

Development Ground Lease Template

SAMPLE

Development Ground Lease Template Disclaimer

The Department of General Services (DGS) and the Department of Housing and Community Development (HCD) are committed to promoting efficiency, standardization, and accountability across all housing development transactions. At the same time, HCD and DGS recognize that the enclosed Development Ground Lease Template must allow for customization where necessary to reflect the unique characteristics of the individual project, site location, financing, or development context.

Time is of the Essence

Proposing changes to customize the Lease to fit each transaction is expected. However, significant or extensive proposed revisions to the terms in this lease *could* negatively impact the time it takes to successfully negotiate the final form. The State will set a mutually agreed upon deadline for the submission of all comments from the development team. **No new comments will be considered by DGS and HCD after this period**, whether from the developer team, their investor/lenders, or any affiliated representatives.

Cumulative and Combined Comments

*It is incumbent on the development team and their counsel to coordinate a comprehensive review of the Development Ground Lease from **all** parties and to consolidate **all** comments into a single draft before resubmitting it to DGS and HCD.* The State will combine comments from both HCD and DGS when delivering back to the developer. *Parties involved in the review process should include, but are not limited to, the developer team, the developer's counsel, investors, including their counsel, utilities, and lenders, including their counsel.*

Justification of Proposed Revisions

All proposed revisions must be clearly identified and accompanied by a justification. When submitting a comment or request to change lease language, the State has found that providing a legal, or practical and specific justification helps us to understand the reason for the request.

“DEVELOPMENT GROUND LEASE”

STATE OF CALIFORNIA

**DEPARTMENT OF GENERAL
SERVICES
REAL ESTATE SERVICES DIVISION**

<u>LEASE COVERING PREMISES LOCATED AT:</u> 	<u>DEVELOPMENT GROUND LEASE NO.:</u>
<u>AGENCY:</u> 	<u>Lessee:</u>

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List of Exhibits Development Ground Lease

All exhibits are after signature page 60.

Exhibit 'A' Legal Description of Leased Premises

Exhibit 'B' Map Depiction of Leased Premises

Exhibit 'C' [INSERT PROJECT NAME] Project Description

Exhibit 'D' Schedule of Performance

Exhibit 'E' Form of TCAC Lease Rider Agreement (tax credits)

Exhibit 'F' Defined Terms

DEVELOPMENT GROUND LEASE

THIS DEVELOPMENT GROUND LEASE ("**Lease**"), dated for reference purposes only as [REDACTED], is entered into by and between the STATE OF CALIFORNIA ("**State**" or "**Lessor**"), acting by and through the Director of the DEPARTMENT OF GENERAL SERVICES ("**DGS**"), with the consent of the DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT ("**HCD**") collectively referred to as and [REDACTED] ("**Lessee**"), STATE and Lessee may be individually referred to herein as a "**Party**" or collectively as the "**Parties**."

RECITALS

WHEREAS, State is the fee owner of the Leased Premises (defined below), together with all improvements located at [REDACTED], in the City of [REDACTED] ("**City**"), County of [REDACTED] ("**County**"), State of California, identified as Assessor's Parcel Number(s) [REDACTED] and is more particularly described and depicted in **Exhibits A and B** attached hereto and made a part hereof ("**Leased Premises**");

WHEREAS, Executive Order N-06-19 ("**Executive Order**") declared, among other things, that the lack of affordable housing across California is a matter of vital statewide importance;

WHEREAS, pursuant to the Executive Order, the State identified the Leased Premises to be excess land suitable for the development of affordable housing;

WHEREAS, a California Environmental Quality Act (**CEQA**) [Notice of Exemption or Other CEQA Determination] was filed with the Governor's Office of Planning and Research on [INSERT DATE], and assigned the State Clearinghouse Number of [INSERT NUMBER];

WHEREAS, pursuant to Government Code section 14671.2, DGS, with the consent of the state agency concerned, may let for any period of time any real property or interest in real property which belongs to the State, when the Director of DGS deems the letting serves a beneficial public purpose limited to the development of housing;

WHEREAS, HCD has jurisdiction over the Leased Premises and is accordingly the state agency concerned whose consent to this Lease is required pursuant to said Government Code section 14671.2;

WHEREAS, pursuant to Government Code section 14671.2, the Lease has been reviewed by the State Public Works Board ("**SPWB**");

WHEREAS, pursuant to Government Code section 14671.2, the Director of DGS may enter into leases for less than market value, provided that the cost of administering the lease is recovered;

WHEREAS, DGS solicited proposals for development of the Leased Premises in accordance with the Executive Order, [INSERT DEVELOPER(S) NAME] was selected to develop and construct an affordable housing project on the Leased Premises based upon a responsive proposal ("**LESSEE'S Proposal**"). Lessee's Proposal as originally proposed with any changes as approved by State is attached hereto as **Exhibit C**;

WHEREAS, Lessee is a wholly owned affiliate of the developer, and desires to develop, construct, and operate a multi-family affordable housing project as proposed in Lessee's Proposal on the Leased Premises;

WHEREAS, the Director of DGS, in consultation with HCD, deems that this Lease accomplishes the purposes of the Executive Order and the required beneficial public purpose of the development of affordable housing and complies with the provisions of Government Code section 14671.2 in that: (i) at least 20 percent of the housing units developed on the Leased Premises will be available for the Term (as defined in this Lease) to, and occupied by, lower income households, as defined by Health and Safety Code section 50079.5, of which at least 10 percent of said housing units must be available to, and occupied by, very low income households, as defined by Health and Safety Code section 50105; and

WHEREAS, the State desires to lease to Lessee and Lessee desires to lease from the State the Leased Premises for the purpose of Lessee developing, constructing, and operating an affordable housing project on the Leased Premises upon the terms, conditions and provisions set forth in this Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, the truth and accuracy of which are hereby affirmed and represented by the Parties and all of which are expressly incorporated into this Lease, and the mutual promises and covenants of the Parties contained in this Lease, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SUBJECT OF LEASE

Section 1.01 Subject of Lease

The Leased Premises shall be used by Lessee during the Term exclusively for the lawful development, construction, maintenance and operation of a multi-family affordable housing project (the "**Affordable Housing Development**") as more particularly described in the Project Description in Exhibit "C", and for other incidental uses related thereto that are otherwise in compliance with this Lease and all other applicable laws, covenants, restrictions, encumbrances, and requirements.

Section 1.02 Regulatory Agreement

Lessee shall enter into a regulatory agreement with HCD that shall further govern and restrict Lessee's use of the Leased Premises and the Affordable Housing Development, and which has been agreed to by and between HCD and Lessee as set forth in the Excess Sites Regulatory Agreement ("**Regulatory Agreement**"). In the event of any inconsistency between this Lease and the Regulatory Agreement, the Regulatory Agreement shall control. Lessee shall cause the Regulatory Agreement to be recorded in the Official Records of the County in which the Leased Premises is located. Any default under the Regulatory Agreement or under any other covenants or restrictions recorded against the Leased Premises or against the leasehold estate therein created hereby constitutes a material default under this Lease.

ARTICLE 2. DESCRIPTION OF THE LEASED PREMISES

Section 2.01 Lease

For and in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of Lessee to be paid, kept, performed and observed by Lessee, State hereby leases the Leased Premises to Lessee, and Lessee hereby leases from State the Leased Premises in its current "as-is" condition and on the terms and conditions set forth in this Lease. The acreage recited on the attached **Exhibits A and B** is only an approximation and State does not warrant or guarantee the accuracy of such acreage. This Lease conveys only a leasehold interest; this Lease may not be interpreted as conveying a fee interest or any other interest besides a leasehold interest.

Section 2.02 Grant of Easements by State

Subject to the conditions, limitations and reservations contained in this Lease, in connection with the demise of the Leased Premises, State agrees to establish for the benefit of Lessee certain appurtenant easements and rights pursuant to separate written instruments in a form acceptable to State and Lessee.

ARTICLE 3. THE LEASE TERM

The term of this Lease ("**Term**") shall commence upon the date it is signed by the Department of General Services ("**Effective Date**") and shall expire on [place date 99 years from Effective Date], unless terminated earlier in accordance with the rights of termination set forth herein. As used herein, "**Term**" and the "**Term of this Lease**" and similar phrases relating to the duration of this Lease, shall mean the Term.

ARTICLE 4. USE OF THE LEASED PREMISES

Section 4.01 Use of Leased Premises

Lessee may use the Leased Premises only for the lawful development, construction, maintenance and operation of the Affordable Housing Development (collectively, the "**Permitted Uses**"), which shall include any lawful and incidental related uses and activities that are or may be associated therewith, and for no other use without State's prior written consent which consent may be withheld in State's sole and absolute discretion. The Permitted Uses shall be in conformance with (i) this Lease, (ii) the Regulatory Agreement, and (iii) all applicable governmental approvals and any other laws, regulations and ordinances (whether enacted by federal, state or local government) now in effect or hereinafter enacted.

Lessor hereby acknowledges that if the Affordable Housing Development includes certain commercial space(s), and the use of such space(s) for commercial purposes is a Permitted Use of the Leased Premises. All proposed uses and occupants of the commercial space(s) are subject to prior written approval by HCD and must conform with the requirements of Government Code section 14671.2(b). HCD shall make such determination within the time set forth in the Schedule of Performance attached hereto and made a part hereof as **Exhibit D**. After the initial approval of the uses of the commercial space(s), Lessee shall promptly notify HCD in writing of any changes in the use or the occupancy not later than the date specified in the Schedule of Performance. Any subsequent changes in the use or occupancy of the commercial space(s) within the Affordable Housing Development on the Leased Premises shall comply with the requirements set forth in Government Code section

14671.2(b) and shall be deemed in compliance with section 14671.2(b) if HCD does not respond to Lessee's request for approval within 30 days of such request.

The Affordable Housing Development shall be developed in accordance with all applicable federal, state, and local laws, this Lease, the Regulatory Agreement, the Approved Building Plans (defined in Section 6.01), and the Schedule of Performance. State acknowledges and agrees that any milestone for which the date in the Schedule of Performance predates the Effective Date have been satisfied.

Section 4.02 Management

Lessee shall manage the Leased Premises and the Affordable Housing Development in a prudent and business-like manner, consistent with other comparable high quality multifamily rental housing developments in the City/County. Lessee may self-manage or contract with a management company ("**Management Company**") to operate and maintain the Affordable Housing Development in accordance with the terms of this Lease; provided, however, that the selection and hiring of a Management Company shall be subject to the HCD's prior written approval, which approval shall not be unreasonably withheld.

In the event of "**Gross Mismanagement**" (as defined in this Section) of the Affordable Housing Development, which shall in all events constitute a material default of Lessee under this Lease, State shall have, without limitation, the authority and right, but not the obligation, to require that such Gross Mismanagement cease immediately, and to require the immediate replacement of any Management Company if the Gross Mismanagement is not corrected within the earlier of the applicable cure period set forth elsewhere in this Lease, or in the Regulatory Agreement, or else sixty (60) days from the date of written notice from State; provided, however, that if such cure is not capable of being made in such sixty (60) day period, then Lessee may have an additional reasonable period set by State that in no event shall such extension exceed ninety (90) days from the date of the initial written notice from State. If Lessee fails to cure the above Section 25.01(g) shall apply. For purposes of this Lease, the term "**Gross Mismanagement**" shall mean management of the Affordable Housing Development in a manner which violates the terms and/or intention of this Lease to operate a high-quality multifamily housing complex, and shall include, but is not limited to, the following:

- (a) Leasing to residents who exceed the prescribed income levels, at their respective initial occupancies in the Affordable Housing Development, excluding an increase in income after the initial occupancy in accordance with 26 U.S. Code section 42(g)(2)(D)(i);
- (b) Allowing residents to exceed occupancy limits prescribed by law, or those contained in the Regulatory Agreement;
- (c) Failing to cure and resolve violations under the Regulatory Agreement;
- (d) Failing to pay property taxes, special assessments and liens levied against the Leased Premises or any personal property related thereto;
- (e) Failing to resolve and remove mechanical, workmen's or any other type of lien placed against the Leased Premises, or any improvements thereon;
- (f) Failing to maintain insurance as required pursuant to Article 21 or any other provision(s) of this Lease;

- (g) Failing to timely maintain the improvements and the Leased Premises in the manner prescribed in Article 11 or any other provision(s) of this Lease;
- (h) Fraud or embezzlement; and
- (i) Failing to fully cooperate with local, state or federal law enforcement agencies with jurisdiction over the Affordable Housing Development, in maintaining a crime-free environment on the Leased Premises.

Without limiting the above, Lessee shall use its best efforts to correct any defects in management at the earliest feasible time and, if necessary or otherwise required under this Lease, to replace the Management Company as provided above.

Section 4.03 Only Lawful Uses Permitted

Lessee shall not use the Leased Premises for any purpose that violates any condition, covenant, or provision of this Lease, the Regulatory Agreement, any applicable law, ordinance or regulation of any federal, state, county or local governmental agency, body or entity. Furthermore, Lessee shall not maintain, commit or permit any nuisance or unlawful conduct (as now or hereafter defined by any applicable statutory or decisional law) on the Leased Premises, or any part thereof.

ARTICLE 5. RENT

Section 5.01 Net Lease

It is the intent of the Parties hereto that the rent provided herein shall be absolutely net to the State and that Lessee shall pay all costs, taxes, charges, and expenses of every kind and nature against the Leased Premises and the Affordable Housing Development which may arise or become due during the Term, and which, except for execution of this Lease, would or could have been payable by the State. In addition to the rent hereinafter provided, Lessee shall pay to the parties respectively entitled thereto, without limitation, all impositions, insurance premiums, operating charges, maintenance charges, construction costs, and any other charges, costs, or expenses that may arise or may be contemplated under any provisions of this Lease or otherwise in connection with the Leased Premises or Affordable Housing Development during the Term hereof. It is the intention of the parties that this Lease shall not be terminable for any reason by Lessee (except only if and to the extent expressly provided to the contrary in this Lease) and that Lessee shall in no event be entitled to any set-off, abatement of, or reduction in rent or any other amount payable under this Lease, except as, if, and to the extent expressly provided to the contrary herein.

Section 5.02 Rent

For the Term, Lessee agrees to pay the State of California a one-time rent payment in advance, on the Effective Date in the amount of Ninety-Nine and No/100 Dollars (\$99.00). The Affordable Housing Development will benefit the public by providing affordable housing in the State by maximizing land resources to develop and preserve affordable housing. To that end, the Parties understand and acknowledge that the primary consideration for this Lease is the performance of the covenants set forth in this Lease and the Regulatory Agreement, particularly (without limitation, however) the covenants set forth in the Regulatory Agreement. As such, should the Leased Premises at any point be used for purposes other than affordable housing purposes in accordance with the Regulatory

Agreement, then, subject to any applicable notice and cure periods, the rent hereunder may, at the option of the State and without limitation of any other remedies provided under this Lease, the Regulatory Agreement, or applicable law, be increased to market rates and paid in advance on a monthly basis. As used herein, a “**Lease Year**” is defined as being the calendar year (i.e., January 1st through December 31st).

Section 5.03 Administration Fee

In addition to the rent provided for in Section 5.02, an administration fee in accordance with Government Code section 14671.2(h) (the “**Administration Fee**”) shall be assessed by the State to Lessee for any lease administration or technical review staff work by the State in connection with its role as lessor of the Leased Premises or for any action requested, originated, necessitated, initiated, or otherwise caused by Lessee or any Sublessee (as defined below in Section 16.05). To initiate any administration or technical review by the State, Lessee must submit a written request to State. The Administration Fee will be invoiced at the prevailing rates established by DGS in effect at the time the request is received.

Section 5.04 Payment of Rent

All rent and administration fees that become due and payable pursuant to this Lease shall display Lease Number and shall be made payable to the State of California and mailed to the following address:

Department of General Services
Attn: Accounts Receivable 10th Floor - PAL - (AHGL-####)
P.O. Box 989053
West Sacramento, CA 95798-9053

Lessee acknowledges that all rent and past due rent shall be due and payable to State whether or not an actual invoice is sent by State or received by Lessee.

ARTICLE 6. DEVELOPMENT OF THE LEASED PREMISES

Section 6.01 Approved Building Plans

Lessee submitted building plans and paid applicable fees to the [State Building Authority/Name of Local Jurisdiction] on [Insert Date]. Lessee worked with the [State Building Authority/Name of Local Jurisdiction] through the review(s) and corrections of the building plans as required until the [State Building Authority/Name of Local Jurisdiction] certified that the building plans are compliant with the [California Building Codes and Local Amendments/State Building Authority's requirement] (“**Approved Building Plans**”).

Prior to, or concurrently to building plan submission Lessee shall provide DGS will-serve letters for water and sewer or status report of timeline for obtaining services, location of utility connections and description of any required easement. Lessee will also provide DGS preliminary site plan for Fire and Life safety (ingress and egress), including encroachment permit street access. Demonstrated general agreement with applicable agency (City, or County or CalTRANS) for Proposed Project's driveway.

Section 6.02 State Building Approval Letter

Lessee shall submit an electronic set of Approved Building Plans to the State. The State shall issue a State Building Approval Letter authorizing construction of the Affordable Housing Development.

Section 6.03 California Environmental Quality Act and Entitlements

In accordance with the Public Resources Code section 21067, DGS was the “**Lead Agency**” for approving compliance with the California Environmental Quality Act (“**CEQA**”) related to the Affordable Housing Development.

A [Notice of Exemption or Other CEQA Determination] was filed with the Governor’s Office of Planning and Research on [INSERT DATE] and assigned the State Clearinghouse Number of [INSERT NUMBER].

Lessee shall be responsible for any off site or encroachment permits necessary to construct the Affordable Housing Development.

Section 6.04 Permits, Fees, Notices and Development Costs

- (a) Lessee shall be responsible for any costs and expenses associated with the development, construction and operation of the Affordable Housing Development, including, but not limited to: all building and development fees, inspection fees, plan review fees, sewage, water and other utilities, demolition, easements, planning, school, costs necessary to comply with CEQA, due diligence, permits, taxes, insurance, data connectivity, professional design and engineering services, and all other development expenses and/or site requirements of the State or any other public agency having jurisdiction over the development of the Affordable Housing Development. Lessee shall pay all filing fees for all environmental documents filed in connection with the Affordable Housing Development. Lessee shall pay all fees and assessments determined by the State or any other public agency having jurisdiction over the development of the Leased Premises or the Affordable Housing Development, to be attributable to or to benefit the Leased Premises for infrastructure improvements including, without limitation, curbs, gutters, sidewalks, storm or sanitary sewerage improvements, streetlights, traffic signals and similar infrastructure improvements during the Term. Lessee shall pay the cost of all off-site work or fees required by State or any other public agency having jurisdiction over the development of the Leased Premises or the Affordable Housing Development including, without limitation, flood control requirements, public utilities and parking facilities; Lessee shall pay any and all other on-site and off-site costs, fees and assessments in connection with the construction and development of the Affordable Housing Development.
- (b) Lessee shall secure and pay for required permits, governmental fees, licenses and inspections necessary to complete the work in connection with the construction and development of the Affordable Housing Development, unless otherwise authorized in writing by State.
- (c) Lessee shall, and shall cause any contractors, affiliates, and designees to, comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the work in connection with the construction and development of the Affordable Housing Development.

- (d) If Lessee, or any contractor, affiliate, or designee, observes that portions of the Approved Building Plans are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, Lessee shall promptly notify State in writing. If Lessee, or any contractor, affiliate, or designee, performs work known to be contrary, or should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without prior notice to State, Lessee shall assume full responsibility for the work and shall bear the attributable costs.
- (e) Lessee is subject to federal, state, municipal, county, local or district laws, rules, or regulations pertaining to the work, including, but not limited to, Air Quality Management District requirements, utility connections, fire protection systems, encroachment upon federal, state, private, city or county property, and storm water pollution prevention plans, and shall cause all contractors, affiliates, and designees to comply with the same.
- (f) All construction work in connection with the construction and development of the Affordable Housing Development shall comply with the California Code of Regulations, Title 24, California Building Standards Code ("CBSC"), and other applicable codes, current edition, in effect at the time of application.

Section 6.05 Prevailing Wages

As a condition to the State leasing the Leased Premises to Lessee, Lessee acknowledges and agrees that the Affordable Housing Development is a public works project and shall be subject to prevailing wages in accordance with all applicable provisions of the Labor Code, including, but not limited to Labor Code section 1720.

Pursuant to Labor Code §1720.2, the following shall apply:

- (a) Lessee shall comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications, contracts, and subcontracts.
- (b) Lessee shall furnish all contractors, subcontractors and employees a copy of the Department of Industrial Relations prevailing wage rates which Lessor will post at the job site. All prevailing wage rates shall be obtained by the Lessee from:
- (c) Department of Industrial Relations Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor
San Francisco, California 94102 Phone: (415) 703-4774
Fax: (415) 703-4771
- (d) For further information on prevailing wage:
http://www.dir.ca.gov/dlsr/statistics_research.html
- (e) Lessee, its contractors, and subcontractors shall comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.
- (f) Lessee, its contractors, and subcontractors shall make travel and subsistence payments to workers needed for performance of work in accordance with the Labor Code

- (g) Prior to commencement of work, Lessee shall contact the Division of Apprenticeship Standards and comply with § 1777.5, §1777.6, and §1777.7 of the Labor Code and Applicable Regulations.

