

**ATTACHMENT A:**

**DEVELOPMENT AGREEMENT**

## DEVELOPMENT AGREEMENT

### NORTHGATE TRANSIT CENTER/AFFORDABLE HOUSING PROJECT

This Development Agreement (the “**Agreement**”) is made as of \_\_\_\_\_, 2021 (the “**Execution Date**”) by and between **BRIDGE HOUSING CORPORATION**, a California nonprofit public benefit corporation (“**BRIDGE**”) and **COMMUNITY ROOTS HOUSING**, a Washington public corporation (“**CRH**”) (BRIDGE and CRH together constitute the “**Affordable Housing Developer**” herein), and **KING COUNTY**, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle (“**KCM**”) in the following factual context:

**A.** This Agreement is for a portion of that certain real property located in the City of Seattle, King County, State of Washington, with a street address of 10104 – 3<sup>rd</sup> Avenue NE, Seattle, WA, and more particularly described in Attachment 1 hereto (the “**Property**”). The Property is a part of KCM’s Northgate Transit Center, which is a critical facility in KCM’s public transportation system and daily used by the public for public transportation purposes, including but not limited to park-and-ride purposes, vanpooling, layover, and boarding and debarking numerous buses.

**B.** KCM is authorized and empowered to lease the Property or portions thereof to others, and to otherwise own, operate and control the Property, pursuant to RCW sections 35.58.240 and 36.34.135 and King County Code sections 2.16.038, 4.56.060 and 4.56.150.

**C.** In 2018, KCM issued that certain Request for Qualifications and Concepts (RFQ/C) No. 1207-18-VLN. Through the RFQ/C, KCM sought proposals for the development of its Northgate Park & Pool lot, of which the Property is a part. Among other things, the RFQ/C required proposals to include a minimum of 200 units of subsidized affordable housing for a minimum of 50 years to serve households earning up to 60 percent of Area Median Income (AMI), with a mix of unit sizes and configurations, and with a minimum of 10% of the units to be “system connected,” serving very-low to extremely low income households below 50% AMI. KCM received three responses to the RFQ/C, including a response from a team including Affordable Housing Developer, which team submitted a response (“**RFQ/C Response**”) dated October 29, 2018, copies of which are on file with the Parties. The RFQ/C Response included a proposal to construct 232 affordable housing units as well as a 10,000 square-foot childcare center or use by residents and possibly others. The RFQ/C Response and the other two responses were evaluated by a five-member evaluation committee as part of the RFQ/C’s competitive selection process. Based upon the commitments described in the RFQ/C Response, on November 19, 2018, KCM selected the team including Affordable Housing Developer to negotiate a definitive agreement. After more than a year of negotiations, and as allowed under the terms of the RFQ/C, KCM subsequently elected to terminate discussions regarding the market-rate element of the proposed development, and to focus instead on the affordable housing project element. KCM and Affordable Housing Developer thereafter negotiated the affordable housing transaction contemplated in this Agreement.



D. KCM and Affordable Housing Developer have previously entered into that certain Entry, Due Diligence and Pre-Development Agreement made as of February 7, 2020 as extended from time to time according to its terms (the “**Due Diligence Agreement**”). The Due Diligence Agreement authorizes Affordable Housing Developer to undertake certain due diligence and pre-development activities, at its discretion and subject at all times to the terms and conditions of the Due Diligence Agreement, on a 45,000 square foot (approximately) portion of the Property as described and depicted on Attachment 2 hereto (the “**AH Parcel**”) in connection with Affordable Housing Developer’s potential development of a subsidized, affordable housing project including up to 232 units with a mix of at least 52 two or three-bedroom units and at least 24 system-connected units, all to serve households with incomes of 60% or less of the area median income, together with certain accessory spaces including a childcare center on the AH Parcel (collectively, the “**Project**”).

E. Contemporaneous with Affordable Housing Developer’s due diligence activities, Affordable Housing Developer wishes to initiate and undertake certain pre-construction development, permitting and other activities relating to the development of the Project (collectively, the “**Development Activities**”) and the closing of a ground lease transaction with KCM for the AH Parcel upon the satisfaction of certain conditions precedent (the “**Transaction**”). Subject to the terms and conditions of this Agreement, KCM is willing to allow Affordable Housing Developer to undertake such Development Activities relating to the Project, and if Affordable Housing Developer completes such Development Activities in a timely manner, to lease the AH Parcel to Affordable Housing Developer for the construction, operation and management of the Project. Notwithstanding anything to the contrary set forth herein or in the Due Diligence Agreement, Affordable Housing Developer’s rights and obligations as set forth in the Due Diligence Agreement shall continue in full force and effect during the term of this Agreement except as may be expressly agreed to otherwise by the Parties herein.

F. The economic provisions contained in this Agreement have been negotiated and approved based upon, among other things: (1) Affordable Housing Developer’s undertaking to assume the specific Development Activities and other obligations set forth in this Agreement in connection with the proposed development of the Project (which development shall in compliance with Evergreen Sustainable Development Standard Version 3.0.1 or later and otherwise in accordance with the “**Conceptual Site Plan Detail**” attached as Attachment 3), and in the manner set forth in this Agreement, including but not limited to Affordable Housing Developer’s construction of a transit operator comfort station on the ground floor of the Project, but with an independent exterior access, and meeting KCM’s engineering requirements and design specifications as agreed upon by the Parties (the “**Comfort Station**”); (2) Affordable Housing Developer’s acknowledgment and agreement to conduct any and all Development Activities consistent with all terms, conditions and requirements of the Due Diligence Agreement, including but not limited to all entry, indemnity and insurance provisions contained therein; and (3) KCM’s undertaking at the end of the development period to ground lease the AH Parcel to Affordable Housing Developer as and to the extent set forth in this Agreement, including, without limitation, the satisfaction of certain conditions precedent. With respect to the foregoing Comfort Station, the Parties agree that KCM shall be responsible for the construction cost of the Comfort Station and shall further be responsible for all taxes, insurance, utilities, cleaning and maintenance of the Comfort Station as set forth in the Ground Lease (as defined in Section 1.1) and its attached sublease agreement between the Parties related to the Comfort Station.

**G.** KCM understands and acknowledges that not later than Closing (as that term is defined in Section 7 of this Agreement): (1) Affordable Housing Developer has established or will establish a special-purpose entity, **NORTHGATE AFFORDABLE LLC**, a Washington limited liability company (the “**Company**”) in which BRIDGE and CRH are the sole members, to implement the Project; (2) that the Company will serve as the general partner of a limited liability partnership (the “**Partnership**”) and a low income housing tax credit investor will serve as the limited partner and (3) Affordable Housing Developer will assign at Closing all of its rights, obligations and interest in this Agreement to that Partnership, consistent with the terms and conditions of this Agreement.

**H.** KCM and Affordable Housing Developer are individually referred to as a “**Party**” and collectively as “**Parties**” from time to time herein.

NOW THEREFORE, in consideration of the mutual undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **SECTION 1. GROUND LEASE**

**1.1 Ground Lease.** Subject to the terms and conditions of this Agreement, at the Closing, KCM shall ground lease the AH Parcel to the Partnership and the Partnership pursuant to a ground lease in substantially the form of the attached Attachment 5 (the “**Ground Lease**”).

**1.2 SEPA on Ground Lease.** KCM will commence any required SEPA review of the Ground Lease (which will include review of potential transit-related commuter parking displacement impacts) upon the Effective Date of this Agreement as defined in **Section 3.3** hereto (or such earlier time as KCM determines SEPA may be reasonably initiated under current SEPA law). The SEPA review shall be completed prior to Metropolitan King County Council action to authorize this Agreement. If the County’s SEPA review (i) results in a determination, or (ii) imposes mitigation or conditions which, as determined by either Party, in its reasonable discretion, renders the Project infeasible, or, with respect to KCM, would constitute an “Adverse Condition” as defined in Section 5.8.2, then either Party may terminate this Agreement. Similarly, if following the County’s SEPA review, a SEPA appeal or other external party or decisionmaker imposes conditions or renders a decision which, as determined by either Party, renders the Project infeasible or, with respect to KCM, would constitute an “Adverse Condition” as defined in Section 5.8.2, then either Party may terminate this Agreement consistent with Section 9.2.

## **SECTION 2. ESCROW; CONSIDERATION IN ABSENCE OF CLOSING; LIQUIDATED DAMAGES**

**2.1 Escrow.** Affordable Housing Developer shall open escrow (“**Escrow**”) with First American Title Insurance Company, 920 Fifth Avenue, Suite 1200, Seattle, Washington 98104, Attention: Laura Lau (“**Escrow Holder**”) by depositing a fully-executed copy of this Agreement within three (3) days following the Execution Date. KCM and Affordable Housing Developer shall thereafter deposit with Escrow Holder such additional documents and funds as required in connection with Closing consistent with Section 7 of this Agreement.

**2.2 Consideration.** As consideration to KCM in the event Closing does not occur for a reason other than a Material Breach by KCM, and at no cost or expense to KCM, Affordable Housing Developer, subject to any required third party consents, Developer shall assign and deliver KCM all of Affordable Housing Developer's Materials (excluding items subject to attorney-client privilege or attorney-client confidentiality rules), and/or the entitlement or development thereof, including, without limitation, site plans, traffic studies, surveys, wetland reports, geotechnical report, engineering work, architectural plans, and permits and applications therefor, if any; provided, however, the same will be assigned and delivered in their then-current form, AS-IS, WITH ALL FAULTS and without warranties and subject to the rights of the consultants who produced the items assigned and delivered.

**2.3 Liquidated Damages.** IF THE GROUND LEASE OF THE AH PARCEL TO AFFORDABLE HOUSING DEVELOPER IS NOT CONSUMMATED AS A RESULT OF AFFORDABLE HOUSING DEVELOPER'S FAILURE TO PERFORM ITS OBLIGATIONS IN BREACH OF THIS AGREEMENT, THEN KCM, BY WRITTEN NOTICE TO AFFORDABLE HOUSING DEVELOPER (AFTER EXPIRATION OF THE NOTICE AND CURE PERIOD SET FORTH IN SECTION 9.3(a) BELOW), MAY TERMINATE THIS AGREEMENT. AFFORDABLE HOUSING DEVELOPER AND KCM ACKNOWLEDGE AND AGREE THAT DETERMINING KCM'S ACTUAL DAMAGES IN THE EVENT OF SUCH BREACH WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, IN THE EVENT OF AFFORDABLE HOUSING DEVELOPER'S BREACH (OTHER THAN A BREACH OF AFFORDABLE HOUSING DEVELOPER'S INDEMNITY OBLIGATIONS, FOR WHICH KCM RESERVES ALL AVAILABLE REMEDIES), THE PARTIES HAVE AGREED, AFTER NEGOTIATION, THAT THE CONSIDERATION DESCRIBED IN SECTION 2.2 ABOVE SHALL CONSTITUTE KCM'S SOLE AND EXCLUSIVE RIGHT TO DAMAGES PRIOR TO CLOSING, AND THAT THIS REMEDY REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES KCM WOULD INCUR IN THE EVENT OF AFFORDABLE HOUSING DEVELOPER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT PRIOR TO CLOSING. EXCEPT TO THE EXTENT AFFORDABLE HOUSING DEVELOPER BREACHES ANY INDEMNITY OBLIGATION HEREUNDER OR UNDER THE DUE DILIGENCE AGREEMENT (FOR EACH OF WHICH KCM RESERVES ALL AVAILABLE REMEDIES), KCM WAIVES ANY RIGHT TO SPECIFIC PERFORMANCE OR DAMAGES PRIOR TO CLOSING OTHER THAN AS SET FORTH IN THIS SECTION. BY INITIALING IN THE SPACES WHICH FOLLOW, KCM AND AFFORDABLE HOUSING DEVELOPER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SECTION GOVERNING LIQUIDATED DAMAGES. ANY DAMAGES RESULTING FROM BREACH OF THIS AGREEMENT BY AFFORDABLE HOUSING DEVELOPER AFTER CLOSING SHALL BE ADDRESSED UNDER THE GROUND LEASE.

**KCM initials:** \_\_\_\_;

**BRIDGE initials:** \_\_\_\_;

**CRH initials:** \_\_\_\_\_

### SECTION 3. DUE DILIGENCE; EFFECTIVE DATE

**3.1 Affordable Housing Developer's Due Diligence.** Affordable Housing Developer acknowledges that: (i) Affordable Housing Developer is a sophisticated real estate developer with sufficient experience and expertise in the development and operation of affordable housing projects, and will hire or have the opportunity to hire consultants with sufficient experience and expertise, to evaluate the AH Parcel and the risks associated with acquiring a leasehold interest in the AH Parcel; (ii) Affordable Housing Developer will have received sufficient information and had adequate time to make such an evaluation; (iii) Affordable Housing Developer will enter into this Agreement and the Ground Lease with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, archeological, economic and legal condition of the AH Parcel; and (iv) in connection with its investigations and inspections of the AH Parcel, Affordable Housing Developer will have the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, and archeologists to conduct such environmental, land use, permitting, geological, soil, hydrology, seismic, archeological, physical, structural, mechanical and other inspections of the AH Parcel as Affordable Housing Developer deems to be necessary, and Affordable Housing Developer will review thoroughly the reports of such advisors and consultants, as well as all materials and other information given or made available to Affordable Housing Developer by KCM or any Governmental Authority (as defined herein). Affordable Housing Developer further acknowledges that it has not and will not receive from or on behalf of KCM any accounting, tax, legal, architectural, engineering, archeological, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, archeological, property management and other advisors. Affordable Housing Developer will satisfy itself as to such suitability and other pertinent matters by Affordable Housing Developer's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement and the Ground Lease.

**3.2** Prior to the Effective Date, Affordable Housing Developer shall have completed its investigation of the AH Parcel (the "**Due Diligence Investigation**") and approved all matters related to the AH Parcel pursuant to the Due Diligence Agreement.

**3.3** For the purpose of clarity, the Development Activities to be undertaken by Affordable Housing Developer under Section 5 of this Agreement are not required to be commenced by Affordable Housing Developer until Affordable Housing Developer has completed its due diligence investigation and issued an "**Approval Notice**" as described in Section 8 of the Due Diligence Agreement and substantially in the form attached as Attachment 4. While this Agreement shall be binding upon KCM and Affordable Housing Developer from the Execution Date (as defined above), the effective date of this Agreement (the "**Effective Date**") shall be the date Affordable Housing Developer issues such Approval Notice. Affordable Housing Developer shall affirmatively acknowledge the Effective Date in the Approval Notice. Further, if the Due Diligence Agreement terminates due to a decision or election by Affordable Housing Developer not to issue such Approval Notice, then this Agreement shall also terminate without further obligations or actions by Affordable Housing Developer or KCM (other than indemnity obligations of this Agreement or the Due Diligence Agreement that expressly survive any such termination).



**3.4 Survival.** Affordable Housing Developer's obligations under the Due Diligence Agreement shall survive the Closing or the termination of this Agreement prior to Closing.

#### **SECTION 4. AS-IS; RELEASE AND INDEMNITIES**

**4.1 "As Is" and "Where Is" Condition.** Prior to Closing, Affordable Housing Developer shall have made a thorough, independent examination of the AH Parcel and all matters relevant to Affordable Housing Developer's decision to enter into this Agreement and the Ground Lease and develop the Project. This Agreement and KCM's agreement to enter into the Ground Lease are made "AS IS" with all faults, and Affordable Housing Developer expressly acknowledges and agrees that, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY KCM UNDER SECTION 7.3 ("KCM'S CLOSING DOCUMENTS"), KCM MAKES NO REPRESENTATIONS OR WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE AH PARCEL, THE PROPERTY OR ANY PORTION THEREOF, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE PROJECT OR THE CONDUCT OF AFFORDABLE HOUSING DEVELOPER'S BUSINESS. Affordable Housing Developer acknowledges that as of Closing, and except as set forth in this Agreement or the Ground Lease, Affordable Housing Developer will have carefully inspected the AH Parcel and by executing this Agreement and the Ground Lease will accept the AH Parcel on an "AS IS" and "WHERE IS" basis, and except as set otherwise expressly set forth in this Agreement or in KCM's Closing Documents, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of KCM, or any person on behalf of KCM, regarding the AH Parcel, the Property or matters affecting the AH Parcel or Property, including, without limitation:

**(a) Physical Condition.** The physical condition of the AH Parcel and any adjacent portions of the Property, including the quality, nature, adequacy, and physical condition of (i) any systems, facilities, access, adjacent uses, and/or landscaping; (ii) the air, soils, geology, and groundwater, (iii) the suitability of the AH Parcel for construction of any improvements or any activities or uses that Affordable Housing Developer may elect to conduct on the AH Parcel, including but not limited to the Project, or (iv) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the AH Parcel for building or any other purpose;

**(b) Improvements.** The quality, nature, adequacy, and physical condition of the existing improvements on the AH Parcel, if any, including but not limited to, the structural elements, engineering characteristics, appurtenances, access, landscaping, paving, and/or parking facilities;

**(c) Title.** Title to the AH Parcel and/or the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, or other title condition affecting the AH Parcel, including without limitation the existence of any easements, covenants,

rights of ways or other rights across, to or in other properties that might burden or benefit the AH Parcel, whether recorded or unrecorded;

(d) **Compliance/Zoning.** The development potential and/or availability of any necessary permits or approvals (or conditions thereon) for development of the AH Parcel and/or the zoning, comprehensive plan, land use, or other legal status of the AH Parcel, or compliance with any public or private restrictions on the use of the AH Parcel, as the same are in effect as of the Effective Date or may be hereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance with the AH Parcel with any applicable laws;

(e) **Hazardous Materials.** The presence or removal of hazardous materials (as defined in Section 4.3.5) on, in, under or about the AH Parcel, the Property, or on any other property;

(f) **Economic Feasibility.** Economic conditions or projections, market data, or other aspects of the economic feasibility of the Project and/or any business Affordable Housing Developer intends to conduct on the AH Parcel;

(g) **Utilities.** The availability, existence, quality, nature, adequacy and physical condition of utilities serving the AH Parcel;

(h) **Suitability.** The use, habitability, merchantability, fitness, suitability, value or adequacy of the AH Parcel for any particular purpose (including, without limitation, the Project);

(i) **Boundaries.** The boundaries of the AH Parcel, the location of any improvements on the AH Parcel and/or the existence of any encroachments onto or from any adjacent lands, including the Property;

(j) **Access.** Vehicular and/or pedestrian access to the AH Parcel, including from or through any particular route; and

(k) **Other Matters.** Any other matter not referenced above that pertains to the AH Parcel.

**4.2 Release of KCM.** Affordable Housing Developer, on behalf of itself, its directors, officers, representatives, employees and agents (the “**Affordable Housing Developer Parties**”), hereby waives, releases, acquits, and forever discharges KCM and all of its affiliated organizations, and its employees, representatives, agents, consultants, contractors and subcontractors (the “**KCM Parties**”), of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Affordable Housing Developer or any Affordable Housing Developer Parties now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the AH Parcel, provided however, that such release shall not apply or extend to (i) the representations, warranties, covenants and obligations of KCM under this Agreement, (ii) the affirmative obligations of KCM under the Ground Lease, and (iii) matters covered by KCM’s indemnities

in Sections 4.3 and 4.4. The release provisions herein on the part of Affordable Housing Developer are in addition to any release provisions set forth in the Due Diligence Agreement.

### **4.3 Indemnities.**

4.3.1 Except as otherwise provided in this Section 4.3, Affordable Housing Developer hereby agrees to indemnify, defend and hold KCM and the KCM Parties harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees, reasonable costs of defense, and reasonable costs and expenses of all experts and consultants), arising directly or indirectly, in whole or in part, out of Affordable Housing Developer's Development Activities, the Project, or any other development activities or pre-development activities conducted by or on behalf of Affordable Housing Developer or its employees, agents or contractors on the AH Parcel or Property (collectively, "Claims"), including but not limited to:

- (a) any Claims for personal injury or property damage made by KCM or any third party;
- (b) any investigative activity, storage of equipment or materials, or any other act or omission in connection with the AH Parcel by or on behalf of Affordable Housing Developer or its employees, agents or contractors;
- (c) any contract, agreement or commitment entered into or made by Affordable Housing Developer in connection with the AH Parcel; and
- (d) the introduction of hazardous materials or hazardous substances onto the AH Parcel or Property, the exacerbation of any pre-existing environmental condition, any claims of third parties regarding the presence of hazardous materials or substances, and any remediation costs incurred by KCM as to such matters.

4.3.2 Notwithstanding Section 4.3.1, Affordable Housing Developer's indemnification of KCM shall not extend or apply to (i) the mere discovery by Affordable Housing Developer of pre-existing hazardous materials or hazardous substances at, on or under the AH Parcel or Property or the mere discovery by Affordable Housing Developer of any other adverse condition of the AH Parcel or the Property, or (ii) the negligent acts or omissions of KCM or any KCM Parties. The of Affordable Housing Developer's indemnification obligations set forth herein are in addition to the Affordable Housing Developer's indemnification obligations under the Due Diligence Agreement.

4.3.3 KCM hereby agrees to indemnify, defend and hold Affordable Housing Developer, its partners, members, officers, directors, employees and agents ("Developer Parties") harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred by Affordable Housing Developer in connection with the sole negligence of KCM or any KCM Parties to the extent arising out of its activity, if any, in any investigations, tests or inspection of the AH Parcel or Property by Affordable Housing Developer. Provided, that if both Parties are

found to be negligent, then KCM's indemnity obligations under this Section 4.3.3 shall be enforceable only to the extent of KCM's negligence.

4.3.4 KCM further agrees to indemnify, defend and hold the Developer Parties harmless from and against all fines, penalties, administrative and judicial proceedings and orders, and all other direct costs and expenses incurred by KCM or Affordable Housing Developer solely with respect to clean up or remediate any hazardous materials or substances that may be found to exist on the Property from past events or releases prior to the Effective Date of this Agreement (collectively, "Cleanup Costs"), save and except to the extent that such Cleanup Costs result from Affordable Housing Developer's exacerbation of such pre-existing condition, nature and/or extent of such hazardous materials or releases of hazardous substances. KCM's limited indemnity under this Section 4.3.4 does not and shall not be construed to alter, reduce, or expand Affordable Housing Developer's separate indemnity obligations under this Agreement, the Due Diligence Agreement, or the Ground Lease, all of which are ratified and reaffirmed.

4.3.5 For purposes of this Agreement, "hazardous materials" or "hazardous substances" shall mean:

- i. Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or
- ii. Any dangerous waste or hazardous waste as defined in:
  - a. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or
  - b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or
  - c. Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or
- iii. Any hazardous substance as defined in:
  - a. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or
  - i. b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105.D); or
- iv. Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.



## **SECTION 5. DESIGN DEVELOPMENT PERIOD; REVIEW PROCEDURES; ENTITLEMENTS**

**5.1 Duration of Design Development Period.** The design development period (“**Development Period**”) shall commence on the Effective Date and shall continue until Closing, or such earlier date as this Agreement is terminated in accordance with its terms.

**5.2 Purpose of Development Period.** During the Development Period, Affordable Housing Developer shall use its commercially reasonable efforts and all due diligence to timely complete the requirements of Section 5.6 below, and other items required under this Agreement in connection with the design, entitlement, financing and preconstruction of the Project as set forth in this Agreement, all of which Affordable Housing Developer shall cause to occur so that the Closing shall occur no later than the Final Date for Closing, as that term is defined in Section 7.1 of this Agreement (but subject to the extension rights expressly provided in this Agreement). Development matters to be undertaken by Affordable Housing Developer with respect to the Project shall be done in accordance with this Agreement. As between the Parties all costs of designing and permitting the Project shall be borne by Affordable Housing Developer.

**5.3 No Construction.** Except as otherwise permitted in the Due Diligence Agreement, Affordable Housing Developer shall not conduct any excavation, construction, demolition or similar work with respect to the Project (collectively, any “**Construction Activity**”) during the term of this Agreement, it being the understanding of the Parties that Construction Activity shall occur only after the Closing, and then only in accordance with the terms and conditions of the Ground Lease.

**5.4 Design Team.** KCM has approved and Affordable Housing Developer has previously retained the architects, engineers and related consultants identified in Schedule 5.4-1 attached hereto in connection with the preparation of the Conceptual Site Plan Detail (the “**Design Team**”). Affordable Housing Developer shall give KCM reasonable advance notice of any changes to the Design Team. Notwithstanding anything to the contrary contained herein, the general contractor (or any substitute general contractor) shall be capable of being bonded, licensed in the State of Washington, and shall have experience in completing construction comparable to the Project. No approval by KCM of the Design Team and/or Design Documents (as that term is further defined in Section 5.6) shall be deemed a warranty or other representation on KCM’s part that any such Design Document is accurate or correct, or that the Design Team is qualified or appropriate.

**5.5 Communications with KCM; KCM Role.** Affordable Housing Developer shall direct all material correspondence from Affordable Housing Developer or the City of Seattle (the “**City**”), with respect to the Project and the Approval Process, to KCM’s Authorized Representative and to KCM’s Project Manager, and communication by Affordable Housing Developer to either KCM’s Authorized Representative or KCM’s Project Manager shall constitute communication by Affordable Housing Developer to KCM. KCM’s Authorized Representative and KCM’s Project Manager shall have the right to attend meetings with Governmental Authorities, as observers only; provided that KCM’s Authorized Representative and KCM’s Project Manager shall not be prevented from speaking at non-

public meetings, and shall have the right to participate (consistent with the right of public participation generally) in any public hearings in KCM's sole discretion, subject to the provisions of Section 5.6.2 below. Neither KCM's Authorized Representative nor KCM's Project Manager shall have the right to direct the activities of any member of the Design Team.

## **5.6 Design Development and Milestone Schedule and Review Process.**

For purposes of this Section 5.6, the following definitions apply:

- i. "EDG Package" means all materials required to satisfy the City's early design guidance requirements consistent with Seattle Municipal Code (S.M.C.) Chapter 23.41 and related S.M.C. chapters and City regulations as applied to the Project. The City has requested, and the Parties have agreed, that the required documents for the proposed boundary line adjustment of the Property and the draft access easement providing access to the Project be submitted as part of the EDG Package. Affordable Housing Developer has agreed to undertake the necessary application and submittal process for the proposed boundary line adjustment subject to KCM reimbursement of all third party design and application costs of Affordable Housing Developer in connection with the boundary line adjustment application and submittal. The Parties shall execute a separate letter agreement for the purpose of authorizing Affordable Housing Developer to undertake the boundary line adjustment on behalf of KCM as described herein. All contents and details of the boundary line adjustment application and submittal are subject to prior review and approval by KCM.
- ii. "MUP Package" means all materials required to satisfy the City's Master Use Permit application requirements consistent with S.M.C. Chapter 23.76, and related S.M.C. chapters and City regulations as applied to the Project, including but not limited to required schematic design elements.
- iii. "Building Permit Package" means all materials required to satisfy the City's building code, grading code, housing code, plumbing code, fire code, stormwater code, and all other construction permit-related requirements consistent with S.M.C. Chapter 22 and related S.M.C. chapters and City regulations as applied to the Project.

Collectively, these packages constitute the "Design Documents."

### **5.6.1 Design Development and Milestone Schedule.**

5.6.1.1 Prior to the Execution Date, Affordable Housing Developer has delivered to KCM and KCM has approved: (i) the Conceptual Site Plan Detail for the Project to be constructed by Affordable Housing Developer on the AH Parcel, which Conceptual Site Plan Detail is attached as Attachment 3 hereto; (ii) additional descriptive materials provided to assist KCM to evaluate such drawings; and (iii) a preliminary estimated budget for Affordable Housing Developer's cost to construct the Project.

5.6.1.2 No later than sixty (60) days after the Effective Date, Affordable Housing Developer shall deliver to KCM for KCM's review and approval the EDG Package that

Affordable Housing Developer intends to submit to the City of Seattle (unless Affordable Housing Developer submitted and obtained KCM approval of the EDG Package prior to the Effective Date). KCM shall approve or disapprove the EDG Package as described in Section 5.6.2.

**5.6.1.3** At the times indicated on the then-current Development and Milestone Schedule (as defined in Section 5.6.3.1) and in accordance with Section 5.6.3, Affordable Housing Developer shall submit to KCM for review and approval all the documents listed below:

- i. EDG Package
- ii. MUP Package
- iii. Building Permit Package -- KCM review limited to conformance with the MUP plans approved by the City, such that KCM shall not object to any conditions imposed by the City of Seattle other than such changes constituting an Adverse Condition as defined in Section 5.8.2. If the City has not approved the MUP at the time Affordable Housing Developer desires to submit the Building Permit Package, then KCM's review shall be limited to conformance with the MUP Package plus any changes to the MUP Package previously approved under this Agreement.

## **5.6.2 KCM Design Review Criteria**

5.6.2.1 KCM will evaluate the Design Documents against the following criteria:

- i. Conformance with the RFQ/C Response and the Conceptual Site Plan Detail set forth above, except as otherwise approved in writing by KCM;
- ii. Conformance with this Agreement;
- iii. Conformance with any encumbrances or other legal or equitable restrictions on the Property;
- iv. KCM's determination that, other than as contemplated in any prior approval of the Design Documents or by this Agreement, (1) any revisions to or (2) conditions imposed on the proposed Project will not constitute a material change (as that term is defined in Section 5.6.3.7(i)) or an Adverse Condition as defined in Section 5.8.2.
- v. KCM's determination that (1) any revisions to or (2) conditions imposed on the proposed Project will not detrimentally affect the operation of KCM's adjacent Northgate Transit Center or interim use of the southern portion of the Property as a park and pool lot;
- vi. KCM's determination that (1) any revisions to or (2) conditions imposed on the design, program and location of the Comfort Station for the exclusive use of KCM employees as described and depicted in the Conceptual Site Plan Detail for the Project meet KCM's engineering and design specifications provided to Affordable Housing Developer prior to EDG Package.

- vii. KCM's determination that (1) any revisions to or (2) conditions imposed on the Project will not detrimentally affect King County's ability to develop the southern portion of the Property at a future date; and
- viii. KCM's determination that, other than as contemplated in any prior approval of the Design Documents or by this Agreement, (1) any revisions to or (2) conditions imposed on the Project will not impose one or more restrictions, limitations, or costs on KCM's fee interest in the Property or on any other property owned by KCM, including but not limited to any requirement that KCM pay for or build on the Property, in advance of any redevelopment of the remainder of the Property outside the AH Parcel, any kind of pedestrian corridor including but not limited to a "mid-block corridor" as referenced in City Ordinance #125792.

5.6.2.2 The EDG Package, and the MUP Package shall each be subject to KCM's approval, in its reasonable discretion, whether each of those packages satisfies the criteria in Section 5.6.2.1.

5.6.2.3 Following KCM's review and approval of the EDG Package, and the MUP Package, respectively, KCM shall not unreasonably withhold, condition or delay its consent to Affordable Housing Developer's subsequent permit packages or other entitlement submissions to the City or to any other Governmental Authority (in instances where such consent is required) so long as KCM reasonably determines that such packages or submissions satisfy the criteria set forth in Section 5.6.2.1; provided, however, that nothing in this Section 5.6.2.3 shall limit KCM's authority to enforce this Agreement against Affordable Housing Developer in any other regard.

### **5.6.3 KCM Design Document Review and Approval Process**

5.6.3.1 Attachment 6 hereto is a development schedule that outlines the work to be performed during the Development Period, including where applicable the milestones and outside dates on which Design Documents will be submitted to KCM for KCM's review and approval (the "**Development and Milestone Schedule**"). KCM may rely on such dates to plan KCM's review of submittals. If circumstances require revisions to the Development and Milestone Schedule, Affordable Housing Developer shall promptly notify KCM in writing, which notice shall include a reasonably detailed explanation for the revision.

5.6.3.2 Affordable Housing Developer shall exercise its commercially reasonable best efforts to give King County at least (10) business days' prior notice of the date that Affordable Housing Developer expects to submit any Design Documents to KCM for review.

5.6.3.3 Affordable Housing Developer shall prepare and submit to KCM for KCM's approval or disapproval all Design Documents required by this Agreement in accordance with the approval process (the "**Approval Process**") described in this subsection 5.6.3.

5.6.3.4 Affordable Housing Developer shall submit the Design Documents to KCM in such electronic format or formats as the Parties may negotiate. All Design Documents submitted to KCM for review and approval by Affordable Housing Developer and its contractors or

subcontractors shall be prepared to meet applicable requirements imposed by the City. At King County's request, Affordable Housing Developer shall also provide King County with up to three (3) hard copies of any Design Documents.

5.6.3.5 Any Design Documents that do not meet the standard in paragraph 5.6.3.4 shall be deemed incomplete and KCM shall have the right to reject such Design Documents without approving or disapproving them; provided, that if KCM rejects any Design Documents for failure to meet such standard, KCM shall advise Affordable Housing Developer with reasonable particularity as to why KCM believes such Design Documents fail to meet such standard, and at Affordable Housing Developer's option KCM's determination shall be subject to the dispute resolution process in Section 9.1.

5.6.3.6 Upon receipt of properly submitted Design Documents that meet the standard set forth in Section 5.6.3.4, KCM shall review the Design Documents against the criteria set forth in Section 5.6.2 and shall give Affordable Housing Developer written notice of approval or disapproval within (10) business days following its receipt of such Design Documents. If KCM disapproves of any Design Documents then KCM's notice of disapproval shall advise Affordable Housing Developer with reasonable particularity as to the reason or reasons for such disapproval, and Affordable Housing Developer shall revise the noncompliant Design Documents and shall resubmit them to KCM for review consistent with this Section 5.6.3.6. If KCM fails to provide any notice of approval or disapproval within ten (10) business days of receiving Design Documents, then Affordable Housing may submit a written request to KCM for KCM's response, and if KCM fails to respond within (5) business days after receipt of such request, such Design Documents shall be deemed to have been approved by KCM.

#### 5.6.3.7 Design Document Changes After KCM Approval

- i. If, after KCM has approved a given set of Design Documents, Affordable Housing Developer makes a material change to that set of Design Documents, then Affordable Housing Developer shall submit such revised Design Documents to KCM for approval with such changes indicated, and KCM shall review the revised Design Documents consistent with the time periods and deemed approval processes set forth in this Section 5.6.3. For purposes of this Section 5.6.3.7, a "material" change is any change that would reasonably be understood to potentially render the Project noncompliant with one or more of the criteria in Section 5.6.2.1, including but not limited to an Adverse Condition as defined in Section 5.8.2.
- ii. If KCM disapproves any aspect of Affordable Housing Developer's revised Design Documents, then KCM shall notify Affordable Housing Developer and Affordable Housing Developer shall make whatever changes are reasonably necessary to ensure the disapproved item conforms to the criteria in Section 5.6.2.1 and shall resubmit it for KCM's written approval, all consistent with the time periods and deemed approval processes set forth in this Section 5.6.3.



- iii. Affordable Housing Developer shall not proceed with any disapproved item, or any other item affected by the disapproved item, until KCM has approved Affordable Housing Developer's revised Design Documents consistent with the process set forth in this Section 5.6.3.

#### 5.6.3.8 Additional Procedure for KCM Review of the MUP Package

The following additional procedure applies to KCM's review of Affordable Housing Developer's MUP Package.

- i. Affordable Housing Developer shall cause one of its principals and the key members of its Design Team to present the MUP Package to KCM. KCM shall cause KCM's Authorized Representative, KCM's Project Manager and such other representatives of KCM who participate directly in the Approval Process to attend Affordable Housing Developer's presentations of each package. Affordable Housing Developer shall provide the MUP Package to KCM in advance of each such presentation and consistent with the process set forth in this Section 5.6.3.
- ii. If, following each such presentation and KCM's review of MUP Package materials, KCM disapproves the MUP Package for noncompliance with the criteria in Section 5.6.2.1, then KCM and Affordable Housing Developer shall meet and confer regarding the basis for KCM's disapproval and shall attempt in good faith to negotiate any necessary revisions to the MUP Package. Such negotiations shall be subject to the Dispute Process Resolution process in Section 9. If the Parties are unable to resolve a dispute regarding the MUP Package or both within thirty (30) days after KCM's written disapproval of the same, then either Party may terminate this Agreement by written notice to the other and consistent with Section 9.2.

5.6.3.9 **Prior Approval.** Once KCM has approved any Design Document submittal under this Agreement, then KCM may only subsequently disapprove of changes to such submittal or any subsequent Design Document submittal that (i) fail to comply with legal requirements, or (ii) contain a material change (as that term is defined in Section 5.6.3.7(i)), or an Adverse Condition as defined in Section 5.8.2, from any previously approved submittal, or both.

### Section 5.7 Entitlements and Vesting

#### 5.7.1 In General

- i. Affordable Housing Developer will exercise commercially reasonable efforts to obtain all development permits and approvals from the City or other regulatory authorities with jurisdiction in a timely manner.
- ii. Affordable Housing Developer shall coordinate closely with KCM in pursuing entitlements. Subject to KCM's Design Document review and its approval and disapproval rights under this Agreement, KCM will support Developer in obtaining entitlements for the Project.

- iii. Affordable Housing Developer shall submit for KCM's approval, and KCM will timely review, comment, approve or disapprove Affordable Housing Developer's entitlement submissions consistent with Section 5.6. The permit packages include: EDG, MUP, and Building Permit Packages, as outlined in the Development and Milestone Schedule, Attachment 6.

#### 5.7.2 Entitlement Progress Meetings; Communication and Cooperation.

During the preparation of all Design Documents and the processing of all permits and other entitlements, Affordable Housing Developer shall meet with governmental or quasi-governmental authorities with land-use or related permitting jurisdiction over the AH Parcel or the Project (collectively, the "**Governmental Authorities**") to coordinate the preparation of, submission to, and review of all Design Documents and permit applications by the applicable Governmental Authorities. Affordable Housing Developer shall provide KCM with reasonable advance notice of all such meetings so that KCM may elect to attend. Such notice shall not be required for routine or spontaneous email and telephonic communications with Governmental Authorities but shall be required for any scheduled meeting or communication that occurs remotely (e.g. a permit preapplication conference that takes place via an online meeting platform or telephone conference call, etc). KCM and Affordable Housing Developer shall communicate and consult informally as reasonably necessary to ensure that the formal submittal of any Design Documents for approval by the applicable Governmental Authorities can receive prompt and speedy consideration. Subject to KCM's Design Document review, approval, and disapproval rights under this Agreement, KCM shall reasonably cooperate with Affordable Housing Developer's efforts to obtain approvals from the applicable Governmental Authorities.

5.7.3 Updates Regarding Entitlement Process. Affordable Housing Developer shall promptly notify KCM of any disapprovals by any applicable Governmental Authorities and shall keep KCM reasonably informed with respect to Affordable Housing Developer's application for and acquisition of entitlements and permits.

#### 5.8 MUP Issuance; Tolling of Development and Milestone Schedule.

5.8.1 Affordable Housing Developer shall be responsible for the timely payment of all fees associated with the City's review of the MUP application and shall pay all accrued fees necessary for notice of the MUP approval to be published by the City. For purposes of this Section 5.8, a MUP for the Project shall be deemed to have been issued by the City when all of the following have occurred:

- (i) the MUP is approved for issuance in accordance with the provisions of Chapter 23.76 of the Seattle Municipal Code materially consistent with a MUP application previously approved by KCM, and without Adverse Conditions as defined in paragraph 5.8.2;
- (ii) all appeal periods have expired and all pending appeals have been resolved in a manner pursuant to which the Project remains consistent in all material respects with the MUP application; and

(iii) all outstanding review and processing fees have been paid by Affordable Housing Developer to the City (collectively, “MUP Issuance<sup>[AL1][JR2]</sup>”).

## 5.8.2 Adverse Conditions

5.8.2.1 An “**Adverse Condition**” is a condition attached to the MUP or the City’s SEPA determination that:

- i. Results in a material change (as defined in Section 5.6.3.7(i)) to the Project; or
- ii. purports to apply to the AH Parcel or other KCM-owned property, or bind KCM, or both, regardless of whether Affordable Housing Developer elects to actually construct the Project as described in the MUP; or
- iii. A condition that imposes one or more restrictions, limitations or costs on KCM’s fee interest in the Property or other property owned by KCM, including without limitation any condition that binds KCM to pay for or build on the Property, in advance of any redevelopment of the remainder of the Property outside the AH Parcel, any kind of pedestrian corridor including but not limited to a “mid-block corridor” as referenced in City Ordinance #125792.

5.8.2.2 An Adverse Condition that materially changes aspects of the Project as previously approved by KCM (as described in clause 5.8.2.1(i) above) shall be subject to KCM’s reasonable approval or disapproval, and any disapproval of such Adverse Condition shall be subject to the Dispute Process described in Section 9. An Adverse Condition that imposes restrictions, limitations or costs on the Property or other property owned by KCM, or that purports to bind the AH Parcel or KCM or both regardless of whether the Project is constructed (as described in clauses 5.8.2.1(ii) above), or that binds KCM to pay for or build any kind of pedestrian corridor on the Property (as described in clause 5.8.2.1(iii) above), shall be subject to KCM’s approval in its sole and absolute discretion. KCM’s disapproval of any Adverse Conditions described in clauses 5.8.2.1 (ii) or -(iii) above shall not be subject to the dispute resolution process in Section 9.

5.8.2.3 The MUP approval or MUP Issuance periods in the Development and Milestone Schedule shall be tolled for a ten (10) business day or a thirty (30) day period, respectively, for Affordable Housing Developer to respond to a KCM disapproval due to an Adverse Condition.

5.8.3 Tolling Development and Milestone Schedule to Resolve Disputes Over MUP-related Adverse Conditions.

5.8.3.1 The Parties acknowledge that a situation could arise in which they dispute whether MUP approval or MUP Issuance is subject to an Adverse Condition and the Parties are proceeding under the dispute resolution process outlined in Section 9. In addition to the tolling periods set forth in Section 5.8.2.3, the MUP Approval or MUP Issuance periods set forth in the Development and Milestone Schedule shall be further tolled if, as of the end of such period, MUP Approval has been obtained and/or MUP Issuance has been achieved, but the Parties are disputing whether such MUP approval or MUP Issuance is subject to one or more Adverse Conditions as described in the first sentence of this subsection 5.8.3.1. The Parties agree and acknowledge that not all Adverse Conditions are subject to dispute resolution, as more particularly described in Section 5.8.2.2.



5.8.3.2 If upon resolution of such dispute, it is determined that MUP approval or MUP Issuance was obtained without Adverse Conditions (i.e., Affordable Housing Developer prevails in the dispute resolution), then Affordable Housing Developer will be deemed to have obtained MUP approval or MUP Issuance, as applicable, effective as of the end of the MUP approval or MUP Issuance periods set forth in the Development and Milestone Schedule. If upon resolution of such dispute, it is determined that MUP approval or MUP Issuance was obtained with Adverse Conditions (i.e., KCM prevails in the dispute resolution), then Affordable Housing Developer shall have a period of one hundred eighty (180) days following conclusion of the dispute resolution process to seek a revised MUP approval or MUP Issuance without the Adverse Conditions, and if Affordable Housing Developer is successful in doing so, Affordable Housing Developer will be deemed to have obtained MUP approval or MUP Issuance, as applicable, effective as of the end of the MUP approval or MUP Issuance periods set forth in the Development and Milestone Schedule. If Affordable Housing Development fails to obtain MUP approval or MUP Issuance without Adverse Conditions, then at the conclusion of such one hundred eighty (180) day period KCM may terminate this Agreement as provided under Section 9.2.

## **SECTION 6. CONDITIONS PRECEDENT; COUNCIL APPROVAL CONTINGENCY**

**6.1 Affordable Housing Developer's Conditions Precedent.** Affordable Housing Developer's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.1. Each condition is solely for the benefit of Affordable Housing Developer and may be waived in whole or in part by Affordable Housing Developer by written notice to KCM.

(a) **Title Policy.** First American Title Insurance Company (the "**Title Company**") shall be prepared to deliver to Affordable Housing Developer at Closing a leasehold title standard coverage policy, issued by the Title Company as of the date and time of the recording of the Memorandum of Ground Lease (as defined in Section 7.3(b) below), and subject only to the Permitted Exceptions and such endorsements as may be required by the Project lenders and tax credit investor (the "**Title Policy**"); provided, however, that Affordable Housing Developer may in its discretion request that Title Company issue the Title Policy in an extended coverage form in which case Affordable Housing Developer shall be responsible for satisfying any and all costs and requirements in connection therewith. "**Permitted Exceptions**" means exceptions approved or deemed approved or accepted by Affordable Housing Developer pursuant to the Due Diligence Agreement; real estate taxes not yet due and payable, and the standard printed exceptions set forth in the Title Policy. In connection with the issuance of such Title Policy, KCM agrees to provide to the Title Company such evidence of authority and authorization of KCM as Title Company may reasonably require for issuance of the Title Policy, as well as such affidavits, indemnities or other documentation as may be reasonably necessary to issue the Title Policy in standard coverage form and remove from the Title Policy the standard pre-printed exception for mechanics liens.

(b) **Representations and Warranties.** KCM's representations and warranties contained in this Agreement shall be true and correct in all material respects as of the Closing Date.

(c) **KCM's Performance.** KCM shall have performed all of its obligations under this Agreement.

(d) **No Litigation.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against the Property other than those that may be disclosed in writing by KCM in writing prior to the Effective Date.

(e) **License or other Agreements.** KCM has entered into no licenses or agreements that would limit Affordable Housing Developers intended development or use of the AH Parcel or that would materially and adversely affect KCM's ability to perform its obligations under this Agreement,

(f) **Permits.** Affordable Housing Developer shall have obtained all permits or obtained a permit ready letter, required for completion of the Project in material conformance with all Design Documents requiring KCM approval and the Building Permit Package.

(f) **Boundary Line Adjustment.** The Parties shall have completed, and the City of Seattle shall have approved, a boundary line adjustment to create the AH Parcel as a separate legal lot and substantially in conformance with Attachment 2 hereto, and the boundary line adjustment shall have been duly executed and recorded in the real property records of King County, Washington.

(g) **County SEPA Review of Ground Lease.** The County's SEPA review of the Ground Lease shall have been completed and all appeals exhausted, to the satisfaction of Affordable Housing Developer consistent with the terms of Section 1.2.

**6.2 KCM's Condition Precedent.** KCM's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.2. Each condition is solely for the benefit of KCM and may be waived in whole or in part by KCM by written notice to Affordable Housing Developer.

(a) **Representations and Warranties.** Affordable Housing Developer's representations and warranties contained herein shall be true and correct in all material respects as of the Closing Date.

(b) **Affordable Housing Developer's Performance.** Affordable Housing Developer shall have performed all of its obligations under this Agreement, including without limitation, obtaining KCM's approval of the Design Documents in accordance with Section 5.6 above by the Final Date for Closing (as defined in Section 7.1 below).

(c) **Project Development Team.** Affordable Housing Developer shall have engaged the Project Development Team.

(d) **Permits.** Affordable Housing Developer shall have obtained all permits or obtained a permit ready letter, required for completion of the Project and in material conformance with all **Design** Documents requiring KCM approval and the Building Permit Package.

(e) **Financing.** Affordable Housing Developer shall have provided KCM with reasonably satisfactory evidence that Affordable Housing Developer has the financial ability (either as equity or through financing available to Affordable Housing Developer for the Project) to complete the construction of the Project.

(f) **No Litigation.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against Affordable Housing Developer or the Property or Project that would materially and adversely affect Affordable Housing Developer's ability to perform its obligations under this Agreement.

(g) **Boundary Line Adjustment.** The City shall have approved a boundary line adjustment to create the AH Parcel as a separate lot substantially in conformance with Attachment 2 hereto, and without any required mitigation or conditions that would constitute an "Adverse Condition" as defined in Section 5.8.2 hereof. The boundary line adjustment shall have been duly executed and recorded in the real property records of King County, Washington.

(h) **County SEPA Review of Ground Lease.** The County's SEPA review of the Ground Lease shall have been completed and all appeals exhausted to the satisfaction of KCM consistent with the terms of Section 1.2 hereof.

**6.3 Failure of Conditions Precedent.** So long as a Party is not in default hereunder, if any condition to such Party's obligation to proceed with the Closing hereunder has not been satisfied as of the Final Date for Closing, or any other applicable date specified in this Agreement, such Party may, in its sole discretion, either (i) terminate this Agreement by delivering written notice to the other Party, (ii) extend the time available for the satisfaction of such condition by up to a total of ten (10) business days, or (iii) elect to close, notwithstanding the non-satisfaction of such condition, in which event such Party shall be deemed to have waived any such condition. If such Party elects to proceed pursuant to clause (ii) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such Party may elect to proceed pursuant to either clause (i) or (ii) above. The Parties agree that if the failure of any condition precedent is also a breach of this Agreement by either Party, then such breach shall be governed pursuant to the terms of Section 9 below.

**6.4 Council Approval Contingency.** In addition to the conditions precedent for KCM's performance as set forth in Section 6.2, and notwithstanding anything to the contrary in this Agreement, KCM's performance under this Agreement is contingent on approval by ordinance of the Ground Lease by the Metropolitan King County Council ("**Council Approval**"). Council Approval will be satisfied if an ordinance passed by the Metropolitan King County Council approving the Ground Lease becomes effective within the period provided in the Development and Milestone Schedule ("**Council Approval Period**"). KCM may extend the Council Approval Period consistent with the Development and Milestone Schedule. If Council Approval is not satisfied within the Council Approval Period, as may be extended, then this Agreement shall terminate, and this Agreement shall be null and void and of no further force or effect, and the Parties shall have no further rights, obligations or liabilities hereunder. The foregoing shall not limit, any rights Affordable Housing Developer has under the Letter Agreement between the Affordable Housing Developer and KCM regarding expense

reimbursement, or any indemnity given by either Party to the other under this Agreement, and each Party shall have all remedies available at law or equity to enforce such indemnity in the event the other Party fails to perform any indemnity obligation set forth in this Agreement.

## SECTION 7. CLOSING

**7.1 Time.** Provided that all requirements set forth in Section 5 above and all conditions and contingencies set forth in Section 6 of this Agreement have been either satisfied or waived by the appropriate Party, the Parties shall close the transaction contemplated by this Agreement (the “**Closing**”), on a date mutually approved by KCM and Affordable Housing Developer, but in no event later than as set forth in the Development and Milestone Schedule, unless extended as expressly provided in this Section 7.1 or otherwise agreed in writing by the Parties (as and if extended, the “**Final Date for Closing**”). In the event Affordable Housing Developer desires that the Closing occur prior to the Final Date for Closing, Affordable Housing Developer shall deliver to KCM written notice of its desired date for Closing, which shall be no sooner than thirty (30) days after the date of such notice. Notwithstanding the foregoing, Affordable Housing Developer shall have the right to extend the Final Date of Closing for up to two (2) periods of twelve (12) months each (each, an “**Extension Option**”) by delivery to KCM no later than thirty (30) days prior to the then-effective Final Date of Closing of written notice of Affordable Housing Developer’s election to extend; provided, however, that in order for Affordable Housing Developer to exercise the second 12-month Extension Option, Affordable Housing Developer must have prepared and submitted the Design Documents described in Section 5.6.1.3(iv) above to KCM. For purposes of clarity, and after taking into account all extensions provided under this Agreement and the Development and Milestone Schedule, in no event shall the Final Date of Closing occur more than four (4) years following the Effective Date.

**7.2 Escrow Instructions.** Closing shall occur through the Escrow with the Title Company. The terms of this Agreement, together with such additional instructions as the Title Company shall reasonably request and the Parties shall agree to, shall constitute the escrow instructions to the Title Company. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Title Company, this Agreement shall control unless the intent to amend this Agreement is clearly and expressly stated in said additional escrow instructions.

**7.3 KCM’s Deposit of Documents into Escrow.** KCM shall deposit into escrow not later than three (3) business days before Closing the following documents:

- (a) Two duly executed and acknowledged counterparts of the Ground Lease;
- (b) A duly executed and acknowledged counterpart of a Memorandum of Ground Lease in the form of Attachment 7 hereto (the “**Memorandum of Ground Lease**”);
- (c) Such additional documents, including written escrow instructions consistent with this Agreement, as may be reasonably necessary to consummate the ground leasing of the AH Parcel in accordance with the terms of this Agreement.

#### **7.4 Affordable Housing Developer's Deposit of Documents and Funds.**

Affordable Housing Developer shall deposit into escrow not later than three (3) business days before Closing:

- (a) Two duly executed counterparts of the Ground Lease;
- (b) A duly executed and acknowledged counterpart of the Memorandum of Ground Lease;
- (c) Such additional documents, including written escrow instructions consistent with this Agreement, as may be reasonably necessary to consummate the ground leasing of the AH Parcel in accordance with this Agreement;
- (d) Sufficient funds to pay for Affordable Housing Developer's share of prorations and Closing costs pursuant to Section 7.6.

#### **7.5 Closing.**

7.5.1 When the Title Company has received all documents identified in Sections 7.3 and 7.4 of this Agreement and has received written notification from Affordable Housing Developer and KCM that all conditions to Closing have been satisfied or waived; and is irrevocably committed to issue the Title Policy as described in Section 6.1(a) above, then, and only then, the Title Company shall:

- (a) Record the Memorandum of Ground Lease;
- (b) Issue the Title Policy to Affordable Housing Developer;
- (c) Deliver to Affordable Housing Developer: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Ground Lease; and (ii) a fully executed original of the Ground Lease; and
- (d) Deliver to KCM: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Ground Lease, and (ii) a fully executed original of the Ground Lease.

7.5.2 The Title Company shall prepare and the Parties shall sign closing statements showing all receipts and disbursements and deliver copies to Affordable Housing Developer and KCM and, if applicable, shall file with the Internal Revenue Service (with copies to Affordable Housing Developer and KCM) the reporting statement required under Section 6045(e) of the Internal Revenue Code.

