
income before interest, depreciation and amortization		<u> </u>	<u> </u>	
Other expenses:				
Interest		-	-	-
Amortization of financing costs		-	-	-
Depreciation				
		-	-	-
Net Income	\$	- \$	- \$	_

# Statements of Changes in Members' Equity

	Member 1	Member 2		
	50%	50%		Total
Balance at Prior Year End	\$	- \$	- \$	-
Distributions		-	-	-
Net Income		-	- \$	
Balance at Q1		-	-	-
Distributions		-	-	-
Net Income		-	-	
				·
Balance at Q2	\$	- \$	- \$	-

See notes to financial statements.

### **Statements of Cash Flows**

	YTD	) G	)2 Q	1
Cash flows from operating activities:				
Net loss	\$	- \$	- \$	-
Adjustments to reconcile net loss to net cash				
provided by operating activities:				
Depreciation		-	-	-
Amortization of financing costs		-	-	-
Loss (gain) on disposal of fixed assets				
Straight-line rent adjustment				
Changes in operating assets and liabilities:				
Decrease (increase) in restricted cash for security deposits		-	-	-
Decrease (increase) in other restricted cash		-	-	-
Decrease (increase) in accounts receivable		-	-	-
Decrease (increase) in prepaid expenses		-	-	-
Increase (decrease) in accrued expenses		-	-	-
Increase (decrease) in accrued interest		-	-	-
Increase (decrease) in deferred income		-	-	-
Increase (decrease) in tenant security deposits		-	-	
Net cash provided by operating activities		-	-	-
Cash flows from investing activities:				
Additions to building and building improvements		-	-	
Net cash used in investing activities		-	-	-
Cash flows from financing activities:				
Capital contributions by (distributions to) members		-	-	-
Mortgage note advances (principal payments)		-	-	-
Junior note advances (principal payments)		-	-	
Net cash used in financing activities		-	-	
Not increase (decrease) in each and each annivelente				
Net increase (decrease) in cash and cash equivalents		-	-	-
Unrestricted cash and cash equivalents, beginning of period				
Offiestificted cash and cash equivalents, beginning of period			<u> </u>	
Unrestricted cash and cash equivalents, end of period	\$	- \$	- \$	_
officerioted each and each equivalente, one of period	Ψ	Ψ	Ψ	
Supplementary summary of non-cash investing transactions:				
Building and building improvements included in accrued expenses	\$	- \$	- \$	_
Write-off of disposal of fixed assets	\$	- \$	- \$	
White-on of disposal of lived assets	Ψ	- ψ	- ψ	
Supplemental disclosure of cash flow activity:				
Cash paid for interest	\$	- \$	- \$	_
Cash paid for Participating Rent under ground lease	\$	- \$ - \$	- \$	
Cash paid for Farticipating Item under ground lease	Ψ	- ψ	- ψ	

See notes to financial statements.

**EXHIBIT J-2** 

#### Unleveraged Cashflow and Leveraged Operating Cash Flow Calculations

#### Unleveraged Cash Flow Calculation By Quarter

	YTD	Q4	Q3	Q2	Q1
Net cash provided by operating activities	-			-	-
Adjustments:					
Cash paid for interest	-			-	-
Additions to Land and Buildings	-			-	-
Halawaran Cash Flam					

#### Leveraged Operating Cash Flow Calculation By Quarter

YTD	Q4	Q3	Q2		Q1	
-				-		-
-			\$	- \$		-
-				-		-
-				-		-
-				-		-
	YTD	YTD Q4	YTD Q4 Q3	YTD Q4 Q3 Q2  -		

Leveraged Operating Cash Flow Before Participating Rent

Cumulative Record of Unleveraged Cash Flow		Gross Revenue Calculation By Quarter	(
Year 1 Q 1	-	Year 1 Q 1 -	
Year 1 Q 2	-	Year 1 Q 2 -	
Year 1 Q 3		Year 1 Q 3	
Year 1 Q 4		Year 1 Q 4	
Year 2 Q 1		Year 2 Q 1	
Year 2 Q 2		Year 2 Q 2	
Year 2 Q 2		Year 2 Q 2	
Year 2 Q 3		Year 2 Q 3	
Year 2 Q 4		Year 2 Q 4	

Cumulative Record of Leveraged Operating Cash Flow Before Participating	Rent Cumulative Record of Junior Loans Funded by Tenant Affiliates
Year 1 Q 1 -	Year 1 Q 1
Year 1 Q 2 -	Year 1 Q 2
Year 1 Q 3	Year 1 Q 3
Year 1 Q 4	Year 1 Q 4
Year 2 Q 1	Year 2 Q 1
Year 2 Q 2	Year 2 Q 2
Year 2 Q 2	Year 2 Q 2
Year 2 Q 3	Year 2 Q 3
Year 2 Q 4	Year 2 Q 4

# **EXHIBIT J-3**

# **Summary of BHA Payments**

	YTD	Q4	Q3	Q2	Q1
At Lease Commencement Fixed Rent	-	-	-	-	-
From Operating Revenues Supplemental Rent (Ground Lease Per Unit Charge) Additional Rent (Ground Lease % Management Charge)	- -	- -	-	- -	- -
From Leveraged CF Waterfall Distributions During Lockout Period (1) Participating Rent After Lockout Period and through LMP Transfer Date	-	-		-	-
From Transaction Proceeds Transaction Rent (2)	-	-	-	-	-
Total Payments to BHA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Notes: (1) See Assigment of Economic Interests Agreement for Input Detail

(2) See GL Schedules 1A & 1 B for Calculations

# **Cumulative Record of BHA Payments**

At Commencement	76,500
Year 1 Q 1	-
Year 1 Q 2	-
Year 1 Q 3	
Year 1 Q 4	
Year 2 Q 1	
Year 2 Q 2	
Year 2 Q 2	
Year 2 Q 3	
Year 2 Q 4	

# **EXHIBIT K**

# FORM OF OPERATING BUDGET

# [TO BE ATTACHED AT TIME OF LEASE EXECUTION]

		A		В		$\mathbf{c}$		D		${f E}$	F		G		Н	I
		PY Actuals		PY Actuals		2022	Year	r to date Actuals		2022	Variance	:	Proposed		Variance	Cost Per Unit
		Dec 2020		Dec 2021		Budget	Se	eptember 2022		Annualized	C & E		Budget		E & G	181
Salvadada Of Danasinta									1							
Schedule Of Receipts Residential Receipts									-							
Rent-Resident Share	\$	1,169,084	¢	1,193,535	•	1,156,455	•	889,082	\$	1,185,443	\$ 28	988 \$	1,357,323	¢	171,880 \$	7,499
Rent-Subsidy	\$	6,219,084		6,325,112		6,500,293		4,823,490		6,545,320		)27 \$	6,657,390		112,070 \$	
Rent-Garage & Parking	\$	4,200		3,975		4,200		2,850		3,800		100) \$	3,800		- \$	
Vacancies-Apartments	\$	(149,968)		(90,344)		(114,851)		(36,715)		(48,953)		398 \$	(120,221)		(71,267) \$	
Concessions To Residents	\$	(31,660)		(26,571)		(24,744)	200	(19,291)	Dia.	(25,721)		977) \$	(25,656)		65 \$	
Bad Debts	\$	(6,884)		(24,120)		(21,711)	s	-	\$		\$	- \$	(22,030)	\$	- \$	
Total Residential Receipts	\$	7,203,856		7,381,587		7,521,353	\$	5,659,416	\$	7,659,888		535 \$	7,872,636	\$	212,748	
S B																
Service Receipts  Laundry & Vending Income	\$	25,416	¢	23,512	•	25,000	\$	9,876	•	13,168	¢ /11	332) \$		\$	(13,168) \$	
NSF & Late Charges	\$ \$		\$ \$		\$	100	\$	105	\$ \$	13,108		40 \$	-	\$ \$	(13,108) \$	
Damage Reimbursements	\$	207	\$	90	\$	150	9	103	\$			150) \$	-	\$ \$	- \$	
Keys & Access Cards	\$	60	\$	35	\$	100	4	240	\$	320		220 \$	-	\$	(320) \$	
Miscellaneous Income	\$	199	\$	785	dia .	100	4	136	\$			181 \$	500	\$	319 \$	
Total Service Receipts	\$	26,017		24,423	•	25,350	¢	10,357				540) \$	500	-	(13,310) \$	
Total Service Receipts	φ	20,017	φ	24,423	•	25,550	Ψ	10,557	φ	13,010	φ (11,	940) <b></b>	300	φ	(13,310) \$	, 3
Financial Income					A	1										
Interest Income-Operation	\$	2,073	\$	860	\$	1,000	\$	1,459	\$	1,945	\$	945 \$	2,000	\$	55 \$	5 11
Total Financial Income	\$	2,073	\$	860			\$	1,459	_	1,945		945 \$	2,000	-	55 \$	
Total I marcial ficone	Ψ	2,073	Ψ	000	4	1,000	Ψ	1,407	Ψ	1,740	Ψ	Ψ	2,000	Ψ	25 φ	
Total Income	\$	7,231,946	\$	7,406,869	\$	7,547,703	\$	5,671,232	\$	7,675,643	\$ 127,	940 \$	7,875,136	\$	199,493	43,509
Schedule Of Expenses																
Advertising Expenses																
Advertising	\$	24	\$	423	\$	500	\$	25	\$	33	\$	167 \$	33	\$	- \$	0
CORI's & Credit Reports	\$	1,389	\$		\$		\$	609	\$	812		388 \$	812		- \$	
Total Advertising Expenses	\$	1,413		1,394		1,700	\$	634	\$	845		355 \$	845		- \$	5 5
Administrative Expenses																
Management Fee	\$	222,406	¢.	200,996	•	200,996	•	150,747	2	200,996	2	0 \$	207,337	\$	(6,341) \$	1,146
Office/Admin Salaries	\$	,	\$	223,849		192,848		142,670		190,227		521 \$	235,729	\$	(45,502) \$	,
Admin Employee Benefits	\$	51,306		36,132		35,179		28,847		38,463		284) \$	62,595		(24,132) \$	
Legal	\$	21,846		4,715			\$	3,455				393 \$	20,000		(15,393) \$	
Auditing	\$	,	\$	18,900		20,600		19,455		25,940		340) \$	26,718		(778) \$	
Telephone/Communications	\$	,	\$	20,048			\$	19,219		25,625	. ,	525) \$	20,000		5,625 \$	
Office Expense	\$	59,274		51,976			\$	44,590		59,453		153) \$	47,700	\$	11,753 \$	
Temp Admin Staff	\$	,	\$	4,975			\$	6,734		8,979		979) \$	-	\$	8,979 \$	
Staff Training & Education	\$		\$	3,676			\$	3,841		5,121	. ,	)79 \$	5,000		121 \$	
Dues & Memberships	\$	-	\$		\$	-	\$		\$	158		158) \$	-	\$	158 \$	
Resident & Social Services	\$	221,332	\$		\$	209,316	\$	159,324		212,432		116) \$	300,672		(88,240) \$	
Office Rent	\$	69,148		80,837		84,471		63,079		84,105	. ,	366 \$	84,311		(206) \$	,
Misc Admin	\$	6,567	\$	327			\$	-	\$			500 \$		\$	- \$	
Consulting Fee	\$	-	\$		\$	2,500	\$	2,750	\$			567) \$	_	\$	3,667 \$	
Total Administrative Expenses	\$	995,308	-	831,481	т	838,110	\$	644,830	_	859,773		663) <b>\$</b>	1,010,062	_	(150,289) \$	
Maintenance Expenses																
Maintenance Salaries	s	203,776	\$	213,445	\$	182,659	\$	143,145	\$	190,860	\$ (8	201) \$	233,522	\$	(42,662) \$	1,290
Maint Employee Benefits	\$	23,696		20,290		21,262		11,147		14,863	. ,	399 \$	50,025		(35,162) \$	
Mant Employee Beliefts	Ψ	23,090	Ψ	20,290	Ψ	21,202	Ψ	11,147	Ψ	17,003	Ψ 0,	,,, p	30,023	Ψ	(55,102)	, 210

### Sample Property Budget

	 A		В		C		D	E		F		G		Н		I
	PY Actuals		PY Actuals		2022	Ye	ar to date Actuals	2022		Variance		Proposed		Variance	Co	ost Per Unit
	Dec 2020		Dec 2021		Budget		September 2022	Annualized		C & E		Budget		E & G		181
Janitor Materials	\$ 4,183		5,241		4,600	\$	2,877	3,836		764		4,600	\$	(764)		25
Janitor/Cleaning Contract	\$ 60,232		65,472		66,000	\$	46,935	\$ 62,580	\$	3,420		66,396	\$	(3,816)		367
Grounds Materials	\$ 1,108	\$	1,174	\$	-	\$	66	\$ 88		(88)	\$	-	\$	88	\$	-
Grounds Contracts	\$ 62,255	\$	67,394	\$	75,000	\$	53,007	\$ 70,676	\$	4,324	\$	75,000	\$	(4,324)	\$	414
Decorating Materials	\$ 17,052	\$	10,805	\$	18,000	\$	4,522	\$ 6,029	\$	11,971	\$	12,000	\$	(5,971)	\$	66
Decorating Contract	\$ ,		69,782		80,000		44,633	59,511		20,489		. ,	\$	(12,489)		398
Carpentry Materials	\$ 47,668	\$	24,497	\$	25,000	\$	10,191	\$ 13,588	\$	11,412	\$	25,000	\$	(11,412)	\$	138
Carpentry Contract	\$ 57,862	\$	50,603	\$	70,000	\$	17,080	\$ 22,773	\$	47,227	\$	50,000	\$	(27,227)	\$	276
Electrical Materials	\$ 20,798	\$	14,694	\$	15,000	\$	9,713	\$ 12,951	\$	2,049	\$	13,500	\$	(549)	\$	75
Electrical Contract	\$ 15,381	\$	16,315	\$	10,500	\$	18,610	\$ 20,610	\$	(10,110)	\$	13,000	\$	7,610	\$	72
Plumbing Materials	\$ 20,752	\$	19,564	\$	18,500	\$	12,427	\$ 16,569	\$	1,931	\$	18,500	\$	(1,931)	\$	102
Plumbing Contract	\$ 78,164	\$	75,540	\$	76,000	\$	35,618	\$ 47,491	\$	28,509	\$	70,000	\$	(22,509)	\$	387
Appliance Materials	\$ 46,884	\$	33,525	\$	15,000	\$	26,788	\$ 35,717	\$	(20,717)	\$	15,000	\$	20,717	\$	83
Windows/Glass	\$ 3,325	\$	3,278	\$	5,000	\$	1,245	\$ 1,660	\$	3,340	\$	5,000	\$	(3,340)	\$	28
Elevator Service & Maintenance	\$ 10,568	\$	16,303	\$	14,500	\$	21,997	29,329	\$	(14,829)	\$	15,360	\$	13,969		85
COVID-19 Expense	\$ 5,274	\$	1,138	\$	4	\$	2,175	\$ 2,900	\$	(2,900)	\$	-	\$	2,900	\$	-
Heating/Cooling Repairs	\$ 49,060	\$	62,446	\$	30,000	\$	48,711	\$ 57,948	\$	(27,948)	\$	50,000	\$	7,948	\$	276
Fire & Safety Systems	\$ 19,737	\$	31,325	\$	23,000	\$	14,401	\$ 19,201	\$	3,799	\$	23,000	\$	(3,799)	\$	127
Locks/Keys/Access Systems	\$ 3,947	\$	3,142	\$		\$	784	\$ 1,045	\$	(1,045)	\$	-	\$	1,045	\$	-
Exterminating	\$ 22,087	\$	22,690	\$	20,000	\$	21,606	\$ 28,808	\$	(8,808)	\$	18,720	\$	10,088	\$	103
Garbage & Trash Removal	\$ 3,358	\$	6,455	\$	4,200	\$	270	\$ 360	\$	3,840	\$	1,500	\$	(1,140)	\$	8
Snow Removal	\$ 18,701	\$	30,222	\$	40,000	\$	32,409	\$ 38,409	\$	1,591	\$	40,000	\$	(1,591)	\$	221
Maintenance Equipment	\$ 1,048	\$	861	\$	1,500	\$	693	\$ 924	\$	576	\$	1,500	\$	(576)	\$	8
Uniforms	\$ 3,197	\$	2,037	\$	2,000	\$	1,477	\$ 1,969	\$	31	\$	2,100	\$	(131)	\$	12
Misc. Maintenance	\$ 1,761	\$	5,324	\$	1,400	\$	1,151	\$ 1,535	\$	(135)	\$	1,500	\$	35	\$	8
<b>Total Maintenance Expenses</b>	\$ 877,457	\$	873,562	\$	819,121	\$	583,679	\$ 762,232	\$	56,890	\$	877,223	\$	(114,992)	\$	4,847
Utilities Expenses			1													
Electricity	\$ 204,498	\$	224,070	\$	222,993	\$	176,385	\$ 223,678	\$	(685)	\$	234,862	\$	(11,184)	\$	1,298
Gas	\$ 143,529	\$	151,912	\$	156,315	\$	117,877	\$ 167,726	\$	(11,411)	\$	176,112	\$	(8,386)	\$	973
Water & Sewer	\$ 293,987	\$	292,115	\$	310,380	\$	221,555	\$ 296,164	\$	14,216	\$	310,972	\$	(14,808)	\$	1,718
<b>Total Utilities Expenses</b>	\$ 642,015	\$	668,097	\$	689,688	\$	515,817	\$ 687,568	\$	2,120	\$	721,947	\$	(34,378)	\$	3,989
Security Expense																
Security Contract	\$ 85,118	\$	64,135	\$	85,000	\$	29,500	\$ 39,333	\$	45,667	\$	55,990	\$	(16,657)	\$	309
Total Security Expenses	\$ 85,118	_	64,135	_	85,000		29,500	39,333	_	45,667	_	55,990	_	(16,657)		309

### Sample Property Budget

	A		В		C		D	E		F			G	Н		ī	
	PY Actuals		PY Actuals		2022	Ye	ar to date Actuals		2022		Variance		Proposed	Variance	Cos	t Per Unit	
	Dec 2020		Dec 2021		Budget		September 2022		Annualized		C & E		Budget	E & G		181	
Taxes & Insurance Expense																	
Real Estate Taxes	\$ 601,866		642,978		666,977		483,376		644,501		22,475		660,614	(16,113)		3,650	
Admin Payroll Taxes	\$ 21,025		21,098		18,056		11,937		15,916		2,140		21,713	(5,797)		120	
Maint Payroll Taxes	\$ 17,258		20,067		18,340		12,977		17,303		1,037		20,645	(3,342)		114	
Corporate Taxes-State	\$ 520	\$	520		520		520	\$	520			\$	520	-	\$	3	
Excise/Personal Property Tax	\$ -	\$	87		150		87	\$		\$	63		125	()	\$	1	
Misc Tax, License & Permits	\$ 149	\$	12,327	\$	175	\$	3,045	\$	3,045	\$	(2,870)	\$	3,200	\$ (155)	\$	18	
Property & Liability Ins	\$ 111,446	\$	128,636	\$	134,287	\$	105,816	\$	141,088	\$	(6,801)	\$	149,553	\$ (8,465)	\$	826	
Motor Vehicle Insurance	\$ 2,907	\$	2,932	\$	3,000	\$	2,442	\$	3,256	\$	(256)	\$	3,600	\$ (344)	\$	20	
Worker's Comp	\$ 9,386	\$	9,021	\$	8,543	\$	6,603	\$	8,804	\$	(261)	\$	10,188	\$ (1,384)	\$	56	
Total Tax & Insurance Expenses	\$ 764,557	\$	837,666	\$	850,047	\$	626,803	\$	834,520	\$	15,527	\$	870,158	\$ (35,638)	\$	4,808	
Total Operating Expenses	\$ 3,365,868	\$	3,276,334	\$	3,283,666	\$	2,401,262	\$	3,184,272	\$	99,395	\$	3,536,225	\$ (351,954)	\$	19,537	
					4												
Net Operating Income	\$ 3,866,077	\$	4,130,535	\$	4,264,037	\$	3,269,970	\$	4,491,372	\$	227,335	\$	4,338,911	\$ (152,461)	\$	23,972	
Non Operating Income & Expenses Non Operating Income			•	7		7											
Interest Income-Repl Res	\$ 27,981	_	3,761	_	5,000	\$	15,108		20,144	_	15,144		15,000	(5,144)	_	83	
Total Non Operating Income	\$ 27,981	\$	3,761	\$	5,000	\$	15,108	\$	20,144	\$	15,144	\$	15,000	\$ (5,144)	\$	83	
Financial Expenses																	
Mortgage Interest #2	\$ 1,815,596		1,791,723		1,769,087		1,329,175		1,772,233		(3,147)		1,743,541	-,	\$	9,633	
Mortgage Ins Premium	\$ 128,216	\$	126,530	\$	124,783	\$	93,812	\$	125,083	\$	(299)	\$	123,284	\$ 1,799	\$	681	
Interest Expense - Financing Fees	\$ 34,104		33,654		33,187		24,890		33,187		0	_	- /	\$	\$	181	
<b>Total Financial Expenses</b>	\$ 1,977,916	\$	1,951,907	\$	1,927,057	\$	1,447,877	\$	1,930,503	\$	(3,446)	\$	1,899,529	\$ 30,974	\$	10,495	
Depreciation																	
Depreciation	\$ 1,501,764	\$	1,285,101	\$	1,398,062	\$	1,048,546	\$	1,398,061	\$	1	\$	1,414,403	\$ (16,341)	\$	7,814	
Total Depreciation	\$ 1,501,764	\$	1,285,101	\$	1,398,062	\$	1,048,546	\$	1,398,061	\$	1	\$	1,414,403	\$ (16,341)	\$	7,814	

#### Sample Property Budget

	A	В		C		D		E		F	G	H		<u> </u>
	PY Actuals	PY Actuals		2022	Υe	ear to date Actuals		2022		Variance	Proposed	Variance	Cos	t Per Unit
	Dec 2020	Dec 2021		Budget		September 2022		Annualized		C & E	Budget	E & G		181
•							•	_	•					
Total Non Operating Expenses	\$ 3,451,699	\$ 3,233,247	\$	3,320,119	\$	2,481,315	\$	3,308,420	\$	11,699	\$ 3,298,931	\$ 9,489	\$	18,226
							1							
Net Income	\$ 414,378	\$ 897,288	\$	943,918	\$	788,655	\$	1,182,952	\$	239,034	\$ 1,039,980	\$ (142,972)	\$	5,746
Cash Flow Adjustments									-					
Add:														
Depreciation & Amortization	\$ 1,501,764	\$ 1,285,101	\$	1,398,062	\$	1,048,546	\$	1,398,061	\$	(1)	\$ 1,414,403	\$ 16,341	\$	7,814
Replacement Reserve Releases	\$ -	\$ -	\$	868,475	\$	229,629	\$	269,629	\$	(598,846)	\$ 422,710	\$ 153,081	\$	2,335
Accrued Interest & Asset/Incent. mgt fees	\$ 34,104	\$ 33,654	\$	33,187	\$	24,890	\$	33,187	\$	(0)	\$ 32,704	\$ (483)	\$	181
Less:						. 7	7				\$ -	\$ -		
Replacement Reserve Deposits	\$ 433,284	\$ 312,205	\$	(152,784)	\$	(108,790)	\$	(145,053)	\$	7,731	\$ (158,552)	\$ (13,498)	\$	(876)
Capital Improvements	\$ (513,799)	\$ (334,536)	\$	(768,475)	\$	(174,427)	\$	204,127	\$	972,602	\$ (422,710)	\$ (626,837)	\$	(2,335)
Less non operating income	\$ (27,981)	\$ (3,761)	\$	(5,000)	\$	(15,108)	\$	(20,144)	\$	(15,144)	\$ (20,144)	\$ -	\$	(111)
Loan Principal Retired	\$ (661,540)	\$ (685,342)	\$	(710,001)	\$	(530,140)	\$	(706,853)	\$	3,147	\$ (735,547)	\$ (28,693)	\$	(4,064)
Net Cash Flow From Operations	\$ 1,180,210	\$ 1,504,609	\$	1,607,382	\$	1,263,255	\$	2,215,905	\$	608,523	\$ 1,572,844	\$ (643,061)	\$	8,690
					1									
Cash Flow Adjustments			_											
Plus/(Minus):				- T										
Decr/(Incr) in Savings & Operating Escrows	\$ (174,227)	\$ (266,298)	\$	- 1	\$	260,425	\$	260,425	\$	260,425		\$ (260,425)	\$	-
Decr/(Incr) in Net A/R Balances	\$ 18,463	\$ (19,840)	\$	1	\$	29,246	\$	29,246	\$	29,246		\$ (29,246)	\$	-
Decr/(Incr) in Other Assets	\$ (18,788)	\$ (13,684)	\$		\$	74,981	\$	74,981	\$	74,981		\$ (74,981)	\$	-
Incr/(Decr) in A/P & Accrued Expenses	\$ 5,433	\$ 99,523			\$	(127,028)	\$	(127,028)	\$	(127,028)		\$ 127,028	\$	-
Incr/(Decr) in Other Liabilities	\$ 732	\$ 865	lin.		\$	(205)	\$	(205)	\$	(205)		\$ 205	\$	-
Non operating income and expense	\$ 27,981	\$ 3,761	\$	5,000	\$	15,108	\$	15,108	\$	10,108		\$ (15,108)	\$	-
Replacement Reserve Interest	\$ -	\$ -	\$	(5,000)	\$	(15,108)	\$	(15,108)	\$	(10,108)		\$ 15,108	\$	-
Prior Year Distribution	\$ (1,304,358)	\$ (1,319,621)		-	\$	(1,514,883)	\$	(1,514,883)	\$	(1,514,883)		\$ 1,514,883	\$	-
Net Cash Flow	\$ (264,553)	\$ (10,685)	\$	1,607,382	\$	(14,209)	\$	938,441	\$	(668,941)	\$ 1,572,844	\$ 634,403	\$	8,690

#### **EXHIBIT L**

#### **DESIGN REVIEW PROCESS**

The design of the Improvements was approved by Landlord pursuant to the design review process established under the Development Agreement prior to the execution of the Lease.