Section 6.06 Commencement of Construction of Affordable Housing Development

Within the time set forth in the Schedule of Performance, or earlier, if possible, subject to Sections 25.01(c) and 27.03, Lessee shall, or shall cause its contractor(s) to, commence and diligently pursue to completion the construction of the Affordable Housing Development. Said Affordable Housing Development shall be constructed in substantial conformance with the Approved Building Plans, except as State may specifically agree otherwise in writing. Lessee and/or Lessee's contractor(s) shall at all times provide such fences, warning devices, barricades and other protective devices as are necessary to protect the public from death, physical injury, or property damage arising out of, or in any way connected with, Lessee's use of the Leased Premises. Lessee and/or Lessee's contractor(s) shall perform such construction work in accordance with all applicable laws and regulations and any requirements of State or other public agencies having jurisdiction over the Leased Premises, including, but not limited to, the following:

- (a) Demolition and construction shall only be performed pursuant to the requirements and restrictions imposed as part of the approved environmental document.
- (b) Lessee shall, or shall cause its contractor(s) to, utilize dust-reducing construction practices including (i) minimizing the amount of time dirt surfaces are exposed and (ii) periodic sprinkling of exposed areas and soil piles with water, if necessary.
- (c) Lessee shall, or shall cause its contractor(s) to, minimize street traffic disruption during construction including, without limitation, (i) visual screening of site, and (ii) to the extent feasible, avoiding construction site traffic during peak commuter-hours.
- (d) In the event historical artifacts are found on the Leased Premises, Lessee shall, or shall cause its contractor(s) to, immediately halt construction work, inform State in writing and not recommence construction work until authorized in writing to do so by State. The date set forth for the completion of construction under the Schedule of Performance shall be adjusted to reflect any delay resulting from such halt in construction work.
- (e) Lessee shall not, and shall cause its contractor(s) not to, remove any trees from the Property or trim any existing trees without State's prior written approval.
- (f) Lessee shall, or shall cause its contractor(s) to, construct all drainage and sewerage improvements in compliance with the standards or requirements of State or other public agencies having jurisdiction over Leased Premises.
- (g) Lessee shall, or shall cause its contractor(s) to, comply with all requirements of the State or other public agencies having jurisdiction over the Leased Premises over the construction of the Affordable Housing Development when construction is within a flood plain area.
- (h) Lessee shall, or shall cause its contractor(s) to, during construction of the Affordable Housing Development and at all times, thereafter, keep the Leased Premises in a neat and orderly condition.
- (i) Lessee shall, or shall cause its contractor(s) to, dispose of waste, trash and debris

off the Leased Premises in a safe manner and in accordance with all applicable laws, regulations and requirements of State or other public agencies having jurisdiction over such matters.

- (j) Lessee shall, or shall cause its contractor(s) to, confine operations at the Affordable Housing Development site to areas permitted by law, ordinances, permits and the Approved Building Plans.
- (k) Lessee shall not, and shall cause its contractor(s) not to, perform any operations on or beyond the limits of work or the Leased Premises, except as such operations are authorized by the State and/or local building officials.
- (l) Lessee shall ensure the Leased premises is free of graffiti and other similar defacements during the time of the Lease; if such defacement occurs, then Lessee shall properly remove, repair, or correct the affected area(s), or as otherwise directed by the State. Lessee shall protect exposed surfaces within the limits of work, with anti-graffiti coatings, and maintain such protection continuously effective during the term of the Lease.
- (m) The use of alcohol and tobacco products, and the use or possession of weapons, or illegal controlled substances by Lessee and/or Lessee's contractor(s), in connection with the construction of the Affordable Housing Development, on State property is not allowed. Residing on site in temporary facilities by Lessee and/or Lessee's contractor(s), is not allowed unless otherwise authorized in writing by State.

Section 6.07 Protection of Persons and Property

- (a) Lessee shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the construction and operation of the Affordable Housing Development, or shall cause its contractor(s) to do so. State shall have no responsibility for initiating, maintaining and supervising safety of persons and property at the Affordable Housing Development.
- (b) Lessee shall, and shall cause its contractor(s) to, take safety precautions and provide protection to prevent damage, injury or loss to:
 - (i) Employees working under the contract(s) for construction of the Affordable Housing Development and other persons who may be affected thereby;
 - (ii) The work, materials, and equipment to be incorporated therein, whether in storage on or off the Affordable Housing Development site, under care, custody, or control of Lessee or Lessee's contractors and/or subcontractors, regardless of tier; and
 - (iii) Other property at the Affordable Housing Development site, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement during the course of construction.
- (c) Lessee shall, and shall cause its contractor(s) to, comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.
- (d) Lessee shall, or shall cause its contractor(s) to, erect and maintain, as required by existing conditions and performance of the Approved Building Plans, safeguards for

safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying State, other owners (other than State) and users of adjacent sites and utilities.

- (e) Lessee shall, and shall cause its contractor(s) to, comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for construction of the Affordable Housing Development. Lessee shall, and shall cause its contractor(s) to, employ properly qualified personnel for supervision of same.
- (f) Lessee shall, or shall cause its contractor(s) to, remedy any damage and loss to property referred to herein caused in whole or in part by Lessee and/or Lessee's contractor(s) or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Lessee and/or Lessee's contractor(s) is responsible herein. The foregoing obligations of Lessee and/or Lessee's contractor(s) are in addition to Lessee's indemnification and hold-harmless obligations herein.
- (g) When conditions of the work are in violation of applicable safety laws and therefore present an unreasonable risk of injury or death to persons or property damage, the local building officials and/or the State may direct Lessee and/or Lessee's contractor(s) at Lessee's or its contractors' sole expense, to close down the work and not commence work again until all dangerous conditions are eliminated.
- (h) Lessee, at its own cost, shall, or shall cause its contractor(s) to, rebuild, repair, restore and make good any and all damage to any portion of the Affordable Housing Development work affected by such causes before acceptance of the work.

Section 6.08 Supervision and Construction Procedures

- (a) Unless so specified herein and/or in the Approved Building Plans, the State will not dictate construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Affordable Housing Development project work. State will not be responsible for acts, errors, or omissions of Lessee, its contractor, subcontractors, regardless of tier, or anyone directly or indirectly employed by any of them, or of any other persons performing portions of the work in connection with the construction and development of the Affordable Housing Development.
- (b) If State reviews or observes work that appears to not comply with the requirements of the Lease, Approved Building Plans, and/or Regulatory Agreement, the local building officials and/or the State will have the authority to require such work to be cured. Whenever local building officials and/or the State considers it necessary or advisable for implementation of the intent of the Lease and/or Approved Building Plans, local building officials and/or the State will require additional inspection or testing of the work, whether or not such work is fabricated, installed or completed.
- (c) Lessee shall, or shall cause its contractor(s) to, supervise and direct the work. Lessee shall, or shall cause its contractor(s) to, be responsible for, and have control over, construction means and methods, techniques, procedures, safety precautions and programs in connection with the work, and for coordinating the work, unless otherwise specified herein or authorized by local building officials and/or the State.

- (d) Lessee shall be responsible to State for acts and omissions of Lessee's employees, contractors, subcontractors, regardless of tier, and/or material suppliers and their agents and employees, and other persons performing portions of the work under a contract with Lessee and/or its contractor(s) or affiliate(s).

Section 6.09 Right to Observe and Inspect

- (a) Lessee shall, and shall cause its construction contractor(s) to, upon reasonable prior written notice and at all reasonable times, permit local building officials and State, its agents, officers, and employees to visit the Affordable Housing Development project site and inspect the work, including shops where work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection, including, but not limited to providing lifts, ladders, scaffolds, platforms and paths of travel. When the Approved Building Plans require a portion of the work to be tested, such portion of the work shall not be covered up until inspected and accepted by State in writing. Lessee shall be solely responsible for notifying or shall cause its contractor(s) to notify, State where and when the work is ready for inspection and testing. Lessee shall or shall cause its contractor(s) to, provide State's identified Inspector of Record ("IOR") written notice where and when the work is ready for inspection no fewer than seven (7) business days prior to the time of inspection. Should any work be covered without the required testing and acceptance, such work shall be uncovered and recovered at no cost to State. The presence or absence of an inspector does not relieve the Lessee from the requirement to construct improvements in accordance with the approved plans and specifications.
- (b) If local building officials or the State determine in their/its reasonable discretion that portions of the work require additional testing, inspection, or acceptance not included in the Approved Building Plans, State will instruct the Lessee, in writing, to make, or cause its contractor(s) to make, arrangements for additional testing, inspection or acceptance by the State. The Lessee shall, or shall cause its contractor(s) to, provide the IOR written notice where and when the work is ready for inspection no fewer than seven (7) business days prior to the time of inspection. Should any work be covered without the required testing and acceptance, such work shall be uncovered and recovered at no expense to State.
- (c) If procedures for testing, inspection or acceptance reveal the failure of a portion(s) of the work to comply with the Approved Building Plans, the Lessee shall or shall cause its contractor(s) to, bear all costs made necessary by such failure(s) including those of repeated procedures and compensation for local building officials' services and expenses.
- (d) Required certificates of testing, inspection or acceptance shall, unless otherwise required by the local building officials be secured by the Lessee and/or Lessee's contractor(s) and delivered to the local building officials within seven business (7) days after each test, inspection or acceptance.
- (e) Beginning upon the completion of the Affordable Housing Development, State may enter upon the Leased Premises for such other purposes as may be necessary or proper for the reasonable protection of State's interest (including, but not limited to, verification of Lessee's maintenance of the Leased Premises and Affordable Housing Development). State agrees to permit a representative of Lessee to be present during any such entry.

- (f) State shall have no responsibility to Lessee or users of the Leased Premises or the Affordable Housing Development for the quality or durability of construction materials and techniques, or for the design or construction techniques employed by Lessee and/or Lessee's contractor(s).
- (g) Lessee shall promptly correct work rejected by State or work failing to conform to the requirements of the Lease and/or Approved Building Plans, whether or not fabricated, installed or completed. Lessee shall, or shall cause its contractor(s) to, bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for State's services and expenses made necessary thereby.
- (h) Lessee shall, or shall cause its contractor(s) to, remove from the Leased Premises or the Affordable Housing Development portions of the work that are not in accordance with the requirements of the Lease and/or Approved Building Plans and are neither corrected by the Lessee and/or Lessee's contractor(s) nor accepted by State.
- (i) Lessee, its affiliates, contractors, and designees shall keep the Affordable Housing Development site and surrounding areas free from waste materials and/or rubbish caused by operations under the Lease and at other times when directed by State. At all times while finish work is being accomplished, floors shall be kept clean, free of dust, construction debris and trash. Upon completion of the work, Lessee shall, or shall cause its contractor(s) to remove from the Leased Premises or the Affordable Housing Development tools, construction equipment, machinery, and any waste materials not previously disposed of, leaving the Leased Premises and the Affordable Housing Development clean and ready for State's final inspection.

Section 6.10 Completion of Affordable Housing Development

- (a) Not later than the date specified in the Schedule of Performance, subject to any extensions approved by the State in writing, the Lessee shall, or shall cause its contractor(s) to request a final inspection in writing to be conducted by State when Lessee and/or Lessee's contractor(s) considers the construction of the Affordable Housing Development complete.
- (b) The Lessee shall, or shall cause its contractor(s) to, request this final inspection only when all work, including deficient items identified on previous inspections, have been completed as noted in the Approved Building Plans.
- (c) State shall conduct a final inspection of construction of the Affordable Housing Development within seven business (7) days of receipt of a written request from the Lessee and/or Lessee's contractor(s) for final inspection.
- (d) If, after the inspection, State determines that the work in connection with the construction of the Affordable Housing Development is complete, the State will establish a date for completion of the work (the "**Completion Date**").
- (e) If, after the inspection, State determines that the work in connection with construction of the Affordable Housing Development is not complete, the Lessee will be notified in writing of all deficiencies. After correcting all deficiencies, the Lessee shall, or shall cause its contractor(s) to, again initiate the procedures for final inspection as set forth above.

- (f) Once the State establishes the Completion Date, Lessee shall, or shall cause its contractor(s) to, submit a written request to the State for issuance of a certificate of occupancy (the "**Certificate of Occupancy**"). Within seven (7) business days following State's receipt of said written request, the State shall inspect the Affordable Housing Development and within five (5) business days either issue the Certificate of Occupancy, or (ii) give Lessee a written statement of the reasons for disapproval and a specific description of the actions Lessee must take, or shall cause its contractor(s) to take, to obtain the Certificate of Occupancy. The Certificate of Occupancy shall be evidence as between Lessee and State that the Affordable Housing Development has been substantially completed in accordance with the terms and conditions of this Lease and the Approved Building Plans. The Certificate of Occupancy shall not constitute evidence of compliance with, or satisfaction of, any obligations of Lessee to any lender or any insurer of a Leasehold Mortgage. The Certificate of Occupancy is not a "notice of completion" as referred to in Civil Code section 8182.
- (g) Lessee shall, or shall cause its contractor(s) to, obtain the Certificate of Occupancy from the State no later than the date specified in the Schedule of Performance.

Section 6.11 As-Built Drawings

Upon completion of the Affordable Housing Development, Lessee shall provide to State two (2) completed sets of as-built drawings, a CAD disk if Lessee produces drawings on disks, and a break-down which shows all costs incurred for completing the Affordable Housing Development. Lessee agrees that, upon the request of State, Lessee will, or will cause its contractors to, inspect the Leased Premises jointly with the State to verify the as-built drawings.

Section 6.12 State Immunity

To the fullest extent permitted by applicable law, the State, including its agencies, departments, boards, commissions, officers, agents and employees shall be free from and immune from all liability and claims for damages by reason of any injury to any person or property, arising out of or in any way connected with the State's performance or non-performance under this Article 6. This provision shall be in addition to Section 20.01.

ARTICLE 7. HOUSING REQUIREMENTS

Section 7.01 Regulatory Agreement

All affordable housing requirements for the Affordable Housing Development that are associated with this Lease will be set forth in the Regulatory Agreement. In the event of a conflict between the terms of this Lease and the terms of the Regulatory Agreement, the Regulatory Agreement shall control.

The Regulatory Agreement shall be recorded at Lessee's cost. The Regulatory Agreement must be recorded senior to all private and public debt and security instruments with respect to the Leased Premises. No lien or encumbrance instruments may be recorded in a position senior to the Regulatory Agreement, except as permitted by the State in its sole discretion.

Section 7.02 HCD Control and Approval of Liens and Clouds on Title Related to the Affordable Housing Development

HCD shall have the authority under this Lease, on behalf of the State, to consent to liens, encumbrances, and other clouds on title of the Leased Premises or the Affordable Housing Development, if any, and their instruments' recordation. Such consent shall only be effective upon HCD obtaining the consent of DGS. Notwithstanding the foregoing, the State agrees that, after receipt of a written request from Lessee, State shall evaluate any requests to approve grants of easements for public utilities useful or necessary to the development of the Affordable Housing Development and either approve or if it is unable to approve, shall provide the reasons for disapproval.

Section 7.03 Regulatory Agreement Fees

Lessee hereby acknowledges that in addition to any other fees set forth in this Lease, Lessee shall be responsible for paying HCD any monitoring or enforcement fees set forth in the Regulatory Agreement or otherwise due and owing to HCD under any applicable agreements related to HCD financing for the Affordable Housing Development.

Section 7.04 Restrictions Applicable to Units

Lessee shall, at all times throughout the Term, comply with all applicable requirements of the Regulatory Agreement and any other regulatory agreements, covenants, restrictions, or other encumbrances that are then encumbering the Leased Premises. To the extent applicable, in no event will any action be taken which violates Title 26 Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, regarding prohibitions against evicting, terminating tenancy or increasing rent of tenants for a period of three (3) years after acquisition of a building by foreclosure or deed-in-lieu of foreclosure.

ARTICLE 8. UTILITIES AND TAXES

Section 8.01 Utilities

Lessee shall pay when due and shall hold State harmless from any liability for all charges for water, gas, sewage, electricity, trash collection, communications and other utilities and services supplied to and used on the Leased Premises. To the extent not paid by contractors, tenants or Sublessees (as defined below in Section 16.05), Lessee shall make arrangements for and pay for all water, gas, heat, light, power, communications service, trash disposal and other utilities and services supplied to the Leased Premises and the Affordable Housing Development, together with any taxes thereon. State does not warrant the existence of any utilities on or serving the Leased Premises. Lessee shall, at its sole cost and expense, make all arrangements and pay for all such utilities used by Lessee, tenants, or Sublessees at or upon the Leased Premises. In its development of the Leased Premises in accordance with this Lease, Lessee shall rely solely on water and sewer services supplied by the City, County or other governmental or quasi-governmental authorities and acknowledges that this Lease does not include any water or sewer services or rights. Lessee shall comply with energy conservation measures at the Leased Premises required by any applicable law.

Section 8.02 Taxes and Assessments

This Lease may create a possessory interest subject to taxation and Lessee may be subject to the payment of taxes levied on such interest. Throughout the Term, Lessee shall pay before delinquency all real and personal property taxes and assessments, including, without limitation, all city, county, school district and other taxes and general and special assessments, levied upon or assessed against the Leased Premises or the Affordable Housing Development, the leasehold estate, any personal property of Lessee located on the Leased Premises, or arising in respect of the occupancy, use or possession of the Leased Premises or the Affordable Housing Development and which are assessed or become due during the Term. Lessee shall have the right to contest the validity of any tax or assessment by appropriate proceedings timely instituted and diligently pursued. State, if requested by Lessee, shall reasonably participate, if and when necessary, in any such proceedings; provided, that all costs and expenses (including reasonable attorneys' fees and costs) incurred by State in connection therewith shall be paid by Lessee. Lessee will keep current municipal, state or local licenses or permits required for the conduct of its business. Assessments billed to Lessee after the Effective Date shall be prorated between the State and Lessee in regard to any amounts incurred prior to the Effective Date.

ARTICLE 9. OWNERSHIP OF IMPROVEMENTS, FIXTURES AND FURNISHINGS DURING THE TERM

Section 9.01 Ownership During Term

The Affordable Housing Development shall, during the Term, be considered the property of Lessee, its successors, or assigns. Lessee shall be accorded all burdens and benefits of ownership of the Affordable Housing Development for so long as this Lease remains in effect. Accordingly, at all times during the Term, Lessee shall be deemed to exclusively own the Affordable Housing Development for federal tax purposes and Lessee alone shall be entitled to all tax attributes of ownership thereof; provided, however, that Lessee shall have no right to waste the Affordable Housing Development, or to destroy, demolish or remove any part of the Affordable Housing Development except as otherwise permitted pursuant to this Lease; and provided further that Lessee's rights and powers with respect to the Affordable Housing Development are subject to the terms and limitations of this Lease. The Affordable Housing Development shall be considered real property for purposes of this Section 9.01. During the Term and for the tax year during which the Term begins and ends, Lessee shall have the exclusive right to deduct, claim, retain, and enjoy any and all depreciation, amortization and tax credits for federal or state tax purposes relating to the Affordable Housing Development.

Section 9.02 Benefits of Improvements During the Term

State acknowledges and agrees that any and all depreciation, amortization, profits, losses, income and tax credits for federal or state tax purposes relating to the Affordable Housing Development and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively to Lessee during the Term and for the tax years during which the Term begins and ends.

ARTICLE 10. LIENS

Section 10.01 Liens

California law prohibits any mechanics' lien from attaching to the Leased Premises, and Lessee shall not permit any liens to be enforced against the fee simple estate of State as to the Leased Premises and/or the Affordable Housing Development, nor against Lessee's leasehold interest therein or the Leased Premises by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Leased Premises and the Affordable Housing Development, or any part thereof, through or under Lessee. If any such lien shall at any time be filed against the Leased Premises or the Affordable Housing Development, Lessee shall, within thirty (30) days after notice to Lessee of the filing thereof, cause the same to be discharged of record; provided, however, that Lessee shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings but in such event, Lessee shall notify State and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to State. Lessee shall pursue such proceedings with due diligence. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of State, express or implied, by inference or otherwise, to any person, firm or limited partnership for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Leased Premises, the Affordable Housing Development, or any part thereof.

Prior to commencement of construction of the Affordable Housing Development, or any repair or alteration thereto, Lessee shall give State not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws.

ARTICLE 11. MAINTENANCE AND REPAIR

Section 11.01 Maintenance and Repair

Lessee agrees to assume full responsibility for the management, operation and maintenance of the Affordable Housing Development and the Leased Premises throughout the Term without expense to the State, and to perform all repairs and replacements necessary to maintain and preserve the Affordable Housing Development and the Leased Premises in good repair, in a neat, clean, safe and orderly condition reasonably satisfactory to State, ordinary wear and tear excepted, and in compliance with all applicable laws. Lessee agrees that the State shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Affordable Housing Development and the Leased Premises. Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of the State as may be provided for in Civil Code sections 1941 and 1942, if applicable.

The following standards shall be complied with by Lessee, whether directly, or by causing compliance by its maintenance staff, contractors, and subcontractors:

- (a)** Lessee shall maintain the Affordable Housing Development, including individual housing units, all common areas and buildings, all exterior facades, all sidewalks, and all exterior areas, in a safe and sanitary fashion suitable for a high-quality multifamily housing development. Lessee shall remove, or cause the removal of, all

graffiti within forty-eight (48) hours of the discovery of such being on any portion of the Affordable Housing Development or the Leased Premises, including but not limited to: buildings, walls, fences, hardscape areas, windows, signs, fixtures and equipment. Lessee agrees to provide utility services, administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are necessary for the upkeep and maintenance of the entire Affordable Housing Development including, but not limited to, exterior and interior tenant spaces, exterior and interior common area spaces, and parking areas.

- (b) Landscape maintenance shall include, but not be limited to watering and irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.
- (c) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, sidewalks, parking areas, driveways, curbs, gutters and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of and all tools, equipment, and implements used are removed and properly stored out of the public areas of the Affordable Housing Development.
- (d) The Affordable Housing Development shall be maintained in conformance with, in accordance with and in compliance with the approved construction and architectural and landscape plans and design scheme, as the same may be amended from time to time with the written approval of State.
- (e) All maintenance work shall conform to all applicable federal and state standards, applicable local laws, and regulations for the performance of maintenance, including without limitation the Cal/Occupation Safety and Health Act (OSHA).
- (f) Any and all chemicals, unhealthy substances, and pesticides used in and during maintenance performed by Lessee, Management Company, or their contractors shall be applied in strict accordance with all governing regulations and in accordance with the manufacturer's directions for their use. Precautionary measures shall be employed regarding any areas that are open to public access.
- (g) Parking lots, lighting fixtures, trash enclosures, and all areas which can be seen from the adjacent streets shall be kept free from any debris or waste materials by regularly scheduled maintenance.