**7.6 Prorations and Closing Costs.** Subject to the other provisions of this Section 7.6, all applicable taxes, charges and other costs associated with the AH Parcel will be prorated as of 11:59 p.m. Pacific Time on the day immediately preceding the actual date of Closing (the "**Closing Date**"). Not less than three (3) business days prior to the Closing Date, the Title Company shall submit to Affordable Housing Developer and KCM for their approval a tentative prorations schedule showing the categories and amounts of all prorations proposed.



The Parties shall agree on a final proration schedule prior to the Closing. As of the Closing Date and during the term of the Ground Lease, Affordable Housing Developer shall be responsible for all costs, charges and expenses related to the ownership and operation of the AH Parcel. If based on the final proration schedule, any amount is due to KCM, Affordable Housing Developer shall pay the amount due to KCM in readily available funds at Closing. If based on the final proration schedule, any amount is due to Affordable Housing Developer, the amount due shall be credited against the first or next payment of rent due under the Ground Lease.

(a) **Property and Leasehold Excise Taxes.** All real and personal property ad valorem taxes, special assessments, and leasehold excise taxes, if any, applicable to the Project, whether payable in installments or not, including, without limitation, all supplemental taxes attributable to the period prior to the Closing Date (regardless of when payable), shall be prorated to the Closing Date, based on the latest available tax rate and assessed valuation. If the amount of any installment of real property taxes is not known as of the Closing Date, then a proration shall be made by the Parties based on a reasonable estimate of the real property taxes applicable to the AH Parcel and the Parties shall adjust the proration when the actual amount becomes known upon the written request of either Party made to the other.

(b) **Closing Costs.** Affordable Housing Developer shall pay all escrow and recording costs, the cost of the Title Policy, and all other costs incurred in connection with the Closing (provided that each Party shall pay its own legal, consulting and related professional fees and expenses).

(c) **Survival.** The obligations of this Section 7.6 shall survive the Closing.

**7.7 Possession.** Possession of the AH Parcel pursuant to this Agreement and the terms of the Ground Lease shall transfer to Affordable Housing Developer at the Closing.

## **SECTION 8. REPRESENTATIONS AND WARRANTIES**

**8.1 KCM's Representations and Warranties.** As a material inducement to Affordable Housing Developer to execute this Agreement and consummate this transaction, and subject to the express limitations in Section 8.1(e), KCM represents and warrants to Affordable Housing Developer that:

(a) **Authority.** Subject to the Council Approval Contingency in Section 6.4, KCM has or shall as of the Closing Date have the full right and authority and has or shall have obtained any and all consents required to enter into this Agreement and the Ground Lease and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by KCM at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of KCM, enforceable in accordance with their terms.

(b) **No Conflict.** To KCM's knowledge, there is no agreement to which KCM is a party, or to KCM's actual knowledge binding on KCM, that is in conflict with this Agreement. There is no action or proceeding pending or, to KCM's actual knowledge, threatened against KCM, that challenges or impairs KCM's ability to execute or perform its

obligations under this Agreement, except as may be disclosed by KCM in writing prior to the Effective Date.

(c) **No Litigation.** There is not now pending or, to KCM's actual knowledge threatened, any action, suit or proceeding before any court or Governmental Authority against the Property except as may be disclosed in writing by KCM prior to the Effective Date.

(d) **Litigation and Compliance.** To KCM's actual knowledge there are no suits, other proceedings or investigations pending against or affecting the AH Parcel that could materially impair KCM's ability to perform its obligations under this Agreement, nor is KCM in violation of any laws or ordinances that could materially impair KCM's ability to perform its obligations under this Agreement, except as may be disclosed in writing by KCM prior to the Effective Date.

(e) Any and all representations or warranties or other provisions in this Agreement that are conditions on terms such as "actual knowledge" or "to KCM's knowledge" or "about which KCM has knowledge" are made to and limited by the present, actual knowledge of the Northgate Transit Center project manager, an employee of the Metro Transit Department, who as of the Execution Date is \_\_\_\_\_ has made no independent inquiries or investigations with respect to KCM's representations or warranties or other provisions prior to the making thereof and has no duty to undertake the same.

**8.2 Affordable Housing Developer's Representations and Warranties.** As a material inducement to KCM to execute this Agreement and consummate this transaction, Affordable Housing Developer makes the following representations and warranties, individually and collectively, to KCM that:

(a) **Authority.** Affordable Housing Developer is validly existing in the State of Washington with the full right and authority, including any and all required consents, to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered at the Closing by or on behalf of Affordable Housing Developer will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Affordable Housing Developer, enforceable in accordance with their terms.

(b) **No Conflict.** There is no agreement to which Affordable Housing Developer is a party, or to its knowledge binding on Affordable Housing Developer that is in conflict with this Agreement. There is no action or proceeding pending or to its knowledge, threatened against it that challenges or impairs the ability of Affordable Housing Developer to execute or perform its obligations under this Agreement.

(c) **No Litigation.** There is not now pending or threatened, any action, suit or proceeding before any court or Governmental Authority against Affordable Housing Developer that would prevent it from performing its obligations hereunder.

(d) **Financial Condition.** Affordable Housing Developer has or will have as of Closing all funds necessary to consummate the transactions contemplated by this Agreement (including financing arrangements in place for such funds). Affordable Housing

Developer has or will furnish KCM with a true and correct copy of its current financial statement in the form or forms provided to any Project lenders (the “**Financial Statement**”). The Financial Statement has or will fairly present its financial condition as of the date indicated and there shall have been no changes in the assets, liabilities, financial condition or affairs set forth or reflected in the Financial Statement since it was delivered to KCM that in any one case or in the aggregate, constitutes a material adverse change.

(e) **Litigation and Compliance.** There are no suits, other proceedings or investigations pending or threatened against or affecting the business or the properties of Affordable Housing Developer that could materially impair its ability to perform its obligations under this Agreement, nor is it in violation of any laws or ordinances that could materially impair its ability to perform its obligations under this Agreement.

(f) **Adverse Conditions, Etc.** There is no adverse condition or circumstance, pending or threatened litigation, governmental action, or other condition that could prevent or materially impair the ability of Affordable Housing Developer to enter into the Ground Lease and develop the Project as contemplated by the terms of this Agreement.

**8.3 Notice of Changed Circumstances.** If either Party becomes aware of any fact or circumstance that would render false or misleading a representation or warranty made by such Party, then it shall immediately give written notice of such fact or circumstance to the other Party, but such notice shall not relieve either Party of any liabilities or obligations with respect to any representation or warranty.

## **SECTION 9. DISPUTE RESOLUTION; DEFAULT AND TERMINATION**

### **9.1 Dispute Resolution Prior to Closing.**

(i) Prior to Closing, KCM and Affordable Housing Developer agree to communicate regularly to discuss matters arising under this Agreement and to endeavor to prevent disputes from arising. Except as otherwise provided, prior to Closing the Parties agree further to use their best efforts to resolve any disputes arising under this Agreement using good-faith negotiations through the following Dispute Process:

Step One. KCM and Affordable Housing Developer or their designees shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either Party.

Step Two. In the event KCM and Affordable Housing Developer or their designees are unable to resolve the dispute within ten (10) business days as provided in Step One, either Party may refer the dispute to KCM’s Project Manager and Affordable Housing Developer’s Authorized Representative or their respective designees. They shall confer and attempt to resolve the dispute within five (5) business days of receiving the referral.

Step Three. In the event KCM’s Project Manager and Affordable Housing Developer’s Authorized Representative or their respective designees are unable to resolve the dispute within five (5) business days as provided in Step Two, either Party may refer the dispute to KCM’s Division Director and such representative as designated for this purpose by



Affordable Housing Developer. They shall confer and attempt to resolve the dispute within five (5) business days after receiving the referral.

(ii) If the Parties are unable to resolve the dispute using the process set forth in Steps One through Three above, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator. Except as otherwise provided in this Agreement, neither Party shall have the right to seek relief in a court of law until and unless Steps One through Three above are exhausted.

(iii) The dispute resolution process outlined herein shall toll any deadlines set forth in the then-current Development and Milestone Schedule and shall toll the expiration of periods described in Section 5 to the extent set forth in Section 5.8, but shall not extend the Final Date for Closing defined in Section 7.1.

(iv) KCM's review and approval or disapproval of the EDG Package and the MUP Package shall not be subject to this dispute resolution process, and instead the provisions of Section 5.6.2.2 above shall govern such review and approval or disapproval.

(v) After Closing, dispute resolution shall be governed by the Ground Lease.

## **9.2 Termination In General**

In addition to the other provisions of this Agreement that provide for termination under particular circumstances, either Party may terminate this Agreement and give written notice to Escrow Holder that this Agreement and the Escrow is terminated under any of the following circumstances:

- (i) Affordable Housing Developer disapproves of the results of its due diligence investigation of the AH Parcel pursuant to the terms of the Due Diligence Agreement (or fails to issue the Approval Notice within the deadline to issue an Approval Notice under the Due Diligence Agreement) or determines that the Project is infeasible for any reason;

- (ii) KCM fails to obtain the BLA from the City (including appeals) by the outside date set forth in the Development and Milestone Schedule;
- (iii) KCM fails to complete its SEPA review (including appeals) of the ground lease by the outside date set forth in the Development and Milestone Schedule;
- (iv) KCM disapproves the EDG Package, or the MUP Package and the Parties fail to negotiate agreed revisions to same during the time period described in Section 5.6;
- (vi) Affordable Housing Developer fails to obtain MUP approval without one or more Adverse Conditions (as defined in Section 5.8.2) consistent with the Development and Milestone Schedule;
- (vii) Affordable Housing Developer fails to obtain MUP Issuance without one or more Adverse Conditions (as defined in Section 5.8.2) consistent with the Development and Milestone Schedule;
- (viii) Affordable Housing Developer is in default hereunder after notice and opportunity to cure as provided under Section 9.3(a); or
- (ix) Council Approval as set forth in Section 6.4 fails to occur for any reason.

### **9.3 Default In General.**

**(a) Failure to Perform.** Either Party shall be in default under this Agreement if such party fails to observe or perform any provision, covenant or condition of this Agreement to be observed or performed by such Party, where (a) a monetary failure continues for ten (10) business days after written notice thereof from the other Party, or (b) any non-monetary failure continues for twenty (20) business days after written notice thereof from the other Party. Notwithstanding the foregoing, KCM shall have no obligation to provide Affordable Housing Developer with an opportunity to cure any failure by Affordable Housing Developer to have met the requirements of Section 5.3 above by the Final Date for Closing, which shall be deemed an incurable default under this Agreement.

**(b) Waiver of Default.** Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies in connection therewith or of any other rights and remedies provided by this Agreement or by law, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

### **9.4 Remedies.**

**(a) Affordable Housing Developer's Remedies.** Prior to Closing, and provided Affordable Housing Developer is not then in breach of this Agreement, Affordable Housing Developer shall have the option to terminate this Agreement if KCM is in Material Breach of its obligations under this Agreement after the expiration of the cure period provided in Section 9.1(a) above. For purposes hereof, a "**Material Breach**" shall mean a failure or

refusal of KCM, following satisfaction of all conditions precedent and contingencies to KCM's obligations under this Agreement, to enter into the Ground Lease with Affordable Housing Developer as of the Final Date of Closing without legal excuse. If KCM is in Material Breach of this Agreement, Affordable Housing Developer shall have the right, as its sole and exclusive remedies, to either terminate this Agreement, or pursue an action for specific performance in accordance with applicable law. The Parties agree that the limitation on Affordable Housing Developer's remedies set forth herein as a result of a Material Breach is a reasonable provision given the circumstances existing at the time this Agreement was entered into, provided however, the foregoing shall not limit any indemnity given by KCM to Affordable Housing Developer under this Agreement, and Affordable Housing Developer shall have all remedies available at law or equity to enforce such indemnity in the event KCM fails to perform any indemnity obligation set forth in this Agreement. Affordable Housing Developer specifically acknowledges that KCM would not enter into this Agreement without this limitation upon KCM's damages. With respect to any breach of this Agreement by KCM after the expiration of the cure period provided in Section 9.1(a) above that does not constitute a Material Breach, Affordable Housing Developer may pursue an action for specific performance or declaratory relief as its sole and exclusive remedies.

**(b) KCM's Remedies.** Prior to Closing, and provided KCM is not then in breach of this Agreement, KCM shall have the option to terminate this Agreement if Affordable Housing Developer is in breach of its obligations under this Agreement after the expiration of the cure period provided in Section 9.1(a) above. In the event of such termination, the consideration set forth in Section 2.2 of this Agreement shall be KCM's sole and exclusive remedy; provided, however, the foregoing shall not limit any indemnity given by Affordable Housing Developer to KCM under this Agreement, and KCM shall have all remedies available at law or equity to enforce such indemnity in the event Affordable Housing Developer fails to perform any indemnity obligation set forth in this Agreement.

**9.5 Ownership of Affordable Housing Developer Materials.** If this Agreement terminates as a result of a default by Affordable Housing Developer, Affordable Housing Developer shall deliver to KCM, without cost or expense to KCM, all studies, site plans, reports, surveys, environmental assessment test results and other documents relating to the AH Parcel and the Project that were prepared by or on behalf of Affordable Housing Developer in connection with Affordable Housing Developer's Due Diligence Investigation, as well as all Design Documents (as defined in Section 5.6 of this Agreement) prepared in connection with the Project (collectively, "**Affordable Housing Developer Materials**"), together with a bill of sale for Affordable Housing Developer's interest in such Affordable Housing Developer Materials, to the extent any necessary third party consent is required and not otherwise deemed confidential, contain proprietary information or allowed to be so transferred by any party providing or creating such materials, but with neither warranty nor recourse to Affordable Housing Developer for losses and liabilities resulting from defective Affordable Housing Developer Materials, which Affordable Housing Developer Materials shall thereupon be the sole property of KCM free from all claims or interests of Affordable Housing Developer or any other person, and which KCM may, subject to any restrictions by third parties providing any of the Affordable Housing Developer Materials and unless the provider of such information has retained ownership of any materials pursuant to the terms of its agreement or contract with the Affordable Housing Developer, and which KCM may use, grant, license or

otherwise dispose of to any person for development of the AH Parcel or the Property or the Project or any other purpose in KCM's sole discretion. Without limiting the foregoing, Affordable Housing Developer further agrees that, in the event this Agreement terminates, expires or is canceled for any reason other than a default by KCM due to a Material Breach by KCM, KCM may thereafter proceed with development of the Project in a manner and with a site plan which is the same or substantially similar to that contemplated by Affordable Housing Developer. Affordable Housing Developer agrees at all times to keep the Affordable Housing Developer Materials free of all liens, charges, attachments or judgments. Affordable Housing Developer shall, upon request, cooperate with KCM in obtaining (at no additional cost to Affordable Housing Developer, other than costs associated with time spent by Affordable Housing Developer's own personnel) any rights of use desired by KCM with respect to the Affordable Housing Developer Materials.

9.6 Remedies After Closing. After Closing, the Parties remedies for breach of this Development Agreement shall be governed by the Ground Lease.

## **SECTION 10. CASUALTY AND CONDEMNATION**

10.1 **Casualty Prior to Closing.** This Section 10.1 intentionally deleted.

10.2 **Condemnation.** In the event of a taking or threatened taking by condemnation or similar proceedings or actions of all or a substantial portion of the AH Parcel, such that the Project is no longer economically feasible for development of the Project in Affordable Housing Developer's or KCM's reasonable determination, this Agreement shall terminate upon written notice of such determination delivered to the other Party, whereupon this Agreement shall have no further force or effect, except with respect to obligations that by their terms survive such termination.

## **SECTION 11. GENERAL**

11.1 **Notices.** Except for design review communications governed under Section 5, all notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (a) upon receipt when personally delivered to the recipient at the recipient's address set forth below; (b) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, or when such receipt is rejected; (c) one (1) business day after deposit with a recognized overnight courier or delivery service; or (d) when electronically transmitted (including email) with confirmation sent by regular U.S. mail; provided, however, that any notice transmitted pursuant to preceding subparagraphs (a), (b) or (c) shall be accompanied by a contemporaneous electronic transmission (including email) to the recipient. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or federal or state legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday. Any references to "days" that are not expressly designated to be business days shall mean calendar days. If a Party disputes the delivery or receipt of notice by email then that Party shall bear the evidentiary burden to prove, by a preponderance of the evidence, that such notice was not delivered or received or both.

The addresses for notice are:

If to KCM:

King County Metro Transit Department  
Attn: Director of Capital Division, Metro Transit Department  
201 South Jackson Street  
KSC-TR-0415  
Seattle, WA 98104-3856  
Email:

With a copy to:

Metro Transit Department  
Attn: General Manager's Office  
201 South Jackson Street  
KSC-TR-0431  
Seattle, WA 98104-3856  
Email:

With a copy to:

King County Prosecuting Attorney Office  
Attn: Chief Civil Deputy Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
Email:

If to Affordable Housing Developer:

Northgate Affordable LLC  
C/o Bridge Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attention: Rebecca Hlebasko, General Counsel  
Email:

And:

Community Roots Housing  
1620 – 12<sup>th</sup> Ave., Suite 205  
Seattle, WA 98122  
Attn: Jeremy Wilkening, Vice President, Real Estate Development  
Email:

With a copy to:

Kantor Taylor PC  
Attn: Mark Kantor  
1200 5<sup>th</sup> Avenue, Suite 1910  
Seattle, WA 98101  
Email: [mkantor@kantortaylor.com](mailto:mkantor@kantortaylor.com)

Either Party may change its address by written notice to the other given in the manner set forth above.

**11.2 Entire Agreement.** This Agreement (and the attachments hereto) and the Due Diligence Agreement contain the entire agreement and understanding between Affordable Housing Developer and KCM concerning the subject matter of this Agreement, and supersede all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Affordable Housing Developer or KCM concerning the AH Parcel or the other matters which are the subject of this Agreement. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting Party shall not be employed nor applied in the interpretation of this Agreement.

**11.3 Amendments and Waivers; Further Agreements.** No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the Party against whom the addition or modification is sought to be enforced. The Party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving Party. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. Any waiver granted shall apply solely to the specific instance expressly stated. The Parties intend to cooperate, take further action, and execute and deliver further documents as may be reasonably required in order to carry out the purposes of this Agreement and the Project, such as (by way of example only) a temporary construction license, a crane swing license, and such agreements as may be required by the City of Seattle as a condition of one or more permits for the Project. All such agreements shall be the subject of future negotiation between the Parties and are not the subject of this Agreement.

**11.4 Severability.** The provisions of this Agreement are intended to be severable and enforced to the maximum extent permitted by law. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of the invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of the Agreement in any other jurisdiction. The unaffected portion and provisions of the Agreement will be enforced to the maximum extent permitted by law.

**11.5 References.** Unless otherwise indicated, (a) all section and exhibit references are to the sections and exhibits of this Agreement, and (b) all references to days are to calendar days. The attachments hereto are incorporated herein by this reference. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a



Saturday, Sunday or State of Washington holiday, such time for performance shall be extended to the next business day. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires.

**11.6 Governing Law.** The interpretation, construction and enforcement of this Agreement, and all matters relating hereto, shall be governed by the law of the State of Washington, without giving effect to its conflicts of law rules or choice of law provisions. Any judicial proceeding brought by either of the Parties against the other Party or any dispute arising out of this Agreement, the Closing, the Project or the AH Parcel or Property, or any matter relating thereto, shall be brought in the Superior Court of the State of Washington (in King County), or in the United States District Court for the Western District of Washington. In that regard, each Party hereby waives any defense of inconvenient forum and any bond or other security that might otherwise be required of the other Party with respect to such choice of judicial forum.

**11.7 Time; Force Majeure.** Time is of the essence in the performance of the Parties' respective obligations under this Agreement, and no notice of a Party's intent to require strict compliance with the deadlines set forth in this Agreement is required. The Parties hereby acknowledge and agree that the times set forth in this Agreement shall not be subject to delay, except to the extent a Force Majeure Event has occurred, and then only as provided in this Section. For purposes of this Agreement, a "**Force Majeure Event**" shall mean any delay due to war, insurrection, riots, civil disturbances, floods, fires, casualties, earthquakes, tsunamis, acts of God, acts of the public enemy, epidemics, quarantine restrictions, any actions by any Governmental Authorities beyond Affordable Housing Developer's reasonable control (other than issuance or an appeal of the MUP or other entitlements); provided, however, any financial inability, or an economic downturn as the result of any of the foregoing or any other cause, shall not be deemed a Force Majeure Event. A Force Majeure Event shall not toll or extend the Final Day for Closing.

**11.8 Attorneys' Fees.** If either Party commences any legal action or other proceeding to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party shall pay the prevailing party's actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post judgment motion, and any action to enforce or collect the judgment including contempt, garnishment, levy, discovery and bankruptcy. For this purpose "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing party" shall mean the Party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.

**11.9 Acceptance of Service of Process.** In the event that any legal action is commenced by KCM against Affordable Housing Developer, service of process on Affordable Housing Developer shall be made by personal service upon Affordable Housing Developer, or upon Affordable Housing Developer's agent or agents in such manner as may be provided by law, and shall be valid whether made within or without the State of Washington.

### **11.10 Assignment.**

(a) **General Terms.** Affordable Housing Developer recognizes the following: (i) KCM's reliance on the real estate and development expertise of Affordable Housing Developer to assure the quality of the development of the Project; (ii) that the design, use, operation and maintenance of the Project and its components are deemed critical by KCM; (iii) that a change in ownership or control of Affordable Housing Developer, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership, could have a material adverse impact on the development of the Project; and (iv) that the qualifications and identity of the Affordable Housing Developer are of particular concern to KCM. Affordable Housing Developer further recognizes that it is because of such qualifications and identity that KCM is entering into this Agreement with Affordable Housing Developer.

(b) **No Transfers.** Except as provided in Section 11.10(c) below, no voluntary or involuntary successor-in-interest of Affordable Housing Developer shall acquire any rights or powers under this Agreement. Affordable Housing Developer acknowledges and agrees that, except as provided in Section 11.10(c) below, or except with the prior written consent of KCM (which KCM may withhold in its sole discretion), Affordable Housing Developer may not transfer, assign, mortgage, or otherwise convey (collectively, "**Transfer**") all or any portion of Affordable Housing Developer's interest in this Agreement to any person or entity, nor may Affordable Housing Developer permit any change in "control" of Affordable Housing Developer. "Control," as used in this Section 11.10, shall mean (i) the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, any person or entity; or (ii) the power to determine and control the performance of Affordable Housing Developer's obligations under this Agreement or the Ground Lease.

(c) **Permitted Assignment.** Notwithstanding Sections 11.10(a) and (b), and consistent with Recital G, KCM acknowledges that at or after Closing the Affordable Housing Developer may assign and transfer this Agreement and its rights and obligations hereunder to a limited liability company or to a limited liability partnership in which the Affordable Housing Developer or an affiliate, is the general partner and a tax credit investor(s) will have a 99.99% interest.

(d) **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.

**11.11 Commissions, Indemnity.** Neither KCM nor Affordable Housing Developer is represented by a broker in this transaction. Each Party represents to the other Party that the representing party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the negotiation or execution of this Agreement. Each Party hereby indemnifies and agrees to protect, defend and hold harmless the other Party from and against



all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 11.11 is intended to be solely for the benefit of the Parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.

**11.12 Non-publicity.** Except for those matters that must be disclosed to perform the commitments of Affordable Housing Developer under this Agreement, and except as otherwise provided by applicable law, Affordable Housing Developer agrees that no press releases concerning the transactions provided for in this Agreement shall be made by Affordable Housing Developer before Closing without the prior written consent of KCM. The provisions of this Section 11.12 shall survive any termination of this Agreement. Notwithstanding the foregoing, KCM acknowledges that the existence of this Agreement and certain of its terms will become public at such time as Affordable Housing Developer submits the EDG Package to the City. Further, the provisions of this Section 11.12 shall not be applicable to Affordable Housing Developer with respect to information that becomes public through parties other than Affordable Housing Developer, including information that may become public through information requests directed at KCM and information that may become public as part of KCM's internal approval processes. Finally, KCM acknowledges that Affordable Housing Developer may disclose the terms of this Agreement and the Ground Lease for the purposes of financing the Project.

**11.13 Survival.** Affordable Housing Developer's obligations under this Agreement shall survive the Closing or the termination of this Agreement prior to the Closing.

**11.14 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

**11.15 Nondiscrimination.** Affordable Housing Developer, on behalf of itself and its successors and assigns, as a part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state and local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Affordable Housing Developer shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Chapter 12.16, as now codified and as hereafter amended. Affordable Housing Developer shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, King County Charter Section 840, Chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Agreement and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Agreement and may result in ineligibility for further agreements between the Parties.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

The Parties have executed this Agreement as of the Execution Date.

**AFFORDABLE HOUSING  
DEVELOPER:**

**KCM:**

**KING COUNTY**, a home rule charter and  
Washington political subdivision:

**BY:**

**BRIDGE HOUSING CORPORATION**, a  
California corporation  
Its Manager

By: /s/

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**and**

**COMMUNITY ROOTS HOUSING**, a  
Washington public corporation

Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NOTICE: COMMUNITY ROOTS IS ORGANIZED  
PURSUANT TO SEATTLE MUNICIPAL CODE  
(SMC) CHAPTER 3.110 AND RCW 35.21.660,  
35.21.670 AND 35.21.730-.755. RCW 35.21.750  
PROVIDES AS FOLLOWS:

“ALL LIABILITIES INCURRED BY SUCH PUBLIC  
CORPORATION, COMMISSION OR AUTHORITY  
SHALL BE SATISFIED EXCLUSIVELY FROM THE  
ASSETS AND PROPERTIES OF SUCH PUBLIC  
CORPORATION, COMMISSION OR AUTHORITY  
AND NO CREDITOR OR OTHER PERSON SHALL  
HAVE ANY RIGHT OF ACTION AGAINST THE  
CITY, TOWN OR COUNTY CREATING SUCH  
PUBLIC CORPORATION, COMMISSION OR  
AUTHORITY ON ACCOUNT OF ANY DEBTS,  
OBLIGATIONS OR LIABILITIES OF SUCH PUBLIC  
CORPORATION, COMMISSION OR AUTHORITY.”

111307310.3 0070831- 00002

## **Northgate Transit Center/Affordable Housing Project Transaction**

Attachment 1	Legal Description of the Property
Attachment 2	Description/Depiction of AH Parcel
Attachment 3	Conceptual Site Plan Detail
Attachment 4	Form of Approval Notice
Attachment 5	Form of Ground Lease
Attachment 6	Development and Milestone Schedule
Attachment 7	Form of Memorandum of Ground Lease

Schedule 5.4-1	List of Design Team
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**Attachment 1 to Development Agreement - Legal Description of the Property**

**[see attached]**



Attachment I

Legal Description of Property

Tax Parcel No. 324204-9325:

Begin legal description:

THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE  
NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 26  
NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.

EXCEPT THAT PORTION THEREOF PLATTED IN EXECUTIVE PARK, ACCORDING TO  
THE PLAT THEREOF

RECORDED IN VOLUME 104 OF PLATS, PAGES 85 THROUGH 89, RECORDS OF KING  
COUNTY, WASHINGTON.

ALSO EXCEPT THE NORTH 30 FEET THEREOF FOR NORTHEAST 103RD STREET.

(ALSO BEING KNOWN AS PARCEL C OF LOT BOUNDARY ADJUSTMENT NO. 2305066  
RECORDED DECEMBER 23, 2004 UNDER RECORDING NO. 20041223900007.)

End legal description

Tax Parcel No. 322604-9003:

Begin legal description:

THAT PORTION OF THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST  
QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF  
SECTION 32, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY,  
WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF THE ABOVE  
DESCRIBED SUBDIVISION AND THE NORTH MARGIN OF NORTHEAST 100TH STREET;  
THENCE NORTH 88°16'50" WEST ALONG SAID NORTH MARGIN 119.23 FEET TO THE  
TRUE POINT OF

BEGINNING;

THENCE NORTH 0°36'30" EAST PARALLEL TO THE WEST LINE OF THE SOUTHWEST  
QUARTER OF SAID

SUBDIVISION 589.42 FEET TO A LINE 40 FEET SOUTH OF THE NORTH LINE OF SAID  
SUBDIVISION;

THENCE SOUTH 88°16'18" EAST PARALLEL TO SAID NORTH LINE 119.39 FEET TO THE  
EAST LINE OF THE WEST HALF OF THE EAST HALF OF SAID SUBDIVISION;

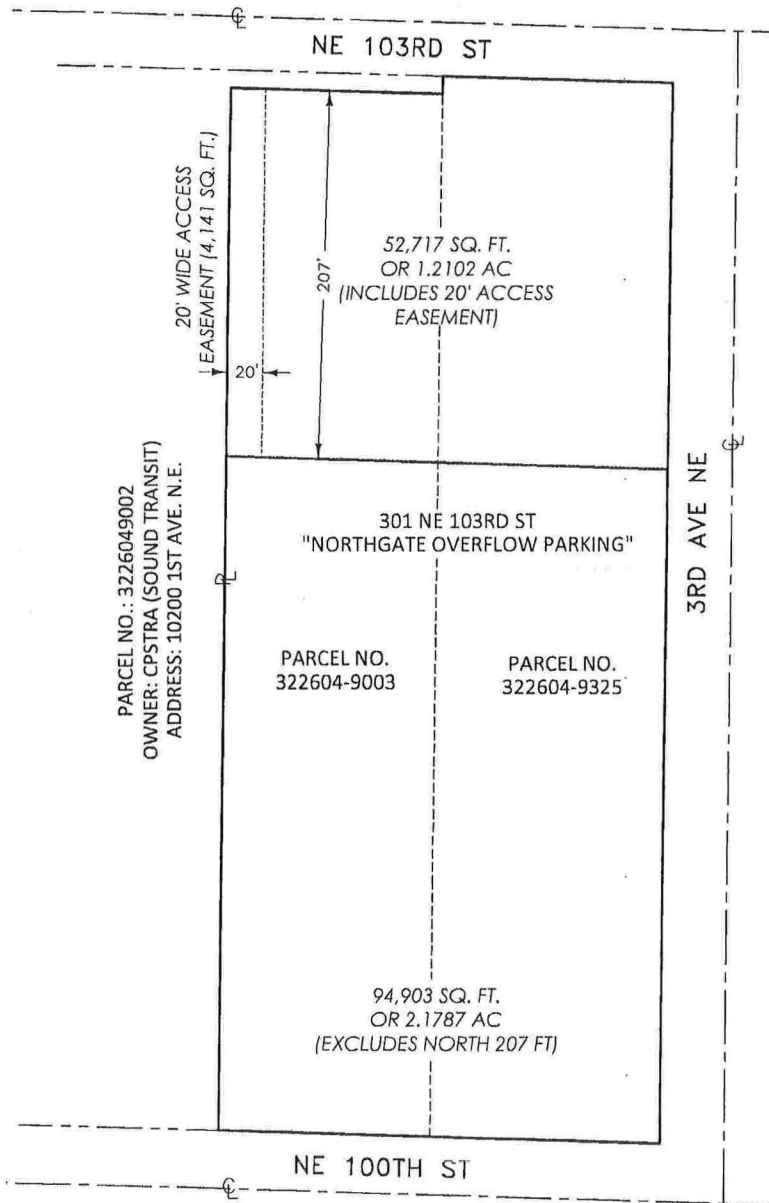
THENCE ALONG SAID EAST LINE SOUTH 0°37'27" WEST 589.40 FEET TO THE NORTH  
MARGIN OF NORTHEAST 100TH STREET;

THENCE ALONG SAID NORTH MARGIN NORTH 88°16'50" WEST 119.23 FEET TO THE  
TRUE POINT OF BEGINNING;

(ALSO KNOWN AS REVISED PARCEL B OF BOUNDARY LINE REVISION RECORDED  
AUGUST 15, 1989 UNDER RECORDING NO. 8908150721, BEING SUPERSEDED BY  
RECORDING NO. 8912121172.)

End legal description

# BRIDGE NORTHGATE AFFORDABLE HOUSING PARCEL EXHIBIT



1"=100'



**BUSH, ROED & HITCHINGS, INC.**  
LAND SURVEYORS & CIVIL ENGINEERS

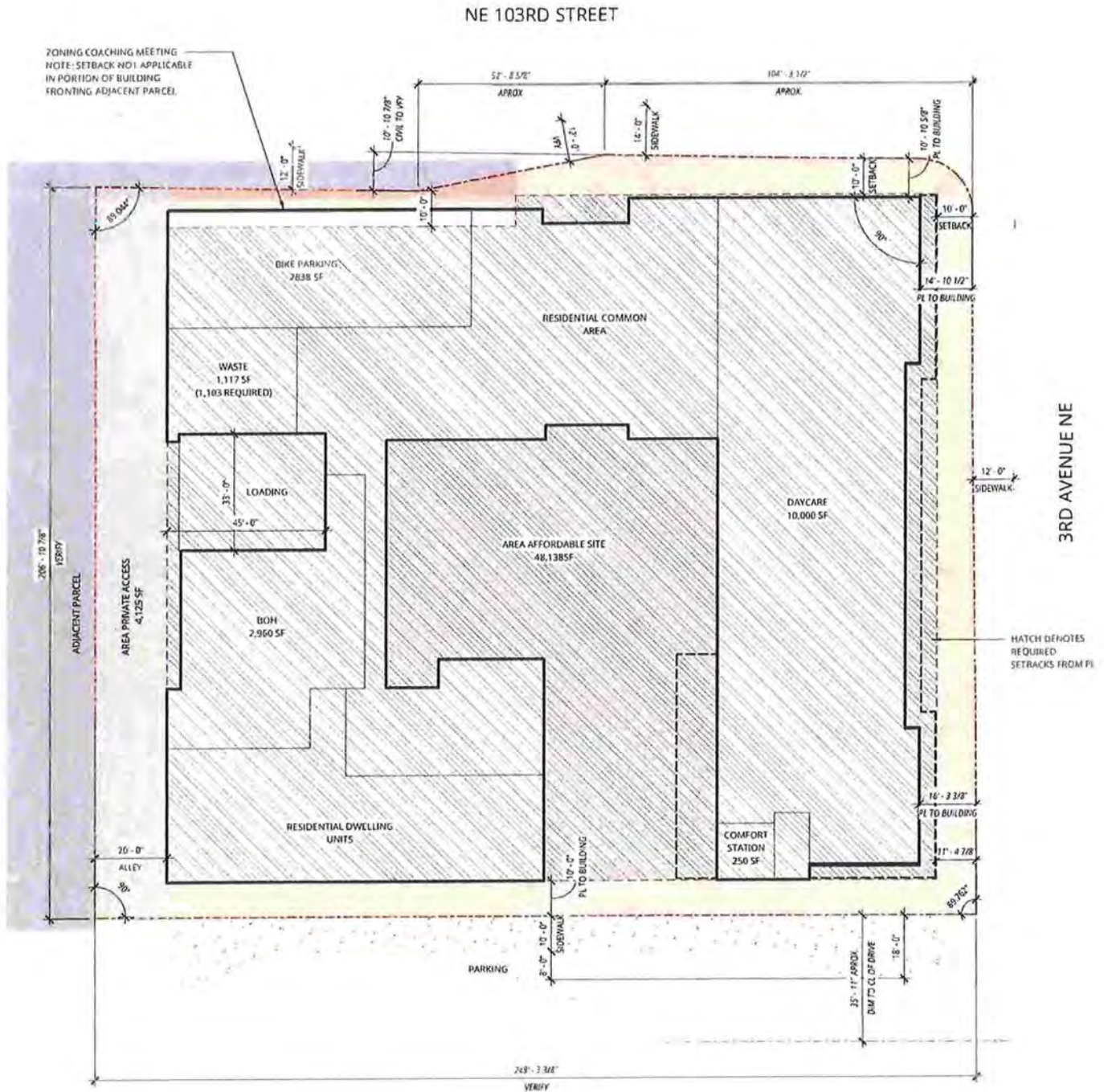
2009 MINOR AVE. EAST  
SEATTLE, Washington  
98102-3513

(206) 323-4144  
07/08/21  
2018234.01

**Attachment 2 to Development Agreement – Description/Depiction of AH Parcel**

**[see attached]**

# Attachment 2 - Description/Depiction of AH Parcel – Prepared by Surveyor

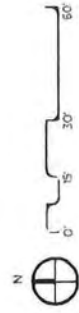
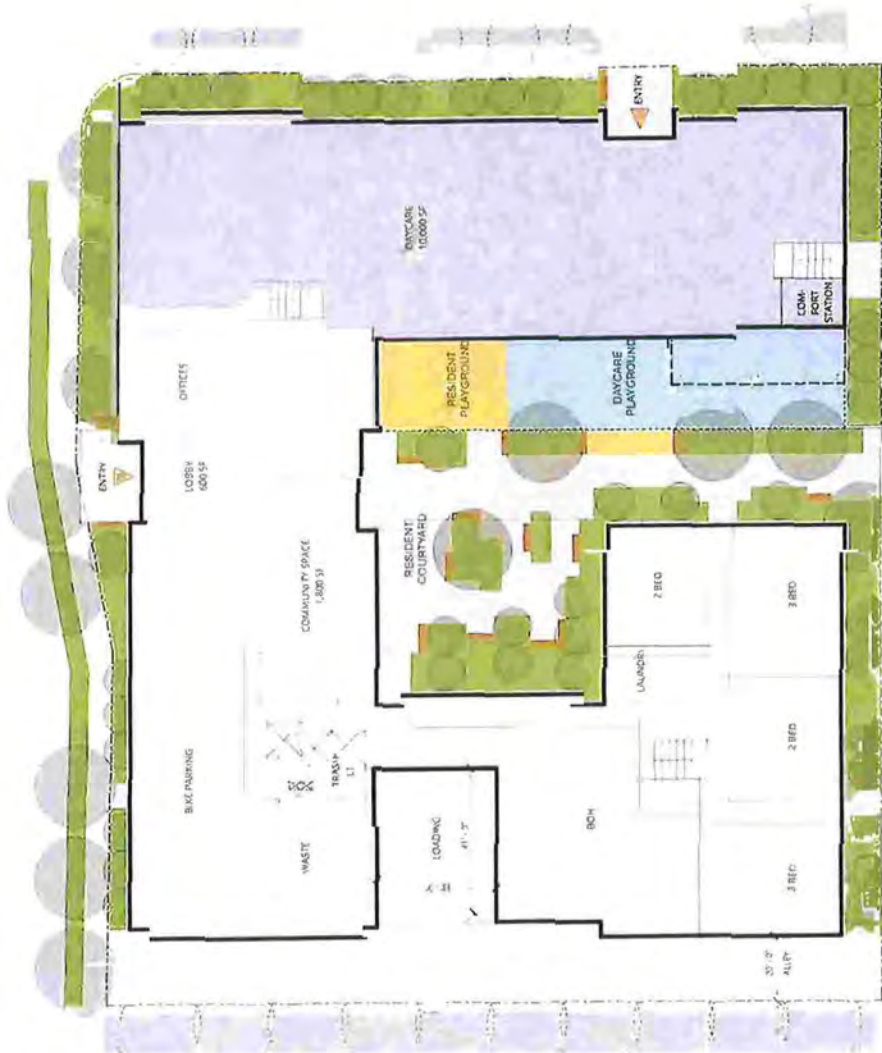


**Attachment 3 to Development Agreement – Conceptual Site Plan Detail**

**[see attached]**



Attachment 3 - Concept Site Plan Detail



**Attachment 4 to Development Agreement – Form of Approval Notice**

**[see attached]**

ATTACHMENT 4

FORM OF NOTICE OF APPROVAL OF DUE DILIGENCE INVESTIGATION

DATE: \_\_\_\_\_

THIS NOTICE OF APPROVAL is given as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, pursuant to that certain Entry, Due Diligence and Pre-Development Agreement executed on February 7, 2020, as thereafter extended, (the “**Due Diligence Agreement**”) by and between **Bridge Housing Corporation**, a California corporation and **Capitol Hill Housing Improvement Program**, a Washington public corporation (together “**Affordable Housing Developer**”) and **King County**, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle (“**KCM**”).

Pursuant to Section 8 of the Due Diligence Agreement, Affordable Housing Developer hereby gives notice of approval of the results of its Due Diligence Investigation (as defined in the Due Diligence Agreement), including approval of all title matters as set forth in Section 7 of the Due Diligence Agreement.

AFFORDABLE HOUSING DEVELOPER:

By:

**Bridge Housing Corporation**, a California corporation, Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Community Roots Housing**, a Washington public corporation, Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Attachment 5 to Development Agreement – Form of Ground Lease**

**[see attached]**

**GROUND LEASE**

*BETWEEN*

**KING COUNTY**

**as**

**“Landlord”**

*AND*

**NORTHGATE AFFORDABLE LLC**

**as**

**“Tenant”**



## GROUND LEASE

This GROUND LEASE (“**Lease**”) dated as of the \_\_\_\_ day of \_\_\_\_\_, 2021 is by and between KING COUNTY, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle (“**Landlord**”) and NORTHGATE AFFORDABLE LLC, a Washington limited liability company (“**Tenant**”).

### **P R E A M B L E:**

A. Landlord owns that certain real property situated in the City of Seattle, King County, State of Washington and legally described on **Exhibit A** (the “**Property**”). The Property together with adjacent parcels and public rights of way are depicted graphically on the Site Plan attached hereto as **Exhibit A-1**.

B. In 2018, Landlord issued that certain Request for Qualifications and Concepts (“**RFQ/C**”) No. 1207-18-VLN. Through the RFQ/C, Landlord sought proposals for the development of its Northgate Park & Pool lot, of which the Property is a part. Among other things, the RFQ/C required proposals to include a minimum of 200 units of subsidized affordable housing for a minimum of 50 years to serve households earning up to 60 percent of Area Median Income (“**AMI**”), with a mix of unit sizes and configurations, and with a minimum of 10% of the units to be “system connected,” serving very-low to extremely-low income households below 50% AMI. Landlord received three responses to the RFQ/C, including a response (“**RFQ/C Response**”) dated October 29, 2018, copies of which are on file with the Parties. The RFQ/C Response proposed to construct 232 affordable housing units as well as a 10,000 square-foot child care center for use by residents and possibly others. The RFQ/C Response and the other two responses were evaluated by a five-member evaluation committee as part of the RFQ/C’s competitive selection process. Based upon the commitments described in the RFQ/C Response, on November 19, 2018, Landlord selected the team that submitted the RFQ/C Response to negotiate a definitive agreement. After more than a year of negotiations, and as allowed under the terms of the RFQ/C, Landlord subsequently elected to terminate discussions regarding the market-rate element of the proposed development, and to focus instead on the affordable housing project element. Landlord and Tenant’s predecessors in interest thereafter negotiated the affordable housing project contemplated in this Lease.

C. Pursuant to the RFQ process, Landlord and BRIDGE Housing Corporation, a California nonprofit public benefit corporation (“**BRIDGE**”) and COMMUNITY ROOTS HOUSING, a Washington public corporation (“**CRH**”) (BRIDGE and CRH together constitute the “**Affordable Housing Developer**”) then entered into that certain (i) Entry, Due Diligence and Pre-Development Agreement made as of February 7, 2020 and extended from time to time (the “**Due Diligence Agreement**”), a copy of which is attached hereto as **Exhibit E**; and (ii) that certain Development Agreement made as of \_\_\_\_\_, 2021 (the “**Development Agreement**” a copy of which is attached hereto as **Exhibit F**. The Development Agreement and the Due Diligence Agreement are collectively referred to as the “**Existing Project Agreements**.”

D. Tenant understands and acknowledges that Landlord reserves the right and intends to develop the remainder of its Northgate Park & Pool lot, and, while that future development will be an entirely separate development, Tenant acknowledges its obligation to cooperate and act in good faith in its development and operation of the Project adjacent to and in anticipation of such future development.

E. Tenant understands and acknowledges that the Property and the Project adjoin an existing regional transit center as well as a significant light rail station and related transit facilities that serve the greater Northgate area and beyond. Tenant understands and acknowledges that the safe, efficient operation and maintenance of these transit facilities is a regional priority and that these transit uses will continue into the future. Tenant further understands and acknowledges that Landlord's exercise of its discretion under this Lease will be informed by Landlord's transit-related priorities and with the intention of protecting and preserving the existing and future use of Landlord's transit facilities as well as the neighboring light rail station and related facilities. Tenant acknowledges its obligation to cooperate and to act in good faith in its development and operation of the Project adjacent to and in coordination with existing and future uses of these transit facilities, all as more specifically set forth in this Lease.

F. The contingencies to "Closing" set forth in the Development Agreement (including without limitation completion of the Boundary Line Adjustment described therein which created the separate legal lot to be leased to Tenant as contemplated herein) having been satisfied, Landlord shall lease to Tenant and Tenant shall lease from Landlord a portion of the Property as legally described on Exhibit B (the "**Premises**") located in the City of Seattle, King County, State of Washington, having a street address of 10104 – 3rd Avenue NE, Seattle, WA, for a period of seventy five (75) years pursuant to the terms of this Lease.

G. Promptly following the Commencement Date (as defined below), and in strict accordance with all issued permits and approvals and the Design Documents approved by Landlord pursuant to the Development Agreement, Tenant will construct, develop and operate at the Premises a 232-unit subsidized, affordable housing project serving households with incomes of 60% or less of the area median income including a mix of at least 52 two or three-bedroom units and at least 24 units designated for system-connected households with incomes of 50% or less of the area median income (collectively, the "**Affordable Housing Units**") and certain accessory spaces, including approximately 9,750 square feet of nonresidential commercial space. The initial improvements to be constructed by Tenant hereunder are sometimes referred to hereafter as the "**Improvements**," and the Improvements, together with any subsequent Alterations (as defined below) and all fixtures and personal property used in connection therewith are hereafter collectively referred to as the "**Project**". Notwithstanding anything to the contrary elsewhere in this Lease, in no event shall the Project contain fewer than 200 Affordable Housing Units serving households with incomes of 60% or less of the area median income, of which units at least 20 shall be units for system-connected households with incomes of not more than 50 percent of the area median income (the "**Minimum Affordable Housing Unit Requirement**").

H. Landlord is authorized and empowered to lease the Premises to Tenant pursuant to RCW Sections 35.58.240 and RCW 36.34.135 and King County Code Sections 2.16.038, 4.56.060 and 4.56.150.

I. In RFQ/C No. 1207-18-VLN, Landlord indicated its intent to provide land to an affordable housing developer at little or no cost. In pursuit of that objective, Landlord and Tenant have negotiated a transaction in which Tenant will pay nominal rent so long as Tenant abides by the terms and conditions of this Lease and the Existing Project Agreements, including but not limited to Tenant's covenant to construct and operate the Project for the entire Term of this Lease to provide the Minimum Affordable Housing Unit Requirement consistent with all terms, conditions and requirements of this Lease and the Existing Project Agreements.

J. Each of Landlord and Tenant are individually referred to as a "**Party**" and collectively as "**Parties**" from time to time.

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

## **ARTICLE 1**

### **THE LEASE**

#### **Section 1.1 Leased Premises; Access and Glazing Easements.**

1.1.1 Subject to the terms and conditions hereof, Landlord hereby leases to Tenant the Premises.

1.1.2 The Parties acknowledge that Landlord intends to separately grant non-exclusive easements for access, utility, and glazing setback purposes to Tenant on a portion of the property to the west of the Premises, all as set forth in two (2) separate easement instruments (the "**Access Easement**" and the "**Glazing Easement**"), the forms of which are attached for the sake of convenience as **Exhibit G-1** and **Exhibit G-2**. The Parties anticipate that any such Access Easement and Glazing Easement will remain in effect throughout the Term of this Lease and that the Access Easement will, among other things, provide access to the Property via the route described thereon as set forth in such Access Easement. However, any such Access Easement and Glazing Easement are not a part of this Lease and are not subject to or governed by this Lease, and any changes, modifications, or amendments to such Access Easement or Glazing Easement shall be subject to and be governed by such Access Easement or Glazing Easement, as applicable.

Section 1.2 **Term.** The term of this Lease shall commence on the date that the Memorandum of Lease in the form attached hereto as **Exhibit D** is recorded in the real property records of King County, Washington (the "**Commencement Date**"), and unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a term

("Term") expiring on the last day of the calendar month in which the seventy-fifth (75<sup>th</sup>) anniversary of the Commencement Date occurs (the "Expiration Date"). Landlord shall deliver exclusive possession of the Premises to Tenant on the Commencement Date.

### Section 1.3 Use.

1.3.1 Uses Limited. Tenant shall use the Premises solely for the development, construction and operation of the Project. No other uses, activities or operations, shall be conducted by the Tenant on or from the Premises without first obtaining the written consent of Landlord. Tenant shall obtain and maintain, at its sole cost and expense, any and all licenses and permits necessary for Tenant's contemplated use of the Premises. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action which would constitute a nuisance or which would disturb or endanger any other tenants or occupants of the Property or of any adjacent parcels owned by Landlord, or unreasonably interfere with such other tenants' or occupants' use of their respective spaces. Tenant agrees not to do or permit anything to be done in or about the Premises which will in any manner obstruct or interfere with the rights of other tenants or occupants of the Property, or injure or unreasonably annoy them, or use or allow the Premises to be used for any unlawful or unreasonably objectionable purpose. Tenant shall neither commit nor suffer any waste to the Premises.

1.3.2 Tenant to Comply with Development Agreement. In using the Premises, Tenant will comply with the Development Agreement and all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction. Tenant specifically agrees to comply and pay all costs associated with achieving such compliance without any notice from Landlord, and further agrees that Landlord does not waive the requirements of this section by giving notice of demand for compliance in any instance.

### Section 1.4 Rent.

1.4.1 GENERAL. In consideration of the restrictions and limitations set forth herein and in the Existing Project Documents including without limitation Tenant's obligation to construct and operate the Project for the entire Term of this Lease to provide the Minimum Affordable Housing Unit Requirement consistent with all terms, conditions and requirements of this Lease and the Existing Project Agreements, annual rent shall be One and 00/100 Dollars (\$1.00) per year which shall be prepaid for the entire Term at Closing as defined in the Development Agreement.

1.4.2 RENT PAYMENT ADDRESS. All payments (Rent or otherwise) due from Tenant hereunder shall be payable to \_\_\_\_\_ and are to be received at the following address:

[Insert payment info]

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#### Section 1.5 Tenant Taking Premises “As-Is-Where-Is.”

1.5.1 Tenant has made a thorough, independent examination of the Premises and all matters relevant to Tenant’s decision to enter into this Lease and develop the Project. Tenant expressly acknowledges and agrees that, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE PREMISES, THE PROPERTY OR ANY PORTION THEREOF, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE CONDUCT OF TENANT’S BUSINESS. Tenant acknowledges that, as of the Commencement Date, Tenant will have carefully inspected the Premises, including by performing its due diligence reviews and investigations pursuant to the Due Diligence Agreement and the Development Agreement, and by executing this Lease. Therefore, except as set forth elsewhere in this Lease (including without limitation in Section 8.1 below), Tenant accepts the Premises on an “AS IS” and “WHERE IS” basis, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of Landlord, or any person on behalf of Landlord, regarding the Premises, Property, or matters affecting the Premises or Property or Tenant’s proposed Project, including, without limitation:

(i) Physical Condition. The physical condition of the Premises and any adjacent portions of the Property, including the quality, nature, adequacy, and physical condition of (1) any systems, facilities, access, adjacent uses, and/or landscaping; (2) the air, soils, geology, and groundwater, including but not limited to the presence of peat or other organic matter; (3) the suitability of the Premises for construction of any improvements or any activities or uses that Tenant may elect to conduct on the Premises, or (4) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the Premises for building or any other purpose;

(ii) Existing Improvements and Installations. The quality, nature, adequacy, and physical condition of all existing at- and below-grade improvements and installations at the Premises, including but not limited to engineering characteristics, appurtenances, access, landscaping, paving, drainage, and parking facilities;

(iii) Title. Title to the Premises and/or the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, or other title condition affecting the Premises, whether or not of record, including without limitation the existence of



any easements, rights of ways or other rights across, to or in other properties that might burden or benefit the Premises;

(iv) Compliance/Zoning. The development potential and/or availability of any necessary permits or approvals (or conditions thereon) for development of the Premises and/or the zoning, comprehensive plan, land use, or other legal status of the Premises, or compliance with any public or private restrictions on the use of the Premises, as the same are in effect as of the date of mutual execution hereof or the Commencement Date, or may be thereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance of the Premises with any applicable laws;

(v) Hazardous Materials. The presence or removal of Hazardous Materials (as defined in Article 14 below) in, under or about, or emanating from or migrating to, the Premises, the Property, or on any other property;

(vi) Economic Feasibility. Economic conditions or projections, market data, or other aspects of the economic feasibility of the Project and/or any business Tenant intends to conduct on the Premises;

(vii) Utilities. The availability, existence, quality, nature, adequacy and physical condition of utilities serving the Premises;

(viii) Suitability. The use, habitability, merchantability, fitness, suitability, value or adequacy of the Premises for any particular purpose (including, without limitation, the Project);

(ix) Boundaries. The boundaries of the Premises, the location of any improvements on the Premises, and/or the existence of any encroachments onto or from any adjacent lands, including the Property;

(x) Access. Vehicular and/or pedestrian access to the Premises, including from or through any particular route; and

(xi) Other Matters. Any other matter not referenced above that pertains to the Premises.