The following Design Review Process shall be followed with respect to any future Major Alterations (unless the nature of the Major Alterations are such that design plans would not reasonably be required), provided that Landlord shall consider in good faith reasonable modifications to the process set forth in this **Exhibit L** requested by Tenant if the nature and scope of the Major Alterations being performed warrants a less rigorous process that that articulated in this **Exhibit L**.

Tenant shall, promptly upon development thereof, submit to Landlord four (4) full size sets and two (2) half size sets of each of the schematic, design development and construction drawings and specifications for the Major Alterations (collectively, as used in this **Exhibit L**, the "Design Documents"). Design Documents for Major Alterations to the Improvements shall conform to any applicable Bunker Hill Housing Design Criteria established by Developer and Landlord prior to the execution of this Lease and used in the design of the initial Improvements, which may include requirements of Landlord regarding "green building standards", "well building standards", accessibility and sustainable practices, as well as other applicable requirements of the BHA and other applicable legal requirements set forth in such criteria.

Design submissions as required by this <u>Exhibit L</u> shall be made to Landlord at various stages of project design and construction depending on the nature of the design and construction process. Major Alterations shall be reviewed at the following stages, as set forth in Section A below: Schematic Design, Design Development, and Construction Documents. Tenant shall not commence construction (and/or demolition, except as required by applicable law or as necessary to maintain the Improvements in safe and secure condition) of any Major Alterations until final Design Documents for such Major Alterations have been approved by Landlord in accordance with this <u>Exhibit L</u>. Tenant's required submissions are set forth and described in Section A, below. Landlord's right to approve, and the process by which Landlord shall approve or disapprove such submissions are set forth in Section B, below. Landlord shall cooperate with Tenant's efforts to complete any applicable development review process with the BPDA as set forth in Section C, below. Landlord and Tenant will each designate a Project Manager with respect to the Major Alterations.

Submission and review of design materials will be a continuing process and it is expected that reasonable requests by Landlord for progress prints, technical information and other materials in addition to those required herein will be met by Tenant. Project Managers of Landlord and Tenant shall meet on a regular basis but no less frequently than monthly, unless the parties otherwise agree, to review the status of the development of design materials for the Major Alterations.

#### A. <u>SUBMISSION REQUIREMENTS</u>

#### 1. Schematic Design Stage

The intent of the review at this stage is to secure agreement on the basic design of a component as documented by dimensional plans and preliminary building elevations and sections, if applicable for the Major Alterations being performed. The following materials, if relevant to the stage of design or construction of a component, and only to the extent reasonably applicable to the Major Alterations (the parties recognizing that many of the following materials would be applicable only if in the event of a substantial rebuilding of the Major Alterations following a material casualty), must be submitted:

- (a) Prior to the Schematic Design submissions, schedule a Kick-off meeting with Landlord to introduce staff, discuss the general and design approach to the project, review and identify any gaps in the information concerning the existing conditions, work with Landlord, site and maintenance staff, and other agencies to continue to collect additional drawings and information.
- (b) Written description of the Major Alterations including design detail for Major Alterations as compared to BHA Design Criteria.
- (c) Site plan showing:
  - (i) Relationships of Major Alterations to existing Improvements and, if applicable, proposed adjacent buildings and open space. Open spaces mutually defined by buildings on adjacent parcels and across streets shall be included.
  - (ii) Location and dimensions of walks, driveways, parking, service areas, roads, and major landscape features.
  - (iii) Pedestrian and vehicular (including service) access and flow through the parcel and to adjacent areas, including building entries and curbside operations diagrams.
  - (iv) Survey information, such as existing elevations, benchmarks, utilities, etc. (Survey to be prepared by Tenant).
- (d) Preliminary grading plan.
- (e) Site and building sections plan.
- (f) Schematic building plans showing the ground floor, typical upper floor(s) and parking levels, if any, for the Major Alterations.

- (g) Preliminary building elevations with identification of proposed materials. Elevations shall show the Major Alterations in the context of the surrounding area as required by BPDA to illustrate character, scale, materials and colors.
- (h) Estimated development schedule for the Major Alterations which shall be developed and periodically updated in accordance herewith.
- (i) Description of the sustainable design and construction features of the Major Alterations organized in accordance with the LEED checklist of the U.S. Green Building Council, sufficient to obtain a LEED Gold Certification.

#### 2. <u>Design Development Stage</u>

The intent of the review at this stage is to secure agreement on the design prior to work on Construction Documents. The following materials (if not already received, reviewed and approved as herein provided) and only to the extent reasonably applicable to the Major Alterations must be submitted as soon as relevant to the stage of design or construction of the Major Alterations:

- (a) Updated written description of the Major Alterations. Provide a brief summary of those items still unresolved from the Schematic Design Stage.
- (b) Site plan showing:
  - (i) Relationship of proposed Major Alterations and open space to existing or proposed Improvements, adjacent buildings, open spaces, streets, and buildings and open spaces across streets.
  - (ii) Proposed site improvements and amenities including paving, landscaping, lighting and street furniture extending at least to the back of the curb of adjacent streets and driveways.
  - (iii) Building and site dimensions, including setbacks and other dimensions.
  - (iv) Proposed site grading, including typical existing and proposed grades at parcel lines.
- (c) Site sections.
- (d) Building plans, sections and elevations for all floors of all buildings developed from approved Schematic Design Stage drawings. All plans, sections and elevations shall reflect the impact of proposed structural and mechanical systems on the appearance of exterior facades, interior public spaces, and roofscape.
- (e) Include a cost estimate that tracks estimate changes over the design period to the issuance of the Pricing Set.

- (f) Include an outline specifications in a format acceptable to the parties which lists the technical specification sections and their respective scopes.
- (g) Provide a summary of the codes and/or regulations that will apply to the Major Alterations.
- (h) Note any significant design modifications made since the approval of the Schematic Design Stage.

#### 3. Construction Documents Stage

The intent of the review is to ensure that the architectural, MEPFP, site and landscape design of the Major Alterations are consistent with the Approved Development Plan as amended, the provisions of this Agreement, all Approvals, and any prior submissions as amended. The following materials (but only to the extent reasonably applicable to the Major Alterations) must be submitted as soon as relevant to the stage of design or construction of the Major Alterations:

- (a) A statement that the plans conform to the Approved Development Plan, this Agreement, all prior submissions and all Public Approvals or, if such is not the case, how the plans materially deviate. Provide a brief summary of the significant project changes, or items still unresolved, from the previous stage and their potential impact to the project's budget and schedule.
- (b) Site plan showing:
  - (i) Relationship of proposed Major Alterations, building and open space to existing or proposed adjacent buildings, open space, streets, private ways, and buildings and open spaces across streets.
  - (ii) Proposed site improvements and amenities, including paving, landscaping, lighting and streetscape improvements extending at least to the back of the curb of adjacent streets, driveways and private ways. Building and site dimensions, including setbacks and other dimensions.
  - (ix) Proposed site grading, including typical existing and proposed grades at parcel lines.
- (c) Building elevations at an appropriate scale showing the Major Alterations to illustrate character, scale, materials and colors.
- (d) Description of the palette of materials proposed for the exterior of the building finishes and site improvement finishes.
- (e) Parking plan, if applicable, showing the location of the parking spaces, ingress and egress to and from the parking spaces and relationship of the parking spaces to the building entrances and exits.

- (f) Include an <u>updated</u> cost estimate that tracks estimate changes over the design period.
- (g) Include specifications formatted as established in previous stage that lists the technical specification sections and their respective scopes.
- (h) Construction schedule.
- (i) Confirmation from the architect that the Major Alterations are designed to meet LEED gold, if applicable.

#### 4. <u>General Requirements - All Submissions</u>

All materials submitted by Tenant to Landlord pursuant to this **Exhibit L** shall comply with the following requirements:

- i. All material changes to the site plan and the parking plan shall be submitted to Landlord for review with an explanation of such changes. Materials relating to other aspects of the Improvements shall be accompanied by a statement setting forth the material changes made from previously-submitted Design Documents. Notice shall be given to Landlord prior to finalizing, or submitting for review by any public agency, any change to the Design Documents that affects the number of Units or the Landlord's Design Criteria.
- ii. Such materials shall have been prepared by an architect, engineer, landscape architect and/or surveyor, as appropriate, licensed to practice in the Commonwealth of Massachusetts.
- iii. Final Plans and Specifications shall conform to all applicable legal requirements relating to the design, construction, and use of the Improvements.
- iv. All plan sets shall be submitted electronically in PDF format except that any site plans and parking plans shall be also submitted on half (1/2) size paper copies (two (2) copies).

#### B. BHA APPROVAL OF DESIGN SUBMISSIONS

Design Documents will be reviewed by Landlord at various stages of completion. Upon receipt of the documents, the BHA will have fifteen (15) business days to complete its review and submit comments. Upon written approval of any Design Documents, the next stage of the Design Documents for the Major Alterations or component of a phase of the Major Alterations must be materially consistent with the submissions previously approved by Landlord. After any Design Document has been approved by Landlord, Tenant shall not materially modify, change, amend or vary from the approved Design Document (or any material component thereto) without first obtaining Landlord's written approval in each instance required by this **Exhibit L** which approval

rights shall be limited by the terms and provisions of this **Exhibit L**. Tenant agrees that any request for approval by Landlord of a Design Document or modification to a Design Document shall be accompanied by all documentation reasonably necessary for Landlord to properly assess the quality and impact of the Design Document or requested modification to the Design Document.

Landlord shall have the right to approve or disapprove the Design Documents and all other materials submitted to Landlord pursuant to the provisions of **Section A** of this **Exhibit L** for the Major Alterations, but only for the limited purposes of verifying that (i) the various components of the Major Alterations are consistent with the Approved Development Plan and Design Documents previously approved by Landlord, (ii) the design of any Major Alterations to the Improvements conform to the Landlord's Design Criteria, and (iii) the Major Alterations are designed to be constructed in accordance with applicable legal requirements (the "Limited Review Standards").

Landlord's right to review the Design Documents or changes or modifications thereto shall be in accordance with the Limited Review Standards, and Landlord's right to withhold approval of Design Documents for the Major Alterations shall be limited to the following circumstances, each being referred to herein as a "Material Change": (i) any material change to any Affordable Unit including without limitation, changes in the quality of the finishes, (ii) any changes to the access or parking for Income Qualified Residents, (iii) changes in or objections to the quality, or any other aspect, of the building comprising the Improvements being not at least equal to that called for by the Final Plans and Specifications, (iv) changes, other than in a de minimis manner, to the exterior appearance of the building comprising the Improvements, any public area finishes to the building comprising the Improvements or any landscaping, walkways and other exterior space visible to the general public, (v) changes adversely affecting the structural integrity of the building comprising the Improvements, (vi) reduction in the rentable square feet of the building comprising the Improvements by ten percent (10%) or more (provided, however, that Landlord shall have the right to disapprove any Design Document that changes the number or square footage or layouts of Affordable Units that are materially different from prototype units), (vii) changes adversely affecting the capacity, functionality or serviceability of the HVAC, plumbing, electrical and other mechanical or structural systems of the building comprising the Improvements, (viii) any changes that would, in the reasonable opinion of Landlord, unreasonably delay completion of the Major Alterations, (ix) any material changes to the "footprint" of the building comprising the Improvements or any component thereof, or (x) any reduction in the proportion of the Affordable Units compared to Market-Rate Units.

#### Miscellaneous

The review and approval rights of Landlord set forth in this **Exhibit L** are for the sole benefit of Landlord. It is understood and agreed that Tenant and Tenant's architects and engineers are fully and completely responsible for all aspects of the design, engineering and construction of the Major Alterations. No comments on or approval by Landlord of the Design Documents or Final Plans and Specifications or any other advice or opinions provided by Landlord concerning the design or construction of the Major Alterations shall render Landlord responsible for the design, engineering or construction of the Major Alterations or invest Landlord with any responsibility for defects or other conditions of the Major Alterations. Tenant shall bear the sole

responsibility and cost for the suitability, adequacy and compliance of the Design Documents, Final Plans and Specifications and the Major Alterations with all applicable legal requirements, whether or not the Design Documents or Final Plans and Specifications are approved by (or deemed approved by) Landlord.

#### **EXHIBIT M**

#### INTENTIONALLY DELETED

#### **EXHIBIT N**

# BHA MINORITY & WOMEN PARTICIPATION PROVISION [TO BE ATTACHED AT TIME OF LEASE EXECUTION]



#### SECTION 00800

#### MINORITY AND WOMEN'S PARTICIPATION PROVISION (MWPP)

for	
BHA JOB NO	

#### 1.01 GENERAL

- A. This section summarizes goals for the project (the "Project") for the utilization of minority and women workers and minority business enterprises ("MBEs") and women's business enterprises ("WBEs") under the Contract. This section also summarizes goals for BHA's purchasing of supplies and services not related to construction.
- B. Other duties and requirements of law that may not be specified in this section apply and are inherently a part of the Contract.

#### 1.02 UTILIZATION OF MINORITY AND WOMEN WORKERS AND MBEs AND WBEs

The Boston Housing Authority's Minority and Women's Participation Provision ("MWPP"), consisting of Sections 00800 through 00800C, sets out certain affirmative action goals for the Contract. The Contractor shall take affirmative action to meet the minority and women workforce goals and minority and women's business enterprise utilization goals for the Project set out herein.

- A. <u>Minority Workforce Goals</u>. The Contractor and each of its Subcontractors shall take affirmative action to employ and maintain Minority workers that perform a total of *FORTY* PERCENT (40%) of the total employee person hours under the Contract.
- B. <u>Women Workforce Goals</u>. The Contractor and each of its Subcontractors shall take affirmative action to employ and maintain Women workers that perform a total of *TWELVE* PERCENT (12 %) of the total employee person hours under the Contract.

#### C. Utilization of MBEs.

- 1. <u>Agency-wide Goals</u>. The BHA's goal for the utilization of MBEs is *TWENTY* PERCENT (20%). The Contractor for supplies or services unrelated to construction shall take affirmative action to expend twenty percent of the Contract price to MBEs for the procurement of goods, supplies, and/or services under the Contract if the nature of the Contract permits.
- 2. <u>Construction & Design Work Goals</u>. The **Project goal** for the utilization of MBEs for construction and construction design is *TWENTY-FIVE* PERCENT (25%). The Contractor shall take affirmative action to expend twenty-five percent of the Contract price to MBEs to procure construction work, supplies, and goods and/or services for the Project under the Contract. The Contractor can self-perform as an MBE or joint-venture with MBEs, subcontract to MBEs, or purchase materials/goods or other services from MBEs.



#### D. Utilization of WBEs.

- 1. <u>Agency-wide Goals</u>. The BHA's goal for the utilization of WBEs is *FIFTEEN* PERCENT (15%). The Contractor for supplies or services unrelated to construction shall take affirmative action to expend fifteen percent of the Contract price to WBEs for the procurement of goods, supplies, and/or services under the Contract if the nature of the Contract permits.
- 2. <u>Construction & Design Work Goals</u>. The **Project goal** for the utilization of WBEs for construction and construction design is *FIFTEEN* PERCENT (15%). The Contractor shall take affirmative action to expend fifteen percent of the Contract price to WBEs to procure construction work, supplies, and goods and/or services for the Project under the Contract. The Contractor can self-perform as a WBE or joint-venture with WBEs, subcontract to WBEs, or purchase materials/goods or other services from WBEs.
- E. <u>Required Certification</u>. Only MBEs and WBEs certified by the Massachusetts Supplier Diversity Office (SDO) or the City of Boston's Supplier Diversity Program (SDP) will be deemed MBEs and WBEs to demonstrate compliance with the MWPP. If an SDO or SDP-certified MBE or WBE is not performing work on the contract, such MBE or WBE participation will not contribute towards the utilization goals.

#### 1.03 REQUIRED SUBMITTALS FOR CONSTRUCTION CONTRACTS.

The Contractor shall, in accordance with Section 3 of Section 00800A of the MWPP, complete and submit to the BHA the Required Submittals within five (5) business days of bid opening. The Required Submittals are contained in the Boston Housing Authority Minority and Women Participation Provision Forms ("MWPP Forms") in Section 00800B of the MWPP.

#### 1.04 EXTENSION OF TIME FOR SUBMITTAL.

The Contractor may, in accordance with Section 4 of Section 00800A of the MWPP, request an extension of time for making the Required Submittals

#### 1.05 WAIVER OF MWPP UTILIZATION GOALS.

The Contractor may, in accordance with Sections 7 and 9 of Section 00800A of the MWPP, request a waiver of the MWPP goals set out in this section. Waiver requests should be directed to the Director of Civil Rights at the BHA, 9th Floor, 52 Chauncy Street, Boston, MA 02111. Waiver requests may be mailed, emailed, faxed, or hand-delivered.

#### 1.06 INCREASE IN CONTRACT PRICE.

If there is an increase in the Contract price attributable to the selection of one or more alternates and/or to the use of unit prices, the Contractor shall, in accordance with Section 12 of Section 00800A of the MWPP, conform the Required Submittals to reflect such increase. If there is an increase in the Contract price attributable to change orders or other adjustments, the Contractor may, in accordance with such Section 12, be required to revise its Required Submittals to reflect such increase.



#### 1.07 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS.

The Contractor agrees to comply with all applicable Federal, State or other governmental rules, regulations and requirements relating to equal opportunity and affirmative action in construction projects (see Specifications section in Section 00800C of the MWPP).



#### SECTION 00800A

#### MINORITY AND WOMEN'S PARTICIPATION PROVISION (MWPP)

#### TABLE OF CONTENTS

Page		
Section 1:	Definitions	2
Section 2:	Utilization of Minority and Women's Business Enterprises	3
Section 3:	Required Submittals	3
Section 4:	Extension of Time for Submittal	3
Section 5:	Penalty for Failure to Make Required Submittals	3
Section 6:	Review of Required Submittals	4
Section 7:	Waiver of MBE/WBE Requirements	4
Section 8:	Utilization of Minority Workers	4
Section 9:	Waiver of Minority Workforce Requirements	4
Section 10:	Joint Venture Certification	5
Section 11:	Compliance Monitoring after Contract Award	5
Section 12:	Increase in Contract Price	6
Section 13:	No Substitution for Designated MWPP Subcontractors	6
Section 14:	Enforcement	7
Section 15:	Penalties for Noncompliance	7
Section 16:	Access to Documents	8
Section 17:	Equal Opportunity and Affirmative Action Requirements	9
Section 18:	Required Clauses	



#### SECTION 00800A

#### MINORITY AND WOMEN'S PARTICIPATION PROVISION (MWPP)

#### Statement of Provision

The Boston Housing Authority ("BHA") has established the following provision to promote the utilization of minority and women business enterprise ("M/WBEs") on BHA projects. This Provision shall be incorporated in its entirety in all BHA contracts and apply to all contractors.

#### 1. Definitions.

For the purposes of this Provision, the following terms have the following meanings:

- 1.1 <u>Agency-wide Goals</u> means the Boston Housing Authority's aspirational goals for the total dollars spent on goods, supplies, and services by or from an MBE or WBE set out in Section 00800.
- 1.2 <u>BHA</u> means the Boston Housing Authority.
- 1.3 <u>Bidder</u> means any individual, partnership, joint venture, corporation, or other entity which submits a general bid to the BHA for performance of construction work:
- 1.4 <u>Contract</u> means the contract executed or to be executed between a General Contractor or proposer and the BHA for performance of construction work, professional services, or purchase of goods of which this Provision is a part.
- 1.5 <u>Contractor</u> means the individual, partnership, joint venture, corporation, or other entity that has executed the contract with the BHA.
- 1.6 <u>Minority Business Enterprise</u> ("MBE") means a business enterprise owned and controlled by 51% or more by one or more minority persons and certified as a MBE by the SDO pursuant to M.G.L. c. 7, § 58 or certified by the City of Boston's Supplier Diversity Program (SDP).
  - M.G.L. c. 7, § 58 defines an MBE as follows: "Minority business enterprise" or "MBE", for the purpose of receipt of services from the Supplier Diversity Office (SDO), means a business enterprise that is owned and controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, African Americans, Cape Verdeans, Western Hemisphere Hispanics, Asians, American Indians, Eskimos, and Aleuts. For purposes of section 61 and of section 40N of chapter 7, the term "minority owned business" shall have the same meaning as "minority business enterprise."
- 1.7 <u>Perform</u> means the doing of work by a contractor with its own organization.
- 1.8 <u>Services</u> means work supplied to the Contractor in connection with its performance of this Contract, including rental of equipment, trucking, security, and other similar services, but not including insurance, bonding, or other financial services.



- 1.9 <u>Subcontractor</u> means any individual, partnership, joint venture, corporation, or other entity under contract with the Contractor (or any of its Subcontractors) to perform work under this Contract.
- 1.10 <u>Supplier Diversity Office</u> ("SDO") means the Commonwealth's Supplier Diversity Office as designated by M.G.L. c. 7, § 61 and § 58. The office is the successor to the State Office of Minority and Women Business Assistance ("SOMWBA") pursuant to 425 CMR 2.00.
- 1.11 <u>Supplier Diversity Program</u> ("SDP") means Minority Business Enterprise and Women Business Enterprise certification with the City of Boston's Supplier Diversity Program.
- 1.12 <u>Supply</u> means the provision of any goods or services by a vendor to the Contractor. An MBE or a WBE (as defined below) that merely acts as an agent or a passive conduit in connection with the provision of goods or materials, or an MBE or a WBE that does not assume any financial risk or control over goods and materials provided shall not be considered a vendor or supplier under this definition.
- 1.13 <u>Utilization Goals</u> means the total dollar amount of the contract spent on MBE or WBE General Contractor, Subcontractor, and/or supplier of goods/services set out in Section 00800.
- 1.14 Women Business Enterprise ("WBE") means a business enterprise owned and controlled by 51% or more by one or more women and certified as a WBE by SDO pursuant to M.G.L. c. 7, § 58 or SDP Certified.
  - M.G.L. c. 7, § 58 defines a WBE as follows: "Women business enterprise" or "WBE", for the purpose of receipt of services from SDO means a business enterprise that is both owned and controlled, by one or more women who have invested in an ongoing business free of conversion rights. For purposes of section 61 and of section 40N of chapter 7, the term "women owned business" shall have the same meaning as "women business enterprise."
- 1.15 <u>Workforce Goals</u> means the total labor hours performed by a minority and/or women worker under the Contract set out in Section 00800.
- 2. <u>Utilization of MBEs and WBEs</u>. Contractor/Bidders shall take affirmative action to meet the MBE and WBE utilization goals for work and/or for the supply of goods and/or services set out in Section 00800. Contractor/Bidders shall self-perform as an M/WBE or joint-venture with M/WBEs, subcontract to M/WBEs, or purchase materials/goods or other services from M/WBEs for the performance of the Contract.
- 3. Required Submittals for Construction Contracts. Within five (5) business days of bid opening the apparent low general bidder shall complete and submit to the BHA signed copies of the following documents (collectively, the "Required Submittals") contained in Section 00800B:
  - 3.1 Attachment MWPP1, entitled "Contractor's Certification" ("Attachment MWPP1"), if not submitted with bid;
  - 3.2 Attachment MWPP2, entitled "MBE/WBE Utilization Form" ("Attachment MWPP2"); and



3.3 Attachment MWPP3, entitled "Letter of Intent", for each MBE and WBE listed in the general bidder's Attachment MPP2 as providing materials and/or construction services for the project.

In addition, the BHA may request any other general bidder to make the Required Submittals and such general bidder shall do so within five (5) business days of receipt of the BHA's request. The BHA shall make any such request in writing.

- 4. <u>Extension of Time for Submittal</u>. The apparent low general bidder may request an extension of time for making the Required Submittals, provided that:
  - 4.1 The request is made in writing; and
  - 4.2 Is made before the initial 5-day period for making the Required Submittals has expired; and
  - 4.3 Sets out with specificity the reasons for the request.

The BHA will respond within two (2) business days of its receipt of a request for an extension of time. If the BHA does not respond to the request for an extension of time in a timely manner, the general bidder will be deemed to have been granted an extension of five (5) business days.

- 5. <u>Penalty for Failure to Make Required Submittals</u>. Failure to submit the Required Submittals in a timely manner may cause the BHA to reject the general bidder's bid.
- 6. Review of Required Submittals. The BHA will review the Required Submittals for compliance with the BHA's MWPP. Only MBEs and WBEs certified by the SDO or SDP will be deemed MBEs or WBEs for the purpose of demonstrating compliance with the MWPP.

If after reviewing the Required Submittals the BHA determines that a general bidder has not met the affirmative action obligations established for the job in accordance with MWPP requirements, the BHA may in the exercise of its discretion afford that bidder an opportunity to amend its Required Submittals by the addition, deletion and/or substitution of MBEs and/or WBEs.

If the BHA has permitted a general bidder to amend its Required Submittals by the addition, deletion and/or substitution of MBEs and/or WBEs, that bidder shall promptly submit to the BHA its amended Attachment MWPP2, together with an Attachment MWPP3 for each new MBE and/or WBE.

- 7. <u>Waiver of MBE/WBE Requirements</u>. If, despite a best faith effort, the apparent low general bidder or Contractor is unable to meet the MBE/WBE goals established for the job, it may request a waiver, either in full or in part, of the MBE/WBE goals, provided that:
  - 7.1 The request is made in writing; and
  - 7.2 Is made before the initial 5-day period for making the Required Submittals has expired; and
  - 7.3 Is submitted with such of the Required Submittals as may be made; and
  - 7.4 Sets out with specificity the reasons for the request. (Provide documentation demonstrating all the efforts undertaken including but not limited to the types and modes of outreach events to MBEs and/or WBEs, list of MBEs



and/or WBEs directly contacted, frequency and timeline of communication efforts, and any other compelling best faith efforts.)