ARTICLE 12. ENVIRONMENTAL MATTERS

Section 12.01 Definitions

For the purposes of this Lease, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

- (a) "Environmental Laws" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction, or common law relating in any

way to human health, occupational safety, natural resources, plant or animal life, or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

- (b) "Hazardous Substances" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Laws provided, however, that this definition does not include substances that occur naturally on the Leased Premises or commercially reasonable amounts of hazardous materials used in the ordinary course of construction and operation of a residential development, provided they are used and stored in accordance with all applicable laws. For purposes of this Lease, Hazardous Substances may include, without limitation, any material or substance:
- (c) now or hereafter defined as a "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or "toxic substance" or words of similar import under any applicable local, state or federal law or under the regulations adopted or promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) ("CERCLA"); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1151 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the River and Harbor Act of 1899 (33 U.S.C. § 401 et seq.); the National Emission Standard for Asbestos (40 C.F.R. § 61.140 et seq.), the Cal/OSHA ; the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); the Oil Pollution Act (33 U.S.C. § 2701 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.); the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.); the Atomic Energy Act of 1954, (42 U.S.C. §2011 et seq.); the Nuclear Waste Policy Act of 1982 (42 U.S.C. §10101 et seq.); the Medical Waste Management Act (Cal. Health & Safety Code §25015 et seq.); the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.); the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Cal. Health and Safety Code § 25300 et seq.); the Hazardous Waste Act (Cal. Health & Safety Code § 25100 et seq.); and all rules and regulations of the United States or California Environmental Protection Agency or any successor agency, or any other state or federal department, board or agency, or any other agency or governmental board or entity having jurisdiction, as any of the foregoing have been, or are hereafter amended from time to time; or
- (d) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and is now or hereafter regulated as a Hazardous Substance by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof having jurisdiction over either Party to this Lease; or which causes, or is listed by the State of California as being known to the State of California to cause, cancer or reproductive toxicity; or
- (e) the presence of which on the Leased Premises poses or threatens to pose a hazard to the health or safety of persons or to the environment; or

- (f) that contains gasoline, diesel fuel or other petroleum hydrocarbons; or
- (g) that contains lead-based paint or other lead contamination, polychlorinated biphenyls or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or
- (h) that contains radon gas.

Section 12.02 Compliance with Environmental Laws

- (a) Lessee agrees to comply with all Environmental Laws pertaining to Hazardous Substances.
- (b) If Lessee or Lessee's representatives, agents, contractors, subcontractors, employees or consultants generates any regulated Hazardous Substances on the Leased Premises, Lessee agrees to dispose of such Hazardous Substances in accordance with all Environmental Laws. Copies of all hazardous waste manifests or disposal certificates shall be submitted to State.
- (c) Any violation by Lessee of Environmental Laws reasonably deemed material by State will be grounds for termination of the Lease in accordance with applicable sections herein; provided, however, that any such right of termination is subject to the terms of Articles 19 and 25. Termination of Lease by either Party or evacuation of the Leased Premises by Lessee shall not relieve Lessee of environmental or Hazardous Substances related liabilities incurred by State during Lessee's occupancy or incurred as a result of Lessee's actions prior to such termination.

Section 12.03 Violation of Applicable Laws or Environmental Requirements

- (a) Lessee will not cause or permit any Hazardous Substance to be used, generated, manufactured, produced, stored, brought upon, or released on, under or about the Leased Premises, or transported to and from the Leased Premises, by Lessee or its representatives, agents, contractors, subcontractors, employees or consultants in violation of Environmental Laws.
- (b) Lessee, at State's reasonable request, will conduct such testing and analysis as necessary to ascertain whether Lessee is using the Leased Premises in compliance with Environmental Laws. Any such tests will be conducted by qualified independent experts chosen by Lessee and subject to State's reasonable written approval. Copies of such reports from any such testing will be provided to State without cost to State.
- (c) Lessee will promptly provide to State copies of all notices, reports, claims, demands or actions concerning any actual or threatened releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping of any Hazardous Substances in violation of Environmental Laws on the Leased Premises.

Section 12.04 Contamination of Leased Premises

- (a) If the use or presence of any Hazardous Substances on, under or about the Leased Premises after the Effective Date (but expressly excluding any Hazardous Substances (a) migrating on, under, or about the Leased Premises after the Effective Date and not caused by Lessee, or (b) brought onto the Leased Premises by State, its agents, employees, or contractors during the Term) by or caused by Lessee or its

representatives, agents, contractors, subcontractors, employees or consultants results in any contamination of the Leased Premises in violation of Environmental Laws, Lessee will promptly take all actions as are necessary to remediate the Leased Premises to the extent required by applicable Environmental Laws and to bring the Leased Premises into compliance with all applicable Environmental Laws. If any such contamination is a result of the negligence of or caused by Lessee or its representatives, agents, contractors, subcontractors, employees, consultants, or anyone acting through Lessee, or if Lessee or its representatives, agents, contractors, subcontractors, employees, consultants or anyone acting through Lessee, intentionally contaminates the Leased Premises, all costs incurred to bring the Leased Premises into compliance with Environmental Laws shall be at Lessee's sole cost and expense.

- (b) If, after the Effective Date, the illegal use of any Hazardous Substances on, under or about the Leased Premises by Sublessees and tenants, their respective agents, employees, contractors, or invitees results in any contamination of the Leased Premises in violation of Environmental Laws, Lessee will promptly take all actions and be responsible for all costs and expenses, or cause its Sublessees or tenants to take such actions and bear such costs and expenses, as are necessary to remediate the Leased Premises to the extent required by applicable Environmental Laws and to bring the Leased Premises into compliance with all applicable Environmental Laws.

Section 12.05 Compliance with All Governmental Authorities

- (a) Lessee will promptly make all submissions required of Lessee and comply with all requirements of the appropriate governmental authority under all Environmental Laws.
- (b) Should any governmental agency having authority over such matters determine that a site characterization, site assessment, and/or cleanup plan be prepared or that a cleanup should be undertaken because of any spills or discharges of hazardous materials at the Leased Premises after the Effective Date by Lessee or its representatives, agents, contractors, subcontractors, employees, consultants or anyone acting through Lessee which occur during the Term, then Lessee shall prepare and submit the required plans and financial assurances, and carry out the approved plans. If any such spills or discharges are a result of the negligence of Lessee or its representatives, agents, contractors, subcontractors, employees, consultants or anyone acting through Lessee, or if Lessee or its representatives, agents, contractors, subcontractors, employees, consultants or anyone acting through Lessee intentionally spilled or discharged hazardous materials at the Leased Premises, all costs incurred to prepare and submit the required plans and carry out the approved plans shall be at the sole cost and expense of Lessee or its contractors, subcontractors and/or consultants.

Section 12.06 Leased Premises Evaluation

- (a) Except as otherwise expressly set forth in this Lease, State makes no representations or warranties concerning the condition of the Leased Premises (including, without limitation, its environmental condition). Lessee has had an opportunity, prior to the Effective Date, to engage its own environmental consultants to make such investigations of the Leased Premises as Lessee has deemed

necessary to determine the condition of the Leased Premises (including, without limitation, its environmental condition) and its suitability for the construction and development of the Affordable Housing Development, and Lessee has approved the condition of the Leased Premises (including, without limitation, its environmental condition).

Section 12.07 Indemnification

- (a) Upon and after the Effective Date, Lessee agrees to indemnify, defend and hold State, including its agencies, departments, boards, commissions, officers, agents, employees harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees) (a "Claim"), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Substances on, under, in or about, the Leased Premises or the transportation of any such Hazardous Substances to or from, the Leased Premises during the Term, or (ii) the violation, or alleged violation, of any Environmental Laws, statute, ordinance, order, rule, regulation, permit, judgment or license by Lessee, its representatives, agents, contractors, subcontractors, employees, consultants, or anyone acting through Lessee relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Substances on, under, in or about, to or from, the Leased Premises during the Term. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. The foregoing shall not apply to the extent caused by the gross negligence or willful misconduct of the State or any of its officer(s), employee(s), agent(s), contractor(s) and director(s) (including directors and employees of any State instrumentalities or affiliates).

Section 12.08 Survival

All of Lessee's obligations under this Article shall survive any termination of this Lease.

ARTICLE 13. AS-IS CONVEYANCE

Section 13.01 As-Is Conveyance

This Lease is made "AS IS" with no warranties or representations by the State concerning the condition of the Leased Premises, including the presence or absence of any Hazardous Substances. Lessee hereby agrees and acknowledges that except in the event of any fraud, misrepresentation, or knowingly withholding of information with the intent to defraud by State: (i) neither State, nor anyone acting for or on behalf of State, has made any representation, statement, warranty or promise to Lessee concerning the development potential or condition of the Leased Premises; (ii) in entering into this Lease, Lessee has not relied on any representation, statement or warranty of State, or anyone acting for or on behalf of State, other than as may expressly be contained in this Lease; (iii) all matters

concerning the Leased Premises have been or shall be independently verified by Lessee and Lessee shall lease the Leased Premises for the purpose of carrying out the Permitted Uses on Lessee's own prior examination thereof; and (iv) that Lessee is leasing the Leased Premises, as applicable, in an "as is" physical condition and in an "as is" state of repair.

Section 13.02 General Release

Except as otherwise expressly agreed to herein, Lessee and its partners, employees, agents, assigns and successors agree that upon the Effective Date, Lessee shall be deemed conclusively to have released and discharged State, including its agencies, departments, boards, commissions, officers, agents, employees, assigns and successors, from any and all damages, losses, demands, claims, debts, liabilities, obligations, causes of action and rights, whether known or unknown, by Lessee regarding the Leased Premises, including, but not limited to, the environmental condition of the Leased Premises.

ARTICLE 14. ALTERATION OF IMPROVEMENTS

Section 14.01 Alteration of Improvements

Upon completion of the Affordable Housing Development, Lessee shall not make or permit to be made any structural alteration of the Affordable Housing Development, nor demolish all or any part of the Affordable Housing Development, without obtaining the prior written consent of the State; provided, however, that the foregoing shall not prohibit or restrict the maintenance, repair and/or replacement of the Affordable Housing Development by Lessee in accordance with Article 11 and Article 15 hereof. In requesting such consent of the State, Lessee shall submit to the State detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. This provision shall not limit or set aside any obligation of Lessee under this Lease to maintain the Affordable Housing Development and the Leased Premises in a clean and safe condition, including structural repair and restoration of damages to the Affordable Housing Development, reasonable wear and tear excepted. State shall not be obligated to make any improvements to the Leased Premises or to assume any expense therefor. Lessee shall not commit or allow to be committed any waste or impairment of the Leased Premises or the Affordable Housing Development, or any part thereof, except as otherwise permitted pursuant to this Lease.

ARTICLE 15. DAMAGE OR DESTRUCTION

Section 15.01 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance

Subject to Section 15.03 below and subject to the rights of each holder of a Leasehold Mortgage as defined in Article 19 (each a "Leasehold Mortgagee") the Affordable Housing Development shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Lessee, Lessee shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Affordable Housing Development to substantially the same condition as the Affordable Housing Development is required to be maintained pursuant to this Lease, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Lessee shall complete the same as soon as possible thereafter so that the Affordable Housing Development can be occupied in accordance with this Lease. In no event shall the repair, replacement, or

restoration period exceed one (1) year from the date Lessee obtains insurance proceeds unless the State approves a longer period of time in writing. State shall reasonably cooperate with Lessee, at no expense to State, in obtaining any governmental permits required for the repair, replacement, or restoration of the Affordable Housing Development.

If, however, the then-existing governmental requirements applicable to the Leased Premises do not permit the repair, replacement, or restoration of the Affordable Housing Development, Lessee may elect, with the prior consent of the Senior Leasehold Mortgagee (as defined in Section 19.13(i)(a) and the Investor (as defined in Section 19.15 below), not to repair, replace, or restore the Affordable Housing Development by giving written notice to State (in which event Lessee will be entitled to all insurance proceeds, subject to Lessee's obligations to lenders or other third parties, but Lessee shall be required to remove the Affordable Housing Development and remove all debris from the Leased Premises) or Lessee may reconstruct such other improvements on the Leased Premises as are consistent with applicable land use regulations and approved in writing by State and any other governmental agency or agencies with jurisdiction.

In the event Lessee elects not to repair, replace, or restore the Affordable Housing Development and gives State notice of such election as provided herein, this Lease shall terminate, subject to Article 19, and Sections 25.01 (g) and 25.03 of this Lease.

Section 15.02 Continued Operations

During any period of repair, Lessee shall continue, or cause the continuation of, the operation of the Affordable Housing Development to the extent reasonably practicable from the standpoint of prudent business management.

Section 15.03 Damage or Destruction Due to Cause Not Required to be Covered by Insurance

If the Affordable Housing Development is completely destroyed or substantially damaged by a casualty for which Lessee is not required to (and has not) insured against, then State shall deliver written notice to Lessee of its obligations under this Section 15.03 within thirty (30) days of such event of substantial damage or destruction, and Lessee shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing State with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. Such notice shall include a statement that Lessee's failure to respond shall be deemed a waiver of Lessee's right not to repair, replace or restore such improvements. In such event, Lessee shall remove the Affordable Housing Project and remove all debris from the Leased Premises. As used in Section 15.03, substantial damage caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Affordable Housing Development. In the event that State delivers such notice to Lessee but Lessee does not timely elect not to repair, replace, or restore the Affordable Housing Development as set forth in the first sentence of this Section 15.03, Lessee shall be conclusively deemed to have waived its right not to repair, replace, or restore the Affordable Housing Development and thereafter Lessee shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed improvements comprising the Affordable Housing Development with Section 15.01 above.

ARTICLE 16. ASSIGNMENT AND SUBLEASING

Section 16.01 Assignment

Except for (a) leases of particular dwelling units to residents and commercial/retail space to businesses, (b) the lease of a community center portion of the Affordable Housing Development to outside parties, and (c) transfers consented to by HCD pursuant to the Regulatory Agreement, Lessee shall not sell, assign, sublease, or otherwise transfer this Lease or any right therein, nor make any total or partial sale, assignment, sublease, or transfer in any other mode or form of the whole or any part of the Leased Premises, or the Affordable Housing Development (each of which events is referred to in this Lease as an **"Assignment"**), without State's prior written consent. Any purported Assignment without the State's prior written consent shall render the purported Assignment absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

- (a) Except as specifically permitted in this Lease, Lessee shall not assign this Lease or any rights or duties hereunder or any estate created hereunder, in whole or in part, except with the prior written approval of State, which approval may be withheld in State's sole discretion. Further, any such approved Assignment will not release Lessee from any of Lessee's obligations under this Lease and assignee will also be subject to all provisions of this Lease. Any Assignment without the prior written approval of State is void.
- (b) Any voluntary or involuntary transfer of fifty-percent (50%) or more of Lessee's or any permitted successor's or assign's voting common stock, or the transfer of fifty-percent (50%) or more of the partnership or membership interest, or the acquisition or transfer of fifty-percent (50%) or more of Lessee's ownership, or the transfer of substantially all of the assets of Lessee or any such successor or assignee will be deemed an Assignment requiring the prior written approval of State; however any transfers by partners or members of Lessee or shareholders of partners or members of Lessee to each other or for estate purposes or upon death or transfers in the Investor (as hereinafter defined) or by the Investor to an affiliate will not be considered an Assignment hereunder.
- (c) Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or transferee's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable State to evaluate the proposed assignee pursuant to the criteria set forth in this Section 16 and as reasonably determined by State. State shall evaluate such proposed transferee or assignee on the basis of its development qualifications and experience and/or qualifications and experience in the operation of facilities similar to the Affordable Housing Development, and its financial commitments and resources, and may in its sole discretion disapprove any proposed transferee or assignee, which State reasonably determines does not possess sufficient qualifications. At a minimum, such proposed transferee or assignee must be at least as qualified as Lessee. If the prior written approval of State is given to any such Assignment, the proposed assignee shall, in recordable form, expressly assume all of the terms, covenants, and conditions of this Lease which are the subject of the Assignment. An assignment and assumption agreement in form satisfactory to the State shall also be required for all proposed Assignments. Any Assignment will not release Lessee from its obligations under this Lease.

- (d) The State agrees that during the Term and subject to the terms and conditions of this Lease, any approved assignee, Sublessee or transferee shall have the right to attorn to the State with respect to its applicable parcel, and the State will accept such attornment and not disturb the occupancy or rights of such assignee or transferee pursuant to its transfer, Assignment, grant, purchase, or sublease agreement with Lessee. The Parties agree to review and execute any nondisturbance or recognition agreements as may be reasonably requested by State, subtenant or subtenant's lenders to memorialize and effectuate the provisions of this Article. If any party is unable to approve the agreements, the reasons for such disapproval will be provided.

Section 16.02 No Approval Needed

Notwithstanding any other provision of this Lease to the contrary, State's approval of an Assignment of this Lease or conveyance of the Leased Premises, or Affordable Housing Development, or any part thereof, shall not be required in connection with any of the following:

- (a) Any transfer of the Leased Premises to a limited partnership in which Lessee or its wholly controlled affiliate, is the sole general partner, for the purposes of operating a low-income housing tax credit limited partnership during the fifteen -year tax credit for the compliance period pursuant to Internal Revenue Code §42(i)(1).
- (b) Any requested Assignment for financing purposes (subject to such financing being considered and approved by State pursuant to Section 19 herein), including the grant of a deed of trust to secure the funds necessary for construction and permanent financing of the Affordable Housing Development. Review of experience in operating similar developments shall not be required with respect to institutional lenders providing financing pursuant to Section 19 hereof so long as the original Lessee (or a successor that has been expressly approved in writing by State) remains responsible for operating the Affordable Housing Development and performing as Lessee pursuant to this Lease.
- (c) Any transfers of a limited partner interest of Lessee unless prohibited by California law.
- (d) In the event a general partner of Lessee is removed by the limited partner of such Lessee for cause following default under Lessee's partnership agreement, the transfer of the general partner interest to an affiliate of the limited partner or to another entity selected by Lessee's limited partner, provided, as reasonably determined by the limited partner, such entity shall have experience commensurate to that of the removed general partner in the management, and leasing and ownership of similar properties, not smaller in size than and not of lesser quality to the Leased Premises (or shall have retained a professional management and leasing company with substantial experience in the management and leasing of such buildings) unless prohibited by California law.
- (e) Notwithstanding anything else contained in this Lease, this Lease may be assigned, without State's consent, to the purchaser at any foreclosure sale relating to a permitted first trust deed encumbrance, whether judicial or non-judicial, or to the beneficiary or mortgagee under any encumbrance expressly permitted, consented to, or approved pursuant to and in accordance with the terms of this Lease, pursuant to foreclosure or similar proceedings, or pursuant to an Assignment or other transfer of this Lease to such beneficiary or mortgagee in lieu thereof, and may thereafter be

assigned by such beneficiary or mortgagee without State's consent. The first subsequent Assignment of this Lease following any such foreclosure or deed in lieu of foreclosure is the **"First Post-Foreclosure Transfer."**

Notwithstanding an Assignment by Lessee under subparagraphs (a) through (d), inclusive, above, not requiring State's prior approval, Lessee nevertheless agrees that at least thirty (30) days prior to such Assignment or any other Assignment under this Section 16.02 it shall give written notice to State of such Assignment and satisfactory evidence that the assignee has assumed jointly with Lessee the obligations of this Lease and the Regulatory Agreement.

Section 16.03 Assignment Does Not Extend Term

Notwithstanding any provision in Article 16 to the contrary, in no event shall Lessee make any Assignment which would or could be effective beyond the Term.

Section 16.04 Assignment by State

State may assign or transfer any of its interests hereunder at any time without the consent of Lessee, provided that such assignee or transferee executes a written assumption of State's obligations and confirms it will be bound by the terms of this Lease and that notice and copies of such Assignment and assumption will be sent to Lessee.

Section 16.05 Subleasing

- (a) Except as expressly provided to the contrary in Section 2.02, Lessee shall obtain State's prior written approval of any transfer, conveyance, Assignment, or any leases, licenses, occupancy agreements, franchise or other similar rights, agreements or arrangements of whatever nature relating to the use or occupancy of any part of the Leased Premises or other pledge or encumbrance, or disposal of all or a portion of its interest in this Lease (individually a "Sublease" or collectively "Subleases") which approval may be withheld in State's sole discretion. All Subleases shall expressly provide that they are subordinate to this Lease, any Leasehold Mortgage and any new direct lease entered into between State and any Leasehold Mortgagee.
- (b) If the Affordable Housing Development includes certain commercial space(s), approval of the proposed uses and occupants of the commercial spaces shall be required at the time of initial occupancy. Any subsequent changes in use or the occupancy of the commercial space(s) within the Affordable Housing Development on the Leased Premises shall comply with the requirements set forth in Government Code section 14671.2(b) and shall be deemed in compliance if HCD does not respond to Lessee's request for approval within 30 days of such request.
- (c) Lessee may Sublease portions of the Leased Premises in the normal course of Lessee's business for occupancy consistent with the Permitted Uses, and neither the approval of State nor the assumption of this Lease shall be required in connection with such renting or subleasing of the Affordable Housing Development units if all of the conditions set forth below are satisfied:
 - (i) Each Sublease shall be in writing, be subject and subordinate to this Lease and the rights of State hereunder and shall expressly provide the foregoing in the written Sublease agreements, shall be to a bona fide third-party and shall be on commercially reasonable terms. Lessee shall provide copies of all tenant

("Sublessee") lease(s) to State within thirty (30) days after State's request for such.