1.5.2 Tenant's Due Diligence. Tenant acknowledges: (1) Tenant is a sophisticated real estate developer with sufficient experience and expertise in the development and operation of affordable housing projects, and will hire or have the opportunity to hire consultants with sufficient experience and expertise, to evaluate the Premises and the risks associated with acquiring a leasehold interest in the Premises; (2) Tenant will have received sufficient information and had adequate time to make such an evaluation; (3) Tenant enters into this Lease with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, archeological, economic and legal condition of

the Premises; and (4) in connection with its investigations and inspections of the Premises, including by performing its due diligence reviews and investigations pursuant to the Due Diligence Agreement and the Development Agreement, Tenant will have the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, and archeologists to conduct such environmental, land use, permitting, geological, soil, hydrology, seismic, archeological, physical, structural, mechanical and other inspections of the Premises as Tenant deems to be necessary, and Tenant will review thoroughly the reports of such advisors and consultants, as well as all materials and other information given or made available to Tenant by Landlord or governmental authorities. Tenant further acknowledges that it has not and will not receive from or on behalf of Landlord any accounting, tax, legal, architectural, engineering, archeological, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, archeological, property management and other advisors. Tenant will satisfy itself as to such suitability and other pertinent matters by Tenant's own inquiries and tests into all matters relevant in determining whether to enter into this Lease.

1.5.3 Release of Landlord and Landlord Parties. Tenant, on behalf of itself, its directors, officers, representatives, employees and agents (the "**Tenant Parties**"), hereby waives, releases, acquits and forever discharges Landlord and all of its affiliated organizations, and its employees, representatives, agents, consultants, contractors and subcontractors (the "**Landlord Parties**"), of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Tenant or any Tenant Parties now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the Premises, provided however, that such release shall not apply or extend to (1) the express representation, warranties, covenants and obligations of Landlord under this Lease, or (2) the affirmative obligations of Landlord under this Lease. Tenant's release of Landlord under this Section 1.5.3 is in addition to any release provisions set forth in the Existing Project Agreements.

**Tenant Initials:** \_\_\_\_\_

## **ARTICLE 2**

### **OWNERSHIP**

### **PERMITS AND LICENSES**

Section 2.1 Ownership of the Project. Landlord acknowledges and agrees that the Project, including the Improvements and all subsequent Alterations thereto and replacements thereof and all appurtenances thereto, fixtures, machinery and equipment installed on the Premises, shall be owned solely by Tenant. During the Term and for the tax years during which the Term begins, Tenant shall be entitled to any and all tax attributes of ownership of the Project, including, without limitation, the right to claim depreciation or cost recovery deductions, the

right to claim any tax credits authorized by the Internal Revenue Code, and the right to amortize all capital costs and to claim any and all other federal or state tax benefits attributable to the Project.

Section 2.2 Permits and Licenses. All building permits and other permits, licenses, permissions, consents, and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Project (including the MUP and all permits included in the definition of "Design Documents" in the Development Agreement) and any subsequent improvements, repairs, replacements, or renewals to the Project shall be acquired as required by applicable laws, ordinances, or regulations by and at the sole cost and expense of Tenant.

Section 2.3 Project Design and Development. Tenant's initial design, development, and permitting of the Project shall comply with the Existing Project Agreements. Any changes proposed by Tenant to the approved Documents, Development Schedule, Conceptual Site Plan Detail, Schematic Design Documents, Design Development Documents, Construction Documents, and MUP (as such terms are defined in the Development Agreement) shall be subject to Landlord's prior approval pursuant to the applicable review standards as to each such item set forth in the Development Agreement, which shall control. All design and pre-development expenses for the Project shall be borne solely by Tenant.

Section 2.4 Construction of the Project. Upon issuance of the MUP and all other shoring, grading, demolition, and building permits required for construction of the Project, and upon Tenant having received financing commitments from Project funders satisfactory to Affordable Housing Developer in its sole discretion, Tenant shall substantially commence construction of the Project and shall diligently prosecute such work to completion, provided that Tenant must obtain a temporary or permanent certificate of occupancy for the Project on or before the applicable deadline set forth in the Development Agreement; and Tenant's failure to do so shall constitute a material default under this Lease, provided that notwithstanding any other provisions herein, a Leasehold Mortgagee or Lessee's Limited Partner and their successors and assigns shall have not less than one hundred and eighty (180) days from the schedule completion date to complete construction of the Project. All work on the Premises during the Term shall be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and representatives of such agencies having jurisdiction. Tenant shall contract with an experienced, qualified general contractor for construction of the Project. Tenant or the Contractor shall obtain and maintain in force at all times during which construction is in progress at the Premises builder's risk insurance and such other insurance as may be required under Article 5. From and after the commencement of any construction and through the completion date thereof, Tenant shall provide or cause to be provided monthly progress reports to Landlord, including without limitation a current construction schedule, revised expected completion date, a summary of all change orders approved by Tenant subsequent to the preceding monthly progress report, and notice of any laborer's or materialmen's liens filed or threatened against the Premises or the Project. Within three (3) months following the final completion date of the Project (including all "punch-list" items), Tenant shall deliver to Landlord copies of: (i) all final permits

(including without limitation the MUP, shoring/grading permits, and building permit); and (ii) a copy of as-built drawings (which may consist of the final approved Construction Documents annotated with field notes identifying all changes made thereto in the course of construction) in electronic and hard-copy format as required by the Landlord.

Section 2.5 Construction Bonds. Prior to commencing construction of any Improvements or subsequent Alterations, Tenant shall furnish to Landlord a General Contractor's performance and payment surety bond in the amount of the total estimated construction costs for the Improvements or Alterations, as applicable. The Performance and Payment surety bond shall be acceptable to Landlord in its commercially reasonable discretion and shall identify Landlord as a dual obligee.

### **ARTICLE 3** **LIENS**

#### Section 3.1 Easements and Covenants against Fee Title and Leasehold Interests.

3.1.1 Landlord expressly acknowledges that Tenant's development of the Project may require the recording of utility easements and other customary easements necessary and incidental to the development, construction and operation of the Project, provided that all of the foregoing shall be subject to the reasonable prior approval of Landlord and shall not subject Landlord, any Landlord Parties, the Landlord's estate and interest in this Lease and the Premises, the Landlord's estate and interest in the remainder of the Property, or the Landlord's estate or interest in any other property in the vicinity of the Premises to any material adverse impacts or costs.

3.1.2 Landlord further acknowledges that Tenant is obtaining a portion of its financing for development of the Project through an allocation of low income housing tax credits, the issuance of tax exempt bonds and other private and public funding sources (the "**Funding Sources**") and that such Funding Sources may require that commercially reasonable covenants and regulatory agreements restricting the use of the Project for low income housing (the "**Covenants**") be recorded against Tenant's leasehold interest in the Premises. Tenant covenants and agrees that except for the Regulatory Agreement (Extended Use Agreement) and any covenant required for federal tax purposes to qualify the Project for tax-exempt bond financing (collectively the "**Regulatory Agreements**"), no Covenants or any other documentation or agreements relating to or required by Tenant's Funding Sources shall bind or encumber the Landlord's fee interest in the Premises or the Property. Landlord shall execute the Regulatory Agreements in recordable form for recordation against Landlord's fee interest in the Property at Closing, subject to the terms and conditions set forth in Section 3.1.3.

3.1.3 Tenant's right to subject Landlord's fee estate in the Premises or Property to any Regulatory Agreement and Landlord's obligation to execute any such Regulatory Agreement are further subject to and conditioned on each such Regulatory Agreement containing language to the effect that:



- (i) Landlord shall be obligated to execute any Regulatory Agreement only to the extent required to meet the requirements of Section 42 or Section 142(d) of the Internal Revenue Code such that such Regulatory Agreement shall be an enforceable covenant against the Premises and Property;
- (ii) Landlord shall execute such Regulatory Agreement only in its capacity as the ground lessor of the Premises and Property, and not as the "Owner" of the Project;
- (iii) The Regulatory Agreement shall expressly provide that Landlord shall have no liability under the Regulatory Agreement, and nothing therein shall obligate Landlord to make any payment to or to indemnify the housing credit agency or other grantee under such Regulatory Agreement (any such entity, the "**Agency**") or any other third party, or to pay any amounts due before, during or following a default by Tenant thereunder, or be subject to any other rights remedies of Agency or any other third party pursuant to Section 8.2 thereunder, unless and until (A) this Lease has been terminated, and (B) Landlord has succeeded to the Tenant's interest in the Project and is liable as a Successor Indemnitor under the Regulatory Agreement;
- (iv) In the event Landlord is deemed a successor to Tenant under the Regulatory Agreement, Landlord's cure period in which to correct any Noncompliance thereunder shall not commence until the earlier of (A) the date on which Landlord obtains control of the Project, or (B) the effective date of termination of this Lease; and
- (v) For all purposes under the Regulatory Agreement, a termination of this Lease due to an uncured default by Tenant thereunder shall be deemed a "foreclosure" for purposes of rendering Landlord as a "successor" to Tenant under such Regulatory Agreement.

3.1.4 In the event of any conflict between the Development Agreement and this Lease, the Lease shall control.

Section 3.2 Mechanics' Liens. It is understood and agreed that Landlord's interest in the Premises and the Property is public property that is not subject to any lien and therefore this Lease is executed and delivered upon the express condition that Tenant will not and cannot contract any debt or debts for labor, materials, services, or otherwise which will or may become a lien against the interest of Landlord in the Premises or the Property, and Landlord hereby denies to Tenant any right, power, or authority to do any act, or contract any obligation or liability which would in any way subject the interest of Landlord in the Premises to any lien, claim, or demand whatsoever. Tenant agrees that it will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against Landlord's fee simple interest in the Premises for work or materials furnished to Tenant in connection with any construction, improvements, maintenance, or repair thereof made by Tenant or its agents upon the Premises. Tenant shall cause any such claim or lien to be fully discharged within thirty (30) days after the date of filing thereof; provided, however, that in

the event Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall give to Landlord such security as Landlord may reasonably require to ensure payment thereof and prevent any sale, foreclosure, or forfeiture of the Premises or any portion thereof by reason of such nonpayment, including without limitation recording a bond which complies with the requirements of RCW 60.04.161, Tenant shall not be deemed to be in breach of this Section 3.2, so long as Tenant is diligently pursuing a resolution of such dispute. Upon entry of final judgment resolving the dispute, if litigation or arbitration results therefrom, Tenant shall discharge said lien within thirty (30) days. In the event Tenant shall fail to so remove, discharge, bond around any such lien, Landlord may take such action as it shall reasonably determine to remove such lien and all costs and expenses incurred by Landlord including, without limitation, amounts paid in good faith settlement of such lien and attorneys' fees and costs, shall be paid by Tenant to Landlord together with interest thereon at the Default Rate from the date advanced until paid. Tenant's obligations pursuant to this Section 3.2 shall survive the expiration or earlier termination of this Lease.

#### **ARTICLE 4** **TAXES: UTILITIES**

##### **Section 4.1 Taxes.**

4.1.1 Tenant shall pay before they become delinquent all real property taxes assessed or levied against the Project, including the Project and all other improvements located on the Premises from time to time. Tenant shall also pay all personal property taxes assessed or levied against the equipment, machinery, fixtures, furniture, and furnishings thereon and any and all other charges, fees or costs imposed by any governmental or quasi-governmental entity or utility. Tenant shall have the right in good faith, in a proper procedural manner, and at its sole cost, to contest and resist any taxes or assessments or other dispositions levied against or imposed upon the Premises and Project. Tenant shall defend and indemnify Landlord from any and all taxes incurred during the term of this Lease.

4.1.2 Landlord or any other party occupying any portion of the Property other than the Premises, the Project, and Tenant's leasehold estate created under this Lease, shall pay before they become delinquent all real property taxes assessed or levied against such and any improvements, equipment, machinery, fixtures, furniture, and furnishings relating and any and all other charges, fees or costs imposed by any governmental or quasi-governmental entity or utility assessed against any portion of the Property other than the Premises, Project, and Tenant's leasehold estate created under this Lease, and shall defend and indemnify Tenant from any and all such taxes incurred.

4.1.3 Tenant shall be responsible to pay any statutory leasehold excise tax imposed in connection with this Lease pursuant to Chapter 82.29A RCW as now enacted or hereafter amended; PROVIDED, however, that Tenant shall have the right in good faith, in a proper procedural manner, and at its sole cost, to contest and resist any leasehold excise tax levied against or imposed upon the Premises and Project; PROVIDED further, that, if the



Washington State Department of Revenue or other applicable Washington State authority shall conclusively determine that leasehold excise tax is or may become payable in connection herewith, then upon receiving notice of such determination Tenant shall remit to Landlord in addition to the Rent the estimated calculation of such leasehold excise tax on a monthly basis on the first (1<sup>st</sup>) day of each subsequent month, and shall include in its first monthly payment thereof any leasehold excise taxes allocable to any prior period falling within the Term. Without limiting the provisions of Section 4.1.2, Tenant shall defend and indemnify Landlord from any and all leasehold excise taxes incurred during the Term of this Lease.

Section 4.2 Utilities. Tenant shall arrange for and pay before they become delinquent all connection fees and usage charges for utility services furnished to the Premises and Project, including, but not limited to, electricity, gas, water, sewer, telephone and trash collection. Landlord shall have no responsibility for the payment of any utility costs, fees, or charges. Tenant shall defend and indemnify Landlord from any and all such costs, fees, or charges incurred during the Term of this Lease.

## **ARTICLE 5** **INSURANCE**

Section 5.1 Tenant's Insurance. During the Term, Tenant shall keep and maintain in force, at no cost or expense to Landlord, the following minimum insurance types and limits:

5.1.1 Property Insurance. "All risk" or "Special Form" property insurance covering all risks of physical loss or damage to the Project, with liability limits of not less than one hundred percent (100%) of the "full replacement value" thereof. Such policies shall be broad form and shall include, but shall not be limited to, coverage for fire, extended coverage, vandalism, malicious mischief and storm and, if required by other Project lenders and/or the Limited Partner, earthquake and flood (provided the limits of flood coverage may be a reasonable amount that is less than full replacement value). Business interruption coverage shall be provided for at least twelve (12) months' worth of estimated operating expenses and Rent following a loss from a covered peril. Landlord shall be named as loss payee on Tenant's property insurance as its interests may appear.

5.1.2 Commercial General Liability Insurance. Commercial general liability insurance, covering loss or damage resulting from accidents or occurrences on or about or in connection with the Project or any work, matters or things under, or in connection with, or related to this Lease, with personal injury, death and property damage combined single limit liability of not less than Five Million Dollars (\$5,000,000) for each occurrence. Coverage under any such policy shall be broad form and shall include, but shall not be limited to, operations, contractual, elevators, owner's and contractor's protective, products and completed operations. This limit may be achieved through the use of umbrella/excess liability policy(ies).

5.1.3 Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering BUSINESS AUTO COVERAGE, symbol 1 “any auto” (if applicable); or the combination of symbols 2 (if applicable), 8, and 9. The policy shall provide a \$5,000,000 combined single limit per accident. This limit may be achieved through the use of umbrella/excess liability policy(ies).

5.1.4 Worker’s Compensation. Coverage shall be at least as broad as Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or “other States” State Law.

5.1.5 Employer’s Liability or “Stop Gap”. Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy.

5.1.6 Additional Insured Endorsements. Landlord and its officers, officials, employees and agents are to be covered as additional insureds for full coverage and policy limits on Tenant’s liability policies (except Worker’s Compensation coverage) as respects liability arising out of activities performed by or on behalf of Tenant in connection with this Lease.

5.1.7 Construction Insurance. Prior to commencement of any construction and until construction is complete and accepted by Tenant, Tenant shall cause its construction general contractor to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to said construction; the cost of such insurance shall be paid by Tenant and/or any of Tenant’s contractors. Prior to commencement of construction, Tenant shall furnish Landlord with certificate(s) of the required insurance policies and endorsement(s) complying with the requirements of this Article 5. Alternatively, Tenant may obtain liability insurance coverage during construction of the Project through an Owner Controlled Insurance Program (“OCIP”) policy.

(i) General Liability. \$10,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$10,000,000 aggregate limit. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 or its substantive equivalent, including coverage for Products and Completed Operations. Coverage shall not exclude explosion collapse and underground damage (XCU). Limit may be achieved through the use of umbrella/excess liability policy(ies)

(ii) Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering BUSINESS AUTO COVERAGE, symbol 1 “any auto” (if applicable); or the combination of symbols 2 (if applicable), 8, and 9. Policy shall provide \$5,000,000 combined single limit per accident. If the work involves the

transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90. Limit may be achieved through the use of umbrella/excess liability policy(ies)

(iii) Builder's Risk. Tenant shall procure and maintain, or cause its general contractor to procure and maintain, during the life of the construction contract, or until acceptance of the work by Tenant, whichever is later, "All Risk" or "Special Form" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and, if required by other Project lenders and/or the Limited Partner, include earthquake and flood. The policy shall be endorsed to cover the interests, as they may appear, of Tenant (first named insured), Landlord (loss payee), and the general contractor (additional insured). . In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the contract and acceptance of the work by Tenant, Tenant shall require the contractor to promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse Tenant or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the construction contract.

(iv) Workers' Compensation. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

(v) Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

(vi) Professional Liability Errors and Omissions. In the event that services delivered pursuant to such construction either directly or indirectly involve or require professional services, Professional Liability Errors and Omissions coverage shall be provide at a limit of \$1,000,000 per claim and in the aggregate.

(vii) Contractor's Pollution Liability. \$1,000,000 per claim/aggregate. Tenant and/or its contractor shall provide contractor's pollution liability coverage to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed. If asbestos, lead or PCBs are a potential exposure, such insurance shall not exclude pollution arising out of such substances.

Section 5.2 General Requirements. All policies described in Section 5.1 shall include Landlord and any Leasehold Mortgagees, as additional insureds for full coverage and policy limits under the general, automobile, and pollution liability policies and as loss payees under the property policies (including builder's risk), as their respective interests may appear. All policies described in Section 5.1 shall be issued by insurance companies permitted to issue policies in the State of Washington and having a Best's rating of at least "A/VIII", shall be written on an "occurrence" form (claims-made policies are not acceptable except for pollution and professional liability policies), and shall contain or be endorsed to provide: (a) an agreement that such policies are primary and non-contributing with any insurance that may be carried by Landlord, and any insurance and/or self-insurance maintained by Landlord or its officers, officials, employees or agents shall not contribute with Tenant's insurance or benefit Tenant in any way; (c) a provision that no act or omission of the Tenant shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (d) a waiver by the insurer of all rights of subrogation against the Landlord and its authorized parties in connection with any loss or damage thereby insured against; (e) an acknowledgement that Tenant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability; and (f) terms providing that any loss covered by such insurance shall be adjusted with the Landlord, but shall, to the extent required by the loan documents of any Leasehold Mortgage, be payable to the holder of any Leasehold Mortgage, who shall agree to receive and disburse all proceeds of such insurance, subject to the duty of the Tenant to repair or restore the Project. Coverage shall not be suspended, voided, canceled, or reduced in scope or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior written notice has been given to the Landlord and applicable Leasehold Mortgagee(s), which notice may be provided by Tenant. If at any time, any of the foregoing policies shall not be in compliance with the requirements herein, Tenant shall, upon written notice from Landlord, obtain a new policy as promptly as practicable, and shall submit the same to Landlord, with the appropriate certificates and endorsements for approval. Any deductibles or self-insured retentions must be declared to Landlord, and Tenant's deductible and or self-insured retentions shall not limit or apply to Tenant's liability to Landlord and shall be the sole responsibility of Tenant. By requiring such minimum insurance hereunder, Landlord shall not be deemed or construed to have assessed the risks that may be applicable to Tenant under this Lease, and Tenant shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Section 5.3 Evidence of Insurance. Certificates of insurance and required endorsements for all insurance required to be maintained by Tenant under this Article 5 shall be furnished by Tenant to Landlord prior to the Commencement Date and at least ten (10) days prior to expiration of any such policies. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by Landlord and are to be received and approved by Landlord prior to the commencement of activities associated with the Lease. Tenant shall also provide copies of required policies to Landlord within ten (10) days after the latter's request.



Section 5.4 Waiver of Subrogation. To the extent any loss is required to be covered by property and/or builder's risk insurance required in this Article 5 or elsewhere in this Lease, or is actually covered by property insurance carried by a party, Landlord and Tenant hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under the other by way of subrogation or otherwise) for any loss or damage to real or personal property on the Premises caused by fire or any other insured peril, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible, provided that the foregoing waivers shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of Landlord or Tenant.

Section 5.5 Periodic Adjustment of Tenant's Insurance Requirements. Due to the length of the Term of this Lease, the Parties agree that this Article 5 may, at the discretion of Landlord, be reviewed and adjusted within ninety (90) days of the end of each five (5) year anniversary of the Commencement Date hereof. Any adjustments made by Landlord with regard to limits, scope and types of insurance, shall be in accordance with such insurance customary for similar multifamily housing projects in the Seattle – King County geographical area and shall be effective on the first day of each successive five (5) year period. Adjustment, if any, in insurance premium(s) shall be the responsibility of Tenant. Any failure by Landlord to exercise its right to review and adjust at any of the aforementioned adjustment periods shall not constitute a waiver of future review and adjustment timings. Nothing contained within this Section 5.5 shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this Section 5.5 shall affect and/or alter the application of any other provision contained within this Lease. Notwithstanding the foregoing, in no event shall Tenant be required to carry flood insurance covering the Premises if such coverage is not commercially available.

Section 5.6 Tenant's Failure to Carry Insurance. If Tenant at any time during the Term fails to procure or maintain insurance required hereunder or to pay the premiums therefor, and such failure continues for five (5) business days after written notice from Landlord, Landlord shall have the right to procure the same and to pay any and all premiums thereon, and any amounts paid by Landlord in connection with the acquisition of insurance shall be immediately due and payable as additional rent, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, including interest at the Default Rate defined below until paid.

## **ARTICLE 6**

### **MAINTENANCE AND ALTERATIONS**

Section 6.1 Maintenance of Leased Premises. In addition to the provisions of Section 6.3 below, during the Term, at Tenant's sole cost and expense, Tenant shall keep and maintain the Premises, the Project and all appurtenances thereunto belonging, in good and safe order,

condition and repair. Tenant shall be responsible for any repairs and replacements, whether structural or nonstructural, ordinary or extraordinary, necessary to maintain the Premises and the Project. At Tenant's own expense, Tenant shall keep and maintain the Premises and the Project in compliance with the Existing Project Agreements and all applicable laws, rules, regulations and ordinances of all federal, state, county, municipal and other public authorities having or claiming jurisdiction. Additionally, Tenant shall protect against and refrain from creating or allowing the creation of a recognized hazardous environmental condition. During the Term, Tenant, at Tenant's sole cost and expense, shall take all actions necessary to eliminate, remove, remediate or otherwise clean up any recognized hazardous environmental condition, provided however, that to the extent that such hazardous environmental condition is the responsibility of the Landlord under Section 5.7.4 of the Development Agreement, the Landlord shall take all actions necessary to eliminate, remove, remediate or otherwise clean up such hazardous environmental condition. Save and except as provided in Section 5.7.4 of the Development Agreement, Landlord shall have no obligation to Tenant to make any changes or improvements, or to incur any expenses whatsoever for the maintenance, monitoring, repair or remediation of the Premises or the Project.

Section 6.2 Alterations to Leased Premises. Subject to the permitted uses of the Premises set forth in Section 1.3, following initial construction of the Project as contemplated in Article 2 above, Tenant shall make no additions, alterations or changes in or to the Project (1) with respect to the Project footprint, or (2) that impact the Comfort Station described in Section 6.3.1 below, or (3) that impact Landlord's use of any adjacent property by the Landlord or Landlord's use of the Reserved Access Rights ("**Alterations**") unless such Alterations: (A) are consistent with the Minimum Affordable Housing Unit Requirement, and (B) are approved by Landlord in its reasonable discretion. Any disputes with respect to such changes shall be subject to the Dispute Process described in the Development Agreement to resolve disagreements in connection therewith, as more particularly described in the Development Agreement. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's sole cost and expense, payment and performance bonds in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of any proposed Alterations, including all costs for materials, labor, and supplies. Within three (3) months following final completion date of any Alterations (including all "punch-list" items), Tenant shall deliver to Landlord copies of: (i) all final permits (including without limitation any building permit); and (ii) a copy of as-built drawings for the Alterations (which may consist of the final drawings for the Alterations annotated with field notes identifying all changes made thereto in the course of construction) in electronic and hard-copy format as required by the Landlord.

### Section 6.3 Landlord's Rights.

6.3.1 Comfort Station. Consistent with the Development Agreement, Tenant shall design and construct, and Landlord may accept and have the exclusive right to use at all times a portion of the Premises labeled "**Comfort Station**" on the Site Plan attached hereto as **Exhibit A-1**. If Landlord accepts the completed Comfort Station as provided under the Development Agreement, then, from and after the date of acceptance, the use, operation, maintenance, repair, and improvement of the interior of the Comfort Station shall be



Landlord's responsibility at its sole cost and expense, as more particularly set forth in the "**Comfort Station Sublease**" attached hereto as **Exhibit I** attached hereto.

6.3.2 Landlord's Reserved Access Rights. Landlord reserves for itself, its transit customers, and the public the right to enter, use, and cross all outdoor public spaces within the Premises. Landlord further reserves the right, on an emergency, to drive and park Transit supervisor, security/first responder, or maintenance vehicles, but not coaches or buses, on those outdoor portions of the Premises that are designed and constructed for vehicle use.

## **ARTICLE 7**

### **PERMITTED MORTGAGES**

Section 7.1 Leasehold Mortgage Provisions. Tenant intends that the development of the Project be financed with various public and private debt and/or grants, which funding may be secured by leasehold mortgages ("**Leasehold Mortgages**"). "**Leasehold Mortgagee**" shall include any lender who is a holder of a Leasehold Mortgage as permitted hereunder. Subject to Landlord's approval of all Transfers as required below, any Leasehold Mortgagee or transferee or designee of any Leasehold Mortgagee that acquires title to the leasehold estate or any part thereof, any person that acquires title to the leasehold estate through any judicial or nonjudicial foreclosure sale, deed or assignment in lieu thereof, or any sale or transfer made under any order of any court to satisfy wholly or in part obligations secured by any Leasehold Mortgage, and the successors and assigns of any such Leasehold Mortgagee, is referred to as a "**Transferee**".

Section 7.2 Leasehold Mortgages; Landlord's Consent to Transfers. Landlord acknowledges that Tenant's financing for the Project will require Tenant to provide security interests in Tenant's leasehold interest in the Premises, and its ownership interest in the Project. Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder or any part thereof and Tenant's interest in the Project and other rights hereunder, or any part thereof, to any Leasehold Mortgagee or other person through, or in lieu of, foreclosure, trustee's sale or other proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, provided that the Leasehold Mortgagee or other person executes an attornment agreement in a form acceptable to Landlord in its reasonable discretion; and provided further that (1) Landlord shall have the right to approve in its sole discretion any direct or indirect Transferee (other than Leasehold Mortgagee itself) in accordance with the approval standards for Transfers set forth in Article 16 below, and (2) and upon such foreclosure, sale or conveyance Landlord shall recognize Leasehold Mortgagee or other Landlord-approved direct or indirect Transferee in connection therewith as the Tenant hereunder to the extent of the interest so transferred. Modifications or amendment of any Leasehold Mortgage or any document or agreement entered into connection therewith shall not require the consent of the Landlord so long the Project and the Minimum Affordable Housing Unit Requirement are not materially altered or modified.

Section 7.3 Notice of Default to Leasehold Mortgagee. During any period in which a Leasehold Mortgage is in place, Landlord shall give each Leasehold Mortgagee at the address set forth in this Lease or at the last address of such Leasehold Mortgagee provided in a written notice to Landlord pursuant to the terms hereof, a duplicate copy of all notices of default at the same time as such notice of default is given to or served upon Tenant, provided that such notice shall be duly given when sent to the Leasehold Mortgagee at the notice address set forth herein (or the last address of such Leasehold Mortgagee provided in a written notice to Landlord pursuant to the terms hereof), by US Mail, registered, return receipt requested or by a recognized overnight commercial delivery service; and provided, further, that the failure of Landlord to send a copy of such notice of default to Leasehold Mortgagee shall not subject Landlord to any liability hereunder. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord. Landlord may additionally provide a copy of such notice to a Leasehold Mortgagee by email as a courtesy but Landlord is under no obligation to do so.

Section 7.4 Right of Leasehold Mortgagee to Cure. Leasehold Mortgagee, at its option at any time within thirty (30) days, or such longer period as may be applicable as provided below, following the expiration of the right of Tenant to cure any default under the Lease, may pay any amount or do any act or thing required of Tenant by the terms of the Lease. Payments made and acts performed by such Leasehold Mortgagee within such thirty (30) day period, or such longer period as may be applicable as provided below, shall be effective to prevent a termination of the rights of Tenant hereunder, if such payments and acts conform to the terms of the notice from Landlord described in Section 7.3 or if, together with any performance by Tenant or any other person with any cure rights, they are sufficient, except as to timing, to exercise the Tenant's right to cure that so expired, but in order to prevent termination of the Lease, a Leasehold Mortgagee shall not be required to cure (1) default on obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in the Lease caused by a wrongful act of Tenant; or (2) any default to the extent resulting from the acts or omissions of the Landlord ("**Excluded Defaults**"). Accordingly, in such event Leasehold Mortgagee shall not be required to cure such Excluded Defaults to avoid termination of the Lease, but Leasehold Mortgagee would be required to remediate, ameliorate, or eliminate such continuing conditions to Landlord's reasonable satisfaction to avoid such termination. If the default by Tenant is of such nature that it cannot practicably be cured without possession of the Premises and the Project, then the thirty-day period set forth above shall be extended for up to an additional thirty (30) days if Leasehold Mortgagee shall then be proceeding with reasonable diligence to foreclose on the Tenant's interest or otherwise obtain possession of the Premises and Project for itself or a receiver.

7.4.1 Prior to the expiration of the cure rights of Leasehold Mortgagees, the Landlord shall not effect or cause any purported termination of the Lease nor take any action to deny Tenant or any subtenant possession, occupancy, or quiet enjoyment of the Premises or any part thereof.

7.4.2 Without limiting the rights of Leasehold Mortgagees as stated above, and whether or not there shall be any notice of default hereunder, each Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of the Lease to pay all of the Rent due hereunder, with all due interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of the Lease. Any Leasehold Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing, and at all times during such entry and access, Leasehold Mortgagee and its agents and contractors shall be subject to and shall comply with all indemnity and insurance obligations applicable to Tenant under this Lease. Any of the foregoing done by any Leasehold Mortgagee shall be as effective to prevent a termination of the Lease, as the same would have been if done by Tenant.

Section 7.5 Right to New Lease. If the Lease terminates for any reason including the rejection of the Lease in a bankruptcy proceeding, then Landlord shall give written notice of such fact to each Leasehold Mortgagee, and if one or more Leasehold Mortgagees gives written notice to Landlord within thirty (30) days following delivery of such notice of termination by Landlord, Landlord agrees in such case to enter into a new ground lease for the Premises (a “**New Lease**”) with the most senior Leasehold Mortgagee or its affiliated designee who has been approved in advance by Landlord in Landlord’s sole discretion, for the remainder of the term of the Lease (including any option terms) effective as of the date of such termination, at the rent and additional rent and upon the other terms, conditions, covenants and agreements contained in this Lease and the Existing Project Agreements and with equal priority thereto, on the conditions set forth in this Article 7. Notwithstanding anything to the contrary contained herein, no termination of the Lease shall become effective until, and the lien of each Leasehold Mortgage on the Project shall remain effective until, either a New Lease has been made pursuant to this Article 7 or no Leasehold Mortgagee has timely accepted (or caused to be accepted) a New Lease, upon the expiration of the 30-day period as set forth above. Upon entering into a New Lease, such Leasehold Mortgagee or its affiliated approved designee shall cure all then-existing defaults by Tenant hereunder, including without limitation payment of any accrued by unpaid Fair Market Rental Value, but except Excluded Defaults.

7.5.1 The tenant under the New Lease shall have the same right, title and interest in and to the Premises and Project and all obligations as Tenant had under the terminated Lease (other than with respect to Excluded Defaults) and the Existing Project Agreements and the Landlord and the new tenant shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest or obligations.

7.5.2 If the Landlord shall, without termination of the Lease, evict the Tenant, or if the Tenant shall abandon the Premises without Landlord thereafter terminating this Lease as

permitted elsewhere herein, then any reletting thereof shall be subject to the liens and rights of Leasehold Mortgagees, and in any event Landlord shall not relet the Premises or any part thereof, other than renewal of occupancies of residential tenants and leases or other occupancy agreements with new residential tenants consistent with any covenants of record for low-income housing, without sixty (60) days' advance written notice to all Leasehold Mortgagees of the intended reletting and the terms thereof, and if any Leasehold Mortgagee shall, within thirty days of receipt of such notice, give notice to the Landlord of such Leasehold Mortgagee's intent to pursue proceedings to foreclose on the Premises or otherwise cause the transfer thereof, then so long as the Leasehold Mortgagee shall diligently pursue such proceedings the Landlord shall not proceed with such reletting without the written consent of such Leasehold Mortgagee.

7.5.3 Nothing herein contained shall require any Leasehold Mortgagee to accept a New Lease.

Section 7.6 Limitation on Liability of Leasehold Mortgagee. No Leasehold Mortgagee shall be liable to Landlord as the "Tenant" under this Lease unless it expressly assumes such liability in writing. Unless any Leasehold Mortgagee or other Transferee becomes the Tenant under the Lease or under any New Lease obtained pursuant to this Article, the Leasehold Mortgagee or other Transferee shall not be liable for the obligations of the Tenant under the Lease arising on and after the transfer of the Tenant's interest in this Lease to the new "Tenant." Any liability of any Leasehold Mortgagee or other Transferee shall be limited to its interests in the leasehold and the Premises, including the rents, profits, and proceeds therefrom, and shall be enforceable solely against those interests.

Section 7.7 Estoppel Certificates; Recognition Agreements. Landlord and Tenant agree that at any time and from time to time upon not less than forty-five (45) days' prior written notice by the other Party, or upon request from any Leasehold Mortgagee or a permitted assignee, Landlord or Tenant will execute, acknowledge and deliver to the other Party or to such Leasehold Mortgagee a statement in writing certifying (1) that the Lease is unmodified and in full force and effect if such be the case or, if not, the extent to which the Lease has been modified; (2) the date through which the Rent has been paid; and (3) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of the Lease or such statement. Landlord shall have the right to ignore and to strike out as non-compliant any other statement, term, condition, or provision of any estoppel certificate or recognition agreement other than the specific statements set forth in the preceding sentence. The Parties intend that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant, or any Leasehold Mortgagee, as the case may be, in the Lease, or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgagee; provided that no such statement shall be deemed to modify or amend this Lease or to affect the rights or remedies of the party providing such statement. Landlord agrees to execute a Consent and Recognition Agreement in the form attached hereto as **Exhibit C** or such other commercially reasonable form as may be negotiated in good faith between



Landlord and a Leasehold Mortgagee (any such form, a “**Recognition Agreement**”). All reasonable costs and expenses incurred by Landlord in connection with its review and negotiation of any such estoppel certificate, Recognition Agreement, or any other documentation relating to any Leasehold Mortgage and requested to be executed by Landlord by Tenant or any Lender or Transferee, including without limitation costs and fees of Landlord’s counsel, shall be borne solely by Tenant, and Tenant shall reimburse Landlord either within thirty (30) days of Landlord’s demand therefor or on or before Landlord’s execution of the estoppel certificate, Recognition Agreement, or any other documentation relating to any Leasehold Mortgage.

Section 7.8 Actions not Effective Without Leasehold Mortgagee Consent. No cancellation, surrender, or modification or amendment of the Lease, and no waiver of any of Tenant’s rights thereunder, shall be binding on a Leasehold Mortgagee unless that Leasehold Mortgagee consents thereto in writing. No subordination of the Tenant’s interest in the leasehold or the Premises, or the rents or income therefrom, to any encumbrance or assignment granted by Landlord, and no joinder by Tenant in any such encumbrance or assignment, shall be binding as to a Leasehold Mortgagee without the express written consent of that Leasehold Mortgagee. No consent or waiver of any Leasehold Mortgagee shall be effective for purposes of the Lease unless it is made in writing.

Section 7.9 Registration of Leasehold Mortgages. Tenant shall promptly provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Lease.

Section 7.10 Subordination of Liens to Leasehold Mortgages. Landlord hereby subordinates its statutory landlord’s lien rights to the perfected lien of the Leasehold Mortgage (including UCC-1 Financing Statements). Any Leasehold Mortgagee may enter the Premises for the purpose of exercising the rights and remedies provided under its Leasehold Mortgage including, without limitation, removing equipment, trade fixtures and other personal property from the Premises; provided that at all times during such entry and access, Leasehold Mortgagee and its agents and contractors shall be subject to and shall comply with all indemnity and insurance obligations applicable to Tenant under this Lease, and Leasehold Mortgagee shall repair any damage resulting from such removal.

Section 7.11 Tenant’s Limited Partner shall have the notice and cure rights provided in Section 11.2.7 below.

## **ARTICLE 8**

### **REPRESENTATIONS AND WARRANTIES**

Section 8.1 Representations of Landlord. Landlord represents to Tenant as follows, which representations are true and correct as of the date of this Lease to the actual knowledge of the Landlord:

8.1.1 The execution and delivery of this Lease have been or will be duly authorized by all necessary agency or other action; and

8.1.2 Landlord has received no written notice of any pending eminent domain proceeding or threatened governmental taking relating to all or any part of the Premises.

Section 8.2 Representations, Warranties and Covenants of Tenant. As an inducement to Landlord to enter into and to proceed under this Lease, Tenant warrants and represents to Landlord as follows, which warranties, representations and covenants are true and correct as of the date of this Lease and will be true and correct as of the Commencement Date:

8.2.1 Tenant has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease; and

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

8.2.3 Tenant has sufficient financial resources (which may include but are not limited to loans, grants, and/or tax credit financing) to carry out the Project on the Premises consistent with this Lease and the Existing Project Agreements.

Section 8.3 Landlord's Remedy of Specific Performance. In addition to all other remedies under this Lease, the Existing Project Agreements, or at law or equity, Landlord reserves the remedy of specific performance to require Tenant to perform consistent with its representations and warranties under Section 8.2.

## **ARTICLE 9**

### **EMINENT DOMAIN**

Section 9.1 Total Condemnation. If the whole of the Premises and the Project, (or such portion of the Premises as renders it infeasible, in Tenant's sole discretion, for Tenant to continue to operate and maintain the Project), shall be taken, appropriated, or condemned under power of eminent domain during the Term (including any transfer made under threat of any such taking, appropriation, or condemnation), then any award of "just compensation" shall be allocated and distributed to Landlord and Tenant taking into account (1) Landlord's fee estate and Landlord's interest in this Lease and its reversionary rights to the Project and the Premises; (2) the restricted nature of Tenant's leasehold interest under this Lease and the Existing Project Documents; and (3) Tenant's own investment in the completed Improvements apart from financing reflected in any Leasehold Mortgages. In the event of a total taking, this Lease shall terminate when Tenant can no longer use the Premises in the manner herein intended, or when possession thereof shall be required by the appropriating or condemning authority, whichever shall first occur; but such termination of this Lease shall not



preclude nor restrict Tenant's right to a reasonable allocation of just compensation as provided above. In the event that this Lease is terminated pursuant to this Section 9.1, the condemnation proceeds received as the result of such appropriation or taking shall be distributed as follows: (1) First to Landlord, to the extent of its interest in the Property, the Premises, and this Lease, or any of them; (2) if any Leasehold Mortgages are in place, to the Leasehold Mortgagee to the extent of any indebtedness then owed to such Leasehold Mortgagees; and (3) to Tenant to the extent of its interests in this Lease and its investment in the Premises. If there are any proceeds remaining after the distributions specified in the preceding sentence then those remaining proceeds shall be distributed to Landlord.

Section 9.2 Partial Condemnation. In the event that a part of the Premises shall be taken or condemned under circumstances in which Tenant desires to continue the Lease, this Lease shall continue in full force and effect and shall terminate only as to that part of the Premises so taken. In that event Tenant shall, at its own cost and expense, make all repairs to the Project on the Premises affected by such taking or condemnation to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase). Any award of "just compensation" shall be allocated and distributed to Landlord and Tenant as provided under Section 9.1. There shall be no adjustment to Rent.

Section 9.3 Temporary Taking. If there shall be a temporary taking with respect to all or any part of the Premises or of Tenant's interest in this Lease, then the Term shall not be reduced and Tenant shall continue to pay in full all Rent (if any) and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Tenant shall not be required to perform such obligations that Tenant is prevented from performing by reason of such temporary taking.

Section 9.4 Miscellaneous. It is understood and agreed that Tenant shall not be party to any negotiation or proceedings at law wherein Landlord claims compensation other than that which is defined statutorily as constituting "just compensation."

## **ARTICLE 10**

### **DAMAGE OR DESTRUCTION**

Section 10.1 Damage or Destruction to Leased Premises. Tenant shall give prompt written notice to Landlord after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Premises, the Project or any portion thereof (hereinafter sometimes referred to as a "**Casualty**"). Subject to Section 10.2 below, if during the Term the Project shall be damaged or destroyed by Casualty, Tenant shall, subject to the terms of the Leasehold Mortgages, promptly and with all due diligence, apply for and collect all applicable insurance proceeds recoverable with respect to such casualty to fully repair or restore the Project or to replace damaged portions thereof with new improvements of a like quality and usefulness to those that were damaged (subject to Landlord's approval rights to any such replacement improvements pursuant to Section 6.2 above).

## Section 10.2 Right to Terminate.

10.2.1 If Tenant determines, subject to the rights of the Leasehold Mortgagees and subject to the terms and conditions of any executed Recognition Agreement, by notice to Landlord given within one hundred eighty (180) days after the date of such Casualty, that it is not economically practical to restore the Project and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Tenant terminates this Lease pursuant to this Section 10.2, Tenant shall be responsible for and shall bear all costs to remove all remaining improvements and debris from the Premises, including without limitation removal of all foundations, footings, pads, and other underground, at-grade, and above-ground improvements and to promptly surrender possession of the Premises to Landlord in "pad-ready" condition with no excavations or other holes in the ground surface.

10.2.2 Prior to surrendering the Premises to Landlord, duly authorized representatives of Tenant and Landlord will together inspect the Premises to evaluate the state of the Premises. After such inspection, both representatives together will establish in writing any further work to be done by Tenant, the time schedule to perform such work and the inspection date of such work, in order to make the Premises "pad ready" upon surrender to Landlord. If Landlord is satisfied with the condition of the Premises, Landlord shall so notify Tenant in writing.

10.2.3 Tenant acknowledges and agrees that if any remaining work is not completed by Tenant to Landlord's satisfaction within the agreed-upon timeframe, then any such work may be performed by Landlord or at Landlord's expense in order to repair and restore the Premises to the required "pad-ready" condition. All expenses incurred by Landlord for such restoration work shall be reimbursed by Tenant within thirty (30) days of Tenant's receipt of Landlord's detailed invoices, it being understood that these expenses shall be limited to the cost of labor at Landlord's "fully loaded" union labor rates, plus the cost of necessary materials (if any).

Section 10.3 Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to this Article 10, then upon completion of demolition of the Project improvements and surrender of the Premises to Landlord in "pad ready" condition under Section 10.2, any remaining insurance proceeds received as the result of such Casualty shall be distributed as follows: (1) if any Leasehold Mortgages are in place, to the Leasehold Mortgagee to the extent of any indebtedness then owed to such Leasehold Mortgagees; and (2) to Landlord, up to the total cost of all restoration work (if any) paid for by Landlord under Section 10.2.3; and (3) then, and only then, to Tenant.

## **ARTICLE 11** **EVENTS OF DEFAULT AND REMEDIES**

Section 11.1 Default By Tenant. Each of the following is a material default and breach of this Lease by Tenant:

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

11.1.2 Failure to substantially commence construction of the Project by the deadline set forth in the Development Agreement.

11.1.3 Failure to substantially complete construction of the Project by the deadline set forth in the Development Agreement.

11.1.4 Failure to obtain or maintain any insurance required to be maintained by Tenant hereunder, and such failure continues for a period of five (5) business days after written notice from Landlord.

11.1.5 Failure to operate no less than the Minimum Affordable Housing Unit Requirement at the Project in accordance with the Covenants, if the failure continues for a period of sixty (60) days or more after written notice from Landlord or such other cure periods as may be provided in the Covenants.

11.1.6 Failure to perform any other obligation of Tenant hereunder not described in clauses 11.1.1 through 11.1.5 above, inclusive, if the failure continues for a period of thirty (30) days after written notice from Landlord (provided that, if the default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such thirty-day period and thereafter diligently pursues its completion).

Section 11.2 Remedies Upon Default By Tenant. If any material default or breach by Tenant occurs, Landlord may, subject in all respects to the provisions of this Lease with respect to Landlord's rights to cure defaults by Tenant, and with respect to the rights of any Leasehold Mortgagees or limited partner (the "**Limited Partner**"), do any or all of the following:

11.2.1 Upon thirty (30) days' written notice to Tenant, terminate Tenant's right to possession of the Premises, and this Lease shall terminate. Landlord may re-enter and take possession of and remove, at Tenant's costs and expense, all persons or property, and Tenant shall immediately surrender possession of the Premises to Landlord.

11.2.2 Maintain Tenant's right to possession, and this Lease shall continue in force whether or not Tenant has abandoned the Premises. Landlord shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due.

11.2.3 Pursue any other remedy available to Landlord under the law or equity. These remedies are not exclusive.

11.2.4 Any amount due from Tenant to Landlord under this Lease not paid when due shall (1) be subject to a "**Late Charge**" equal to the greater of (A) five percent (5%) of the overdue payment, or (B) \$500; and shall (2) accrue interest from date due until paid at the rate of twelve percent (12%) per annum (the "**Default Rate**"). The Parties agree that the foregoing Late Charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for its loss caused by Tenant's non- or late-payment of any Rent or other amount due and owing under this Lease. Landlord's acceptance of any Late Charge shall not constitute a waiver of Tenant's default with respect to any such late- or nonpayment, or prevent Landlord from exercising all other rights and remedies available to Landlord under this Lease or under law. Waiver of the late charge or interest with respect to any delinquent payment will not be deemed to constitute a waiver of the late charge or interest with respect to any subsequent delinquent payment. Any payments of any kind returned for insufficient funds will be subject to an additional charge of \$50.00 payable by Tenant to Landlord. In addition, if payments are received by check or draft from Tenant, and two (2) or more of such checks or drafts are dishonored by the bank or other financial institution they were drawn upon in any twelve (12) month period, Landlord may thereafter require all Rent and other payments due hereunder from Tenant to Landlord to be made by bank cashier's or bank certified check or other similar means of payment, and Landlord shall not be required to accept any checks or drafts of Tenant that do not comply with such requirements.

11.2.5 Upon any termination of this Lease due to any uncured default by Tenant hereunder that is not cured prior to the expiration of any applicable notice and cure period, Tenant shall, within ten (10) days thereafter, deliver to Landlord at no cost to Landlord all of the Affordable Housing Developer Materials (as such term is defined in the Development Agreement) then in Tenant's possession or control.

11.2.6 If Tenant defaults in the performance of any obligation under this Lease and such default remains uncured for a period longer than specified above, then Landlord may request and Tenant shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to Landlord, a surety bond, or a letter of credit. Tenant's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and Landlord may in its discretion terminate this Lease.

11.2.7 Notwithstanding anything to the contrary contained herein, Landlord shall not exercise any of its remedies hereunder without having given written notice of the Event of Default to the Tenant's limited partner reflected in the limited partnership agreement created by Affordable Housing Developer for this Project (the "**LP Agreement**") simultaneously with the giving of notice to Tenant. The Limited Partner shall have the same cure period after the

giving of a notice as provided to Tenant, plus an additional period of ninety (90) days if reasonably required by Limited Partner to effect a cure (including without limitation, up to thirty (30) additional days if necessary to remove the general partner of Tenant and/or admit an additional general partner pursuant to the LP Agreement and as permitted by Section 16.2.2 below, if such removal and/or admission is reasonably necessary in order to effect cure). If the Limited Partner elects to cure the Event of Default (and nothing hereunder binds the Limited Partner to do so), Landlord agrees to accept such performance as though the same had been done or performed by Tenant, prior to exercise by Landlord of any remedies hereunder. Landlord acknowledges that, if the Limited Partner removes the general partner of Tenant as contemplated herein, the Limited Partner will not be required to cure prior defaults of that general partner that are not capable of being cured by Limited Partner, such as the bankruptcy of such general partner.

Section 11.3 Default by Landlord. Landlord shall be in default under this Lease if it fails to perform any material provision of this Lease that it is obligated to perform and if the failure to perform is not cured within thirty (30) days after written notice of the default has been given to Landlord. If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default of this Lease if Landlord commences to cure the default within such thirty-day period and thereafter diligently pursues its completion.

Section 11.4 Remedies Upon Default by Landlord; Limitation of Landlord's Liability. Tenant's sole remedies for any claimed default by Landlord hereunder shall be an action for actual damages or injunctive relief, and in no event shall Tenant have the right to: (i) abate or set-off Rent; (ii) engage in self-help remedies; or (iii) terminate this Lease; provided that, if Landlord's default (a) consists of its failure to initially deliver exclusive possession of the Premises to Tenant as required by Section 1.2 above, or (b) constitutes an actual or constructive eviction of Tenant from the entire Premises, Tenant may nevertheless elect to terminate this Lease upon ninety (90) days' written notice to Landlord, provided that Tenant's notice of termination shall be void *ab initio* if Landlord cures the alleged default giving rise to Tenant's termination remedy within such 90-day period. If Tenant exercises its right to terminate this Lease as aforesaid, then all provisions of this Lease that apply in connection with the expiration or termination of this Lease shall apply. Landlord shall not be liable for incidental or consequential damages or lost profits, and any monetary judgment obtained by Tenant hereunder shall be satisfied solely from Landlord's estate and interest in the Premises, including the Rental and other income therefrom and the insurance, condemnation, and sales proceeds thereof, and not from any other property or assets of Landlord, and shall be subject to all other limitations of liability set forth elsewhere in this Lease. Neither Landlord, nor any agent, officer, director, or employee of Landlord shall be personally liable for any portion of such a judgment.



**ARTICLE 12**  
**QUIET ENJOYMENT AND POSSESSION; LANDLORD'S RIGHT OF ENTRY**

Section 12.1 Quiet Enjoyment. So long as Tenant is not in default under this Lease after expiration of any applicable notice and cure period, Landlord covenants that Tenant, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Premises during the Term, subject to the provisions of this Lease, the Existing Project Agreements, any Recognition Agreement, and all applicable laws, ordinances and regulations.

Section 12.2 Landlord's Right of Entry. Landlord reserves the right to enter the Premises to inspect the same and to perform any maintenance, repairs, or improvement which it is permitted or entitled by this Lease or applicable law to make, at any and all reasonable times throughout the term of this Lease, provided that Landlord shall give Tenant not less than forty-eight (48) hours' prior notice (except in an emergency, in which case Landlord shall give such advance notice as is practicable under the circumstances), shall not interfere unduly with Tenant's operations and shall use reasonable efforts to cooperate with any security measures Tenant may then have in effect. The right of entry and inspection reserved to Landlord hereunder shall impose no obligation on Landlord to make inspections to ascertain the condition of the Premises, and shall impose no liability upon Landlord for failure to make such inspections.

**ARTICLE 13**  
**VACATION OF LEASED PREMISES**

Tenant covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Tenant will peaceably and quietly yield and surrender possession of the Premises and Project to Landlord. Unless otherwise stipulated, all improvements or alterations, including the initial Improvements and all subsequent Alterations, erected or made on the Premises (not including personal property, equipment and removable fixtures, which shall remain the property of Tenant and which shall be removed by Tenant at its sole cost prior to the expiration or earlier termination of this Lease, including without limitation all of the foregoing items located in any portion of the Premises and Project devoted to commercial or other non-residential uses) shall, upon expiration or earlier termination of this Lease, belong to Landlord without compensation to Tenant and shall be delivered to Landlord clean and in reasonably good operating order and condition, reasonable wear and tear excepted. For the avoidance of doubt, all appliances shall remain on and be surrendered with the Premises except to the extent they are owned by individual residential unit tenants, in which case Tenant shall cause such residential tenant-owned appliances to be removed at no cost to Landlord. If Tenant holds over after the expiration or earlier termination of this Lease, Tenant shall become a tenant from month-to-month at a rental rate equal to then-fair market rental value of the Premises and Project, as reasonably determined by Landlord, and otherwise subject to the terms, covenants, and



conditions of this Lease, except those clearly inapplicable to the month-to-month tenancy. Acceptance by Landlord of Rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease, Tenant shall indemnify and hold Landlord harmless from all loss or liability including, without limitation, any claim made by any succeeding tenant or occupant founded on or resulting from such failure to surrender, together with Default Interest, reasonable attorney's fees, costs, and expenses. Within thirty (30) days after the Expiration Date or earlier termination of this Lease, Tenant shall deliver to Landlord copies of all Affordable Housing Developer Materials (as defined in the Development Agreement) then in Tenant's possession, without warranty or recourse.

## **ARTICLE 14**

### **HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE**

Section 14.1 Definitions. **"Hazardous Materials"** as used herein shall mean:

14.1.1 Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

14.1.2 Any dangerous waste or hazardous waste as defined in:

(i) Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

(ii) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

(iii) Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

14.1.3 Any hazardous substance as defined in:

(i) Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

(ii) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

14.1.4 Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

For purposes of this Article 14, "Tenant" shall mean Tenant and its sublessees, assignees, contractors, agents, employees, representatives, and/or affiliates.

Section 14.2 Environmental Compliance.