Upon receiving a request for a waiver of the MBE/WBE goals established for the job, the BHA will determine whether there is reasonable cause to waive the MBE/WBE goals for the job, either in full or in part. If in the exercise of its discretion the BHA determines that there is reasonable cause to grant the request for a waiver, it will notify the general bidder or Contractor in writing of its decision and its reasons therefor.

In no event will the BHA's failure to act on a request for a waiver of the MBE/WBE goals for a job be deemed a grant of such a waiver.

- 8. <u>Utilization of Minority and Women Workers</u>. The Contractor and each of its Subcontractors will take affirmative action to assure that the percentages set out in Section 00800 of all person hours contributed in all job categories of construction work will be contributed by minority and women employees.
- 9. <u>Waiver of Minority Workforce Requirement</u>. If, despite its best efforts, the Contractor or any of its Subcontractors is unable to comply with the Minority workers requirements established for the job, the Contractor may request a waiver, either in full or in part, of such requirements, provided that:
  - 9.1 The request is made in writing; and
  - 9.2 Is made in a timely manner; and
  - 9.3 Sets out with specificity the reasons for the request, including recruitment or outreach efforts undertaken.

Upon receiving a request for a waiver of the Minority workforce requirements established for the job, BHA will meet with the Contractor in order to determine whether there is reasonable cause to waive such requirements for the job, either in full or in part. If in the exercise of its discretion the BHA determines that there is reasonable cause to grant the request for a waiver, it will notify the Contractor in writing of its decision and its reasons therefor.

In no event will BHA's failure to act on a request for a waiver of the Minority workforce requirements for a job be deemed a grant of such a waiver.

10. <u>Joint Venture Certification</u>. Upon the BHA's certification that a venture between an MBE and a non-minority-owned business, or between a WBE and a non-women-owned business, is as to form and substance, a legitimate joint venture, such a joint venture may be utilized, as provided herein, toward fulfillment of the goals established by the MWPP for the job. If the Contractor or a Subcontractor is certified by the BHA as a legitimate joint venture, the creditable dollar amount of the work, goods or services performed or supplied by the MBE or WBE partner of the joint venture will be determined by the BHA in its sole discretion. In taking its determination as to the dollar amount to credit toward the MWBE goals, the BHA will consider, among other things, the amount of the initial capital contribution of the MBE or WBE partner to the joint venture and the amount of joint venture proceeds to be distributed and actually distributed to said MBE/WBE partner of the joint venture. The Contractor and any proposed parties to a joint venture shall provide to the BHA upon request such information or permit access by designees of the BHA, with or without prior notice, to any books, records, accounts, contracts or other sources of information necessary both to an initial determination or



certification and to on-going and final reviews of the business of the joint venture, in order to determine compliance with this Section 10.

#### 11. Compliance Monitoring after Contract Award

- 11.1 Prior to the execution of any Subcontract, whether prior to or after commencement of work under the Contract, the Contractor shall notify the BHA of the name, address, telephone number and MBE/WBE status of the Subcontractor with which it intends to contract for work and/or materials and/or supplies, the nature of the work and/or materials and/or supplies for which it intends to contract, the projected dates for commencement and completion of such work and/or provision of materials and/or supplies.
- 11.2 A Contractor performing a construction contract shall also submit a completed and signed Attachment MWPP1A, entitled "Subcontractor's Certification" ("Attachment MWPP1A") for such Subcontractor.
- 11.3 At the end of each week following commencement of work under the Contract and continuing through to the completion of the work the General Contractor for a construction contract and each of its Subcontractors shall complete and submit to the BHA Attachment MWPP5, entitled "Weekly Utilization Report" ("Attachment MWPP5") showing for the preceding week the hours worked in each trade by each employee and identifying the minority status and sex of each such employee.
- 11.4 The Contractor shall submit with each application for payment under the Contract a completed and signed Attachment MWPP7, entitled "MBE/WBE Utilization Progress Report" ("Attachment MWPP7").
- 12. <u>Increase in Contract Price</u>. If there is an increase in the Contract price attributable to the selection of one or more alternates and/or to the use of unit prices in awarding the Contract, the Contractor shall submit a revised Attachment MWPP2 to reflect the increased price and, where applicable, an Attachment MWPP3 for each new MBE and/or WBE, or for each MBE and/or WBE doing additional work and/or providing additional material and/or supplies to the Contractor for an increased price. If there is an increase in the Contract price after execution attributable to change orders or other adjustments, the BHA may require the Contractor to submit a revised Attachment MWPP2 and, where applicable, new or revised Attachment MWPP3s.
- 13. No Substitution for Designated MWPP Subcontractors. Except with the prior express written consent of the BHA the Contractor shall not substitute for any MBE or WBE named in its Attachment MWPP2 as performing construction work or providing materials and/or supplies its own workforce or capacity or the workforce or capacity of any other subcontractor. If the Contractor is unable, for reasons beyond its control, to complete the work of the Contract using the MBEs or WBEs named in its Attachment MWPP2, the Contractor may request that the BHA accept the addition, deletion and/or substitution of one or more MBEs or WBEs, or that the BHA waive the Contractor's MBE/WBE commitment under the MWPP to the extent necessary to bring the Contractor into compliance, or that the BHA accept an alternative commitment consistent with MWPP goals, provided that:
  - 13.1 The request is made in writing; and
  - 13.2 Is made promptly after the issue arises; and



#### 13.3 Sets out with specificity the reasons for the request.

Upon receiving such a request, the BHA may meet with the Contractor in order to determine whether there is reasonable cause to grant the request, either in full or in part, or it may make its determination based upon written submissions and/or telephone interviews. If in the exercise of its discretion the BHA determines that there is reasonable cause to grant the Contractor's request, it will notify the Contractor in writing of its decision and its reasons therefor.

In no event will the BHA's failure to act on such a request be deemed a grant of the request.

#### 14. Enforcement.

- 14.1 If at any time the BHA determines that the Contractor is not in compliance with its obligations and commitments under the MWPP, it shall notify the Contractor in writing of such finding and of any sanctions it intends to apply. Such written notice shall give the Contractor an opportunity to meet with representatives of the BHA to present information demonstrating that it is in compliance, or in mitigation of its failure to comply and shall appoint a time and place for such meeting, subject to the Contractor's availability. The BHA may require the attendance of any Subcontractor at any such meeting.
- 14.2 Following any meeting held with a Contractor pursuant to Section 14.1 the BHA shall make a finding as to whether the Contractor is in compliance with its obligations and commitments under the MWPP and shall notify such Contractor in writing of such finding, the information upon which such finding was based and the sanctions, if any, it intends to apply. Such finding shall be final and without recourse, unless it is made in bad faith and without reasonable cause.
- 15. Penalties for Noncompliance. If, during the term of the Contract the BHA determines that the Contractor is not in compliance with its obligations and commitments under the MWPP, the BHA may impose on the Contractor, or require the Contractor to impose on any Subcontractor, any one or more of the following penalties:
  - 15.1 The recovery from the Contractor of one percent (1%) of the Contract price or \$1,000.00, whichever is lesser, in the nature of liquidated damages for each week that the Contractor fails or refuses or has failed or refused to comply; or if a Subcontractor is in noncompliance, the recovery from the Contractor, to be assessed by the Contractor as a back charge against the Subcontractor, one percent (1%) of the subcontract price, or \$1,000.00, whichever is lesser, in the nature of liquidated damages for each week that the Subcontractor fails or refuses or has failed or refused to comply;
  - 15.2 The suspension of any payment or part thereof due under the Contract, including, where applicable, payment of amounts that should have been paid to an MBE or WBE in accordance with the Contractor's commitment, until such time as the Contractor, or any Subcontractor, where applicable, is able to demonstrate its compliance with the terms of the MWPP;
  - 15.3 Requiring the Contractor to subcontract with an MBE or WBE for any contract or specialty item, or to purchase any goods or services from an MBE or WBE in accordance with the MBE/WBE utilization goals for the Contract and/or the Contractor's commitment under the Contract to utilize MBEs and WBEs for the work of the Contract:



- 15.4 The termination or cancellation of the Contract, in whole or in part, unless the Contractor or any Subcontractor, where applicable, is able to demonstrate within a reasonable specified time its compliance with its obligations and commitments under the MWPP;
- 15.5 The retention in connection with final acceptance and final payment of up to five percent (5%) of the Contract price (as adjusted by change orders or other amendments), where the Contractor and/or any Subcontractor has refused to demonstrate compliance with the Contractor's commitment under the Contract to utilize MBEs and WBEs in accordance with the MWPP:
- 15.6 Denial to the Contractor of the right to participate in any future contracts awarded by the BHA for a period of up to three (3) years.
- 16. Access to Records and Documents. The Contractor and its Subcontractors shall provide to the BHA upon the BHA's request access during regular business hours to any records, documents and other information prepared and/or kept by the Contractor and/or its Subcontractors in the regular course of business relevant to the Contractor's and/or its Subcontractors' compliance with the BHA's MWPP and shall promptly provide to the BHA upon its request copies of any and all such records, documents and other information.
- 17. <u>Equal Opportunity and Affirmative Action Requirements</u>. In addition to satisfying the specific requirements of this MWPP, the Contractor agrees to comply with all other applicable Federal, State or other governmental rules, regulations and requirements relating to equal opportunity and affirmative action in construction projects (see Section 00800C).

#### SECTION 00800B

## MINORITY AND WOMEN'S PARTICIPATION PROVISION FORMS FOR CONSTRUCTION CONTRACTS

Attachments shall be submitted to BHA's Contract Compliance Officer

٦	ΓΔ	R	ΙF	OF	CO	N	ΓFN	NTS
	_		ᆫ	VI.	CU			4 I O

TABLE OF CONTENTS		
ATTACHMENT MWPP1	Contractor's Certification	Submitted by apparent low general bidder within five (5) business days of bid opening.
ATTACHMENT MWPP1A	Subcontractor's Certification	Secured by general contractor from subcontractor. Submitted before the execution of subcontract.
ATTACHMENT MWPP2	MBE/WBE Utilization Form	Submitted by apparent low general bidder within five (5) business days of bid opening.
ATTACHMENT MWPP3	Letter of Intent	Submitted by apparent low general bidder within five (5) business days of bid opening.
ATTACHMENT MWPP4	Quarterly Projected Workforce	Submitted by the general contractor at a preconstruction conference. Thereafter, submit before each quarter of work.
ATTACHMENT MWPP5	Weekly Utilization Report	Submitted by the general contractor and subcontractor five (5) days following the first week of the work. Thereafter, submitted weekly.
ATTACHMENT MWPP6	Monthly Utilization Report	Submitted by the general contractor and subcontractor by the fifth (5 <sup>th</sup> ) day of each month of the contract's life.
ATTACHMENT MWPP7	MBE/WBE Utilization Progress Report	Submitted with each application for payment under the contract.

	TACHMENT MWPP1  Tactor's Certification Bidder:
-	Name & Number of Project:urpose of Attachment MWPP1 is to demonstrate the bidder's intent to comply with on 00800 of the MWPP and perform the requirements set out in the Specifications.
	ler may not be eligible for award of a contract unless such bidder has submitted the ing certification, which is deemed a part of the resulting contract.
	certifies that:
1.	The bidder will use the following construction trades for the work under this contract:
2.	The Bidder will take affirmative action to meet the minority and women employment goals contained in Section 00800 of the MWPP; and
3.	The Bidder will obtain the subcontractor certification form (Attachment MWPP1A) from each of its subcontractors and submit it to the Boston Housing Authority prior to the award of any subcontract under this contract as required by the contract documents.
RESP WITH	E: SUBMISSION OF THIS COMPLETED FORM IS A MATTER OF BID PONSIVENESS. FAILURE TO COMPLETE AND SUBMIT THIS FORM IN ACCORDANCE THE MINORITY AND WOMEN'S PARTICIPATION PROVISION MAY CAUSE THE BID E REJECTED.
Signe	d under the pains and penalties of perjury,
(Signa	ture of authorized representative of contractor)
(Title)	
(Date)	

	ACHMENT MWPP1A	Diddow
Subc	ontractor's Certification	Bidder: <b>-</b>
-	•	demonstrate the <b>subcontractor's</b> intent to comply rm the requirements set out in the Specifications.
certific	· · · · · · · · · · · · · · · · · · ·	actor must complete and submit the following e the execution of any subcontract, which will be
		certifies that:
4.	The subcontractor will use the follow contract:	ring construction trades for the work under this
5.	in Section 00800 of the MWPP; and	ne minority and women employment goals contained
6.		ocontractor's certification (MWPP1A) before subcontract, as required by the General Contractor
RESF WITH		ED FORM IS A MATTER OF BID LETE AND SUBMIT THIS FORM IN ACCORDANCE TICIPATION PROVISION MAY CAUSE THE BID TO
Signe	d under the pains and penalties of per	jury,
(Signa	ture of authorized representative of contra	actor)
(Title)		
(Date)		

#### **ATTACHMENT MWPP2**

MBE/MWE Utilization Form

The purpose of Attachment MWPP2 is to demonstrate how the bidder will comply with Section 00800 of the MWPP and perform the requirements set out in the Specifications.

Name and Number of Project:	
Total Dollar Amount of Base Bid:	
Name of General Bidder:	
Address:	
Phone(s):	

The bidder certifies that it will meet the Minority and Women Business Enterprise (M/WBE) goals contained in Section 00800 of the MWPP: 1) because it is an MBE and/or WBE as defined in the MWPP and/or 2) by contracting with the MBEs and WBEs listed below to provide the work, goods, or services indicated below at the prices indicated below.

**NOTE:** ONLY WORK ACTUALLY PERFORMED BY A GENERAL CONTRACTOR THAT IS AN MBE OR A WBE MAY BE CREDITED TOWARD THE CONTRACTOR'S MWPP GOALS. THE CONTRACTOR'S STATUS AS AN MBE OR WBE MAY NOT BY ITSELF BE SUFFICIENT TO MEET MWPP GOALS.

MBE supplying GOODS or NON-CONSTRUCTION SERVICES	Type of GOODS:
Name:	Price of GOODS: \$
Address:	Type of SERVICES: Price of SERVICES: \$
Phone:	Total: \$
MBE providing CONSTRUCTION SERVICES	
Name:	Type of CONSTRUCTION: *Price of CONSTRUCTION: \$
Address:	**Grand Total of : \$
Phone:	GOODS, NON- CONSTRUCTION SERVICES, & CONSTRUCTION WORK

<sup>\*</sup> The total of construction work must be sufficient to meet the MBE subcontracting goals set forth in Section 00800 of the MWPP.

<sup>\*\*</sup> The Grand Total must be sufficient to meet the overall MBE percentage requirement set forth in Section 00800 of the MWPP.

WBE supplying GOODS or NON-CONSTRUCTION SERVICES	
Name:	Type of GOODS: Price of GOODS: \$
Address:	Type of SERVICES: Price of SERVICES: \$
Phone:	Total: \$
WBE providing CONSTRUCTION SERVICES	
Name:	Type of CONSTRUCTION: *Price of CONSTRUCTION: \$
Address:	**Grand Total of : \$
Phone:	GOODS, NON- CONSTRUCTION SERVICES, & CONSTRUCTION WORK
	& CONSTRUCTION WORK
* The total of construction work must be sufficient to meet the MBE the MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe MWPP.  ** The Grand Total must be sufficient to meet the overall MBE perceithe	entage requirement set forth in Section 00800 of S A MATTER OF BID SUBMIT THIS FORM IN ACCORDANCE ECTED. FURTHERMORE, FAILURE TO TO MEET BOTH PERCENTAGE
(Signature of authorized representative of contractor)	
(Title)	
(Date)	
(Federal Identification Number)	

Projec	et Number:		Project Name:							
-	of General Contractor:		•	Name of M/WBE:						
<ol> <li>2.</li> <li>3.</li> </ol>	The above-named Mind work or supply goods at above-named General Cowned Business Enterplif the General Contractor participate in the project agreement and a copy of members of the joint vertice. The minority and/or wor Business Enterprise is a Boston Supplier Diversi	nd/or services in Contractor agrees or ise in connection and the Minority as a joint venture of any financial agriculture.  The men status of the cortified by the Contractor and the Contractor and the cortified by the Contractor and the cortified by the Contractor and the contra	connection with the sto utilize the aboven with the aboven y and/or Women Ore, please attach a greements between above-named Minommonwealth of Market and the commonwealth of Market at the commonwealth of Market above the commonwealth above the co	e above-named re-named Minor named project. Iwned Business copy of the join n corporate and	project. The ity and/or W Enterprise t venture personal men Owned	e /omen will				
	□ MBE	□ <b>W</b>	/BE	<b>ВОТ</b>	Н					
	zed Description of work s, or to be provided	Contractors Labor	Contractors Materials	Suppliers Unit Price	Suppliers Quantity	Amount for Item				
					Total Price:	\$				
Signati M/WB	ure of authorized represen E	tative of	Signature of a General Conti	authorized repre	esentative of	<del></del>				
Print Name and Title			Print Name a	nd Title						
Date			Date							
Federa	l Identification Number	_	Federal Ident	ification Numbe	r					

#### **ATTACHMENT MWPP4**

Quarterly Projected Work Force Table

Name and Number of Project:
Name of General Contractor:
Contractor filling out this form:
Address:
Phone(s):
Trades Utilized:
<b>Estimate Total Hours to Complete Work</b>
Total Contract Dollar Value:
Quarter Begin:
Quarter End:

**NOTE:** Please identify the hours <u>per trade</u>, <u>per week</u>, for <u>each trade individually</u>.

WEEK ENDING	PROJECTED TOTAL HOURS BY ALL PERSONNEL	PROJECTED TOTAL OF ALL MINORITY HOURS	PROJECTED TOTAL OF ALL FEMALE HOURS	TRADE				

THIS FORM MUST BE FILLED OUT BY THE GENERAL CONTRACTOR AND ALL SUBCONTRACTORS AND PRESENTED AT THE PRE-CONSTRUCTION CONFERENCE.

Week Of: Perc												oort #: cent Completed: ject Date of Completion:									
Name of co	ontractor	·() or Sub	contract	or ( )				Eth	nici	ty C	odes	s: 1. Cau	ıcasian, 2	2. Black, 3.	Hispani	c, 4. Asiar	n, 5. Oth	er			
Address:												Contractor's Telephone No.:									
Project Name and Location:												Project or Contract No.:									
Name, Address, SSN	Sex	Sex Work Ethni O Classifi city ST cation code				М	1 T	W	T	F	S	Total hours		Gross amount earned	FICA	Withho Iding tax	State W/H	Union	Total deduc tions	Net wage paid	
NAME & 7																					

**NOTE:** THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 10 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE. This form must be completed in its entirety by all contractors and subcontractors and submitted to the BHA's Contract Compliance Office each week during the life of this contract.

#### **ATTACHMENT MWPP5**

Weekly Utilization Report (continued)

	do hereby state:
1.	That I pay or supervise the payment of the person employed byon the
	project, that during the payroll period commencing on the,
	20 and ending the day of all persons
	employed on said project have been paid the full weekly wages earned, the no rebates have been or will be made either directly or indirectly to or on behalf of said from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amende (48 Stat. 948, 63 Stat. 108, 72 Stat. 967, 76 Stat. 357, 40 U.S.C. 276c), a described below:
2.	That any payrolls otherwise under this contract required to be submitted find above period are correct and complete, that the wage rates for labore or mechanics contained therein are not less than the applicable wage rate contained in any wage determination incorporated into the contract, that to classifications set forth therein for each laborer or mechanic conform with
<ol> <li>3.</li> <li>4.</li> </ol>	the work performed.  That any apprentices employed in the above period are duly registered in bona fide Apprenticeship program registered with a State Apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.  That:
4.	a. WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLAIFUNDS, OR PROGRAMS
	FUNDS, OR PROGRAMS  In addition to the basic hourly wage rates paid to each laborer mech listed in the above referenced payroll, payments or fringe benefit

listed in the contract have been or will be made to appropriate programs for the benefit of such employees expect as noted in Section 4 C below.

#### b. WHERE FRINGE BENEFITS ARE PAID IN CASH

In addition to the basic hourly wage rates paid to each laborer mechanic listed in the above referenced payroll, payments or fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees expect as noted in Section C below.

#### c. EXCEPTIONS

Exceptions (Craft)	Explanation
Remarks:	
NAME & TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECURION. SEE SECTION 1001 OF TITLE 10 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

#### **ATTACHMENT MWPP5**

Weekly Utilization Report (continued)

GENERAL CONTRACTOR:

CONTRACT NUMBER:

WEEK ENDING:

SUBCONTRACTOR:

LOCATION:

TRADES	No. of employ	employees		Total Weekly Workforce Hours		Female % of total	Weekly no. Of minority	Total weekly minority	Minority % of total	Total hours to	Total minority hours to	Minority % of total
	М	F	М	F	weekly hours	hours to date	workers	workforce hours	weekly hours	date	date	hours to date

PREPARED BY:

TITLE: DATE:

#### Instructions for Filling Monthly Employment Utilization Report (Attachment MWPP6)

The Monthly Utilization Report is to be completed by each subject contractor (both prime and sub) and signed by a responsible official of the company. The reports are to be filed by the 5th day of each month during the term of the contract, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. The prime contractor shall submit a report for its aggregate work force and collect and submit reports for each subcontractor's aggregate work force to the Federal compliance agency that has Executive Order 11246 responsibility. (Additional copies of this form may be obtained from the U.S. Department of Labor, Employment Standards Administration, OFCCP's regional office for your area.)

Compliance Agency	U.S. Government agency assigned responsibility for equal Employment opportunity. (Secure this information from the contracting officer.)								
Federal Funding Agency	U.S. Government agency funding project (in whole or in part If more than one agency, list all.								
Contractor	Any contractor who has a construction contract with the U.S. Government or a contract funded in whole or in part with Federal funds.								
Minority	Includes Blacks, Hispanics, American Indians, Alaskan Natives, and Asian and Pacific Islands-both men and women								
Covered Area	Geographic area identified in Notice required under 41 CFR 60-4.2.								
2. Employer's Identification Number	Federal Social Security number used on Employer's Quarterly Federal Tax Return (U.S. Treasury Department Form 941).								
3. Current Goals (Minority & Female)	See Contact Notification								
Reporting Period	Monthly, or as directed by the compliance agency, beginning with the effective date of the contract.								
5. Construction Trade	Only those construction crafts which contractor employs in the covered area.								
6. Work Hours of Employment (a-e)	<ul> <li>a. The total number of male hours and the total number of female hours worked by employees in each classification.</li> <li>b e. The total number of male hours and the total number of female hours worked by each specified group of minority employees in each classification</li> </ul>								
Classification	The level of accomplishment or status of the worker in the trade (Journey Worker, Apprentice, Trainee).								
7. Minority Percentage	The percentage of total minority work hours of all work-hours (the sum of columns b, c, and e divided by column a; just one figure for each construction trade).								
8. Female Percentage	For each trade the number reported in a. F divided by the sum of the number reported in a. M and F.								
9. Total Number of Employees	Total number of male and total number female employees working in each classification in each trade in the contractor's aggregate work force during reporting period.								
10. Total Number of Minority Employees	Total number of male minority employees and total number of female minority employees working in each classification in each trade in the contractor's aggregate work force during reporting period.								

ATTACHMENT MWPP6 Monthly Employment Utilization Report Name and Address of Contractor Reporting					Number			Covered Area (MA or EA)  This report is required by <b>Executive Order 11246, Sec. 203.</b> This form reform CC-257 by the U.S. Department of Labor Office of Federal Contract Programs. Failure to report can result in contracts being canceled, termina suspended, and/or declared ineligible for further Government contracts or assisted construction contracts.											
					orksite Ad	dress/Locati	on			Employer'	s ID#	Current Goal Minority:		Reporting Period From:					
												Female:	То:						
1.				otal Fed	eral an	d Non-F	'ederal	Construc	ction W	ork Ho	urs	Percentages			Employees				
<b>Construction Trade</b>	Classifications	Total Work Hours of All Employees		b. Black (Not of Hispanic Origin)		c. Hispanic		<b>d.</b> Asian or Pacific Islander		e. American Indian or Alaskan Native		2. Minority Percentage	3. Female Percentage	4. Total Number of Employees		5. Total Number of Minority Employees			
		M	F	M	F	M	F	M	F	M	F			M	F	M	F		
	Journey Worker					1													
	Apprentice																		
	Trainee																		
	Journey Worker																		
	Apprentice					1													
	Trainee																		
	Journey Worker																		
	Apprentice																		
	Trainee Journey Worker																		
	Apprentice																		
	Trainee																		
	Journey Worker																		
	Apprentice																		
	Trainee																		
Total Journey Workers																			
Total Apprentices																			
<b>Total Trainees</b>																			
Grand Total																			
Company Official's Signature and Title								Tel	ephone N	umber		Date S	igned		Page	of			

### MBE/WBE Utilization Progress Report **Project Number: Project Location:** Date: **Periodical Payment No.:** a) Contractor: b) Minority and/or Women Business Enterprise: One copy of this report is to be submitted for each Minority and/or Women Business Enterprise at the time of submitting a request for payment. Copies of the report must be sent to the Minority Business Enterprise named above and the Contract Compliance Department. 1. The total price to be paid to the above-name ☐ Minority and/or ☐ Women Business Enterprise: \$ 2. The amount remitted to the Minority and/or Women Business Enterprise as of the above date for work performed under this project: \$ 3. Balance due to Minority and/or Women Business Enterprises as of the above date for work performed under the above-named project: \$ 4. Comments or explanation of amounts indicated under items 1 and 2 above: 5. We hereby certify that the information supplied herein (including pages attached) is correct and complete. Contractor: Minority Business Enterprise: Signed Signed Title Title

Date

ATTACHMENT MWPP7

Date



#### SECTION 00800C

## MINORITY AND WOMEN'S PARTICIPATION PROVISION EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS

Federally-Assisted Contracts over \$10,000 only

Page C-2 to C-3 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) Page C-4 to C-5 **Equal Opportunity Clause** Page C-6 to C-11 Standard Federal Equal **Employment** Opportunity Construction Contract Specifications Page C-12 to C-13 Instructions to Contractors Subject to Federal Bid Conditions



#### NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

#### TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

(Executive Order 11246)

- 1. The CONTRACTOR'S attention is called to the "Equal Opportunity Clause" and "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth in this part.
- 2. The goals<sup>1</sup> and timetables for minority and female participation, expressed in percentage terms for the CONTRACTOR'S aggregate workforce in each trade on all construction work in the covered area, are as follows:

## GOALS FOR FEMALE PARTICIPATION IN EACH TRADE (Nationwide)

<u>UNTIL FURTHER NOTICE</u>, the following goals and timetables for female participation shall be included in all Federal or Federally-assisted construction <u>contracts and subcontracts in excess of ten thousand (\$10,000) dollars</u>. The goals are applicable to the Contractor's aggregate onsite construction work on a Federal or Federally-assisted construction contract or subcontract.