- (ii) Any violation of any provision of this Lease, whether by act or omission by any Sublessee, shall be deemed a violation of such provision by Lessee, it being the intention and meaning of the Parties that Lessee shall assume and be liable to State for any and all acts and omissions of any and all Sublessees with respect to this Lease.
- (iii) The term of any Sublease shall not extend beyond the expiration of the Term without the prior written approval of State.
- (iv) If requested in writing by State, Lessee will provide State with a copy of any rules, regulations or other standards of operation or occupancy developed by Lessee and distributed to Sublessees.
- (v) There shall be no prepayment of rent in excess of thirty (30) days, and Lessee shall not accept prepayment of rent beyond the Term.
- (vi) If Lessee obtains any security deposits under any Sublease, all such funds shall be kept in a separate deposit account (and not comingled with any other accounts of Lessee) and shall be used only for the purposes set forth in the applicable Sublease and, in all events, in compliance with all applicable laws governing the use of such deposit. Each Sublease shall provide that State has no responsibility for any security deposits.

ARTICLE 17. ATTORNMENT

Section 17.01 Attornment

- (a) Subleases entered into by Lessee will be subject to all terms and conditions of this Lease and the Regulatory Agreement. If this Lease terminates for any reason, all Sublessees will recognize State as the successor to Lessee under their respective Subleases, and will render performance thereunder to State as if the Sublease were executed directly between State and the Sublessees; provided, however, State agrees that so long as a Sublessee has entered into an approved sublease in accordance with Section 16.02 and is not in default under its Sublease, State agrees to be bound by all of the terms and conditions of each such Sublease. All Subleases entered into by Lessee will contain the following provision:

If the underlying Lease and the leasehold estate of Lessee thereunder is terminated for any reason, Sublessee will attorn to State and recognize State as lessor under this Sublease; provided, however, State agrees that so long as Sublessee has entered into an approved form sublease and the Sublessee is not in default under the Sublease, State agrees to be bound, as permitted by law, by all the terms and conditions of this Sublease.

- (b) In the event this Lease is terminated for any reason, all Sublessees will be liable to State for their payment of rents and fees under their respective Subleases and will otherwise remain subject to all the provisions and terms contained in their Subleases.

ARTICLE 18. EVIDENCE OF FINANCING AND SETTLEMENT STATEMENTS

Section 18.01 Submittal of Evidence

Lessee has represented that it will obtain financing commitments from lenders sufficient to develop the Affordable Housing Development on the Leased Premises in the manner provided in this Lease. Lessee shall provide written evidence reasonably satisfactory to State that Lessee has secured such financing commitments for the development of the Affordable Housing Development. Said written evidence shall include estimated development costs of the Affordable Housing Development. State shall either approve or disapprove said written evidence within ten (10) days following Lessee's submission of said written evidence.

Section 18.02 Settlement Statements

As promptly as possible after executing binding agreements for all financing sources necessary to complete construction of the Affordable Housing Development ("**Close Construction Financing**") and, in any event, no later than the date set forth in the Schedule of Performance, Lessee shall submit to State a final settlement statement ("**Final Settlement Statement**") detailing Lessee's debits and credits for estimated development costs of the Affordable Housing Development. The Final Settlement Statement shall be issued by Lessee's title company and signed by Lessee.

Section 18.03 Permanent Financing

Lessee shall notify HCD in writing of the Permanent Loan Closing for the Affordable Housing Development no later than the date specified in the Schedule of Performance.

ARTICLE 19. LEASEHOLD MORTGAGES, DEFAULTS AND CURE RIGHTS

Section 19.01 Leasehold Mortgage

Subject to the terms of this Lease and provided Lessee is not in default under this Lease, upon receiving prior written approval of State, which approval shall not be unreasonably withheld, Lessee will have the right to hypothecate Lessee's interest in all or part of this Lease, the Leased Premises and the Affordable Housing Development (or any portion thereof) through financing for which a deed of trust or other equivalent instrument is recorded on the leasehold interest created hereby ("**Leasehold Mortgage**").

Section 19.02 Financing Stack Approval by State

Any Leasehold Mortgage, or other financing of the Affordable Housing Development shall be subject to the terms of this Lease and shall not acquire any rights greater than those of Lessee, except as otherwise expressly provided in this Lease. The loan term for any Leasehold Mortgage, or other financing may not extend beyond the Term without Lessee receiving prior written approval from the State. A Leasehold Mortgage, or other Lessee financing allowed hereunder may contain such terms and conditions as are acceptable to Lessee provided such terms are not in conflict with the terms of this Lease and State has provided approval of the financing as required by this Lease and, if applicable, any HCD loan program regulations and HCD loan documents. In the event of State's disapproval pursuant to Article 19, State shall state the reasons for any such disapproval.

Section 19.03 Recordation of Documents

Lessee will have the right any time during the Term to execute and deliver such documents as may be required by any or all of its Leasehold Mortgagees. It is hereby agreed that Lessee or any such Leasehold Mortgagees, will have the right to immediately record such document or document(s) with an appropriate public official or officials. Lessee agrees that certified copies of all such recorded documents of conveyance or Assignment as provided in this Section will be provided to the State forthwith. State agrees to review any documents Lessee or the Leasehold Mortgagee reasonably requests of State to execute, in connection with any such Leasehold Mortgage or other financing as approved by the State;

Section 19.04 Leasehold Estate Security Only

UNDER NO CIRCUMSTANCES SHALL STATE BE OBLIGATED TO SUBORDINATE ITS FEE INTEREST IN THE PROPERTY TO ANY LEASEHOLD MORTGAGE, AND, NOTWITHSTANDING ANY TERM OR PROVISION OF ANY SUCH LEASEHOLD MORTGAGE OR THIS LEASE TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL ANY SUCH LEASEHOLD MORTGAGE OR OTHER FINANCING CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF STATE NOR SHALL STATE BE LIABLE IN ANY WAY FOR THE PAYMENT OF ANY PORTION OF THE INDEBTEDNESS EVIDENCED BY SUCH LEASEHOLD MORTGAGE OR OTHER FINANCING OR FOR THE PAYMENT OR PERFORMANCE OF ANY OTHER OBLIGATION THEREUNDER OR SECURED THEREBY. ANY LEASEHOLD MORTGAGE OR OTHER FINANCING SHALL BE AN ENCUMBRANCE OR LIEN ONLY ON LESSEE'S INTEREST IN THIS LEASE AND THE LEASEHOLD ESTATE CREATED HEREIN.

Section 19.05 Default and Cure Periods

State will deliver to any such Leasehold Mortgagee, written notice of any default of Lessee under the terms of this Lease and such notice will specify the nature of the default. Before terminating this Lease, State will allow such Leasehold Mortgagee to cure or commence to cure any default of Lessee in accordance with the provisions of this Lease. The time period to cure any default of Lessee will commence when such notice is delivered to Leasehold Mortgagee and Leasehold Mortgagee, shall have the same lengths of time to cure the specified default as are permitted Lessee in Article 25 herein. In the event Lessee fails to timely cure a default after receipt of written notice and expiration of any applicable cure period, State agrees to provide any Leasehold Mortgagee with a second written notice and provide such Leasehold Mortgagee, with an additional thirty (30)-day cure period. State will not have the right to exercise any remedies under this Lease so long as a Leasehold Mortgagee is diligently pursuing a cure of any default pursuant to Article 25 herein. If such default is of a nature which is incapable of being cured by Leasehold Mortgagee because the Leasehold Mortgagee is not the holder of Lessee's interest in this Lease and in the Leased Premises, State agrees not to exercise its remedies arising from such default for only so long as may be required to complete the foreclosure and become the holder of Lessee's interest in this Lease and in the Leased Premises after such additional thirty (30)-day period if:

- I. Leasehold Mortgagee notifies State in writing within such additional thirty (30) day cure period that Leasehold Mortgagee intends to foreclose its Leasehold Mortgage and Leasehold Mortgagee commences and diligently pursues such foreclosure; and
- II. Leasehold Mortgagee makes all payments due by Lessee under this Lease through the date of foreclosure, to the extent the amount of such payments can be reasonably

determined by the Leasehold Mortgagee.

- III. Any default by Lessee in the payment of money as required under the terms of this Lease may be cured by the Leasehold Mortgagee in accordance with the terms of Article 25 hereof, and State will accept any such payment or cure from such Leasehold Mortgagee during the term of the Leasehold Mortgage.

Section 19.06. No Merger

There shall be no merger of this Lease or any interest in this Lease with the fee estate in the Leased Premises for any reason.

Section 19.07 Foreclosure

State agrees that upon completion of any foreclosure proceedings under the leasehold deed of trust or other recorded security instrument securing the loan, or upon delivery of a deed in lieu of foreclosure, the: (a) Leasehold Mortgagee; (b) purchaser ("Purchaser") at such sale; or (c) any successor or assign ("Assignee") of any Purchaser or Leasehold Mortgagee subsequent to the Leasehold Mortgagee's acquisition of the leasehold estate by such sale or deed in lieu of foreclosure pursuant to a sale, which Assignee is approved by State, will be recognized by State as the new lessee under the terms of this Lease for all purposes for the remaining Term. The leasehold interest of the Leasehold Mortgagee, Purchaser, or Assignee will not be adversely affected or terminated by reason of any nonmonetary default occurring prior to the completion of such proceedings, provided such default of the Leased Premises has been promptly remedied, or if such default requires possession to cure, provided such Leasehold Mortgagee, Purchaser, or Assignee promptly commences and diligently and continuously pursues such cure upon taking possession of the Leased Premises.

Section 19.08 New Lease

Notwithstanding any language to the contrary in this Lease, in the event this Lease is terminated for any reason prior to the end of the Term (it being the intent that this Lease will remain in full force and effect if Leasehold Mortgagee performs), State shall enter into a new lease (the "New Lease") with a Leasehold Mortgagee, holding the Senior Leasehold Mortgage (as defined in section 19.13(i)(A) below) encumbering the Affordable Housing Development immediately prior to such termination (or its designee or nominee) provided that any such party (i) requests such New Lease by written notice to State within sixty (60) days after termination of the Lease, and (ii) cures all prior defaults of Lessee under this Lease that are capable of being cured by Leasehold Mortgagee. The New Lease shall be for the remainder of the Term, effective at the date of such termination, at the same rent and on the same covenants, agreements, conditions, provisions, restrictions and limitations contained in this Lease. The New Lease shall have the same title priority as this Lease and shall be subject only to the exceptions to title having priority over this Lease or such additional exceptions to which such Leasehold Mortgagee has consented in writing. In the event State and such Leasehold Mortgagee enter into any such New Lease, title to the Affordable Housing Development located upon the Leased Premises as of the date of such New Lease shall vest in such Leasehold Mortgagee. If requested by such Leasehold Mortgagee State agrees to execute and deliver to Leasehold Mortgagee within a commercially reasonable timeframe after receiving written request and any necessary supporting documentation from Leasehold Mortgagee a quitclaim deed in recordable form conveying title to such Affordable Housing Development to such Leasehold Mortgagee.

State also agrees to assign to such Leasehold Mortgagee all Subleases which attorned to State upon the termination of this Lease.

Section 19.09 Leasehold Mortgagee Limited Liability

A Leasehold Mortgagee will not become personally liable under the terms and obligations of this Lease unless and until it assumes the obligations and is recognized by State as lessee under this Lease and will be liable only so long as such Leasehold Mortgagee maintains ownership of the leasehold interest or estate, and recourse to such Leasehold Mortgagee shall be limited solely to Leasehold Mortgagee's interest in the Leased Premises and the Affordable Housing Development.

Section 19.10 Bankruptcy

The bankruptcy or insolvency of Lessee will not, in and of itself, operate or permit State to terminate this Lease as long as all rent or other monetary payments required to be paid by Lessee continue to be paid and other required obligations are performed in accordance with the terms of this Lease.

Section 19.11 Default Notices to the State

Every Leasehold Mortgage shall contain a provision requiring that copies of all notices of default by Lessee thereunder must be sent to State. In the event of any default by Lessee under any Leasehold Mortgage, State reserves the right to make any payments due to the Leasehold Mortgagee before the Leasehold Mortgagee resorts to any foreclosure or sale proceedings under its leasehold deed of trust or other security instrument.

Section 19.12 Lender Loss Payee

Any Leasehold Mortgagee shall have the right to participate in any settlement or adjustment of losses under insurance policies maintained by Lessee under this Lease. Such Leasehold Mortgagee shall be named as a loss payee or additional insured, as applicable, in accordance with any loan documents executed by Lessee, under the insurance policies required under this Lease.

Further, notwithstanding the foregoing or anything in this Lease or the Regulatory Agreement to the contrary, including but not limited to Article 15 (Damage or Destruction), Article 21 (Insurance), Article 22 (Eminent Domain) of this Lease, so long as any Leasehold Mortgage remains outstanding:

- I. Any insurance proceeds or condemnation awards shall:
- II. Be paid to the Leasehold Mortgagee (the "**Senior Leasehold Mortgagee**") holding the Senior Leasehold Mortgage encumbering the Affordable Housing Development (the "**Senior Leasehold Mortgage**"), or at Senior Leasehold Mortgagee's election, an independent trustee acceptable to the Senior Leasehold Mortgagee (with condemnation payment amounts to be at least the amount of the total award minus the value of the land taken, considered as unimproved but encumbered by this Lease); and
- III. Be applied in accordance with the requirements of the Senior Leasehold Mortgagee's loan documents, which may include the application of such proceeds and/or awards to repayment of the Senior Leasehold Mortgage.

- IV. This Lease shall not terminate in the event of damage or destruction to the Affordable Housing Development unless the Senior Leasehold Mortgagee has been paid in full.
- V. State shall not receive any insurance proceeds until either the Affordable Housing Development is fully restored, or the Senior Leasehold Mortgage is paid in full.
- VI. Lessee's obligation to rebuild the Affordable Housing Development after casualty is limited to the amount of available insurance proceeds.
- VII. In the event of a partial taking, Lessee may rebuild/restore the Affordable Housing Development unless the Senior Leasehold Mortgagee consents to or requires distribution of award proceeds, in which case award proceeds must first be applied toward the Senior Leasehold Mortgage.
- VIII. State is prohibited from mortgaging, encumbering, or placing any liens on its fee estate to the Leased Premises without the prior consent of the Lessee, Investor, and Leasehold Mortgagee, and express subordination to the interests of Lessee and Leasehold Mortgagee under this Lease, any permitted subleases, and any new ground lease with Leasehold Mortgagee (e.g., a New Lease pursuant to Article 19 herein).

Section 19.13 Amending the Lease

State shall consider amending this Lease from time to time to add any provision which may reasonably be requested in writing by any Leasehold Mortgagee or prospective Leasehold Mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Lease and allowing such Leasehold Mortgagee, or prospective Leasehold Mortgagee, reasonable means to protect or preserve the lien of its security documents and the value of its security. If any such requested amendment is acceptable to State, State agrees to execute and deliver (and to acknowledge if necessary for recording purposes) any such amendment. Notwithstanding the foregoing, no such amendment shall in any way affect or change the Term, the rent or other amounts payable to State under this Lease, encumber the fee interest of State in the Leased Premises, or otherwise in any respect adversely affect any rights of State under this Lease.

Section 19.14 Rights of Investor

Any tax credit investor acting as a limited partner of Lessee (the "**Investor**") shall have the same notice and cure rights afforded to a Leasehold Mortgagee pursuant to Article 19 herein. The address for any notices to same, as of the Effective Date, is provided in Section 27.01.

Notwithstanding any provisions of this Lease to the contrary, the State agrees that the State:

- I. will not enter into any agreement with Lessee to terminate, cancel, surrender, amend, alter modify or extend the Lease or any interest of Lessee hereunder without prior written notice to the Investor and any such purported agreement shall not be valid or effective without the prior written consent of the Investor.
- II. will not terminate the Lease after the Effective Date for any reason prior to the expiration of the compliance period applicable to any building in the Affordable Housing Development pursuant to 26 U.S.C. section 42(a)(i) in effect as of the Effective Date of this Lease (the "Compliance Period"); provided, however, that the

foregoing shall not limit or restrict any other rights or remedies of the State under this Lease, at law or in equity, nor shall the foregoing limit or restrict the State's right to terminate this Lease following an uncured Event of Default after the expiration of the Compliance Period; and

- III. with respect to material defaults under the Lease, if Investor cannot cure a default without removing the general partner of Lessee, State will toll its exercise of remedies for a period of up to sixty (60) days during such period the Investor diligently pursues the removal and replacement of the general partner. If ordered by a court of competent jurisdiction in a bankruptcy or other legal proceeding, the State will toll its exercise of remedies.

Section 19.15 Rights of Most Senior Leasehold Mortgagee

This Lease may not be terminated, canceled, surrendered, modified, extended, restated and/or amended without the prior written consent of the most Senior Leasehold Mortgagee.

ARTICLE 20. EXCULPATION; DEBT LIABILITY DISCLAIMER AND INDEMNITY

Section 20.01 Exculpation

This Lease is made upon the express condition that the State, including its agencies, departments, boards, commissions, officers, agents, employees and the Leased Premises, and the Affordable Housing Development, are to be free from all liability and claims for damages by reason of any injury to any person or persons, including Lessee, or property of any kind whatsoever and to whomsoever belonging, including Lessee, from any cause or causes whatsoever while in, upon, or in any way connected with the Leased Premises during the Term or any occupancy hereunder, except those arising out of the sole gross negligence of State or its employees, agents and contractors. Consistent with Article 20 herein, Lessee further agrees to provide necessary Workers Compensation insurance for all employees of Lessee at Lessee's own cost and expense for all work related to the Leased Premises and the Affordable Housing Development.

Section 20.02 Debt Liability Disclaimer

The State, including but not limited to the State's General Fund, and any insurance or special self-insurance programs, is not liable for any debts, liabilities, settlements, liens or any other obligations of Lessee or its heirs, successors or assigns.

Section 20.03 Indemnity

To the fullest extent permitted by applicable law, Lessee agrees to indemnify, protect, defend and hold harmless the State, including its agencies, departments, boards, commissions, officers, agents, employees (collectively "Indemnitees") from and against all costs and expenses, liabilities, obligations, damages, penalties, claims, actions including, without limitation, any and all sums paid for investigation costs, settlement of claims, consultant and expert fees, reasonable attorney's fees and costs and expenses of litigation and appeal from the first notice any claim or demand has been or may be made, directly or indirectly arising out of, caused by, or resulting from, in whole or in part, the following:

- (a) Loss of life, personal injury or damage to property occurring on the Leased Premises and/or the Affordable Housing Development;

- (b) The use or occupancy of the Leased Premises and/or the Affordable Housing Development by Lessee, its employees, agents, invitees or contractors;
- (c) Any liens or encumbrances arising out of any work performed or materials furnished to Lessee;
- (d) Any default on the part of Lessee under this Lease;
- (e) Violations of or noncompliance with any law(s) pertaining to or resulting from conduct of Lessee's business on the Leased Premises and/or the Affordable Housing Development; or
- (f) Any act or omission of Lessee, any tenant or Sublessee, or any of Lessee's contractors, subcontractors of any tier, or anyone directly or indirectly employed by Lessee, or anyone that Lessee controls or exercises control over.

The obligations of Lessee under this indemnification provision shall apply to all liabilities even if such liabilities arise from or are attributed to the concurrent conduct and/or culpability of any Indemnitee. Notwithstanding the foregoing, the only liabilities with respect to which Lessee's obligation to indemnify, including the cost to defend, the Indemnitees does not apply is with respect to liabilities resulting from the sole gross negligence or willful misconduct of an Indemnitee. Lessee's duty to defend the Indemnitees is separate from, independent of and free-standing of Lessee's duty to indemnify the Indemnitees and applies whether the issue of Lessee's gross negligence, breach of contract or other fault or obligations has in any way been determined.

Lessee shall promptly advise State in writing of any action, arbitration hearing(s), administrative or legal proceeding or investigation as to which this indemnification may apply, and Lessee, at Lessee's sole and exclusive expense, shall assume on behalf of State (and the other Indemnitees) and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to State; provided, however, that State shall have the right, at its option, to be represented therein by "advisory counsel" of its own selection and at its own expense. In such event, Lessee shall direct its counsel to fully and unconditionally share all information and materials with State's counsel in a timely manner so calculated as to permit State's counsel to be fully and timely aware of all activity and conduct. In the event that a conflict exists between the interests of State and the interests of Lessee, Lessee shall retain counsel selected by the State, defend the Indemnitees from any liabilities; provided, however, that Lessee shall defend the Indemnitees with Lessee's counsel if a conflict does not exist. In the event State commences a legal action to compel Lessee to indemnify State and/or defend State (to the extent expressly required under this Lease), State shall be entitled to its reasonable attorney's fees and costs if it prevails in such action.

In the event of failure by Lessee to fully perform in accordance with this indemnification Section, State, at its option, and without relieving Lessee of its obligations hereunder, may so perform, but all costs and expenses so incurred by State in that event shall be reimbursed by Lessee to State, together with interest on the same from the date any such expense was paid by State until reimbursed by Lessee, at the rate of interest provided to be paid on judgments, by the law of the State of California.

This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts. It is agreed with respect to any legal limitations now or hereafter

in effect and affecting the validity or enforceability of the indemnification obligation under this Section, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect. This indemnity provision shall survive expiration or earlier termination of the Lease. In the event of a conflict between this indemnification provision and any other indemnity provision contained in this Lease, the indemnification provision that is the most stringent and offers the most protection in favor of the State and/or the Indemnitees shall control.