14.2.1 In the conduct of its business at the Property, and in its use and occupancy of the Premises and adjacent public areas that are available for use by Tenant and others (the "**Public Areas**"), Tenant shall, at Tenant's own expense, comply with all federal, state and local laws, ordinances, regulations, permits, decrees or other governmental requirements now or hereafter in effect related to Hazardous Materials and other environmental laws, including, but not limited to, laws and regulations pertaining to stormwater discharges as set by the U.S. Environmental Protection Agency and the Washington Department of Ecology, as well as such rules concerning environmental matters as may be promulgated by Landlord ("**Environmental Laws**"). Tenant warrants that its business and all activities to be conducted or performed in, on, or about the Premises and the Public Areas shall comply with all of the Environmental Laws. Tenant agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations as may be necessary at any time during the term of this Lease to comply with the Environmental Laws.

14.2.2 Tenant shall not without first obtaining Landlord's prior written approval use, generate, handle, store, treat, transport, or sell any Hazardous Materials in, on, or about the Premises or the Public Areas. In the event, and only in the event, that Landlord approves any of the foregoing, Tenant agrees that such activity shall occur safely and in compliance with the Environmental Laws. Without limiting the foregoing sentences, Landlord agrees that Tenant may use, handle, store, transport, and dispose of reasonable amounts and types of ordinary cleaning supplies and similar items routinely used in the normal construction, operation, maintenance, repair, and occupancy of a residential building, to the extent consistent with all applicable Environmental Laws.

14.2.3 Tenant shall not cause or permit to occur any violation of the Environmental Laws on, under, or about the Premises and the Public Areas, or arising from Tenant's use or occupancy of the Premises and the Public Areas. Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, or negligent activities that result in a release or threatened release of Hazardous Materials. If Tenant's act, omission or breach of obligation under this Lease results in a release of Hazardous Materials into the environment on, about, or migrating from the Premises or the Property that exceeds regulatory cleanup levels, then Tenant shall, at Tenant's sole expense, promptly take all actions necessary to mitigate such release and to fully and completely remove (and to dispose of such in accordance with applicable law) all of such Hazardous Materials.

14.2.4 Tenant shall, in a timely manner and at Tenant's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental or regulatory authorities ("the **Authorities**" or "**Authority**") with jurisdiction

under Environmental Laws. If Tenant fails to fulfill any duty imposed under this Article within the time specified by applicable law, or if no time is specified within a reasonable time, Landlord may take action; and in such case, Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and/or the Public Areas and Tenant's use thereof, and for compliance with the Environmental Laws, and Tenant shall execute all documents promptly upon Landlord's request. No such action by Landlord and no attempt made by Landlord to mitigate damages shall constitute a waiver of any of Tenant's obligations under this Article. Tenant shall immediately notify Landlord if Tenant becomes aware of any of the following: (a) a release or threatened release of Hazardous Materials on the Premises; (b) any actual or alleged violation of any of the Environmental Laws, including any inspection reports or any other notice received from any Authority that Tenant may be in violation of any Environmental Law; and (c) any notification from any Authority that investigation, remediation or removal of Hazardous Materials is or may be required at the Premises.

14.2.5 Should any Authority demand that a remedial investigation and/or cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Lease and arises from Tenant's use or occupancy of the Premises, or which arises at any time from Tenant's use or occupancy of the Premises and/or the Public Areas, then Tenant shall, in a timely manner and at Tenant's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Tenant shall carry out all such investigation and/or cleanup or remediation plans. Any such plans are subject to Landlord's prior written approval, such approval not to be unreasonably withheld. Although Landlord reserves the right to review and approve such plans, Landlord assumes no responsibility for such plans or their compliance with Environmental Laws.

14.2.6 If Landlord determines in its sole discretion that an emergency exists (i) because of the deposit, spill, discharge or other release of Hazardous Materials at or from the Premises or (ii) which arises from Tenant's use or occupancy of the Premises and/or the Public Areas, Landlord will take such action as Landlord, in its sole discretion, considers reasonable to contact Tenant and advise it of the emergency situation. If Tenant is unreachable, or is unwilling to take immediate action, Landlord may, but is not required to, take immediate action to address the emergency situation, and Tenant will reimburse Landlord for all of its costs and expenses related thereto, provided, with respect to clause (i) above, that the deposit, spill, discharge or other release of Hazardous Materials arises from Tenant's use or occupancy of the Premises. The fact that Landlord takes immediate action shall not relieve Tenant of any of its responsibilities under this Lease and the Environmental Laws including, without limitation, Tenant's responsibility for complying with reporting requirements.

### Section 14.3 Indemnification and Release.

14.3.1 Except as otherwise provided in this Section 14.3, Tenant shall be fully and completely liable to Landlord for, and shall indemnify, hold harmless and release Landlord from and against, any and all claims, liabilities, lawsuits, damages, demands, suits, losses, judgments, and costs, including but not limited to removal, remedial action, or other costs recoverable under CERCLA or MTCA; any and all other requirements, charges, interest, fees, oversight costs, or penalties (civil or criminal or both) imposed by any Authority; and all other expenses including but not limited to claims for bodily injury or death, property damage, diminution in value or loss of use, including attorney's fees and other costs of defense ("**Claims**") caused by or arising from (1) the use, disposal, transportation, generation, past, present or future release or threatened release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Tenant in, on, around, about, or emanating from the Premises, including but not limited any remediation activities conducted by Tenant or from Tenant's activities on the Premises or the Property, or from Tenant's activities on any adjoining property occurring during the term of the this Lease or at any time if caused by Tenant, including exacerbation or disturbance of existing Hazardous Materials that were released in, on or about the Premises prior to the Commencement Date of this Lease; or (2) Tenant's failure to comply with any obligation in this Article; or (3) any actions by Landlord under this Article. Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by the Parties. Tenant's duties under this Section 14.3 include the duty to pay or reimburse Landlord's direct and indirect costs to monitor or oversee Tenant's cleanup or other corrective work, including but not limited to engineering and other consulting services, sampling and studies, confirmatory testing, compliance monitoring, and administrative costs and expenses incurred in procuring and managing the same. Tenant's indemnity regarding Hazardous Materials and environmental compliance under this Section 14.3 is in addition to, and separate from, Tenant's indemnity obligations under Article 17 of this Lease.

14.3.2 Landlord agrees to indemnify, defend and hold Tenant harmless from and against all fines, penalties, administrative and judicial proceedings and orders, and all other direct costs and expenses incurred by Landlord or Tenant solely with respect to clean up or remediate any hazardous materials or substances that may be found to exist on the Property from past events or releases prior to the Effective Date of the Development Agreement (collectively, "Cleanup Costs"), save and except to the extent that such Cleanup Costs result from Tenant's exacerbation of such pre-existing condition, nature and/or extent of such hazardous materials or releases of hazardous substances. Landlord's limited indemnity under this Section 14.3.2 does not and shall not be construed to alter, reduce, or expand Tenant's separate indemnity obligations under this Lease, the Due Diligence Agreement, or the Development Agreement all of which are ratified and reaffirmed.

Section 14.4 Reporting Requirements. Tenant shall comply with the Environmental Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to Landlord a full copy of any such submission, filing or report as submitted within 15 days of such submission.



Section 14.5 Right to Check on the Tenant's Environmental Compliance. Landlord expressly reserves the right to conduct, and Tenant shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as Landlord, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems, provided that the inspection of individual residential units shall be subject to the rights of tenants under applicable landlord/tenant laws and ordinances.

Section 14.6 Remedies. Upon any default by Tenant under this Article, and the expiration of any applicable notice and cure period provided in this Lease (including without limitation expiration of all additional notice and cure periods afforded to all Leasehold Mortgagees), Landlord shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to Landlord:

14.6.1 At Landlord's option, to terminate this Lease, effective immediately; and/or

14.6.2 At Landlord's option, to perform such action as is required to bring the Premises and any other areas of the Property affected by Tenant's default into compliance with the Environmental Laws and to recover from Tenant all of Landlord's costs and expenses in connection therewith; and/or

14.6.3 To recover from Tenant any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs, expenses and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises or any other areas of the Property, loss of business and sales by Landlord and other tenants of the Property, diminution of value of the Premises and/or other areas of the Property, the loss of or restriction of useful space in the Premises and/or other areas of the Property, and any and all damages and claims asserted by third parties, and Landlord's reasonable attorneys' fees, costs and expenses.

Section 14.7 Remediation on Termination of Lease. Upon the expiration or termination of this Lease, Tenant shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Premises caused by Tenant as required by applicable laws ("**Termination Cleanup**"). The process for such Termination Cleanup is subject to Landlord's prior written approval. Although Landlord reserves the right to review and approve the Termination Cleanup process, Landlord assumes no responsibility for it or its compliance with the Environmental Laws. If Tenant fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, within the time specified by law or within a reasonable time if no time is specified, Landlord may elect to perform such Termination Cleanup after providing Tenant with written notice of Landlord's intent to commence Termination Cleanup, and after providing Tenant a reasonable opportunity, which shall not be less than ninety (90) days after such notice (unless Landlord is given notice by a government or regulatory agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time), to commence or resume the Termination Cleanup process. If Landlord performs such Termination Cleanup



after said notice and Tenant's failure to perform same, Tenant shall pay all of Landlord's costs and expenses.

Section 14.8 Survival. Tenant's obligations and liabilities under this Article shall survive the expiration or termination of this Lease.

## **ARTICLE 15**

### **TENANT'S COOPERATION WITH EXISTING AND FUTURE USES AND DEVELOPMENT OF TRANSIT CENTER AND PARK & POOL LOT**

Section 15.1 Tenant acknowledges that Landlord intends to redevelop certain parcels adjoining the Premises for transit-oriented development and potentially other purposes consistent with existing and future transit uses of those parcels and the neighboring light rail station and related facilities. A conceptual illustration of the potential redevelopment sites is attached hereto as Exhibit H.

Section 15.2 In Tenant's development, construction, and operation of the Project on the Premises, Tenant shall cooperate and act in good faith in anticipation of the future redevelopment of the parcels illustrated in Exhibit H.

Section 15.3 Tenant shall not perform or cause or allow others to perform any act or omission upon the Premises or in connection with the Project if such act or omission could reasonably be expected to interfere with existing or future transit uses (1) upon the parcels illustrated in Exhibit H or (2) upon the public streets or other rights of way adjacent to the Property. For purposes of this Section 15.3, "transit uses" include, but are not limited to, the turning movements, layover, and free passage of transit coaches and service and security vehicles; and pedestrian, bicycle, and other nonmotorized access to, from, and across the parcels illustrated in Exhibit H.

Section 15.4 Tenant shall reasonably cooperate with the operation, maintenance, use, redevelopment, and construction of transit and other facilities or improvements upon the parcels illustrated in Exhibit H. Tenant shall reasonably cooperate and participate in Landlord's public outreach and other planning efforts related to such use, redevelopment, and construction. Provided, that this Section 15.4 imposes no duty on Tenant to affirmatively perform or undertake any transit or transit-related function.

Section 15.5 Tenant's failure to comply with this Article 15 shall constitute a breach of the Lease.

## **ARTICLE 16**

### **TRANSFERS**

Section 16.1 General Terms. Tenant acknowledges that: (i) Landlord is relying on the real estate and development expertise of Tenant to assure the quality of the development of the

Project; (ii) the design, use, operation and maintenance of the Project and its components are deemed critical by Landlord; (iii) a change in ownership or control of Tenant, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership, could have a material adverse impact on the development of the Project; and (iv) the qualifications and identity of the Tenant are of particular concern to Landlord. Tenant further recognizes that it is because of such qualifications and identity that Landlord is entering into this Lease with Tenant. Accordingly, except to the extent expressly permitted in Article 7 above (Leasehold Mortgages), and except in connection with Permitted Rental Agreements described in Section 16.4, Tenant shall not voluntarily, involuntarily, or by operation of any law, sell, convey, mortgage, assign, sublet or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Premises (any of the foregoing, a "**Transfer**") without Landlord's prior written consent in each instance, which consent may be withheld in Landlord's sole and absolute discretion except as otherwise provided in this Article, and any attempt by Tenant to do so without this consent shall be, at Landlord's election, null and void and without any effect whatsoever, and may be deemed by Landlord as a default under the Lease and no cure provision shall apply. Without limiting the generality of the foregoing, in no event may Tenant enter into any Transfer to or with a party that is not a non-profit entity or governmental entity or a for profit entity in which a nonprofit or governmental entity is a manager or general partner, that is in the business of providing affordable housing to low-income occupants as contemplated elsewhere in this Lease.

## Section 16.2 Assignments.

16.2.1 Tenant shall not assign or transfer this Lease or any interest therein, nor grant an option for such an assignment or transfer for the whole or any part of the Premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law, or by any process or proceeding of any court or otherwise without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. It shall not be deemed unreasonable for Landlord to withhold, condition or delay its consent for a transfer or assignment of this Lease, in whole or in part, that would entail a use other than the Permitted Use.

16.2.2 Notwithstanding the provisions of Section 16.2.1, the following shall be considered "**Exempt Transfers**" which shall not require the consent of the Landlord: (i) to the extent permitted by the initial LP Agreement, a transfer of the Limited Partner's interests in Tenant or of any membership or limited partnership interests in the Limited Partner of Tenant, in either case to an affiliate of the initial Limited Partner; (ii) to the extent contained in or permitted by the initial LP Agreement, the grant and/or exercise of an option or right of first refusal to any affiliate of the General Partner or its members to acquire the Tenant's interest in this Lease or the Premises or the Limited Partner's interests in the Tenant, and (iii) to the extent provided by the initial LP Agreement, any removal of the general partner of the Tenant by the Limited Partner provided that: (1) within ninety (90) days thereafter a successor general partner is substituted that is, or the sole member and manager (if any) of which is either, at the option of the Limited Partner: (a) a Seattle-based nonprofit or public entity

approved in writing by Landlord, or a subsidiary or Affiliate of which a Seattle-based nonprofit or public entity approved in writing by Landlord is the sole member and manager, or (b) any other non-profit or public entity approved in writing by Landlord, or limited liability company of which a nonprofit or public entity approved in writing by Landlord are the sole members; and (2) if the successor general partner is not a Seattle-based nonprofit or public entity approved in writing by Landlord then, within six (6) months of such entity becoming the successor general partner, the Limited Partner shall have replaced such successor general partner, with a general partner, that is, or the sole members of which are, Seattle-based nonprofits or public entities approved in writing by Landlord. If Landlord consents to any assignment or transfer or if an assignment or transfer is made pursuant to this Section 16.2.2 that does not require Landlord's consent, this Section 16.2 shall nevertheless continue in full force and effect and no further assignment or transfer shall be made except in compliance with this Section 16.2.

16.2.3 If Tenant desires to assign or transfer, or grant an option for assignment or transfer, for the whole or part of the Premises, or any portion of this Lease or any interest herein, and such assignment or transfer is not an Exempt Transfer under Section 16.2.2 above, then Tenant shall notify Landlord in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of assignment or transfer, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other consideration involved, and an affidavit from the third party stating it has examined this Lease, and, understanding this Lease, agrees to assume and be bound by all of the Tenant's obligations and covenants under this Lease, the same as if it were the original Tenant hereunder, and the proposed date of assignment, transfer or grant of an option therefor. Tenant shall also provide any financial, corporate or other information regarding the proposed assignment or the assignee/transferee, demonstrating the assignee's ability to perform the Tenant's obligations under the Lease, including information evidencing the managerial, operational and financial wherewithal of the assignee or transferee, as reasonably requested by Landlord (all of the aforementioned documents are collectively referred to as the "**Transfer Documents**").

16.2.4 Any assignment or transfer made in violations of this Section 16.2 shall be null and void and without any effect whatsoever, and may be deemed by Landlord as a default under the Lease and no cure provision shall apply.

### Section 16.3 Subletting.

16.3.1 Unless the sublease sought to be entered into is (i) a Permitted Rental Agreement as defined under Section 16.4, or (ii) to an entity that controls, is controlled by or is under common control with Tenant (collectively, an "**Exempt Sublease**"), Tenant shall not sublet the whole or any part of the Premises, nor grant an option for sublease for the whole or any part of the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall not withhold its

consent to a proposed sublease or grant of an option for sublease on the ground of the subtenant's proposed use if such use is consistent with the Permitted Uses in this Lease. If Landlord shall give its consent to any sublease, this Section 16.3 shall nevertheless continue in full force and effect and no further sublease shall be made without Landlord's consent. No sublease authorized under this Section 16.3 shall relieve or release the Tenant from any obligation or responsibility required of the Tenant under this Lease.

16.3.2 Except with respect to an Exempt Sublease, if Tenant desires to sublease, or grant an option for sublease, for the whole or part of the Premises, or any portion of this Lease or any interest therein, Tenant shall notify Landlord in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of sublease, or grant of an option therefor, to a third party. The notification shall include to a full disclosure of the monetary payment or any other consideration involved, the proposed date of the sublease, and a copy of the sublease agreement between the Tenant and new tenant. Tenant shall also provide any financial, corporate or other information regarding the proposed sublease or the subtenant reasonably requested by Landlord.

16.3.3 Any sublease made in violations of this Section 16.3 shall be null and void and without any effect whatsoever, and may be deemed by Landlord as a default under the Lease and no cure provision shall apply.

Section 16.4 Permitted Rental Agreements. Notwithstanding anything to the contrary elsewhere in this Lease, Tenant shall have the unrestricted right at any time and from time to time to enter into (1) a sublease for a childcare facility consistent with the Project purpose; (2) the Comfort Station Sublease; and (3) apartment rental agreements with residential apartment tenants at the Project (each, a "**Permitted Rental Agreement**"), all without the necessity of obtaining Landlord's prior consent thereto or approval thereof. All Permitted Rental Agreements shall be subject and subordinate to this Lease and in no event shall the term of any Permitted Rental Agreement extend beyond the expiration date of the Term of this Lease. Upon any earlier expiration or termination of this Lease, all then-effective Permitted Rental Agreements shall, at Landlord's election, likewise terminate.

Section 16.5 No Third Party Beneficiaries. Nothing in this Lease, express or implied, is intended to confer any rights, privileges, or remedies under or by reason of this Lease on any person other than the Parties to it, nor is anything in this Lease intended to relieve or discharge any obligation of any third person to any Party hereto or give any third person any right of subrogation or action over or against any Party to this Lease.

## **ARTICLE 17**

### **RELEASE AND INDEMNIFICATION**

Section 17.1 Releases. This Lease is made upon the express condition that except as specifically set forth herein, Landlord is to be free from and Tenant assumes the risk of all liability and claims for damage, loss, cost or expense by reason of any injury, loss or theft of



any property in or from the Premises or the improvements or by reason of any injury to any person or persons, including Tenant, or any property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes whatsoever, in, upon or in any manner connected with the Premises or the improvements or with the sidewalks, approaches, and entrances adjacent to the Premises, during the term of this Lease or any extension or renewal thereof or any occupancy hereunder. Without limiting the generality of the foregoing, Landlord and the Landlord Parties shall not be liable for any loss or damage to persons or property resulting from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any cause, whether the said damage or injury results from conditions arising upon the Premises, the adjacent property or from other sources or places regardless of whether the same is inaccessible to Tenant.

Section 17.2 Indemnification. Notwithstanding any other provision of this Lease, the Tenant hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Landlord) the Landlord and the other Landlord Parties from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of the use of and operations at the Premises, including but not limited to: (1) any claims for personal injury or property damage made by Landlord, any Landlord Party, or any third party; and (2) any act or omission by Tenant or any Tenant Parties in connection with the Premises. Notwithstanding the foregoing, the foregoing indemnification obligations by Tenant shall not extend or apply to the negligent acts and omissions of Landlord or any Landlord Party. In addition, if any contractor or subcontractor that performed any construction work for the Tenant or the Tenant's affiliates on the Project asserts any claim against the Landlord on account of any damage alleged to have been caused by the Tenant or the Tenant's affiliates, their members, partners, officers, commissioners, directors, affiliates (other than Landlord), agents or employees, or their construction contractors, then the Tenant shall defend at its own expense any suit based upon such claim; and if any judgment or claim against the Landlord shall be allowed, the Tenant shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith. Tenant hereby waives for itself and its employees any immunity to which it or they may be entitled under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify Landlord and the Landlord Parties, which waiver has been mutually negotiated by the Parties. In the event it is determined that RCW 4.24.115 applies to this Lease, Tenant agrees to defend, hold harmless, and indemnify Landlord to the maximum extent permitted thereunder. These indemnities shall survive the termination of this Lease.

Section 17.3 Miscellaneous. Tenant's indemnity obligations under this Article 17 are in addition to, and separate from, Tenant's indemnity obligations under Article 14 of this Lease regarding Hazardous Materials and environmental compliance. Tenant's indemnity



obligations under this Article 17 do not include Hazardous Materials and environmental compliance.

## **ARTICLE 18**

### **MISCELLANEOUS PROVISIONS**

Section 18.1 Entire Agreement. This Lease (and the Exhibits hereto), the Due Diligence Agreement and the Development Agreement contain the entire agreement and understanding between Landlord and Tenant concerning the subject matter of this Lease, and supersede all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Landlord or Tenant concerning the Property, Premises, or Project or the other matters which are the subject of this Lease. The Parties acknowledge that each Party and its counsel have reviewed this Lease and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting Party shall not be employed nor applied in the interpretation of this Lease.

Section 18.2 Governing Law; Choice of Venue; Attorneys' Fees. The interpretation, construction and enforcement of this Lease, and all matters relating hereto, shall be governed by the laws of the State of Washington without giving effect to its conflicts of law rules or choice of law provisions. Subject to matters governed by the Dispute Process pursuant to Article 19 below, any judicial proceeding brought by either of the Parties against the other Party or any dispute arising out of this Lease, the Premises, or the Project, or any matter relating thereto, shall be brought in the Superior Court of the State of Washington (in King County), or in the United States District Court for the Western District of Washington. In that regard, each Party hereby waives any defense of inconvenient forum and any bond or other security that might otherwise be required of the other Party with respect to such choice of judicial forum. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Lease, the losing Party shall pay the prevailing Party's actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post judgment motion, and any action to enforce or collect the judgment including contempt, garnishment, levy, discovery and bankruptcy. For purposes of this Section 18.2 "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing Party" shall mean the Party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.

Section 18.3 Binding Effect. This Lease shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, administrators, executors, and permitted assigns.

Section 18.4 Severability. The provisions of this Lease are intended to be severable and enforced to the maximum extent permitted by law. If for any reason any provision of this Lease shall be held invalid, illegal or unenforceable in whole or in part, then that provision shall be ineffective only to the extent of the invalidity, illegality or unenforceability, without in any manner affecting the validity, legality or enforceability of the unaffected portion and

the remaining provisions of the Lease. The unaffected portion and provisions of the Lease will be enforced to the maximum extent permitted by law.

Section 18.5 Further Assurances. From and after the date of this Lease, Landlord and Tenant, at the request of the other Party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Lease, provided that the same may be done at no material cost to the Party receiving such request; and provided further, that where this Lease provides for specific forms of or limitations on such further instruments, the Parties shall abide by the same.

Section 18.6 References; Construction. Unless otherwise indicated, (1) all section and exhibit references are to the sections and exhibits of this Lease, and (2) all references to days are to calendar days. The Exhibits hereto are incorporated herein by this reference; provided that in the event of any conflict or inconsistency between this Lease and either or both of the Existing Project Agreements, the terms and provisions of this Lease shall control. Whenever under the terms of this Lease the time for performance of a covenant or condition falls upon a Saturday, Sunday or State of Washington holiday, such time for performance shall be extended to the next business day. The headings used in this Lease are provided for convenience only and this Lease shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires.

Section 18.7 Intentionally Omitted.

Section 18.8 Intentionally Omitted.

Section 18.9 Intentionally Omitted.

Section 18.10 Rights Cumulative; Amendments and Waivers. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity. No addition to or modification of this Lease shall be effective unless set forth in writing and signed by the Party against whom the addition or modification is sought to be enforced. The Party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by the other Party unless made in writing and signed by the waiving Party. No delay or failure to require performance of any provision of this Lease shall constitute a waiver of that provision. Any waiver granted shall apply solely to the specific instance expressly stated.

Section 18.11 Notices. All notices, demands, approvals, and other communications provided for in this Lease shall be in writing and shall be effective (1) upon receipt when personally delivered to the recipient at the recipient's address set forth below; (2) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested,

addressed to the recipient as set forth below, or when such receipt is rejected; (3) one (1) business day after deposit with a recognized overnight courier or delivery service; or (4) when electronically transmitted (including email or facsimile) to the email address or facsimile number set forth below. A Party disputing delivery or receipt of email notice shall have the burden of proving that the email notice was not delivered or received or both. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or federal or state legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday. A Party may change its address or other contact information by giving notice as specified in this Section 18.11.

If to Landlord: King County Metro Transit Department  
Attn: Director of Capital Division, Metro Transit Department  
201 South Jackson Street  
KSC-TR-0415  
Seattle, WA 98104-3856

With a copy to: Facilities Management Division  
Real Estate Services Section  
201 South Jackson Street  
KSC-FMD-0XXX  
Seattle, WA 98104-3856

With a copy to: King County Prosecuting Attorney Office  
Attn: Chief Civil Deputy Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

If to Tenant: Northgate Affordable LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attention: Rebecca Hlebasko, General Counsel

With a copy to: Community Roots Housing  
1620 – 12<sup>th</sup> Ave., Suite 205  
Seattle, WA 98122  
Attn: Jeremy Wilkening, Vice President, Real Estate Development

With a copy to: Kantor Taylor PC  
1200 5<sup>th</sup> Avenue, Suite 1910  
Seattle, WA 98101  
Attn: Mark Kantor

If to Lender(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Tax Credit  
Investor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Section 18.12 Counterparts. This Lease may be executed and delivered in counterparts as a PDF file delivered by email, or as a facsimile copy, and each counterpart so executed and delivered is original, and such counterparts together shall constitute but one and the same instrument. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. It shall not be necessary in making proof of this Lease to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each Party hereto. Any executed signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it such additional executed signature pages.

Section 18.13 Time of Essence. Time is of the essence in the performance of the Parties' respective obligations under this Lease, and no notice of a Party's intent to require strict compliance with the deadlines set forth in this Lease is required.

Section 18.14 No Third-Party Beneficiaries. Nothing in this Lease, express or implied, is intended to confer any rights or remedies under or by reason of this Lease on any person other than the Parties to it, nor is anything in this Lease intended to relieve or discharge any obligation of any third person to any Party hereto or give any third person any right of subrogation or action over or against any Party to this Lease.

Section 18.15 Commissions; Indemnity. Neither Landlord nor Tenant is represented by a broker in this transaction. Each Party represents to the other party that the representing party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the negotiation or execution of this Lease. Each Party hereby indemnifies and agrees to protect, defend and hold harmless the other Party from and against all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying Party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying Party. This Section 18.15 is intended to be solely for the benefit of the Parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a Party to this Lease.

Section 18.16 Memorandum of Lease. This Lease shall not be recorded, but the Parties hereto shall execute a Memorandum of Lease in the form attached hereto as **Exhibit D** and Tenant shall cause the same to be recorded at its expense in the real property records of King County, Washington. Tenant agrees to execute, within ten (10) days after written demand from Landlord, an appropriate release and/or cancellation instrument, in proper form for recordation, acknowledging the expiration or earlier termination of the Lease.

Section 18.17 Relationship of Parties. Nothing contained in this Lease shall be construed to create, nor shall either Party represent the existence of, a partnership, a joint venture, an association, a corporation, a trust or other entity, nor to constitute either Party the agent of the other.

Section 18.18 No Brokers. Neither Party is represented by a broker in connection with this Lease, and each Party represents to the other Party that the representing Party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the negotiation or execution of this Lease. Each Party hereby indemnifies and agrees to protect, defend and hold harmless the other Party from and against all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying Party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying Party. This Section 18.18 is intended to be solely for the benefit of the Parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a Party to this Lease.

Section 18.19 Non-publicity. Except for those matters that must be disclosed to perform the commitments of Tenant under this Lease, and except as otherwise provided by applicable law, Tenant agrees that no press releases concerning the transactions provided for in this Lease shall be made by Tenant without the prior written consent of Landlord. The provisions of this Section 18.19 shall survive any termination of this Lease. Notwithstanding the foregoing, Landlord and Tenant acknowledge that the existence of this Lease and certain of its terms will become public. Further, the provisions of this Section 18.19 shall not be applicable to Tenant with respect to information that becomes public through parties other than Tenant, including information that may become public through information requests directed at Landlord and information that may become public as part of Landlord's internal approval processes. Finally, Landlord acknowledges that Tenant may disclose the terms of this Lease for the purposes of financing the Project.

Section 18.20 Force Majeure. The Parties hereby acknowledge and agree that the times set forth in this Lease shall not be subject to delay, except to the extent a Force Majeure Event has occurred, and then only as provided in this Section. For purposes of this Lease, a "**Force Majeure Event**" shall mean any delay due to war, insurrection, riots, civil disturbances, floods, fires, casualties, earthquakes, tsunamis, acts of God, acts of the public enemy, epidemics, quarantine restrictions of more than three (3) consecutive calendar months in



duration, any actions by any Governmental Authorities beyond a Party's reasonable control (other than issuance or an appeal of any permits, approval, or other entitlements); provided, however, any financial inability, or an economic downturn as the result of any of the foregoing or any other cause, shall not be deemed a Force Majeure Event. A Force Majeure Event shall not toll or extend the Expiration Date.

Section 18.21 Waiver of Jury Trial. LANDLORD AND TENANT IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT UNDER THIS LEASE, THE ENFORCEMENT OF THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN LANDLORD AND TENANT, OR ANY ACTIONS OF LANDLORD IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS LEASE.

Section 18.22 Acceptance of Service of Process. In the event that Landlord or a Landlord party commences any legal action against Tenant, service of process on Tenant shall be made by personal service upon Tenant, or in such manner as may be provided by law, and shall be valid whether made within or without the State of Washington.

Section 18.23 Nondiscrimination. Tenant, on behalf of itself and its successors and assigns, as a part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state and local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Tenant shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Chapter 12.16, as now codified and as hereafter amended. Tenant shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, King County Charter Section 840, Chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Lease and may result in ineligibility for further agreements between the Parties.

## **ARTICLE 19**

### **DISPUTE RESOLUTION AND RELATED MATTERS**

Section 19.1 Certain Matters Not Subject to Dispute Resolution. The following matters are not subject to dispute resolution under Section 19.2 of this Lease: (1) Any dispute or matter involving any action by Landlord that seeks repossession of the Premises as part of Landlord's remedy, whether by unlawful detainer, or ejectment, or otherwise; (2) any action

by Landlord seeking an injunction or temporary restraining order; (3) any action for the collection of Rent; (4) any matter related to Landlord's assertion that the Tenant is in uncured default under this Lease; or (5) any matter arising out of or related to eminent domain proceedings against the Premises or the Project by any governmental entity.

Section 19.2 Certain Disputes Subject to Dispute Resolution. Disputes that are not excluded from dispute resolution under Section 19.1 shall be subject to dispute resolution under this Section 19.2.

19.2.1 Landlord and Tenant agree to communicate regularly to discuss matters arising under this Lease and to prevent disputes from arising. Except as otherwise provided, the Parties agree further to use their best efforts to resolve any disputes arising under this Lease using good-faith negotiations through the following Dispute Process:

Step One. Landlord and Tenant or their designees shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either Party.

Step Two. In the event Landlord and Tenant or their designees are unable to resolve the dispute within ten (10) business days as provided in Step One, either Party may refer the dispute to Landlord's and Tenant's authorized representatives or their respective designees. They shall confer and attempt to resolve the dispute within five (5) business days of receiving the referral.

Step Three. In the event Landlord's and Tenant's authorized representatives or their respective designees are unable to resolve the dispute within five (5) business days as provided in Step Two, either Party may refer the dispute to Landlord's Division Director and such representative as designated for this purpose by Tenant. They shall confer and attempt to resolve the dispute within five (5) business days after receiving the referral.

19.2.2 If the Parties are unable to resolve the dispute using the process set forth in Steps One through Three above, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator.

19.2.3 As to matters that are subject to dispute resolution under this Section 19.2 neither Party shall have the right to seek relief in a court of law until and unless Steps One through Three above are exhausted. At all times during the course of such dispute resolution efforts, the Parties agree to continue to perform their respective responsibilities under this Lease with due diligence.

19.2.4 The Parties agree that as between them, applicable statutes of limitation or statutes of repose shall be tolled while the Parties implement the dispute resolution process set forth in this Section 19.2.

## **ARTICLE 20**

### **EXHIBITS**

Section 20.1 List of Exhibits. The following Exhibits are attached to this Lease and are incorporated herein by reference:

- A. Legal Description of the Property
- A-1. Site Plan
- B. Legal Description of the Premises
- C. Form of Consent and Recognition Agreement
- D. Form of Memorandum of Ground Lease
- E. Copy of Due Diligence Agreement
- F. Copy of Development Agreement
- G-1 Form of Access Easement
- G-2 Form of Glazing Easement
- H. Conceptual Illustration of Potential Future Uses and Development on Parcels  
Adjacent to the Premises
- I. Comfort Station Sublease

*[Signatures on Following Page]*

IN WITNESS WHEREOF, this Lease is made and entered into in multiple original counterparts on the day and year first above written.

**LANDLORD:**

**KING COUNTY**, a home rule charter and Washington political subdivision:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form for King County:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AFFORDABLE HOUSING  
DEVELOPER:**

**NORTHGATE AFFORDABLE LLC**,  
a Washington limited liability company

**BY:**

**BRIDGE HOUSING CORPORATION**, a  
California corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**And**

**COMMUNITY ROOTS HOUSING**, a  
Washington public corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of KING COUNTY, a home rule charter  
and Washington political subdivision, to be the free and voluntary act of such entity for the  
uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of  
Washington,

residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of BRIDGE HOUSING  
CORPORATION, a California corporation, the Manager of NORTHGATE AFFORDABLE  
LLC, a Washington limited liability company, the General Partner of  
\_\_\_\_\_ LLLP to be the free and voluntary act of such entity for the uses and  
purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of  
Washington,

residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_



STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of COMMUNITY ROOTS HOUSING, a Washington public corporation, the Manager of NORTHGATE AFFORDABLE LLC, a Washington limited liability company, the General Partner of \_\_\_\_\_ LLLP to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the State of  
Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

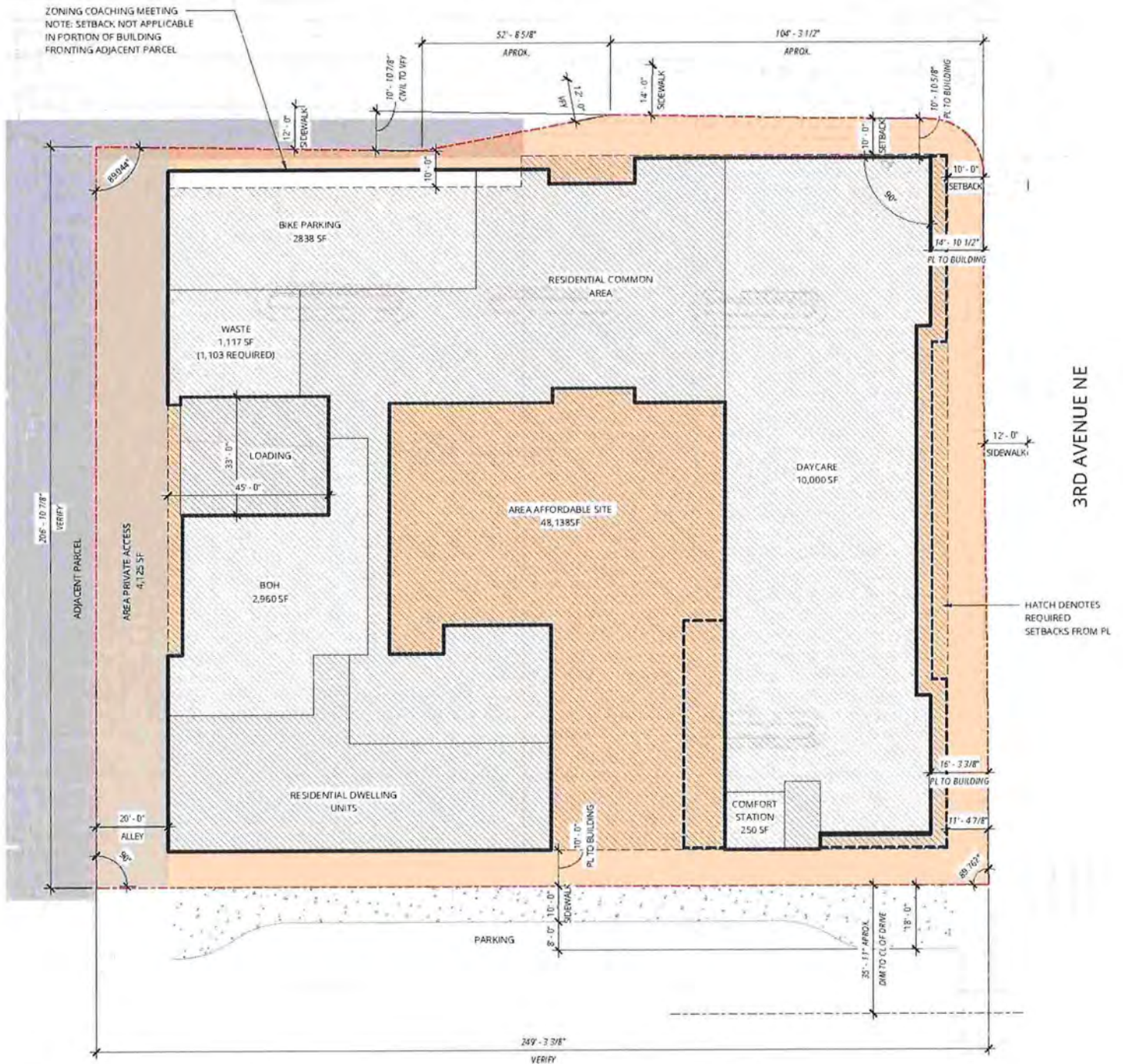
## **EXHIBIT A**

### **Legal Description of the Property**

[On the Commencement Date, Landlord is hereby authorized to substitute as the Legal Description of the Property the legal description of the "AF Parcel" defined in the Development Agreement, as such legal description is determined pursuant to the boundary line adjustment process contemplated therein.]

## Site Plan

NE 103RD STREET



## **EXHIBIT B**

### **Legal Description of the Premises**

[On the Commencement Date, Landlord is hereby authorized to substitute as the Legal Description of the Premises upon determination of the Legal Description of the Property.]

EXHIBIT C

Form of Consent and Recognition Agreement

RECORDED AT THE REQUEST OF  
AND AFTER RECORDING RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

**LEASEHOLD MORTGAGE CONSENT AND RECOGNITION AGREEMENT**

Grantor: KING COUNTY, a home rule charter county and legal  
successor in interest to the Metropolitan Municipality of  
Seattle

Grantee: \_\_\_\_\_, a  
\_\_\_\_\_

Legal Description: \_\_\_\_\_

Assessor's Tax Parcel ID#: \_\_\_\_\_

THIS LEASEHOLD MORTGAGE CONSENT AND RECOGNITION  
AGREEMENT ("**Agreement**") is dated for reference purposes as of \_\_\_\_\_, 20\_\_\_\_,  
and is made by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Lender**"), KING  
COUNTY, a home rule charter county and legal successor in interest to the Metropolitan  
Municipality of Seattle ("**Landlord**"), and NORTHGATE AFFORDABLE HOUSING, LLC,  
a Washington limited liability company ("**Tenant**").

08/05/2021 Exhibit C to Ground Lease – Form of Consent and Recognition Agreement



## RECITALS

A. Landlord is the owner of the real property more particularly described on **Exhibit "A"** attached hereto (the "**Premises**"); and

B. Landlord and Tenant entered into that certain Ground Lease dated \_\_\_\_\_, 2021 (the "**Effective Date**") (together with all amendments, substitutions, replacements and renewals thereto from time to time, collectively, the "**Lease**"), pursuant to which Landlord has leased to Tenant and Tenant has leased from Landlord the Premises;

C. Tenant has obtained a loan from Lender secured by a deed of trust (the "**Leasehold Mortgage**") in favor of Lender encumbering the Tenant's leasehold estate in the Premises, including whatever interest the Tenant may have in the existing or subsequently erected improvements on the Premises including, but not limited to, any buildings, structures, facilities, additions, furniture, fixtures, inventory, accounts receivable, chattel paper, and equipment on the Premises (the "**Project**"), which Leasehold Mortgage will be recorded in the real property records of King County, Washington, within which the Premises are located (the "**Records**"); and

D. Capitalized terms used but not defined herein shall have their meanings set forth in the Lease.

## **AGREEMENT**

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Consent. Landlord consents to the Leasehold Mortgage; provided, however, that the Leasehold Mortgage shall at all times be subject to all of the terms and conditions of the Lease. Notwithstanding the foregoing, so long as the Lease remains in full force and effect, Landlord agrees to subordinate all of its interests in the leasehold improvements at the Premises to the security interests held by Lender in the same. Modifications or amendment of the Leasehold Mortgage or any document or agreement entered into connection therewith shall not require the consent of the Landlord.

2. Notice of Default. Landlord shall give Lender at its address set forth below a duplicate copy of all notices of default at the same time as such notice of default is given to or served upon Tenant, provided that such notice shall be duly given when sent to the Lender at the notice address set forth herein (or the last address of Lender provided in a written notice to Landlord pursuant to the terms hereof), by US Mail, registered, return receipt requested or by a recognized overnight commercial delivery service; and provided, further, that the failure of Landlord to send a copy of such notice of default to Lender shall not subject Landlord to any liability hereunder. The address of the Lender originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord.

3. Lender's Right to Cure.

3.1 Lender, at its option at any time within thirty (30) days, or such longer period as may be applicable as provided below, following the expiration of the right of Tenant to cure any default under the Lease, may pay any amount or do any act or thing required of Tenant by the terms of the Lease. Payments made and acts performed by Lender within such thirty (30) day period, or such longer period as may be applicable as provided below, shall be effective to prevent a termination of the rights of Tenant hereunder, if such payments and acts conform to the terms of the notice from Landlord described in this Agreement or if, together with any performance by Tenant or any other person with any cure rights, they are sufficient, except as to timing, to exercise the Tenant's right to cure that so expired, but in order to prevent termination of the Lease, Lender shall not be required to cure (A) default on obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in the Lease caused by a wrongful act of Tenant; or (B) any default resulting from the acts or omissions of the Landlord ("**Excluded Defaults**"). Accordingly, in such event Lender shall not be required to cure such Excluded Defaults to avoid termination of the Lease, but Lender would be required to remediate, ameliorate, or eliminate such continuing conditions to Landlord's reasonable satisfaction to avoid such termination. If the default by Tenant is of such nature that it cannot practicably be cured without possession of the Premises and the Project, then the thirty-day period set forth above shall be extended for up to an additional thirty (30) days if Lender shall then be proceeding with reasonable diligence to foreclose on the Tenant's interest or otherwise obtain possession of the Premises and Project for itself or a receiver. Tenant hereby agrees to indemnify, defend and hold harmless Landlord and its affiliates from any and all claims, demands, penalties, fees (including reasonable attorneys' fees), liens, damages, losses, expenses, and liabilities arising out of or in any way connected to Lender's election to cure any default or breach under the Leasehold Mortgage pursuant to this section.

3.2. Prior to the expiration of the cure rights of Lender, the Landlord shall not effect or cause any purported termination of the Lease nor take any action to deny Tenant or any subtenant possession, occupancy, or quiet enjoyment of the Premises or any part thereof.

3.3. Without limiting the rights of Lender as stated above, and whether or not there shall be any notice of default hereunder, Lender shall have the right, but not the obligation, at any time prior to termination of the Lease to pay all of the rent due hereunder or under the Lease, with all due interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder or under the Lease, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of the Lease. Lender and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing, and at all times during such entry and access, Lender and its agents and contractors shall be subject to and shall comply with all indemnity and insurance obligations applicable to Tenant under the Lease. Any of the foregoing done by Lender shall be as effective to prevent a termination of the Lease, as the same would have been if done by Tenant.

4. Landlord's Consent to Transfers. Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate created by the Lease or any part thereof and Tenant's interest in the Project and other rights thereunder, or any part thereof, to the Lender or other person through, or in lieu of, foreclosure, trustee's sale or other proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under the Lease, except that (1) Landlord shall have the right to approve in its sole discretion any direct or indirect Transferee (other than Lender itself) in accordance with the approval standards for Transfers set forth in Article 16 of the Lease, and (2) and upon such foreclosure, sale or conveyance Landlord shall recognize Lender or other Landlord-approved direct or indirect Transferee in connection therewith as the Tenant under the Lease to the extent of the interest so transferred.

5. Right to New Lease.

5.1 If the Lease terminates for any reason including the rejection of the Lease in a bankruptcy proceeding, then Landlord shall give written notice of such fact to Lender, and if Lender is the senior holder of a Leasehold Mortgage, and if Lender gives written notice to Landlord within thirty (30) days following delivery of such notice of termination by Landlord, Landlord agrees in such case to enter into a new ground lease for the Premises (a "**New Lease**") with Lender or its affiliated designee who has been approved in advance by Landlord in Landlord's sole discretion, for the remainder of the term of the Lease (including any option terms) effective as of the date of such termination, at the rent and additional rent and upon the other terms, conditions, covenants and agreements contained in the Lease and with equal priority thereto, on the conditions set forth in this Agreement. Notwithstanding anything to the contrary contained herein, if Lender is the senior holder of a Leasehold Mortgage, no termination of the Lease shall become effective until, and the lien of the Leasehold Mortgage on the Project shall remain effective until, either a New Lease has been made pursuant to this Agreement or Lender has not timely accepted (or caused to be accepted) a New Lease, upon the expiration of the 30-day period as set forth above. Upon entering into a New Lease, Leasehold Mortgagee or its affiliated Landlord-approved designee shall cure all then-existing defaults by Tenant hereunder, except Excluded Defaults.

5.2. The tenant under the New Lease shall have the same right, title and interest in and to the Premises and Project and all obligations as Tenant had under the terminated Lease (other than with respect to Excluded Defaults) and the Existing Project Agreements (as that term is defined in the Lease) and the Landlord and the new tenant shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest or obligations.

5.3. If the Landlord, without termination of the Lease, evicts the Tenant, or if the Tenant abandons the Premises without Landlord thereafter terminating the Lease as permitted elsewhere herein, then any reletting thereof shall be subject to the lien and rights of Lender, and in any event Landlord may not relet the Premises or any part thereof, other than renewal

of occupancies of residential tenants and leases or other occupancy agreements with new residential tenants consistent with any covenants of record for low-income housing, without sixty (60) days' advance written notice Lender of the intended reletting and the terms thereof; and if Lender, within thirty days of receipt of such notice, gives notice to the Landlord of Lender's intent to pursue proceedings to foreclose on the Premises or otherwise cause the transfer thereof, then so long as the Lender diligently pursues such proceedings the Landlord may not proceed with such reletting without the written consent of Lender.

5.4. Nothing in this Section 5 shall require Lender to accept a New Lease.

6. Limitation of Liability of Lender. Lender shall not be liable to Landlord as the "Tenant" under the Lease unless it expressly assumes such liability in writing. Unless Lender or any Landlord-approved Transferee becomes the Tenant under the Lease or under any New Lease obtained pursuant to this Agreement, Lender or such Transferee shall not be liable for the obligations of the Tenant under the Lease arising on and after the transfer of the Tenant's interest in the Lease to the new "Tenant." Any liability of Lender or such Transferee shall be limited to its interests in the leasehold and the Premises, including the rents, profits, and proceeds therefrom, and shall be enforceable solely against those interests.

7. Actions not Effective Without Leasehold Mortgagee Consent. No cancellation, surrender, or modification or amendment of the Lease, and no waiver of any of Tenant's rights thereunder, shall be effective as to Lender unless consented to in writing by Lender. No subordination of the Tenant's interest in the leasehold or the Premises, or the rents or income therefrom, to any encumbrance or assignment granted by Landlord, and no joinder by Tenant in any such encumbrance or assignment, shall be valid without the express written consent of Lender. No consent or waiver of Lender shall be effective for purposes of the Lease unless it is made in writing.

8. Bankruptcy of Landlord. If the Lease is rejected by Landlord or Landlord's trustee in bankruptcy following the bankruptcy of Landlord under the United States Bankruptcy Code (Title 11 U.S.C.), as now or hereafter in effect, Tenant shall not have the right to treat the Lease as terminated except with the prior written consent of Lender, and the right to treat the Lease as terminated in such event shall be deemed assigned to Lender whether or not specifically set forth in the Leasehold Mortgage, so that the concurrence in writing of Tenant and Lender shall be required as a condition to treating the Lease as terminated in connection with any such bankruptcy proceeding.

9. Subordination of Liens to Leasehold Mortgages. Landlord hereby subordinates its statutory landlord's lien rights to the perfected lien of the Leasehold Mortgage (including UCC-1 Financing Statements). Lender may enter the Premises for the purpose of exercising the rights and remedies provided under its Leasehold Mortgage including, without limitation, removing equipment, trade fixtures and other personal property from the Premises, and at all times during such entry and access, Lender and its agents and contractors shall be subject to and shall comply with all indemnity and insurance obligations applicable to Tenant under the Lease, and Lender shall repair any damage resulting from such removal.

10. Notices. Any notices required or permitted hereunder shall be in writing and shall be given via certified first class mail, postage prepaid, return receipt requested, and addressed as follows:

If to Landlord: King County Metro Transit Department  
Attn: Director of Capital Division, Metro Transit Department  
201 South Jackson Street  
KSC-TR-0415  
Seattle, WA 98104-3856

With a copy to: King County Facilities Management Division  
Attn: Real Estate Services Section  
201 South Jackson Street  
KSC-TR-0XXX  
Seattle, WA 98104-3856

With a copy to: King County Prosecuting Attorney Office  
Attn: Chief Civil Deputy Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

If to Tenant: Northgate Affordable LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attention: Rebecca Hlebasko, General Counsel

With a copy to: Community Roots Housing  
1620 – 12<sup>th</sup> Ave., Suite 205  
Seattle, WA 98122  
Attn: Jeremy Wilkening, Vice President, Real Estate Development

With a copy to: Kantor Taylor PC  
1200 5<sup>th</sup> Avenue, Suite 1910  
Seattle, WA 98101  
Attn: Mark Kantor

If to Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_



With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Limited Partner \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

or to such other address as any party may designate by notice to the other parties.

11. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of each party's respective successors and assigns; subject, however, to the terms, conditions, and limitations expressly set forth herein.

12. Integration. This Agreement contains the whole agreement between the parties relating to the terms of this Agreement. There are no agreements, written or oral, outside or separate from this Agreement concerning the subject matter hereof, and all prior negotiations, if any, are merged into this Agreement.

13. Conflicts. If there is a conflict or ambiguity between any of the provisions of this Agreement, the documents evidencing the Leasehold Mortgage, or the Lease, this Agreement shall prevail as to the subject matter hereof.

14. Termination. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall terminate and be of no further force or effect upon payment in full of the Leasehold Mortgage or voluntary reconveyance of the Leasehold Mortgage. If Landlord terminates the Lease and Lender fails to avail itself of the cure rights provided by this Agreement, then this Agreement will terminate and Lender agrees to execute any documents reasonably requested by Landlord to clear title to the Premises as to this Agreement. To evidence such termination or expiration pursuant to this Section, each party agrees, within five (5) business days after the written request of any other party, to enter into and record an appropriate release and/or cancellation instrument, in proper form for recordation in the Records, acknowledging the expiration or earlier termination of this Agreement (the "**Cancellation**"). If either Lender or Tenant fails to timely deliver the Cancellation, and such failure continues for an additional five (5) business days after a second

written notice, each of Tenant and Lender hereby appoints Landlord as Tenant's or Lender's, as applicable, attorney-in-fact for the limited purpose to prepare, execute and record the Cancellation. This appointment shall be coupled with an interest and irrevocable.

15. Counterparts. This Agreement may be executed and delivered in counterparts as a PDF file delivered by email, or as a facsimile copy, and each counterpart so executed and delivered is original, and such counterparts together shall constitute but one and the same instrument. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each party hereto. Any executed signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it such additional executed signature pages.

[Remainder of page intentionally left blank; signatures on next page.]

IN WITNESS WHEREOF, this Leasehold Mortgage Consent and Recognition Agreement is made and entered into in multiple original counterparts on the day and year first above written.

**LANDLORD/KCM:**

**KING COUNTY**, a home rule charter and Washington political subdivision:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form for King County:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT/AFFORDABLE HOUSING DEVELOPER:**

**NORTHGATE AFFORDABLE LLC**, a Washington limited liability company

**BY:**

**BRIDGE HOUSING CORPORATION**, a California corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**And**

**COMMUNITY ROOTS HOUSING**, a Washington public corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON

SS:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of KING COUNTY, a home rule charter  
and Washington political subdivision, to be the free and voluntary act of such entity for the  
uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the State of  
Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

SS:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of BRIDGE HOUSING  
CORPORATION, a California corporation, the Manager of NORTHGATE AFFORDABLE  
LLC, a Washington limited liability company, to be the free and voluntary act of such entity  
for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the State of  
Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of CAPITOL HILL HOUSING IMPROVEMENT PROGRAM, a Washington public corporation, the Manager of NORTHGATE AFFORDABLE LLC, a Washington limited liability company, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of

Washington,

residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF \_\_\_\_\_

ss:

COUNTY OF \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of

\_\_\_\_\_,

residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_



**EXHIBIT A**  
**To**  
**Leasehold Mortgage Consent and Recognition Agreement**

**Legal Description of the Premises**

[To be attached at execution]

## EXHIBIT D

### Form of Memorandum of Ground Lease

RECORDED AT THE REQUEST OF  
AND AFTER RECORDING RETURN TO:

Kantor Taylor PC  
1200 5th Avenue, Suite 1910  
Seattle, WA 98101  
Attn: Mark Kantor, Esq.