The goal for female participation for each trade is **6.9%**.

## GOALS FOR MINORITY PARTICIPATION IN EACH TRADE (Boston, Massachusetts Area)

<u>UNTIL FURTHER NOTICE</u>, the following goals and timetables for minority participation shall be included in all Federal or Federally-assisted construction <u>contracts and subcontracts in excess of ten-thousand (\$10,000) dollars</u>. The goals are applicable to the contractor's aggregate onsite construction work force whether or not the part of that workforce is performing work on a Federal or Federally-assisted construction contract or subcontract.

GOALS AND TIMETABLES (EFFECTIVE UNTIL FURTHER NOTICE)

The goal for minority participation for each trade is 4.0%.

These goals are applicable to all the CONTRACTOR'S construction work (whether or not it is Federal or Federally-assisted) performed in the covered area. The covered area is Boston, MA.

<sup>&</sup>lt;sup>1</sup> According to 41 C.F.R. § 60-4 Appendix B-80, the Office of Federal Contract Compliance Programs (OFCCP) set nationwide goals for female participation at 6.9% and goals for Boston, MA, economic area for minority participation at 4.0%. On December 30, 1980, OFCCP extended the goals established in 41 C.F.R. 60-4 to "until further notice" and remain in effect. However, the BHA has established higher overall workforce goals that are set out in Section 00800 and that do not conflict with the goals specified herein. See U.S. DEP'T. OF LAB. FED. CONT. COMPLIANCE PROGRAMS, CONSTRUCTION CONTRACTORS TECHNICAL ASSISTANCE GUIDE, app. P (2019) <a href="https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf">https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf</a> (clarifying that "The percentage goal a contractor establishes for minority participation must be at least equal to the percentage established for that geographic area....Contractors may establish higher goals if they desire.").



The Contractor's Compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the geographical area where the contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract in each trade, and the CONTRACTOR shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

- The CONTRACTOR shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the prime contract. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- 4. As used in this Notice, and in the contract, the covered area is Arlington, Boston, Belmont, Brookline, Burlington, Cambridge, Canton, Reading, Revere, Somerville, Stoneham, Wakefield, Westwood, Winthrop, Winchester, Woburn, and the Islands of Boston Harbor, Massachusetts.



#### **EQUAL OPPORTUNITY CLAUSE**

During the performance of the contract, the contractor agrees as follows:

- 1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract for understanding, a notice to be provided advising the said labor union of workers' representatives of the contractors' commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and relevant orders of the Secretary of Labor.
- 6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any or the said rules, regulations, or orders, the contractor may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided however, that in the event a subcontractor becomes involved



in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.



#### STANDARD FEDERAL EQUAL EMPLOYMENT

#### OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

(EXECUTIVE ORDER 11246)

- 1. As used in these specification:
  - a. <u>Covered Area</u> means the geographical area described in the contract agreement.
  - b. <u>Director</u> means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority.
  - c. <u>Employer Identification Number</u> means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. Minority includes:
    - I. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).
    - II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or other Spanish Culture or origin regardless of race).
    - III. Asian and Pacific Islander (all persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands).
    - IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation of community identification).
- Whenever the Contractor or any Subcontractor at any Tier subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in this contract agreement.
- 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have union participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved plan is individually



required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals or timetables.

- 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7(a) through (p) of these specifications. The goals set forth in this part are expressed as percentages of the total hours of employment and training of minority and female utilization. The Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
- Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
- 6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources and to community organizations when the Contractor or its unions have employed opportunities available, and maintain a record of the organization's responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with



respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7(b) above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification



to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- I. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractors association and other business associations.
- p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations (7(b) through (p)). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the Contractor is a member or participant, may be asserted as fulfilling any one or more of its obligations under 7(a) through (p) of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and those in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of action taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.
- 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to



take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- 10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
- 11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12. The Contractor shall carry out such sanctions and penalties for violation of these Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these Specifications and Executive Order 11246, as amended.
- 13. The Contractor, in fulfilling its obligation under these Specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these Specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, of these Specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- 14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof, as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- 15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).



## INSTRUCTIONS TO CONTRACTORS SUBJECT TO FEDERAL BID CONDITIONS<sup>2</sup>

Within ten (10) working days of the award of a subcontract in excess of \$10,000, the contractor must submit a "Notice of Award of Construction Subcontract" to:

Assistant Regional Administrator
Office of Federal Contract Compliance Programs
U.S. Department of Labor
JFK Federal Building, Room 1612C
Boston, MA 02203 (617) 223-5272

In addition, all contractors and subcontractors subject to the Federal EEO Bid Conditions are required to file the Standard Form 257. The instructions for filing this Monthly Employment Utilization Report are as follows:

a. The report is to be completed by each subject contractor (both prime and subcontractors), signed by a responsible official of the company, and filed by the fifth day of each month during the term of the contract, beginning the effective date of the contract. This report includes the total work hours worked for each employee level in each designated trade for the entire reporting period. The contractor submits a report for its aggregate work force on all Federally-funded or assisted construction contracts and all non-Federal construction work within the particular Bid Condition area, and collects from subcontractors performing work on a Federally-assisted construction project their individual SF-257 reports of aggregate workforce in the Bid Condition area, and submits them with its own report to:

Assistant Regional Administrator
Office of Federal Contract Compliance Programs
U.S. Department of Labor
JFK Federal Building, Room 1612C
Boston, MA 02203

Subcontractors should not individually submit these reports directly to HUD.

b. Attach to the Standard Form 257 a one time listing of all Federally-funded or assisted contracts within the particular Bid Condition area by agency, contract and/or project number, location, dollar volume, percent completed, completion date, and a similar listing of all non-Federal work being performed in that area. Monthly reports thereafter should only include a listing of new contracts (both federal and non Federal) received

U.S. Department of Labor-Area Office Office of Contract Compliance 507 J.W. McCormack Post Office and Court House Building Boston, MA 02109 (617) 223-1481

<sup>&</sup>lt;sup>2</sup> Forms referred to in these instructions are available from:



and current contracts completed.

- c. If there is no work in a craft in the contractor's aggregate workforce for the reporting month, indicate this lack of work by placing a zero (0) in the appropriate column.
- d. Label the final report for a contractor or subcontractor FINAL REPORT-CONTRACT/SUBCONTRACT COMPLETED.
- e. Enter your employer identification number (Federal Social Security number used on the Employers Quarterly Tax Return, U.S. Treasury Department Form 941) in item 1 of the Standard Form 257.
- f. Minority is defined as including Blacks, Hispanics, Asians/Pacific Islanders and American Indians, Aleuts, Cape Verdeans, and Eskimos.
- g. The procedure for assigning OFCCP identification numbers to each contract awarded has been cancelled, and the project names and OFCCP number are no longer required to be reported on the SF-257.

Construction contractors and subcontractors performing work subject to the requirements of Executive Order 11246 in non-plan areas are also required to file SF-257 forms on a monthly basis. The procedure for filing the form is identical to that outlined above except that the geographic area for reporting is the Standard Metropolitan Statistical Area (SMSA) (or county, where no SMSA exists) in which the Federally-assisted construction contract is being performed.

## **EXHIBIT O**

# BHA RESIDENT EMPLOYMENT PROVISION [TO BE ATTACHED AT TIME OF LEASE EXECUTION]

## APPENDIX C-2

## RESIDENT EMPLOYMENT PROVISION: CONSTRUCTION CONTRACTS



## **BOSTON HOUSING AUTHORITY SECTION 3 PROVISION**

## **TABLE OF CONTENTS**

		Page
Program	Summary	ii
Part 1:	Definitions	1
Part 2:	Training and Employment Preferences for Section 3 Workers	3
Part 3:	Contract Preference for Section 3 Business Concerns	4
Part 4:	Procedures Prior to Contract Execution	5
Part 5:	Compliance Monitoring After Notice to Proceed	6
Part 6:	Enforcement	7
Part 7:	Sanctions	7
Part 8:	Other Provisions	8
Part 9:	Section 3 Clause	9
Part 10:	Section 3 Provision Submission Forms	10



#### **SUMMARY**

#### 1.01 GENERAL

- **A.** This section summarizes the Boston Housing Authority ("BHA") Section 3 Provision ("S3P"). The S3P describes BHA's implementation of section 3 of the Housing and Urban Development Act of 1968 ("Section 3"). Section 3 is a federal law that requires contractors, to the greatest extent feasible, to hire and/or train low and very low income persons in Boston or adjacent neighborhoods, employees of Section 3 Business Concern, and YouthBuild Participants ("Section 3 Worker"); BHA residents and BHA lease voucher participants ("Targeted Section 3 Worker"); and to offer subcontracts to business concerns owned or operated largely by Section 3 Workers or Targeted Section 3 Workers ("Section 3 Business Concerns"). All persons submitting a proposal in response to BHA's Request For Proposal ("Proposers", "Consultants" and/or "Contractors") are advised to consult the S3P for the specific requirements that apply to them. Section 3 and this S3P apply to all BHA contractors. The S3P will be incorporated into the contract to be awarded by the BHA (the "Contract" or the "Section 3 Contract") and contains both pre- and post-contract award requirements.
- **B.** In addition to this Summary section, proposers, consultants, and contractors are required to review all sections of the S3P in order to be fully advised of all S3P procurement phase and contract phase requirements. Other duties and requirements of law which may not be specified in this section or the S3P apply and are inherently made part of the Contract.

## 1.02 PREFERENCES FOR SECTION 3 WORKERS AND SECTION 3 BUSINESS CONCERNS

The S3P is appended to this section and is numbered 1 through 19. Together with this section, the S3P sets out certain employment, training and contracting requirements for the Contract. All proposers are required to comply with the terms of the S3P.

## **A.** <u>Training and Employment Preference for Section 3 Workers and Targeted Section 3 Workers.</u>

- 1. The Contractor shall, to **the greatest extent feasible**, provide employment and training opportunities to Section 3 Workers. The Contractor will be in compliance with the training and employment requirement when, to the greatest extent feasible, at **least twenty-five (25) percent or more of the total number of labor hours worked by all Workers on a Section 3 project are Section 3 Workers**; and **Five (5) percent or more are Targeted Section 3 Workers**. All training efforts must facilitate and promote the hiring percentages.
- 2. The S3P establishes certain requirements for outreach to Section 3 Workers and Targeted Section 3 Workers by the Contractor and for the documentation of such outreach efforts. Consult Part 2.2 of the S3P for these requirements.
- 3. The S3P establishes an order of priority for the Contractor for making any new hire under the Contract. Consult Part 2.3 of the S3P for the order of priority in making offers of new hires.

#### **B.** Contract Preference for Section 3 Business Concerns.

1. The Contractor shall, to **the greatest extent feasible**, give preference to Section 3 business concerns when entering into any contract in connection with a Section 3 covered activity. When contracting with Section 3 Business Concerns, recipients will follow the **order of** 



#### **priority** outlined below:

- Section 3 Business Concerns that provide economic opportunities for residents of the BHA development subject to the project for which the assistance is provided (category 1);
- 2. Section 3 Business Concerns that provide economic opportunities for residents of other BHA developments or BHA's leased housing program (category 2);
- 3. HUD YouthBuild programs being carried out in the Boston metropolitan area (category 3);
- 4. Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the Boston metropolitan area (category 4).

As with the Section 3 Worker and Targeted Section 3 Worker hiring preferences, Contractors are required to contract in the priority outline established above and must document instances where available higher category business concerns were available but not used.

2. The S3P establishes certain requirements for outreach to Section 3 Business Concerns by the Contractor and for the documentation of such outreach efforts. Consult Part 3.2 of the S3P for these requirements.

#### 1.03 PROCEDURES PRIOR TO CONTRACT AWARD AND EXECUTION

Plan

- 1. All proposers are required under the S3P to make certain submittals to the BHA and to attend an Implementation Meeting with the BHA prior to contract award. Consult Parts 4 and 5 of the S3P for these requirements for more details regarding these requirements.
  - 2. A schedule of procedures prior to contract execution is indicated below:

Step	Event	Submission of Form
1	Proposal Due Date	Form 1 (Part 4.1.1)
		Form 2 (Part 4.1.3)
2	BHA Notification	Section 3 Compliance Plan (for
		proposals valued over \$100,000) within
		10 business days
3	BHA Approval/Disapproval of Section	
	3 forms and Section 3 Compliance	

The S3P forms submission schedule is provided solely as a convenience for proposers and in no way changes, affects, or supersedes the provisions contained in the S3P or any other section or provision of the Request For Proposals. All proposers are strongly encouraged to read the S3P thoroughly to ensure compliance with all applicable requirements.

#### 1.04 SECTION 3 PROVISION FORMS

The S3P forms are appended to Part 10 of the S3P. Bidders and contractors are required to submit the various S3P forms during the proposal submission phase, contract award phase and contract administration phase in the manner described in the S3P, time being of the essence.

#### 1.05 SECTION 3 CLAUSE.

The Contractor is required to include information entitled the "Section 3 Clause" in all contracts and subcontracts related to the Contract. The Section 3 Clause is printed at Part 10 of the S3P.



### 1.06 MISCELLANEOUS

No provision of this S3P shall be interpreted or construed to create or establish an employment, agency or contractual relationship of any type or nature between the BHA and any Section 3 Worker, Targeted Section 3 Worker and/or any Section 3 Business Concern.

**END OF S3P SUMMARY SECTION** 



### 1. <u>Definitions</u>.

For the purposes of this S3P, the following terms have the following meanings:

- 1) <u>Authority or BHA</u> means the Boston Housing Authority.
- 2) <u>BHA leased housing participant</u> means an individual or family that has been admitted to and is currently assisted by a housing program administered by the BHA Leased Housing Department.
- 3) <u>Contractor</u> means any entity which contracts to perform work in connection with a Section 3 Covered Project.
- 4) Employment opportunities means, with respect to Section 3 covered housing assistance, all employment opportunities arising in connection with Section 3 Covered Projects not including professional services. Professional services means non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.
- 5) <u>Federal Wage Rate Job Classification</u> means the job classifications listed in the federal minimum wage rate schedule issued from time to time by the Secretary of the United States Department of Labor pursuant to the Davis Bacon Act.
- 6) <u>HUD</u> means the U.S. Department of Housing and Urban Development.
- 7) <u>HUD YouthBuild programs</u> mean programs that receive applicable federal assistance and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.
- 8) Metropolitan area means the Boston metropolitan statistical area (MSA), as established by the Office of Management and Budget. The Boston MSA consists of seven counties: Norfolk, Plymouth, Suffolk, Middlesex, Essex, Rockingham (NH), and Strafford (NH).
- 9) <u>Person</u> means any natural person, business, partnership, corporation, joint venture, organization, entity or group of individuals.
- 10) <u>Project Development</u> means the public housing development or developments for which the Contractor is performing work under a Section 3 Covered Contract.
- 11) Provision or S3P means this Section 3 Provision.
- 12) <u>Section 3</u> means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

#### 13) Section 3 Business Concern means:

A business concern meeting at least one of the following criteria, documented within the last sixmonth period:

i) It is at least 51 percent owned and controlled by low- or very low-income persons;



- ii) Over 75 percent of the labor hours performed for the business over the prior threemonth period are performed by Section 3 Workers; or
- iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

The status of a Section 3 Business Concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

- 14) <u>Labor hours</u> means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.
- 15) <u>Section 3 Compliance Plan</u> means the plan submitted to the BHA by a Contractor setting out how it intends to comply with the requirements of this Provision.
- 16) <u>Section 3 Covered Activity</u> means any activity, procurement or contract funded by Section 3 covered HUD assistance including, but not limited to: all manner of procurements; and construction service contracts and subcontracts.
  - Section 3 covered activities do not include procurements or contracts for the purchase of supplies and materials that do not require the furnishing of labor, time, and/or effort relating to the installation of the supply and/or material. Additionally, Section 8 project-based assistance contracts are not covered under this policy. Nevertheless, former public housing developments that are being redeveloped or undergoing a subsidy conversion to Section 8 will continue to be subject to Section 3 either by law or BHA policy.
- 17) <u>Section 3 Covered Contract</u> means a contract or a subcontract awarded by the Authority or by a Contractor for work on a Section 3 Covered Project and/or any Section 3 Covered Activity. Section 3 Covered Contracts do <u>not</u> include contracts for the purchase of supplies and materials, except where a contract for the purchase of materials includes installation.
- 18) <u>Section 3 Project</u> means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs. These thresholds will be adjusted every five years by HUD.
- 19) <u>Section 3 Worker</u> means any Worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
  - a) The Worker's income for the previous or annualized calendar year is below the income limit established by HUD.
  - b) The Worker is employed by a Section 3 Business Concern.
  - c) The Worker is a YouthBuild participant.
- 20) <u>Section 3 joint venture</u> means an association of business concerns formed by a written joint venture agreement to engage in and carry out a specific business venture, where one of the business concerns qualifies as a Section 3 Business Concern and:
  - a) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
  - b) Performs at least 25% of the work and is contractually entitled to compensation

proportionate to its work.

21) <u>Subcontractor</u> means any entity (other than an individual who is an employee of the Contractor) which has a contract with a Contractor to undertake a portion of the Contractor's obligation for the performance of the work.

#### 1A. <u>Order of Precedence</u>.

In the event of a conflict between the definitions contained in this Part 1 and the definitions of terms contained in Section 3 and its regulations, the definitions contained in Section 3 and its regulations shall control.

## 2. <u>Training and Employment Preference for Section 3 Workers.</u>

- 2.1 When new hires are needed, recipients are required to, at a minimum: notify Section 3 Workers about training and employment opportunities arising out of any Section 3 covered activity; encourage the application of Section 3 Workers for training and employment opportunities arising out of any Section 3 covered activity; facilitate the employment of Section 3 Workers; and document actions taken to comply with these requirements and the results of such actions and impediments encountered, if any.
- 2.2 In order to qualify for priority status, Section 3 Workers and Targeted Section 3 Workers must meet the minimum qualifications of the position to be filled.

When hiring **Section 3 Workers** recipients will provide training and employment opportunities in the **order of priority** below:

- 1. Residents of the BHA development subject to the project, as documented within the past five years (category 1);
- 2. Residents of other BHA development (category 2);
- 3. Participants in BHA's leased housing programs ("BHA leased housing participant") in the Boston metropolitan area (category 2);
- 4. Participants in HUD YouthBuild programs in the Boston metropolitan area (category 3);
- 5. Other low-income or very-low income residents of Boston metropolitan area (category 4).

When hiring **Targeted Section 3 Workers** recipients will provide training and employment opportunities in the **order of priority** below:

- 1. Worker employed by a Section 3 Business Concern (category 1);
- 2. Residents of other BHA developments, as documented within the past five years (category 2);
- 3. Participants in BHA's leased housing programs ("BHA leased housing participant") in the Boston metropolitan area, as documented within the past five years (category 3);



- 4. Participants in HUD YouthBuild programs in the Boston metropolitan area, as documented within the past five years (category 4);
- 2.3 Recipients are required to hire in the priority outline established above and must document instances where available higher category residents were not hired. Recipients will not be permitted to fulfill the hiring and training percentages by passing over available category 1-3 residents to hire category 4 residents.
- 2.4 Any Contractor that has not met the minimum percentages for training and employment set forth in this Part 2 has the burden of demonstrating why it was not feasible to meet such percentages.
- 2.5 A Section 3 Worker or Targeted Section 3 Worker seeking preference in training and employment pursuant to this Part 2 shall, if requested to by the Contractor, certify or submit evidence that they are a Section 3 Worker or Targeted Section 3 Worker as defined in this Provision.
- 2.6 Notwithstanding the foregoing, any individual named as a Section 3 Worker or Targeted Section 3 Worker on a list provided to the Contractor by the Authority shall be deemed to be a Section 3 Worker or Targeted Section 3 Worker for the purposes of this Part 2.6 without being required to furnish additional proof of such status.
- 2.7 Nothing in this Part 2 shall be construed to require the employment of a Section 3 Worker or Targeted Section 3 Worker who does not meet the minimum qualifications of the position to be filled; however, any such qualifications shall be reasonably related to the work to be performed by the person filling the position as determined by the Authority.
- 2.8 The Contractor is responsible for complying with the requirements of this Provision in its own operations and for assuring compliance in the operations of its Subcontractors.

#### 3. Contract Preference for Section 3 Business Concerns.

- 3.1 The Contractor shall, to the greatest extent feasible, give preference to Section 3 Business Concerns when entering into any Contract in connection with a Section 3 Covered Project.
- 3.2 Prior to entering into any Contract in connection with a Section 3 Covered Project, the Contractor shall use its best efforts to:
  - 1. Notify Section 3 Business Concerns about contracting opportunities arising out of any Section 3 Covered Contract;
  - 2. Encourage Section 3 Business Concerns to submit proposals or bids on any Section 3 Covered Contracts;
  - 3. Facilitate the award of contracts to Section 3 Business Concerns; and
  - 4. Document actions taken to comply with the requirements of this Part 3, the results of such actions and impediments encountered, if any.
- 3.3 In entering into any Contract in connection with a Section 3 Covered



Project, the Contractor shall award any such contract in the following order of priority:

- 1. Section 3 Business Concerns that provide economic opportunities for residents of the BHA development subject to the project for which the assistance is provided (category 1);
- 2. Section 3 Business Concerns that provide economic opportunities for residents of other BHA developments or BHA's leased housing program (category 2);
- 3. HUD YouthBuild programs being carried out in the Boston metropolitan area (category 3);
- 4. Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the Boston metropolitan area (category 4).
- 3.4 The Contractor may demonstrate compliance with the contract requirements of this Provision by meeting the following minimum percentages: at least twenty-five (25) percent or more of the total number of labor hours worked by all Workers on a Section 3 project are Section 3 Workers; and Five (5) percent or more are Targeted Section 3 Workers.
- 3.5 Any Contractor that has not met the minimum percentages for contracting set forth in this Part 3 has the burden of demonstrating why it was not feasible to meet such percentages.
- 3.6 A Section 3 Business Concern seeking preference in contracting pursuant to this Part 3 shall, if requested by the Contractor, certify or submit evidence that it is a Section 3 Business Concern as defined in this S3P. Notwithstanding the foregoing, any business concern named as a Section 3 Business Concern on a list provided to the Contractor by the BHA shall be deemed to be a Section 3 Business Concern for the purposes of this Part 3.6 without being required to furnish additional proof of such status.
- 3.7 A Section 3 Business Concern seeking preference in contracting pursuant to this Part 3 shall, if requested by the Contractor awarding the Contract, submit evidence sufficient to demonstrate to the satisfaction of the Contractor that it is responsible and has the ability to perform successfully under the terms and conditions of such Contract.
- 3.8 The Contractor is responsible for complying with the requirements of this Provision in its own operations and for assuring compliance in the operations of its Subcontractors.

## 4. <u>Procedures Prior to Contract Execution</u>.

- 4.1 Publicly Bid Section 3 Covered Contracts
  - 1. Proposers shall submit a completed **Certification of Intent to Comply with Section 3 (Form 1)** and **Section 3 Hiring, Training, and Contracting Opportunities (Form 2)** with their proposals.
    - 2. If the Certification of Intent to Comply with Section 3 (Form 1)



and/or Section 3 Hiring, Training, and Contracting Opportunities (Form 2) are not submitted with the proposal, the Authority may, but is not required to, reject the proposal. If the Contractor's Certification is incomplete, the Authority may, but is not required to, permit the apparent proposer to submit and/or complete, correct, and/or modify such Forms in order to meet bid requirements.

- 3. Within ten (10) business days of notification by the Authority, Proposers on contracts with costs estimated over \$100,000 shall submit a **Section 3 Compliance Plan** describing in detail how the Proposer intends to comply with this Provision, including a plan for soliciting Section 3 Workers, Targeted Section 3 Workers, and Section 3 Business Concerns for employment and contracting opportunities, together with sample solicitations and other information to be used in the implementation of such plan and designating a representative for overseeing the Proposer's responsibilities under this Provision.
- 4.2 If deemed advisable by the BHA, the Authority may assist the Contractor's outreach efforts by providing the Contractor with the following information (if such information is available) for its consideration:
  - 1. A list of Section 3 Workers and Targeted Section 3 Workers available for work under this Provision and a summary of their qualifications and experience; and
  - 2. A list of Section 3 Business Concerns available for work under this Provision and of the summary of their qualifications and experience.
- 4.3 The Authority shall, within five (5) business days after the delivery to the Authority of the Section 3 Compliance Plan:
  - 1. Approve the Section 3 Compliance Plan as submitted; or
  - 2. Approve the Section 3 Compliance Plan as modified to reflect changes arising out of correspondence between the Contractor and the Authority; or
  - 3. Notify the Contractor that the Section 3 Compliance Plan is not approved and require the Contractor to submit for the Authority's approval a revised Section 3 Compliance Plan.
- 4.4 If the Contractor does not submit a Section 3 Compliance Plan, or if the Authority does not approve the Section 3 Compliance Plan, the Authority may, but is not required to, award the Contract to the next-ranked Person on the short list of Persons submitting proposals for the contract.
  - 1. The next-ranked Person submitting a proposal for the contract shall be required to submit the forms required pursuant to Part 4.1 within five (5) business days of receipt of the Authority's request. Forms required to be submitted pursuant to Part 4.1.3 shall be submitted within ten (10) business days of receipt of the Authority's original request.
- 4.5 In addition, the Contractor shall submit to the Authority prior to execution of any Subcontract a Section 3 Hiring, Training, and Contracting Opportunities form (Form 2) completed by such Subcontractor under such Subcontract.