ARTICLE 21. INSURANCE

Lessee shall furnish to State a certificate of insurance with State's Lease Number indicated on the face of said certificate, issued to State as the certificate holder and evidencing the insurance as follows:

Section 21.01 General Requirements

- (a) Insurance Carrier Required Rating. All insurance required under this Article 21 and any other provisions in this Lease shall provide for severability of interests; shall provide that an act or omission of one of the named or additional insureds shall not reduce or avoid coverage to the other named or additional insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. All insurance policies required to be carried under this Article and any other provisions in this Lease shall be (i) written by companies rated A-XII or better in *Best's Insurance Guide* or an equivalent rating from another industry-accepted rating agency and authorized to do business in California, and (ii) add State (i.e. The State of California, its agencies, departments, boards, commissions, officers, agents, employees and any mortgagee or other persons or entities reasonably designated by State) as an additional named insured. State shall not be liable for the payment of any premiums or assessments on the required insurance coverages.
- (b) Deductibles or Self-Insured Retention Amounts. Lessee is solely responsible for any deductibles or self-insured retention amounts contained within its insurance program. State shall not be responsible for payment of any deductible or self-insured retention amounts held by Lessee. If Lessee is self-insured for a portion or all of its insurance, review of Lessee's financial information including a letter of credit may be required by State. In addition, State may require Lessee to a) reduce or eliminate such self-insured retention as respects this Lease, or b) procure a bond which guarantees payments of losses and related investigations, claims administration, and defense costs and expenses. Lessee shall be solely responsible for any deductible and/or self-insured retention amount, so that so far as State is concerned, it will be as if the related insurance had no deductible and/or self-insured retention amount whatsoever.
- (c) Failure to Maintain Insurance. If Lessee fails or refuses to provide a copy of the insurance certificates or the renewal insurance certificates within twenty-five (25) days following written request by State to Lessee and any Leasehold Mortgagee, together with evidence of payment of premiums therefor, or if Lessee otherwise fails or refuses to procure or maintain insurance as required by this Lease, State shall

have the right, at State's election, to procure and maintain such insurance for its own benefit. The premiums paid by State shall be due and payable by Lessee to State within ten (10) days following the date of notice to Lessee that such premiums were paid by State. State shall give prompt written notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of State, without proper replacement coverage shall be a default under this Lease. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to State for any liability arising during the lapsed or previously uncovered period.

- (d) Application of Proceeds. Subject to Article 19 and except as expressly set forth therein, the proceeds of any insurance required to be maintained by the provisions of this Article shall be payable to Lessee and shall be used to restore the Leased Premises and the Affordable Housing Development as required by Article 15, except to the extent otherwise required in any Leasehold Mortgage.
- (e) Coverage Term. All required insurance coverage must be in force during the Term. If insurance expires during the Term, a new certificate must be received by State at least ten (10) days prior to the expiration of the insurance. Any new insurance must comply with the requirements of this Lease. In the event Lessee fails to keep in effect at all times the required insurance coverage, State may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event, subject to the notice and cure provisions of this Lease. Notwithstanding anything in this Lease to the contrary, State shall give ninety (90) days prior written notice of its intent to terminate the Lease to Lessee and all Leasehold Mortgagees; moreover, State agrees not to exercise its right to terminate the Lease until the holder of any Leasehold Mortgage encumbering the Leased Premises has been given its rights to cure or foreclose as set forth in Article 19.
- (f) Policy Cancellation or Termination & Notice of Non-Renewal. Lessee shall notify the State within five (5) business days before the effective date of any cancellation, non-renewal, or material change that affects any required insurance coverages in this Article. In the event Lessee fails to keep in effect at all times the specified insurance coverages in this Article, the State may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event, subject to the provisions of this Lease.
- (g) Certificates/Endorsements. Prior to the Effective Date and/or commencement of any construction or operations on the Leased Premises by Lessee or its contractors, Lessee shall provide State with: (a) valid certificates of insurance issued by the insurance carrier of each policy of insurance required to be carried by Lessee hereunder showing the carriers, policy numbers, names of additional insureds and policy expiration dates, and (b) all required endorsements. Lessee shall provide to State within five (5) business days following receipt by State of a copy of any modification, cancellation or non-renewal of insurance required by this Lease.
- (h) Occurrence Form. All insurance shall be written on an occurrence form basis and shall not be written on a claims-made form.
- (i) Inadequate Insurance. Subject to Article 19, inadequate or lack of insurance does not negate Lessee's obligations under this Lease.
- (j) Loss Payee. The insurance under Sections 21.02(a) and 21.02(c) below shall name

State as a loss payee, subject to Lessee's rights under Article 15 herein regarding Damage or Destruction and except as otherwise required in any Leasehold Mortgage.

- (k) Contractor/Subcontractor/Vendor Requirements. Lessee shall require that all of its contractors, subcontractors of any tier, or any other vendors performing work or providing services of any type on the Leased Premises (i) provide general liability, automobile insurance, workers' compensation and other commercially reasonable insurance coverages generally maintained by others performing similar work and/or services in a commercially reasonable form and amounts reasonably acceptable to State and Lessee, and naming State (i.e. The State of California, its agencies, departments, boards, commissions, officers, agents, employees and any mortgagee or other persons or entities reasonably designated by State) and Lessee as additional insureds; and (ii) expressly agree to indemnify, defend and hold State (i.e. The State of California, its agencies, departments, boards, commissions, officers, agents, employees and any mortgagee or other persons or entities reasonably designated by State) and Lessee harmless from and against any costs, claims or liability arising out of work performed or services provided by such contractor, subcontractor of any tier, or any other vendor, regardless of whether such contractor, subcontractor of any tier, or any other vendor performs work or services directly for State, Lessee or for another contractor, subcontractor of any tier, or any other vendor.
- (l) Periodic Review. State and Lessee agree that the terms and conditions of this Article are subject to periodic review and revision by mutual consent of the Parties in light of **the** prevailing conditions.

Section 21.02 Specific Insurance Requirements

- (a) Real and Personal Property Insurance. During the Term and any extension thereof, Lessee shall cause to be effected upon the Leased Premises (including any additions or improvements made by Lessee and any fixtures or equipment installed by Lessee) commercial property insurance on a special form basis in the amount of one-hundred-percent (100%) of the full replacement value of the improvements located on the Leased Premises, with building laws and ordinance endorsement, and also providing combined business interruption and extra expense coverage for the actual loss sustained until resumption of normal operations. Such policy shall contain a replacement cost endorsement and a stipulated amount endorsement. Such policy or policies required herein shall be endorsed to add the State (i.e. The State of California, its agencies, departments, boards, commissions, officers, agents, employees and any **mortgage** or other persons or entities reasonably designated by State) as an additional named insured.
- (b) Commercial General Liability Coverage. Lessee shall procure and maintain during the Term and any extension thereof, at its sole cost and expense, a policy or policies of commercial general liability insurance (occurrence form only) relating to the use and occupancy of the Leased Premises and the business operated by Lessee or any other occupant on the Leased Premises. Such insurance shall include broad form contractual liability insurance coverage insuring all of Lessee's indemnity obligations under this Lease. Such coverage shall have a minimum combined single limit of liability of at least Five Million Dollars (\$5,000,000) per occurrence and a general aggregate limit of at least Ten Million Dollars (\$10,000,000). The policy or policies required herein shall be endorsed to add State (i.e., The State of California, its

agencies, departments, boards, commissions, officers, agents, employees and any mortgagee or other persons or entities reasonably designated by State) as an additional named insured and shall provide that such coverage shall be primary and that any insurance and/or self-insured programs maintained by State shall not be construed as contributory. Such coverage shall also contain endorsements: (a) deleting any employee exclusion on personal injury coverage; and (b) deleting any liquor liability exclusion, or Lessee shall provide a separate policy providing liquor liability coverage in lieu of deleting the exclusion.

- (c) Builder's Risk Coverage. With respect to the construction of the Affordable Housing Development or any other improvements or alterations to the Leased Premises, Lessee shall procure and maintain insurance for course of construction insurance or builder's risk insurance, covering all construction and operations at the Leased Premises. Such insurance shall be written on a blanket or all-risk form and cover the full replacement cost of all improvements as well as incidental damages, including rental obligations, rental interruption or rental loss (as applicable). Such insurance shall also provide coverage for any upgrades or changes in building codes or other such laws in the event of loss to any of the improvements in connection with the Affordable Housing Development. Lessee shall have the option but not the obligation to purchase flood and earthquake insurance. Such policy or policies required herein shall be endorsed to add the State (i.e., The State of California, its agencies, departments, boards, commissions, officers, agents, employees and any mortgagee or other persons or entities reasonably designated by State) as an additional named insured.
- (d) Automobile Liability Insurance. Lessee shall maintain liability insurance for all owned, maintained, non-owned or hired vehicles so used in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit each accident. Such policy or policies shall be endorsed to add the State, including HCD (i.e., The State of California, its agencies, departments, boards, commissions, officers, agents, employees and any mortgagee or other persons or entities reasonably designated by State) as an additional named insured.
- (e) Workers' Compensation and Employer's Liability Insurance. Lessee shall maintain statutory Workers' Compensation Insurance as prescribed by the laws of the State of California. Such policy or policies shall include Employers' Liability including Occupational Disease with limits of not less than One Million Dollars (\$1,000,000) per person per accident. Lessee shall require that its contractors, vendors, concessionaires and licensees who have access to the Leased Premises for the performance of work or other services shall maintain worker's compensation insurance and employers' liability insurance in the amounts required by applicable laws. The workers' compensation policy of Lessee shall contain a waiver of subrogation endorsement in favor of the State.
- (f) Optional Flood and Earthquake Insurance. If required by the Leasehold Mortgagee, Lessee shall obtain and maintain flood and earthquake coverage for the Affordable Housing Development with limits, exclusions and deductible amounts satisfactory to the Leasehold Mortgagee. In the event there is no Leasehold Mortgagee, and if as determined by an independent study performed by qualified engineering professionals, the probable maximum loss exceeds what would otherwise be allowed by a Leasehold Mortgagee, then at State's option Lessee shall obtain and maintain flood and earthquake coverage for the Affordable Housing Development with limits,

exclusions and deductible amounts that would otherwise be satisfactory to a Leasehold Mortgagee.

Section 21.03 Subrogation Waived

The Parties hereby release each other, and their respective successors and assigns, from any claims for damage to any person, the Leased Premises, or to any of the improvements in connection with the Affordable Housing Development and any personal property in or on the Leased Premises, that are caused by or result from risks insured against under any insurance policies carried by the Parties and in force at the time of any such damages, provided that such release shall only be effective to the extent of the actual coverage of the insurance policies. Each Party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either Party in connection with any damage covered by any policy carried with respect to the Leased Premises or to any of the improvements in connection with the Affordable Housing Development.

ARTICLE 22. EMINENT DOMAIN

Section 22.01 Eminent Domain

Subject to Article 19 and except as expressly set forth therein, in the event of any acquisition of or damage to all or any part of the Leased Premises or any interest therein by eminent domain, whether by condemnation proceeding or transfer in avoidance of an exercise of the power of eminent domain or otherwise during the Term, the rights and obligations of the Parties with respect to such appropriation shall be as provided in this Article. As used herein:

- (a) "Taking" shall mean any taking or damage, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance in lieu of an exercise of eminent domain or while condemnation proceedings are pending. The taking shall be deemed to take place on the earlier of (i) the date actual physical possession is taken by the condemner or (ii) the date on which the title passes to the condemner.
- (b) "Total Taking" shall mean the taking of fee title to all of the Leased Premises or so much of the Leased Premises that the portions of the Leased Premises not so taken are, in the reasonable judgment of Lessee, not reasonably suited for the uses of the Leased Premises that have been previously made by Lessee. A Temporary Taking, defined below, may be treated as a Total Taking if it meets the test set forth above.
- (c) "Partial Taking" shall mean any taking of fee title that is not a Total Taking.
- (d) "Temporary Taking" shall mean the taking for temporary use of all or any portion of the Leased Premises for a period ending on or before the expiration of the Term.
- (e) "Award" shall mean all compensation paid for the Taking whether pursuant to a judgment or by agreement or otherwise.
- (f) "Notice of Intended Taking" shall mean any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal and shall include without limitation the service of a condemnation

summons and complaint on either State or Lessee or the receipt by either State or Lessee from a condemning agency or entity of a written notice of intent to take containing a description or map of the Taking reasonably defining the extent thereof.

Section 22.02 Notice and Proceedings

Upon receipt of any of the following by either Party hereto, such Party shall promptly deliver a copy thereof, endorsed with the date received, to the other Party, and any Leasehold Mortgagee which has given its name and address to such Party for such purpose.

- (a) Notice of Intended Taking;
- (b) Service of any legal process relating to the condemnation of all or any part of the Leased Premises;
- (c) Notice in connection with any proceedings or negotiations with respect to any such condemnation; and
- (d) Notice of intent or willingness to make or negotiate a private purchase, sale or other transfer in lieu of condemnation.

Section 22.03 Participation in Taking and Proceedings

State, Lessee and any Leasehold Mortgagee that would be affected by such Taking shall each have the right to represent its respective interest in each proceeding or negotiation with respect to any taking or intended taking and to make full proof of its claims. No consensual agreements, settlement, sale or transfer to or with the condemning authority shall be made without the prior written consent of State, Lessee and Leasehold Mortgagee, which consent shall not be unreasonably withheld. Each of the Parties hereto agrees to execute and deliver to the other any instruments that may be required to effectuate or facilitate any of the provisions of this Article where such execution or delivery will not adversely affect the right of such party to receive just compensation for any loss sustained in such negotiation or proceeding.

Section 22.04 Termination Upon Total Taking

In the event of a Total Taking, this Lease and all interests, rights, liabilities and obligations of the Parties hereunder shall terminate as of the date of Taking, except for liabilities and obligations arising out of events occurring prior to the date of termination.

Section 22.05 Lessee's Right to Elect Total Taking

In the event of a Taking of fee title to less than all of the Leased Premises, which Lessee reasonably believes to be a Total Taking, Lessee may, by written notice to State approved by all Leasehold Mortgagees, within one hundred twenty (120) days after Lessee receives Notice of Intended Taking thereof, elect to treat such taking as a Total Taking. If Lessee fails to make such timely election, such Taking shall be deemed to be a Partial Taking for all intents and purposes.

Section 22.06 Total Taking Conditions

Any taking determined to be a Total Taking in accordance with this Article shall be treated as a Total Taking if (i) Lessee delivers possession of the Leased Premises to State within one hundred twenty (120) days after Lessee shall have delivered written notice to State electing to treat such taking as a Total Taking and (ii) Lessee has complied with all of the provisions hereof relating to the apportionment of the awards.

Section 22.07 Order of Priority

In a Total Taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be distributed in the following order of priority:

- (a) First, to Leasehold Mortgagees to the extent of the then balance due on all Leasehold Mortgages, in order of priority beginning with the Senior Leasehold Mortgagee;
- (b) Second, to State an amount equal to the value of State's then present fee interest in the Leased Premises, as encumbered by this Lease, plus any reversionary interest in the Affordable Housing Development upon the expiration of this Lease;
- (c) Third, subject to other distribution requirement set forth in the Lease, the balance to Lessee.

Section 22.08 Distribution of Award

All sums awarded for the leasehold or the fee shall (i) be delivered to State and Lessee (or to the Senior Leasehold Mortgagee, if any), respectively, if such award has been apportioned between State and Lessee by such condemning authority, or (ii) deposited promptly with the Senior Leasehold Mortgagee (or in the event that there is no Leasehold Mortgage of record, with an escrow agent selected by Lessee in the reasonable exercise of its discretion), if only a single award is made, and distributed and disbursed as set forth above. Sums being held by the escrow agent pending disbursement shall be deposited in a federally insured interest-bearing account and, upon distribution, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of such sums.

Section 22.09 Partial Taking

In the event of a Partial Taking, this Lease shall remain in full force and effect as to the portion of the Leased Premises remaining after the Partial Taking, and there shall be no adjustment to any rent or other amounts payable to State hereunder. In the event of a Partial Taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be distributed in the following order of priority:

- (a) First, to Lessee an amount equal to the cost of making all repairs and restorations to any improvements related to the Affordable Housing Development affected by such Partial Taking to the extent necessary to restore the same to a complete architectural and economically viable or functioning units (to the extent permitted, however, taking into consideration the amount of land remaining after such taking or purchase);
- (b) Second, to any Leasehold Mortgagee to the extent that the security of its Leasehold Mortgage has been impaired as a result of the Partial Taking or as required by its loan documents, whichever is greater;

- (c) Third, to State an amount equal to the State's then present value of its fee interest in that portion of the Leased Premises that is taken in such Partial Taking, as encumbered by this Lease;
- (d) Fourth, subject to other distribution requirement set forth in the Lease, the balance to Lessee.

Section 22.10 Temporary Taking

In the event of a Temporary Taking, this Lease shall remain in full force and effect, neither the rents hereunder nor the Term hereof shall be reduced or affected in any way, and Lessee shall be entitled to any award for the use or estate taken, subject to the requirements of any Leasehold Mortgagee.

Section 22.11 Arbitration

Unless the respective values are determined by the court in the eminent domain proceeding, the values of the interests for which State and Lessee are entitled to compensation in the event of a Total or Partial Taking shall be determined by the mutual written agreement of State and Lessee. If State and Lessee are unable to agree on the value of such interests within thirty (30) days after the deposit of the sums awarded with the escrow agent or Leasehold Mortgagee, as applicable, then within thirty (30) days after the expiration of that period, each such Party shall submit its good faith estimate of the value of such interests as of the date of the Taking. If the higher of such estimates is not more than one hundred five percent (105%) of the lower of such estimates, the value shall be the average of the submitted estimates. If otherwise, then within ten (10) days the question shall be submitted to arbitration pursuant to the rules of the American Arbitration Association.

ARTICLE 23. COMPLIANCE WITH LAWS

Section 23.01 General

Lessee shall at its sole cost and expense comply with all the applicable statutes, laws, ordinances and regulations of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the Leased Premises, the Affordable Housing Development, or any portion of any of them or the use of any of them as provided by this Lease or otherwise, including, without limitation, with all Preservation Notice Law requirements (Government Code sections 65863.10, 65863.11, and 65863.13). Lessee must certify compliance with Preservation Notice Law annually, as prescribed in Government Code section 65863.11(o)(3).

- (a) Lessee agrees, at its sole cost and expense, to comply and secure compliance by all contractors and residents of the Leased Premises and Affordable Housing Development with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Leased Premises, or the Affordable Housing Development, as well as any operations conducted thereon, and to faithfully observe and secure compliance by all contractors and residents of the Leased Premises and Affordable Housing Development with, in the use of the Leased Premises and the Affordable Housing Development, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees, if any, assessed or levied upon

Lessee or the Leased Premises or the Affordable Housing Development, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or any Sublessee or by reason of the business or other activities of Lessee or any Sublessee upon or in connection with the Leased Premises, or the Affordable Housing Development. Lessee shall use good faith, commercially reasonable efforts to prevent residents from maintaining any nuisance or other unlawful conduct on or about the Leased Premises, the Affordable Housing Development, or any portion of any of them, and shall take such actions as are reasonably required to abate any such violations by residents or other tenants of the Leased Premises, the Affordable Housing Development, or any portion of any of them. The judgment of any court of competent jurisdiction, or the admission of Lessee or any resident, tenant, Sublessee or permittee in any action or proceeding against them, or any of them, whether the State be a party thereto or not, that Lessee, resident, tenant, Sublessee or permittee has violated any such ordinance or statute in the use of the Leased Premises or the Affordable Housing Development shall be conclusive of that fact as between the State and Lessee, or such resident, tenant, Sublessee or permittee.

Section 23.02 Obligation to Refrain from Discrimination

- (a) Lessee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40) (other than setting aside Affordable Housing Development units for seniors in accordance with applicable laws), marital status, sex, sexual orientation, or any other protected characteristic under federal, state or local laws in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Leased Premises, nor shall Lessee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, lessees, subtenants, Sublessees or vendees of the Leased Premises or any portion thereof. The foregoing covenants shall run with the land.
- (b) Lessee shall refrain from restricting the rental or lease of the Leased Premises and the Affordable Housing Development, or any portion thereof, on the basis of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40) (other than setting aside Affordable Housing Development units for seniors in accordance with applicable laws), marital status, sex, sexual orientation, or any other protected characteristic under federal, state or local laws. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

 - (i) In Leases: "Lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, sex, sexual orientation, or any other protected characteristic under federal, state or local laws, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises

herein leased nor shall Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, lessees, Sublessees, subtenants, or vendees in the premises herein leased."

- (ii) In Contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, sex, sexual orientation, or any other protected characteristic under federal, state or local laws, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of residents, lessees, subtenants, Sublessees or vendees of the premises."
- (c) In the performance of this Lease, Lessee shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, sex, sexual orientation, use of family care leave, or any other protected characteristic under federal, state or local laws.
- (d) Lessee shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (e) Lessee shall comply with the applicable provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Lease by reference and made a part thereof as if set forth in full. Lessee shall give written notice of its obligations under this clause to any labor organizations with which they have collective bargaining or other agreements. Further, Lessee shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of this Fair Employment Practices Section. (Government Code sections 12920-12994). Remedies for Willful Violations:

State may determine a willful violation of the Fair Employment Practices provision to have occurred upon the receipt of a final judgment having that effect from a court in an action to which Lessee was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that Lessee has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

State will have the right to terminate this Lease and any loss or damage sustained by the State by reason thereof will be borne and paid for by Lessee.

Section 23.03 Americans with Disabilities Act; Unruh Civil Rights Act; Disabled Persons Act

Lessee shall comply with all applicable federal requirements established under 28 Code of Regulations, Part 36, Americans with Disabilities Act, and with all California requirements established under Civil Code section 51 et seq., Unruh Civil Rights Act and Civil Code section 54 et seq., Disabled Persons Act, in order to make programs accessible to all participants and to provide equally effective communications.

By signing this Lease, Lessee assures State that Lessee complies with all federal and state statutes described above, prohibiting discrimination on the basis of disability. Lessee also assures State that Lessee complies with any applicable regulations and guidelines issued pursuant to the federal and state statutes described above.