### MEMORANDUM OF GROUND LEASE

Grantor: KING COUNTY, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle, as "Landlord"

Grantee: NORTHGATE AFFORDABLE LLC, a Washington limited liability company, as "Tenant"

Legal Description: \_\_\_\_\_

Assessor's Tax Parcel ID#: \_\_\_\_\_

### RECITALS

A. Landlord is the owner of the real property more particularly described on **Exhibit "A"** attached hereto (the "**Premises**"); and

B. Landlord and Tenant entered into that certain Ground Lease dated \_\_\_\_\_, 2021 (the "**Effective Date**") (together with all amendments, substitutions, replacements and renewals thereto from time to time, collectively, the "**Lease**"), pursuant to which Landlord has leased to Tenant and Tenant has leased from Landlord the Premises; and

C. Pursuant to the Lease, the parties have agreed to execute and Tenant shall at its sole expense record this Memorandum of Ground Lease (this "**Memorandum**") against the Premises in the real property records of King County, Washington (the "**Records**"). Each of Landlord and Tenant are sometimes referred to hereinafter individually as a "**Party**" and collectively as the "**Parties.**"

08/05/2021 Exhibit D to Ground Lease – Form of Memorandum of Ground Lease

## AGREEMENT

NOW, THEREFORE, in consideration of the Lease and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Incorporation of Recitals; Capitalized Terms. The foregoing Recitals shall be incorporated as though fully set forth herein. Any capitalized terms not defined in this Memorandum shall have the meanings ascribed thereto in the Lease.
2. The Lease. Landlord has leased to Tenant, and Tenant has leased from Landlord, pursuant to the terms and conditions of the Lease, the Premises.
3. Lease Term. The Term of the Lease is a period of seventy-five (75) years, commencing on the Commencement Date defined in the Lease.
4. Assignments, Subleases, and Other Transfers Restricted. Tenant acknowledges that: (i) Landlord is relying on the real estate and development expertise of Tenant to assure the quality of the development of the Project; (ii) the design, use, operation and maintenance of the Project and its components are deemed critical by Landlord; (iii) a change in ownership or control of Tenant, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership, could have a material adverse impact on the development of the Project; and (iv) the qualifications and identity of the Tenant are of particular concern to Landlord. Tenant further recognizes that it is because of such qualifications and identity that Landlord is entering into the Lease with Tenant. Accordingly, except to the extent expressly permitted in Article 7 of the Lease (Leasehold Mortgages), and except in connection with Exempt Transfers and Permitted Rental Agreements described in Article 16 of the Lease, Tenant shall not voluntarily, involuntarily, or by operation of any law, sell, convey, mortgage, assign, sublet or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or the Premises (any of the foregoing, a "**Transfer**") without Landlord's prior written consent in each instance, which consent may be withheld in Landlord's sole and absolute discretion except as otherwise provided in Article 16 of the Lease, and any attempt by Tenant to do so without this consent shall be, at Landlord's election, null and void and without any effect whatsoever, and may be deemed by Landlord as a default under the Lease and no cure provision shall apply. Without limiting the generality of the foregoing, in no event may Tenant enter into any Transfer to or with a party that is not a non-profit entity that is in the business of providing affordable housing to low-income occupants as contemplated elsewhere in the Lease.
5. Additional Provisions. The Lease contains additional rights, terms and conditions not enumerated in this instrument.
6. Purpose and Intention; Conflict. This Memorandum is executed for the purpose of recordation in the Records, and is not intended, and shall not be construed, to define, limit or modify the Lease. The leasehold estate created and conveyed hereby with respect to the Premises is intended to be one and the same estate as was created with respect to the Premises by the Lease and is further intended to be governed in all respects solely by the Lease and all

of the provisions thereof. In the event of any inconsistency between the provisions of this Memorandum and the Lease, the provisions of the Lease shall control.

7. Cancellation of Memorandum of Lease. Unless sooner terminated by specific written agreement of Landlord and Tenant, this Memorandum shall expire and be of no further force or effect immediately, and without further action, upon the expiration or earlier termination of the Lease. To evidence such termination or expiration pursuant to this Section, each Party agrees, within five (5) business days after the written request of the other Party, to enter into and record an appropriate release and/or cancellation instrument, in proper form for recordation in the Records, acknowledging the expiration or earlier termination of the Lease (the “**Cancellation**”). If Tenant fails to timely deliver the Cancellation, and such failure continues for an additional five (5) business days after a second written notice, Tenant hereby appoints Landlord as Tenant’s attorney-in-fact for the limited purpose to prepare, execute and record the Cancellation. This appointment shall be coupled with an interest and irrevocable.

8. Binding Effect. All of the provisions of this Memorandum shall inure to the benefit of and shall be binding upon the successors and assigns of Landlord and Tenant; provided, however, any such assignment shall be subject to the terms and conditions of the Lease.

9. Counterparts. This Memorandum may be executed and delivered in counterparts as a PDF file delivered by email, or as a facsimile copy, and each counterpart so executed and delivered is original, and such counterparts together shall constitute but one and the same instrument. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. It shall not be necessary in making proof of this Memorandum to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each Party hereto. Any executed signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it such additional executed signature pages.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, this Memorandum of Ground Lease is made and entered into in multiple original counterparts on the day and year first above written.

**LANDLORD/KCM:**

**KING COUNTY**, a home rule charter and Washington political subdivision:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form for King County:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT/AFFORDABLE HOUSING DEVELOPER:**

**NORTHGATE AFFORDABLE LLC**, a Washington limited liability company

**BY:**

**BRIDGE HOUSING CORPORATION**, a California corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**And**

**COMMUNITY ROOTS HOUSING**, a Washington public corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of KING COUNTY, a home rule charter  
and Washington political subdivision, to be the free and voluntary act of such entity for the  
uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of  
Washington,

residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of BRIDGE HOUSING  
CORPORATION, a California corporation, the Manager of NORTHGATE AFFORDABLE  
LLC, a Washington limited liability company, to be the free and voluntary act of such entity  
for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of  
Washington,

residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of CAPITOL HILL HOUSING  
IMPROVEMENT PROGRAM, a Washington public corporation, the Manager of  
NORTHGATE AFFORDABLE LLC, a Washington limited liability company, to be the free  
and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the State of  
Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

**EXHIBIT A**  
**To**  
**Memorandum of Ground Lease**  
**Legal Description of the Premises**

[To be attached at execution]

**EXHIBIT A**  
**To**  
**Memorandum of Ground Lease**  
**Legal Description of the Premises**

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[To be attached at execution]

## **EXHIBIT E**

### **Copy of Due Diligence Agreement**

[See attached twenty-one (21) pages.]

**SECOND AMENDMENT TO  
ENTRY, DUE DILIGENCE AND PRE-DEVELOPMENT AGREEMENT  
NORTHGATE TRANSIT CENTER/AFFORDABLE HOUSING PROJECT**

This SECOND Amendment to the Entry, Due Diligence and Pre-Development Agreement is made as of October 4, 2020 (the "Effective Date") by and between BRIDGE HOUSING CORPORATION, a California corporation and COMMUNITY ROOTS HOUSING, a Washington public corporation (together, "Affordable Housing Developer"), and KING COUNTY, a home rule charter county legal successor in interest to the Metropolitan Municipality of Seattle ("KCM"). Affordable Housing Developer and KCM are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

**RECITALS**

- A. The Parties entered into an Entry, Due Diligence and Pre-Development Agreement dated as of February 7, 2020 (the "Entry Agreement").
- B. The terms of the license provided pursuant to the Entry Agreement was for a period of 240 days after the Effective Date.
- C. The Entry Agreement expired on October 4, 2020.
- D. The Parties entered into a first amendment to the Entry Agreement (the "First Amendment") on January 22, 2021, which extended the term of the Entry Agreement through August 31, 2021.
- E. The Parties now desire to extend the term of the Entry Agreement to 90 days following the Development Agreement "Execution Date".

**AGREEMENT**

Now therefore, in consideration of the mutual benefits to be derived herein, the Parties agree that the Term of the Entry Agreement is hereby extended through to 90 days following the Development Agreement "Execution Date".

Unless otherwise modified herein, all other terms and conditions of the Entry Agreement remain in full force and effect as if fully set forth herein.

*[Signature Page follows]*



BRIDGE HOUSING CORPORATION,

a California corporation:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

COMMUNITY ROOTS HOUSING,

a Washington public corporation:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

KING COUNTY,

a home rule charter and Washington political subdivision

\_\_\_\_\_  
Diane Carlson  
Director, Capital Division  
King County Metro Transit  
Date: \_\_\_\_\_

Approved as to form only:

\_\_\_\_\_  
Senior Deputy Prosecuting Attorney

FIRST AMENDMENT TO  
ENTRY, DUE DILIGENCE AND PRE-DEVELOPMENT AGREEMENT  
NORTHGATE TRANSIT CENTER/AFFORDABLE HOUSING PROJECT

This First Amendment to Entry, Due Diligence and Pre-Development Agreement ("Agreement") is made as of January 22, 2021 (the "Effective Date") by and between BRIDGE HOUSING CORPORATION, a California corporation and COMMUNITY ROOTS HOUSING, a Washington public corporation (together, "Affordable Housing Developer"), and KING COUNTY, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle ("KCM"). Affordable Housing Developer and KCM are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS

- A. The Parties entered into that certain Entry, Due Diligence and Pre-Development Agreement ("Agreement") dated as of February 7, 2020 (the "Entry Agreement").
- B. The terms of the license provided pursuant to the Entry Agreement was for a period of 240 days after the Effective Date.
- C. The term of the Entry Agreement expired on October 4, 2020.
- D. The Parties desire to extend the term of the Entry Agreement through August 31, 2021.

AGREEMENT

Now therefore in consideration of the mutual benefits to be derived herein, the Parties agree that the term of the Entry Agreement is hereby extended through August 31, 2021.

Unless otherwise modified herein, all other terms and conditions of the Entry Agreement remain in full force and effect as if fully set forth herein.

*[Signature Page follows]*

**BRIDGE HOUSING CORPORATION,**

a California corporation:

By: Alison Lorig  
566AD5DACF8E4FD...

Name: Alison Lorig

Title: Senior Vice President

Date: 2/19/2021

**COMMUNITY ROOTS HOUSING,**

a Washington public corporation:

By: Chris Persons  
6E406C36R0FE4EC...

Name: Chris Persons

Title: CEO

Date: 2/19/2021

**KING COUNTY,**

a home rule charter and Washington political subdivision:

DocuSigned by:  
Diane Carlson  
B90130704FC64E3...  
Diane Carlson  
Director, Capital Division  
King County Metro Transit

2/5/2021  
Date

Approved as to form only:

DocuSigned by:  
Andrew Marcuse  
524E3970ACE14FC...  
Andrew Marcuse  
Senior Deputy Prosecuting Attorney

2/22/2021  
Date

**ENTRY, DUE DILIGENCE AND PRE-DEVELOPMENT AGREEMENT**  
**NORTHGATE TRANSIT CENTER/AFFORDABLE HOUSING PROJECT**

This Entry, Due Diligence and Pre-Development Agreement ("Agreement") is made as of 2/7/2020, 2020 (the "Effective Date") by and between **BRIDGE HOUSING CORPORATION**, a California corporation and **CAPITOL HILL HOUSING IMPROVEMENT PROGRAM**, a Washington public corporation (together, "Affordable Housing Developer"), and **KING COUNTY**, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle ("KCM"). Affordable Housing Developer and KCM are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

**RECITALS**

- A. KCM owns certain real property ("Property") described as follows:

Parcel Address: 10104 3rd Avenue NE, Seattle WA  
Parcel Numbers: 322604-9325 & 322604-9003  
Legal Description: See Attachment 1 hereto

- B. Affordable Housing Developer acknowledges that the Property is a part of KCM's Northgate Transit Center, which is a critical facility in KCM's public transportation system and daily used by the public for public transportation purposes, including but not limited to park-and-ride purposes, vanpooling, and boarding and debarking numerous buses.
- C. KCM is authorized and empowered to lease all or a portion of the Property to others and to otherwise own, operate and control the Property pursuant to RCW 35.58.240 and King County Code sections 2.16.038, 4.56.060, and 4.56.150.
- D. On August 28, 2018, KCM issued a Request for Qualifications and Concepts 1207-18-VNL (the "RFQ/C") seeking proposals from developers to acquire and develop the Property into a mixed-income, mixed-use community project including, among other things, both market rate and affordable housing units. KCM received three responses to the RFQ/C. A five-member evaluation committee evaluated the three responses as part of a competitive selection process. Affordable Housing Developer was part of a team, along with Stellar Holdings and Lowe Enterprises (collectively, the "Market Rate Developer"), that submitted a response (the "RFQ/C Response"). Based upon the commitments described in RFQ/C Response, on November 19, 2018, KCM selected the team consisting of the Affordable Housing Developer and the Market Rate Developer to negotiate a definitive agreement for the development of the Property consistent with the RFQ/C. The role and function of Affordable Housing Developer was to develop a portion of the Property with the affordable housing project described below. During negotiations, Parties concluded that entering into a single development agreement between KCM, the Market Rate Developer, and the Affordable Housing Developer could result in delays to the affordable housing project. In order to facilitate and expedite the development of the affordable housing project on the Property, KCM and Affordable Housing Developer are entering into this Agreement on the terms and conditions outlined herein.
- E. Affordable Housing Developer desires to undertake certain due diligence and pre-development activities on a 43,000 square foot (approximately) portion of the Property as described and depicted on Attachment 2 hereto (the "AF Parcel") in connection with Affordable Housing Developer's potential development of a 232-unit subsidized, affordable housing project consisting of a mix of at

least 52 two or three-bedroom units and at least 24 system-connected units and serving households with incomes of 60% or less of the area median income and certain accessory spaces, including a childcare center (the "Project"). Subject to the terms and conditions of this Agreement, KCM is willing to allow Affordable Housing Developer a limited license to access the AF Parcel and to undertake certain due diligence activities thereon relating to the Project in accordance with this Agreement.

- F. Contemporaneous with Affordable Housing Developer's due diligence activities, KCM and Affordable Housing Developer intend to enter into negotiations for the terms and conditions of an agreement (the "Development Agreement") that will provide for certain development, permitting and other pre-construction activities by Affordable Housing Developer in connection with the Project and the closing of a ground lease transaction for the AF Parcel upon the satisfaction of certain conditions precedent (the "Transaction"). KCM is also undertaking a boundary line adjustment or short plat of the Property that will create the AF Parcel as a legally conveyable and leaseable parcel. The Parties agree and acknowledge that nothing in this Agreement shall constitute or be deemed to constitute a commitment on the part of KCM or Affordable Housing Developer for entry into a further Development Agreement or consummation of the Transaction, all of which remain subject to the Parties further negotiation and agreement on the terms thereof.

1. **Grant of Limited License; Term.** KCM hereby grants to Affordable Housing Developer a limited and revocable, non-exclusive license to enter upon the AF Parcel, including such portion of the Property, if any, as is reasonably necessary for access to the AF Parcel, for the sole purpose of conducting its due diligence investigation in connection with the Project (the "Due Diligence Investigation"). Before its access to the AF Parcel and commencement of any due diligence activities, Affordable Housing Developer will coordinate with KCM's Designated Representative listed in Section 2 below. To the maximum extent practicable, Affordable Housing Developer shall at all times use commercially reasonable efforts to avoid, minimize, and mitigate the impact of its activities on KCM's public transportation activities and the public's use of the Property. Subject to Section 9 below, the term of this license shall be for a period of 240 days after the Effective Date (the "Term").

2. **Contacts; Notice of Entry.**

- A. Prior to accessing the Property, Affordable Housing Developer and/or its designated Representatives shall contact the KCM's Designated Representative as well as notify the KCM's Park and Ride Coordination and Construction Coordination contacts to arrange for access. Once a date or dates for access has been established, Affordable Housing Developer shall give KCM at least five (5) days' advanced notice of entry and a 24 hours' advance courtesy reminder.

B. **KCM's Designated Representative**

Name: Rand Iuliano, Transactions Manager

Telephone #: 206-477-5933

Email: rand.iuliano@kingcounty.gov

Park and Ride Coordination contact: email: ParkRide.Coord@kingcounty.gov

Construction Coordination contact: email: Construction.Coord@kingcounty.gov

Point of Contact for Property Access Coordination Related to this Agreement:

Name: Coordinator, Park Ride; email: ParkRide.Coord@kingcounty.gov

**C. Affordable Housing Developer's Point of Contact for Purposes Related to this Agreement:**

Name: Alison Lorig  
Title: Senior Vice President, Pacific Northwest  
BRIDGE Housing Corporation  
1000 Second Avenue, Suite 1610  
Seattle, WA 98104  
Telephone #: 206-890-4759  
Email: [alorig@bridgehousing.com](mailto:alorig@bridgehousing.com)

and:

Name: Jeremy Wilkening  
Title: Vice President of Real Estate Development  
Capitol Hill Housing  
1620 - 12<sup>th</sup> Avenue, Suite 205  
Seattle, WA 98122  
Telephone #: 206-204-3830  
Email: [jwilkening@capitolhillhousing.org](mailto:jwilkening@capitolhillhousing.org)

**3. Indemnity.**

- A. Affordable Housing Developer shall protect, defend, indemnify and hold KCM and its officials, officers, employees, agents, consultants, contractors and subcontractors harmless (except to the extent resulting from the presence of pre-existing latent conditions on, at or under the Property, which were not disclosed to Affordable Housing Developer or the gross negligence of KCM or any official, officer, employee, agent, consultant, contractor or subcontractor of KCM acting within the scope of such person's employment or office) from and against any and all claims, demands, losses, liabilities, damages, expenses and costs (including reasonable attorney's fees and costs) (collectively, "Claims") of every kind and description and for any personal injury, bodily injury or loss to or damage or destruction of property arising out of or relating to Affordable Housing Developer's exercise of its rights under this Agreement or the completion of activities on the Property by or on behalf of Affordable Housing Developer or its agents, representatives, consultants, contractors or subcontractors. For the purpose of clarity, Affordable Housing Developer's foregoing indemnification obligations shall not include any duty or obligation, or any Claims related thereto, with respect to Affordable Housing Developer's discovery, without further exacerbation, of any pre-existing conditions at the Property, including without limitation any hazardous or toxic substances or materials or other adverse condition.
- B. The foregoing indemnification is specifically and expressly intended to include, but is not limited to, all Claims against KCM by an employee or former employee of Affordable Housing Developer or its agents or representatives, to the extent such Claim arises out of the rights granted under this Agreement; and Affordable Housing Developer expressly waives, as respect KCM only, all immunity and limitation on liability under any industrial insurance act including Title 51 RCW, to the extent necessary to provide KCM with a complete indemnity of Claims for the actions of Affordable Housing Developer's employees, former employees, agents or representatives pursuant to 3 A. above. This waiver has been mutually negotiated.



- C. The indemnities contained herein will not cover any Claims arising solely as a result of the discovery, without further exacerbation, by Affordable Housing Developer of any pre-existing adverse condition on the Property as described in Section 3.A. above.
- D. This Section 3 and the indemnities contained herein have been the subject of specific negotiation between the Parties and this Section 3 and the indemnities contained herein shall survive the expiration or termination of this Agreement.

4. **Affordable Housing Developer Insurance.**

- A. Affordable Housing Developer shall maintain at its sole cost and expense, and cause any consultant, contractor or subcontractor hired to provide work or services in connection with Affordable Housing Developer's Due Diligence Investigation to maintain the following minimum insurance during the Term:
  - (i) Commercial General Liability insurance in an amount not less than \$5,000,000 per occurrence and in the aggregate for bodily injury, personal and advertising injury and property damage, including coverage for premises liability, products and completed operations, ongoing operations and contractual liability. Such limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including but not limited to additional insured status for KCM;
  - (ii) Business Automobile Liability (owned, hired and non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1,000,000 combined single limit per accident;
  - (iii) Any contractor or consultant hired by Affordable Housing Developer to perform soil sampling or soil boring work must have Professional Liability (Errors and Omissions) insurance with minimum limits of \$1,000,000 per claim;
  - (iv) Employer's Liability insurance with limits of not less than \$1,000,000 each occurrence;
  - (v) Any contractor or consultant hired by Affordable Housing Developer to perform soil sampling or soil boring work, shall have Pollution Liability insurance coverage in an amount no less than \$1,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage, including the destruction of tangible property, loss of use, clean-up costs and the loss of use of tangible property that has not been physically injured or destroyed; and
  - (vi) Workers' Compensation insurance (as required by law).
- B. All insurance policies of Affordable Housing Developer and any consultant, contractor or subcontractor are to contain or be endorsed to contain the following provisions  
With respect to all liability policies except for professional liability (errors and omissions) and workers' compensation:

- (i) KCM, its officers, officials, employees and agents shall be covered as additional insureds for full coverage and policy limits as respects liability arising out of work or other activities performed by or on behalf of Affordable Housing Developer or its agents, representatives, employees, consultants, contractors or subcontractors in connection with this Agreement. Additional Insured status shall include Products-Completed Operations.

With respect to all liability policies (except workers' compensation):

- (ii) Be endorsed to provide that it is primary with and non-contributing with, any insurance or self-insurance maintained by KCM;
  - (iii) Contain a severability of interest provision in favor of KCM;
  - (iv) Contain a waiver of any rights of subrogation against KCM; and
  - (v) Be issued by an insurance company authorized to do business in the State of Washington with a Best's rating of not less than A:VIII.
- C. The insurance coverage and limits set forth herein shall be deemed to be minimum coverage and limits and shall not be construed in any way as a limitation on Affordable Housing Developer's duty to carry adequate insurance or liability for losses, claims, liabilities or damages arising under this Agreement or Affordable Housing Developer's activities on the Property.
- D. Prior to the start of any entry onto or start of other due diligence activities on the Property, Affordable Housing Developer shall deliver to KCM copies of all relevant insurance policies or certificates of insurance and endorsements verifying such coverage.

5. **Due Diligence Investigation.** Affordable Housing Developer may conduct its Due Diligence Investigation of the AF Parcel during the Term. Prior to expiration of the Term, subject in all events to the terms of this Agreement, Affordable Housing Developer shall complete at its sole cost and expense all such necessary due diligence activities with respect to the AF Parcel in order to determine whether Affordable Housing Developer desires to proceed with the Transaction. Notwithstanding anything to the contrary set forth herein, any investigation involving soils borings, subsoil, soil vapor, ground water, soil load-bearing tests or other tests involving physical invasion of the surface of the AF Parcel or Property shall be made by Affordable Housing Developer only after obtaining the express written consent of KCM, which shall not be unreasonably withheld (and it shall be reasonable for KCM to withhold approval for any such investigation that is reasonably likely to damage the Property, create a risk of exacerbating any environmental condition or interfere with KCM's public transportation activities or the public's use of the Property. Promptly after any invasive physical investigation or sampling on the Property approved hereunder by KCM, Affordable Housing Developer shall be required to restore the Property at its cost to substantially the same condition that existed immediately prior to such inspection.

6. **Liens.** Affordable Housing Developer shall not suffer or permit any lien, charge, security interest or encumbrance (collectively, "Liens") arising under this Agreement to be filed against the Property. If any such Lien is filed, Affordable Housing Developer shall, within thirty (30) days following the Affordable Housing Developer becoming aware of such attachment, remove and discharge any and all such Liens. Affordable Housing Developer shall indemnify, protect, defend and hold KCM harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorneys' fees and costs) incurred in connection with any such Liens, which indemnification shall survive the expiration or termination of this Agreement.

7. **Approval/Disapproval of Title.** KCM has previously delivered to Affordable Housing Developer preliminary commitments for the Property issued by First American Title Insurance Company ("Title Company") as follows: (i) Commitment No. NCS-482269-WA1 dated September 15, 2017 at 7:30 A.M. and (ii) Commitment No. NCS-482272-WA1 dated March 29, 2011 at 7:30 A.M. As part of its Due Diligence Investigation, Affordable Housing Developer shall obtain an updated preliminary title commitment for the Property from Title Company ("Preliminary Title Report"), together with a copy of each document, map and survey referenced in the Preliminary Title Report. Affordable Housing Developer shall have until fourteen (14) business days prior to the end of the Term to approve or disapprove any exceptions shown on the Preliminary Title Report that encumber or otherwise pertain to the AF Parcel. If Affordable Housing Developer disapproves any such exceptions, Affordable Housing Developer shall either (i) terminate this Agreement by giving KCM written notice of termination pursuant to Section 8 below, or (ii) give KCM a written notice ("Disapproval Notice") identifying the disapproved title exceptions which Affordable Housing Developer will require to be removed or cured prior to closing of the Transaction (the "Disapproved Title Matters"). Failure by Affordable Housing Developer to give any notice of approval, disapproval or termination shall be deemed approval. With respect to any Disapproved Title Matters, KCM shall notify Affordable Housing Developer in writing within seven (7) business days after KCM's receipt of the Disapproval Notice whether KCM will cause the Disapproved Title Matters to be removed or cured at or prior to closing of the Transaction. If KCM elects in its sole discretion not to remove or cure all Disapproved Title Matters, and Affordable Housing Developer subsequently approves its due diligence investigation pursuant to Section 8 below, Affordable Housing Developer shall be deemed to have accepted such Disapproved Title Matters and KCM shall have no obligation to remove same.

8. **Approval/Disapproval of Due Diligence Investigation.** Affordable Housing Developer shall approve or disapprove the results of its Due Diligence Investigation, including approval/disapproval of title matters, in its sole and absolute discretion by written notice delivered to KCM no later than expiration of the Term. In the event Affordable Housing Developer fails to approve the results of its Due Diligence Investigation in a written notice to KCM prior to the end of the Term (the "Approval Notice"), this Agreement shall terminate, and except as otherwise provided herein, this Agreement shall be null and void and of no further force or effect, and the Parties shall have no further rights, obligations or liabilities hereunder.

9. **Continued Access.** Upon issuance of Affordable Housing Developer's Approval Notice in accordance with Section 8 above, and thereafter for so long as the Development Agreement remains in full force and effect, Affordable Housing Developer shall have the right to continued access to the AF Parcel and Property for the development, permitting and pre-construction activities of Affordable Housing Developer as permitted under the Development Agreement, subject at all times to the requirements set forth herein including but not limited to the indemnification obligations of Affordable Housing Developer.

10. **Dispute Resolution.** The Parties agree to communicate regularly to discuss matters arising under this Agreement and to prevent disputes from arising. The Parties further agree to use their best efforts to resolve any disputes arising under this Agreement using good-faith negotiations through the following process:

(i) STEP ONE. KCM and Affordable Housing Developer or their designees shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either Party.

(ii) STEP TWO. In the event KCM and Affordable Housing Developer or their designees are unable to resolve the dispute within ten (10) business days as provided in Step One, either Party may refer the dispute to KCM's Project Manager and Affordable Housing

Developer's representative or their designees. They shall confer and attempt to resolve the dispute within five (5) business days of receiving the referral.

(iii) **STEP THREE.** In the event KCM's Project Manager and Affordable Housing Developer's representative or their designees are unable to resolve the dispute within five (5) business days as provided in Step Two, either Party may refer the dispute to KCM's Capital Division Director and such representative as designated for this purpose by Affordable Housing Developer. They shall confer and attempt to resolve the dispute within five (5) business days after receiving the referral.

If the Parties are unable to resolve the dispute utilizing the process set forth in Steps One through Three above, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator. Except as otherwise provided in this Agreement, neither Party shall have the right to seek relief in a court of law until and unless Steps 1-3 above are exhausted.

#### **11. General Terms and Conditions**

- A. Compliance with Laws; Property Damage.** While on the Property, Affordable Housing Developer will comply with and will cause all of its agents and representatives to comply with all applicable laws, regulations, rules, and policies. Affordable Housing Developer will be responsible for any damage done to the Property by Affordable Housing Developer or its agents or representatives and will pay the cost of repairing and restoring the Property to as good a condition as existed before Affordable Housing Developer's or its agents or representative's entry onto the Property.
- B. Default; Injunctive Relief.** In addition to any other right of early termination of this Agreement in favor of KCM, if Affordable Housing Developer violates or defaults on any of the material covenants and agreements herein contained or referenced, KCM may terminate this Agreement upon giving five (5) business days advance notice.

EXCEPT FOR AFFORDABLE HOUSING DEVELOPER'S RIGHT TO DISPUTE RESOLUTION AS PROVIDED IN SECTION 10, THERE ARE NO OTHER REMEDIES AVAILABLE TO AFFORDABLE HOUSING DEVELOPER AT LAW OR IN EQUITY WITH RESPECT TO A TERMINATION OF THIS AGREEMENT. AS A MATERIAL INDUCEMENT FOR KCM TO ENTER INTO THIS AGREEMENT, AFFORDABLE HOUSING DEVELOPER HAS AGREED THAT IT HAS NO RECOURSE AGAINST KCM FOR ANY DECISION MADE BY KCM TO TAKE WHATEVER ACTION KCM DEEMS NECESSARY AND APPROPRIATE WITH RESPECT TO THE PROPERTY, INCLUDING KCM'S RIGHT TO TERMINATE THIS AGREEMENT IN ITS SOLE AND ABSOLUTE DISCRETION AS PROVIDED FOR IN THIS SECTION 11.B. AFFORDABLE HOUSING DEVELOPER HEREBY AGREES THAT THE DAMAGES THAT WOULD BE SUFFERED BY AFFORDABLE HOUSING DEVELOPER CONTESTING KCM'S DECISION TO TERMINATE THIS AGREEMENT WOULD EXACT A TREMENDOUS HARM TO THE PUBLIC IN GENERAL. IN ADDITION, AFFORDABLE HOUSING DEVELOPER HEREBY WAIVES TRIAL BY JURY. AFFORDABLE HOUSING DEVELOPER UNDERSTANDS THAT KCM WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE RIGHT OF UNILATERAL TERMINATION UNDER THIS SECTION 11.B AND AS SUCH IN THE EVENT THAT AFFORDABLE HOUSING DEVELOPER ATTEMPTS TO CONTEST OR CONTESTS KCM'S TERMINATION OF THIS AGREEMENT EITHER IN A

COURT OF LAW OR IN ANOTHER FORUM, THEN THIS AGREEMENT SHALL AUTOMATICALLY TERMINATE WITHOUT ANY FURTHER ACTION NECESSARY BY EITHER PARTY; AND THE FILING OF ANY SUCH CONTEST ACTION SHALL SERVE AS AFFORDABLE HOUSING DEVELOPER'S NOTICE OF IMMEDIATE TERMINATION.

- C. **Attorney's Fees and Costs.** If either Party brings an action to enforce the terms of this Agreement, in any such action the substantially prevailing party shall be entitled to an award of its reasonable attorneys' fees and reasonable costs. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal or in any proceedings under any present or future federal bankruptcy, forfeiture or state receivership or similar law.
- D. **Governing Law.** This Agreement is issued under and governed by the laws of the State of Washington, which shall be controlling in any dispute that arises hereunder, without reference to its conflicts of law rules or choice of law provisions. Actions pertaining to this Agreement shall be brought in King County Superior Court, King County, Washington.
- E. **Severability.** All provisions of this Agreement are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions.
- F. **Amendment.** This Agreement may be amended or modified only by written instrument, executed by the Parties hereto or their successors or assigns.
- G. **Entire Agreement.** This Agreement and its exhibit or exhibits contains the entire agreement of the Parties and supersedes any prior written or oral agreements with respect to the matters described herein.
- H. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.
- I. **Survival.** Any terms and provisions of this Agreement pertaining to rights, duties or obligations extending beyond the expiration or termination of this Agreement, and all obligations accrued prior to the end of the Term, shall survive the end of the Term.
- J. **Powers of King County.** Nothing contained in this Agreement shall be considered or interpreted to diminish the governmental or police powers of KCM.
- K. **Legal Relations.** Nothing contained herein shall make, or be deemed to make, Affordable Housing Developer and KCM a partner of one another and this Agreement shall not be construed as creating a partnership or joint venture. This Agreement shall create no right, duty, or cause of action in any person or entity not a party to it.
- L. **Notices.** Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given (a) upon receipt when personally delivered or sent by overnight courier, or (b) two (2) business days after deposit in the United States mail if by first class, certified or registered mail, return receipt requested. All notices shall be addressed to the Parties at the addresses set forth below or at such other addresses as any Parties may specify by notice to all other Parties and given as provided herein:

If to KCM: King County Metro Transit Department  
Attn: Director of Capital Division, Metro Transit Department  
201 South Jackson Street  
KSC-TR-0415  
Seattle, Washington 98104-3856

With a copy to: Metro Transit Department  
Attn: General Manager's Office  
201 South Jackson Street  
KSC-TR-0431  
Seattle, Washington 98104-3856

With a copy to: King County Prosecuting Attorney Office  
Attn: Chief Civil Deputy Prosecuting Attorney  
W400 King County Courthouse.  
516 Third Ave.  
Seattle, Washington 98104

With a copy to: Steel Rives LLP  
Attn: Beth A. Clark  
600 University, Suite 3600  
Seattle, WA 98101

If to Affordable Housing Developer: BRIDGE HOUSING CORPORATION  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: Rebecca Hlebasko, General Counsel

And to: Capitol Hill Housing Improvement Program  
1620 12th Ave., Suite 205  
Seattle, WA 98122  
Attn: Jeremy Wilkening, Vice President, Real Estate  
Development


With a copy to: Kantor Taylor PC  
Attn: Mark Kantor  
1200 5th Avenue Suite 1910  
Seattle, WA 98101

[signature page follows]




**BRIDGE HOUSING CORPORATION, a**

California corporation:

By:   
Name: Alison Long  
Title: Vice President  
Date: 2/6/2020

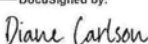
**CAPITOL HILL HOUSING IMPROVEMENT PROGRAM, a**

Washington public corporation:

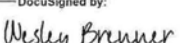
By:   
Its: CEO

**KING COUNTY**

a home rule charter and Washington political subdivision

DocuSigned by:  
  
Diane Carlson  
Director, Capital Division  
King County Metro Transit

Approved as to form only:

DocuSigned by:  
  
Senior Deputy Prosecuting Attorney

Attachment 1

Legal Description of Property

Tax Parcel No. 324204-9325:

Begin legal description:

THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE  
NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 26  
NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.

EXCEPT THAT PORTION THEREOF PLATTED IN EXECUTIVE PARK, ACCORDING TO  
THE PLAT THEREOF

RECORDED IN VOLUME 104 OF PLATS, PAGES 85 THROUGH 89, RECORDS OF KING  
COUNTY, WASHINGTON.

ALSO EXCEPT THE NORTH 30 FEET THEREOF FOR NORTHEAST 103RD STREET.

(ALSO BEING KNOWN AS PARCEL C OF LOT BOUNDARY ADJUSTMENT NO. 2305066

RECORDED DECEMBER 23, 2004 UNDER RECORDING NO. 20041223900007.)

End legal description

Tax Parcel No. 322604-9003:

Begin legal description:

THAT PORTION OF THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST  
QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF  
SECTION 32, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY,  
WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF THE ABOVE  
DESCRIBED SUBDIVISION AND THE NORTH MARGIN OF NORTHEAST 100TH STREET;  
THENCE NORTH 88°16'50" WEST ALONG SAID NORTH MARGIN 119.23 FEET TO THE  
TRUE POINT OF

BEGINNING;

THENCE NORTH 0°36'30" EAST PARALLEL TO THE WEST LINE OF THE SOUTHWEST  
QUARTER OF SAID

SUBDIVISION 589.42 FEET TO A LINE 40 FEET SOUTH OF THE NORTH LINE OF SAID  
SUBDIVISION;

THENCE SOUTH 88°16'18" EAST PARALLEL TO SAID NORTH LINE 119.39 FEET TO THE  
EAST LINE OF THE WEST HALF OF THE EAST HALF OF SAID SUBDIVISION;

THENCE ALONG SAID EAST LINE SOUTH 0°37'27" WEST 589.40 FEET TO THE NORTH  
MARGIN OF NORTHEAST 100TH STREET;

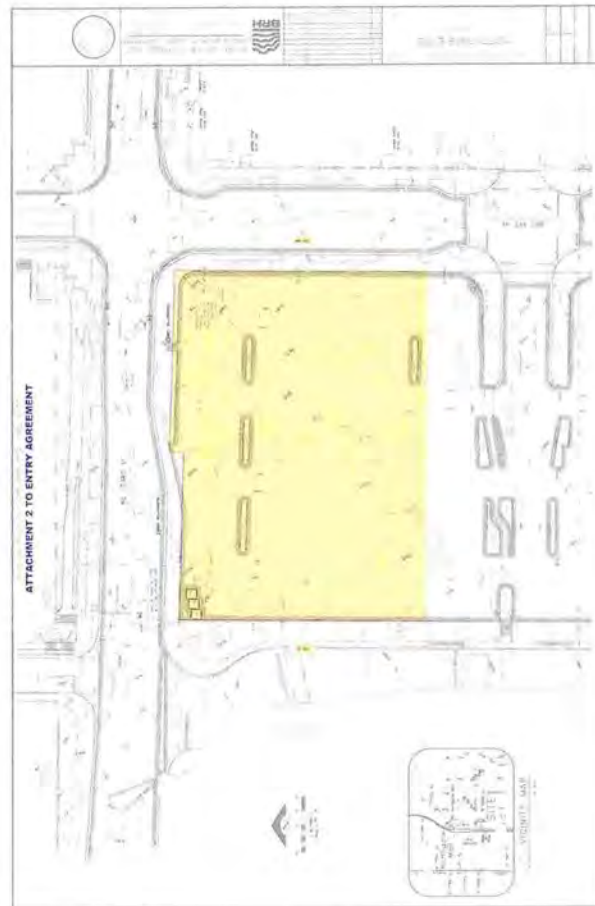
THENCE ALONG SAID NORTH MARGIN NORTH 88°16'50" WEST 119.23 FEET TO THE  
TRUE POINT OF BEGINNING;

(ALSO KNOWN AS REVISED PARCEL B OF BOUNDARY LINE REVISION RECORDED  
AUGUST 15, 1989 UNDER RECORDING NO. 8908150721, BEING SUPERSEDED BY  
RECORDING NO. 8912121172.)

End legal description

**Attachment 2**

**Site Plan Depicting Property and AF Parcel**



### Certificate Of Completion

Envelope Id: 1E7451027ED44836AC07BF7906939FFD	Status: Completed
Subject: Please DocuSign: 2 FINAL King County Metro - AF Project Right of Entry (Clean Version)(02 06 20...	
Source Envelope:	
Document Pages: 12	Signatures: 4
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Peggy Murray
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	401 5th Ave
	Suite 600
	Seattle, WA 98104
	pmurray@kingcounty.gov
	IP Address: 146.129.22.28

### Record Tracking

Status: Original	Holder: Peggy Murray	Location: DocuSign
2/6/2020 1:37:12 PM	pmurray@kingcounty.gov	
Security Appliance Status: Connected	Pool: FedRamp	
Storage Appliance Status: Connected	Pool: King County	Location: DocuSign

### Signer Events

Alison Lorig  
alorig@bridgehousing.com  
Vice President  
Security Level: Email, Account Authentication  
(None)

### Signature

DocuSigned by:  
*Alison Lorig*  
55A5D5D4C37E84F0  
Signature Adoption: Pre-selected Style  
Using IP Address: 107.77.220.109  
Signed using mobile

### Timestamp

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Viewed: 2/6/2020 3:53:50 PM  
Signed: 2/6/2020 3:55:24 PM

**Electronic Record and Signature Disclosure:**  
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ID: 95f84cad-9869-49b5-b61b-08f198a0f525

Chris Persons  
cpersons@capitolhillhousing.org  
CEO  
Security Level: Email, Account Authentication  
(None)

DocuSigned by:  
*Chris Persons*  
14702D511A06B892  
Signature Adoption: Pre-selected Style  
Using IP Address: 63.239.12.210

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Accepted: 2/6/2020 3:58:14 PM  
ID: dcac9a11-0d1b-4807-a04f-0b8b289ec753

Wesley Brenner  
Wesley.Brenner@kingcounty.gov  
Security Level: Email, Account Authentication  
(None)

DocuSigned by:  
*Wesley Brenner*  
A27E8A5AFF797CA1A  
Signature Adoption: Pre-selected Style  
Using IP Address: 146.129.175.167

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Signed: 2/6/2020 4:30:41 PM

**Electronic Record and Signature Disclosure:**  
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ID: a0908974-756c-41e1-bc21-5aa1e32e156e

Diane Carlson  
Diane.Carlson@kingcounty.gov  
Director, Capital Division  
Security Level: Email, Account Authentication  
(None)

DocuSigned by:  
*Diane Carlson*  
D991355A47C8A5B  
Signature Adoption: Pre-selected Style  
Using IP Address: 67.183.156.170

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Signed: 2/7/2020 9:21:21 AM

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<b>Agent Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Intermediary Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
Rand Juliano Rand.Juliano@kingcounty.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		<div>COPIED</div> Sent: 2/6/2020 3:04:00 PM Viewed: 2/6/2020 3:10:09 PM
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Signing Complete	Security Checked	2/7/2020 9:21:21 AM
Completed	Security Checked	2/7/2020 9:21:21 AM
<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
<b>Electronic Record and Signature Disclosure</b>		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Carahsoft OBO King County ITD (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.



**How to contact Carahsoft OBO King County ITD:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: bob.johnson@kingcounty.gov

**To advise Carahsoft OBO King County ITD of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at bob.johnson@kingcounty.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

**To request paper copies from Carahsoft OBO King County ITD**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to bob.johnson@kingcounty.gov and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with Carahsoft OBO King County ITD**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to bob.johnson@kingcounty.gov and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum

Enabled Security Settings:	Allow per session cookies
----------------------------	---------------------------

\*\* These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Carahsoft OBO King County ITD as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Carahsoft OBO King County ITD during the course of my relationship with you.

**EXHIBIT F**

**Copy of Development Agreement**

[To be attached at execution]

## DEVELOPMENT AGREEMENT

### NORTHGATE TRANSIT CENTER/AFFORDABLE HOUSING PROJECT

This Development Agreement (the “**Agreement**”) is made as of \_\_\_\_\_, 2021 (the “**Execution Date**”) by and between **BRIDGE HOUSING CORPORATION**, a California nonprofit public benefit corporation (“**BRIDGE**”) and **COMMUNITY ROOTS HOUSING**, a Washington public corporation (“**CRH**”) (BRIDGE and CRH together constitute the “**Affordable Housing Developer**” herein), and **KING COUNTY**, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle (“**KCM**”) in the following factual context:

A. This Agreement is for a portion of that certain real property located in the City of Seattle, King County, State of Washington, with a street address of 10104 – 3<sup>rd</sup> Avenue NE, Seattle, WA, and more particularly described in Attachment 1 hereto (the “**Property**”). The Property is a part of KCM’s Northgate Transit Center, which is a critical facility in KCM’s public transportation system and daily used by the public for public transportation purposes, including but not limited to park-and-ride purposes, vanpooling, layover, and boarding and deboarding numerous buses.

B. KCM is authorized and empowered to lease the Property or portions thereof to others, and to otherwise own, operate and control the Property, pursuant to RCW sections 35.58.240 and 36.34.135 and King County Code sections 2.16.038, 4.56.060 and 4.56.150.

C. In 2018, KCM issued that certain Request for Qualifications and Concepts (RFQ/C) No. 1207-18-VLN. Through the RFQ/C, KCM sought proposals for the development of its Northgate Park & Pool lot, of which the Property is a part. Among other things, the RFQ/C required proposals to include a minimum of 200 units of subsidized affordable housing for a minimum of 50 years to serve households earning up to 60 percent of Area Median Income (**AMI**), with a mix of unit sizes and configurations, and with a minimum of 10% of the units to be “system connected,” serving very-low to extremely low income households below 50% AMI. KCM received three responses to the RFQ/C, including a response from a team including Affordable Housing Developer, which team submitted a response (“**RFQ/C Response**”) dated October 29, 2018, copies of which are on file with the Parties. The RFQ/C Response included a proposal to construct 232 affordable housing units as well as a 10,000 square-foot childcare center or use by residents and possibly others. The RFQ/C Response and the other two responses were evaluated by a five-member evaluation committee as part of the RFQ/C’s competitive selection process. Based upon the commitments described in the RFQ/C Response, on November 19, 2018, KCM selected the team including Affordable Housing Developer to negotiate a definitive agreement. After more than a year of negotiations, and as allowed under the terms of the RFQ/C, KCM subsequently elected to terminate discussions regarding the market-rate element of the proposed development, and to focus instead on the affordable housing project element. KCM and Affordable Housing Developer thereafter negotiated the affordable housing transaction contemplated in this Agreement.

D. KCM and Affordable Housing Developer have previously entered into that certain Entry, Due Diligence and Pre-Development Agreement made as of February 7, 2020 as extended from time to time according to its terms (the “**Due Diligence Agreement**”). The Due Diligence Agreement authorizes Affordable Housing Developer to undertake certain due diligence and pre-development activities, at its discretion and subject at all times to the terms and conditions of the Due Diligence Agreement, on a 45,000 square foot (approximately) portion of the Property as described and depicted on Attachment 2 hereto (the “**AH Parcel**”) in connection with Affordable Housing Developer’s potential development of a subsidized, affordable housing project including up to 232 units with a mix of at least 52 two or three-bedroom units and at least 24 system-connected units, all to serve households with incomes of 60% or less of the area median income, together with certain accessory spaces including a childcare center on the AH Parcel (collectively, the “**Project**”).

E. Contemporaneous with Affordable Housing Developer’s due diligence activities, Affordable Housing Developer wishes to initiate and undertake certain pre-construction development, permitting and other activities relating to the development of the Project (collectively, the “**Development Activities**”) and the closing of a ground lease transaction with KCM for the AH Parcel upon the satisfaction of certain conditions precedent (the “**Transaction**”). Subject to the terms and conditions of this Agreement, KCM is willing to allow Affordable Housing Developer to undertake such Development Activities relating to the Project, and if Affordable Housing Developer completes such Development Activities in a timely manner, to lease the AH Parcel to Affordable Housing Developer for the construction, operation and management of the Project. Notwithstanding anything to the contrary set forth herein or in the Due Diligence Agreement, Affordable Housing Developer’s rights and obligations as set forth in the Due Diligence Agreement shall continue in full force and effect during the term of this Agreement except as may be expressly agreed to otherwise by the Parties herein.

F. The economic provisions contained in this Agreement have been negotiated and approved based upon, among other things: (1) Affordable Housing Developer’s undertaking to assume the specific Development Activities and other obligations set forth in this Agreement in connection with the proposed development of the Project (which development shall in compliance with Evergreen Sustainable Development Standard Version 3.0.1 or later and otherwise in accordance with the “**Conceptual Site Plan Detail**” attached as Attachment 3), and in the manner set forth in this Agreement, including but not limited to Affordable Housing Developer’s construction of a transit operator comfort station on the ground floor of the Project, but with an independent exterior access, and meeting KCM’s engineering requirements and design specifications as agreed upon by the Parties (the “**Comfort Station**”); (2) Affordable Housing Developer’s acknowledgment and agreement to conduct any and all Development Activities consistent with all terms, conditions and requirements of the Due Diligence Agreement, including but not limited to all entry, indemnity and insurance provisions contained therein; and (3) KCM’s undertaking at the end of the development period to ground lease the AH Parcel to Affordable Housing Developer as and to the extent set forth in this Agreement, including, without limitation, the satisfaction of certain conditions precedent. With respect to the foregoing Comfort Station, the Parties agree that KCM shall be responsible for the construction cost of the Comfort Station and shall further be responsible for all taxes, insurance, utilities, cleaning and maintenance of the Comfort Station as set forth in the Ground Lease (as defined in Section 1.1) and its attached sublease agreement between the Parties related to the Comfort Station.

**G.** KCM understands and acknowledges that not later than Closing (as that term is defined in Section 7 of this Agreement): (1) Affordable Housing Developer has established or will establish a special-purpose entity, **NORTHGATE AFFORDABLE LLC**, a Washington limited liability company (the “**Company**”) in which BRIDGE and CRH are the sole members, to implement the Project; (2) that the Company will serve as the general partner of a limited liability limited partnership (the “**Partnership**”) and a low income housing tax credit investor will serve as the limited partner and (3) Affordable Housing Developer will assign at Closing all of its rights, obligations and interest in this Agreement to that Partnership, consistent with the terms and conditions of this Agreement.

**H.** KCM and Affordable Housing Developer are individually referred to as a “**Party**” and collectively as “**Parties**” from time to time herein.

NOW THEREFORE, in consideration of the mutual undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **SECTION 1. GROUND LEASE**

**1.1 Ground Lease.** Subject to the terms and conditions of this Agreement, at the Closing, KCM shall ground lease the AH Parcel to the Partnership and the Partnership pursuant to a ground lease in substantially the form of the attached Attachment 5 (the “**Ground Lease**”).

**1.2 SEPA on Ground Lease.** KCM will commence any required SEPA review of the Ground Lease (which will include review of potential transit-related commuter parking displacement impacts) upon the Effective Date of this Agreement as defined in **Section 3.3** hereto (or such earlier time as KCM determines SEPA may be reasonably initiated under current SEPA law). The SEPA review shall be completed prior to Metropolitan King County Council action to authorize this Agreement. If the County’s SEPA review (i) results in a determination, or (ii) imposes mitigation or conditions which, as determined by either Party, in its reasonable discretion, renders the Project infeasible, or, with respect to KCM, would constitute an “Adverse Condition” as defined in Section 5.8.2, then either Party may terminate this Agreement. Similarly, if following the County’s SEPA review, a SEPA appeal or other external party or decisionmaker imposes conditions or renders a decision which, as determined by either Party, renders the Project infeasible or, with respect to KCM, would constitute an “Adverse Condition” as defined in Section 5.8.2, then either Party may terminate this Agreement consistent with Section 9.2.

## **SECTION 2. ESCROW; CONSIDERATION IN ABSENCE OF CLOSING; LIQUIDATED DAMAGES**

**2.1 Escrow.** Affordable Housing Developer shall open escrow (“**Escrow**”) with First American Title Insurance Company, 920 Fifth Avenue, Suite 1200, Seattle, Washington 98104, Attention: Laura Lau (“**Escrow Holder**”) by depositing a fully-executed copy of this Agreement within three (3) days following the Execution Date. KCM and Affordable Housing Developer shall thereafter deposit with Escrow Holder such additional documents and funds as required in connection with Closing consistent with Section 7 of this Agreement.



**2.2 Consideration.** As consideration to KCM in the event Closing does not occur for a reason other than a Material Breach by KCM, and at no cost or expense to KCM, Affordable Housing Developer, subject to any required third party consents, Developer shall assign and deliver KCM all of Affordable Housing Developer's Materials (excluding items subject to attorney-client privilege or attorney-client confidentiality rules), and/or the entitlement or development thereof, including, without limitation, site plans, traffic studies, surveys, wetland reports, geotechnical report, engineering work, architectural plans, and permits and applications therefor, if any; provided, however, the same will be assigned and delivered in their then-current form, AS-IS, WITH ALL FAULTS and without warranties and subject to the rights of the consultants who produced the items assigned and delivered.

**2.3 Liquidated Damages.** IF THE GROUND LEASE OF THE AH PARCEL TO AFFORDABLE HOUSING DEVELOPER IS NOT CONSUMMATED AS A RESULT OF AFFORDABLE HOUSING DEVELOPER'S FAILURE TO PERFORM ITS OBLIGATIONS IN BREACH OF THIS AGREEMENT, THEN KCM, BY WRITTEN NOTICE TO AFFORDABLE HOUSING DEVELOPER (AFTER EXPIRATION OF THE NOTICE AND CURE PERIOD SET FORTH IN SECTION 9.3(a) BELOW), MAY TERMINATE THIS AGREEMENT. AFFORDABLE HOUSING DEVELOPER AND KCM ACKNOWLEDGE AND AGREE THAT DETERMINING KCM'S ACTUAL DAMAGES IN THE EVENT OF SUCH BREACH WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, IN THE EVENT OF AFFORDABLE HOUSING DEVELOPER'S BREACH (OTHER THAN A BREACH OF AFFORDABLE HOUSING DEVELOPER'S INDEMNITY OBLIGATIONS, FOR WHICH KCM RESERVES ALL AVAILABLE REMEDIES), THE PARTIES HAVE AGREED, AFTER NEGOTIATION, THAT THE CONSIDERATION DESCRIBED IN SECTION 2.2 ABOVE SHALL CONSTITUTE KCM'S SOLE AND EXCLUSIVE RIGHT TO DAMAGES PRIOR TO CLOSING, AND THAT THIS REMEDY REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES KCM WOULD INCUR IN THE EVENT OF AFFORDABLE HOUSING DEVELOPER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT PRIOR TO CLOSING. EXCEPT TO THE EXTENT AFFORDABLE HOUSING DEVELOPER BREACHES ANY INDEMNITY OBLIGATION HEREUNDER OR UNDER THE DUE DILIGENCE AGREEMENT (FOR EACH OF WHICH KCM RESERVES ALL AVAILABLE REMEDIES), KCM WAIVES ANY RIGHT TO SPECIFIC PERFORMANCE OR DAMAGES PRIOR TO CLOSING OTHER THAN AS SET FORTH IN THIS SECTION. BY INITIALING IN THE SPACES WHICH FOLLOW, KCM AND AFFORDABLE HOUSING DEVELOPER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SECTION GOVERNING LIQUIDATED DAMAGES. ANY DAMAGES RESULTING FROM BREACH OF THIS AGREEMENT BY AFFORDABLE HOUSING DEVELOPER AFTER CLOSING SHALL BE ADDRESSED UNDER THE GROUND LEASE.