- 4.6 On the date of contract award, the Contractor shall provide the Authority with a list of its current employees in a format satisfactory to the Authority. The Contractor shall provide such employee lists on an ongoing basis for any and all of its subcontractors as subcontracts are awarded.
- 4.7 Notwithstanding the foregoing, the Contractor shall demonstrate compliance with this Provision no later than the date the Contractor signs the Contract.

#### 5. Compliance Monitoring After Notice to Proceed.

- Quarterly Section 3 Report (Form 3) for the preceding quarter, setting out for each week in such quarter the total numbers of hours worked on the Section 3 project and total number of labor hours worked by Section 3 Workers and Targeted Section 3 Workers, whether employed directly by the Contractor, or indirectly by one or more of its Subcontractors and amounts paid under the contract to Section 3 Business Concerns, whether such amounts are paid directly by the Contractor, or indirectly by one or more of its Subcontractors.
- 5.2 The Contractor shall promptly provide to the Authority, at its request, any such information or reports as the Authority may require and shall permit access to the Authority's employees and agents to the job site and to any books, records, accounts and/or other material deemed by the Authority to be necessary to monitor the Contractor's compliance with this Provision.
- 5.3 The Contractor or any of its Subcontractors may terminate the employment of a Section 3 Worker, Targeted Section 3 Worker, or the contract of a Section 3 Business Concern for good cause, provided that the Contractor or Subcontractor first notifies the Authority in writing of the proposed termination and the specific reasons therefor. The Authority may request that the Contractor or Subcontractor meet with the Authority to discuss the reasons for any such proposed termination. Nothing in this paragraph or in the S3P is intended to or shall be interpreted to create or establish an employment, agency or contractual relationship of any type or nature between the BHA and any Section 3 Worker, Targeted Section 3 Worker, and/or any Section 3 Business Concern.
- 5.4 If any Section 3 Worker or Targeted Section 3 Worker employed by the Contractor or a Subcontractor pursuant to this Provision leaves or is terminated from such employment, or if any Section 3 Business Concern fails to perform under its contract or its contract is terminated, the Authority may require the Contractor and/or its Subcontractor to employ another Section 3 Worker or Targeted Section 3 Worker or contract with another Section 3 Business Concern in order to remain in compliance with the requirements of this Provision.

#### 6. Enforcement.

6.1 If at any time the Authority determines that the Contractor is not in compliance with this Provision, it shall notify the Contractor in writing of such finding and of any sanctions it intends to apply. Such written notice shall give the Contractor an opportunity to meet with representatives of the Authority to present information demonstrating that it is in compliance, or in mitigation of its failure to



comply and shall appoint a time and place for such meeting, subject to the Contractor's availability. The Authority may require the attendance of any Subcontractor at any such meeting.

6.2 Following any meeting held with a Contractor pursuant to Section 7.1 the Authority shall make a finding as to whether the Contractor is in compliance with this Provision and shall notify such Contractor in writing of such finding, the information upon which such finding was based and the sanctions, if any, it intends to apply. Any such finding shall be final and without recourse, unless it is made in bad faith and without reasonable cause.

### 7. Sanctions.

- 7.1 If the Authority determines that the Contractor is not in compliance with this Provision, the Authority may impose on the Contractor, or require the Contractor to impose on any Subcontractor, any one or more of the following sanctions:
  - 1. The recovery from the Contractor of one-tenth of one percent (0.1%) of the Contract price or \$2,500, whichever is greater, in the nature of liquidated damages, for each week that the Contractor fails or refuses to comply; or the recovery from the Contractor, to be assessed by the Contractor as a back-charge against the Subcontractor, of one-tenth of one percent (0.1%) of the subcontract price, or \$1,000, whichever sum is greater, in the nature of liquidated damages for each week that the Subcontractor fails or refuses to comply.
  - 2. The suspension of any payment or part thereof due under the Contract, until such time as the Contractor is able to demonstrate its compliance with the terms of this Provision.
  - 3. The termination or cancellation of the Contract, in whole or in part, unless the Contractor is able to demonstrate within a specified time its compliance with the terms of this Provision.
  - 4. In connection with final acceptance and final payment, retention and forfeiture of no more than five percent (5%) of the Contract price (as adjusted by change orders or other amendments), where the Contractor has been unable to demonstrate compliance with the terms of this Provision.
  - 5. Denial to the Contractor of the right to participate in any future contracts awarded by the Authority for a period of up to three (3) years.
- 7.2 If, at any time after the imposition of one or more of the above sanctions, a Contractor is able to demonstrate to BHA's satisfaction that it is in compliance with this Provision, it may request the Authority to suspend the sanctions conditionally, pending a final determination as to whether the Contractor is in compliance. Upon final determination of the Authority, the Authority shall either lift the sanctions or re-impose them.

#### 8. Other Provisions.

8.1 All Section 3 Covered Contracts shall include the clause set forth in Part 10, entitled "Section 3 Clause".



- 8.2 Certain Contractors subject to this S3P are also required to comply with Executive Order 11246, as amended by Executive Order 12036 and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60), which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.
- 8.3 The Authority shall have access to all records, reports, and other documents or items maintained to demonstrate compliance with this S3P.

### 9. Section 3 Clause.

The Contractor shall require that the following provision entitled "the Section 3 Clause" be included in all Section 3 Covered Contracts related to or associated with the work to be performed under the Contract:

## SECTION 3 CLAUSE OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low-and-very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of Workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or Workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each: and the name and location of the person(s) taking applications for each of the positions: and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed,



and (2) persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With Respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**END OF SECTION 3 CLAUSE** 



## 10. <u>Section 3 Submission Forms and Deadlines</u>

FORM 1	Certification of Intention to Comply with Section 3	Submit with Proposal
FORM 2	Section 3 Hiring, Training, and Subcontracting Opportunities	Submit with Proposal
	Section 3 Compliance Plan* (For contracts valued over \$100,000)	Due within 10 business days of BHA notification
FORM 3	Quarterly Section 3 Report	Submit upon request
HUD Form 60002	Section 3 Summary Report	Submit at end of calendar year (if applicable) and at completion of project
Section 3 Worker Affidavit	Certification of Section 3 Worker and Targeted Section 3 Worker	Submit upon request and whenever FORM 3 is submitted

-

<sup>\*</sup> There is no BHA form for a Compliance Plan but sample plans are available on request. The Compliance Plan details the Proposer's specific efforts to implement the Section 3 requirements.



## FORM 1 Certification of Intent to Comply with Section 3

This form is to be submitted by proposers with their proposal. Failure to submit this form may result in the rejection of your proposal.

I herek	by certify that:				
1.	I am the		[Insert	Title]	of
		[Insert Name of F	Proposer] (the	e "Comp	any");
2.	. I am duly authorized by the Company to submit a proposal on its behalf to the Bostor				
	Housing Authority	for			
	[Insert Project Nar	ne and Number] and	to execute an	y and a	II documents required to be
	filed as a condition	of such proposal;			
3.	I have read and	understood the Section	on 3 Provisio	n, whic	h applies Section 3 of the
	Housing and Urba	n Development Act of	1968, as ame	ended, a	nd the Section 3 regulations
	found at 24 CFR 1	35.			
4.	The Company wi	I comply with the re-	quirements o	of 24 CF	FR 135 and the Section 3
Provision. This includes ensuring that, to the greatest extent fe				easible, at least twenty-five	
	(25) percent or m	ore of the total numb	er of labor h	nours w	orked by all Workers on a
	Section 3 project	are Section 3 Worke	ers; and Five	(5) per	cent or more are Targeted
	Section 3 Worker	s.			
5.	The Company is responsible for the compliance of its subcontractors and will ensure that				
	its subcontractors comply with the requirements set out in 24 CFR 135 and the Section 3				
	Provision.				
6.		ons filled after the open filled to circumvent			cation but before contrac
		penalties of perjury.		,	on coungainens
[Comp	pany]		[	Date]	
[Addre	ess/Contact]			Signatur Duly Autl	



## FORM 2 Section 3 Hiring, Training, and Contracting Opportunities

This form is to be completed by the proposer on behalf of itself and all projected subcontractors, if any. Provide estimates of hiring and contracting needs on the project.

#### **HIRING OPPORTUNITIES**

Job Category	Number of positions needed to complete project	Number of positions filled by current employees*	Number of positions to be filled by Section 3 Workers	Anticipated dates of work
Example: Tenant	1	0	1	10/1/21-
Coordinator				12/31/21
1) Technicians				
2) Office/Clerical				
3) Trade				
4) Trade				
5) Trade				
6) Tenant Coordinator				
7) Other:				
Totals				

#### SUBCONTRACTING OPPORTUNITIES

Sub-trade and Company (if	Filed Sub- trade? (Y/N)	Section 3 Business	Specification Reference	Amount of Contract
known)		Concern? (Y/N)		
Example: HVAC		Y	06200	8,000
Inc.				
1)				
2)				
3)				

The above tables represent an accurate estimate of workforce and subcontracting needs for this project and also represent the number of Section 3 Workers, Targeted Section 3 Workers, and business concerns that the company proposes to employ and/or contract with.

Signed under the penalties of perjury.	
	[Company]
Date:	By: [Signature]



## FORM 3 **Quarterly Section 3 Report**

This form or a certified substitute document containing the information requested below is to b	е
completed by the consultant and all subcontractors, if any, and submitted upon request. Attac	h
verifications (e.g., Section 3 Workers Affidavit and copy of photo identification) as necessary.	

ompleted by the erifications (e.g.,	e <u>consultant a.</u> ., Section 3 W	nd all subco	ntractors, if	any, ar	nd <u>subr</u>	nitte	ed upor	requ	uest. Attac
HA Job No			Mo	nth End	ding: _				
	SE	ECTION 3 W	ORKER LA	BOR H	OURS				
Employee Name	Job Title	Targeted/Section 3 Worker? (Y/N)	e Addre	SS	Date Hire		Lab Hou this mor	ırs s	Labor Hours to date
Example: Gladys Jones	Project Assistant	Y	Franklin I 100 Ame Dorchest MA 0212	s St. er,	10/15. 1	/2	80		200
1)									
2)									
3)									
4)									
5)									
	S	ECTION 3 E	BUSINESS C	ONCE	RNS				
Section 3 Business Concern	Addi	ress	Dates of Work		itract ice		aid to Date	Rer	Amount maining to be paid
Example: ABC Security Co. 1)	123 Main S Boston MA		11/1/20- 5/30/21	15,00	00	2,	500	12,	500
2)									
3)									
4)									
ate:			[Company] By:			ı			
									_



## **BOSTON HOUSING AUTHORITY SECTION 3 WORKER AFFIDAVIT**

Eligibility for Preference: Any person seeking Section 3 preference in training and employment shall certify or submit evidence to the Boston Housing Authority (BHA) that the person qualifies for a Section 3 preference.

<ol> <li>I reside in:         <ul> <li>Essex or Middlesex County, MA</li> <li>Norfolk or Suffolk County, MA</li> <li>Plymouth County, MA or Rockingham County, NH</li> </ul> </li> <li>I qualify as a Section 3 Worker because (check only one):         <ul> <li>My income from the past 12 months is at or below the \$78,300 individual income limit of the Boston-Cambridge-Quincy, MA and Rockingham County, NH area.</li> <li>My income from the past 12 months is at or below the \$49,100 individual income limit of the Boston-Cambridge-Quincy, MA and Rockingham County, NH area.</li> <li>I am employed by a Section 3 business concern (S3BC)</li> <li>Name &amp; Address of S3BC:</li> </ul> </li> </ol>
<ul> <li>I am a YouthBuild Participant</li> <li>I qualify as a Targeted Section 3 Worker because (check only one):         <ul> <li>I am or have been in the past five years a resident of BHA</li> <li>I am or have been in the past five years a participant of BHA's Section 8 voucher program</li> <li>I am or have been in the past five years a resident or a participant of a Section 8 voucher program managed by another public housing authority</li> </ul> </li> <li>I do not qualify as a Section 3 Worker or Targeted Section 3 Worker because:         <ul> <li>I do not live in one of the counties listed in section 1</li> <li>None of the above statements in section 2 or 3 apply</li> </ul> </li> <li>Eligibility Guideline for FY 2022 (updated in April 2022)         <ul> <li>(Verify current income levels at <a href="http://www.huduser.org/portal/datasets/il.html">http://www.huduser.org/portal/datasets/il.html</a>)</li> </ul> </li> <li>Boston-Cambridge-Quincy, MA-NH Metro Area consists of Essex, Middlesex, Norfolk, Plymouth, Suffolk County, MA and Rockingham County, NH.</li> </ul>
I hereby agree to provide, upon request, documents verifying the information provided on this form and authorize my employer to release information required to verify my Section 3 status. I certify that the information on this form is complete and accurate. I understand that providing false statements or information is punishable under state and federal law. Signed under the penalties of perjury,
Employee Name:
Employee Signature:
Date:

#### **EXHIBIT P**

#### FORM OF NOTICE OF LEASE

Prepared by and After Recording Return to:

James L. Black, Jr. Morgan, Lewis & Bockius LLP One Federal Street Boston, MA 02110

### NOTICE OF CONSTRUCTION AND GROUND LEASE

NOTICE is hereby given pursuant to Massachusetts General Laws Chapter 183, Section 4 of a lease containing, inter alia, the following terms and conditions:

<u>LANDLORD</u>: Boston Housing Authority

52 Chauncy Street Boston, MA 02111

TENANT: Building M Owner LLC

c/o Leggat McCall Properties LLC 10 Post Office Square, 13<sup>th</sup> Floor

Boston, MA 02109

DATE OF LEASE: June 30, 2023

**DESCRIPTION OF** 

PREMISES: Real property owned by the Landlord located at 40 Corey Street,

Charlestown, Suffolk County, Massachusetts containing approximately 0.825 acres and more particularly described in

Exhibit A attached hereto

TERM OF LEASE: The period commencing on June 30, 2023 and expiring on June 29,

2122 [99-year term].

RIGHTS OF EXTENSION

OR RENEWAL: None.

RIGHT OF FIRST OFFER: From and after the expiration of the Compliance Period (as defined

in the Lease), Landlord shall have a right of first offer to purchase Tenant's interest in the Lease, the Premises and the improvements thereon, subject to and in accordance with the terms and conditions

of the Lease.

This Notice of Construction and Ground Lease ("Notice of Lease") is executed for the purpose of recordation in order to give notice of the terms, provisions and conditions of the Construction and Ground Lease Agreement (the "Lease") and is not intended, and shall not be construed, to alter, limit or modify the Lease. In the event of an inconsistency between the terms of this Notice of Lease and the terms of the Lease, the terms of the Lease shall control. This Notice of Lease may be executed in one or more counterparts each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

For Landlord's title, see Eminent Domain Taking dated May 19, 1939, and recorded with the Suffolk County Registry of Deeds in Book 5793, Page 425; Eminent Domain Taking dated July 31, 1939, and recorded with the Suffolk County Registry of Deeds in Book 5806, Page 119; Eminent Domain Taking dated November 8, 1939, and recorded with the Suffolk County Registry of Deeds in Book 5828, Page 166; Eminent Domain Taking dated June 9, 1941, and recorded with the Suffolk County Registry of Deeds in Book 5932, Page 441.

[Signatures Appear on Following Page]

EXECUTED as a sealed instrument as of this	day of	, 2023.
LANDLORD:		
BOSTON HOUSING AUTHORITY		
By: Name: Title:		
TENANT:		
BUILDING M OWNER LLC, a Delaware limited liability company		
By:		
Name:		
Title:		

## COMMONWEALTH OF MASSACHUSETTS

County, ss	
with signature issued by a federal or sta witness, □ personal knowledge of the	, 2023, before me, the undersigned notary public _], the Administrator of Boston Housing Authority, proved of identification, which was □ photographic identification at governmental agency, □ oath or affirmation of a credible undersigned, to be the person whose name is signed on the cknowledged to me that she signed voluntarily for its stated in Housing Authority.
	Notary Public My Commission Expires:
	NWEALTH OF MASSACHUSETTS
with signature issued by a federal or sta witness, $\square$ personal knowledge of the	
	My Commission Expires:

### **EXHIBIT A**

### LEGAL DESCRIPTION OF PREMISES

The land located in that part of Boston called Charlestown, Suffolk County, Massachusetts, being Lot M on a plan entitled, "Subdivision Plan of Land Lot 'M' & Open Space, Boston Housing Authority - Charlestown Campus; prepared for Leggat McCall Properties, 10 Post Office Square, Boston MA 02109" recorded with the Suffolk County Registry of Deeds as Plan 249 of 2023, to which plan reference is made for a more particular description. Lot M contains 35,934± S.F. according to said plan.

The above described land has the benefit of the following:

Easement as set forth in the Drainage Easement Agreement between the Boston Housing Authority and Building M Owner LLC to be recorded herewith in the Suffolk County Registry of Deeds.

### **EXHIBIT Q**

### FORM OF CONSTRUCTION COMPLETION GUARANTY

### CONSTRUCTION COMPLETION GUARANTY

THIS COMPLETION GUARANTY ("Guaranty") is made as of June 30, 2023 by Leggat McCall Properties LLC, a Massachusetts limited liability company, with an address of 10 Post Office Square, 13<sup>th</sup> Floor, Boston, MA 02109 ("Guarantor") in favor of The Boston Housing Authority, a public body politic and corporate, organized and existing under Chapter 121B of the General Laws of the Commonwealth of Massachusetts and Chapter 88 of the Acts of 1989, with a principal place of business at 52 Chauncy Street, Boston, Massachusetts 02111 (the "BHA").

### **RECITALS**

- A. The BHA is the owner of certain land located at 40 Corey Street in Charlestown, Suffolk County, Massachusetts, as more fully set forth and described on **Exhibit A** attached to the Lease, as hereinafter defined, and incorporated herein by reference (the "Premises").
- B. Pursuant to the provisions of the Construction and Ground Lease Agreement, dated of even date herewith, between Building M Owner LLC, a Delaware limited liability company (the "Tenant") and the BHA, as landlord (the "Lease"), the Tenant shall construct and operate upon the Premises certain initial Improvements, as such term is defined in the Lease (the "Improvements").
- C. Guarantor is an affiliate of the managing member of Tenant, which managing member holds a 0.010% interest in the Tenant.
- D. The Lease provides that Tenant's obligations with respect to the completion of the construction of the Improvements shall be guaranteed by a guarantor reasonably acceptable to Landlord.
- E. Guarantor has common beneficial ownership with the managing member of the managing member of Tenant and has received good and valuable consideration for the execution, delivery and (if required) performance of the terms of this Guaranty.
- F. All terms not defined herein shall have the meanings ascribed to them in the Lease.

NOW, THEREFORE, in order to induce the BHA to enter into the Lease, and in consideration thereof, Guarantor unconditionally covenants and agrees as follows:

1. <u>GUARANTY</u>. Subject to the terms and conditions of this Guaranty, and Section 7.2 of the Lease, Guarantor hereby irrevocably, absolutely and unconditionally guarantees the completion of construction of the Improvements in accordance with the terms and provisions of the Lease pertaining thereto. Subject to the terms and conditions of this

Guaranty and Section 7.2 of the Lease, Guarantor guarantees that: (a) Substantial Completion of the Improvements shall occur no later than the Outside Completion Date, plus, so long as Tenant or Guarantor is then diligently pursuing Substantial Completion of the Improvements, the Extended Completion Period, plus any additional notice and cure period under Section 12.1(iii) of the Lease; (b) the Improvements shall be constructed and completed in accordance with the Final Plans and Specifications, as modified by (i) Limited Change Orders or (ii) Major Change Orders approved (or deemed approved) by the BHA in accordance with Section 7.7 or 7.8 of the Lease; (c) the Improvements shall be constructed and completed free and clear of any mechanics' liens, materialmen's liens and equitable liens, subject to the Tenant's right to contest such liens in accordance with the provisions of Section 4.11 of the Lease; and (d) all costs of constructing the Improvements shall be paid when due following proper completion thereof, subject to the Tenant's right to contest, in accordance with the provisions of Section 4.11 of the Lease, liens arising from non-payment of such costs. This Guaranty is an unconditional and irrevocable guaranty of payment and performance, and not merely a guaranty of collection.

### 2. <u>INTENTIONALLY DELETED</u>.

- 3. OBLIGATIONS OF GUARANTOR UPON DEFAULT BY TENANT. If the Improvements are not Substantially Completed in the manner and within the time required by Section 7.2 of the Lease, plus any additional notice and cure period under Sections 12.1(iii) of the Lease, Guarantor shall (or shall cause Tenant to), promptly upon demand of the BHA: (a) diligently proceed to Substantially Complete construction of the Improvements with the then unadvanced loan proceeds under that certain construction loan agreement dated on or about the date hereof between Tenant and Massachusetts Housing Finance Agency and, to the extent required, such additional funds from Guarantor as may be required to complete construction; (b) fully pay and discharge all claims for labor performed and material and services furnished in connection with the construction of the Improvements, subject to the right to contest such claims in accordance with the provisions of Section 4.11 of the Lease; (c) release and discharge all claims of mechanics' liens, materialmen's liens and equitable liens that may arise in connection with the construction of the Improvements, subject to the right to contest such claims in accordance with the provisions of Section 4.11 of the Lease; and (d) pay to the BHA all actual out-of-pocket third-party costs and expenses (including, without limitation, attorneys' reasonable fees and expenses) incurred by the BHA in enforcing this Guaranty. The BHA shall permit Guarantor and its contractors and subcontractors access to the Premises (upon the same terms and conditions as the BHA permits Tenant and its contractors and subcontractors access to the Premises under the Lease) for the purposes of completing the Improvements and fulfilling Guarantor's other obligations under this Guaranty.
- **REMEDIES.** If Tenant fails to satisfy its obligations under Section 7.2 of the Lease to Substantially Complete construction of the Improvements within the time period required therein plus any additional notice and cure period under Sections 12.1(iii) of the Lease, and to make payment therefor in accordance with the provisions of the Lease, and Guarantor thereafter fails to promptly perform its obligations under this Guaranty, the BHA shall have the following remedies:

- (a) At the BHA's option, and without any obligation to do so, to proceed to perform on behalf of Guarantor any or all of Guarantor's obligations hereunder and Guarantor shall, within thirty (30) days after demand by the BHA accompanied by copies of supporting invoices, and whether or not construction is actually completed by the BHA, pay to the BHA all sums reasonably expended by the BHA in performing Guarantor's obligations hereunder together with interest thereon at the "Default Rate" as defined in the Lease; and
- (b) From time to time and without first requiring performance by Tenant or otherwise proceeding against Tenant, to bring any action at law or in equity or both to compel Guarantor to perform its obligations hereunder, and to collect in any such action compensation for all actual out-of-pocket third party costs and expenses (including, without limitation, attorneys' reasonable fees and expenses) incurred by the BHA in connection therewith, together with interest at the Default Rate.
- 5. NO RELEASE OR IMPAIRMENT OF GUARANTY. This Guaranty shall not be terminated, released, modified, affected or impaired by reason of any of the following, as to all of which Guarantor hereby waives notice and the requirement for the BHA to obtain Guarantor's consent, but without limiting any obligation of the BHA to provide notice to, or obtain the consent of, Tenant with respect thereto to the extent required by the Lease: (a) any renewal, extension, modification or amendment of the Lease; (b) approval by the BHA of modifications to the Final Plans and Specifications so long as such modifications do not materially increase the cost of constructing the Improvements nor materially increase the time necessary to complete the Improvements; (c) any action which the BHA may take or fail to take against Tenant or against any other guarantor, if there be more than one, or against any security held from time to time by the BHA pursuant to the terms of the Lease (provided that the BHA shall not be entitled to receive payment in the aggregate from Tenant, Guarantor, and all other guarantors (if any), in excess of amounts actually due and payable to the BHA in the aggregate under the Lease, this Guaranty, and any other applicable guaranty); (d) any waiver, indulgence or extension of time which the BHA may grant respecting the Lease or this Guaranty or any other guaranty, if there be more than one; (e) any failure to enforce any of the terms, covenants or conditions of the Lease or this Guaranty or any other guaranty, if there be more than one; (f) any assignment by Tenant, whether voluntary or involuntary, of all or any portion of its interest under the Lease, or any subletting, licensing or other occupancy arrangement concerning all or any part of the Premises leased thereunder, whether or not the BHA has consented to the same; (g) any termination of the Lease by the BHA by reason of the default of Tenant thereunder; (h) the acquisition by Guarantor of any rights under, or interest in, the Lease, or in all or any portion of the Premises demised thereunder, whether by assignment, subletting, licensing or otherwise; (i) the assignment of this Guaranty in whole or in part by the BHA to any party to whom the BHA has assigned its interests under, and to the extent permitted by, the Lease; (i) the release or discharge of Tenant in any receivership, bankruptcy or other proceedings; (k) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of any state

or federal law concerning bankruptcy or insolvency; (l) the rejection or disaffirmance of the Lease in any such proceeding; (m) any disability of Tenant; or (n) the cessation for any cause whatsoever of the liability of Tenant other than full payment and performance of those obligations of Tenant which are guaranteed hereunder.