Lessee shall ensure that the Affordable Housing Development and the Leased Premises adhere to the accessibility requirements set forth in California Building Code Chapter 11A and 11B and the Americans with Disabilities Act, Title II. In addition, Lessee must ensure that the Affordable Housing Development and the Leased Premises adhere to either the Uniform Federal Accessibility Standards (UFAS) standards, 24 C.F.R. Part 8, or HUD's modified version of the 2010 ADA Standards for Accessible Design (Alternative 2010 ADAS), HUD-2014-0042-0001, 79 F.R. 29671 (5/27/14) (commonly referred to as "the Alternative Standards" or "HUD Deeming Memo"). Accessible units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the Affordable Housing Development and be available in a sufficient range of sizes and amenities consistent with 24 CFR section 8.26.

Lessee shall adopt a written non-discrimination policy requiring that no person shall, on the grounds of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law), arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes be excluded from participation in, be denied the benefits of, or be subjected to discrimination. Lessee shall comply with the applicable requirements contained in the Americans with Disabilities Act, the Fair Housing Amendments Act, the California Fair Employment and Housing Act (FEHA), and FEHA accompanying regulations at 2 CCR Section 12005 et seq, the Unruh Act, Government Code Section 11135, Section 504 of the Rehabilitation Act, and regulations promulgated pursuant to those statutes, including 24 C.F.R. Part 100, 24 C.F.R. Part 8, and 28 C.F.R. Part 35, in all of Lessee's activities.

Prior to the opening of the Affordable Housing Development, Lessee shall provide a certification of compliance, signed by Lessee and the project architect as well as third party

documentation confirming compliance with all the requirements listed in this Section 22.03 (by a CASP certified architect or someone with demonstrated experience meeting federal accessibility standards.)

ARTICLE 24. ENTRY AND INSPECTION; RIGHT TO MAINTAIN

Section 24.01 Entry and Inspection

State reserves and shall have the right during reasonable business hours (and at any time in cases of emergency), upon forty-eight (48) hours prior notice (except in cases of emergency) to Lessee, to enter the Leased Premises and the Affordable Housing Development for the purpose of viewing and ascertaining the condition of the same, or to protect State's interests in the Leased Premises and the Affordable Housing Development or to inspect the operations conducted thereon.

Section 24.02 Right to Maintain

In the event that the entry or inspection by the State pursuant to Section 24.01 hereof discloses that the Leased Premises or the Affordable Housing Development are not in a decent, safe, and sanitary condition, State shall have the right, if not cured by Lessee, after thirty (30) days written notice to Lessee (and at any time in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all reasonable costs incurred by State in having such necessary maintenance work done in order to keep the Leased Premises and the Affordable Housing Development in a decent, safe and sanitary condition, provided that State delivers such notice which is required hereunder. Such costs paid by State shall be treated as additional rent due from Lessee, which costs shall be due and payable within thirty (30) days after presentation by State of a statement of all or part of said costs. The rights reserved in this Section shall not create any obligations on State or increase obligations elsewhere in this Lease imposed on State.

ARTICLE 25. DEFAULT BY LESSEE

Section 25.01 Default by Lessee

Lessee will be considered in default under this Lease in the event of any one or more of the following occurrences:

- (a) Lessee shall abandon or surrender the Leased Premises, or the Affordable Housing Development; or
- (b) Lessee fails to pay rent or any other money payments required by this Lease within 15 days as of when the same are due and payable by Lessee; or
- (c) The Lessee shall fail to materially perform any covenant or condition of the Regulatory Agreement, this Lease, and/or any loan documents or regulatory agreements executed by the Lessee which are permitted pursuant to the foregoing, other than as set forth in subparagraphs (a) or (b) directly above, and any such failure shall not be cured within a period of thirty (30) days following written notice from State specifying the failure complained of, or if it is not reasonably practicable for Lessee to cure or remedy such failure within such thirty (30) day period, then the Lessee shall not be deemed to be in default if the Lessee shall commence such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; or

- (d) Subject to any restrictions or limitations placed on State by applicable laws governing bankruptcy, Lessee's:
- (i) application for, consent to or suffering of the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets,
 - (ii) making a general assignment for the benefit of creditors,
 - (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt,
 - (iv) becoming unable to or failing to pay its debts as they mature,
 - (v) being adjudged a bankrupt,
 - (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing),
 - (vii) convening a meeting of its creditors or any class thereof for purposes of effecting a moratorium, extension or composition of its debts; or
 - (viii) suffering or permitting to continue unstayed and in effect for thirty (30) consecutive days any attachment, levy, execution or seizure of all or a portion of Lessee's assets or of Lessee's interest in this Lease; then such event shall constitute an event of default under this Lease; or
- (e) Lessee shall fail to either break ground within two (2) years of the Effective Date or to complete construction of the Affordable Housing Development within three (3) years of the Effective Date, subject to Section 27.03 and subject to any permitted extensions by the State; or
- (f) Lessee fails to maintain any insurance required to be maintained by it under this Lease and such failure continues for a period of thirty (30) days after written notice thereof from State; or
- (g) Lessee fails to timely perform any term, provision or any other material covenant contained in this Lease or in the Regulatory Agreement, including but not limited to, items contained in 25.01 (a), (b), (c), (d), (e), and (f) or regulatory agreements executed by Lessee which are permitted pursuant to the foregoing and such failure continues for a period of thirty (30) days after written notice thereof from State; provided, however, that if a material nonmonetary default cannot be cured with reasonable diligence within such thirty (30) day period, then State shall not have the right to terminate this Lease or pursue any other remedy against Lessee, as long as Lessee commences the curing of such default within such thirty (30) day period and continuously proceeds with the curing of such default to completion with reasonable diligence, with allowance for delays due to the action or failure to act of governmental authorities, strikes, acts of God or other matters beyond the reasonable control of Lessee (except Lessee's inability to fulfill its financial obligations). Notwithstanding anything herein to the contrary, State shall give ninety (90) days prior written notice to all Leasehold Mortgagees and the Investor of its intent to terminate the Lease; moreover, State agrees not to exercise its right to terminate the Lease until all holder(s) of a Leasehold Mortgage encumbering the Leased Premises and the Investor have been given their rights to cure or foreclose as set forth in Article 19.

Section 25.02 Remedies of State

In the event of any such default as described in Section 25.01, and subject to the provisions of Section 15 herein, State may, at its option, and without limiting and in addition to all of its other rights and remedies under this Lease or at law or in equity:

- (a) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by State in enforcing this provision) to the account of Lessee, which charge shall be due and payable within thirty (30) days after presentation by State of a statement of all or part of said costs; and/or
- (b) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by State in enforcing this provision) from the proceeds of any insurance.

Section (formerly 24.03 "Cure" was deleted, following advice from OLS comment made 12/24/24.)

Section 25.03 Termination for Default by Lessee

If Lessee is in default as described in Section 25.01 above and such default is not cured as provided in this Article, State shall provide Lessee and all Leasehold Mortgagee(s) and the Investor(s) with an additional written notice thereof, and if such failure to cure continues for an additional period of sixty (60) days, subject to the right of the Senior Leasehold Mortgagee to a New Lease under Section 19.08, State shall be entitled to pursue any and all rights and remedies which it may have under this Lease or at law or in equity, including, without limitation, the right to terminate this Lease. All of such rights and remedies shall be cumulative and not alternative. Notwithstanding anything herein to the contrary, State shall give ninety (90) days prior written notice to all Leasehold Mortgagees and Investors of its intent to terminate the Lease; moreover, State agrees to not exercise its right to terminate the Lease until all holder(s) of a Leasehold Mortgage encumbering the Leased Premises have been given their rights to cure or foreclose as set forth in Article 19. If State elects to terminate this Lease, it will in no way prejudice the State's right of action for payment of any rental or other payment arrearages owed by Lessee as of the effective date of such termination.

Section 25.04 Bankruptcy

Should Lessee at any time after the execution of this Lease file a voluntary petition in bankruptcy or be adjudged bankrupt either upon the voluntary petition or petition of creditors of Lessee, or should Lessee seek, claim, or apply for any right, privilege, remedy, relief, or protection afforded by any statute or statutes of the United States relating to bankruptcy, or should it make an assignment for the benefit of its creditors, or should a receiver be appointed over, or should an attachment be levied and permitted to remain for a period of more than thirty (30) days following the levying of such attachment upon or against any right, or privilege to this Lease, then, and upon the happening of either of said events, all interest, rights, and privileges as shall have been therefore validly assigned by Lessee pursuant to the terms, covenants, and conditions of this Lease, shall at the sole option of State cease, terminate, and end upon thirty (30) days written notice to Lessee from State; provided, however, if said receiver be discharged within thirty (30) days after his appointment, Lessee may, at any time within ten (10) days thereafter, notify State thereof and resume the performance of this Lease, and the same shall thereupon again become in full force and effect.

ARTICLE 26. TERMINATION; EXPIRATION

Section 26.01 Lessee's Duty to Surrender

Subject to the rights of a Sublessee as permitted in Section 16.05 and in Article 17 above and subject to the right of the Senior Leasehold Mortgagee to a New Lease under Section 19.08, Lessee covenants that at the termination of this Lease, howsoever caused, it will quit and surrender Lessee's right, title and interest in the Leased Premises and the Affordable Housing Development in a safe, sanitary and good condition and repair, excepting reasonable wear and tear. Notwithstanding the above, State and Lessee acknowledge and agree that given the age of the Affordable Housing Development at the end of the Term it may have reached the end of its useful life and that nothing in this Article shall obligate Lessee to make any capital improvements.

- (a) The Affordable Housing Development, at the expiration or earlier termination of this Lease, howsoever caused, shall, without payment or compensation of any kind to Lessee, then become State's property, in fee simple, free and clear of all claims, liens and encumbrances imposed by or against Lessee, any Leasehold Mortgagee, any Sublessee or tenant, or any other third party claiming by or through Lessee (collectively, the "Prohibited Encumbrances"). Upon termination of this Lease howsoever caused, Lessee shall remove from the Leased Premises and the Affordable Housing Development, within fifteen (15) days following the date of such termination, all office equipment, trade fixtures and personal property (collectively "Lessee's Personal Property") belonging to Lessee located in any management office maintained by Lessee on the Leased Premises, provided Lessee repairs any damage caused by such removal. All of Lessee's Personal Property that is not removed by Lessee within thirty (30) days following the termination of this Lease, shall become the property of State.
- (b) Without limiting the provisions of this Article, Lessee agrees that upon the expiration or earlier termination of this Lease, howsoever caused, it will execute, acknowledge and deliver to State, within thirty (30) days after written demand from State, all such documents and instruments as shall be reasonably necessary to evidence and confirm the transfer of ownership of the Affordable Housing Development from Lessee to State, in the condition as provided in this Lease, free and clear of any Prohibited Encumbrances thereon. Lessee shall perform its obligations set forth in the preceding sentence without any further consideration required from State to Lessee, any Sublessee or tenant or third party, and Lessee shall defend and hold State harmless from all liability arising from any claims arising from the existence of any Prohibited Encumbrances. Concurrently with its delivery of the above documents and instruments, Lessee shall also deliver to State copies of all documents reasonably required for the operation of the Affordable Housing Development, including, without limitation, copies of all Subleases and service contracts.
- (c) Notwithstanding anything in this Lease to the contrary, but subject to the rights of Leasehold Mortgagees as set forth in Article 19, Lessee agrees that upon the expiration or earlier termination of this Lease, howsoever caused, State may elect to cause Lessee to remove all or a portion of the Affordable Housing Development, which work shall be completed within ninety (90) days after the expiration or termination of this Lease, provided that State gives Lessee written notice of such election at least one (1) year prior to the expiration of this Lease. The cost and expense of such work to remove all or a portion of the Affordable Housing

Development shall be borne solely by Lessee.

Section 26.02 Holding Over

Lessee shall have no right to hold over after the expiration of the Term or upon prior termination as provided herein without the express written consent of State. Any holding over after the expiration of the Term or any extension thereof, with the written consent of State, shall be deemed a tenancy only from month-to-month, and all other terms and conditions of this Lease shall continue in full force and effect. Holdover rent is immediately due and payable on the fifteenth (15th) day of the month following the expiration of the Term. Holdover rent shall be due and payable to State whether or not an actual invoice is sent by State or received by Lessee. Lessee shall pay water, electric, gas and other utility charges and any other charges in connection with Lessee's use or operation of the Leased Premises during the holdover period.

ARTICLE 27. MISCELLANEOUS

Section 27.01 Notices

All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid or return receipt requested to the addresses set forth below. All such notices or other communications shall be deemed received upon the earlier of (1) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice or (2) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Time, so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

To LESSEE

(name of development or L.P.)
(name of developer)
(street name where development is located)
(city, CA, zip code)
(ATTN: Contact person)

With a copy to Investor:

(name of syndicator/financing institution)
(street address)
(city, state zip-code)
(ATTN: Contact person/dept.)

To STATE

DEPARTMENT OF GENERAL SERVICES

Real Estate Services Division
Lease Management, [AHGL-XXXX]
707 3rd Street, 5th Floor
West Sacramento, CA 95605
Office: (916) 375-4172
Email: LeaseManagement@dgs.ca.gov

With Copies to:

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Division of Housing Policy Development; Excess Sites Program
651 Bannon Street, Suite 400
Sacramento CA 95811

Notice of change of address shall be given by written notice in the manner described in this Section. Lessee is obligated to notice all State offices listed above. Failure to provide notice to all State offices will be deemed to constitute a lack of notice.

Section 27.02 Estoppel Certificate

State shall, from time to time, upon not less than thirty (30) days prior written request by Lessee, Investor, or a Leasehold Mortgagee, execute, acknowledge and deliver to Lessee, Investor or a Leasehold Mortgagee a statement in writing, certifying to any Leasehold Mortgagee, prospective Leasehold Mortgagee or to an independent third party designated by Lessee that this Lease is unmodified and in full force and effect and that State has no knowledge of any uncured defaults of Lessee under this Lease (or, if there have been any modifications that the same are in full force and effect as modified and stating the modifications and, if there are any defaults, setting them forth in reasonable detail), the Effective Date, and the dates to which the rent and other charges under this Lease have been paid. State shall have no obligation to amend or modify the Lease if requested by Lessee's Lender, or assignee of Lessee's Lender, or any third party.

Section 27.03 Force Majeure

If either Lessee or State will be delayed or prevented from the performance of any act required hereunder by reason of acts of nature, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease) or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, but in no event shall any period of delay hereunder exceed one hundred eighty (180) days. Nothing in this paragraph shall excuse Lessee from prompt payment of any rent, taxes, insurance or any other charge required of Lessee, except as may be expressly provided in this Lease.

Section 27.04 Quiet Enjoyment

Subject only to any encumbrances of record as of the date of this Lease and the terms of this Lease, State agrees that on payment of the rents and fees and performance of the covenants, conditions and agreements on the part of Lessee to be performed hereunder, Lessee and its tenants and Sublessees (and their respective employees, agents, contractors, and invitees) shall have the right to peaceably occupy and enjoy the Leased Premises.

Section 27.05 Reserved

Section 27.06 Control of Personnel

Lessee will, in and about the Leased Premises, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. The provisions of this Section shall in no way limit the liability of Lessee with respect to the negligence, acts or omissions of its employees, agents, representatives, contractors and suppliers, nor shall such provisions limit any obligations of indemnity on the part of Lessee under this Lease.

Section 27.07 Medical and Emergency Services

Lessee acknowledges that State is not available or able to provide any emergency medical care or other medical support to Lessee, tenants, Sublessees, or other person(s) upon the Leased Premises. Lessee is a separate and distinct entity from State and shall so inform the local fire and police agencies of this fact. State shall in no way be obligated, responsible or liable for the provision of such protective services to Lessee. Lessee agrees to be responsible for maintaining Lessee's own emergency preparedness program. Lessee shall not rely upon State to provide food or supplies during a local or area wide disaster. Lessee will be responsible for the security of the Leased Premises, its agents, employees, contractors, clients, visitors, volunteers, staff, and other persons lawfully on or about the Leased Premises.

Section 27.08 Authority

If Lessee is a public, private or non-profit corporation or partnership or limited liability company, each individual executing this Lease on behalf of the entity represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of such entity in accordance with a duly adopted resolution of the governing body of such entity or in accordance with the bylaws or operating agreement of such entity and that this Lease is binding upon such entity in accordance with its terms. Lessee shall, within thirty (30) days after full execution of this Lease deliver to State a copy of the minutes of the board of directors or other governing body or a copy of the resolution of the Board of Directors certified by the Board secretary or other governing body of the entity ratifying the execution of this Lease.

Section 27.09 Exhibits, Addenda

All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them, whether or not they are actually attached.

Reference to “this Lease” includes matters incorporated by reference. Lessor acknowledges that the California Tax Credit Allocation Committee will require Lessor to execute the TCAC Lease Rider in the form attached hereto as Exhibit E and Lessor shall not unreasonably withhold its consent to such TCAC Lease Rider.

Section 27.10 Headings, Titles or Captions; Terminology

Article headings, Section headings, titles or captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or extent of any provision of this Lease. All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

Section 27.11 Cumulative Remedies

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Section 27.12 Governing Law

The laws of the State of California shall govern the interpretation and enforcement of this Lease. In the event that either State or Lessee brings or commences an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, then the prevailing party shall be entitled to and shall be paid reasonable attorneys’ fees and court costs therefor in addition to whatever other relief such prevailing party may be entitled.

Section 27.13 Financial Statement; Inspection of Books and Records

Lessee shall submit to State on an annual basis, not later than one hundred eighty (180) days after the end of each calendar year during the term of this Lease, a financial statement for the operation of the Leased Premises and the Affordable Housing Development, which is prepared by a certified public accounting firm. In addition, State shall have the right (at State’s office, upon not less than forty-eight (48) hours’ notice, and during normal business hours) to inspect the books and records of Lessee pertaining to the Leased Premises as pertinent to the purposes of this Lease.

Section 27.14 Interest

Any amount due State that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of (i) the discount rate established by the San Francisco office of the Federal Reserve Bank, plus two percent (2%), on the first day of the month such amount becomes due, and (ii) the maximum rate permitted by applicable law.

Section 27.15 Time is of the Essence

Time is of the essence in the performance of the terms and conditions of this Lease.

Section 27.16 Non-Liability of State Officials and Employees

No member, official, officer, employee, agent, or representative of the State shall be personally liable to Lessee, or any successor in interest, in the event of any default or

breach by State or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

Section 27.17 Relationship

Nothing herein contained shall be in any way construed as expressing or implying that the Parties hereto have joined together in any joint venture or partnership or in any manner have agreed to or are contemplating the sharing of profits and losses among themselves in relation to any matter relating to this Lease.

Section 27.18 Successors and Assigns

The terms, provisions, covenants, agreements and conditions of this Lease shall be binding upon, inure to the benefit of and apply to, the respective successors and assigns of State and Lessee.

Section 27.19 Waivers and Amendments

All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of State or Lessee. The waiver by State of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by State shall not be deemed to be a waiver of any preceding breach of Lessee of any term, covenant or condition of this Lease, regardless of State's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of State to require or exact full and complete compliance with any of the covenants or conditions of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent State from enforcing any provision hereof.

All amendments hereto must be in writing and signed by the appropriate authorities of State and Lessee, with Investor's consent as required pursuant to Article 19 above. Lessee's mortgagee permitted by this Lease shall not be bound by any waiver or amendment to this Lease entered into during the term of its applicable mortgage without Lessee's mortgage giving its prior written consent.

Section 27.20 Waiver of Civil Code Section 1542

Lessee agrees that, with respect to the General Release contained in Section 13.02, such General Release extends to all matters regarding the Leased Premises, whether or not claimed or suspected, to and including the date of execution hereof, and constitutes a waiver of each and all the provisions of Civil Code section 1542, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Lessee's Initials

Lessee herein acknowledges that the effect and import of the provisions of Civil Code section 1542 have been explained to it by its own counsel. Lessee understands and acknowledges the significance and the consequence of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, losses or liabilities that it may hereinafter incur from the waiver of these unknown claims.

Section 27.21 Construction

The Parties hereto acknowledge and agree that (i) each Party hereto is of equal bargaining strength, (ii) each Party has actively participated in the drafting, preparation and negotiation of this Lease (iii) each Party has consulted with such Party's own independent legal counsel, and such other professional advisors as such Party has deemed appropriate, relative to any and all matters contemplated under this Lease, (iv) each Party and such Party's legal counsel and advisors have reviewed this Lease, (v) each Party has agreed to enter into this Lease following such review and their rendering of such advice, and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Lease, or any portions hereof, or any amendments hereto.

Section 27.22 Severability

If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

Section 27.23 Counterparts

This Lease may be executed in counterparts, all of which together shall constitute one original document.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the Effective Date. The date on which DGS executes this Lease will be referred to as the Effective Date.