**KCM initials:** \_\_\_\_;

**BRIDGE initials:** \_\_\_\_;

**CRH initials:** \_\_\_\_\_

### SECTION 3. DUE DILIGENCE; EFFECTIVE DATE

**3.1 Affordable Housing Developer's Due Diligence.** Affordable Housing Developer acknowledges that: (i) Affordable Housing Developer is a sophisticated real estate developer with sufficient experience and expertise in the development and operation of affordable housing projects, and will hire or have the opportunity to hire consultants with sufficient experience and expertise, to evaluate the AH Parcel and the risks associated with acquiring a leasehold interest in the AH Parcel; (ii) Affordable Housing Developer will have received sufficient information and had adequate time to make such an evaluation; (iii) Affordable Housing Developer will enter into this Agreement and the Ground Lease with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, archeological, economic and legal condition of the AH Parcel; and (iv) in connection with its investigations and inspections of the AH Parcel, Affordable Housing Developer will have the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, and archeologists to conduct such environmental, land use, permitting, geological, soil, hydrology, seismic, archeological, physical, structural, mechanical and other inspections of the AH Parcel as Affordable Housing Developer deems to be necessary, and Affordable Housing Developer will review thoroughly the reports of such advisors and consultants, as well as all materials and other information given or made available to Affordable Housing Developer by KCM or any Governmental Authority (as defined herein). Affordable Housing Developer further acknowledges that it has not and will not receive from or on behalf of KCM any accounting, tax, legal, architectural, engineering, archeological, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, archeological, property management and other advisors. Affordable Housing Developer will satisfy itself as to such suitability and other pertinent matters by Affordable Housing Developer's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement and the Ground Lease.

**3.2** Prior to the Effective Date, Affordable Housing Developer shall have completed its investigation of the AH Parcel (the "**Due Diligence Investigation**") and approved all matters related to the AH Parcel pursuant to the Due Diligence Agreement.

**3.3** For the purpose of clarity, the Development Activities to be undertaken by Affordable Housing Developer under Section 5 of this Agreement are not required to be commenced by Affordable Housing Developer until Affordable Housing Developer has completed its due diligence investigation and issued an "**Approval Notice**" as described in Section 8 of the Due Diligence Agreement and substantially in the form attached as Attachment 4. While this Agreement shall be binding upon KCM and Affordable Housing Developer from the Execution Date (as defined above), the effective date of this Agreement (the "**Effective Date**") shall be the date Affordable Housing Developer issues such Approval Notice. Affordable Housing Developer shall affirmatively acknowledge the Effective Date in the Approval Notice. Further, if the Due Diligence Agreement terminates due to a decision or election by Affordable Housing Developer not to issue such Approval Notice, then this Agreement shall also terminate without further obligations or actions by Affordable Housing Developer or KCM (other than indemnity obligations of this Agreement or the Due Diligence Agreement that expressly survive any such termination).

**3.4 Survival.** Affordable Housing Developer's obligations under the Due Diligence Agreement shall survive the Closing or the termination of this Agreement prior to Closing.

#### **SECTION 4. AS-IS; RELEASE AND INDEMNITIES**

**4.1 "As Is" and "Where Is" Condition.** Prior to Closing, Affordable Housing Developer shall have made a thorough, independent examination of the AH Parcel and all matters relevant to Affordable Housing Developer's decision to enter into this Agreement and the Ground Lease and develop the Project. This Agreement and KCM's agreement to enter into the Ground Lease are made "AS IS" with all faults, and Affordable Housing Developer expressly acknowledges and agrees that, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY KCM UNDER SECTION 7.3 ("KCM'S CLOSING DOCUMENTS"), KCM MAKES NO REPRESENTATIONS OR WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE AH PARCEL, THE PROPERTY OR ANY PORTION THEREOF, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE PROJECT OR THE CONDUCT OF AFFORDABLE HOUSING DEVELOPER'S BUSINESS. Affordable Housing Developer acknowledges that as of Closing, and except as set forth in this Agreement or the Ground Lease, Affordable Housing Developer will have carefully inspected the AH Parcel and by executing this Agreement and the Ground Lease will accept the AH Parcel on an "AS IS" and "WHERE IS" basis, and except as set otherwise expressly set forth in this Agreement or in KCM's Closing Documents, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of KCM, or any person on behalf of KCM, regarding the AH Parcel, the Property or matters affecting the AH Parcel or Property, including, without limitation:

(a) **Physical Condition.** The physical condition of the AH Parcel and any adjacent portions of the Property, including the quality, nature, adequacy, and physical condition of (i) any systems, facilities, access, adjacent uses, and/or landscaping; (ii) the air, soils, geology, and groundwater, (iii) the suitability of the AH Parcel for construction of any improvements or any activities or uses that Affordable Housing Developer may elect to conduct on the AH Parcel, including but not limited to the Project, or (iv) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the AH Parcel for building or any other purpose;

(b) **Improvements.** The quality, nature, adequacy, and physical condition of the existing improvements on the AH Parcel, if any, including but not limited to, the structural elements, engineering characteristics, appurtenances, access, landscaping, paving, and/or parking facilities;

(c) **Title.** Title to the AH Parcel and/or the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, or other title condition affecting the AH Parcel, including without limitation the existence of any easements, covenants,

rights of ways or other rights across, to or in other properties that might burden or benefit the AH Parcel, whether recorded or unrecorded;

(d) **Compliance/Zoning.** The development potential and/or availability of any necessary permits or approvals (or conditions thereon) for development of the AH Parcel and/or the zoning, comprehensive plan, land use, or other legal status of the AH Parcel, or compliance with any public or private restrictions on the use of the AH Parcel, as the same are in effect as of the Effective Date or may be hereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance with the AH Parcel with any applicable laws;

(e) **Hazardous Materials.** The presence or removal of hazardous materials (as defined in Section 4.3.5) on, in, under or about the AH Parcel, the Property, or on any other property;

(f) **Economic Feasibility.** Economic conditions or projections, market data, or other aspects of the economic feasibility of the Project and/or any business Affordable Housing Developer intends to conduct on the AH Parcel;

(g) **Utilities.** The availability, existence, quality, nature, adequacy and physical condition of utilities serving the AH Parcel;

(h) **Suitability.** The use, habitability, merchantability, fitness, suitability, value or adequacy of the AH Parcel for any particular purpose (including, without limitation, the Project);

(i) **Boundaries.** The boundaries of the AH Parcel, the location of any improvements on the AH Parcel and/or the existence of any encroachments onto or from any adjacent lands, including the Property;

(j) **Access.** Vehicular and/or pedestrian access to the AH Parcel, including from or through any particular route; and

(k) **Other Matters.** Any other matter not referenced above that pertains to the AH Parcel.

**4.2 Release of KCM.** Affordable Housing Developer, on behalf of itself, its directors, officers, representatives, employees and agents (the “**Affordable Housing Developer Parties**”), hereby waives, releases, acquits, and forever discharges KCM and all of its affiliated organizations, and its employees, representatives, agents, consultants, contractors and subcontractors (the “**KCM Parties**”), of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Affordable Housing Developer or any Affordable Housing Developer Parties now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the AH Parcel, provided however, that such release shall not apply or extend to (i) the representations, warranties, covenants and obligations of KCM under this Agreement, (ii) the affirmative obligations of KCM under the Ground Lease, and (iii) matters covered by KCM’s indemnities



in Sections 4.3 and 4.4. The release provisions herein on the part of Affordable Housing Developer are in addition to any release provisions set forth in the Due Diligence Agreement.

### **4.3 Indemnities.**

4.3.1 Except as otherwise provided in this Section 4.3, Affordable Housing Developer hereby agrees to indemnify, defend and hold KCM and the KCM Parties harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees, reasonable costs of defense, and reasonable costs and expenses of all experts and consultants), arising directly or indirectly, in whole or in part, out of Affordable Housing Developer's Development Activities, the Project, or any other development activities or pre-development activities conducted by or on behalf of Affordable Housing Developer or its employees, agents or contractors on the AH Parcel or Property (collectively, "Claims") , including but not limited to:

- (a) any Claims for personal injury or property damage made by KCM or any third party;
- (b) any investigative activity, storage of equipment or materials, or any other act or omission in connection with the AH Parcel by or on behalf of Affordable Housing Developer or its employees, agents or contractors;
- (c) any contract, agreement or commitment entered into or made by Affordable Housing Developer in connection with the AH Parcel; and
- (d) the introduction of hazardous materials or hazardous substances onto the AH Parcel or Property, the exacerbation of any pre-existing environmental condition, any claims of third parties regarding the presence of hazardous materials or substances, and any remediation costs incurred by KCM as to such matters.

4.3.2 Notwithstanding Section 4.3.1, Affordable Housing Developer's indemnification of KCM shall not extend or apply to (i) the mere discovery by Affordable Housing Developer of pre-existing hazardous materials or hazardous substances at, on or under the AH Parcel or Property or the mere discovery by Affordable Housing Developer of any other adverse condition of the AH Parcel or the Property, or (ii) the negligent acts or omissions of KCM or any KCM Parties. The of Affordable Housing Developer's indemnification obligations set forth herein are in addition to the Affordable Housing Developer's indemnification obligations under the Due Diligence Agreement.

4.3.3 KCM hereby agrees to indemnify, defend and hold Affordable Housing Developer, its partners, members, officers, directors, employees and agents ("Developer Parties") harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred by Affordable Housing Developer in connection with the sole negligence of KCM or any KCM Parties to the extent arising out of its activity, if any, in any investigations, tests or inspection of the AH Parcel or Property by Affordable Housing Developer. Provided, that if both Parties are

found to be negligent, then KCM's indemnity obligations under this Section 4.3.3 shall be enforceable only to the extent of KCM's negligence.

4.3.4 KCM further agrees to indemnify, defend and hold the Developer Parties harmless from and against all fines, penalties, administrative and judicial proceedings and orders, and all other direct costs and expenses incurred by KCM or Affordable Housing Developer solely with respect to clean up or remediate any hazardous materials or substances that may be found to exist on the Property from past events or releases prior to the Effective Date of this Agreement (collectively, "Cleanup Costs"), save and except to the extent that such Cleanup Costs result from Affordable Housing Developer's exacerbation of such pre-existing condition, nature and/or extent of such hazardous materials or releases of hazardous substances. KCM's limited indemnity under this Section 4.3.4 does not and shall not be construed to alter, reduce, or expand Affordable Housing Developer's separate indemnity obligations under this Agreement, the Due Diligence Agreement, or the Ground Lease, all of which are ratified and reaffirmed.

4.3.5 For purposes of this Agreement, "hazardous materials" or "hazardous substances" shall mean:

- i. Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or
- ii. Any dangerous waste or hazardous waste as defined in:
  - a. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or
  - b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or
  - c. Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or
- iii. Any hazardous substance as defined in:
  - a. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or
  - i. b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105.D); or
- iv. Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.



## **SECTION 5. DESIGN DEVELOPMENT PERIOD; REVIEW PROCEDURES; ENTITLEMENTS**

**5.1 Duration of Design Development Period.** The design development period (“**Development Period**”) shall commence on the Effective Date and shall continue until Closing, or such earlier date as this Agreement is terminated in accordance with its terms.

**5.2 Purpose of Development Period.** During the Development Period, Affordable Housing Developer shall use its commercially reasonable efforts and all due diligence to timely complete the requirements of Section 5.6 below, and other items required under this Agreement in connection with the design, entitlement, financing and preconstruction of the Project as set forth in this Agreement, all of which Affordable Housing Developer shall cause to occur so that the Closing shall occur no later than the Final Date for Closing, as that term is defined in Section 7.1 of this Agreement (but subject to the extension rights expressly provided in this Agreement). Development matters to be undertaken by Affordable Housing Developer with respect to the Project shall be done in accordance with this Agreement. As between the Parties all costs of designing and permitting the Project shall be borne by Affordable Housing Developer.

**5.3 No Construction.** Except as otherwise permitted in the Due Diligence Agreement, Affordable Housing Developer shall not conduct any excavation, construction, demolition or similar work with respect to the Project (collectively, any “**Construction Activity**”) during the term of this Agreement, it being the understanding of the Parties that Construction Activity shall occur only after the Closing, and then only in accordance with the terms and conditions of the Ground Lease.

**5.4 Design Team.** KCM has approved and Affordable Housing Developer has previously retained the architects, engineers and related consultants identified in Schedule 5.4-1 attached hereto in connection with the preparation of the Conceptual Site Plan Detail (the “**Design Team**”). Affordable Housing Developer shall give KCM reasonable advance notice of any changes to the Design Team. Notwithstanding anything to the contrary contained herein, the general contractor (or any substitute general contractor) shall be capable of being bonded, licensed in the State of Washington, and shall have experience in completing construction comparable to the Project. No approval by KCM of the Design Team and/or Design Documents (as that term is further defined in Section 5.6) shall be deemed a warranty or other representation on KCM’s part that any such Design Document is accurate or correct, or that the Design Team is qualified or appropriate.

**5.5 Communications with KCM; KCM Role.** Affordable Housing Developer shall direct all material correspondence from Affordable Housing Developer or the City of Seattle (the “**City**”), with respect to the Project and the Approval Process, to KCM’s Authorized Representative and to KCM’s Project Manager, and communication by Affordable Housing Developer to either KCM’s Authorized Representative or KCM’s Project Manager shall constitute communication by Affordable Housing Developer to KCM. KCM’s Authorized Representative and KCM’s Project Manager shall have the right to attend meetings with Governmental Authorities, as observers only; provided that KCM’s Authorized Representative and KCM’s Project Manager shall not be prevented from speaking at non-

public meetings, and shall have the right to participate (consistent with the right of public participation generally) in any public hearings in KCM's sole discretion, subject to the provisions of Section 5.6.2 below. Neither KCM's Authorized Representative nor KCM's Project Manager shall have the right to direct the activities of any member of the Design Team.

## **5.6 Design Development and Milestone Schedule and Review Process.**

For purposes of this Section 5.6, the following definitions apply:

- i. "EDG Package" means all materials required to satisfy the City's early design guidance requirements consistent with Seattle Municipal Code (S.M.C.) Chapter 23.41 and related S.M.C. chapters and City regulations as applied to the Project. The City has requested, and the Parties have agreed, that the required documents for the proposed boundary line adjustment of the Property and the draft access easement providing access to the Project be submitted as part of the EDG Package. Affordable Housing Developer has agreed to undertake the necessary application and submittal process for the proposed boundary line adjustment subject to KCM reimbursement of all third party design and application costs of Affordable Housing Developer in connection with the boundary line adjustment application and submittal. The Parties shall execute a separate letter agreement for the purpose of authorizing Affordable Housing Developer to undertake the boundary line adjustment on behalf of KCM as described herein. All contents and details of the boundary line adjustment application and submittal are subject to prior review and approval by KCM.
- ii. "MUP Package" means all materials required to satisfy the City's Master Use Permit application requirements consistent with S.M.C. Chapter 23.76, and related S.M.C. chapters and City regulations as applied to the Project, including but not limited to required schematic design elements.
- iii. "Building Permit Package" means all materials required to satisfy the City's building code, grading code, housing code, plumbing code, fire code, stormwater code, and all other construction permit-related requirements consistent with S.M.C. Chapter 22 and related S.M.C. chapters and City regulations as applied to the Project.

Collectively, these packages constitute the "Design Documents."

### **5.6.1 Design Development and Milestone Schedule.**

5.6.1.1 Prior to the Execution Date, Affordable Housing Developer has delivered to KCM and KCM has approved: (i) the Conceptual Site Plan Detail for the Project to be constructed by Affordable Housing Developer on the AH Parcel, which Conceptual Site Plan Detail is attached as Attachment 3 hereto; (ii) additional descriptive materials provided to assist KCM to evaluate such drawings; and (iii) a preliminary estimated budget for Affordable Housing Developer's cost to construct the Project.

5.6.1.2 No later than sixty (60) days after the Effective Date, Affordable Housing Developer shall deliver to KCM for KCM's review and approval the EDG Package that

Affordable Housing Developer intends to submit to the City of Seattle (unless Affordable Housing Developer submitted and obtained KCM approval of the EDG Package prior to the Effective Date). KCM shall approve or disapprove the EDG Package as described in Section 5.6.2.

**5.6.1.3** At the times indicated on the then-current Development and Milestone Schedule (as defined in Section 5.6.3.1) and in accordance with Section 5.6.3, Affordable Housing Developer shall submit to KCM for review and approval all the documents listed below:

- i. EDG Package
- ii. MUP Package
- iii. Building Permit Package -- KCM review limited to conformance with the MUP plans approved by the City, such that KCM shall not object to any conditions imposed by the City of Seattle other than such changes constituting an Adverse Condition as defined in Section 5.8.2. If the City has not approved the MUP at the time Affordable Housing Developer desires to submit the Building Permit Package, then KCM's review shall be limited to conformance with the MUP Package plus any changes to the MUP Package previously approved under this Agreement.

## **5.6.2 KCM Design Review Criteria**

5.6.2.1 KCM will evaluate the Design Documents against the following criteria:

- i. Conformance with the RFQ/C Response and the Conceptual Site Plan Detail set forth above, except as otherwise approved in writing by KCM;
- ii. Conformance with this Agreement;
- iii. Conformance with any encumbrances or other legal or equitable restrictions on the Property;
- iv. KCM's determination that, other than as contemplated in any prior approval of the Design Documents or by this Agreement, (1) any revisions to or (2) conditions imposed on the proposed Project will not constitute a material change (as that term is defined in Section 5.6.3.7(i)) or an Adverse Condition as defined in Section 5.8.2.
- v. KCM's determination that (1) any revisions to or (2) conditions imposed on the proposed Project will not detrimentally affect the operation of KCM's adjacent Northgate Transit Center or interim use of the southern portion of the Property as a park and pool lot;
- vi. KCM's determination that (1) any revisions to or (2) conditions imposed on the design, program and location of the Comfort Station for the exclusive use of KCM employees as described and depicted in the Conceptual Site Plan Detail for the Project meet KCM's engineering and design specifications provided to Affordable Housing Developer prior to EDG Package.

- vii. KCM's determination that (1) any revisions to or (2) conditions imposed on the Project will not detrimentally affect King County's ability to develop the southern portion of the Property at a future date; and
- viii. KCM's determination that, other than as contemplated in any prior approval of the Design Documents or by this Agreement, (1) any revisions to or (2) conditions imposed on the Project will not impose one or more restrictions, limitations, or costs on KCM's fee interest in the Property or on any other property owned by KCM, including but not limited to any requirement that KCM pay for or build on the Property, in advance of any redevelopment of the remainder of the Property outside the AH Parcel, any kind of pedestrian corridor including but not limited to a "mid-block corridor" as referenced in City Ordinance #125792.

5.6.2.2 The EDG Package, and the MUP Package shall each be subject to KCM's approval, in its reasonable discretion, whether each of those packages satisfies the criteria in Section 5.6.2.1.

5.6.2.3 Following KCM's review and approval of the EDG Package, and the MUP Package, respectively, KCM shall not unreasonably withhold, condition or delay its consent to Affordable Housing Developer's subsequent permit packages or other entitlement submissions to the City or to any other Governmental Authority (in instances where such consent is required) so long as KCM reasonably determines that such packages or submissions satisfy the criteria set forth in Section 5.6.2.1; provided, however, that nothing in this Section 5.6.2.3 shall limit KCM's authority to enforce this Agreement against Affordable Housing Developer in any other regard.

### **5.6.3 KCM Design Document Review and Approval Process**

5.6.3.1 Attachment 6 hereto is a development schedule that outlines the work to be performed during the Development Period, including where applicable the milestones and outside dates on which Design Documents will be submitted to KCM for KCM's review and approval (the "**Development and Milestone Schedule**"). KCM may rely on such dates to plan KCM's review of submittals. If circumstances require revisions to the Development and Milestone Schedule, Affordable Housing Developer shall promptly notify KCM in writing, which notice shall include a reasonably detailed explanation for the revision.

5.6.3.2 Affordable Housing Developer shall exercise its commercially reasonable best efforts to give King County at least (10) business days' prior notice of the date that Affordable Housing Developer expects to submit any Design Documents to KCM for review.

5.6.3.3 Affordable Housing Developer shall prepare and submit to KCM for KCM's approval or disapproval all Design Documents required by this Agreement in accordance with the approval process (the "**Approval Process**") described in this subsection 5.6.3.

5.6.3.4 Affordable Housing Developer shall submit the Design Documents to KCM in such electronic format or formats as the Parties may negotiate. All Design Documents submitted to KCM for review and approval by Affordable Housing Developer and its contractors or



subcontractors shall be prepared to meet applicable requirements imposed by the City. At King County's request, Affordable Housing Developer shall also provide King County with up to three (3) hard copies of any Design Documents.

5.6.3.5 Any Design Documents that do not meet the standard in paragraph 5.6.3.4 shall be deemed incomplete and KCM shall have the right to reject such Design Documents without approving or disapproving them; provided, that if KCM rejects any Design Documents for failure to meet such standard, KCM shall advise Affordable Housing Developer with reasonable particularity as to why KCM believes such Design Documents fail to meet such standard, and at Affordable Housing Developer's option KCM's determination shall be subject to the dispute resolution process in Section 9.1.

5.6.3.6 Upon receipt of properly submitted Design Documents that meet the standard set forth in Section 5.6.3.4, KCM shall review the Design Documents against the criteria set forth in Section 5.6.2 and shall give Affordable Housing Developer written notice of approval or disapproval within (10) business days following its receipt of such Design Documents. If KCM disapproves of any Design Documents then KCM's notice of disapproval shall advise Affordable Housing Developer with reasonable particularity as to the reason or reasons for such disapproval, and Affordable Housing Developer shall revise the noncompliant Design Documents and shall resubmit them to KCM for review consistent with this Section 5.6.3.6. If KCM fails to provide any notice of approval or disapproval within ten (10) business days of receiving Design Documents, then Affordable Housing may submit a written request to KCM for KCM's response, and if KCM fails to respond within (5) business days after receipt of such request, such Design Documents shall be deemed to have been approved by KCM.

#### 5.6.3.7 Design Document Changes After KCM Approval

- i. If, after KCM has approved a given set of Design Documents, Affordable Housing Developer makes a material change to that set of Design Documents, then Affordable Housing Developer shall submit such revised Design Documents to KCM for approval with such changes indicated, and KCM shall review the revised Design Documents consistent with the time periods and deemed approval processes set forth in this Section 5.6.3. For purposes of this Section 5.6.3.7, a "material" change is any change that would reasonably be understood to potentially render the Project noncompliant with one or more of the criteria in Section 5.6.2.1, including but not limited to an Adverse Condition as defined in Section 5.8.2.
- ii. If KCM disapproves any aspect of Affordable Housing Developer's revised Design Documents, then KCM shall notify Affordable Housing Developer and Affordable Housing Developer shall make whatever changes are reasonably necessary to ensure the disapproved item conforms to the criteria in Section 5.6.2.1 and shall resubmit it for KCM's written approval, all consistent with the time periods and deemed approval processes set forth in this Section 5.6.3.

- iii. Affordable Housing Developer shall not proceed with any disapproved item, or any other item affected by the disapproved item, until KCM has approved Affordable Housing Developer's revised Design Documents consistent with the process set forth in this Section 5.6.3.

#### 5.6.3.8 Additional Procedure for KCM Review of the MUP Package

The following additional procedure applies to KCM's review of Affordable Housing Developer's MUP Package.

- i. Affordable Housing Developer shall cause one of its principals and the key members of its Design Team to present the MUP Package to KCM. KCM shall cause KCM's Authorized Representative, KCM's Project Manager and such other representatives of KCM who participate directly in the Approval Process to attend Affordable Housing Developer's presentations of each package. Affordable Housing Developer shall provide the MUP Package to KCM in advance of each such presentation and consistent with the process set forth in this Section 5.6.3.
- ii. If, following each such presentation and KCM's review of MUP Package materials, KCM disapproves the MUP Package for noncompliance with the criteria in Section 5.6.2.1, then KCM and Affordable Housing Developer shall meet and confer regarding the basis for KCM's disapproval and shall attempt in good faith to negotiate any necessary revisions to the MUP Package. Such negotiations shall be subject to the Dispute Process Resolution process in Section 9. If the Parties are unable to resolve a dispute regarding the MUP Package or both within thirty (30) days after KCM's written disapproval of the same, then either Party may terminate this Agreement by written notice to the other and consistent with Section 9.2.

5.6.3.9 **Prior Approval.** Once KCM has approved any Design Document submittal under this Agreement, then KCM may only subsequently disapprove of changes to such submittal or any subsequent Design Document submittal that (i) fail to comply with legal requirements, or (ii) contain a material change (as that term is defined in Section 5.6.3.7(i)), or an Adverse Condition as defined in Section 5.8.2, from any previously approved submittal, or both.

### Section 5.7 Entitlements and Vesting

#### 5.7.1 In General

- i. Affordable Housing Developer will exercise commercially reasonable efforts to obtain all development permits and approvals from the City or other regulatory authorities with jurisdiction in a timely manner.
- ii. Affordable Housing Developer shall coordinate closely with KCM in pursuing entitlements. Subject to KCM's Design Document review and its approval and disapproval rights under this Agreement, KCM will support Developer in obtaining entitlements for the Project.



- iii. Affordable Housing Developer shall submit for KCM's approval, and KCM will timely review, comment, approve or disapprove Affordable Housing Developer's entitlement submissions consistent with Section 5.6. The permit packages include: EDG, MUP, and Building Permit Packages, as outlined in the Development and Milestone Schedule, Attachment 6.

#### 5.7.2 Entitlement Progress Meetings; Communication and Cooperation.

During the preparation of all Design Documents and the processing of all permits and other entitlements, Affordable Housing Developer shall meet with governmental or quasi-governmental authorities with land-use or related permitting jurisdiction over the AH Parcel or the Project (collectively, the "**Governmental Authorities**") to coordinate the preparation of, submission to, and review of all Design Documents and permit applications by the applicable Governmental Authorities. Affordable Housing Developer shall provide KCM with reasonable advance notice of all such meetings so that KCM may elect to attend. Such notice shall not be required for routine or spontaneous email and telephonic communications with Governmental Authorities but shall be required for any scheduled meeting or communication that occurs remotely (e.g. a permit preapplication conference that takes place via an online meeting platform or telephone conference call, etc). KCM and Affordable Housing Developer shall communicate and consult informally as reasonably necessary to ensure that the formal submittal of any Design Documents for approval by the applicable Governmental Authorities can receive prompt and speedy consideration. Subject to KCM's Design Document review, approval, and disapproval rights under this Agreement, KCM shall reasonably cooperate with Affordable Housing Developer's efforts to obtain approvals from the applicable Governmental Authorities.

5.7.3 Updates Regarding Entitlement Process. Affordable Housing Developer shall promptly notify KCM of any disapprovals by any applicable Governmental Authorities and shall keep KCM reasonably informed with respect to Affordable Housing Developer's application for and acquisition of entitlements and permits.

### 5.8 MUP Issuance; Tolling of Development and Milestone Schedule.

5.8.1 Affordable Housing Developer shall be responsible for the timely payment of all fees associated with the City's review of the MUP application and shall pay all accrued fees necessary for notice of the MUP approval to be published by the City. For purposes of this Section 5.8, a MUP for the Project shall be deemed to have been issued by the City when all of the following have occurred:

- (i) the MUP is approved for issuance in accordance with the provisions of Chapter 23.76 of the Seattle Municipal Code materially consistent with a MUP application previously approved by KCM, and without Adverse Conditions as defined in paragraph 5.8.2;
- (ii) all appeal periods have expired and all pending appeals have been resolved in a manner pursuant to which the Project remains consistent in all material respects with the MUP application; and

(iii) all outstanding review and processing fees have been paid by Affordable Housing Developer to the City (collectively, “MUP Issuance<sup>[AL1][JR2]</sup>”).

## 5.8.2 Adverse Conditions

5.8.2.1 An “**Adverse Condition**” is a condition attached to the MUP or the City’s SEPA determination that:

- i. Results in a material change (as defined in Section 5.6.3.7(i)) to the Project; or
- ii. purports to apply to the AH Parcel or other KCM-owned property, or bind KCM, or both, regardless of whether Affordable Housing Developer elects to actually construct the Project as described in the MUP; or
- iii. A condition that imposes one or more restrictions, limitations or costs on KCM’s fee interest in the Property or other property owned by KCM, including without limitation any condition that binds KCM to pay for or build on the Property, in advance of any redevelopment of the remainder of the Property outside the AH Parcel, any kind of pedestrian corridor including but not limited to a “mid-block corridor” as referenced in City Ordinance #125792.

5.8.2.2 An Adverse Condition that materially changes aspects of the Project as previously approved by KCM (as described in clause 5.8.2.1(i) above) shall be subject to KCM’s reasonable approval or disapproval, and any disapproval of such Adverse Condition shall be subject to the Dispute Process described in Section 9. An Adverse Condition that imposes restrictions, limitations or costs on the Property or other property owned by KCM, or that purports to bind the AH Parcel or KCM or both regardless of whether the Project is constructed (as described in clauses 5.8.2.1(ii) above), or that binds KCM to pay for or build any kind of pedestrian corridor on the Property (as described in clause 5.8.2.1(iii) above), shall be subject to KCM’s approval in its sole and absolute discretion. KCM’s disapproval of any Adverse Conditions described in clauses 5.8.2.1 (ii) or -(iii) above shall not be subject to the dispute resolution process in Section 9.

5.8.2.3 The MUP approval or MUP Issuance periods in the Development and Milestone Schedule shall be tolled for a ten (10) business day or a thirty (30) day period, respectively, for Affordable Housing Developer to respond to a KCM disapproval due to an Adverse Condition.

## 5.8.3 Tolling Development and Milestone Schedule to Resolve Disputes Over MUP-related Adverse Conditions.

5.8.3.1 The Parties acknowledge that a situation could arise in which they dispute whether MUP approval or MUP Issuance is subject to an Adverse Condition and the Parties are proceeding under the dispute resolution process outlined in Section 9. In addition to the tolling periods set forth in Section 5.8.2.3, the MUP Approval or MUP Issuance periods set forth in the Development and Milestone Schedule shall be further tolled if, as of the end of such period, MUP Approval has been obtained and/or MUP Issuance has been achieved, but the Parties are disputing whether such MUP approval or MUP Issuance is subject to one or more Adverse Conditions as described in the first sentence of this subsection 5.8.3.1. The Parties agree and acknowledge that not all Adverse Conditions are subject to dispute resolution, as more particularly described in Section 5.8.2.2.

5.8.3.2 If upon resolution of such dispute, it is determined that MUP approval or MUP Issuance was obtained without Adverse Conditions (i.e., Affordable Housing Developer prevails in the dispute resolution), then Affordable Housing Developer will be deemed to have obtained MUP approval or MUP Issuance, as applicable, effective as of the end of the MUP approval or MUP Issuance periods set forth in the Development and Milestone Schedule. If upon resolution of such dispute, it is determined that MUP approval or MUP Issuance was obtained with Adverse Conditions (i.e., KCM prevails in the dispute resolution), then Affordable Housing Developer shall have a period of one hundred eighty (180) days following conclusion of the dispute resolution process to seek a revised MUP approval or MUP Issuance without the Adverse Conditions, and if Affordable Housing Developer is successful in doing so, Affordable Housing Developer will be deemed to have obtained MUP approval or MUP Issuance, as applicable, effective as of the end of the MUP approval or MUP Issuance periods set forth in the Development and Milestone Schedule. If Affordable Housing Development fails to obtain MUP approval or MUP Issuance without Adverse Conditions, then at the conclusion of such one hundred eighty (180) day period KCM may terminate this Agreement as provided under Section 9.2.

## **SECTION 6. CONDITIONS PRECEDENT; COUNCIL APPROVAL CONTINGENCY**

**6.1 Affordable Housing Developer's Conditions Precedent.** Affordable Housing Developer's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.1. Each condition is solely for the benefit of Affordable Housing Developer and may be waived in whole or in part by Affordable Housing Developer by written notice to KCM.

(a) **Title Policy.** First American Title Insurance Company (the "**Title Company**") shall be prepared to deliver to Affordable Housing Developer at Closing a leasehold title standard coverage policy, issued by the Title Company as of the date and time of the recording of the Memorandum of Ground Lease (as defined in Section 7.3(b) below), and subject only to the Permitted Exceptions and such endorsements as may be required by the Project lenders and tax credit investor (the "**Title Policy**"); provided, however, that Affordable Housing Developer may in its discretion request that Title Company issue the Title Policy in an extended coverage form in which case Affordable Housing Developer shall be responsible for satisfying any and all costs and requirements in connection therewith. "**Permitted Exceptions**" means exceptions approved or deemed approved or accepted by Affordable Housing Developer pursuant to the Due Diligence Agreement; real estate taxes not yet due and payable, and the standard printed exceptions set forth in the Title Policy. In connection with the issuance of such Title Policy, KCM agrees to provide to the Title Company such evidence of authority and authorization of KCM as Title Company may reasonably require for issuance of the Title Policy, as well as such affidavits, indemnities or other documentation as may be reasonably necessary to issue the Title Policy in standard coverage form and remove from the Title Policy the standard pre-printed exception for mechanics liens.

(b) **Representations and Warranties.** KCM's representations and warranties contained in this Agreement shall be true and correct in all material respects as of the Closing Date.

(c) **KCM's Performance.** KCM shall have performed all of its obligations under this Agreement.

(d) **No Litigation.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against the Property other than those that may be disclosed in writing by KCM in writing prior to the Effective Date.

(e) **License or other Agreements.** KCM has entered into no licenses or agreements that would limit Affordable Housing Developers intended development or use of the AH Parcel or that would materially and adversely affect KCM's ability to perform its obligations under this Agreement,

(f) **Permits.** Affordable Housing Developer shall have obtained all permits or obtained a permit ready letter, required for completion of the Project in material conformance with all Design Documents requiring KCM approval and the Building Permit Package.

(f) **Boundary Line Adjustment.** The Parties shall have completed, and the City of Seattle shall have approved, a boundary line adjustment to create the AH Parcel as a separate legal lot and substantially in conformance with Attachment 2 hereto, and the boundary line adjustment shall have been duly executed and recorded in the real property records of King County, Washington.

(g) **County SEPA Review of Ground Lease.** The County's SEPA review of the Ground Lease shall have been completed and all appeals exhausted, to the satisfaction of Affordable Housing Developer consistent with the terms of Section 1.2.

**6.2 KCM's Condition Precedent.** KCM's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.2. Each condition is solely for the benefit of KCM and may be waived in whole or in part by KCM by written notice to Affordable Housing Developer.

(a) **Representations and Warranties.** Affordable Housing Developer's representations and warranties contained herein shall be true and correct in all material respects as of the Closing Date.

(b) **Affordable Housing Developer's Performance.** Affordable Housing Developer shall have performed all of its obligations under this Agreement, including without limitation, obtaining KCM's approval of the Design Documents in accordance with Section 5.6 above by the Final Date for Closing (as defined in Section 7.1 below).

(c) **Project Development Team.** Affordable Housing Developer shall have engaged the Project Development Team.

(d) **Permits.** Affordable Housing Developer shall have obtained all permits or obtained a permit ready letter, required for completion of the Project and in material conformance with all **Design** Documents requiring KCM approval and the Building Permit Package.



(e) **Financing.** Affordable Housing Developer shall have provided KCM with reasonably satisfactory evidence that Affordable Housing Developer has the financial ability (either as equity or through financing available to Affordable Housing Developer for the Project) to complete the construction of the Project.

(f) **No Litigation.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against Affordable Housing Developer or the Property or Project that would materially and adversely affect Affordable Housing Developer's ability to perform its obligations under this Agreement.

(g) **Boundary Line Adjustment.** The City shall have approved a boundary line adjustment to create the AH Parcel as a separate lot substantially in conformance with Attachment 2 hereto, and without any required mitigation or conditions that would constitute an "Adverse Condition" as defined in Section 5.8.2 hereof. The boundary line adjustment shall have been duly executed and recorded in the real property records of King County, Washington.

(h) **County SEPA Review of Ground Lease.** The County's SEPA review of the Ground Lease shall have been completed and all appeals exhausted to the satisfaction of KCM consistent with the terms of Section 1.2 hereof.

**6.3 Failure of Conditions Precedent.** So long as a Party is not in default hereunder, if any condition to such Party's obligation to proceed with the Closing hereunder has not been satisfied as of the Final Date for Closing, or any other applicable date specified in this Agreement, such Party may, in its sole discretion, either (i) terminate this Agreement by delivering written notice to the other Party, (ii) extend the time available for the satisfaction of such condition by up to a total of ten (10) business days, or (iii) elect to close, notwithstanding the non-satisfaction of such condition, in which event such Party shall be deemed to have waived any such condition. If such Party elects to proceed pursuant to clause (ii) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such Party may elect to proceed pursuant to either clause (i) or (ii) above. The Parties agree that if the failure of any condition precedent is also a breach of this Agreement by either Party, then such breach shall be governed pursuant to the terms of Section 9 below.

**6.4 Council Approval Contingency.** In addition to the conditions precedent for KCM's performance as set forth in Section 6.2, and notwithstanding anything to the contrary in this Agreement, KCM's performance under this Agreement is contingent on approval by ordinance of the Ground Lease by the Metropolitan King County Council ("**Council Approval**"). Council Approval will be satisfied if an ordinance passed by the Metropolitan King County Council approving the Ground Lease becomes effective within the period provided in the Development and Milestone Schedule ("**Council Approval Period**"). KCM may extend the Council Approval Period consistent with the Development and Milestone Schedule. If Council Approval is not satisfied within the Council Approval Period, as may be extended, then this Agreement shall terminate, and this Agreement shall be null and void and of no further force or effect, and the Parties shall have no further rights, obligations or liabilities hereunder. The foregoing shall not limit, any rights Affordable Housing Developer has under the Letter Agreement between the Affordable Housing Developer and KCM regarding expense

reimbursement, or any indemnity given by either Party to the other under this Agreement, and each Party shall have all remedies available at law or equity to enforce such indemnity in the event the other Party fails to perform any indemnity obligation set forth in this Agreement.

## **SECTION 7. CLOSING**

**7.1 Time.** Provided that all requirements set forth in Section 5 above and all conditions and contingencies set forth in Section 6 of this Agreement have been either satisfied or waived by the appropriate Party, the Parties shall close the transaction contemplated by this Agreement (the “**Closing**”), on a date mutually approved by KCM and Affordable Housing Developer, but in no event later than as set forth in the Development and Milestone Schedule, unless extended as expressly provided in this Section 7.1 or otherwise agreed in writing by the Parties (as and if extended, the “**Final Date for Closing**”). In the event Affordable Housing Developer desires that the Closing occur prior to the Final Date for Closing, Affordable Housing Developer shall deliver to KCM written notice of its desired date for Closing, which shall be no sooner than thirty (30) days after the date of such notice. Notwithstanding the foregoing, Affordable Housing Developer shall have the right to extend the Final Date of Closing for up to two (2) periods of twelve (12) months each (each, an “**Extension Option**”) by delivery to KCM no later than thirty (30) days prior to the then-effective Final Date of Closing of written notice of Affordable Housing Developer’s election to extend; provided, however, that in order for Affordable Housing Developer to exercise the second 12-month Extension Option, Affordable Housing Developer must have prepared and submitted the Design Documents described in Section 5.6.1.3(iv) above to KCM. For purposes of clarity, and after taking into account all extensions provided under this Agreement and the Development and Milestone Schedule, in no event shall the Final Date of Closing occur more than four (4) years following the Effective Date.

**7.2 Escrow Instructions.** Closing shall occur through the Escrow with the Title Company. The terms of this Agreement, together with such additional instructions as the Title Company shall reasonably request and the Parties shall agree to, shall constitute the escrow instructions to the Title Company. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Title Company, this Agreement shall control unless the intent to amend this Agreement is clearly and expressly stated in said additional escrow instructions.

**7.3 KCM’s Deposit of Documents into Escrow.** KCM shall deposit into escrow not later than three (3) business days before Closing the following documents:

- (a) Two duly executed and acknowledged counterparts of the Ground Lease;
- (b) A duly executed and acknowledged counterpart of a Memorandum of Ground Lease in the form of Attachment 7 hereto (the “**Memorandum of Ground Lease**”);
- (c) Such additional documents, including written escrow instructions consistent with this Agreement, as may be reasonably necessary to consummate the ground leasing of the AH Parcel in accordance with the terms of this Agreement.



#### **7.4 Affordable Housing Developer's Deposit of Documents and Funds.**

Affordable Housing Developer shall deposit into escrow not later than three (3) business days before Closing:

- (a) Two duly executed counterparts of the Ground Lease;
- (b) A duly executed and acknowledged counterpart of the Memorandum of Ground Lease;
- (c) Such additional documents, including written escrow instructions consistent with this Agreement, as may be reasonably necessary to consummate the ground leasing of the AH Parcel in accordance with this Agreement;
- (d) Sufficient funds to pay for Affordable Housing Developer's share of prorations and Closing costs pursuant to Section 7.6.

#### **7.5 Closing.**

7.5.1 When the Title Company has received all documents identified in Sections 7.3 and 7.4 of this Agreement and has received written notification from Affordable Housing Developer and KCM that all conditions to Closing have been satisfied or waived; and is irrevocably committed to issue the Title Policy as described in Section 6.1(a) above, then, and only then, the Title Company shall:

- (a) Record the Memorandum of Ground Lease;
- (b) Issue the Title Policy to Affordable Housing Developer;
- (c) Deliver to Affordable Housing Developer: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Ground Lease; and (ii) a fully executed original of the Ground Lease; and
- (d) Deliver to KCM: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Ground Lease, and (ii) a fully executed original of the Ground Lease.

7.5.2 The Title Company shall prepare and the Parties shall sign closing statements showing all receipts and disbursements and deliver copies to Affordable Housing Developer and KCM and, if applicable, shall file with the Internal Revenue Service (with copies to Affordable Housing Developer and KCM) the reporting statement required under Section 6045(e) of the Internal Revenue Code.

**7.6 Prorations and Closing Costs.** Subject to the other provisions of this Section 7.6, all applicable taxes, charges and other costs associated with the AH Parcel will be prorated as of 11:59 p.m. Pacific Time on the day immediately preceding the actual date of Closing (the "**Closing Date**"). Not less than three (3) business days prior to the Closing Date, the Title Company shall submit to Affordable Housing Developer and KCM for their approval a tentative prorations schedule showing the categories and amounts of all prorations proposed.

The Parties shall agree on a final prorations schedule prior to the Closing. As of the Closing Date and during the term of the Ground Lease, Affordable Housing Developer shall be responsible for all costs, charges and expenses related to the ownership and operation of the AH Parcel. If based on the final prorations schedule, any amount is due to KCM, Affordable Housing Developer shall pay the amount due to KCM in readily available funds at Closing. If based on the final prorations schedule, any amount is due to Affordable Housing Developer, the amount due shall be credited against the first or next payment of rent due under the Ground Lease.

(a) **Property and Leasehold Excise Taxes.** All real and personal property ad valorem taxes, special assessments, and leasehold excise taxes, if any, applicable to the Project, whether payable in installments or not, including, without limitation, all supplemental taxes attributable to the period prior to the Closing Date (regardless of when payable), shall be prorated to the Closing Date, based on the latest available tax rate and assessed valuation. If the amount of any installment of real property taxes is not known as of the Closing Date, then a proration shall be made by the Parties based on a reasonable estimate of the real property taxes applicable to the AH Parcel and the Parties shall adjust the proration when the actual amount becomes known upon the written request of either Party made to the other.

(b) **Closing Costs.** Affordable Housing Developer shall pay all escrow and recording costs, the cost of the Title Policy, and all other costs incurred in connection with the Closing (provided that each Party shall pay its own legal, consulting and related professional fees and expenses).

(c) **Survival.** The obligations of this Section 7.6 shall survive the Closing.

**7.7 Possession.** Possession of the AH Parcel pursuant to this Agreement and the terms of the Ground Lease shall transfer to Affordable Housing Developer at the Closing.

## **SECTION 8. REPRESENTATIONS AND WARRANTIES**

**8.1 KCM's Representations and Warranties.** As a material inducement to Affordable Housing Developer to execute this Agreement and consummate this transaction, and subject to the express limitations in Section 8.1(e), KCM represents and warrants to Affordable Housing Developer that:

(a) **Authority.** Subject to the Council Approval Contingency in Section 6.4, KCM has or shall as of the Closing Date have the full right and authority and has or shall have obtained any and all consents required to enter into this Agreement and the Ground Lease and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by KCM at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of KCM, enforceable in accordance with their terms.

(b) **No Conflict.** To KCM's knowledge, there is no agreement to which KCM is a party, or to KCM's actual knowledge binding on KCM, that is in conflict with this Agreement. There is no action or proceeding pending or, to KCM's actual knowledge, threatened against KCM, that challenges or impairs KCM's ability to execute or perform its

obligations under this Agreement, except as may be disclosed by KCM in writing prior to the Effective Date.

(c) **No Litigation.** There is not now pending or, to KCM's actual knowledge threatened, any action, suit or proceeding before any court or Governmental Authority against the Property except as may be disclosed in writing by KCM prior to the Effective Date.

(d) **Litigation and Compliance.** To KCM's actual knowledge there are no suits, other proceedings or investigations pending against or affecting the AH Parcel that could materially impair KCM's ability to perform its obligations under this Agreement, nor is KCM in violation of any laws or ordinances that could materially impair KCM's ability to perform its obligations under this Agreement, except as may be disclosed in writing by KCM prior to the Effective Date.

(e) Any and all representations or warranties or other provisions in this Agreement that are conditions on terms such as "actual knowledge" or "to KCM's knowledge" or "about which KCM has knowledge" are made to and limited by the present, actual knowledge of the Northgate Transit Center project manager, an employee of the Metro Transit Department, who as of the Execution Date is \_\_\_\_\_ has made no independent inquiries or investigations with respect to KCM's representations or warranties or other provisions prior to the making thereof and has no duty to undertake the same.

**8.2 Affordable Housing Developer's Representations and Warranties.** As a material inducement to KCM to execute this Agreement and consummate this transaction, Affordable Housing Developer makes the following representations and warranties, individually and collectively, to KCM that:

(a) **Authority.** Affordable Housing Developer is validly existing in the State of Washington with the full right and authority, including any and all required consents, to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered at the Closing by or on behalf of Affordable Housing Developer will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Affordable Housing Developer, enforceable in accordance with their terms.

(b) **No Conflict.** There is no agreement to which Affordable Housing Developer is a party, or to its knowledge binding on Affordable Housing Developer that is in conflict with this Agreement. There is no action or proceeding pending or to its knowledge, threatened against it that challenges or impairs the ability of Affordable Housing Developer to execute or perform its obligations under this Agreement.

(c) **No Litigation.** There is not now pending or threatened, any action, suit or proceeding before any court or Governmental Authority against Affordable Housing Developer that would prevent it from performing its obligations hereunder.

(d) **Financial Condition.** Affordable Housing Developer has or will have as of Closing all funds necessary to consummate the transactions contemplated by this Agreement (including financing arrangements in place for such funds). Affordable Housing

Developer has or will furnish KCM with a true and correct copy of its current financial statement in the form or forms provided to any Project lenders (the “**Financial Statement**”). The Financial Statement has or will fairly present its financial condition as of the date indicated and there shall have been no changes in the assets, liabilities, financial condition or affairs set forth or reflected in the Financial Statement since it was delivered to KCM that in any one case or in the aggregate, constitutes a material adverse change.

(e) **Litigation and Compliance.** There are no suits, other proceedings or investigations pending or threatened against or affecting the business or the properties of Affordable Housing Developer that could materially impair its ability to perform its obligations under this Agreement, nor is it in violation of any laws or ordinances that could materially impair its ability to perform its obligations under this Agreement.

(f) **Adverse Conditions, Etc.** There is no adverse condition or circumstance, pending or threatened litigation, governmental action, or other condition that could prevent or materially impair the ability of Affordable Housing Developer to enter into the Ground Lease and develop the Project as contemplated by the terms of this Agreement.

**8.3 Notice of Changed Circumstances.** If either Party becomes aware of any fact or circumstance that would render false or misleading a representation or warranty made by such Party, then it shall immediately give written notice of such fact or circumstance to the other Party, but such notice shall not relieve either Party of any liabilities or obligations with respect to any representation or warranty.

## **SECTION 9. DISPUTE RESOLUTION; DEFAULT AND TERMINATION**

### **9.1 Dispute Resolution Prior to Closing.**

(i) Prior to Closing, KCM and Affordable Housing Developer agree to communicate regularly to discuss matters arising under this Agreement and to endeavor to prevent disputes from arising. Except as otherwise provided, prior to Closing the Parties agree further to use their best efforts to resolve any disputes arising under this Agreement using good-faith negotiations through the following Dispute Process:

Step One. KCM and Affordable Housing Developer or their designees shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either Party.

Step Two. In the event KCM and Affordable Housing Developer or their designees are unable to resolve the dispute within ten (10) business days as provided in Step One, either Party may refer the dispute to KCM’s Project Manager and Affordable Housing Developer’s Authorized Representative or their respective designees. They shall confer and attempt to resolve the dispute within five (5) business days of receiving the referral.

Step Three. In the event KCM’s Project Manager and Affordable Housing Developer’s Authorized Representative or their respective designees are unable to resolve the dispute within five (5) business days as provided in Step Two, either Party may refer the dispute to KCM’s Division Director and such representative as designated for this purpose by

Affordable Housing Developer. They shall confer and attempt to resolve the dispute within five (5) business days after receiving the referral.

(ii) If the Parties are unable to resolve the dispute using the process set forth in Steps One through Three above, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator. Except as otherwise provided in this Agreement, neither Party shall have the right to seek relief in a court of law until and unless Steps One through Three above are exhausted.

(iii) The dispute resolution process outlined herein shall toll any deadlines set forth in the then-current Development and Milestone Schedule and shall toll the expiration of periods described in Section 5 to the extent set forth in Section 5.8, but shall not extend the Final Date for Closing defined in Section 7.1.

(iv) KCM's review and approval or disapproval of the EDG Package and the MUP Package shall not be subject to this dispute resolution process, and instead the provisions of Section 5.6.2.2 above shall govern such review and approval or disapproval.

(v) After Closing, dispute resolution shall be governed by the Ground Lease.

## **9.2 Termination In General**

In addition to the other provisions of this Agreement that provide for termination under particular circumstances, either Party may terminate this Agreement and give written notice to Escrow Holder that this Agreement and the Escrow is terminated under any of the following circumstances:

- (i) Affordable Housing Developer disapproves of the results of its due diligence investigation of the AH Parcel pursuant to the terms of the Due Diligence Agreement (or fails to issue the Approval Notice within the deadline to issue an Approval Notice under the Due Diligence Agreement) or determines that the Project is infeasible for any reason;



- (ii) KCM fails to obtain the BLA from the City (including appeals) by the outside date set forth in the Development and Milestone Schedule;
- (iii) KCM fails to complete its SEPA review (including appeals) of the ground lease by the outside date set forth in the Development and Milestone Schedule;
- (iv) KCM disapproves the EDG Package, or the MUP Package and the Parties fail to negotiate agreed revisions to same during the time period described in Section 5.6;
- (vi) Affordable Housing Developer fails to obtain MUP approval without one or more Adverse Conditions (as defined in Section 5.8.2) consistent with the Development and Milestone Schedule;
- (vii) Affordable Housing Developer fails to obtain MUP Issuance without one or more Adverse Conditions (as defined in Section 5.8.2) consistent with the Development and Milestone Schedule;
- (viii) Affordable Housing Developer is in default hereunder after notice and opportunity to cure as provided under Section 9.3(a); or
- (ix) Council Approval as set forth in Section 6.4 fails to occur for any reason.

### **9.3 Default In General.**

**(a) Failure to Perform.** Either Party shall be in default under this Agreement if such party fails to observe or perform any provision, covenant or condition of this Agreement to be observed or performed by such Party, where (a) a monetary failure continues for ten (10) business days after written notice thereof from the other Party, or (b) any non-monetary failure continues for twenty (20) business days after written notice thereof from the other Party. Notwithstanding the foregoing, KCM shall have no obligation to provide Affordable Housing Developer with an opportunity to cure any failure by Affordable Housing Developer to have met the requirements of Section 5.3 above by the Final Date for Closing, which shall be deemed an incurable default under this Agreement.

**(b) Waiver of Default.** Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies in connection therewith or of any other rights and remedies provided by this Agreement or by law, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

### **9.4 Remedies.**

**(a) Affordable Housing Developer's Remedies.** Prior to Closing, and provided Affordable Housing Developer is not then in breach of this Agreement, Affordable Housing Developer shall have the option to terminate this Agreement if KCM is in Material Breach of its obligations under this Agreement after the expiration of the cure period provided in Section 9.1(a) above. For purposes hereof, a "**Material Breach**" shall mean a failure or



refusal of KCM, following satisfaction of all conditions precedent and contingencies to KCM's obligations under this Agreement, to enter into the Ground Lease with Affordable Housing Developer as of the Final Date of Closing without legal excuse. If KCM is in Material Breach of this Agreement, Affordable Housing Developer shall have the right, as its sole and exclusive remedies, to either terminate this Agreement, or pursue an action for specific performance in accordance with applicable law. The Parties agree that the limitation on Affordable Housing Developer's remedies set forth herein as a result of a Material Breach is a reasonable provision given the circumstances existing at the time this Agreement was entered into, provided however, the foregoing shall not limit any indemnity given by KCM to Affordable Housing Developer under this Agreement, and Affordable Housing Developer shall have all remedies available at law or equity to enforce such indemnity in the event KCM fails to perform any indemnity obligation set forth in this Agreement. Affordable Housing Developer specifically acknowledges that KCM would not enter into this Agreement without this limitation upon KCM's damages. With respect to any breach of this Agreement by KCM after the expiration of the cure period provided in Section 9.1(a) above that does not constitute a Material Breach, Affordable Housing Developer may pursue an action for specific performance or declaratory relief as its sole and exclusive remedies.