- 6. **WAIVERS BY GUARANTOR.** Guarantor waives, to the extent permitted by law: (a) any defense based upon any legal disability of Tenant, any other guarantor or other person, or by reason of the cessation or limitation of the liability of Tenant from any cause other than full payment and performance of those obligations of Tenant which are guaranteed hereunder; (b) any defense based upon any lack of authority of the officers, directors, partners, managers, members, or agents acting or purporting to act on behalf of Tenant or any principal of Tenant or any defect in the formation of Tenant or any principal of Tenant; (c) any and all rights and defenses arising out of an election of remedies by the BHA; (d) any defense based upon the BHA's failure to disclose to Guarantor any information concerning Tenant's financial condition or any other circumstances bearing on Tenant's ability to pay and perform its obligations under the Lease; (e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (f) subject to the provisions of Section 8 below, any right of subrogation, any right to enforce any remedy which the BHA may have against Tenant and any right to participate in, or benefit from, any security for the Lease now or hereafter held by the BHA; (g) presentment, demand, protest, and, except as otherwise expressly provided in this Guaranty, notice of any kind including, without limitation, notice of any default by Tenant under the Lease; (h) acceptance of this Guaranty by the BHA; (i) any right or claim of right to cause a marshaling of any of the Tenant's assets or the assets of any other party now or hereafter held as security for Tenant's obligations; and (i) any exemption of disposable earnings from attachment or garnishment under the Massachusetts General Laws. Without limiting the generality of the foregoing or any other provision hereof, but subject to the provisions of Section 8 below, Guarantor further expressly waives, to the extent permitted by law, any and all rights and defenses generally available to sureties, including without limitation any rights against Tenant of subrogation, reimbursement, indemnification and contribution. Guarantor further agrees that the performance of any act or any payment which tolls any statute of limitations applicable to the Lease shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder. Notwithstanding anything to the contrary set forth in this Guaranty, acts or omissions of the BHA or its agents that would constitute a defense available to the Tenant against claims made by the BHA under the Lease with respect to any obligations of Tenant thereunder which are hereby guaranteed, shall also constitute a permitted defense to claims made by the BHA against Guarantor hereunder with respect thereto.
- 7. GUARANTOR'S WARRANTIES. Guarantor acknowledges that the BHA would not enter into the Lease but for this Guaranty. Guarantor warrants and acknowledges that: (a) Guarantor has reviewed all of the terms and provisions of the Lease, and the Final Plans and Specifications; (b) there are no conditions precedent to the effectiveness of this Guaranty; (c) Guarantor has established adequate means of obtaining from sources other than the BHA, on a continuing basis, financial and other information pertaining to Tenant's

financial condition, the Premises, the progress of construction of the Improvements, and the status of Tenant's performance of its obligations under the Lease, and the BHA has made no representation to Guarantor as to any such matters; and (d) Guarantor has not and will not, without the prior written consent of the BHA, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of or permit or cause to be disposed of all or substantially all of Guarantor's assets, other than (i) in the ordinary course of Guarantor's business, (ii) in any transaction that does not result in Guarantor failing to satisfy the financial covenants set forth in Section 11 hereof or (iii) pursuant to any transaction whereby Guarantor arranges for a replacement guarantor reasonably satisfactory to the BHA that meets the minimum net worth and unencumbered Liquid Assets requirements under this Guaranty to enter into a replacement Guaranty.

- 8. SUBORDINATION. This Guaranty shall remain in full force and effect until the earlier to occur of the following (such earlier occurrence, a "Release Condition Event"): (a) all of the obligations guaranteed by Guarantor hereunder have been paid and/or satisfied in full, and (b) Substantial Completion of the construction of the Improvements has occurred and the payment therefor is complete as described in Section 1 hereof. Guarantor shall be subrogated to all rights of the BHA against Tenant in respect of any amounts paid by Guarantor pursuant to this Guaranty; provided, however, until such time as a Release Condition Event has occurred, Guarantor: (a) postpones its right to enforce its rights of subrogation against Tenant by reason of any payments or acts of performance by Guarantor pursuant to this Guaranty; (b) subordinates any right to enforce any remedy which Guarantor now has or hereafter may have against Tenant by reason of any one or more payments or acts of performance pursuant to this Guaranty to the obligations of Tenant to the BHA under the Lease; and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to the BHA under the Lease.
- 9. BANKRUPTCY OF TENANT. In any bankruptcy or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor. If all or any portion of the obligations guaranteed hereunder are paid or performed, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the BHA as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or other similar laws, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of the indebtedness and obligations under the Lease.
- 10. ADDITIONAL, INDEPENDENT AND UNSECURED OBLIGATIONS. The obligations of Guarantor hereunder shall be in addition to and shall not limit or in any way affect the obligations of Guarantor under any other existing or future guaranties unless said other guaranties are expressly modified or revoked in writing. This Guaranty is independent of the obligations of Tenant under the Lease. The BHA may bring a separate action to enforce the provisions hereof against Guarantor without taking action against Tenant or any other party or joining Tenant or any other party as a party to such action. Except as otherwise provided in this Guaranty, this Guaranty is not secured and shall not

be deemed to be secured by any security instrument, unless such security instrument expressly recites that it secures this Guaranty.

11. FINANCIAL COVENANTS. Annually prior to the occurrence of a Release Condition Event, Guarantor shall, within one-hundred twenty (120) days after the end of its fiscal year, and at any time prior to the occurrence of a Release Condition Event, upon request of the BHA if the BHA has a reasonable basis to believe that Guarantor is failing to satisfy the financial covenants set forth in this Section 11, (a) furnish to counsel for the BHA, current financial statements with respect to Guarantor, prepared in accordance with generally accepted accounting principles consistently applied, substantially in the form and with the detail, provided to the BHA prior to the execution hereof, which statements shall be certified by the chief financial officer or a vice president of Guarantor as correct in all material respects as of the date thereof; and (b) execute, acknowledge and deliver to the BHA a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating such modifications). To the extent permitted by law, all financial statements delivered to the BHA's counsel pursuant to this Section shall be maintained by such counsel and the BHA as confidential materials and shall not be disclosed to any person except (i) as required by law or governmental or court order, or (ii) in the event of litigation relating to this Guaranty. Until such time as a Release Condition Event has occurred, Guarantor shall maintain a net worth of at least Five Million Dollars (\$5,000,000.00) and unencumbered Liquid Assets (as defined below) of not less than Two Million Dollars (\$2,000,000.00), measured annually; provided, however, in the event that Guarantor shall fail to maintain such minimum net worth and unencumbered Liquid Assets, Guarantor shall have the right to cure such failure by providing evidence of the cure within thirty (30) days following the date of the delivery of the financial statements which evidence such failure to satisfy such minimum net worth and unencumbered Liquid Assets requirements (the "Failure Date"). "Liquid Assets" shall mean the sum of the following unencumbered assets: (i) all cash (denominated in United States dollars) or cash equivalents; (ii) any demand deposits; (iii) marketable securities (a) consisting of short term (maturity of two years or less) obligations issued or guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof or (b) listed on a national exchange or traded over the counter, marked to market; (iv) short term certificates of deposit, with a maturity of two years or less, issued by, or savings accounts with, any bank or other financial institution organized under the laws of the United States of America having total assets in excess of \$500,000,000.00 or otherwise reasonably acceptable to the BHA; (v) undrawn lines of credit available to meet Guarantor's obligations hereunder; and (vi) the aggregate amount of uncalled capital commitments from Guarantor's members pursuant to the terms of its operating agreement. Notwithstanding the foregoing, Guarantor may cure any breach by Guarantor of the requirements and covenants hereof by electing, in writing, within thirty (30) days of the Failure Date, to propose a replacement guarantor, and presenting to the BHA evidence reasonably satisfactory to the BHA that the replacement guarantor maintains such minimum net worth and unencumbered Liquid Assets. Upon receipt of such evidence, Guarantor shall cause the replacement guarantor to execute a new Guaranty (in substantially the same form as this Guaranty) or a joinder to this Guaranty in

favor of the BHA in form and substance satisfactory to Guarantor, pursuant to which such replacement guarantor assumes all obligations hereunder.

- 12. <u>ATTORNEYS' FEES; ENFORCEMENT</u>. If any attorney is engaged by the BHA to enforce or defend any provision of this Guaranty, with or without the filing of any legal action or proceeding, then provided that the BHA prevails in such enforcement or defense (whether or not any legal action or other proceeding is filed), Guarantor shall pay to the BHA, within thirty (30) days after demand all reasonable attorneys' fees and third-party costs incurred by the BHA in connection therewith, together with interest thereon, if not so paid by such thirtieth (30th) day after demand, until paid at the Default Rate (as defined in the Lease).
- 13. RULES OF CONSTRUCTION. The word "Tenant" as used herein shall include both the named Tenant and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Tenant under the Lease pursuant to an assignment by Tenant or the admission of a person as a new member of Tenant that holds more than eighty percent (80%) of the interests in Tenant. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Guaranty is executed by more than one person, the term "Guarantor" shall include all such persons. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and vice versa. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

### 14. <u>INTENTIONALLY DELETED</u>.

- GOVERNING LAW. This Guaranty shall be governed by, and construed in accordance 15. with, the laws of The Commonwealth of Massachusetts, without regard to conflicts of laws principles. Guarantor hereby agrees that any suit, action, or proceeding arising out of or relating to this Guaranty shall be brought only in, and Guarantor hereby consents and submits irrevocably to the jurisdiction of, the courts of The Commonwealth of Massachusetts or the United States District Court for the District of Massachusetts, and all courts to which an appeal may be taken from the aforementioned courts. Guarantor expressly and irrevocably waives any objection it may now or hereafter have as to venue in any of such courts and any claim that any such suit, action, or proceeding has been brought in an inconvenient forum. Service of process in any such suit, action, or proceeding may be effected upon Guarantor at the first address for Guarantor set forth in Section 21 below (or such other one address as Guarantor may specify to the BHA in a written notice given in the manner provided in this Guaranty) by overnight delivery by an internationally recognized overnight courier delivery service or by any method then permitted under the laws of the Commonwealth of Massachusetts.
- **MISCELLANEOUS**. Time is of the essence hereunder with respect to every provision hereof. The provisions of this Guaranty will bind and benefit the successors and assigns of Guarantor and the BHA. The liability of all persons who are named as Guarantor hereunder, if more than one, shall be joint and several. If any provision of this Guaranty

shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Guaranty and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been part of this Guaranty. This Guaranty sets forth the entire agreement between the parties with regard to the subject matter hereof and cannot be changed or terminated orally, but only by a written instrument signed by the BHA and Guarantor. Capitalized terms used herein and not otherwise defined shall have the meaning given thereto in the Lease. The terms "the BHA" and "Tenant" shall each be deemed to include the named party and such party's successors and assigns. No delay or omission on the part of the BHA or Guarantor in exercising any right hereunder shall operate as a waiver of such right or remedy, or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or a waiver of such right or remedy on any other occasion. All monetary obligations of Guarantor hereunder shall be satisfied in United States dollars.

- 17. JOINT AND SEVERAL LIABILITY. The liability of Guarantor hereunder shall be joint and several with the Tenant and all other guarantors of Tenant's obligations under the Lease. The BHA may, at its option, proceed against Guarantor, or any one or more guarantors if there be more than one, without having commenced any action or having obtained any judgment against Tenant or against Guarantor or against any other guarantor, if there be more than one, and without having first proceeded against any other security then held by the BHA for the performance of Tenant's obligations under the Lease.
- 18. **ENFORCEABILITY.** Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of the BHA's consideration for entering into this transaction, the BHA has specifically bargained for the waiver and relinquishment by Guarantor of such defenses as are specifically waived and relinquished in this Guaranty, and (d) Guarantor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Guarantor does hereby represent and confirm to the BHA that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses as are waived in this Guaranty. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by the BHA, to the extent permitted by law, and that the BHA is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.
- **REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor hereby represents and warrants as of the execution and delivery of this Guaranty that:
  - (a) the beneficial owners of Guarantor hold an indirect beneficial ownership interest in Tenant, and Guarantor deems the granting, execution and delivery of the Lease to

- be in Guarantor's best interest and Guarantor expects to derive substantial benefit therefrom;
- (b) Guarantor is a limited liability company, duly organized and in good standing under the laws of the Commonwealth of Massachusetts, and shall at all times maintain such legal existence and good standing;
- (c) Guarantor has full power and authority to execute, deliver and perform the terms of this Guaranty, and the person executing this Guaranty on behalf of Guarantor has been authorized by all requisite limited liability company action to do so;
- (d) this Guaranty is the legal, valid and binding obligation of Guarantor and, subject to the operation of bankruptcy and insolvency laws in the event of a bankruptcy or insolvency of Guarantor and similar laws affecting creditors' rights generally and under general principles of equity, is enforceable against Guarantor in accordance with its terms;
- (e) the financial statements of Guarantor, dated December 31, 2022, which have been delivered to the BHA, are true, correct, and complete in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied, and fairly present the financial condition of Guarantor as of the date thereof in all material respects. No material adverse change that has caused (or is likely to cause) Guarantor to fail to satisfy the financial covenants set forth in Section 11 hereof has occurred prior to the date hereof in the financial condition of Guarantor as set forth in such financial statements since the date thereof:
- (f) as of the date hereof, there are no outstanding judgments against, or any actions, suits or proceedings at law or in equity or before or by any governmental authority in which Guarantor has been served or (to the best of Guarantor's knowledge) threatened in writing against or affecting Guarantor or any of its assets which proceeding would, if decided adversely to Guarantor, materially and adversely affect Guarantor's ability to perform its obligations under this Guaranty. To the best of Guarantor's knowledge after due inquiry, as of the date hereof, Guarantor is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority which is binding upon it or any of its assets; and
- (g) the execution, delivery and performance of the terms of this Guaranty have not and will not result in any breach of, or default under, any mortgage, deed of trust, lease, bank loan or credit agreement, charter, articles of incorporation, by-law, operating agreement, joint venture or partnership agreement, or other material instrument to which Guarantor is a party or by which any of its assets may be bound.
- **EXECUTIVE ORDER COMPLIANCE**. Guarantor will at all times comply with Executive Order No. 13224 on Terrorist financing effective September 24, 2001, the Uniting and Strengthening America by Providing Appropriate Tours Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 10756) and any other law, regulation or

Executive Order of the United States of America prohibiting the doing of business with or transfer of property to any person or entity.

21. NOTICES. All notices, demands, requests, and other communications required or permitted to be given pursuant to the terms hereof, shall be in writing and shall be deemed to have been properly given if delivered by hand or sent by registered or certified United States mail, postage prepaid, return receipt requested, and:

If directed to the BHA addressed to:

**Boston Housing Authority** 52 Chauncy Street Boston, MA 02111 ATTN: Administrator

With a copy to:

**Boston Housing Authority** 52 Chauncy Street Boston, MA 02111 ATTN: General Counsel

If directed to Guarantor addressed to:

Leggat McCall Properties LLC 10 Post Office Square, #13 Boston, MA 02109 ATTN: Eric B. Sheffels and Adelaide Grady

Email: Eric.Sheffels@lmp.com and adelaide.grady@lmp.com

With a copy to:

Morgan, Lewis & Bockius LLP One Federal Street Boston, MA 02110-1726 ATTN: James L. Black, Jr.

Email: james.black@morganlewis.com

Or, to such other addresses as may from time to time be specified in writing by any party hereto. Unless otherwise specified in writing, all sums payable to the BHA hereunder shall be paid to the first address listed above in this Section for the BHA.

22. **RELEASE OF GUARANTY.** Upon the occurrence of a Release Condition Event, the BHA shall, upon written request of Guarantor, execute and deliver to Guarantor (at no cost to Guarantor or Tenant) a complete release of this Guaranty.

- **SUBORDINATION OF GUARANTY.** The BHA agrees that its rights under this Guaranty shall be subject and subordinate to the rights of any Permitted Leasehold Mortgagee under the completion guaranty provided by Guarantor to such Permitted Leasehold Mortgagee with respect to the Improvements.
- 24. WAIVER OF RIGHT TO TRIAL BY JURY. GUARANTOR AND, BY ITS ACCEPTANCE HEREOF, THE BHA, HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS GUARANTY OR IN ANY WAY CONNECTED WITH OR RELATED TO THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THE IMPROVEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND CONSENT TO THE FILING OF AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF GUARANTOR AND THE BHA TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

[End of Page: See Following Page for Signature]

# [Signature page of Guaranty]

IN WITNESS WHEREOF, Guarantor has signed this Guaranty under seal as of the date first above written.

LEGGA	AT McCALI	_ PROPE	CHES LLO	ن
By:				
Name:				
Title:				

## TRANSACTION RENT CALCULATION ILLUSTRATION

Method 2 Approach

Greater of Method 1 and Method 2 Equals Transaction Rent Due

Transaction Rent Computations Illustration 1	Inputs Highlighted in Yellow	Outlined Input Is Changed Between Illustrations
--	------------------------------	---

Transaction Rent Computed as:	Greater of Method 1 and	nd Method 2
Basic Data		100,000,000 Initial Development Cost or Purchase Price + 3rd Party Closing Costs 125,000,000 Sale Price at End of Holding Period 2.0% 3.0%
Method 1 - % of Gross Sale Approach	% of Gross Sale Proceeds	1.0% Ground Lease Section 4.3(a)
Method 2 - Profit Sharing Approach Treasury Yield Used for Holding Period Hurdle Rates	Tranche 1 Hurdle Tranche 2 Hurdle Tranche 3 Hurdle	Ground Lease Section 4.3(b)  2.14% Ave. 10YR treasury yield for trailing 5 years at Start of Holding Period as of 6/20/23  8.14% Yield on Treasuries + 6.0%  11.14% Yield on Treasuries + 9.0%  14.14% Yield on Treasuries + 12.0%
Profit Share	% of Margin over Hurdle % of Margin over Hurdle % of Margin over Hurdle	10% 20% 30%

Investment Performance																	
Quarter	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Invested Capital At Start of Holding Period (Sale Basis)	-100,000,000																
Cash Flow from Investment Activities (CapEx)		-25,000	-25,000	-25,000	-25,000	-25,750	-25,750	-25,750	-25,750	-26,523	-26,523	-26,523	-26,523	-27,318	-27,318	-27,318	-27,31
Cash Flow from Operating Activities Unlevered (adds back interest expense)		1,250,000	1,250,000	1,250,000	1,250,000	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500
Gross Proceeds from Sale at End of Holding Period (Sale Price)																	125,000,000
Costs of Sale																	-2,500,000
Quarterly Unlevered Cash Flow Prior to Transaction Rent	-100,000,000	1,225,000	1,225,000	1,225,000	1,225,000	1,261,750	1,261,750	1,261,750	1,261,750	1,260,978	1,260,978	1,260,978	1,260,978	1,260,182	1,260,182	1,260,182	123,760,182
IRR Prior to Transaction Rent	9.68%																
Quarterly Unlevered Cash Flow Post Transaction Rent	-100,000,000	1,225,000	1,225,000	1,225,000	1,225,000	1,261,750	1,261,750	1,261,750	1,261,750	1,260,978	1,260,978	1,260,978	1,260,978	1,260,182	1,260,182	1,260,182	122,510,182
IRR Post Transaction Rent = Tenant's Return	9.44%																
Tranche 1 Hurdle Amount Prior to Sale	-100,000,000	-100,809,135	-101,634,728	-102,477,116	-103,336,638	-104,176,895	-105,034,243	-105,909,031	-106,801,613	-107,713,124	-108,643,177	-109,592,148	-110,560,422	-111,549,188	-112,558,067	-113,587,468	-114,637,80
Transla 2 Usualla America Drienta Cala	100 000 000	101 FF0 13F	102 101 070	104 000 020	100 501 057	100 205 262	100 050 003	111 755 660	112 COF 247	115 507 305	117 462 106	110 471 534	121 526 705	122 000 201	135 043 050	120 000 500	120 202 420

Trancile I trancile Amount Frior to Sale	-100,000,000 -100,809	,133 -101,034,728	-102,477,110	-103,330,038	-104,170,033	-103,034,243	-105,505,031	-100,001,013	-107,713,124 -1	100,043,177 -10	.05,552,140	110,300,422	-111,545,100	-112,338,007	/ -113,367,40	00 -114,037,000
Tranche 2 Hurdle Amount Prior to Sale	-100,000,000 -101,559	,135 -103,161,678	-104,808,838	-106,501,857	-108,205,262	-109,956,092	-111,755,668	-113,605,347	-115,507,295 -1	117,462,196 -1	.19,471,524 -:	-121,536,795	-123,660,361	-125,843,050	0 -128,086,50	9 -130,392,428
Tranche 3 Hurdle Amount Prior to Sale	-100,000,000 -102,309	,135 -104,699,877	-107,175,112	-109,737,825	-112,354,357	-115,063,362	-117,868,106	-120,771,973	-123,779,240 -1	126,892,788 -1	.30,116,372 -:	-133,453,883	-136,910,141	-140,488,548	8 -144,193,42	0 -148,029,228
Profit Sharing																
Profit Sharing Profit Share	\$786,219 Tranch 1						ſ	Proceeds to Ow	ner to Clear Trar	nche 1						114,637,808

22,046,001

	\$0 Tranch 3
	\$786,219 Total Share
Transaction Rent Computation	<del></del>
Method 1 Approach	\$1,250,000 at 1% of Gross Proceeds

\$786,219 Total Share of Profits

\$1,250,000 Amount Due

Transaction Rent Computations	Illustration 2	Inputs Highlighted in Yellow	Outlined Input Is Changed Between Illustrations
Transaction Rent Computed as:	Greater of Method 1 ar	nd Method 2	
Basic Data	Invested Capital - Initial Gross Sale Proceeds Costs of Sale Annual Inflation	100,000,000 Initial Development Cost or P 140,000,000 Sale Price at End of Holding P 2.0% 3.0%	, 9
Method 1 - % of Gross Sale Approach	% of Gross Sale Proceeds	1.0% Ground Lease Section 4.3(a)	
Method 2 - Profit Sharing Approach		Ground Lease Section 4.3(b)	
Treasury Yield Used for Holding Period		2.14% Ave. 10YR treasury yield for to	railing 5 years at Start of Holding Period as of 6/20/23
Hurdle Rates	Tranche 1 Hurdle	8.14% Yield on Treasuries + 6.0%	
	Tranche 2 Hurdle	11.14% Yield on Treasuries + 9.0%	
	Tranche 3 Hurdle	14.14% Yield on Treasuries + 12.0%	
Profit Share	% of Margin over Hurdle	10%	

20%

30%

Investment Performance																	
Quarter	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Invested Capital At Start of Holding Period (Sale Basis)	-100,000,000																
Cash Flow from Investment Activities (CapEx)		-25,000	-25,000	-25,000	-25,000	-25,750	-25,750	-25,750	-25,750	-26,523	-26,523	-26,523	-26,523	-27,318	-27,318	-27,318	-27,318
Cash Flow from Operating Activities Unlevered (adds back interest expense)		1,250,000	1,250,000	1,250,000	1,250,000	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500
Gross Proceeds from Sale at End of Holding Period (Sale Price)																	140,000,000
Costs of Sale																	-2,800,000
Quarterly Unlevered Cash Flow Prior to Transaction Rent	-100,000,000	1,225,000	1,225,000	1,225,000	1,225,000	1,261,750	1,261,750	1,261,750	1,261,750	1,260,978	1,260,978	1,260,978	1,260,978	1,260,182	1,260,182	1,260,182	138,460,182
IRR Prior to Transaction Rent	12.33%																
Quarterly Unlevered Cash Flow Post Transaction Rent	-100,000,000	1,225,000	1,225,000	1,225,000	1,225,000	1,261,750	1,261,750	1,261,750	1,261,750	1,260,978	1,260,978	1,260,978	1,260,978	1,260,182	1,260,182	1,260,182	135,698,257
IRR Post Transaction Rent = Tenant's Return	11.86%																
Tranche 1 Hurdle Amount Prior to Sale	-100,000,000	-100,809,135	-101,634,728	-102,477,116	-103,336,638	-104,176,895	-105,034,243	-105,909,031	-106,801,613	-107,713,124	-108,643,177	-109,592,148	-110,560,422	-111,549,188	-112,558,067	-113,587,468	-114,637,808
Tranche 2 Hurdle Amount Prior to Sale	-100,000,000	-101,559,135	-103,161,678	-104,808,838	-106,501,857	-108,205,262	-109,956,092	-111,755,668	-113,605,347	-115,507,295	-117,462,196	-119,471,524	-121,536,795	-123,660,361	-125,843,050	-128,086,509	-130,392,428
Tranche 3 Hurdle Amount Prior to Sale	-100.000.000	-102.309.135	-104.699.877	-107.175.112	-109.737.825	-112.354.357	-115.063.362	-117.868.106	-120.771.973	-123,779,240	-126.892.788	-130.116.372	-133.453.883	-136.910.141	-140.488.548	-144.193.420	-148.029.228

Profit Sharing	
Profit Share	\$1,750,513 Tranch 1
	\$1,011,412 Tranch 2
	\$0 Tranch 3
	\$2,761,925 Total Share

% of Margin over Hurdle

% of Margin over Hurdle

Transaction Rent Computation	
Method 1 Approach	\$1,400,000 at 1% of Gross Proceeds
Method 2 Approach	\$2,761,925 Total Share of Profits
Greater of Method 1 and Method 2 Equals Transaction Rent Due	\$2 761 925 Amount Due

Proceeds to Owner to Clear Tranche 1	114,637,808
Incremental Proceeds to Owner/BHA to Clear Tranche 2 = difference in hurdle amount/(1-BHA share)	17,505,132
Incremental Proceeds to Owner/BHA to Clear Tranche 3 = difference in hurdle amount/(1-BHA share)	22,046,001