LESSEE:

SAMPLE

_____, 2025

STATE OF CALIFORNIA

APPROVED:

DEPARTMENT OF GENERAL SERVICES

By: _____ Date: _____

Kerry Zadel
Assistant Branch Chief
Asset Management Branch
Real Estate Services Division

WITH THE CONSENT OF:

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

By: _____ Date: _____

Megan Kirkeby
Deputy Director
Division of Housing Policy Development

EXHIBIT A

LEGAL DESCRIPTION

SAMPLE

EXHIBIT B
MAP DEPICTION

SAMPLE

EXHIBIT C

[INSERT PROJECT NAME] Project Description

Project Location Identification Labels	Entered Values
APN 1	
APN 2	
APN 3	
APN 4	
Street Address	
City	
County	
Zip Code	
Gross Acreage	
Project Construction Overview	Entered Values
Construction Method	Choose an item.
Construction Type	Choose an item.
Construction Innovation	
If Other, Please Specify	
TCAC Rural	Choose an item.
TCAC Housing Type	
Phased Project If So, Complete One Project Description For Each Phase	Choose an item.
Number of Buildings	
Number of Stories	
Number of Elevators	
Number of Parking Spaces	
Unique Features	
Sustainability Program	Choose an item.
Sustainability Rating	Choose an item.
If Other, Please Specify	

Project Development Overview	Entered Values
Total Project Cost	
Total Units	
Total Low-Income Units	
Accessible Units (Mobility)	
Accessible Units (Audio/Visual)	
Accessible Units (Both)	
Estimated Occupancy	
Average Affordability	
Project Type/Populations Served	
Cost Per Unit	
Residential Square Footage	
Community/Amenity Square Footage	
Parking	
Total Square Footage	
Cost Per Square Foot	
Dwelling Units Per Acre	
Parking Ratio	
EO Affordability Compliant	Choose an item.
EO VLI Units Compliant (Minimum)	
EO LI Units Compliant (Actual)	
EO VLI Units Compliant (Minimum)	
EO LI Units Compliant (Actual)	
Commercial Component	Choose an item.
Commercial Category	Choose an item.
Commercial Use	
TCAC Threshold Basis Summary	Entered Values
(a) Prevailing Wage	Choose an item.
(b) Project Labor Agreement	Choose an item.
(c) Structured Parking	Choose an item.
(d) Daycare	Choose an item.
(e) Energy Efficiency	Choose an item.
(f) Seismic/Environmental Remediation	Choose an item.
(g) Impact Fee	Choose an item.
(h) Elevator	Choose an item.
(i) Type I	Choose an item.
(j) Type III	Choose an item.
(k) High Opportunity Area	Choose an item.

Project Unit Mix	Number of Units
Studio	
1 Bedroom	
2 Bedroom	
3 Bedroom	
4 Bedroom	
Total	

SAMPLE

EXHIBIT D
(of the Development Ground Lease)
Schedule of Performance

The times of performance set forth in this Schedule of Performances may be extended by mutual written agreement between State and Lessee.

Performance Milestones	Milestone Completion Date
Approval by State of Lessee's Evidence of Financing Commitments	Prior to execution of the Ground Lease
Recordation of Memorandum of Development Ground Lease and HCD Regulatory Agreement.	At least fourteen (14) business days after the Effective Date
Close Construction Financing	Within ten (10) business days of the Effective Date
Submission by Lessee of Final Settlement Statement to HCD	Within thirty(30) business days of Close of Construction Financing
Submission of Building Plans Local Jurisdiction or DGS	Prior to execution of the Ground Lease
Approval of Building Plans by DGS	At least seven (7) business days prior to Commencement of Construction by Lessee
Commencement of Construction by Lessee	Pursuant to tax credit approval.
Construction Completion for All Affordable Housing Development	Within three (3) years of the Effective Date
Notification of permanent loan closing	180 days prior to permanent loan closing
HCD Determination of Commercial Space Pursuant to Government Code Section 14671.2(b)	Upon completion of construction of the Affordable Housing Development
Submission of two (2) completed sets of as-built drawings of the Affordable Housing Development	Upon completion of construction of the Affordable Housing Development

Performance Milestones	Milestone Completion Date
After the initial approval of the Commercial Space, Lessee shall promptly notify HCD in writing prior of any change in the use or the occupancy.	Lessee shall promptly notify HCD in writing within thirty (30) days prior to the effective date of any change in the use or the occupancy of the commercial spaces and must comply with the requirements set forth in Government Code Section 14671.2(b)

EXHIBIT E

(of the Development Ground Lease)

Form of TCAC Leasehold Rider

Free recording in accordance with
California Government Code
Section 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:

California Tax Credit Allocation
Committee
915 Capitol Mall, Rm 485
Sacramento, CA 95814

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

LEASE RIDER AGREEMENT (TAX CREDITS)

Development Ground Lease

TCAC NUMBER CA-

THIS LEASE RIDER AGREEMENT (the "Lease Rider Agreement") is dated this _____ day of _____, and is made and entered into for reference purposes only, by and among STATE OF CALIFORNIA ("State"), acting by and through the Director of the DEPARTMENT OF GENERAL SERVICES ("DGS") (the "Lessor"), and _____ (the "Lessee"), and the CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE, a public agency of the State of California established under Section 50199.8 of the Health and Safety Code ("TCAC") in consideration of the following facts and circumstances:

- A. Lessor is the fee simple owner of that certain real property described in Exhibit A attached hereto and incorporated herein (the "Property");
- B. Lessor and Lessee entered into the following ground lease of the Property: that certain ground lease, which is on file with the Lessor as a public record (the "Lease") and a memorandum of which was recorded in the official records of _____ County, California, on _____, as Instrument No. _____ (the "Memorandum of Lease");

C. Pursuant to the Lease, Lessee has agreed to acquire a leasehold in the Property for a term described below in Paragraph 2.f. which is at least as long as the TCAC Regulatory Agreement and to develop, construct, own, operate and manage a rental housing development on the Property consisting of not less than 59 residential rental units. During the term of the Lease, Lessee is the owner of all of those certain buildings, improvements and fixtures now or hereafter erected on the Property described in the lease, and all appurtenances thereto now or hereafter affixed to, placed upon or used in connection with such real property and owned by Lessee or in which Lessee has an interest, together with all additions to, substitutions for, changes in and replacements of the whole or any part of said articles of property (collectively, the "Improvements"). Collectively, the Lessee's leasehold interest in the Property and its interest in the Improvements constructed pursuant to the Lease are hereinafter sometimes referred to as the Development (the "Development");

D. TCAC has authorized an allocation of federal low-income housing tax credits by a Reservation Letter dated (the "Allocation") to Lessee to finance, in part, the Development, pursuant to the Low-Income Housing Tax Credit ("Program"). The Allocation is subject to numerous terms and conditions, including without limitation, the execution and delivery of this Lease Rider Agreement and the TCAC Regulatory Agreement which sets forth certain use restrictions affecting the Development, which TCAC Regulatory Agreement is to be recorded in County, as required by Section 42 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (collectively, "Section 42");

E. As a further condition of the Allocation and pursuant to the requirements of the Program, Lessee and TCAC will enter into a Regulatory Agreement, including any amendments thereto (the "Regulatory Agreement"), securing performance related to the Allocation, and governing the use, occupancy, operation, management and ownership of the Development. Consistent with the provisions of Section 17 hereof, Lessor and Lessee have agreed to waive any such provisions of the Lease in conflict with or which would frustrate Lessee's compliance with the Regulatory Agreement in favor of the terms of the Regulatory Agreement;

F. In order to induce TCAC to make the Allocation, Lessor and Lessee have agreed to enter into and record this Lease Rider Agreement for the benefit of TCAC, its successors, and assigns; and

G. It is the intent of TCAC that, except in unique circumstances, it will exercise its rights and remedies under this Lease Rider Agreement only after written notice of any Lease defaults have been provided to Lessor, any Senior Lender, the Tax Credit Partner, and any other party known by TCAC to have either an ownership or other equitable interest in the Development. In addition, it is the intent of TCAC that the exercise of its rights and remedies under this Lease Rider Agreement generally shall be undertaken as part of a judicial action in a court of competent jurisdiction unless Lessor and any Senior Lenders otherwise agree.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter contained, TCAC, Lessee and Lessor hereby agree as follows:

1. Definitions and Lease Rider Term.

- a. As used herein, "Leasehold" means all of Lessee's leasehold interest in the Property described in Exhibit A, in the Development, in the Improvements now or hereafter located on the Property, all options contained in the Lease or granted in connection with the Lease, all other rights of Lessee under the Lease, and all subleases entered into in connection with the Lease (the "Subleases").
- b. For the purposes of this Lease Rider Agreement, if Lessor is a corporate or governmental entity, the obligation to assert facts related to the "Lessor's knowledge" shall include a duty to perform or otherwise be responsible for pursuit of reasonably diligent efforts to ascertain the existence or nonexistence of the facts asserted, contemporaneous to the assertion. This duty may be fulfilled by use of an estoppel agreement executed by the Lessee.
- c. For the purposes of this Lease Rider Agreement, the holders of all mortgage liens set forth in the Report and any other lenders approved by TCAC and all successors and assigns thereof including the holders of any mortgage lien against the Improvements or Lessee's interest in the Leasehold are collectively referred to as "Senior Lenders."
- d. Lease Rider Agreement Term. This Lease Rider Agreement becomes effective on the date the TCAC Regulatory Agreement is recorded and remains in effect for at least the term of the Regulatory Agreement. Upon the expiration or sooner termination of the TCAC Regulatory Agreement, this Lease Rider Agreement shall terminate and be of no further force or effect.

2. Representations and Warranties of Lessor and Lessee. Lessor and Lessee hereby represent and warrant to TCAC as of the date of this Lease Rider Agreement as follows:

- a. Title. (1) By Lessor: Lessor warrants and represents to TCAC that, to the best of Lessor's knowledge, Lessor's fee interest in the Property is free and clear of all liens, encumbrances, covenants, easements, licenses, judgments, or other matters of record except those shown as affecting the fee interest of the Property in that certain Preliminary Report regarding the Property issued on _____ by _____ Title Company, Order Number _____ (the "Report"). Lessor has not required or permitted and has no knowledge of any other matters of record to be recorded that are not contained in the Report.
(2) By Lessee: Lessee has entered into one or more loan agreements (the "Agreement(s)") which will be secured as more fully described in the Agreement(s). Lessee warrants and represents that it will provide a true and correct copy of said Agreement(s) to TCAC as part of TCAC's placed in service review, for which the issuance of the IRS Form 8609 shall constitute approval.

- b. Priority. Lessor warrants and represents to TCAC that except as otherwise referenced in the Report, the Lease is superior to any and all mortgage liens on the Property and nothing encumbers fee title of the Property which would interfere with Lessee's ability to construct and operate the Development on the Property.
- c. Transfers by Lessor. Lessor warrants and represents to the best of Lessor's knowledge that it has not assigned, mortgaged, or otherwise hypothecated or transferred, or agreed to assign, mortgage or otherwise hypothecate or transfer, its interest in the Property in whole or in part, except as referenced in the Report and except as security for any loans or any other liens, conditions, covenants, or restrictions on the Property identified in the Report and approved in writing by TCAC.
- d. Status of Lease. Lessor warrants and represents that:
- (1) Lessor is the current Lessor under the Lease. To the best of Lessor's knowledge, the Lease is in full force, the Lease is not void, voidable or terminable as of the date hereof without an uncured default by Lessee except pursuant to Section 5 at the option of any party thereto or of any other person or entity claiming an interest in or to such Lease or the Development, and to the best of Lessor's knowledge, there has been no default thereunder on the part of Lessee nor has any event occurred which, with the giving of notice or the passage of time, or both, would be an event of default thereunder. Lessor has not given notice of any violation under the Lease to Lessee. Lessor has not been informed of and has not otherwise received notice from Lessee or from any other person or entity concerning any alleged default on the part of Lessor under the Lease. To the best of Lessor's knowledge, there exist no defenses or offsets to enforcement of the Lease by Lessee.
 - (2) Any consent or approval of any third party (including any lender or government agency) that is required in order for Lessor to deliver this Lease Rider Agreement has been obtained.
 - (3) To the best of Lessor's knowledge, no alterations, improvements or additions now exist on the Property that have not been approved by the Lessor.
- e. Other Agreements. All terms and conditions of the Lessee's tenancy under the Lease are set forth in the Lease and Lessor and Lessee each certify to the best of its knowledge that there have been no other agreements and no further or other supplements, amendments, modifications or extensions thereof except those submitted to and approved by TCAC.
- f. Lease Term. The date of the commencement of the Lease term is _____ and will end on _____ unless terminated sooner pursuant to its terms and consistent

with this Lease Rider Agreement. All conditions precedent to the effectiveness of the Lease or the exercise of any of Lessee's rights thereunder at the effective date of the Lease have been fully satisfied.

- g. Development. To the best of Lessor's knowledge, the Improvements constructed, or to be constructed, by Lessee on the Property satisfy or are expected to satisfy all requirements affecting the design, use or characteristics of such Improvements imposed by Lessor under the Lease or otherwise, including a requirement by Lessor for Lessee to comply with any and all applicable provisions of federal, state and local laws, and all agreements with any public entities concerning the Development, as amended from time to time.
- h. Insurance. All notices, certificates, binders, endorsements, copies of policies, and receipts required under the Lease have been delivered to and approved by Lessor.

3. Cancellation, Transfer of Interest.

- a. Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor and Lessee agree that so long as TCAC, its successor or assigns holds the Regulatory Agreement encumbering the Development, no termination of the Lease or efforts by Lessor to terminate the Lease except a termination consistent with Section 5, and no subordination, cancellation, surrender, amendment or modification of the Lease shall be effective without the prior written consent of TCAC, which consent shall be in TCAC's reasonable discretion and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe. TCAC shall have 30 days after its receipt of such a notice and any clarifications thereof requested by TCAC to consent to or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation. Any attempt by Lessor to take such action shall be void without TCAC's prior written consent or implied consent as provided for in this Section 3.a.
- b. Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner, and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor agrees that it shall not transfer, convey, sell, hypothecate, assign, encumber or permit any liens against its interest, or any portion thereof, in the Property or the Development unless Lessor requires, and any purchaser, assignee, or transferee agrees, that the purchaser, assignee, or transferee will expressly assume all obligations of Lessor under the Lease and this Lease Rider Agreement by a written instrument recordable in the Official Records. Any variation from those obligations shall require prior written approval of TCAC, which consent shall be in TCAC's reasonable discretion, and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably

prescribe. If Lessor or Lessor's successor is seeking a variation from these obligations, Lessor or Lessor's successors and assigns shall provide TCAC with copies of all documents related to the transfer, conveyance, sale, hypothecation, assignment, encumbrance or lien at least 30 days prior to the effective date of that transaction and TCAC shall have 30 days after its receipt to reasonably consent or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation.

- c. Foreclosure. Nothing contained in this Lease Rider Agreement shall prevent a Senior Lender from foreclosing on its security interest or accepting a conveyance in lieu of foreclosure.
- d. No Merger. There shall be no merger of the Lease or any interest in the Lease, nor of the Leasehold interest, with the fee estate in the Property if the Lease or such interest therein, or such Leasehold interest may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the Leasehold interest created thereby may be conveyed or mortgaged in a leasehold mortgage, deed of trust, or other security instrument to a leasehold mortgagee that shall hold the fee estate in the Property or any interest of the Lessor under the Lease.

4. Consent to Assignment, Payment of Rent.

- a. Subject to any matters of record as referenced in the Report, the rights of Senior Lenders, and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor hereby consents to and approves the following to the extent such consents or approvals are required under the Lease:
 - (1) Lessee's encumbering the Lease, the Leasehold and the Development by the Regulatory Agreement; possession of the Leasehold and any Development thereon by TCAC or by a receiver under the Regulatory Agreement; and sale of the Leasehold and the Development pursuant to a court order or other agreement enforcing the Regulatory Agreement;
 - (2) Assignments to TCAC or its designee of any subleases and any and all rents from such subleases; and
 - (3) Sale or assignment of all or any part of any interest in the Leasehold to any purchaser or transferee pursuant to a court order or other agreement enforcing the Regulatory Agreement (such purchaser or transferee, including TCAC, is collectively referred to as the "Transferee"), and to any subsequent transfers (all such assignments, transfers, and subsequent transfers referred to in this Lease Rider Agreement as the "Transfer").

- b. Nothing in this Lease Rider Agreement, in the Regulatory Agreement or in the Lease shall impose on TCAC the obligations of Lessee under the Lease or require TCAC to assume the Lease unless TCAC takes possession or ownership of the Development pursuant to a court order or other agreement under the Regulatory Agreement, or becomes the lessee under the Lease or a New Lease (defined in Section 6, below).

5. Notice of Defaults; Termination Notice.

- a. Notice and Cure. Lessor shall provide concurrently to TCAC a written copy of all notices and demands, including, without limitation, notices of default or breach which Lessor gives, delivers, or sends to Lessee under the Lease. No notice or demand under the Lease shall be effective as to TCAC unless and until a copy of such notice is provided to TCAC as provided herein. Any notice of default under the Lease or this Lease Rider Agreement shall describe the default(s) with reasonable detail. TCAC shall have the right, but not the obligation, to cure any breach or default within the time period given in the Lease; provided that, if such notice to TCAC is not given or is delayed for any reason, the period of time within which TCAC may cure any such breach or default shall commence upon receipt by TCAC of such notice. Lessor and Lessee authorize TCAC to enter the Property and Improvements after reasonable prior written notice or pursuant to a court order for the purpose of mitigating defaults or exercising its right to cure and any other powers given TCAC under the Regulatory Agreement, this Lease Rider Agreement or the Lease.
- b. Termination Notice. After the expiration of the grace period given Lessee under the Lease to cure a default, Lessor shall not terminate the Lease on account of such default but shall give TCAC a written notice (the "Termination Notice") that Lessee has failed to cure the default within the grace period and that, on account thereof, Lessor intends to terminate the Lease, which notice shall set a termination date not earlier than ninety (90) days after TCAC's receipt of the Termination Notice, provided that Lessor agrees to extend such termination date for a reasonable period if TCAC reasonably requires additional time to accommodate TCAC's taking possession of the Development where possession is necessary to cure Lessee's default, all of which is subject to any Senior Lender's security instruments. In the event the default results in the existence of an immediate or imminent serious health and safety threat to the residents or the public, Lessor may request TCAC to approve a shorter termination date which shall not be unreasonably denied. In addition, TCAC may waive its right to the 90-day period to cure under the Termination Notice after its receipt of the Termination Notice if TCAC determines that it will not take action to effect a cure for the default. No Termination Notice shall become effective to terminate the Lease if:

- (1) Except as provided in Section 5.c., within ninety (90) days after receipt of the Termination Notice, TCAC cures all defaults which can

be cured by payment or expenditure of money or without possession of the Development; or provides reasonable assurance and undertakings for the cure of such default. To effect a cure of Lessee's default, TCAC may, subject to the rights of all Senior Lenders, make any repair of improvement, do any other act or thing required of Lessee under the Lease, or do any act or thing which may be necessary or proper to prevent termination of the Lease. TCAC and its agents and contractors, subject to the rights of all Senior Lenders, shall have full access to the Property and Improvements for purposes of accomplishing the curing of defaults under the Lease. Any of the foregoing done by TCAC shall be as effective to prevent a termination of the Lease as the same would have been if done by Lessee; or

- (2) TCAC commences and diligently pursues judicial and/or administrative proceedings commenced under the Regulatory Agreement to cure a default.
 - (3) If TCAC has not cured a default upon the expiration of such Termination Notice pursuant to Subsection (1) above or fails to commence and diligently pursue a cure pursuant to Subsection (2) above, and subject to compliance with other provisions of this Section 5.b. and any limitations on termination in the Lease, Lessor may terminate the Lease and pursue such other remedies as are available under the terms of the Lease.
- c. Defaults Not Susceptible to TCAC Cure. TCAC shall not be required to perform any act which is not susceptible to performance by TCAC, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which is Lessee's failure to pay or comply with any lien, charge or encumbrance which is junior in priority to the Regulatory Agreement, or to pay any amount owed under an indemnity of Lessor by Lessee based on an event occurring prior to TCAC's possession of the Development. If any such act not susceptible to performance by TCAC constitutes a breach under the Lease, Lessor may resort to any and all of its remedies for such breach under the Lease.
- d. Reimbursement of Lessor's Payment of Arrears. Lessor agrees that if Lessor cures Lessee's failure to make any payment due under the Lease or any loan identified in Section 2.a., it shall seek reimbursement of amounts so paid solely from Lessee and TCAC shall have no obligation to pay such amounts to Lessor.
- e. Waiver of Breach or Default. Subject to the rights of Senior Lenders, on transfer of the Leasehold interest pursuant to a court order or other agreement enforcing the Regulatory Agreement, all violations, defaults and breaches by Lessee under the Lease occurring prior to such transfer, including, without limitation, nonpayment of rent or other amounts payable under the Lease, shall be deemed personal obligations of Lessee, and TCAC or other Transferee shall be entitled to the New Lease as described in Section 6 below without incurring

or assuming any liability or obligation of, or claim against, Lessee under the Lease. However, upon transfer of the Leasehold interest, TCAC or the Transferee, as applicable, shall be responsible for correcting all defaults in existence at the time of the transfer; Lessor may exercise its rights under Section 5.b. if TCAC or the Transferee fails to correct any such default within a reasonable time. Nothing in this section shall be deemed a waiver of any claim by Lessor, TCAC, or other Transferee against Lessee under the Lease.

- f. Enforcement Not a Breach. Any action taken by TCAC to enforce its rights under this Lease Rider Agreement with respect to Lessee with respect to any of the documents governing the Allocation including, without limitation, any actions taken to collect any amounts due and owing to TCAC or any action to appoint a receiver for the Development or to otherwise ensure compliance with the Regulatory Agreement, shall not constitute or result in a breach or violation of the Lease.
- g. Status Quo Ante. Any default by Lessee shall not prejudice TCAC if TCAC chooses to cure such default within the applicable grace period specified by this Lease Rider Agreement or the Lease, and Lessor acknowledges and agrees that upon TCAC's cure of any such default, the Lease shall be restored status quo ante.