(b) **KCM's Remedies.** Prior to Closing, and provided KCM is not then in breach of this Agreement, KCM shall have the option to terminate this Agreement if Affordable Housing Developer is in breach of its obligations under this Agreement after the expiration of the cure period provided in Section 9.1(a) above. In the event of such termination, the consideration set forth in Section 2.2 of this Agreement shall be KCM's sole and exclusive remedy; provided, however, the foregoing shall not limit any indemnity given by Affordable Housing Developer to KCM under this Agreement, and KCM shall have all remedies available at law or equity to enforce such indemnity in the event Affordable Housing Developer fails to perform any indemnity obligation set forth in this Agreement.

**9.5 Ownership of Affordable Housing Developer Materials.** If this Agreement terminates as a result of a default by Affordable Housing Developer, Affordable Housing Developer shall deliver to KCM, without cost or expense to KCM, all studies, site plans, reports, surveys, environmental assessment test results and other documents relating to the AH Parcel and the Project that were prepared by or on behalf of Affordable Housing Developer in connection with Affordable Housing Developer's Due Diligence Investigation, as well as all Design Documents (as defined in Section 5.6 of this Agreement) prepared in connection with the Project (collectively, "**Affordable Housing Developer Materials**"), together with a bill of sale for Affordable Housing Developer's interest in such Affordable Housing Developer Materials, to the extent any necessary third party consent is required and not otherwise deemed confidential, contain proprietary information or allowed to be so transferred by any party providing or creating such materials, but with neither warranty nor recourse to Affordable Housing Developer for losses and liabilities resulting from defective Affordable Housing Developer Materials, which Affordable Housing Developer Materials shall thereupon be the sole property of KCM free from all claims or interests of Affordable Housing Developer or any other person, and which KCM may, subject to any restrictions by third parties providing any of the Affordable Housing Developer Materials and unless the provider of such information has retained ownership of any materials pursuant to the terms of its agreement or contract with the Affordable Housing Developer, and which KCM may use, grant, license or

otherwise dispose of to any person for development of the AH Parcel or the Property or the Project or any other purpose in KCM's sole discretion. Without limiting the foregoing, Affordable Housing Developer further agrees that, in the event this Agreement terminates, expires or is canceled for any reason other than a default by KCM due to a Material Breach by KCM, KCM may thereafter proceed with development of the Project in a manner and with a site plan which is the same or substantially similar to that contemplated by Affordable Housing Developer. Affordable Housing Developer agrees at all times to keep the Affordable Housing Developer Materials free of all liens, charges, attachments or judgments. Affordable Housing Developer shall, upon request, cooperate with KCM in obtaining (at no additional cost to Affordable Housing Developer, other than costs associated with time spent by Affordable Housing Developer's own personnel) any rights of use desired by KCM with respect to the Affordable Housing Developer Materials.

9.6 Remedies After Closing. After Closing, the Parties remedies for breach of this Development Agreement shall be governed by the Ground Lease.

## **SECTION 10. CASUALTY AND CONDEMNATION**

**10.1 Casualty Prior to Closing.** This Section 10.1 intentionally deleted.

**10.2 Condemnation.** In the event of a taking or threatened taking by condemnation or similar proceedings or actions of all or a substantial portion of the AH Parcel, such that the Project is no longer economically feasible for development of the Project in Affordable Housing Developer's or KCM's reasonable determination, this Agreement shall terminate upon written notice of such determination delivered to the other Party, whereupon this Agreement shall have no further force or effect, except with respect to obligations that by their terms survive such termination.

## **SECTION 11. GENERAL**

**11.1 Notices.** Except for design review communications governed under Section 5, all notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (a) upon receipt when personally delivered to the recipient at the recipient's address set forth below; (b) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, or when such receipt is rejected; (c) one (1) business day after deposit with a recognized overnight courier or delivery service; or (d) when electronically transmitted (including email) with confirmation sent by regular U.S. mail; provided, however, that any notice transmitted pursuant to preceding subparagraphs (a), (b) or (c) shall be accompanied by a contemporaneous electronic transmission (including email) to the recipient. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or federal or state legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday. Any references to "days" that are not expressly designated to be business days shall mean calendar days. If a Party disputes the delivery or receipt of notice by email then that Party shall bear the evidentiary burden to prove, by a preponderance of the evidence, that such notice was not delivered or received or both.

The addresses for notice are:

If to KCM:

King County Metro Transit Department  
Attn: Director of Capital Division, Metro Transit Department  
201 South Jackson Street  
KSC-TR-0415  
Seattle, WA 98104-3856  
Email:

With a copy to:

Metro Transit Department  
Attn: General Manager's Office  
201 South Jackson Street  
KSC-TR-0431  
Seattle, WA 98104-3856  
Email:

With a copy to:

King County Prosecuting Attorney Office  
Attn: Chief Civil Deputy Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
Email:

If to Affordable Housing Developer:

Northgate Affordable LLC  
C/o Bridge Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attention: Rebecca Hlebasko, General Counsel  
Email:

And:

Community Roots Housing  
1620 – 12<sup>th</sup> Ave., Suite 205  
Seattle, WA 98122  
Attn: Jeremy Wilkening, Vice President, Real Estate Development  
Email:

With a copy to:

Kantor Taylor PC  
Attn: Mark Kantor  
1200 5<sup>th</sup> Avenue, Suite 1910  
Seattle, WA 98101  
Email: [mkantor@kantortaylor.com](mailto:mkantor@kantortaylor.com)

Either Party may change its address by written notice to the other given in the manner set forth above.

**11.2 Entire Agreement.** This Agreement (and the attachments hereto) and the Due Diligence Agreement contain the entire agreement and understanding between Affordable Housing Developer and KCM concerning the subject matter of this Agreement, and supersede all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Affordable Housing Developer or KCM concerning the AH Parcel or the other matters which are the subject of this Agreement. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting Party shall not be employed nor applied in the interpretation of this Agreement.

**11.3 Amendments and Waivers; Further Agreements.** No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the Party against whom the addition or modification is sought to be enforced. The Party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving Party. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. Any waiver granted shall apply solely to the specific instance expressly stated. The Parties intend to cooperate, take further action, and execute and deliver further documents as may be reasonably required in order to carry out the purposes of this Agreement and the Project, such as (by way of example only) a temporary construction license, a crane swing license, and such agreements as may be required by the City of Seattle as a condition of one or more permits for the Project. All such agreements shall be the subject of future negotiation between the Parties and are not the subject of this Agreement.

**11.4 Severability.** The provisions of this Agreement are intended to be severable and enforced to the maximum extent permitted by law. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of the invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of the Agreement in any other jurisdiction. The unaffected portion and provisions of the Agreement will be enforced to the maximum extent permitted by law.

**11.5 References.** Unless otherwise indicated, (a) all section and exhibit references are to the sections and exhibits of this Agreement, and (b) all references to days are to calendar days. The attachments hereto are incorporated herein by this reference. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a

Saturday, Sunday or State of Washington holiday, such time for performance shall be extended to the next business day. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires.

**11.6 Governing Law.** The interpretation, construction and enforcement of this Agreement, and all matters relating hereto, shall be governed by the law of the State of Washington, without giving effect to its conflicts of law rules or choice of law provisions. Any judicial proceeding brought by either of the Parties against the other Party or any dispute arising out of this Agreement, the Closing, the Project or the AH Parcel or Property, or any matter relating thereto, shall be brought in the Superior Court of the State of Washington (in King County), or in the United States District Court for the Western District of Washington. In that regard, each Party hereby waives any defense of inconvenient forum and any bond or other security that might otherwise be required of the other Party with respect to such choice of judicial forum.

**11.7 Time; Force Majeure.** Time is of the essence in the performance of the Parties' respective obligations under this Agreement, and no notice of a Party's intent to require strict compliance with the deadlines set forth in this Agreement is required. The Parties hereby acknowledge and agree that the times set forth in this Agreement shall not be subject to delay, except to the extent a Force Majeure Event has occurred, and then only as provided in this Section. For purposes of this Agreement, a "**Force Majeure Event**" shall mean any delay due to war, insurrection, riots, civil disturbances, floods, fires, casualties, earthquakes, tsunamis, acts of God, acts of the public enemy, epidemics, quarantine restrictions, any actions by any Governmental Authorities beyond Affordable Housing Developer's reasonable control (other than issuance or an appeal of the MUP or other entitlements); provided, however, any financial inability, or an economic downturn as the result of any of the foregoing or any other cause, shall not be deemed a Force Majeure Event. A Force Majeure Event shall not toll or extend the Final Day for Closing.

**11.8 Attorneys' Fees.** If either Party commences any legal action or other proceeding to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party shall pay the prevailing party's actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post judgment motion, and any action to enforce or collect the judgment including contempt, garnishment, levy, discovery and bankruptcy. For this purpose "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing party" shall mean the Party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.

**11.9 Acceptance of Service of Process.** In the event that any legal action is commenced by KCM against Affordable Housing Developer, service of process on Affordable Housing Developer shall be made by personal service upon Affordable Housing Developer, or upon Affordable Housing Developer's agent or agents in such manner as may be provided by law, and shall be valid whether made within or without the State of Washington.



#### 11.10 Assignment.

(a) **General Terms.** Affordable Housing Developer recognizes the following: (i) KCM's reliance on the real estate and development expertise of Affordable Housing Developer to assure the quality of the development of the Project; (ii) that the design, use, operation and maintenance of the Project and its components are deemed critical by KCM; (iii) that a change in ownership or control of Affordable Housing Developer, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership, could have a material adverse impact on the development of the Project; and (iv) that the qualifications and identity of the Affordable Housing Developer are of particular concern to KCM. Affordable Housing Developer further recognizes that it is because of such qualifications and identity that KCM is entering into this Agreement with Affordable Housing Developer.

(b) **No Transfers.** Except as provided in Section 11.10(c) below, no voluntary or involuntary successor-in-interest of Affordable Housing Developer shall acquire any rights or powers under this Agreement. Affordable Housing Developer acknowledges and agrees that, except as provided in Section 11.10(c) below, or except with the prior written consent of KCM (which KCM may withhold in its sole discretion), Affordable Housing Developer may not transfer, assign, mortgage, or otherwise convey (collectively, "**Transfer**") all or any portion of Affordable Housing Developer's interest in this Agreement to any person or entity, nor may Affordable Housing Developer permit any change in "control" of Affordable Housing Developer. "Control," as used in this Section 11.10, shall mean (i) the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, any person or entity; or (ii) the power to determine and control the performance of Affordable Housing Developer's obligations under this Agreement or the Ground Lease.

(c) **Permitted Assignment.** Notwithstanding Sections 11.10(a) and (b), and consistent with Recital G, KCM acknowledges that at or after Closing the Affordable Housing Developer may assign and transfer this Agreement and its rights and obligations hereunder to a limited liability company or to a limited liability limited partnership in which the Affordable Housing Developer or an affiliate, is the general partner and a tax credit investor(s) will have a 99.99% interest.

(d) **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.

**11.11 Commissions, Indemnity.** Neither KCM nor Affordable Housing Developer is represented by a broker in this transaction. Each Party represents to the other Party that the representing party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the negotiation or execution of this Agreement. Each Party hereby indemnifies and agrees to protect, defend and hold harmless the other Party from and against



all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 11.11 is intended to be solely for the benefit of the Parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.

**11.12 Non-publicity.** Except for those matters that must be disclosed to perform the commitments of Affordable Housing Developer under this Agreement, and except as otherwise provided by applicable law, Affordable Housing Developer agrees that no press releases concerning the transactions provided for in this Agreement shall be made by Affordable Housing Developer before Closing without the prior written consent of KCM. The provisions of this Section 11.12 shall survive any termination of this Agreement. Notwithstanding the foregoing, KCM acknowledges that the existence of this Agreement and certain of its terms will become public at such time as Affordable Housing Developer submits the EDG Package to the City. Further, the provisions of this Section 11.12 shall not be applicable to Affordable Housing Developer with respect to information that becomes public through parties other than Affordable Housing Developer, including information that may become public through information requests directed at KCM and information that may become public as part of KCM's internal approval processes. Finally, KCM acknowledges that Affordable Housing Developer may disclose the terms of this Agreement and the Ground Lease for the purposes of financing the Project.

**11.13 Survival.** Affordable Housing Developer's obligations under this Agreement shall survive the Closing or the termination of this Agreement prior to the Closing.

**11.14 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

**11.15 Nondiscrimination.** Affordable Housing Developer, on behalf of itself and its successors and assigns, as a part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state and local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Affordable Housing Developer shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Chapter 12.16, as now codified and as hereafter amended. Affordable Housing Developer shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, King County Charter Section 840, Chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Agreement and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Agreement and may result in ineligibility for further agreements between the Parties.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

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The Parties have executed this Agreement as of the Execution Date.

**AFFORDABLE HOUSING  
DEVELOPER:**

**KCM:**

**KING COUNTY**, a home rule charter and  
Washington political subdivision:

**BY:**

**BRIDGE HOUSING CORPORATION**, a  
California corporation  
Its Manager

By: /s/

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**and**

**COMMUNITY ROOTS HOUSING**, a  
Washington public corporation

Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NOTICE: COMMUNITY ROOTS IS ORGANIZED  
PURSUANT TO SEATTLE MUNICIPAL CODE  
(SMC) CHAPTER 3.110 AND RCW 35.21.660,  
35.21.670 AND 35.21.730-.755. RCW 35.21.750  
PROVIDES AS FOLLOWS:

“ALL LIABILITIES INCURRED BY SUCH PUBLIC  
CORPORATION, COMMISSION OR AUTHORITY  
SHALL BE SATISFIED EXCLUSIVELY FROM THE  
ASSETS AND PROPERTIES OF SUCH PUBLIC  
CORPORATION, COMMISSION OR AUTHORITY  
AND NO CREDITOR OR OTHER PERSON SHALL  
HAVE ANY RIGHT OF ACTION AGAINST THE  
CITY, TOWN OR COUNTY CREATING SUCH  
PUBLIC CORPORATION, COMMISSION OR  
AUTHORITY ON ACCOUNT OF ANY DEBTS,  
OBLIGATIONS OR LIABILITIES OF SUCH PUBLIC  
CORPORATION, COMMISSION OR AUTHORITY.”

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## **Northgate Transit Center/Affordable Housing Project Transaction**

Attachment 1	Legal Description of the Property
Attachment 2	Description/Depiction of AH Parcel
Attachment 3	Conceptual Site Plan Detail
Attachment 4	Form of Approval Notice
Attachment 5	Form of Ground Lease
Attachment 6	Development and Milestone Schedule
Attachment 7	Form of Memorandum of Ground Lease

Schedule 5.4-1	List of Design Team
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**EXHIBIT G-1**

**Form of Access Easement**

[To be attached at execution]

**RETURN ADDRESS:**

King County Metro Transit Dept.  
201 South Jackson Street  
KSC-TR-0415  
Seattle, WA 98104-3856  
ATTN: Director of Capital Division,  
Metro Transit Dept.

**Document Title:**           **Grant of Non-Exclusive Easement for Private  
Access and Utilities**

**Grantor:**       **King County, a home rule charter county and legal  
successor to interest to the Metropolitan Municipality of Seattle**

**Grantee:**       **Northgate Affordable LLC, a Washington limited liability company**

**Abbreviated Legal Description:** \_\_\_\_\_

Complete Legal Description is attached as Exhibit "A"

**Assessor's Property Tax Parcel/Account Numbers:** \_\_\_\_\_



## GRANT OF NON-EXCLUSIVE EASEMENT FOR PRIVATE ACCESS AND UTILITIES

This GRANT OF NON-EXCLUSIVE EASEMENT FOR PRIVATE ACCESS AND UTILITIES (“**Easement**”) is dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and is by and between KING COUNTY, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle (“**Grantor**”) and Northgate Affordable LLC, a Washington limited liability limited partnership (“**Grantee**”).

### RECITALS

- A. Grantor owns that certain real property situated in the City of Seattle, King County, State of Washington and legally described on Exhibit A (the “**Property**”). The Property, together with those certain adjacent parcels owned by Grantor and presently operated as regional transit center facilities (as further described in Recital E. below (the “Adjacent Properties”) and public rights of way are depicted graphically on the Site Plan attached hereto as Exhibit A-1.
- B. In 2018, Grantor issued that certain Request for Qualifications and Concepts No. 1207-18-VLN (the “**RFQ/C**”). Through the RFQ/C, Grantor sought proposals for the development of its Northgate Park & Pool lot, of which the Property is a part. Among other things, the RFQ/C required proposals to include a minimum of 200 units of subsidized affordable housing for a minimum of 50 years to serve households earning up to 60 percent of Area Median Income (“AMI”), with a mix of unit sizes and configurations, and with a minimum of 10% of the units to be “system connected,” serving very-low to extremely-low income households below 50% AMI. Grantor received three responses to the RFQ/C, including a response (“**RFQ/C Response**”) dated October 29, 2018, copies of which are on file with the Parties. The RFQ/C Response proposed to construct 232 affordable housing units as well as a 10,000 square-foot child care center for use by residents and possibly others. The RFQ/C Response and the other two responses were evaluated by a five-member evaluation committee as part of the RFQ/C’s competitive selection process. Based upon the commitments described in the RFQ/C Response, on November 19, 2018, Grantor selected the team that submitted the RFQ/C Response to negotiate a definitive agreement. After more than a year of negotiations, and as allowed under the terms of the RFQ/C, Grantor subsequently elected to terminate discussions regarding the market-rate element of the proposed development, and to focus instead on the affordable housing project element. Grantor and Grantee’s predecessors in interest thereafter negotiated the affordable housing project development documents, all as set forth in the Development Agreement (defined below), the Ground Lease (defined below) and this Easement.
- C. Grantor and Grantee previously entered into a development agreement dated \_\_\_\_\_ (the “**Development Agreement**”) and concurrent with the

execution of this Easement, a seventy-five (75) year ground lease of even date herewith, a memorandum of which is recorded as document # \_\_\_\_\_ (the "**Ground Lease**") for the purpose of Grantee's development, construction and operation of a subsidized affordable housing project on the terms and conditions of the Ground Lease (the "**Project**") and located on certain real property owned by Grantor (the "**Project Site**") that is a portion of the Property.

- D. In order to accommodate Grantee's desire to maximize development of the Project on the Project Site, Grantee has requested, and Grantor is willing to allow certain access for ingress and egress and Project utilities to be located on a portion of the Property abutting the Project Site (defined herein as the Easement Area) subject to the terms and conditions set forth in this Easement.
- E. Grantee understands and acknowledges that the Easement Area, the Property and the Project Site all adjoin the existing regional transit center facilities located on the Adjacent Properties, as well as a significant light rail station and related transit facilities that serve the greater Northgate area and beyond. Grantee understands and acknowledges that the safe, efficient operation and maintenance of these transit facilities is a regional priority. These transit uses will continue into the future and may include future dedication of all or a portion of the Easement Area to the City of Seattle ("**City**"). Grantee further understands and acknowledges that Grantor's exercise of its discretion under this Easement will be informed by Grantor's transit-related priorities and with the intent to protect and preserve the existing and future use and utility of Grantor's transit facilities and the Adjacent Properties, as well as the neighboring light rail station and related facilities. Grantee acknowledges that Grantor's reservation of rights described herein to, among other things, grant rights to third parties to use the Easement Area, dedicate all or a portion of the Easement Area to the City or relocate any improvements within the Easement Area by Grantee, are critical to Grantor's long-term management and operation of its transit facilities, including those presently located on the Adjacent Properties and Grantor would not have entered into this Easement without a reservation of such rights. Grantee further acknowledges its obligation to cooperate and to act in good faith in its use of the Easement Area as permitted herein and its development and operation of the Project on the Project Site adjacent to and in coordination with existing and future uses of these transit facilities, all as more specifically set forth in this Easement.
- F. Grantee understands and acknowledges that Grantor reserves the right and intends to develop the remainder of the Property, and, while that future development will be an entirely separate development, Grantee acknowledges its obligation to act in good faith in its development and operation of the Project, in accordance with the terms of this agreement, adjacent to and in anticipation of such future development. Grantee understands that (1) Grantor would not have entered into this Easement without these assurances from Grantee and that (2) Grantee's consent to Grantor's reservation of rights as described herein is a material inducement for Grantor to enter into this Easement.

- G. Subject to the terms and conditions of this Easement, Grantor is willing to grant Grantee this non-exclusive Easement upon the westerly twenty (20) foot wide portion of the Property abutting the Project Site and legally described and depicted in **Exhibit B** attached hereto (the “**Easement Area**”), and no other portion of the Property or Adjacent Properties. Grantor is willing to grant this non-exclusive Easement to Grantee solely for Grantee’s use in connection with Grantee’s development and operation of the Project on the Project Site consistent with the Ground Lease and for no other purposes.
- H. Grantor and Grantee agree and acknowledge that this grant of Easement to Grantee and Grantee’s use of the Easement Area is strictly limited to the permitted uses described in Article 3 below in connection with the Project, and that other uses of the Easement Area are not and shall not be permitted under this Easement without Grantor’s prior written approval, which approval may be conditioned, withheld, or delayed in Grantor’s sole and absolute discretion. Grantee expressly acknowledges (1) the limited nature of this Easement, and (2) the definite term of the Easement granted, and (3) Grantor’s remedies set forth in Article 5 in the event of Grantee’s default of the terms and conditions for its use of the Easement Area as described herein.
- I. Grantor and Grantee are individually referred to as a “**Party**” and collectively as “**Parties**” from time to time.

NOW, THEREFORE, In consideration of this grant of non-exclusive easement rights and Grantee’s promises and obligations set forth herein, in consideration of Grantee’s willingness to (1) submit to Grantor’s reserved rights and (2) exercise its easement rights within the limitations set forth below, and in further consideration of Grantee’s obligation to construct, operate, and maintain the Project upon the Project Site under the Ground Lease, Grantor and Grantee agree as follows:

## **EASEMENT**

### **1. Recitals and Definitions; Intent.**

1.1 Recitals Incorporated. The Recitals set forth above are hereby incorporated herein.

1.2 Definitions. All capitalized terms used in this Easement but not specifically defined herein shall have the meaning or meanings given to them in the Ground Lease or the Development Agreement or both.

1.3 Intent. The intent of this Easement is to authorize Grantee to make certain specific and limited uses of the Easement Area to serve the Project on a non-exclusive basis as permitted herein for a period and term that is limited to and coterminous with Grantee’s ownership and operation of the Project pursuant to the Ground Lease. This Easement does not grant a possessory estate in the Easement Area or the Property; it is not a franchise; it is not exclusive; and Grantor reserves the right to make any and all current or future uses of the Easement Area subject to the

terms and conditions of Article 2 below.

## **2. Grant of Limited Easement/Term; Grantor's Reserved Rights.**

2.1 Grantor grants this Easement in, over, under, across, above, and through the Easement Area for a period of years, commencing on the Effective Date and automatically terminating as of the expiration date or earlier termination of the Ground Lease according to its terms (the "**Term**"). This Easement and use of the Easement Area by Grantor are subject at all times to the terms and conditions set forth herein.

2.2 Without limiting the generality of Section 2.1, Grantee specifically agrees and acknowledges that future use and development of the Property and the Adjacent Properties may include dedication of all or a portion of the Easement Area to the City, or Grantor's grant of rights to third parties for use of the Easement Area for access, utility installation or other purposes, or both of them. Grantee hereby agrees that its rights under this Easement shall be subject at all times to such future uses; provided, that Grantor may not authorize any future use of the Easement Area that would result in material adverse impacts to Grantee's easement rights or improvements within the Easement Area (to the extent such improvements have been properly located by Grantee within the Easement Area consistent with this Easement) that cannot be reasonably mitigated or remedied (1) through relocation of Grantee's use or improvements within the Easement Area consistent with this Easement or (2) as may otherwise be provided for by Grantor. All costs associated with such mitigation shall be at the sole expense of Grantor. Any relocation pursuant to this Section 2.2 shall be subject to and conditioned upon the grant of any required permits and approvals for such relocation by the City and any utility providers.

2.3 Grantor reserves the right to use the Easement Area for any and all purposes not inconsistent with the limited rights granted to Grantee under this Easement. In particular, and as affirmed in Recital E. above, Grantor reserves the right at all times during the Term of this Easement, and at Grantor's sole cost and expense, to relocate Grantee's vehicular ingress and egress under Section 3.1 and any utilities installed by Grantee for the Project within the Easement Area under Section 3.2 so long as such relocation does not result in adverse impacts to the Project that cannot be reasonably mitigated or remedied or that result in a material diminution in the fair market value of the Project. Grantor and Grantee acknowledge that any such relocation must be consistent with then-applicable City zoning and land use requirements and shall be subject to and conditioned upon the grant of any required zoning or land use permits and approvals by the City. In addition, the proposed relocation of Grantee's vehicular ingress and egress under Section 3.1 must be approved in writing by any parties providing financing, either in the form of debt or equity, to the Project, which approval shall not be unreasonably withheld, conditioned or delayed, and Grantee agrees to act in good faith and use its best efforts to obtain such approvals. The Parties agree to cooperate in good faith to apply for and process all zoning and land use permits and approvals, if any, required for such relocation as further described in this section below. Any and all such Grantor relocation proposals shall follow the procedure set forth in this Section 2.3.

2.3.1 If Grantor desires to relocate Grantee's vehicular access or any utilities installed



within the Easement Area, Grantor shall first provide plans and specifications (“**Relocation Plans**”) to Grantee for review and approval at the 30%, 60% and 90% design intervals or such other similar design intervals as Grantor may designate from time to time. The Relocation Plans shall be prepared in conformance with Grantor’s then-standard work process for capital projects. Grantee shall approve or disapprove the Relocation Plans within ninety (90) days after receipt of the Relocation Plans; provided, however, that if within the 90-day period Grantee provides Grantor with confirmation from the City that the relocation proposed in the Relocation Plans will require City zoning or land use approvals or permits, then the 90-day period shall be extended as required in order for Grantor and Grantee to cooperate in good faith and to use their best efforts to apply for, process and obtain all required zoning and land use permits and approvals, if any. Disputes between the Parties regarding the relocation proposed in the Relocation Plans, whether it satisfies the terms and conditions of this Section 2.3 or whether a Party is acting in good faith or using best efforts, shall be resolved pursuant to the dispute resolution process in Section 2.3.3. The cost of applying for and obtaining any required zoning or land use permits or approvals shall be at Grantor’s sole cost and expense. If Grantee does not respond to Grantor within such 90-day period, then Grantor may request a response from Grantee in writing and if Grantee does not respond to Grantor’s request within fifteen (15) days then Grantee (and any party providing financing to the Project as noted in Section 2.3 above) shall be deemed to have approved the Relocation Plans. If Grantee approves of the Relocation Plans (or is deemed to have approved them) then Grantor may proceed with the relocation as contemplated in this Section 2.3.

2.3.2 If Grantee disapproves the Relocation Plans, and the proposed relocation described in the Relocation Plans does not require any City zoning or land use approvals or permits, then Grantee shall so notify Grantor in writing and Grantee shall specify the basis for Grantee’s disapproval and shall indicate what measures, if any, Grantor could take to address Grantee’s concerns and secure Grantee’s approval. Thereafter Grantor may revise the Relocation Plans and resubmit them to Grantee and Grantee shall approve or disapprove the revised Relocation Plans within ninety (90) days after receipt of the revised Relocation Plans and Grantee’s approval shall not be unreasonably withheld, conditioned, or delayed. If Grantee does not respond to Grantor within such 90-day period, then Grantor may request a response from Grantee in writing and if Grantee does not respond to Grantor’s request within fifteen (15) days Grantee shall be deemed to have approved the revised Relocation Plans. If Grantee approves of the revised Relocation Plans (or is deemed to have approved them) then Grantor may proceed with the relocation as contemplated in this Section 2.3. If Grantee disapproves the revised Relocation Plans then the Parties shall proceed to dispute resolution under Section 2.3.3.

2.3.3 Grantor and Grantee agree to use their best efforts to resolve any disputes arising under this Section 2.3 using good-faith negotiations. Grantor and Grantee further agree to communicate regularly to discuss matters arising under this Section 2.3 and to prevent disputes from arising. Except as otherwise provided in this Section 2.3 the Parties agree to use the following dispute resolution process for disputes regarding Relocation Plans.

a. **STEP ONE.** Grantor and Grantee shall meet and confer and attempt to resolve the dispute through their regular business representatives within ten (10) business days of

written notification by either Party.

b. **STEP TWO.** In the event Grantor and Grantee are unable to resolve the dispute through their regular business representatives within ten (10) business days as provided in Step One, either Party may elect to refer the dispute to a higher level of authority. The Parties shall each identify a person with supervisory authority in their organization and such persons shall confer and attempt to resolve the dispute within five (5) business days of receiving the referral.

c. **STEP THREE.** In the event that the Parties are unable to resolve the dispute within five (5) business days as provided in Step Two, either party may elect to further elevate the dispute to the director or executive level within their respective organizations. The Parties' directors or executives or their designees shall confer and attempt to resolve the dispute within five (5) business days after receiving the referral.

2.3.4 If the Parties are unable to resolve the dispute utilizing the process set forth in Section 2.3.3, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator.

2.3.5 If the Parties are unable to resolve the dispute utilizing the process set forth in Section 2.3.3, or by mediation under Section 2.3.4, then such dispute shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Claims shall be heard by a single arbitrator, unless the proposed relocation work exceeds \$1,000,000, in which case the dispute shall be heard by a panel of three arbitrators. The place of arbitration shall be Seattle, Washington. The arbitration shall be governed by the laws of the State of Washington without giving effect to its conflicts of law rules or choice of law provisions. Unless the Parties agree otherwise, hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in-person hearings. Time is of the essence for any arbitration under this Section 2.3 and any arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these time limits prior to accepting appointment. The arbitrators will have no authority to award damages and shall be limited to awarding specific relief in the form of an order approving or disapproving the Relocation Plans. Without limiting the foregoing sentence, the arbitrator(s) shall not award actual, punitive, or consequential damages in any arbitration initiated under this section 2.3.5. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrator(s), all of their costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The Parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.



2.3.6 Grantor shall be responsible for and bear all costs and fees (excepting those fees and costs, if any, awarded pursuant to arbitration as set forth in Section 2.3.5) associated with any relocation of Grantee's facilities or improvements in the Easement Area, which shall include, but not be limited to, planning, design, permitting, construction, site preparation, grading, plan check, administration, construction inspection, and contract administration.

2.3.7 Grantor and Grantee shall cooperate in any relocation work carried out under this Section 2.3 so that vehicular access and utility service to the Project is not unreasonably interrupted as a result of such relocation work. Grantor shall schedule any relocation work in a manner that will minimize the down time to the Project access and utilities.

2.4 [this Section 2.4 intentionally deleted]

2.5 Grantee accepts and agrees to be bound by this Easement upon the terms and conditions set forth in this Easement and covenants, warrants, and agrees to comply with and abide by the same. If Grantee objects to Grantor's exercise of any of its reserved rights on any basis other than (1) the existence of an unmitigated unreasonably adverse impact to Grantee's rights or uses under this Easement, or (2) reasonable disapproval of Grantor's Relocation Plans or Revised Relocation Plans under Section 2.3, then Grantee shall be in default under this Easement and Grantor shall have the right to exercise any and all rights at law or equity in remedy of such default, including but not limited to injunctive relief and/or specific performance, consistent with Section 5 of this Easement. Grantor's exercise of the specific remedies set forth in this Easement shall be and hereby are deemed reasonable and shall not constitute an unmitigated unreasonably adverse impact to Grantee's rights or uses under this Easement.

**3. Permitted Uses/Non-Exclusive.** Grantee may use the Easement Area for the following purposes during the Term of this Easement, and for no other purpose without Grantor's prior written approval.

3.1 Private Access for Vehicular Ingress and Egress.

3.1.1 Grantee may use and improve the Easement Area for private access by vehicular ingress/egress on a right-in turn and right-out turn only from NE 103<sup>rd</sup> Street for the sole purpose of commercial load/unload purposes related to Project operations by Project staff, contractors, agents, and employees. Grantee may not access the Easement Area by vehicle from any other street or location and Grantee may not use the Easement Area for any other purpose. No public access or pedestrian uses of any kind are permitted within the Easement Area. No use or improvement of the Easement Area by tenants, guests or other invitees of Project tenants, or employees or users of the on-site childcare facility is permitted. No construction staging or temporary or permanent storage of any kind by Grantee, including but not limited to Hazardous Materials as defined in Section 12 below, shall be permitted within the Easement Area. No vehicle parking is permitted within the Easement Area except for: (1) interim construction-related parking during initial construction of the Project, but only until construction of the Project is completed or

the City issues a occupancy permit for the Project, whichever occurs earlier; and (2) once the City issues an occupancy permit for the Project, only commercial vehicles may be parked in the Easement Area while actively loading and unloading for brief periods in support of the Project.

3.1.2 Grantee acknowledges that: (1) the Easement Area is accessible to Grantee from NE 103<sup>rd</sup> Street and no other street or location; and (2) this grant of Easement does not permit or allow a “through block” connection to or from NE 100<sup>th</sup> Street, or to or from 3<sup>rd</sup> Avenue NE through the Property.

3.1.3 Grantee further acknowledges that the Easement Area must at all times remain open and subject to periodic use by Grantor for purposes related to public transit operations subject to the provisions of Article 2; provided, however, that Grantor agrees that during the Term of this Easement the Easement Area shall remain open and passable for vehicular ingress/egress by Grantee as set forth in this Section 3.1, subject to Grantor’s reserved rights under Article 2, the limitations on Grantee’s uses in this Section 3.1 and Grantor’s rights under Article 5 below. Without limiting the preceding sentence, Grantor shall have the further right to install traffic signals or other traffic control measures or signage to limit or prevent conflicts with transit operations on the Adjacent Properties or on public streets in the vicinity of the Easement Area.

3.1.4 Grantee acknowledges that the Easement rights granted in this Section 3.1 are subject to the relocation provisions of Section 2.3 above.

### 3.2 Project Utilities.

3.2.1 Grantee may use the Easement Area to install, operate, and maintain subsurface utilities necessary for the Project, including but not limited to water, sewer, gas, and telecommunications, but only to the extent consistent with and required by the Project contemplated under the Development Agreement and the Ground Lease. In order to minimize Grantee’s use of the Easement Area and the potential need for any future relocation of such utilities by Grantor, all subsurface utilities relating to the Project shall be (1) located and installed by Grantee as close as feasible to the eastern boundary of the Easement Area, and (2) stacked or otherwise co-located to the maximum extent practicable.

3.2.2 Any utilities installed by Grantee in the Easement Area consistent with Section 3.2.1 shall be constructed and appropriately stubbed so that each of them may be connected to by any future development on the remainder of the Property or the Adjacent Properties. Without limiting the preceding sentence, Grantee shall install meters and other necessary equipment to separate Grantee’s utility use from any future use by utility extensions or connections that may be made in support of development or redevelopment on Grantor’s adjoining parcels. Except as specifically set forth in this Section 3.2.2, Grantee is not obligated to make or install any such further or additional utility connection for benefit of development or redevelopment on Grantor’s other property, and all such future utility extensions or connections shall be the responsibility of such party as may seek to make such connection. Upon completion of the Project or at the time the City issues an occupancy permit for the Project, whichever is earlier, Grantee shall provide to

Grantor a complete and compiled set of as-built drawings detailing all utilities installed within the Easement Area consistent with Section 3.2 of this Easement.

3.2.3 Except as provided in this Section 3.2, Grantee may not install or construct any utility-related aerial, surface, or subsurface structures, improvements or installations of any kind without Grantor's prior written permission, which permission may be withheld, conditioned, or delayed in Grantor's sole and absolute discretion.

3.2.4 Grantee acknowledges that the easement rights granted in this Section 3.2 are subject to the relocation provisions of Section 2.3 above.

#### **4. Disclaimer of Property Condition; Grantee's Due Diligence; Release; Duty to Repair; Condition of Property.**

##### **4.1 "As Is" and "Where Is" Condition.**

Grantee has made a thorough, independent examination of the Easement Area and all matters relevant to Grantee's decision to enter into this Easement and develop the Project. Grantee expressly acknowledges and agrees that, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS EASEMENT, GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE EASEMENT AREA, THE PROPERTY OR ANY PORTION THEREOF, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE CONDUCT OF GRANTEE'S BUSINESS. Grantee acknowledges that, as of the Effective Date, Grantee will have carefully inspected the Easement Area, including by performing its due diligence reviews and investigations pursuant to the Due Diligence Agreement and the Development Agreement, and by executing this Easement. Therefore, except as may be set forth elsewhere in this Easement, Grantee accepts the Easement Area on an "AS IS" and "WHERE IS" basis, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of Grantor, or any person on behalf of Grantor, regarding the Easement Area, Property, or matters affecting the Easement Area or Property or Grantee's proposed Project, including, without limitation:

(a) Physical Condition. The physical condition of the Easement Area and any adjacent portions of the Property, including the quality, nature, adequacy, and physical condition of (1) any systems, facilities, access, adjacent uses, and/or landscaping; (2) the air, soils, geology, and groundwater, including but not limited to the presence of peat or other organic matter; (3) the suitability of the Easement Area for construction of any improvements or any activities or uses that Grantee may elect to conduct on the Easement Area, or (4) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the Easement Area for building or any other purpose;

(b) Existing Improvements and Installations. The quality, nature, adequacy, and physical condition of all existing at- and below-grade improvements and installations at the Easement Area, including but not limited to engineering characteristics, appurtenances, access, landscaping, paving, drainage, and parking facilities;

(c) Title. Title to the Easement Area and/or the nature and extent of any right-of-way, Easement, possession, lien, encumbrance, license, reservation, or other title condition affecting the Easement Area, whether or not of record, including without limitation the existence of any easements, rights of ways or other rights across, to or in other properties that might burden or benefit the Easement Area;

(d) Compliance/Zoning. The development potential and/or availability of any necessary permits or approvals (or conditions thereon) for development of the Easement Area, including but not limited to the zoning, comprehensive plan, land use, or other legal status of the Easement Area, including but not limited to the compliance with any public or private restrictions on the use of the Easement Area, as the same are in effect as of the date of mutual execution hereof or the Commencement Date, or may be thereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance of the Easement Area with any applicable laws;

(e) Hazardous Materials. The presence or removal of Hazardous Materials (as defined in Section 12.3 below) in, under or about, or emanating from or migrating to, the Easement Area, the Property, or on any other property;

(f) Economic Feasibility. Economic conditions or projections, market data, or other aspects of the economic feasibility of the Project and/or any business Grantee intends to conduct on the Easement Area;

(g) Utilities. The availability, existence, quality, nature, adequacy and physical condition of utilities serving the Easement Area;

(h) Suitability. The use, habitability, merchantability, fitness, suitability, value or adequacy of the Easement Area for any particular purpose (including, without limitation, the uses authorized under Article 3 of this Easement);

(i) Boundaries. The boundaries of the Easement Area, the location of any improvements on the Easement Area, and/or the existence of any encroachments onto or from any adjacent lands, including the Property;

(j) Access. Vehicular and/or pedestrian access to the Easement Area, including from or through any particular route; and

(k) Other Matters. Any other matter not referenced above that pertains to the Easement Area.



4.2 Grantee's Due Diligence. Grantee acknowledges: (1) Grantee is a sophisticated real estate developer with sufficient experience and expertise in the development and operation of affordable housing projects, and will hire or have the opportunity to hire consultants with sufficient experience and expertise, to evaluate the Easement Area and the risks associated with acquiring an easement interest in the Easement Area; (2) Grantee will have received sufficient information and had adequate time to make such an evaluation; (3) Grantee enters into this Easement with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, archeological, economic and legal condition of the Easement Area; and (4) in connection with its investigations and inspections of the Easement Area, including by performing its due diligence reviews and investigations pursuant to the Due Diligence Agreement and the Development Agreement, Grantee will have the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, and archeologists to conduct such environmental, land use, permitting, geological, soil, hydrology, seismic, archeological, physical, structural, mechanical and other inspections of the Easement Area as Grantee deems to be necessary, and Grantee will review thoroughly the reports of such advisors and consultants, as well as all materials and other information given or made available to Grantee by Grantor or governmental authorities. Grantee further acknowledges that it has not and will not receive from or on behalf of Grantor any accounting, tax, legal, architectural, engineering, archeological, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, archeological, property management and other advisors. Grantee will satisfy itself as to such suitability and other pertinent matters by Grantee's own inquiries and tests into all matters relevant in determining whether to enter into this Easement.

4.3 Release of Grantor and Grantor Parties. Grantee, on behalf of itself, its directors, officers, representatives, employees and agents (the "**Grantee Parties**"), hereby waives, releases, acquits and forever discharges Grantor and all of its affiliated organizations, and its employees, representatives, agents, consultants, contractors and subcontractors (the "**Grantor Parties**"), of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Grantee or any Grantee Parties now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the Easement Area, provided however, that such release shall not apply or extend to (1) the express representation, warranties, covenants and obligations of Grantor under this Easement, or (2) the obligations of Grantor under this Easement, or (3) any future use of the Easement Area by Grantor or Grantor Parties not excluded from the terms of this Section 4.3. Grantee's release of Grantor under this Section 4.3 is in addition to any release provisions set forth in this Easement, the Ground Lease, or the Development Agreement.

**Grantee Initials:** \_\_\_\_\_

4.4.1 Grantee Duty to Repair Damage. Grantee shall keep and maintain the Easement Area and any Grantee improvements in the Easement Area in a neat, clean, and sanitary condition and shall, except for reasonable wear and tear, and at all times preserve the Easement Area in good and safe repair except for any maintenance or repair made necessary by Grantor's use of the Easement Area which shall be the responsibility of Grantor. Grantee shall promptly repair any damage to the Easement Area or to Grantee's improvements in the Easement Area caused by Grantee's use of the Easement Area at Grantee's sole cost and expense. If Grantee fails to timely comply with this Section 4.4.1, then Grantor may, but is not obligated to, pay or perform Grantee's obligations under this Section 4.4.1 at Grantee's expense after providing Grantee ten (10) days written notice of Grantor's intent to do the same. Upon Grantee's receipt of Grantor's written invoice of third-party costs actually incurred by Grantor under this Section 4.4.1, Grantee shall reimburse Grantor in full within thirty (30) days. Grantee's failure to comply with this Section 4.4.1 shall constitute a default of this Easement and a basis for Grantor's exercise of its remedies under this Easement under Article 5.

4.4.2 Grantor Duty to Repair Damage. Grantor shall promptly repair or cause to be repaired any damage to the Grantee's improvements within the Easement Area or any damage that impairs Grantee's use of the Easement Area as permitted herein and caused by Grantor or Grantor Parties or any person or entity using the Easement Area with the permission of Grantor and not otherwise permitted by Grantee at Grantor's sole cost and expense. If Grantor fails to comply with this Section 4.4.2, then Grantee may, but is not obligated to, pay or perform Grantor's obligations under this Section 4.4.2 at Grantor's expense after providing Grantor ten (10) days written notice of Grantee's intent to do the same. Upon Grantor's receipt of Grantee's invoice of third-party costs actually incurred by Grantee under this Section 4.4.2, Grantor shall reimburse Grantee in full within thirty (30) days.

#### 4.5 Condition of Property Upon Expiration or Earlier Termination.

4.5.1 Upon expiration or earlier termination of this Easement, Grantee shall peaceably deliver to Grantor possession of the Easement Area, in good condition except for: (1) ordinary wear and tear; or (2) damage caused by Grantor or Grantor Parties, and Grantor shall be entitled to recover from Grantee the costs of any repairs or restoration of the Easement Area due to damage caused by Grantee or other persons or entities for which Grantee is responsible, including but not limited to Grantee Parties.

4.5.2 Upon expiration or earlier termination of this Easement, all Grantee improvements approved by Grantor and remaining in, under, over, across, or through the Easement Area shall become Grantor's property or, at Grantor's option, any and all of such Grantee improvements shall be removed from the Easement Area at Grantee's expense, including the costs of any required restoration of the Easement Area.

### 5. **Default; Termination of Easement Rights.**

5.1 Default by Grantee. A material default under this Easement by Grantee shall



include, without limitation, the occurrence of any one or more of the following events:

a. Grantee shall have failed to pay any payment required hereunder within ten (10) business days following the date where such failure shall continue for a period of an additional ten (10) business days after written notice from Grantor; or

b. Grantee shall have failed to perform any other obligation required hereunder where such failure shall continue for a period of thirty (30) days after written notice from Grantor, provided such 30-day period shall be extended to the extent reasonably necessary to complete such cure so long as Grantee diligently and continuously attempts to do so;

c. Grantee experiences a bankruptcy or other financial insolvency including but not limited to the following:

(i) Grantee makes a general assignment or general arrangement for the benefit of creditors;

(ii) A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Grantee (unless within sixty (60) days following the date that a proceeding is filed under the bankruptcy code the bankruptcy trustee or the Grantee as debtor in possession has (1) elected to assume this Easement; (2) has cured all defaults under this Easement and paid all sums due and owing under this Easement, and (3) has provided Grantor with adequate assurance that the bankruptcy trustee and/or the Grantee has and will continue to have sufficient unencumbered assets after payment of all secured obligations and administrative expenses to assure Grantor that the bankruptcy trustee and/or Grantee will have sufficient funds and/or income to fulfill the obligations of Grantee under this Easement);

(iii) A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Grantee and is not dismissed within sixty (60) days;

(iv) A trustee or receiver is appointed to take possession of all or substantially all of Grantee's assets; or

(v) Substantially all of Grantee's assets or Grantee's interest under this Easement is subjected to attachment, execution or other judicial seizure which is not discharged within sixty (60) days.

(d) A default under the Ground Lease pursuant to the provisions thereof.

(e) Grantee fails to cooperate in good faith with Grantor in connection with 1) any permits or approvals required in connection with relocation of Grantee's vehicular ingress and egress or utilities as set forth in Section 2.3; or 2) the proposed development on the remainder of the Property or Adjacent Properties.

(f) Grantee fails to cooperate in good faith with others' use of the Easement Area permitted by Grantor as set forth in Section 2.2.

(g) Grantee fails to cooperate in good faith with Grantor's reserved rights under this Easement, including but not limited to Grantor's rights to install traffic signals or other traffic control measures or signage to prevent conflict with transit operations on the Adjacent Properties or on public streets in the vicinity of the Easement Area.

5.2 Grantor's Remedies. Grantor's remedies under this Section 5.2 are cumulative and shall be deemed additional to any and all other remedies to which Grantor may be entitled in law or in equity.

(a) If Grantee defaults in the performance or observation of any covenant, obligation, duty, or agreement contained in this Easement, then Grantor, without notice if deemed by Grantor that an emergency exists, or if no emergency exists, with thirty (30) calendar days prior written notice, may direct Grantee to stop work and may itself perform or cause to be performed such covenant, obligation, duty, or agreement and may enter upon the Easement Area for such purpose. Such "emergency" shall include, but not be limited to, endangerment of life, the Easement Area or any improvements thereon or failure of Grantee to maintain the insurance coverage specified in Article 9. Grantee shall reimburse Grantor the entire cost and expense of such performance by Grantor within thirty (30) calendar days of the date of Grantor's invoice. Any act or thing done by Grantor under the provisions of this Section 5.2 shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

(b) In the event of any violation or breach or threatened violation or breach of any provision of this Easement, Grantor shall, in addition to all other remedies under this Easement, shall have the right to seek specific performance of the terms of this Easement, including but not limited to injunctive relief.

(c) In the event of a default by Grantee under this Easement that Grantor reasonably deems to present a danger to the public health, life, safety, or transit operations, Grantor shall have the right to control, barricade, restrict, or otherwise entirely prohibit access to and ingress/egress from the Easement Area as provided for in Article 7 below.

(d) In the event of termination of the Ground Lease, this Easement shall automatically be deemed terminated as of the Ground Lease termination date and without any further action required on the part of Grantor to effect termination of this Easement.

5.3 Grantor's waiver or acceptance of any default by Grantee under this Easement shall not operate as a release of Grantee's responsibility for any prior or subsequent default.

**6. Permits or Improvements Required.** Grantor's grant of this Easement does not constitute a Project permit and does not release Grantee from any of its obligations to obtain any applicable permits or approvals necessary to use the Easement Area for the purposes described

herein in connection with the Project. Any improvements to or use of the Easement Area required as a condition to any permit or approval for the Project shall be at Grantee's sole cost and expense and, to the extent such improvements or uses differ from the rights granted to Grantee herein, shall require the prior written approval of Grantor, which approval may be withheld in Grantor's reasonable discretion. All work done within the Easement Area as required by any Project permits or approvals shall be promptly and expeditiously performed by Grantee in compliance with all City or other applicable construction standards and specifications.

7. **Emergency.** Notwithstanding any other provision of this Easement, Grantor shall be entitled at all times to barricade or otherwise temporarily close the Easement Area to use by Grantee in the event of any emergency whereby use of the Easement Area becomes a potential, imminent danger to public health, life, safety or transit operations; provided, that Grantor shall use all reasonable efforts to give Grantee 24 hours advance notice of any such closure.

8. **Release and Indemnification.**

8.1 Releases. This Easement is made upon the express condition that except as specifically set forth herein, Grantor shall have no liability for, and Grantee assumes the risk of, all liability and claims against Grantor for damage, loss, cost or expense by reason of any injury, loss or theft of any property in or from the Easement Area or the improvements or by reason of any injury to any person or persons, including Grantee, or any property of any kind whatsoever and to whomsoever belonging, including Grantee, from any cause or causes whatsoever, in, upon or in any manner connected with the Easement Area or the improvements or with the sidewalks, approaches, and entrances adjacent to the Easement Area during the term of this Easement or any extension or renewal thereof or any occupancy hereunder. Without limiting the generality of the foregoing, Grantor and the Grantor Parties shall not be liable for any loss or damage to persons or property resulting from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any cause, whether the said damage or injury results from conditions arising upon the Easement Area, the Property or the Adjacent Properties or from other sources or places regardless of whether the same is inaccessible to Grantee except to the extent any such loss or damage is caused by the negligence or willful misconduct of Grantor or Grantor's officers, officials, employees or agents. Grantee's release under this Section 8.1 is in addition to, and separate from, Grantee's release regarding the Property condition under Section 4.3 of this Easement.

Section 8.2 Indemnification. Notwithstanding any other provision of this Easement, the Grantee hereby agrees to indemnify, protect, hold harmless and defend the Grantor and the other Grantor Parties from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of Grantee's use of and operations at the Easement Area, including but not limited to any act or omission by Grantee or any Grantee Parties in connection with the Easement

Area. Notwithstanding the foregoing, the foregoing indemnification obligations by Grantee shall not extend or apply to the negligent acts and omissions or willful misconduct of Grantor or any Grantor Party. In addition, if any contractor or subcontractor that performed any construction work for the Grantee or the Grantee's affiliates on the Project asserts any claim against the Grantor on account of any damage alleged to have been caused by the Grantee or the Grantee's affiliates, their members, partners, officers, commissioners, directors, affiliates (other than Grantor), agents or employees, or their construction contractors, then the Grantee shall defend at its own expense any suit based upon such claim; and if any judgment or claim against the Grantor shall be allowed, the Grantee shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith. Grantee hereby waives for itself and its employees any immunity to which it or they may be entitled under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify Grantor and the Grantor Parties, which waiver has been mutually negotiated by the Parties. In the event it is determined that RCW 4.24.115 applies to this Easement, Grantee agrees to defend, hold harmless, and indemnify Grantor to the maximum extent permitted thereunder. These indemnities shall survive the termination of this Easement.

8.3 Grantees indemnity obligations under this Article 8 are in addition to, and separate from, Grantee's indemnity obligations under Article 12 of this Easement regarding Hazardous Materials and environmental compliance. Grantee's indemnity obligations under this Article 8 do not include Hazardous Materials and environmental compliance.

## **9. Insurance.**

Section 9.1 Grantee's Insurance. During the Term, Grantee shall keep and maintain in force, at no cost or expense to Grantor, and shall cause its contractors engaged in activities on or about the Easement Area to keep and maintain, the minimum insurance types and limits described in Article 5 of the Ground Lease, including all endorsements, waivers of subrogation, and other applicable provisions described therein. All such liability policies of insurance shall respond to claims for which Grantee is responsible arising on or about the Easement Area, and all such property insurance policies shall respond to physical loss or damage to Grantee's improvements in the Easement Area, as applicable.