**Transaction Rent Computations** 

	•	
Transaction Rent Computed as:	Greater of Method 1 an	d Method 2
Basic Data	Invested Capital - Initial	100,000,000 Initial Development Cost or Purchase Price + 3rd Party Closing Costs
basic bata	Gross Sale Proceeds	160,000,000 Sale Price at End of Holding Period
	Costs of Sale	2.0%
	Annual Inflation	
	Annual Inflation	3.0%
Method 1 - % of Gross Sale Approach	% of Gross Sale Proceeds	1.0% Ground Lease Section 4.3(a)
Method 2 - Profit Sharing Approach		Ground Lease Section 4.3(b)
Treasury Yield Used for Holding Period		2.14% Ave. 10YR treasury yield for trailing 5 years at Start of Holding Period as of 6/20/23
Hurdle Rates	Tranche 1 Hurdle	8.14% Yield on Treasuries + 6.0%
	Tranche 2 Hurdle	11.14% Yield on Treasuries + 9.0%
	Tranche 3 Hurdle	14.14% Yield on Treasuries + 12.0%
Profit Share	% of Margin over Hurdle	10%
	% of Margin over Hurdle	20%

30%

Inputs Highlighted in Yellow

Investment Performance																	
Quarter	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Invested Capital At Start of Holding Period (Sale Basis)	-100,000,000																
Cash Flow from Investment Activities (CapEx)		-25,000	-25,000	-25,000	-25,000	-25,750	-25,750	-25,750	-25,750	-26,523	-26,523	-26,523	-26,523	-27,318	-27,318	-27,318	-27,318
Cash Flow from Operating Activities Unlevered (adds back interest expense)		1,250,000	1,250,000	1,250,000	1,250,000	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500	1,287,500
Gross Proceeds from Sale at End of Holding Period (Sale Price)																	160,000,000
Costs of Sale																	-3,200,000
Quarterly Unlevered Cash Flow Prior to Transaction Rent	-100,000,000	1,225,000	1,225,000	1,225,000	1,225,000	1,261,750	1,261,750	1,261,750	1,261,750	1,260,978	1,260,978	1,260,978	1,260,978	1,260,182	1,260,182	1,260,182	158,060,182
IRR Prior to Transaction Rent	15.51%																
Quarterly Unlevered Cash Flow Post Transaction Rent	-100,000,000	1,225,000	1,225,000	1,225,000	1,225,000	1,261,750	1,261,750	1,261,750	1,261,750	1,260,978	1,260,978	1,260,978	1,260,978	1,260,182	1,260,182	1,260,182	151,117,151
IRR Post Transaction Rent = Tenant's Return	14.43%																
Tranche 1 Hurdle Amount Prior to Sale	-100.000.000	100 000 135	101 624 729	102 477 116	102 226 620	-104.176.895	105 024 242	105 000 021	106 901 612	107 712 124	100 642 177	100 502 149	110 560 422	111 540 100	112 550 067	112 507 460	114 627 000
	,,		. , ,		, ,	. , .,	,,	, ,	,		,,	,	.,	,,	,,.	-,,	, ,
Tranche 2 Hurdle Amount Prior to Sale		-101,559,135		. , ,		, , .											
Tranche 3 Hurdle Amount Prior to Sale	-100,000,000	-102,309,135	-104,699,877	-107,175,112	-109,737,825	-112,354,357	-115,063,362	-117,868,106	-120,771,973	-123,779,240	-126,892,788	-130,116,372	-133,453,883	-136,910,141	-140,488,548	-144,193,420	-148,029,228

Outlined Input Is Changed Between Illustrations

Profit Sharing	
Profit Share	\$1,750,513 Tranch 1
	\$4,409,200 Tranch 2
	\$783,317 Tranch 3
	\$6.942.021 Total Share

% of Margin over Hurdle

Illustration 3

Transaction Rent Computation	
Method 1 Approach	\$1,600,000 at 1% of Gross Proceeds
Method 2 Approach	\$6,943,031 Total Share of Profits
Greater of Method 1 and Method 2 Equals Transaction Rent Due	\$6.943.031. Amount Due

Proceeds to Owner to Clear Tranche 1	114,637,808
Incremental Proceeds to Owner/BHA to Clear Tranche 2 = difference in hurdle amount/(1-BHA share)	17,505,132
Incremental Proceeds to Owner/BHA to Clear Tranche 3 = difference in hurdle amount/(1-BHA share)	22,046,001

## TRANSACTION RENT CALCULATION FORMULAS

#### Macrotrends Data Download

10 Year Treasury Rate - 54 Year Historical Chart

DISCLAIMER AND TERMS OF USE: HISTORICAL DATA IS PROVIDED "AS IS" AND SOLELY FOR INFORMATIONAL PURPOSES - NOT FOR TRADING PURPOSES OR ADVICE.

NEITHER MACROTRENDS LLC NOR ANY OF OUR INFORMATION PROVIDERS WILL BE LIABLE FOR ANY DAMAGES RELATING TO YOUR USE OF THE DATA PROVIDED.

ATTRIBUTION: Proper attribution requires clear indication of the data source as "www.macrotrends.net". A "dofollow" backlink to the originating page is also required if the data is displayed on a web page.

DOWNLOADED 6	/20/2023	sum entries	2672.81 1251
6/15/2018	2.93	ave	<b>2.136539</b> 5 YR T Rate
6/18/2018	2.92		
6/19/2018	2.89		
6/20/2018	2.93		
6/21/2018	2.9		
6/22/2018	2.9		
6/25/2018	2.87		
6/26/2018	2.88		
6/27/2018	2.83		
6/28/2018	2.84		
6/29/2018	2.85		
7/2/2018	2.87		
7/3/2018	2.83		
7/5/2018	2.84		
7/6/2018	2.82		
7/9/2018	2.86		
7/10/2018	2.87		
7/11/2018	2.85		
7/12/2018	2.85		
7/13/2018	2.83		
7/16/2018	2.85		
7/17/2018	2.86		
7/18/2018	2.88		
7/19/2018	2.84		
7/20/2018	2.89		
7/23/2018	2.96		
7/24/2018	2.95		
7/25/2018	2.94		
7/26/2018	2.98		
7/27/2018	2.96		
7/30/2018	2.98		
7/31/2018	2.96		
8/1/2018	3		

8/2/2018	2.98
8/3/2018	2.95
8/6/2018	2.94
8/7/2018	2.98
8/8/2018	2.96
8/9/2018	2.93
8/10/2018	2.87
8/13/2018	2.88
8/14/2018	2.89
8/15/2018	2.86
8/16/2018	2.87
8/17/2018	2.87
	2.82
8/20/2018	
8/21/2018	2.85
8/22/2018	2.82
8/23/2018	2.82
8/24/2018	2.82
8/27/2018	2.85
8/28/2018	2.88
8/29/2018	2.89
	2.86
8/30/2018	
8/31/2018	2.86
9/4/2018	2.9
9/5/2018	2.9
9/6/2018	2.88
9/7/2018	2.94
9/10/2018	2.94
9/11/2018	2.98
9/12/2018	2.97
9/13/2018	2.97
9/14/2018	2.99
9/17/2018	2.99
•	
9/18/2018	3.05
9/19/2018	3.08
9/20/2018	3.07
9/21/2018	3.07
9/24/2018	3.08
9/25/2018	3.1
9/26/2018	3.06
9/27/2018	3.06
9/28/2018	3.05
•	
10/1/2018	3.09
10/2/2018	3.05
10/3/2018	3.15
10/4/2018	3.19
10/5/2018	3.23
10/9/2018	3.21

10/10/2018	3.22
10/11/2018	3.14
10/12/2018	3.15
10/15/2018	3.16
10/16/2018	3.16
10/17/2018	3.19
10/18/2018	3.17
10/19/2018	3.2
10/22/2018	3.2
10/23/2018	3.17
10/24/2018	3.1
10/25/2018	3.14
10/26/2018	3.08
10/29/2018	3.08
10/30/2018	3.12
10/31/2018	3.15
11/1/2018	3.14
11/2/2018	3.22
11/5/2018	3.2
11/6/2018	3.22
11/7/2018	3.22
11/8/2018	3.24
11/9/2018	3.19
• •	
11/13/2018	3.14
11/14/2018	3.12
11/15/2018	3.11
11/16/2018	3.08
11/19/2018	3.06
11/20/2018	3.06
11/21/2018	3.06
11/23/2018	3.05
11/26/2018	3.07
11/27/2018	3.06
11/28/2018	3.06
11/29/2018	3.03
11/30/2018	3.01
12/3/2018	2.98
12/4/2018	2.91
12/6/2018	2.87
12/7/2018	2.85
12/10/2018	2.85
12/11/2018	2.89
12/12/2018	2.91
12/13/2018	2.91
12/14/2018	2.89
12/17/2018	2.86
12/18/2018	2.82

12/19/2018	2.77
	2.79
12/20/2018	
12/21/2018	2.79
12/24/2018	2.74
12/26/2018	2.81
12/27/2018	2.77
12/28/2018	2.72
12/31/2018	2.69
1/2/2019	2.66
1/3/2019	2.56
1/4/2019	2.67
1/7/2019	2.7
1/8/2019	2.73
1/9/2019	2.74
1/10/2019	2.74
1/11/2019	2.71
1/14/2019	2.71
1/15/2019	2.72
1/16/2019	2.73
	2.75
1/17/2019	
1/18/2019	2.79
1/22/2019	2.74
1/23/2019	2.76
1/24/2019	2.72
1/25/2019	2.76
1/28/2019	2.75
1/29/2019	2.72
1/30/2019	2.7
1/31/2019	2.63
2/1/2019	2.7
2/4/2019	2.73
2/5/2019	2.71
2/6/2019	2.7
2/7/2019	2.65
2/8/2019	2.63
2/11/2019	2.65
2/12/2019	2.68
2/13/2019	2.71
2/14/2019	2.66
2/15/2019	2.66
2/19/2019	2.65
2/20/2019	2.65
2/21/2019	2.69
2/22/2019	2.65
2/25/2019	2.67
2/26/2019	2.64
2/27/2019	2.69

2/28/2019	2.73
3/1/2019	2.76
3/4/2019	2.72
3/5/2019	2.72
	2.69
3/6/2019	
3/7/2019	2.64
3/8/2019	2.62
3/11/2019	2.64
3/12/2019	2.61
3/13/2019	2.61
3/14/2019	2.63
3/15/2019	2.59
3/18/2019	2.6
3/19/2019	2.61
3/20/2019	2.54
3/21/2019	2.54
3/22/2019	2.44
3/25/2019	2.43
3/26/2019	2.41
3/27/2019	2.39
· . · . · . · . · . · . · . · . · . · .	
3/28/2019	2.39
3/29/2019	2.41
4/1/2019	2.49
4/2/2019	2.48
4/3/2019	2.52
4/4/2019	2.51
4/5/2019	2.5
4/8/2019	2.52
4/9/2019	2.51
4/10/2019	2.48
4/11/2019	2.51
4/11/2019	2.56
4/15/2019	2.55
4/16/2019	2.6
4/17/2019	2.59
4/18/2019	2.57
4/22/2019	2.59
4/23/2019	2.57
4/24/2019	2.53
4/25/2019	2.54
4/26/2019	2.51
4/29/2019	2.54
4/30/2019	2.51
5/1/2019	2.52
5/2/2019	2.55
5/3/2019	2.54
5/6/2019	2.51

- /- /	
5/7/2019	2.45
5/8/2019	2.49
5/9/2019	2.45
5/10/2019	2.47
5/13/2019	2.4
5/14/2019	2.42
5/15/2019	2.37
5/16/2019	2.4
5/17/2019	2.39
5/20/2019	2.41
5/21/2019	2.43
5/22/2019	2.39
5/23/2019	2.31
5/24/2019	2.32
5/28/2019	2.26
5/29/2019	2.25
5/30/2019	2.22
5/31/2019	2.14
6/3/2019	2.07
6/4/2019	2.12
6/5/2019	2.12
6/6/2019	2.12
6/7/2019	2.09
6/10/2019	2.15
6/11/2019	2.15
6/12/2019	2.13
6/13/2019	2.1
6/14/2019	2.09
6/17/2019	2.09
6/18/2019	2.06
6/19/2019	2.03
6/20/2019	2.01
6/21/2019	2.07
6/24/2019	2.02
6/25/2019	2
6/26/2019	2.05
6/27/2019	2.01
6/28/2019	2
7/1/2019	2.03
7/2/2019	1.98
7/3/2019	1.96
7/5/2019	2.04
7/8/2019	2.05
7/9/2019	2.07
7/10/2019	2.07
7/11/2019	2.13
7/11/2013	2.13
, , 12 / 2013	۷.1۷

7/15/2019	2.09
7/16/2019	2.13
7/17/2019	2.06
7/18/2019	2.04
7/19/2019	2.05
7/22/2019	2.05
7/23/2019	2.08
7/24/2019	2.05
•	
7/25/2019	2.08
7/26/2019	2.08
7/29/2019	2.06
7/30/2019	2.06
7/31/2019	2.02
8/1/2019	1.9
8/2/2019	1.86
8/5/2019	1.75
8/6/2019	1.73
8/7/2019	1.71
8/8/2019	1.72
	1.74
8/9/2019	
8/12/2019	1.65
8/13/2019	1.68
8/14/2019	1.59
8/15/2019	1.52
8/16/2019	1.55
8/19/2019	1.6
8/20/2019	1.55
8/21/2019	1.59
8/22/2019	1.62
8/23/2019	1.52
8/26/2019	1.54
8/27/2019	1.49
8/28/2019	1.47
8/29/2019	1.5
8/30/2019	1.5
9/3/2019	1.47
9/4/2019	1.47
9/5/2019	1.57
9/6/2019	1.55
9/9/2019	1.63
9/10/2019	1.72
9/11/2019	1.75
9/12/2019	1.79
9/13/2019	1.9
9/16/2019	1.84
• •	
9/17/2019	1.81
9/18/2019	1.8

9/19/2019	1.79
9/20/2019	1.74
9/23/2019	1.72
9/24/2019	1.64
9/25/2019	1.73
9/26/2019	1.7
9/27/2019	1.69
• •	1.68
9/30/2019	
10/1/2019	1.65
10/2/2019	1.6
10/3/2019	1.54
10/4/2019	1.52
10/7/2019	1.56
• •	
10/8/2019	1.54
10/9/2019	1.59
10/10/2019	1.67
10/11/2019	1.76
10/15/2019	1.77
10/16/2019	1.75
10/17/2019	1.76
10/18/2019	1.76
10/21/2019	1.8
10/22/2019	1.78
10/23/2019	1.77
10/24/2019	1.77
10/25/2019	1.8
10/28/2019	1.85
10/29/2019	1.84
10/30/2019	1.78
10/31/2019	1.69
11/1/2019	1.73
• •	1.79
11/4/2019	
11/5/2019	1.86
11/6/2019	1.81
11/7/2019	1.92
11/8/2019	1.94
11/12/2019	1.92
• •	1.88
11/13/2019	
11/14/2019	1.82
11/15/2019	1.84
11/18/2019	1.81
11/19/2019	1.79
11/20/2019	1.73
11/21/2019	1.77
• •	
11/22/2019	1.77
11/25/2019	1.76
11/26/2019	1.74

11/27/2019	1.77
11/29/2019	1.78
12/2/2019	1.83
12/3/2019	1.72
12/4/2019	1.77
12/5/2019	1.8
12/6/2019	1.84
12/9/2019	1.83
12/10/2019	1.85
12/11/2019	1.79
12/12/2019	1.9
12/13/2019	1.82
12/16/2019	1.89
12/17/2019	1.89
12/18/2019	1.92
12/19/2019	1.92
12/20/2019	1.92
12/23/2019	1.93
12/24/2019	1.9
12/26/2019	1.9
12/27/2019	1.88
12/30/2019	1.9
12/31/2019	1.92
1/2/2020	1.88
1/3/2020	1.8
1/6/2020	1.81
1/7/2020	1.83
1/8/2020	1.87
1/9/2020	1.85
1/10/2020	1.83
1/13/2020	1.85
1/14/2020	1.82
1/15/2020	1.79
1/16/2020	1.81
1/17/2020	1.84
1/21/2020	1.78
1/22/2020	1.77
1/23/2020	1.74
	1.74
1/24/2020	
1/27/2020	1.61
1/28/2020	1.65
1/29/2020	1.6
1/30/2020	1.57
1/31/2020	1.51
2/3/2020	1.54
2/4/2020	1.61
2/5/2020	1.66

2/6/2020	1.65
2/7/2020	1.59
2/10/2020	1.56
2/11/2020	1.59
2/12/2020	1.62
2/13/2020	1.61
2/14/2020	1.59
2/18/2020	1.55
2/19/2020	1.56
2/20/2020	1.52
2/21/2020	1.46
2/24/2020	1.38
•	
2/25/2020	1.33
2/26/2020	1.33
2/27/2020	1.3
2/28/2020	1.13
3/2/2020	1.1
3/3/2020	1.02
3/4/2020	1.02
3/5/2020	0.92
3/6/2020	0.74
3/9/2020	0.54
3/10/2020	0.76
3/11/2020	0.82
3/12/2020	0.88
3/13/2020	0.94
	0.73
3/16/2020	
3/17/2020	1.02
3/18/2020	1.18
3/19/2020	1.12
3/20/2020	0.92
3/23/2020	0.76
3/24/2020	0.84
3/25/2020	0.88
• •	
3/26/2020	0.83
3/27/2020	0.72
3/30/2020	0.7
3/31/2020	0.7
4/1/2020	0.62
4/2/2020	0.63
4/3/2020	0.62
4/6/2020	0.67
• •	
4/7/2020	0.75
4/8/2020	0.77
4/9/2020	0.73
4/13/2020	0.76
4/14/2020	0.76

4/15/2020	0.63
4/16/2020	0.61
4/17/2020	0.65
4/20/2020	0.63
4/21/2020	0.58
4/22/2020	0.63
4/23/2020	0.61
4/24/2020	0.6
4/27/2020	0.67
4/28/2020	0.62
4/29/2020	0.63
• •	
4/30/2020	0.64
5/1/2020	0.64
5/4/2020	0.64
5/5/2020	0.66
5/6/2020	0.72
5/7/2020	0.63
5/8/2020	0.69
	0.73
5/11/2020	
5/12/2020	0.69
5/13/2020	0.64
5/14/2020	0.63
5/15/2020	0.64
5/18/2020	0.73
5/19/2020	0.7
	0.68
5/20/2020	
5/21/2020	0.68
5/22/2020	0.66
5/26/2020	0.69
5/27/2020	0.68
5/28/2020	0.7
5/29/2020	0.65
6/1/2020	0.66
• •	
6/2/2020	0.68
6/3/2020	0.77
6/4/2020	0.82
6/5/2020	0.91
6/8/2020	0.88
6/9/2020	0.84
6/10/2020	0.75
6/11/2020	0.66
• •	
6/12/2020	0.71
6/15/2020	0.71
6/16/2020	0.75
6/17/2020	0.74
6/18/2020	0.71
6/19/2020	0.7
	-

6/22/2020	0.71
6/23/2020	0.72
• •	
6/24/2020	0.69
6/25/2020	0.68
6/26/2020	0.64
6/29/2020	0.64
• •	
6/30/2020	0.66
7/1/2020	0.69
7/2/2020	0.68
7/6/2020	0.69
7/7/2020	0.65
7/8/2020	0.67
7/9/2020	0.62
7/10/2020	0.65
7/13/2020	0.64
7/14/2020	0.63
7/15/2020	0.64
7/16/2020	0.62
7/17/2020	0.64
7/20/2020	0.62
7/21/2020	0.61
7/22/2020	0.6
7/23/2020	0.59
7/24/2020	0.59
• •	
7/27/2020	0.62
7/28/2020	0.59
7/29/2020	0.58
7/30/2020	0.55
7/31/2020	0.55
• •	
8/3/2020	0.56
8/4/2020	0.52
8/5/2020	0.55
8/6/2020	0.55
8/7/2020	0.57
8/10/2020	0.59
8/11/2020	0.64
8/12/2020	0.69
8/13/2020	0.71
8/14/2020	0.71
8/17/2020	0.69
8/18/2020	0.67
8/19/2020	0.68
8/20/2020	0.65
8/21/2020	0.64
8/24/2020	0.65
8/25/2020	0.69
8/26/2020	0.69
-, =-, ===	

8/27/2020	0.74
	_
8/28/2020	0.74
8/31/2020	0.72
9/1/2020	0.68
9/2/2020	0.66
9/3/2020	0.63
9/4/2020	0.72
9/8/2020	0.69
9/9/2020	0.71
	0.68
9/10/2020	
9/11/2020	0.67
9/14/2020	0.68
9/15/2020	0.68
9/16/2020	0.69
9/17/2020	0.69
9/18/2020	0.7
9/21/2020	0.68
9/22/2020	0.68
9/23/2020	0.68
9/24/2020	0.67
9/25/2020	0.66
9/28/2020	0.67
9/29/2020	0.66
9/30/2020	0.69
10/1/2020	0.68
10/2/2020	0.7
10/5/2020	0.78
10/6/2020	0.76
10/7/2020	0.81
10/7/2020	0.78
10/9/2020	0.79
10/13/2020	0.74
10/14/2020	0.73
10/15/2020	0.74
10/16/2020	0.76
10/19/2020	0.78
10/20/2020	0.81
10/21/2020	0.83
10/22/2020	0.87
10/23/2020	0.85
10/26/2020	0.81
10/27/2020	0.79
10/28/2020	0.79
10/29/2020	0.85
10/30/2020	0.88
11/2/2020	0.87
11/3/2020	0.9

11/4/2020	0.78
11/5/2020	0.79
11/6/2020	0.83
11/9/2020	0.96
• •	
11/10/2020	0.98
11/12/2020	0.88
11/13/2020	0.89
11/16/2020	0.91
11/17/2020	0.87
11/18/2020	0.88
11/19/2020	0.86
11/20/2020	0.83
11/23/2020	0.86
11/24/2020	0.88
11/25/2020	0.88
11/27/2020	0.84
11/30/2020	0.84
12/1/2020	0.92
12/2/2020	0.95
12/3/2020	0.92
12/4/2020	0.97
12/7/2020	0.94
12/8/2020	0.92
12/9/2020	0.95
	0.93
12/10/2020	
12/11/2020	0.9
12/14/2020	0.9
12/15/2020	0.92
12/16/2020	0.92
12/17/2020	0.94
12/18/2020	0.95
12/21/2020	0.95
12/22/2020	0.93
12/23/2020	0.96
12/24/2020	0.94
12/28/2020	0.94
12/29/2020	0.94
12/30/2020	0.93
12/31/2020	0.93
1/4/2021	0.93
1/5/2021	0.96
1/6/2021	1.04
1/7/2021	1.08
1/8/2021	1.13
1/11/2021	1.15
1/12/2021	1.15
1/12/2021	1.13
1/13/2021	1.1

1/14/2021	1.15
1/15/2021	1.11
1/19/2021	1.1
	1.1
1/20/2021	
1/21/2021	1.12
1/22/2021	1.1
1/25/2021	1.05
1/26/2021	1.05
1/27/2021	1.04
1/28/2021	1.07
1/29/2021	1.11
2/1/2021	1.09
2/2/2021	1.12
2/3/2021	1.15
2/4/2021	1.15
2/5/2021	1.19
2/8/2021	1.19
2/9/2021	1.18
	1.15
2/10/2021	
2/11/2021	1.16
2/12/2021	1.2
2/16/2021	1.3
2/17/2021	1.29
2/18/2021	1.29
2/19/2021	1.34
2/22/2021	1.37
2/23/2021	1.37
2/24/2021	1.38
2/25/2021	1.54
2/26/2021	1.44
3/1/2021	1.45
3/2/2021	1.42
3/3/2021	1.47
3/4/2021	1.54
	1.56
3/5/2021	
3/8/2021	1.59
3/9/2021	1.55
3/10/2021	1.53
3/11/2021	1.54
3/12/2021	1.64
3/15/2021	1.62
3/16/2021	1.62
3/17/2021	1.63
3/18/2021	1.71
3/19/2021	1.74
3/22/2021	1.69
3/23/2021	1.63

3/24/2021	1.62
3/25/2021	1.63
3/26/2021	1.67
3/29/2021	1.73
3/30/2021	1.73
3/31/2021	1.74
4/1/2021	1.69
4/2/2021	1.72
4/5/2021	1.73
4/6/2021	1.67
4/7/2021	1.68
	1.64
4/8/2021	
4/9/2021	1.67
4/12/2021	1.69
4/13/2021	1.64
4/14/2021	1.64
4/15/2021	1.56
4/16/2021	1.59
4/19/2021	1.61
-	1.58
4/20/2021	
4/21/2021	1.57
4/22/2021	1.57
4/23/2021	1.58
4/26/2021	1.58
4/27/2021	1.63
4/28/2021	1.63
4/29/2021	1.65
4/30/2021	1.65
5/3/2021	1.63
5/4/2021	1.61
5/5/2021	1.59
5/6/2021	1.58
5/7/2021	1.6
5/10/2021	1.63
5/11/2021	1.64
5/12/2021	1.69
5/13/2021	1.66
5/14/2021	1.63
5/17/2021	1.64
5/18/2021	1.64
5/19/2021	1.68
5/20/2021	1.63
5/21/2021	1.63
5/24/2021	1.61
5/25/2021	1.56
5/26/2021	1.58
5/27/2021	1.61