6. New Lease.

- a. Conditions. Section 5 hereof notwithstanding, and subject to the rights of Senior Lenders as provided in their security instruments, Lessor agrees to comply with the requirements of Section 6.b. if the following conditions specified in this Section 6.a. apply:
 - (1) The Lessee's Lease or a Transferee's New Lease is terminated for any reason whatsoever and TCAC or a subsequent Transferee acquires possession or ownership of the Development as a result of TCAC enforcing its remedies authorized by the Regulatory Agreement; and
 - (2) TCAC or other Transferee, whether or not such party has assumed the Lease, requests Lessor in writing pursuant to Section 6.b. to enter into a new lease (the "New Lease") of the Property within ninety (90) days after TCAC or the Transferee takes possession or ownership of the Development either as a result of a court order or other agreement under the Regulatory Agreement. The New Lease shall be at the rent of, and consistent with, the terms, provisions, covenants, options and agreements contained in the terminated Lease, [as amended,] or granted by the Lessor in connection with the Lease, all as modified or supplemented by this Lease Rider Agreement unless Lessor agrees to lower rent or less restrictive terms and conditions.

b. Obligations. If the conditions specified in Section 6.a. have been satisfied, and subject to the provisions of matters of record as referenced in the Report and the rights of Senior Lenders in their security instruments, Lessor shall:

- (1) upon receipt of the request for New Lease described in Section 6.a.(2) above, enter into a New Lease of the Property with TCAC, its nominee, or its successor-in-interest or other Transferee, for the remainder of the term of the Lease, effective as of the date of the termination of the Leasehold or conveyance of the Development pursuant to a court order or other agreement under the Regulatory Agreement;-
- (2) convey to TCAC, its nominee or its successor-in-interest or other Transferee, all title and interest of the Lessee to the Improvements and Leasehold encumbered by the Regulatory Agreement, if any, which may become or have become vested in Lessor as a result of any termination of the Lease or conveyance by court order or other agreement under the Regulatory Agreement, so long as the New Lease contains provisions that require TCAC, its nominee, or its successor-in-interest or other Transferee to reconvey all title and interest conveyed by Lessor's grant deed in the Improvements at the termination of the term of the New Lease; and
- (3) assign to TCAC, its nominee, or its successor-in-interest or other Transferee, all of Lessor's interest as landlord, if any, in all existing Subleases of all or any part of the Development and all attornments given by the sublessees under such Subleases, provided that TCAC, its nominee, or its successor-in-interest shall reconvey all such title and interest conveyed by Lessor in all existing Subleases in all or any part of the Development at the termination of the New Lease.

c. Priority. The Leasehold interest and any other interest (if any) in the Development granted to TCAC, its nominee or its successor-in interest or other Transferee under this Section 6 shall be prior to any mortgage or other lien, charge or encumbrance on the Development created by Lessor or Lessee, except for the liens of Senior Lenders or as approved in writing by TCAC or as referenced in the Report.

7. Successors to TCAC. Subject to Section 4 hereof, if the Leasehold is transferred pursuant to a court order or other agreement enforcing the Regulatory Agreement, Lessor shall recognize the Transferee as the tenant under the Lease, subject to the liens of Senior Lenders. Anything in the Lease notwithstanding, the rights and benefits of TCAC under this Lease Rider Agreement shall benefit and may be exercised by any Transferee. The holder of any mortgage or deed of trust which may be given to secure a portion of the purchase price in any sale by TCAC or its successor(s) after TCAC acquires the Leasehold interest or enters into a New Lease under this Lease Rider Agreement shall be entitled to rely on continuation of the same rights and benefits of TCAC under this Lease Rider Agreement.

8. Diligence of TCAC. So long as TCAC is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessor or Lessee, from commencing or prosecuting its remedies under the Regulatory Agreement or other appropriate proceedings in the nature thereof, or undertaking or completing any of TCAC's rights or remedies under the Lease or this Lease Rider Agreement, TCAC shall not be deemed for that reason to have failed to commence such proceedings or to have failed to prosecute diligently such proceedings, provided, however, that TCAC shall use reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

9. Certificates.

- a. Certificate by Lessor. Within fifteen (15) calendar days after written request made by TCAC, Lessor shall execute and deliver to TCAC, or to any proposed purchaser, transferee, or encumbrancer of Lessee's Leasehold interest, a certificate declaring, to the best of Lessor's knowledge, (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, and that such Lease or New Lease remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Property reasonably requested by TCAC; and iv) that Lessor understands the recipient will rely on the certificate and that the Lessor will describe in reasonable detail any exceptions to the foregoing statements.
- b. Certificate by Lessee. Within fifteen (15) calendar days after written request made by TCAC, Lessee shall execute and deliver to TCAC, or to any proposed purchaser, transferee, or encumbrancer of Lessee's Leasehold interest, a certificate declaring to the best of Lessee's knowledge (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, and that such Lease or New Lease remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Property, Leasehold or the Development reasonably requested by TCAC; and (iv) that Lessee understands the recipient will rely on the certificate and that the Lessee will describe in reasonable detail any exceptions to the foregoing statements.

10. Notices. Notices and other communications required by this Lease Rider Agreement shall be delivered by messenger to the addresses provided below or sent by U.S Postal Service certified mail, return receipt requested, postage prepaid, addressed as follows:

To TCAC: California Tax Credit Allocation Committee
915 Capitol Mall, Room 485
Sacramento, CA 95814
Attn. Executive Director

To Lessor: Department of General Services
Real Estate Services Division
Lease Management, [AHGL-]
707 3rd Street, 5th Floor
West Sacramento, CA 95605

To Lessee:

Attn:

These addresses may be changed by a written notice given by any party hereto to the other parties in the same manner provided in this Section. Notices shall be effective on receipt.

11. TCAC's Rights Against Lessee. Nothing in this Lease Rider Agreement shall limit or restrict TCAC's rights and remedies under the Regulatory Agreement, or any other agreement between TCAC and Lessee.

12. Successors and Assigns. This Lease Rider Agreement shall inure to the benefit of and bind the successors and assigns of TCAC, Lessor and Lessee.

13. Uninsured Hazard. Lessor agrees that neither TCAC nor any person acquiring the Development, or a portion of the Leasehold pursuant to a court order or other agreement enforcing the Regulatory Agreement, nor the lessee under a New Lease pursuant to Section 6 hereof, nor any successive owner of a portion of the Development after such transfer or New Lease shall have any obligation hereunder or under the Lease or New Lease to repair or reconstruct any damage or loss to the Development which occurred prior to such transfer or New Lease and which is due to a hazard not required to be covered by insurance under the Lease or New Lease. However, if the damage or loss is not corrected and constitutes a breach of the Lease or New Lease, Lessor may exercise its rights under Section 5.

14. Duty to Repair. Lessor agrees that if TCAC, its nominee, or its successor-in-interest succeeds to Lessee's Leasehold interest in the Property and if the Development shall have been or becomes materially damaged before or after the date of such acquisition, TCAC's, its nominee's, or its -successor-in-interest's obligation, if any, to repair, replace or reconstruct the Development shall in any such event be limited to the greater of: i) the amount of the net insurance proceeds received by TCAC, its nominee, or its successor-in-interest by reason of that damage

or ii) the amount TCAC, its nominee, or its successor-in-interest would be entitled to if in compliance with the minimum insurance requirements of Lessee under the Lease. However, if the damage or loss is not corrected and constitutes a breach of the Lease or New Lease, Lessor may exercise its rights under Section 5.

15. Options. Lessor and Lessee agree that TCAC or its successor-in-interest or other Transferee, after its acquisition of the Leasehold, may exercise any option to extend the term of the Lease or New Lease or to purchase any interest in the Property which is granted to Lessee under or in connection with the Lease or the New Lease.

16. Limitation on Liability. If TCAC agrees to be bound by the terms of the Lease, or in the event of any Transfer to a Transferee, then unless so ordered by a court or as agreed to by TCAC, any Transferee, and any secured creditors, neither TCAC nor Transferee shall have any obligation under the Lease or the New Lease with respect to any liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of actions, charges, judgments, costs, and expenses (including architects' and attorneys' fees and court costs) arising out of or resulting from acts, omissions, circumstances or events occurring before or existing at the time of such Transfer or TCAC's agreement to be bound by the Lease or the New Lease except for matters of record identified in the Report at the time of execution of this Lease Rider Agreement or any breach in existence at the time of acquisition of the Leasehold. Nothing in this Lease Rider Agreement or in the Lease or New Lease shall impose on TCAC any liability to perform the obligations of Lessee under the Lease or New Lease or require TCAC to assume the Lease or New Lease unless and until TCAC acquires the Development pursuant to a court order or other agreement enforcing the Regulatory Agreement. After acquiring the Development in such a manner, TCAC shall be liable to perform Lessee's obligations only until TCAC assigns or transfers the Leasehold. TCAC shall not, however, be required to cure Lessee's defaults occurring before TCAC's acquisition of the Development in such a manner except that TCAC or the Transferee must cure any defaults in existence at the time of transfer within a reasonable period of time.

17. Conflict With Lease. The provisions herein are intended to be supplementary to, and not in derogation of, the parties' rights and obligations contained in the Lease (including all of TCAC's rights under the Lease as a party with a recorded encumbrance). In the event of any conflict or inconsistency between the terms of the Lease and the terms of this Lease Rider Agreement, except for any term expressly excluded or modified by Section 21, the terms of this Lease Rider Agreement shall govern and control, and the Lease shall be deemed to be modified hereby. Notwithstanding the foregoing, nothing contained herein shall affect the rights of Senior Lenders or the Tax Credit Partner, nor shall anything contained herein subordinate the lien of any Senior Lender to any rights of TCAC hereunder.

18. Regulatory Agreement Remedies. Nothing in this Lease Rider Agreement is intended to create enforcement rights under the Regulatory Agreement that do not otherwise exist in the Regulatory Agreement.

19. Enforcement. Notwithstanding anything to the contrary in the Lease and notwithstanding the fact that the Lease Rider Agreement is recorded against the Leasehold interest in the Property, Lessor hereby expressly agrees that during the term of the Regulatory Agreement, any violation of the Lease Rider Agreement, including but not limited to any termination, subordination, cancellation, surrender, amendment or modification of the Lease in violation of Section 3 of this Lease Rider Agreement, shall be deemed ineffective. Lessor further agrees, that during the term of the Regulatory Agreement, TCAC shall have standing to enforce and preserve TCAC's rights under the terms of this Lease Rider Agreement and the Regulatory Agreement.

20. Subordination. Notwithstanding anything to the contrary contained elsewhere herein, the parties hereto hereby agree that this Lease Rider Agreement (and all amendments, modifications and supplements hereto) is hereby irrevocably and unconditionally made subject and subordinate in all respects to (a) all existing and future deeds of trust and mortgages approved by TCAC now or hereafter encumbering all or any part of the Lessee's right, title and interest under the Lease (and to all amendments, modifications and supplements thereto), and (b) all rights granted to any holder of any such deed of trust or mortgage under any term or provision of the Lease. Each existing and future holder of any such deed of trust or mortgage (all of whom shall also constitute "Senior Lenders" for all purposes of this Lease Rider Agreement) is hereby made an express third-party beneficiary of the foregoing sentence.

21. Additional Provisions. Intentionally left blank.

22. Acknowledgment. Lessor and Lessee acknowledge that TCAC is relying on the foregoing representations, warranties, covenants and agreements of the undersigned in allocating the allocation of low-income housing tax credits to Lessee, and warrants and affirms to and for the benefit of TCAC that each of their respective representations set forth herein is true, correct and complete as of this date.

TCAC:

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE, a public agency of the State of California

BY: **Form of, not signed.** _____

Name

Executive Director

LESSOR:

STATE OF CALIFORNIA

APPROVED:

Director of Department of General Services

By: **Form of, not signed.** _____

Name/Title

Real Estate Services Division

LESSEE:

Organization Name

By: **Form of, not signed** _____

Name/Title

EXHIBIT F

Defined Terms

1. **“Administration Fee”** means an administration fee in accordance with Government Code section 14671.2(h) shall be assessed by State to Lessee for any lease administration or technical review staff work by State in connection with its role as Lessor, or for any action of State requested, originated, necessitated, initiated, or otherwise caused by Lessee or any Sublessee. (Section 5.03 - Administration Fee)
2. **“Affordable Housing Development”** the specific project as described in Exhibit **“C”** means the lawful development, construction, maintenance and operation of a multi-family affordable housing project upon the Leased Premises during the Term by Lessee. (Section 1.01 – Subject of the Lease)
3. **“Approved Building Plans”** means Lessee worked with the State Building Authority or Local Jurisdiction through the review(s) and corrections of the building plans as required until the State Building Authority or Local Jurisdiction certified that the building plans are compliant with the California Building Codes and Local Amendments/State Building Authority’s requirement. (Section 6.01 – Approved Building Plans)
4. **“Assignee”** means any successor or assign of any Purchaser or Leasehold Mortgagee subsequent to the Leasehold Mortgagee’s or Purchaser’s acquisition of the Leased Premises by a foreclosure sale or deed in lieu of foreclosure pursuant to a sale. (Section 19.07 – Foreclosure)
5. **“Assignment”** means any total or partial sale, assignment, sublease, or otherwise transfer of this Lease or transfer in any other mode or form of the whole or any part of the Leased Premises, or the Affordable Housing Development. (Section 16.01 - Assignment)
6. **“Award”** means all compensation paid for the Taking whether pursuant to a judgment, by agreement or otherwise. (Section 22.01– Eminent Domain)
7. **“Building Approval Letter”** means the letter which is authorizing the construction of the Affordable Housing Development. (Section 6.02 – State Building Approval Letter)
8. **“CEQA”** means the California Environmental Quality Act. (Section 6.03 – CEQA and Entitlements)
9. **“Certificate of Occupancy”** means certificate issued by State to Lessee which is evidence that the Affordable Housing Development has been substantially completed in accordance with the terms and conditions of this Lease and the

Approved Building Plans. (Section 6.10 – Completion of Affordable Housing Development)

10. **“City”** means the City of **XXXX**, County of **XXX**, California. (Recitals)
11. **“Claim”** means, in context with the indemnification in Section 12.07, any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Substances on, under, in or about, the Leased Premises or the transportation of any such Hazardous Substances to or from, the Leased Premises during the Term, or (ii) the violation, or alleged violation, of any Environmental Laws, statute, ordinance, order, rule, regulation, permit, judgment or license by Lessee, its representatives, agents, contractors, subcontractors, employees, consultants, or anyone acting through Lessee relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Substances on, under, in or about, to or from, the Leased Premises during the Term. (Section 12.07 – Indemnification)
12. **“Close Construction Financing”** means the execution of binding agreements for all financing sources necessary to complete construction of the Affordable Housing Development. (Section 18.02 – Settlement Statements)
13. **“Completion Date”** means the date established by State for completion of the work in connection with the construction of the Affordable Housing Development, following State's final inspection thereof. (Section 6.10 – Completion of Affordable Housing Development)
14. **“County”** means the County of **XXXX**, California. (Recitals)
15. **“DGS”** means the Department of General Services of the State of California. (Preamble)
16. **“Effective Date”** means the date the Lease is signed by the Department of General Services. (Article 3 – The Lease Term)
17. **“Environmental Laws”** means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction, or common law relating in any way to human health, occupational safety, natural resources, plant or animal life, or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. (Section 12.01– Environmental Matters)

18. **“Excess Sites Regulatory Agreement”** means the agreement between Lessee and HCD that further governs and restricts Lessee’s use of the Leased Premises and the Affordable Housing Development. (Section 1.02 – Regulatory Agreement).
19. **“Executive Order”** means the Governor of California’s Executive Order N-06-19. (Recitals)
20. **“Final Settlement Statement”** means statement that details Lessee’s debits and credits for estimated development costs of the Affordable Housing Development. (Section 18.02 – Settlement Statements)
21. **“First Post-Foreclosure Transfer”** means the first assignment of the Lease following any sale by judicial foreclosure or pursuant to a power of sale by any Leasehold Mortgagee or a transfer in lieu of such sale to the Leasehold Mortgagee (or any affiliate, parent or subsidiary of such Leasehold Mortgagee that acquires title to Lessee’s interest in the Leased Premises or Sublessee’s interest in any Sublease and the leasehold or sublease hold estate created thereby and the Affordable Housing Development (or any portion thereof) as a result of a transfer in lieu of such sale). (Section 16.02 – No Approval Needed)
22. **“Gross Mismanagement”** means Management of the Affordable Housing Development in a manner which violates the terms and/or intention of the Lease to operate a high-quality multifamily affordable housing complex including, but not limited to, those actions enumerated in Section 4.02, subsections (a)-(i), of the Lease. (Section 4.02 – Management)
23. **“Hazardous Substances”** means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Laws including but not limited to those enumerated in Section 12.01(b), subsections (i)-(v), of the Lease. (Section 12.01– Environmental Matters)
24. **“HCD”** means the California Department of Housing and Community Development (Preamble)
25. **“Indemnitees”** means the State, including its agencies, departments, boards, commissions, officers, agents, and employees. (Section 20.03 – Indemnity)
26. **“Investor”** means any tax credit investor acting as a limited partner of Lessee (Section 19.14 – Rights of Investor)
27. **“Lead Agency”** means DGS, in accordance with Public Resources Code section 21067 and for the purposes of CEQA. (Section 6.03 – CEQA and Entitlements)
28. **“Lease Year”** means the calendar year, i.e. January 1st through December 31st. (Sec 5.02 – Rent)

29. **“Lease”** means this Development Ground Lease” means this Development Ground Lease AHGL-XXXX. (Preamble)

30. **“Leased Premises”** means that certain real property of which State is the fee owner, and as more particularly described and depicted in Exhibits “A” and “B” attached hereto and made a part hereof, together with all improvements , located at XXXX, in the City of XXXX, County of XXXX, State of California, identified as (a portion of) of Assessor's Parcel Number(s) XXX-XXX-XXX-XXX. (Recitals)

31. **“Leasehold Mortgage”** means a loan for which a deed of trust or other equivalent instrument is recorded on the leasehold interest. (Section 19.01 – Leased Mortgage)

32. **“Leasehold Mortgagee”** means a financial institution or government entity who hold Leasehold Mortgage. (Section 15.01 – Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance)

33. **“Lessee’s Personal Property”** means all equipment, trade fixtures and personal property belonging to Lessee, ~~management agent~~, located in any office maintained by Lessee, Management Company, on the Leased Premises. (Section 26.01 – Lessee’s Duty to Surrender)

34. **“Lessee’s Proposal”** means the written proposal submitted by Lessee to DGS in response to a solicitation from DGS for the development and construction of an affordable housing project on the Leased Premises, pursuant to the Executive Order, as represented in Exhibit C of this Lease. (Recitals)

35. **“Lessee”** means XYZ, LP (Preamble)

36. **“Lessor”** means the State of California, acting by and through the Department of General Services. (Preamble)

37. **“Management Company”** means a company (other than Lessee) contracted by Lessee to operate and maintain the Affordable Housing Development in accordance with the terms of the Lease. (Section 4.02 – Management)

38. **“New Lease”** means any lease State enters into with a Senior Leasehold Mortgagee, holding the Senior Leasehold Mortgage encumbering the Affordable Housing Development immediately prior to such termination, and which satisfies the requirements of Sec 19.08. (Section 19.08 – New Lease)

39. **“Notice of Intended Taking”** means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. Such notice or notification shall include, without limitation, the service of a condemnation summons and complaint on either State or Lessee, or the receipt by either State or Lessee from a condemning agency or entity of a

written notice of intent to Take containing a description or map of the Taking reasonably defining the extent thereof. (Section 22.01 – Eminent Domain)

40. **“Partial Taking”** means any Taking of fee title that is not a Total Taking. (Section 22.01 – Eminent Domain)
41. **“Party or Parties”** means State and Lessee. (Preamble)
42. **“Permitted Uses”** means the lawful development, construction, maintenance and operation of the Affordable Housing Development, including any lawful and incidental related uses and activities that are or may be associated therewith. (Section 4.01 - Use of Leased Premises)
43. **“Prohibited Encumbrances”** means all claims, liens and encumbrances imposed by or against Lessee, any Leasehold Mortgagee, any Sublessee or tenant of the Affordable Housing Development, or any other third party claiming by or through Lessee, at the expiration or earlier termination of the Lease. (Section 26.01 – Lessee’s Duty to Surrender)
44. **“Purchaser”** in connection with a foreclosure sale, the purchaser of any leasehold deed of trust or other security instrument securing a loan. (Section 19.08 – Foreclosure)
45. **“Senior Leasehold Mortgage”** means a loan that has a deed of trust or other equivalent instrument recorded in the most senior lien position on the Leasehold Interest during the term of the Lease. (Section 19.13 – Lender Loss Payee))
46. **“Senior Leasehold Mortgagee”** means a financial institution or government entity that holds a Senior Leasehold Mortgage. (Section 19.13 – Lender Loss Payee)
47. **“SPWB”** means the State Public Works Board of the State of California. (Recitals)
48. **“State”** means The State of California acting by and through the Director of the Department of the Department of General Services (DGS) with the Consent of the Department of Housing and Community Development (HCD). (Preamble)
49. **“Sublease”** means any transfer, conveyance, or assignment of any leases, licenses, occupancy agreements, franchise or other similar rights, agreements or arrangements of whatever nature relating to the use or occupancy of any part of the Leased Premises or other pledge or encumbrance, or disposal of all or a portion of Lessee’s interest in the Lease, and which has been granted State’s prior written approval. (Section 16.05 – Subleasing)
50. **“Sublessee”** means a bona fide third-party tenant holding a valid Sublease as defined herein. (Section 16.05 – Subleasing)

51. **“Temporary Taking”** means the taking for temporary use of all or any portion of the Leased Premises for a period ending on or before the expiration of the Term. (Section 22.01 – Eminent Domain)
52. **“Term”** means the period commencing upon the Effective Date the Lease is signed by the Department of General Services and shall expire on (date 99 years from Effective Date), unless terminated earlier in accordance with the rights of termination set forth herein. (Article 3 – The Lease Term).
53. **“Total Taking”** means the taking of fee title to all of the Leased Premises or so much of the Leased Premises that the portions of the Leased Premises not so taken are, in the reasonable judgment of Lessee, not reasonably suited for the uses of the Leased Premises that have been previously made by Lessee. A Temporary Taking may be treated as a Total Taking if it meets the test set forth above. (Section 22.01 – Eminent Domain)
54. **“Take” or “Taking”** means any taking or damage, including severance damage, of the Leased Premises by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. (Section 22.01 – Eminent Domain)