5/28/2021	1.58
6/1/2021	1.62
6/2/2021	1.59
6/3/2021	1.63
6/4/2021	1.56
6/7/2021	1.57
6/8/2021	1.53
6/9/2021	1.5
6/10/2021	1.45
6/11/2021	1.47
6/14/2021	1.51
6/15/2021	1.51
6/16/2021	1.57
6/17/2021	1.52
6/18/2021	1.45
6/21/2021	1.5
6/22/2021	1.48
6/23/2021	1.5
6/24/2021	1.49
•	
6/25/2021	1.54
6/28/2021	1.49
6/29/2021	1.49
6/30/2021	1.45
7/1/2021	1.48
7/2/2021	1.44
7/6/2021	1.37
7/7/2021	1.33
• •	
7/8/2021	1.3
7/9/2021	1.37
7/12/2021	1.38
7/13/2021	1.42
7/14/2021	1.37
7/15/2021	1.31
7/16/2021	1.31
7/19/2021	1.19
7/20/2021	1.23
7/21/2021	1.3
7/22/2021	1.27
7/23/2021	1.3
7/26/2021	1.29
7/27/2021	1.25
7/28/2021	1.26
7/29/2021	1.28
	1.24
7/30/2021	
8/2/2021	1.2
8/3/2021	1.19
8/4/2021	1.19

8/5/2021	1.23
8/6/2021	1.31
8/9/2021	1.33
8/10/2021	1.36
8/11/2021	1.35
8/12/2021	1.36
8/13/2021	1.29
8/16/2021	1.26
8/17/2021	1.26
8/18/2021	1.27
8/19/2021	1.24
	1.24
8/20/2021	
8/23/2021	1.25
8/24/2021	1.29
8/25/2021	1.35
8/26/2021	1.34
8/27/2021	1.31
8/30/2021	1.29
8/31/2021	1.3
9/1/2021	1.31
9/2/2021	1.29
9/3/2021	1.33
9/7/2021	1.38
9/8/2021	1.35
9/9/2021	1.3
9/10/2021	1.35
9/13/2021	1.33
9/14/2021	1.28
9/15/2021	1.31
9/16/2021	1.34
9/17/2021	1.37
9/20/2021	1.31
9/20/2021	
	1.33
9/22/2021	1.32
9/23/2021	1.41
9/24/2021	1.47
9/27/2021	1.48
9/28/2021	1.54
9/29/2021	1.55
9/30/2021	1.52
10/1/2021	1.48
10/4/2021	1.49
10/5/2021	1.54
10/6/2021	1.53
10/7/2021	1.58
10/8/2021	1.61
10/12/2021	1.59
	1.55

10/12/2021	1.50
10/13/2021	1.56
10/14/2021	1.52
10/15/2021	1.59
10/10/2021	1.59
10/18/2021	1.59
10/19/2021	1.65
• •	
10/20/2021	1.65
10/21/2021	1.68
10/21/2021	1.00
10/22/2021	1.66
10/25/2021	1.64
10/26/2021	1.63
10/27/2021	1.54
	4 57
10/28/2021	1.57
10/29/2021	1.55
11/1/2021	1.58
11/2/2021	1 56
11/2/2021	1.56
11/3/2021	1.6
11/4/2021	1.53
11/5/2021	1.45
11/8/2021	1.51
• •	
11/9/2021	1.46
11/10/2021	1.56
11/12/2021	1.58
11/15/2021	1.63
11/16/2021	1.63
11/17/2021	1.6
11/18/2021	1.59
11/10/2021	1.54
11/19/2021	1.54
11/22/2021	1.63
11/23/2021	1.67
11/24/2021	1.64
	1.01
11/26/2021	1.48
11/29/2021	1.52
11/30/2021	1.43
12/1/2021	1 12
12/1/2021	1.43
• •	1.43 1.44
12/2/2021	1.44
• •	
12/2/2021 12/3/2021	1.44 1.35
12/2/2021 12/3/2021 12/6/2021	1.44 1.35 1.43
12/2/2021 12/3/2021	1.44 1.35
12/2/2021 12/3/2021 12/6/2021 12/7/2021	1.44 1.35 1.43 1.48
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021	1.44 1.35 1.43 1.48 1.52
12/2/2021 12/3/2021 12/6/2021 12/7/2021	1.44 1.35 1.43 1.48
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021	1.44 1.35 1.43 1.48 1.52 1.49
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021	1.44 1.35 1.43 1.48 1.52
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021 12/10/2021	1.44 1.35 1.43 1.48 1.52 1.49
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021 12/10/2021 12/13/2021	1.44 1.35 1.43 1.48 1.52 1.49 1.48
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021 12/10/2021	1.44 1.35 1.43 1.48 1.52 1.49
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021 12/10/2021 12/13/2021 12/14/2021	1.44 1.35 1.43 1.48 1.52 1.49 1.48 1.42
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021 12/10/2021 12/13/2021 12/14/2021 12/15/2021	1.44 1.35 1.43 1.48 1.52 1.49 1.48 1.42 1.44
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021 12/10/2021 12/13/2021 12/14/2021	1.44 1.35 1.43 1.48 1.52 1.49 1.48 1.42
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021 12/10/2021 12/13/2021 12/14/2021 12/15/2021 12/16/2021	1.44 1.35 1.43 1.48 1.52 1.49 1.48 1.42 1.44 1.47
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021 12/10/2021 12/13/2021 12/14/2021 12/15/2021 12/16/2021 12/17/2021	1.44 1.35 1.43 1.48 1.52 1.49 1.48 1.42 1.44 1.47 1.44
12/2/2021 12/3/2021 12/6/2021 12/7/2021 12/8/2021 12/9/2021 12/10/2021 12/13/2021 12/14/2021 12/15/2021 12/16/2021	1.44 1.35 1.43 1.48 1.52 1.49 1.48 1.42 1.44 1.47

12/21/2021	1.48
12/22/2021	1.46
12/23/2021	1.5
12/27/2021	1.48
12/28/2021	1.49
	1.55
12/29/2021	
12/30/2021	1.52
12/31/2021	1.52
1/3/2022	1.63
• •	
1/4/2022	1.66
1/5/2022	1.71
1/6/2022	1.73
1/7/2022	1.76
1/10/2022	1.78
1/11/2022	1.75
1/12/2022	1.74
1/13/2022	1.7
	1.78
1/14/2022	
1/18/2022	1.87
1/19/2022	1.83
1/20/2022	1.83
1/21/2022	1.75
1/24/2022	1.75
1/25/2022	1.78
1/26/2022	1.85
1/27/2022	1.81
1/28/2022	1.78
1/31/2022	1.79
2/1/2022	1.81
2/2/2022	1.78
2/3/2022	
• •	1.82
2/4/2022	1.93
2/7/2022	1.92
2/8/2022	1.96
2/9/2022	1.94
	2.03
2/10/2022	
2/11/2022	1.92
2/14/2022	1.98
2/15/2022	2.05
2/16/2022	2.03
2/17/2022	1.97
2/18/2022	1.92
2/22/2022	1.94
2/23/2022	1.99
2/24/2022	1.96
2/25/2022	1.97
2/28/2022	1.83

3/1/2022	1.72
3/2/2022	1.86
3/3/2022	1.86
3/4/2022	1.74
3/7/2022	1.78
3/8/2022	1.86
3/9/2022	1.94
3/10/2022	1.98
3/11/2022	2
3/14/2022	2.14
3/15/2022	2.15
3/16/2022	2.19
3/17/2022	2.2
3/18/2022	2.14
3/21/2022	2.32
3/22/2022	2.38
3/23/2022	2.32
3/24/2022	2.34
•	
3/25/2022	2.48
3/28/2022	2.46
3/29/2022	2.41
3/30/2022	2.35
3/31/2022	2.32
4/1/2022	2.39
4/4/2022	2.42
4/5/2022	2.54
4/6/2022	2.61
· · ·	
4/7/2022	2.66
4/8/2022	2.72
4/11/2022	2.79
4/12/2022	2.72
4/13/2022	2.7
4/14/2022	2.83
4/18/2022	2.85
4/19/2022	2.93
4/20/2022	2.85
4/21/2022	2.9
4/22/2022	2.9
4/25/2022	2.81
4/26/2022	2.77
4/27/2022	2.82
4/28/2022	2.85
4/29/2022	2.89
5/2/2022	2.99
5/3/2022	2.97
• •	
5/4/2022	2.93
5/5/2022	3.05

5/6/2022	3.12
5/9/2022	3.05
5/10/2022	2.99
5/11/2022	2.91
5/12/2022	2.84
5/13/2022	2.93
5/16/2022	2.88
5/17/2022	2.98
5/18/2022	2.89
•	
5/19/2022	2.84
5/20/2022	2.78
5/23/2022	2.86
5/24/2022	2.76
5/25/2022	2.75
5/26/2022	2.75
5/27/2022	2.74
5/31/2022	2.85
6/1/2022	2.94
6/2/2022	2.92
6/3/2022	2.96
• •	
6/6/2022	3.04
6/7/2022	2.98
6/8/2022	3.03
6/9/2022	3.04
6/10/2022	3.15
6/13/2022	3.43
6/14/2022	3.49
6/15/2022	3.33
6/16/2022	3.28
6/17/2022	3.25
6/21/2022	3.31
6/22/2022	3.16
6/23/2022	3.09
6/24/2022	3.13
6/27/2022	3.2
6/28/2022	3.2
6/29/2022	3.1
6/30/2022	2.98
7/1/2022	2.88
7/5/2022	2.82
7/6/2022	2.93
7/7/2022	3.01
7/8/2022	3.09
7/11/2022	2.99
	2.96
7/12/2022	
7/13/2022	2.91
7/14/2022	2.96

7/15/2022	2.93
7/18/2022	2.96
7/19/2022	3.01
	3.04
7/20/2022	
7/21/2022	2.91
7/22/2022	2.77
7/25/2022	2.81
7/26/2022	2.81
7/27/2022	2.78
7/28/2022	2.68
7/29/2022	2.67
8/1/2022	2.6
8/2/2022	2.75
8/3/2022	2.73
8/4/2022	2.68
• •	
8/5/2022	2.83
8/8/2022	2.77
8/9/2022	2.8
8/10/2022	2.78
8/11/2022	2.87
•	
8/12/2022	2.84
8/15/2022	2.79
8/16/2022	2.82
•	
8/17/2022	2.89
8/18/2022	2.88
8/19/2022	2.98
8/22/2022	3.03
8/23/2022	3.05
8/24/2022	3.11
8/25/2022	3.03
8/26/2022	3.04
8/29/2022	3.12
8/30/2022	3.11
8/31/2022	3.15
9/1/2022	3.26
9/2/2022	3.2
9/6/2022	3.33
9/7/2022	3.27
• •	
9/8/2022	3.29
9/9/2022	3.33
9/12/2022	3.37
•	
9/13/2022	3.42
9/14/2022	3.41
9/15/2022	3.45
9/16/2022	3.45
9/19/2022	3.49
9/20/2022	3.57
3/20/2022	5.57

9/21/2022	3.51
9/22/2022	3.7
• •	
9/23/2022	3.69
9/26/2022	3.88
9/27/2022	3.97
9/28/2022	3.72
9/29/2022	3.76
9/30/2022	3.83
10/3/2022	3.67
10/4/2022	3.62
• •	3.76
10/5/2022	
10/6/2022	3.83
10/7/2022	3.89
10/11/2022	3.93
10/12/2022	3.91
10/13/2022	3.97
10/14/2022	4
10/17/2022	4.02
10/18/2022	4.01
10/19/2022	4.14
10/20/2022	4.24
10/21/2022	4.21
10/24/2022	4.25
10/25/2022	4.1
10/26/2022	4.04
10/27/2022	3.96
10/28/2022	4.02
10/31/2022	4.1
11/1/2022	4.07
11/2/2022	4.1
11/3/2022	4.14
11/4/2022	4.17
11/7/2022	4.22
• •	
11/8/2022	4.14
11/9/2022	4.12
11/10/2022	3.82
11/14/2022	3.88
11/15/2022	3.8
11/16/2022	3.67
11/17/2022	3.77
11/18/2022	3.82
11/21/2022	3.83
11/22/2022	3.76
11/23/2022	3.71
11/25/2022	3.68
11/28/2022	3.69
11/29/2022	3.75
11/2/2/2022	3.73

11/30/2022       3.68         12/1/2022       3.53         12/2/2022       3.51         12/6/2022       3.51         12/6/2022       3.42         12/8/2022       3.48         12/9/2022       3.57         12/12/2022       3.61         12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.48         12/19/2022       3.57         12/20/2022       3.69         12/21/2022       3.68         12/22/2022       3.68         12/22/2022       3.67         12/23/2022       3.84         12/29/2022       3.84         12/29/2022       3.88         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2023       3.59         1/4/2023       3.59         1/10/2023       3.51         1/11/2023       3.54         1/12/2023       3.48         1/23/2023 </th <th></th> <th></th>		
12/2/2022       3.51         12/5/2022       3.6         12/6/2022       3.51         12/7/2022       3.42         12/8/2022       3.48         12/9/2022       3.57         12/12/2022       3.61         12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.69         12/19/2022       3.67         12/20/2022       3.69         12/21/2022       3.67         12/23/2022       3.67         12/23/2022       3.84         12/27/2022       3.84         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.53         1/10/2023       3.53         1/11/2023       3.54         1/12/2023       3.49         1/25/2023       3.46         1/25/2023	11/30/2022	3.68
12/5/2022       3.6         12/6/2022       3.51         12/7/2022       3.42         12/8/2022       3.48         12/9/2022       3.57         12/12/2022       3.61         12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.48         12/19/2022       3.69         12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2023       3.71         1/6/2023       3.71         1/6/2023       3.53         1/10/2023       3.54         1/11/2023       3.54         1/12/2023       3.49         1/17/2023       3.53         1/24/2023       3.46         1/25/2023       3.46         1/26/2023	12/1/2022	3.53
12/5/2022       3.6         12/6/2022       3.51         12/7/2022       3.42         12/8/2022       3.48         12/9/2022       3.57         12/12/2022       3.61         12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.48         12/16/2022       3.48         12/19/2022       3.57         12/20/2022       3.69         12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.84         12/29/2022       3.84         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.88         12/29/2022       3.83         12/29/2022       3.83         1/2/20/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.54         1/11/2023       3.43         1/12/2023       3.49         1/25/2023       3.46         1/25/2023       3.46         1/25/2023       3.46         1/26/2023	12/2/2022	3.51
12/6/2022       3.51         12/7/2022       3.42         12/8/2022       3.48         12/9/2022       3.57         12/12/2022       3.61         12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.57         12/20/2022       3.69         12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.67         12/23/2022       3.84         12/27/2022       3.84         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.54         1/11/2023       3.54         1/12/2023       3.49         1/25/2023       3.46         1/25/2023       3.46         1/25/2023       3.46         1/26/2023	12/5/2022	3.6
12/7/2022       3.42         12/8/2022       3.48         12/9/2022       3.57         12/12/2022       3.61         12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.48         12/19/2022       3.57         12/20/2022       3.69         12/21/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.84         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.53         1/10/2023       3.53         1/10/2023       3.53         1/11/2023       3.54         1/12/2023       3.53         1/19/2023       3.53         1/24/2023       3.46         1/25/2023       3.46         1/25/2023       3.46         1/26/2023       3.52         1/30/2023		3.51
12/8/2022       3.48         12/9/2022       3.57         12/12/2022       3.61         12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.48         12/19/2022       3.69         12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.67         12/23/2022       3.84         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.83         12/29/2023       3.69         1/5/2023       3.71         1/6/2023       3.53         1/10/2023       3.53         1/11/2023       3.54         1/12/2023       3.49         1/12/2023       3.48         1/25/2023       3.46         1/25/2023       3.46         1/25/2023       3.46         1/26/2023 <td>• •</td> <td></td>	• •	
12/9/2022       3.57         12/12/2022       3.61         12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.48         12/19/2022       3.57         12/20/2022       3.69         12/21/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.84         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.83         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.53         1/10/2023       3.53         1/11/2023       3.54         1/17/2023       3.53         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/26/2023       3.52         1/30/2023	• •	
12/12/2022       3.61         12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.48         12/19/2022       3.69         12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.51         1/10/2023       3.53         1/10/2023       3.54         1/11/2023       3.54         1/12/2023       3.49         1/17/2023       3.53         1/24/2023       3.46         1/25/2023       3.46         1/26/2023       3.49         1/27/2023		
12/13/2022       3.51         12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.48         12/19/2022       3.57         12/20/2022       3.69         12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.84         12/28/2022       3.88         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.88         12/29/2022       3.89         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.53         1/10/2023       3.51         1/11/2023       3.54         1/12/2023       3.49         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/25/2023       3.52         1/30/2023       3.52         1/30/2023		
12/14/2022       3.49         12/15/2022       3.44         12/16/2022       3.48         12/19/2022       3.57         12/20/2022       3.69         12/21/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.83         12/29/2022       3.83         12/29/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.53         1/10/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/19/2023       3.39         1/20/2023       3.48         1/25/2023       3.46         1/25/2023       3.46         1/25/2023       3.52         1/30/2023       3.52         1/31/2023       3.52         1/30/2023       3.52         1/31/2023       3.52         2/1/2023       3.53         2/2/2023       3	· · ·	
12/15/2022       3.44         12/16/2022       3.48         12/19/2022       3.57         12/20/2022       3.69         12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2022       3.83         12/29/2023       3.79         1/4/2023       3.69         1/5/2023       3.51         1/10/2023       3.53         1/10/2023       3.54         1/11/2023       3.49         1/12/2023       3.49         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/25/2023       3.52         1/30/2023       3.52         1/31/2023       3.52         1/31/2023       3.52         1/30/2023	•	
12/16/2022       3.48         12/19/2022       3.57         12/20/2022       3.69         12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.88         12/29/2022       3.83         12/29/2022       3.88         12/29/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/25/2023       3.52         1/30/2023       3.52         1/31/2023       3.52         1/31/2023       3.52         1/31/2023       3.52         1/31/2023       3.52         2/1/2023       3	•	
12/19/2022       3.57         12/20/2022       3.69         12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.88         12/29/2022       3.83         12/29/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.52         1/30/2023       3.52         1/31/2023       3.52         2/1/2023       3.52         2/2/2023       3.43         2/2/2023       3.53         2/6/2023       3.63 </td <td></td> <td></td>		
12/20/2022       3.69         12/21/2022       3.68         12/23/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.88         12/29/2022       3.83         12/30/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.55         1/31/2023       3.52         1/31/2023       3.52         2/1/2023       3.53         2/2/2023       3.53         2/6/2023       3.63	12/16/2022	3.48
12/21/2022       3.68         12/22/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.88         12/29/2022       3.83         12/30/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/19/2023       3.37         1/19/2023       3.39         1/20/2023       3.46         1/25/2023       3.46         1/25/2023       3.52         1/30/2023       3.52         1/30/2023       3.52         1/31/2023       3.52         2/1/2023       3.4         2/2/2023       3.4         2/2/2023       3.63	12/19/2022	3.57
12/22/2022       3.67         12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.88         12/29/2022       3.83         12/30/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         1/31/2023       3.52         1/32/2023       3.55         1/31/2023       3.52         2/1/2023       3.53         2/2/2023       3.44         2/3/2023       3.53         2/6/2023       3.63	12/20/2022	3.69
12/23/2022       3.75         12/27/2022       3.84         12/28/2022       3.88         12/29/2022       3.83         12/30/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/19/2023       3.39         1/20/2023       3.46         1/25/2023       3.46         1/25/2023       3.46         1/26/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         1/31/2023       3.52         2/1/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.53         2/2/2023       3.44         2/3/2023       3.53         2/6/2023       3.63	12/21/2022	3.68
12/27/2022       3.84         12/28/2022       3.88         12/29/2022       3.83         12/30/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.43         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/19/2023       3.39         1/20/2023       3.46         1/25/2023       3.46         1/26/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.52         2/1/2023       3.52         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	12/22/2022	3.67
12/27/2022       3.84         12/28/2022       3.88         12/29/2022       3.83         12/30/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.43         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/19/2023       3.39         1/20/2023       3.46         1/25/2023       3.46         1/26/2023       3.49         1/27/2023       3.52         1/30/2023       3.52         1/31/2023       3.52         2/1/2023       3.49         1/27/2023       3.52         1/30/2023       3.52         2/1/2023       3.52         2/1/2023       3.52         2/1/2023       3.53         2/6/2023       3.63		3.75
12/28/2022       3.88         12/29/2022       3.83         12/30/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.43         1/12/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         1/31/2023       3.52         2/1/2023       3.49         2/2/2023       3.52         1/31/2023       3.52         2/1/2023       3.52         2/1/2023       3.52         2/3/2023       3.53         2/6/2023       3.63	· · ·	3.84
12/29/2022       3.83         12/30/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/26/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63		
12/30/2022       3.88         1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	· · ·	
1/3/2023       3.79         1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/26/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63		
1/4/2023       3.69         1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/26/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.49         2/2/2023       3.52         2/1/2023       3.52         2/1/2023       3.52         2/3/2023       3.53         2/6/2023       3.63		
1/5/2023       3.71         1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.49         2/2/2023       3.52         2/1/2023       3.52         2/1/2023       3.52         2/3/2023       3.53         2/6/2023       3.63		
1/6/2023       3.55         1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.49         2/2/2023       3.52         2/1/2023       3.52         2/1/2023       3.52         2/3/2023       3.53         2/6/2023       3.63	• •	
1/9/2023       3.53         1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.49         2/2/2023       3.52         2/1/2023       3.53         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63		
1/10/2023       3.61         1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/26/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63		
1/11/2023       3.54         1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.4         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63		
1/12/2023       3.43         1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.46         1/26/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63		
1/13/2023       3.49         1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/26/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.49         2/2/2023       3.52         2/1/2023       3.52         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63		
1/17/2023       3.53         1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/26/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	1/12/2023	3.43
1/18/2023       3.37         1/19/2023       3.39         1/20/2023       3.48         1/23/2023       3.52         1/24/2023       3.46         1/25/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	1/13/2023	3.49
1/19/20233.391/20/20233.481/23/20233.521/24/20233.461/25/20233.491/26/20233.521/30/20233.551/31/20233.522/1/20233.492/2/20233.522/3/20233.522/3/20233.42/3/20233.532/6/20233.63	1/17/2023	3.53
1/20/20233.481/23/20233.521/24/20233.461/25/20233.461/26/20233.491/27/20233.521/30/20233.551/31/20233.522/1/20233.392/2/20233.42/3/20233.532/6/20233.63	1/18/2023	3.37
1/23/20233.521/24/20233.461/25/20233.491/26/20233.521/30/20233.551/31/20233.522/1/20233.392/2/20233.42/3/20233.532/6/20233.63	1/19/2023	3.39
1/24/2023       3.46         1/25/2023       3.46         1/26/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	1/20/2023	3.48
1/24/2023       3.46         1/25/2023       3.46         1/26/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	1/23/2023	3.52
1/25/2023       3.46         1/26/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	•	3.46
1/26/2023       3.49         1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	· · ·	3.46
1/27/2023       3.52         1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63		
1/30/2023       3.55         1/31/2023       3.52         2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	· · ·	
1/31/2023 3.52 2/1/2023 3.39 2/2/2023 3.4 2/3/2023 3.53 2/6/2023 3.63	•	
2/1/2023       3.39         2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	· · ·	
2/2/2023       3.4         2/3/2023       3.53         2/6/2023       3.63	•	
2/3/2023 3.53 2/6/2023 3.63	• •	
2/6/2023 3.63	• •	
	• •	
2/7/2023 3.67		
	2/7/2023	3.67

2/8/2023	3.63
2/9/2023	3.67
2/10/2023	3.74
2/13/2023	3.72
2/14/2023	3.77
2/15/2023	3.81
· ·	
2/16/2023	3.86
2/17/2023	3.82
2/21/2023	3.95
2/22/2023	3.93
2/23/2023	3.88
2/24/2023	3.95
2/27/2023	3.92
2/28/2023	3.92
	4.01
3/1/2023	_
3/2/2023	4.08
3/3/2023	3.97
3/6/2023	3.98
3/7/2023	3.97
3/8/2023	3.98
· . · .	
3/9/2023	3.93
3/10/2023	3.7
3/13/2023	3.55
3/14/2023	3.64
3/15/2023	3.51
3/16/2023	3.56
3/17/2023	3.39
3/20/2023	3.47
3/21/2023	3.59
3/22/2023	3.48
3/23/2023	3.38
3/24/2023	3.38
3/27/2023	3.53
3/28/2023	3.55
3/29/2023	3.57
3/30/2023	3.55
3/31/2023	3.48
4/3/2023	3.43
4/4/2023	3.35
4/5/2023	3.3
4/6/2023	3.3
4/7/2023	3.39
4/10/2023	3.41
4/11/2023	3.43
· ·	
4/12/2023	3.41
4/13/2023	3.45
4/14/2023	3.52
·/ <del>1 ·/</del> / 2023	٥.٥٤

4/17/2023	3.6
4/18/2023	3.58
4/19/2023	3.6
4/20/2023	3.54
4/21/2023	3.57
4/24/2023	3.52
4/25/2023	3.4
4/26/2023	3.43
4/27/2023	3.53
4/28/2023	3.44
5/1/2023	3.59
5/2/2023	3.44
5/3/2023	3.38
5/4/2023	3.37
5/5/2023	3.44
5/8/2023	3.52
5/9/2023	3.53
5/10/2023	3.43
5/11/2023	3.39
5/12/2023	3.46
5/15/2023	3.5
5/16/2023	3.54
5/17/2023	3.57
5/18/2023	3.65
5/19/2023	3.7
5/22/2023	3.72
5/23/2023	3.7
5/24/2023	3.73
5/25/2023	3.83
5/26/2023	3.8
5/30/2023	3.69
5/31/2023	3.64
6/1/2023	3.61
6/2/2023	3.69
6/5/2023	3.69
6/6/2023	3.7
6/7/2023	3.79
6/8/2023	3.73
6/9/2023	3.75
6/12/2023	3.73
6/13/2023	3.84
6/14/2023	3.83
6/15/2023	3.72