Section 9.2 General Requirements. All policies described in Section 9.1 shall include Grantor and Grantee, together with any of Grantee's leasehold mortgagees, as additional insureds for full coverage and policy limits under the general, automobile, and pollution liability policies and as loss payees under the property policies (including builder's risk), as their respective interests may appear. All policies described in Section 9.1 shall be issued by insurance companies permitted to issue policies in the State of Washington and having a Best's rating of at least "A/VIII", shall be written on an "occurrence" form (claims-made policies are not acceptable), and shall contain or be endorsed to provide: (a) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the Grantee or Grantor, and any insurance and/or self-insurance maintained by Grantor or its officers, officials, employees or agents shall not contribute with Grantee's insurance or benefit Grantee in any way; (c) a provision that no act or omission of



the Grantee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (d) a waiver by the insurer of all rights of subrogation against the Grantor and its authorized parties in connection with any loss or damage thereby insured against; (e) an acknowledgement that Grantee's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability; and (f) terms providing that any loss covered by such insurance shall be adjusted with the Grantor and Grantee, but shall, to the extent required by the loan documents of any Leasehold Mortgage, be payable to the holder of any leasehold mortgage on the Project, who shall agree to receive and disburse all proceeds of such insurance, subject to the duty of the Grantee to repair or restore the Project. Coverage shall not be suspended, voided, canceled, or reduced in scope or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior written notice has been given to the Grantor and applicable leasehold mortgagee(s), which notice may be provided by Grantee. If at any time, any of the foregoing policies shall be or become unsatisfactory to Grantor, in its reasonable discretion, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to Grantor, Grantee shall, upon notice to that effect from Grantor, promptly obtain a new policy, and shall submit the same to Grantor, with the appropriate certificates and endorsements for approval. Any deductibles or self-insured retentions must be declared to Grantor, and Grantee's deductible and or self-insured retentions shall not limit or apply to Grantee's liability to Grantor and shall be the sole responsibility of Grantee. By requiring such minimum insurance hereunder, Grantor shall not be deemed or construed to have assessed the risks that may be applicable to Grantee under this Easement, and Grantee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Section 9.3 Evidence of Insurance. Certificates of insurance and required endorsements for all insurance required to be maintained by Grantee under this Article 9 shall be furnished by Grantee to Grantor prior to the Commencement Date (as defined in the Ground Lease) and at least ten (10) days prior to expiration of any such policies. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by Grantor and are to be received and approved by Grantor prior to the commencement of activities associated with the Easement. Grantee shall also provide copies of required policies to Grantor within ten (10) days after the latter's request.

Section 9.4 Waiver of Subrogation. To the extent any loss would be covered by property insurance required in this Article 9 or elsewhere in this Easement, or is actually covered by property insurance carried by a party, Grantor and Grantee hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under the other by way of subrogation or otherwise) for any loss or damage to real or personal property on the Premises caused by fire or any other insured peril, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible, provided that the foregoing waivers shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of Grantor or Grantee.

Section 9.5 Periodic Adjustment of Grantee's Insurance Requirements. Due to the length of the Term of this Easement, the Parties agree that this Article 9 may, at the discretion of Grantor, be reviewed and adjusted within 90 days of the end of each five (5) year anniversary of the Commencement Date (as defined in the Ground Lease). Any adjustments made by Grantor with regard to limits, scope and types of insurance, shall be in accordance with such insurance customary for similar multifamily housing projects in the Seattle – King County geographical area and shall be effective on the first day of each successive five (5) year period. Adjustment, if any, in insurance premium(s) shall be the responsibility of Grantee. Any failure by Grantor to exercise its right to review and adjust at any of the aforementioned adjustment periods shall not constitute a waiver of future review and adjustment timings. Nothing contained within this Section 9.5 shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this Section 9.5 shall affect and/or alter the application of any other provision contained within this Easement.

Section 9.6 Grantee's Failure to Carry Insurance.

9.6.1 Grantee shall be in material default of this Easement if, at any time during the Term, (1) Grantee fails to procure or maintain insurance required hereunder or to pay the premiums therefor, and (2) such failure continues for five (5) business days after written notice from Grantor.

9.6.2 Upon such default Grantor may exercise its remedies as provided for in Article 5.

9.6.3 In addition to Section 9.6.2, upon Grantee's default under this Section 9.6, Grantor shall have the right, but not the obligation, to procure the same and to pay any and all premiums thereon, and any amounts paid by Grantor in connection with the acquisition of insurance shall be immediately due and payable by Grantee, and Grantee shall pay to Grantor upon demand the full amount so paid and expended by Grantor, including interest at the Default Rate (as defined in the Ground Lease) until paid.

**10. Modification and Nonwaiver.** This Easement may not be modified, altered, or amended unless first approved in writing by Grantor. No waiver of any condition or covenant in this Easement or any breach thereof, shall constitute or be deemed to constitute a waiver of any subsequent breach.

**11. Assignment.** Grantee may not assign all or any portion of its rights, benefits, or privileges, in and under this Easement independent of or separate from the Ground Lease. Notwithstanding the foregoing, Grantee may assign this Easement in full to any permitted successor or assignee under the Ground Lease according to its terms; provided, that such assignment shall not relieve Grantee of its obligations under this Easement without Grantor's written permission, which may be withheld, conditioned, or delayed by Grantor in its sole and absolute discretion. Grantee may not grant any sub-easement or let, sublet, or license this Easement or any portion of the Easement Area. Notwithstanding any other provisions herein, Grantee may assign its interest in this Easement as security for any loan or other financing of the



Project.

## 12. Compliance with Laws; Environmental Compliance.

12.1 In General. Grantee shall comply with all federal, state, and municipal laws, rules, and regulations that are applicable to this Easement or to Grantee's proposed use of the Easement Area.

12.2 No Liens. This Easement is executed and delivered upon the express condition that Grantee shall not and may not take any action or omission that will or may become a lien against Grantor's interest in the Easement Area or the Property. Grantee shall ensure that if any lien is placed on the Easement Area or the Property in connection with this Easement or Grantee's use of the Easement Area then Grantee shall (1) remove such lien to the full satisfaction of Grantor within ten (10) business days of receipt of written notice from Grantor, or (2) if such lien is being contested in good faith by Grantee, post a bond satisfactory to Grantor in the full amount of such lien.

### 12.3 Environmental Compliance.

Section 12.3.1 Definitions. "**Hazardous Materials**" as used herein shall mean:

A. Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

B. Any dangerous waste or hazardous waste as defined in:

(i) Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

(ii) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

(iii) Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

C. Any hazardous substance as defined in:

(i) Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

(ii) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

D. Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

E. For purposes of this Section 12.3, "Grantee" shall mean Grantee and its subGrantees, assignees, contractors, agents, employees, representatives, and/or affiliates.

Section 12.3.2 Environmental Compliance.

A. In the conduct of its permitted use of the Easement Area, and in its use and occupancy of adjacent public areas that are available for use by Grantee and others, if any (the "**Public Areas**"), Grantee shall, at Grantee's own expense, comply with all federal, state and local laws, ordinances, regulations, permits, decrees or other governmental requirements now or hereafter in effect related to Hazardous Materials and other environmental laws, including, but not limited to, laws and regulations pertaining to stormwater discharges as set by the U.S. Environmental Protection Agency and the Washington Department of Ecology, as well as such rules concerning environmental matters as may be promulgated by Grantor ("**Environmental Laws**"). Grantee warrants that its business and all activities to be conducted or performed in, on, or about the Easement Area and any Public Areas shall comply with all of the Environmental Laws. Grantee agrees to change, reduce, or stop any non-complying activity for which the Grantee or Grantee Parties are responsible, or install necessary equipment, safety devices, pollution control systems, or other installations as may be necessary at any time during the term of this Easement to comply with the Environmental Laws as they relate to Grantee's use of the Easement Area.

B. Grantee shall not without first obtaining Grantor's prior written approval use, generate, handle, store, treat, transport, or sell any Hazardous Materials in, on, or about the Easement Area or the Public Areas. In the event, and only in the event, that Grantor approves any of the foregoing, Grantee agrees that such activity shall occur safely and in compliance with the Environmental Laws. Without limiting the foregoing sentences, Grantor agrees that Grantee may use, handle, store, transport, and dispose of reasonable amounts and types of ordinary cleaning supplies and similar items routinely used in the normal construction, operation, maintenance, repair, and occupancy of a residential building, to the extent consistent with all applicable Environmental Laws.

C. Grantee shall not cause or permit to occur any violation of the Environmental Laws on, under, or about the Easement Area or the Public Areas, or arising from Grantee's permitted use of the Easement Area or the Public Areas. Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, or negligent activities that result in a release or threatened release of Hazardous Materials. If Grantee's act, omission or breach of obligation under this Easement results in a release of Hazardous Materials into the environment on, about, or migrating from the Easement Area or the Property that exceeds regulatory cleanup levels, then Grantee shall, at Grantee's sole expense, promptly take all actions necessary to

mitigate such release and to fully and completely remove (and to dispose of such in accordance with applicable law) all of such Hazardous Materials.

D. Grantee shall, in a timely manner and at Grantee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental or regulatory authorities (the "**Authorities**" or "**Authority**") with jurisdiction under Environmental Laws in connection with Grantee's use of the Easement Area. If Grantee fails to fulfill any duty imposed under this Section 12.3 within the time specified by applicable law, or if no time is specified within a reasonable time, Grantor may take action; and in such case, Grantee shall cooperate with Grantor in order to prepare all documents Grantor deems necessary or appropriate to determine the applicability of the Environmental Laws to the Easement Area and/or the Public Areas and Grantee's use thereof, and for compliance with the Environmental Laws, and Grantee shall execute all documents promptly upon Grantor's request. No such action by Grantor and no attempt made by Grantor to mitigate damages shall constitute a waiver of any of Grantee's obligations under this Section 12.3. Grantee shall immediately notify Grantor if Grantee becomes actually aware of any of the following: (a) a release or threatened release of Hazardous Materials on the Easement Area or Property or any adjacent property; (b) any actual or alleged violation of any of the Environmental Laws, including any inspection reports or any other notice received from any Authority that Grantee may be in violation of any Environmental Law; and (c) any notification from any Authority that investigation, remediation or removal of Hazardous Materials is or may be required at the Easement Area..

E. Should any Authority demand that a remedial investigation and/or cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Easement and arises from Grantee's use or occupancy of the Easement Area, or which arises at any time from Grantee's use or occupancy of the Easement Area and/or the Public Areas, then Grantee shall, in a timely manner and at Grantee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Grantee shall carry out all such investigation and/or cleanup or remediation plans. Any such plans are subject to Grantor's prior written approval, such approval not to be unreasonably withheld. Although Grantor reserves the right to review and approve such plans, Grantor assumes no responsibility for such plans or their compliance with Environmental Laws.

F. If Grantor determines in its sole discretion that an emergency exists (i) because of the deposit, spill, discharge or other release of Hazardous Materials at or from the Easement Area or (ii) which arises from Grantee's use or occupancy of the Easement Area and/or the Public Areas, Grantor will take such action as Grantor, in its sole discretion, considers reasonable to contact Grantee and advise it of the emergency situation. If Grantee is unreachable, or is unwilling to take immediate action, Grantor may, but is not required to, take immediate action to address the emergency situation, and Grantee will reimburse Grantor for all of its costs and expenses related thereto, provided, with respect to clause (i) above, that the deposit, spill, discharge or other release of Hazardous Materials arises from Grantee's use or occupancy of the Easement Area. The fact that Grantor takes immediate action shall not relieve Grantee of any of its responsibilities under

this Easement and the Environmental Laws including, without limitation, Grantee's responsibility for complying with reporting requirements.

### Section 12.3.3 Indemnification and Release.

A. Except as otherwise provided in this Section 12.3, Grantee shall be fully and completely liable to Grantor for, and shall indemnify, hold harmless and release Grantor from and against, any and all claims, liabilities, lawsuits, damages, demands, suits, losses, judgments, and costs, including but not limited to removal, remedial action, or other costs recoverable under CERCLA or MTCA; any and all other requirements, charges, interest, fees, oversight costs, or penalties (civil or criminal or both) imposed by any Authority; and all other expenses including but not limited to claims for bodily injury or death, property damage, diminution in value or loss of use, including attorney's fees and other costs of defense ("**Claims**") caused by or arising from (1) the use, disposal, transportation, generation, past, present or future release or threatened release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Grantee in, on, around, about, or emanating from the Easement Area, including but not limited any remediation activities conducted by Grantee or from Grantee's activities on the Easement Area or the Property, or from Grantee's activities on any adjoining property occurring during the term of the this Easement or at any time if caused by Grantee, including exacerbation or disturbance of existing Hazardous Materials that were released in, on or about the Easement Area prior to the Commencement Date of this Easement; or (2) Grantee's failure to comply with any obligation in this Section 12.3; or (3) any actions by Grantor under this Section 12.3. Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by the Parties. Grantee's duties under this Section 12.3 include the duty to pay or reimburse Grantor's direct and indirect costs to monitor or oversee Grantee's cleanup or other corrective work, including but not limited to engineering and other consulting services, sampling and studies, confirmatory testing, compliance monitoring, and administrative costs and expenses incurred in procuring and managing the same. Grantee's indemnity regarding Hazardous Materials and environmental compliance under this Section 12.3 is in addition to, and separate from, Grantee's indemnity obligations under Article 8 of this Easement.

B. Grantor agrees to indemnify, defend and hold Grantee harmless from and against all fines, penalties, administrative and judicial proceedings and orders, and all other direct costs and expenses incurred by Grantor or Grantee solely with respect to clean up or remediate any hazardous materials or substances that may be found to exist on the Property from past events or releases prior to the Effective Date of the Development Agreement or introduced by Grantor pursuant to any future use by Grantor of the Easement Area (collectively, "Cleanup Costs"), save and except to the extent that such Cleanup Costs result from Grantee's exacerbation of such pre-existing condition, nature and/or extent of such hazardous materials or releases of hazardous substances. Grantor's limited indemnity under this Section 12.3.3.B does not and shall not be construed to alter, reduce, or expand Grantee's separate indemnity obligations under this Easement, the Due Diligence Agreement, the Ground Lease, or the Development Agreement, all of which are ratified and reaffirmed.

Section 12.3.4 Reporting Requirements. Grantee shall comply with the Environmental Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to Grantor a full copy of any such submission, filing or report as submitted within 15 days of such submission.

Section 12.3.5 Right to Check on the Grantee's Environmental Compliance. Grantor expressly reserves the right to conduct, and Grantee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Easement Area as Grantor, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

Section 12.3.6 Remedies. Upon any default by Grantee under this Section 12.3, and the expiration of any applicable notice and cure period provided in Article 5 of this Easement, Grantor shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to Grantor:

- A. At Grantor's option, any and all remedies set forth in Section 5.2; and/or
- B. At Grantor's option, to perform such action as is required to bring the Easement Area and any other areas of the Property affected by Grantee's default into compliance with the Environmental Laws and to recover from Grantee all of Grantor's costs and expenses in connection therewith; and/or
- C. To recover from Grantee any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs, expenses and charges, civil and criminal penalties and fees, adverse impacts on marketing the Easement Area or any other areas of the Property, loss of business and sales by Grantor and other Grantees of the Property, diminution of value of the Easement Area and/or other areas of the Property, the loss of or restriction of useful space in the Easement Area and/or other areas of the Property, and any and all damages and claims asserted by third parties, and Grantor's reasonable attorneys' fees, costs and expenses.

Section 12.3.7 Remediation on Termination of Easement. Upon the expiration or termination of this Easement, Grantee shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Easement Area caused by Grantee as required by applicable laws ("**Termination Cleanup**"). The process for such Termination Cleanup is subject to Grantor's prior written approval. Although Grantor reserves the right to review and approve the Termination Cleanup process, Grantor assumes no responsibility for it or its compliance with the Environmental Laws. If Grantee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, within the time specified by law or within a reasonable time if no time is specified, Grantor may elect to perform such Termination Cleanup after providing Grantee with written notice of Grantor's intent to commence Termination Cleanup, and after providing Grantee a reasonable opportunity, which shall not be less than ninety



(90) days after such notice (unless Grantor is given notice by a government or regulatory agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time), to commence or resume the Termination Cleanup process. If Grantor performs such Termination Cleanup after said notice and Grantee's failure to perform same, Grantee shall pay all of Grantor's costs and expenses.

Section 12.3.8 Survival. Grantee's obligations and liabilities under this Section 12.3 shall survive the expiration or termination of this Easement.

12.4 Nondiscrimination. Grantee shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125, now and as hereafter amended. Grantee shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, King County Charter Section 840, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision that continues for more than thirty (30) days after written notice thereof to Grantee shall be considered a default of this Easement. Grantee's failure to comply with this Section 12.4 shall constitute a material breach of this Easement for purposes of Grantor's remedies as set forth in Article 5.

**13. Venue and Jurisdiction.** This Easement shall be construed in accordance with the laws of the State of Washington without giving effect to its choice of law rules or conflicts of law provisions. Except as provided in Section 2.3 regarding dispute resolution concerning Relocation Plans, venue and jurisdiction for the resolution of disputes shall be in the Superior Court for King County, Washington. In the event of claim or litigation regarding the enforcement of the terms of this Easement, each party shall be responsible for its own legal costs and attorney fees except as noted in Section 2.3, Article 8, and Article 12. Nothing in this Easement shall preclude or be deemed to preclude Grantor from pursuing any legal or equitable remedy for Grantee's failure to perform its obligations.

#### **14. Notices.**

All notices, demands, approvals, and other communications provided for in this Easement shall be in writing and shall be effective (1) upon receipt when personally delivered to the recipient at the recipient's address set forth below; (2) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, or when such receipt is rejected; (3) one (1) business day after deposit with a recognized overnight courier or delivery service; or (4) when electronically transmitted (including email or facsimile) to the email address or facsimile number set forth below. A Party disputing delivery or receipt of email notice shall have the burden of proving that the email notice was not delivered or



received or both. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or federal or state legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday. A Party may change its address or other contact information by giving notice as specified in this Article 14.

If to Landlord: King County Metro Transit Department  
Attn: Director of Capital Division, Metro Transit Department  
201 South Jackson Street  
KSC-TR-0415  
Seattle, WA 98104-3856

With a copy to: Facilities Management Division  
Real Estate Services Section  
201 South Jackson Street  
KSC-FMD-0XXX  
Seattle, WA 98104-3856

With a copy to: King County Prosecuting Attorney Office  
Attn: Chief Civil Deputy Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

If to Tenant: Northgate Affordable LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attention: Rebecca Hlebasko, General Counsel

With a copy to: Community Roots Housing  
1620 – 12<sup>th</sup> Ave., Suite 205  
Seattle, WA 98122  
Attn: Jeremy Wilkening, Vice President, Real Estate Development

With a copy to: Kantor Taylor PC  
1200 5<sup>th</sup> Avenue, Suite 1910  
Seattle, WA 98101  
Attn: Mark Kantor

**15. Binding Covenant; Recording.** This Easement is appurtenant to and shall run with the land that makes up the Project Site that is subject to the Ground Lease. The covenants, conditions, restrictions, obligations and liabilities of Grantee under this Easement are not personal, but run with, are binding upon and a covenant affecting the Project Site for the Term of the Ground Lease. As such, Grantor shall have the right, but not the obligation, to enforce the covenants,

conditions, restrictions, obligations and liabilities of the Grantee under this Easement against the owner of the Project and its successors and assigns as well as against Grantee's successors and assigns under the Ground Lease. Grantee shall cause this Easement to be recorded against the Property at Closing.

**16. Entire Agreement and Effective Date; Survival.** This Easement contains the entire agreement between the Parties regarding the subject matter hereof and, in executing it, Grantor and Grantee do not rely upon any statement, promise, or representation, whether oral or written, not expressed in this Easement. This Easement shall be effective upon the last day executed below (Effective Date). Grantee's duties and obligations under Section 4.3, Article 8, and Section 12.3 shall survive the expiration or earlier termination of this Easement.

**17. Warranty of Authority to Execute.** Each person executing this Easement warrants that he/she has the requisite authority to bind the Party for whom that person is executing.

(signature page follows)

This Easement is executed and shall become effective as of the last date signed below.

**LANDLORD/GRANTOR:**

**KING COUNTY**, a home rule charter and  
Washington political subdivision:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form for King County:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT/AFFORDABLE HOUSING  
DEVELOPER:**

**NORTHGATE AFFORDABLE LLC**,  
a Washington limited liability company

**BY:**

**BRIDGE HOUSING CORPORATION**, a  
California corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**And**

**COMMUNITY ROOTS HOUSING**, a  
Washington public corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON )  
: ss.  
COUNTY OF KING )

I hereby certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she is authorized to execute the instrument on behalf of King County, and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

*-Notary Seal Must Appear Within This Box-*

IN WITNESS WHEREOF, I have hereunto set my hand and official seal  
the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC, in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )

: ss.

COUNTY OF KING )

I hereby certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she is authorized to execute the instrument as the \_\_\_\_\_ of \_\_\_\_\_ and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

*-Notary Seal Must Appear Within This Box-*

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC, in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY



**SITE PLAN DEPICTING THE PROPERTY, THE ADJACENT PROPERTIES AND  
PUBLIC RIGHTS OF WAY**

## EXHIBIT B

### LEGAL DESCRIPTION AND DEPICTION OF EASEMENT AREA

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**EXHIBIT G-2**

**Form of Glazing Easement**

[To be attached at execution]

RETURN ADDRESS:  
King County Metro Transit Dept.  
201 South Jackson Street  
KSC-TR-0415  
Seattle, WA 98104-3856  
ATTN: Director of Capital Division,  
Metro Transit Dept.

**Document Title:**        **Grant of Non-Exclusive Easement for Glazing  
Setback/No-Build Area**

**Grantor:**        **King County, a home rule charter county and legal  
successor to interest to the Metropolitan Municipality of Seattle**

**Grantee:**        **Northgate Affordable LLC, a Washington limited liability company**

**Abbreviated Legal Description:** \_\_\_\_\_

Complete Legal Description is attached as Exhibit "A"

**Assessor's Property Tax Parcel/Account Numbers:** \_\_\_\_\_

## GRANT OF NON-EXCLUSIVE EASEMENT FOR PRIVATE ACCESS AND UTILITIES

This GRANT OF NON-EXCLUSIVE EASEMENT FOR PRIVATE ACCESS AND UTILITIES (“**Easement**”) is dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and is by and between KING COUNTY, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle (“**Grantor**”) and Northgate Affordable LLC, a Washington limited liability limited partnership (“**Grantee**”).

### RECITALS

- A. Grantor owns that certain real property situated in the City of Seattle, King County, State of Washington and legally described on Exhibit A (the “**Property**”). The Property, together with those certain adjacent parcels owned by Grantor and presently operated as regional transit center facilities (as further described in Recital E. below (the “**Adjacent Properties**”) and public rights of way are depicted graphically on the Site Plan attached hereto as Exhibit A-1.
- B. In 2018, Grantor issued that certain Request for Qualifications and Concepts No. 1207-18-VLN (the “**RFQ/C**”). Through the RFQ/C, Grantor sought proposals for the development of its Northgate Park & Pool lot, of which the Property is a part. Among other things, the RFQ/C required proposals to include a minimum of 200 units of subsidized affordable housing for a minimum of 50 years to serve households earning up to 60 percent of Area Median Income (“**AMI**”), with a mix of unit sizes and configurations, and with a minimum of 10% of the units to be “system connected,” serving very-low to extremely-low income households below 50% AMI. Grantor received three responses to the RFQ/C, including a response (“**RFQ/C Response**”) dated October 29, 2018, copies of which are on file with the Parties. The RFQ/C Response proposed to construct 232 affordable housing units as well as a 10,000 square-foot child care center for use by residents and possibly others. The RFQ/C Response and the other two responses were evaluated by a five-member evaluation committee as part of the RFQ/C’s competitive selection process. Based upon the commitments described in the RFQ/C Response, on November 19, 2018, Grantor selected the team that submitted the RFQ/C Response to negotiate a definitive agreement. After more than a year of negotiations, and as allowed under the terms of the RFQ/C, Grantor subsequently elected to terminate discussions regarding the market-rate element of the proposed development, and to focus instead on the affordable housing project element. Grantor and Grantee’s predecessors in interest thereafter negotiated the affordable housing project development documents, all as set forth in the Development Agreement (defined below), the Ground Lease (defined below) and this Easement.
- C. Grantor and Grantee previously entered into a development agreement dated \_\_\_\_\_ (the “**Development Agreement**”) and concurrent with the execution of this Easement, a seventy-five (75) year ground lease of even date herewith, a memorandum of which is recorded as document # \_\_\_\_\_ (the “**Ground Lease**”) for the purpose of Grantee’s development, construction and operation

of a subsidized affordable housing project on the terms and conditions of the Ground Lease (the "**Project**") and located on certain real property owned by Grantor (the "**Project Site**") that is a portion of the Property.

- D. In order to accommodate Grantee's desire to maximize development of the Project on the Project Site, Grantee has requested, and Grantor is willing to grant an easement for a glazing setback/no-build area over and across the surface only of a portion of the Property abutting the Project Site (defined herein as the Easement Area) subject to the terms and conditions set forth in this Easement.
- E. Grantee understands and acknowledges that the Easement Area, the Property and the Project Site all adjoin the existing regional transit center facilities located on the Adjacent Properties, as well as a significant light rail station and related transit facilities that serve the greater Northgate area and beyond. Grantee understands and acknowledges that the safe, efficient operation and maintenance of these transit facilities is a regional priority. These transit uses will continue into the future and may include future dedication of all or a portion of the Easement Area to the City of Seattle ("**City**"). Grantee further understands and acknowledges that Grantor's exercise of its discretion under this Easement will be informed by Grantor's transit-related priorities and with the intent to protect and preserve the existing and future use and utility of Grantor's transit facilities and the Adjacent Properties, as well as the neighboring light rail station and related facilities. Grantee acknowledges that Grantor's reservation of rights described herein to, among other things, grant rights to third parties to use the Easement Area or dedicate all or a portion of the Easement Area to the City are critical to Grantor's long-term management and operation of its transit facilities, including those presently located on the Adjacent Properties and Grantor would not have entered into this Easement without a reservation of such rights. Grantee further acknowledges its obligation to cooperate and to act in good faith in its use of the Easement Area as permitted herein and its development and operation of the Project on the Project Site adjacent to and in coordination with existing and future uses of these transit facilities, all as more specifically set forth in this Easement.
- F. Grantee understands and acknowledges that Grantor reserves the right and intends to develop the remainder of the Property, and, while that future development will be an entirely separate development, Grantee acknowledges its obligation to act in good faith in its development and operation of the Project, in accordance with the terms of this agreement, adjacent to and in anticipation of such future development. Grantee understands that (1) Grantor would not have entered into this Easement without these assurances from Grantee and that (2) Grantee's consent to Grantor's reservation of rights as described herein is a material inducement for Grantor to enter into this Easement.
- G. Subject to the terms and conditions of this Easement, Grantor is willing to grant Grantee this non-exclusive Easement over and across the surface-only of a ten (10) foot wide portion of the Property abutting the Project Site as legally described and depicted in **Exhibit B** attached hereto (the "**Easement Area**"), and no other portion of the Property or Adjacent Properties. Grantor is willing to grant this non-exclusive Easement to Grantee for the purpose described herein solely for Grantee's use in connection with Grantee's



development and operation of the Project on the Project Site consistent with the Ground Lease and for no other purposes.

- H. Grantor and Grantee agree and acknowledge that this grant of Easement to Grantee and Grantee's use of the Easement Area is strictly limited to the permitted uses described in Article 3 below in connection with the Project, and that other uses of the Easement Area are not and shall not be permitted under this Easement without Grantor's prior written approval, which approval may be conditioned, withheld, or delayed in Grantor's sole and absolute discretion. Grantee expressly acknowledges (1) the limited nature of this Easement, and (2) the definite term of the Easement granted as described herein.
- I. Grantor and Grantee are individually referred to as a "**Party**" and collectively as "**Parties**" from time to time.

NOW, THEREFORE, In consideration of this grant of non-exclusive easement rights and Grantee's promises and obligations set forth herein, in consideration of Grantee's willingness to (1) submit to Grantor's reserved rights and (2) exercise its easement rights within the limitations set forth below, and in further consideration of Grantee's obligation to construct, operate, and maintain the Project upon the Project Site under the Ground Lease, Grantor and Grantee agree as follows:

## **EASEMENT**

### **1. Recitals and Definitions; Intent.**

1.1 Recitals Incorporated. The Recitals set forth above are hereby incorporated herein.

1.2 Definitions. All capitalized terms used in this Easement but not specifically defined herein shall have the meaning or meanings given to them in the Ground Lease or the Development Agreement or both.

1.3 Intent. The intent of this Easement is to authorize Grantee to make use of the Easement Area for a glazing setback/no-build area over and across the surface only of the Easement Area as required by Grantee's permits and approvals from the City for the Project (the "**Glazing Setback/No-Build Area**"), and no grant of rights to use or occupy any subsurface portion of the Easement Area is hereby granted. This Easement is granted to Grantee on a non-exclusive basis as permitted herein for a period and term that is limited to and coterminous with Grantee's ownership and operation of the Project pursuant to the Ground Lease. This Easement does not grant a possessory estate in the Easement Area or the Property; it is not a franchise; it is not exclusive; and Grantor reserves the right to make any and all current or future uses of the Easement Area to the extent such uses do not conflict or violate any City requirements or permits for the Glazing Setback/No-Build Area for the Project, including but not limited to Grantor's right to make any and all use of the subsurface of the Easement Area.

### **2. Grant of Limited Easement/Term; Grantor's Reserved Rights.**

2.1 Grantor grants this Easement in, over and across the surface of the Easement Area for a period of years, commencing on the Effective Date and automatically terminating as of the expiration date or earlier termination of the Ground Lease according to its terms (the “**Term**”). This Easement and use of the Easement Area by Grantor are subject at all times to the terms and conditions set forth herein.

2.2 Without limiting the generality of Section 2.1, Grantee specifically agrees and acknowledges that future use and development of the Property and the Adjacent Properties may include dedication of all or a portion of the Easement Area to the City, or Grantor’s grant of rights to third parties for use of the Easement Area for access, utility installation or other purposes, or both of them. Grantee hereby agrees that its rights under this Easement shall be subject at all times to such future uses; provided, that Grantor may not authorize any future use of the Easement Area that would conflict with or violate any City requirements or permits for the Glazing Setback/No-Build Area.

2.3 Grantor reserves the right to use the Easement Area at all times for any and all purposes not inconsistent with the limited rights granted to Grantee under this Easement.

2.4 Grantor and Grantee agree to use their best efforts to resolve any disputes arising under this Article 2 using good-faith negotiations. Grantor and Grantee further agree to communicate regularly to discuss matters arising under this Article 2 and to prevent disputes from arising.

a. **STEP ONE.** Grantor and Grantee shall meet and confer and attempt to resolve the dispute through their regular business representatives within ten (10) business days of written notification by either Party.

b. **STEP TWO.** In the event Grantor and Grantee are unable to resolve the dispute through their regular business representatives within ten (10) business days as provided in Step One, either Party may elect to refer the dispute to a higher level of authority. The Parties shall each identify a person with supervisory authority in their organization and such persons shall confer and attempt to resolve the dispute within five (5) business days of receiving the referral.

c. **STEP THREE.** In the event that the Parties are unable to resolve the dispute within five (5) business days as provided in Step Two, either party may elect to further elevate the dispute to the director or executive level within their respective organizations. The Parties’ directors or executives or their designees shall confer and attempt to resolve the dispute within five (5) business days after receiving the referral.

2.4.1 If the Parties are unable to resolve the dispute utilizing the process set forth in Section 2.4, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator.

2.4.2 If the Parties are unable to resolve the dispute utilizing the process set forth in Section 2.4, or by mediation under Section 2.4.1, then such dispute shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Claims shall be heard by a single arbitrator, unless the proposed relocation

work exceeds \$1,000,000, in which case the dispute shall be heard by a panel of three arbitrators. The place of arbitration shall be Seattle, Washington. The arbitration shall be governed by the laws of the State of Washington without giving effect to its conflicts of law rules or choice of law provisions. Unless the Parties agree otherwise, hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in-person hearings. Time is of the essence for any arbitration under this Section 2.4 and any arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these time limits prior to accepting appointment. The arbitrators will have no authority to award damages and shall be limited to awarding specific relief in the form of an order approving or disapproving the Relocation Plans. Without limiting the foregoing sentence, the arbitrator(s) shall not award actual, punitive, or consequential damages in any arbitration initiated under this section 2.4.2. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrator(s), all of their costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The Parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

2.5 Grantee accepts and agrees to be bound by this Easement upon the terms and conditions set forth in this Easement and covenants, warrants, and agrees to comply with and abide by the same.

**3. Permitted Use/Non-Exclusive.** Grantee may use the Easement Area for the purpose of the Glazing Setback/No-Build Area and for no other purpose without Grantor's prior written approval.

**4. Disclaimer of Property Condition; Grantee's Due Diligence; Release; Duty to Repair; Condition of Property.**

**4.1 "As Is" and "Where Is" Condition.**

Grantee has made a thorough, independent examination of the Easement Area and all matters relevant to Grantee's decision to enter into this Easement and develop the Project. Grantee expressly acknowledges and agrees that, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS EASEMENT, GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE EASEMENT AREA, THE PROPERTY OR ANY PORTION THEREOF, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE CONDUCT OF GRANTEE'S BUSINESS. Grantee acknowledges that, as of the Effective Date,

Grantee will have carefully inspected the Easement Area, including by performing its due diligence reviews and investigations pursuant to the Due Diligence Agreement and the Development Agreement, and by executing this Easement. Therefore, except as may be set forth elsewhere in this Easement, Grantee accepts the Easement Area on an "AS IS" and "WHERE IS" basis, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of Grantor, or any person on behalf of Grantor, regarding the Easement Area, Property, or matters affecting the Easement Area or Property or Grantee's proposed Project, including, without limitation:

(a) Physical Condition. The physical condition of the Easement Area and any adjacent portions of the Property, including the quality, nature, adequacy, and physical condition of (1) any systems, facilities, access, adjacent uses, and/or landscaping; (2) the air, soils, geology, and groundwater, including but not limited to the presence of peat or other organic matter; or (3) the suitability of the Easement Area for the Glazing Setback/No-Build Area, or (4) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the Easement Area;

(b) Existing Improvements and Installations. The quality, nature, adequacy, and physical condition of all existing at- and below-grade improvements and installations at the Easement Area, including but not limited to engineering characteristics, appurtenances, access, landscaping, paving, drainage, and parking facilities;

(c) Title. Title to the Easement Area and/or the nature and extent of any right-of-way, Easement, possession, lien, encumbrance, license, reservation, or other title condition affecting the Easement Area, whether or not of record, including without limitation the existence of any easements, rights of ways or other rights across, to or in other properties that might burden or benefit the Easement Area;

(d) Compliance/Zoning. The development potential and/or availability of any necessary permits or approvals (or conditions thereon) for development of the Easement Area, including but not limited to the Glazing Setback/No-Build Area or the zoning, comprehensive plan, land use, or other legal status of the Easement Area or compliance with any public or private restrictions on the use of the Easement Area, as the same are in effect as of the date of mutual execution hereof or the Commencement Date, or may be thereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance of the Easement Area with any applicable laws;

(e) Hazardous Materials. The presence or removal of Hazardous Materials (as defined in Section 12.3 below) in, under or about, or emanating from or migrating to, the Easement Area, the Property, or on any other property;

(f) Economic Feasibility. Economic conditions or projections, market data, or other aspects of the economic feasibility of the Project and/or any business Grantee intends to conduct on the Easement Area;

(g) Utilities. The availability, existence, quality, nature, adequacy and physical



condition of utilities serving the Easement Area;

(h) Suitability. The use, habitability, merchantability, fitness, suitability, value or adequacy of the Easement Area for any particular purpose (including, without limitation, the uses authorized under Article 3 of this Easement);

(i) Boundaries. The boundaries of the Easement Area, the location of any improvements on the Easement Area, and/or the existence of any encroachments onto or from any adjacent lands, including the Property;

(j) Access. Vehicular and/or pedestrian access to or use of the Easement Area, including from or through any particular route; and

(k) Other Matters. Any other matter not referenced above that pertains to the Easement Area.

4.2 Grantee's Due Diligence. Grantee acknowledges: (1) Grantee is a sophisticated real estate developer with sufficient experience and expertise in the development and operation of affordable housing projects, and will hire or have the opportunity to hire consultants with sufficient experience and expertise, to evaluate the Easement Area and the risks associated with acquiring an easement interest in the Easement Area; (2) Grantee will have received sufficient information and had adequate time to make such an evaluation; (3) Grantee enters into this Easement with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, archeological, economic and legal condition of the Easement Area; and (4) in connection with its investigations and inspections of the Easement Area, including by performing its due diligence reviews and investigations pursuant to the Due Diligence Agreement and the Development Agreement, Grantee will have the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, and archeologists to conduct such environmental, land use, permitting, geological, soil, hydrology, seismic, archeological, physical, structural, mechanical and other inspections of the Easement Area as Grantee deems to be necessary, and Grantee will review thoroughly the reports of such advisors and consultants, as well as all materials and other information given or made available to Grantee by Grantor or governmental authorities. Grantee further acknowledges that it has not and will not receive from or on behalf of Grantor any accounting, tax, legal, architectural, engineering, archeological, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, archeological, property management and other advisors. Grantee will satisfy itself as to such suitability and other pertinent matters by Grantee's own inquiries and tests into all matters relevant in determining whether to enter into this Easement.

4.3 Release of Grantor and Grantor Parties. Grantee, on behalf of itself, its directors, officers, representatives, employees and agents (the "**Grantee Parties**"), hereby waives, releases, acquits and forever discharges Grantor and all of its affiliated organizations, and its employees, representatives, agents, consultants, contractors and subcontractors (the "**Grantor Parties**"), of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which

Grantee or any Grantee Parties now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the Easement Area, provided however, that such release shall not apply or extend to (1) the express representation, warranties, covenants and obligations of Grantor under this Easement, or (2) the obligations of Grantor under this Easement, or (3) any future use of the Easement Area by Grantor or Grantor Parties not excluded from the terms of this Section 4.3. Grantee's release of Grantor under this Section 4.3 is in addition to any release provisions set forth in this Easement, the Ground Lease, or the Development Agreement.

**Grantee Initials:** \_\_\_\_\_

4.4 **Grantee Duty to Repair Damage.** Grantee shall keep and maintain the Easement Area in a neat, clean, and sanitary condition and shall, except for reasonable wear and tear, and at all times preserve the Easement Area in good and safe repair except for any maintenance or repair made necessary by Grantor's use of the Easement Area or by any person or entity using the Easement Area with the permission of Grantor and not otherwise permitted by Grantee, the foregoing of which shall be the responsibility of Grantor. Grantee shall promptly repair any damage to the Easement Area or to Grantee's improvements in the Easement Area caused by Grantee's use of the Easement Area at Grantee's sole cost and expense. If Grantee fails to timely comply with this Section 4.4 then Grantor may, but is not obligated to, pay or perform Grantee's obligations under this Section 4.4 at Grantee's expense after providing Grantee ten (10) days written notice of Grantor's intent to do the same. Upon Grantee's receipt of Grantor's written invoice of third-party costs actually incurred by Grantor under this Section 4.4, Grantee shall reimburse Grantor in full within thirty (30) days. Grantee's failure to comply with this Section 4.4 shall constitute a default of this Easement.

4.5 **Condition of Property Upon Expiration or Earlier Termination.**

4.5.1 Upon expiration or earlier termination of this Easement, Grantee shall peaceably deliver to Grantor possession of the Easement Area, in good condition except for: (1) ordinary wear and tear; or (2) damage caused by Grantor or Grantor Parties, and Grantor shall be entitled to recover from Grantee the costs of any repairs or restoration of the Easement Area due to damage caused by Grantee or other persons or entities for which Grantee is responsible, including but not limited to Grantee Parties.

## **5. Default and Termination of Easement Rights.**

5.1 Default by Grantee. A material default under this Easement by Grantee shall include, without limitation, the occurrence of any one or more of the following events:

a. Grantee shall have failed to pay any payment required hereunder within ten (10) business days following the date where such failure shall continue for a period of an additional ten (10) business days after written notice from Grantor; or

b. Grantee shall have failed to perform any other obligation required hereunder where



such failure shall continue for a period of thirty (30) days after written notice from Grantor, provided such 30-day period shall be extended to the extent reasonably necessary to complete such cure so long as Grantee diligently and continuously attempts to do so;

c. Grantee experiences a bankruptcy or other financial insolvency including but not limited to the following:

(i) Grantee makes a general assignment or general arrangement for the benefit of creditors;

(ii) A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Grantee (unless within sixty (60) days following the date that a proceeding is filed under the bankruptcy code the bankruptcy trustee or the Grantee as debtor in possession has (1) elected to assume this Easement; (2) has cured all defaults under this Easement and paid all sums due and owing under this Easement, and (3) has provided Grantor with adequate assurance that the bankruptcy trustee and/or the Grantee has and will continue to have sufficient unencumbered assets after payment of all secured obligations and administrative expenses to assure Grantor that the bankruptcy trustee and/or Grantee will have sufficient funds and/or income to fulfill the obligations of Grantee under this Easement);

(iii) A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Grantee and is not dismissed within sixty (60) days;

(iv) A trustee or receiver is appointed to take possession of all or substantially all of Grantee's assets; or

(v) Substantially all of Grantee's assets or Grantee's interest under this Easement is subjected to attachment, execution or other judicial seizure which is not discharged within sixty (60) days.

(d) A default under the Ground Lease pursuant to the provisions thereof.

(e) Grantee fails to cooperate in good faith with others' use of the Easement Area permitted by Grantor as set forth in Section 2.2.

5.2 Grantor's Remedies. Grantor's remedies under this Section 5.2 are cumulative and shall be deemed additional to any and all other remedies to which Grantor may be entitled in law or in equity.

(a) If Grantee defaults in the performance or observation of any covenant, obligation, duty, or agreement contained in this Easement, then Grantor, without notice if deemed by Grantor that an emergency exists, or if no emergency exists, with thirty (30) calendar days prior written notice, may direct Grantee to stop work and may itself perform or cause to be performed such covenant, obligation, duty, or agreement and may enter upon the Easement Area for such purpose. Such "emergency" shall include, but not be limited to, endangerment of life, the Easement Area or any improvements thereon or failure of Grantee to maintain the insurance coverage specified in

Article 9. Grantee shall reimburse Grantor the entire cost and expense of such performance by Grantor within thirty (30) calendar days of the date of Grantor's invoice. Any act or thing done by Grantor under the provisions of this Section 5.2 shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

(b) In the event of any violation or breach or threatened violation or breach of any provision of this Easement, Grantor shall, in addition to all other remedies under this Easement, shall have the right to seek specific enforcement of the terms of this Easement, including but not limited to injunctive relief.

(c) In the event of termination of the Ground Lease, this Easement shall automatically be deemed terminated as of the Ground Lease termination date and without any further action required on the part of Grantor to effect termination of this Easement.

5.3 Grantor's waiver or acceptance of any default by Grantee under this Easement shall not operate as a release of Grantee's responsibility for any prior or subsequent default.

5.4 Notwithstanding any other provision of this Article 5, once the City issues a Master Use Permit for the Project, the Glazing Setback/No-Build Area established pursuant to this Easement shall not terminate unless and until: (1) the Ground Lease expires or is earlier terminated according to its terms (including but not limited to termination due to destruction or abandonment of the Project), or (2) the Project is renovated or rebuilt so as to render the Glazing Setback/No-Build Area unnecessary, or (3) the City makes a regulatory determination or code amendment that renders the Glazing Setback/No-Build Area unnecessary for the Project.

**6. Permits or Improvements Required.** Grantor's grant of this Easement does not constitute a Project permit and does not release Grantee from any of its obligations to obtain any applicable permits or approvals necessary to use the Easement Area for the purposes described herein in connection with the Project.

**7. [this Article 7 intentionally deleted]**

**8. Release and Indemnification.**

8.1 Releases. This Easement is made upon the express condition that except as specifically set forth herein, Grantor shall have no liability for, and Grantee assumes the risk of, all liability and claims against Grantor for damage, loss, cost or expense by reason of any injury, loss or theft of any property in or from the Easement Area or the improvements or by reason of any injury to any person or persons, including Grantee, or any property of any kind whatsoever and to whomsoever belonging, including Grantee, from any cause or causes whatsoever, in, upon or in any manner connected with the Easement Area or the improvements or with the sidewalks, approaches, and entrances adjacent to the Easement Area during the term of this Easement or any extension or renewal thereof or any occupancy hereunder. Without limiting the generality of the foregoing, Grantor and the Grantor Parties shall not be liable for any loss or damage to persons or property resulting from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any cause, whether the said damage or injury results from conditions

arising upon the Easement Area, the Property or the Adjacent Properties or from other sources or places regardless of whether the same is inaccessible to Grantee except to the extent any such loss or damage is caused by the negligence or willful misconduct of Grantor or Grantor's officers, officials, employees or agents. Grantee's release under this Section 8.1 is in addition to, and separate from, Grantee's release regarding the Property condition under Section 4.3 of this Easement.

Section 8.2 Indemnification. Notwithstanding any other provision of this Easement, the Grantee hereby agrees to indemnify, protect, hold harmless and defend the Grantor and the other Grantor Parties from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of Grantee's use of and operations at the Easement Area, including but not limited to any act or omission by Grantee or any Grantee Parties in connection with the Easement Area. Notwithstanding the foregoing, the foregoing indemnification obligations by Grantee shall not extend or apply to the negligent acts and omissions or willful misconduct of Grantor or any Grantor Party. In addition, if any contractor or subcontractor that performed any construction work for the Grantee or the Grantee's affiliates on the Project asserts any claim against the Grantor on account of any damage alleged to have been caused by the Grantee or the Grantee's affiliates, their members, partners, officers, commissioners, directors, affiliates (other than Grantor), agents or employees, or their construction contractors, then the Grantee shall defend at its own expense any suit based upon such claim; and if any judgment or claim against the Grantor shall be allowed, the Grantee shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith. Grantee hereby waives for itself and its employees any immunity to which it or they may be entitled under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify Grantor and the Grantor Parties, which waiver has been mutually negotiated by the Parties. In the event it is determined that RCW 4.24.115 applies to this Easement, Grantee agrees to defend, hold harmless, and indemnify Grantor to the maximum extent permitted thereunder. These indemnities shall survive the termination of this Easement.

8.3 Grantee's indemnity obligations under this Article 8 are in addition to, and separate from, Grantee's indemnity obligations under Article 12 of this Easement regarding Hazardous Materials and environmental compliance. Grantee's indemnity obligations under this Article 8 do not include Hazardous Materials and environmental compliance.

## **9. Insurance.**

Section 9.1 Grantee's Insurance. During the Term, Grantee shall keep and maintain in force, at no cost or expense to Grantor, and shall cause its contractors engaged in activities on or about the Easement Area to keep and maintain, the minimum insurance types and limits described in Article 5 of the Ground Lease, including all endorsements, waivers of subrogation, and other applicable provisions described therein. All such liability policies of insurance shall respond to claims for which Grantee is responsible arising on or about the Easement Area, and all such property insurance policies shall respond to physical loss or damage to Grantee's improvements

in the Easement Area, as applicable.

Section 9.2 General Requirements. All policies described in Section 9.1 shall include Grantor and Grantee, together with any of Grantee's leasehold mortgagees, as additional insureds for full coverage and policy limits under the general, automobile, and pollution liability policies and as loss payees under the property policies (including builder's risk), as their respective interests may appear. All policies described in Section 9.1 shall be issued by insurance companies permitted to issue policies in the State of Washington and having a Best's rating of at least "A/VIII", shall be written on an "occurrence" form (claims-made policies are not acceptable), and shall contain or be endorsed to provide: (a) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the Grantee or Grantor, and any insurance and/or self-insurance maintained by Grantor or its officers, officials, employees or agents shall not contribute with Grantee's insurance or benefit Grantee in any way; (c) a provision that no act or omission of the Grantee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (d) a waiver by the insurer of all rights of subrogation against the Grantor and its authorized parties in connection with any loss or damage thereby insured against; (e) an acknowledgement that Grantee's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability; and (f) terms providing that any loss covered by such insurance shall be adjusted with the Grantor and Grantee, but shall, to the extent required by the loan documents of any Leasehold Mortgage, be payable to the holder of any leasehold mortgage on the Project, who shall agree to receive and disburse all proceeds of such insurance, subject to the duty of the Grantee to repair or restore the Project. Coverage shall not be suspended, voided, canceled, or reduced in scope or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior written notice has been given to the Grantor and applicable leasehold mortgagee(s), which notice may be provided by Grantee. If at any time, any of the foregoing policies shall be or become unsatisfactory to Grantor, in its reasonable discretion, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to Grantor, Grantee shall, upon notice to that effect from Grantor, promptly obtain a new policy, and shall submit the same to Grantor, with the appropriate certificates and endorsements for approval. Any deductibles or self-insured retentions must be declared to Grantor, and Grantee's deductible and or self-insured retentions shall not limit or apply to Grantee's liability to Grantor and shall be the sole responsibility of Grantee. By requiring such minimum insurance hereunder, Grantor shall not be deemed or construed to have assessed the risks that may be applicable to Grantee under this Easement, and Grantee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Section 9.3 Evidence of Insurance. Certificates of insurance and required endorsements for all insurance required to be maintained by Grantee under this Article 9 shall be furnished by Grantee to Grantor prior to the Commencement Date (as defined in the Ground Lease) and at least ten (10) days prior to expiration of any such policies. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by Grantor and are to be received and approved by Grantor prior to the commencement of activities associated with the Easement. Grantee shall also provide copies of required policies to Grantor within ten (10) days after the latter's request.



Section 9.4 Waiver of Subrogation. To the extent any loss would be covered by property insurance required in this Article 9 or elsewhere in this Easement, or is actually covered by property insurance carried by a party, Grantor and Grantee hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under the other by way of subrogation or otherwise) for any loss or damage to real or personal property on the Premises caused by fire or any other insured peril, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible, provided that the foregoing waivers shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of Grantor or Grantee.

Section 9.5 Periodic Adjustment of Grantee's Insurance Requirements. Due to the length of the Term of this Easement, the Parties agree that this Article 9 may, at the discretion of Grantor, be reviewed and adjusted within 90 days of the end of each five (5) year anniversary of the Commencement Date (as defined in the Ground Lease). Any adjustments made by Grantor with regard to limits, scope and types of insurance, shall be in accordance with such insurance customary for similar multifamily housing projects in the Seattle – King County geographical area and shall be effective on the first day of each successive five (5) year period. Adjustment, if any, in insurance premium(s) shall be the responsibility of Grantee. Any failure by Grantor to exercise its right to review and adjust at any of the aforementioned adjustment periods shall not constitute a waiver of future review and adjustment timings. Nothing contained within this Section 9.5 shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this Section 9.5 shall affect and/or alter the application of any other provision contained within this Easement.

Section 9.6 Grantee's Failure to Carry Insurance.

9.6.1 Grantee shall be in material default of this Easement if, at any time during the Term, (1) Grantee fails to procure or maintain insurance required hereunder or to pay the premiums therefor, and (2) such failure continues for five (5) business days after written notice from Grantor.

9.6.2 Upon such default Grantor shall have the remedies provided for in Article 5, and in addition shall have the right, but not the obligation, to procure the insurance provided for herein and to pay any and all premiums thereon, and any amounts paid by Grantor in connection with the acquisition of insurance shall be immediately due and payable by Grantee, and Grantee shall pay to Grantor upon demand the full amount so paid and expended by Grantor, including interest at the Default Rate (as defined in the Ground Lease) until paid.

**10. Modification and Nonwaiver.** This Easement may not be modified, altered, or amended unless first approved in writing by Grantor. No waiver of any condition or covenant in this Easement or any breach thereof, shall constitute or be deemed to constitute a waiver of any subsequent breach.

**11. Assignment.** Grantee may not assign all or any portion of its rights, benefits, or privileges, in and under this Easement independent of or separate from the Ground Lease.

Notwithstanding the foregoing, Grantee may assign this Easement in full to any permitted successor or assignee under the Ground Lease according to its terms; provided, that such assignment shall not relieve Grantee of its obligations under this Easement without Grantor's written permission, which may be withheld, conditioned, or delayed by Grantor in its sole and absolute discretion. Grantee may not grant any sub-easement or let, sublet, or license this Easement or any portion of the Easement Area. Notwithstanding any other provision herein, Grantee may assign its interest in this Easement as security for any loan or other financing of the Project.

## **12. Compliance with Laws; Environmental Compliance.**

12.1 In General. Grantee shall comply with all federal, state, and municipal laws, rules, and regulations that are applicable to this Easement or to Grantee's proposed use of the Easement Area.

12.2 No Liens. This Easement is executed and delivered upon the express condition that Grantee shall not and may not take any action or omission that will or may become a lien against Grantor's interest in the Easement Area or the Property. Grantee shall ensure that if any lien is placed on the Easement Area or the Property in connection with this Easement or Grantee's use of the Easement Area then Grantee shall (1) remove such lien to the full satisfaction of Grantor within ten (10) business days of receipt of written notice from Grantor, or (2) if such lien is being contested in good faith by Grantee, post a bond satisfactory to Grantor in the full amount of such lien.

### **12.3 Environmental Compliance.**

Section 12.3.1 Definitions. "**Hazardous Materials**" as used herein shall mean:

A. Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

B. Any dangerous waste or hazardous waste as defined in:

(i) Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

(ii) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

(iii) Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

C. Any hazardous substance as defined in:

(i) Comprehensive Environmental Response, Compensation and Liability Act



as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

(ii) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

D. Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

E. For purposes of this Section 12.3, "Grantee" shall mean Grantee and its subGrantees, assignees, contractors, agents, employees, representatives, and/or affiliates.

#### Section 12.3.2 Environmental Compliance.

A. In the conduct of its permitted use of the Easement Area, and in its use and occupancy of adjacent public areas that are available for use by Grantee and others, if any (the "**Public Areas**"), Grantee shall, at Grantee's own expense, comply with all federal, state and local laws, ordinances, regulations, permits, decrees or other governmental requirements now or hereafter in effect related to Hazardous Materials and other environmental laws, including, but not limited to, laws and regulations pertaining to stormwater discharges as set by the U.S. Environmental Protection Agency and the Washington Department of Ecology, as well as such rules concerning environmental matters as may be promulgated by Grantor ("**Environmental Laws**"). Grantee warrants that its business and all activities to be conducted or performed in, on, or about the Easement Area and any Public Areas shall comply with all of the Environmental Laws. Grantee agrees to change, reduce, or stop any non-complying activity for which the Grantee or Grantee Parties are responsible, or install necessary equipment, safety devices, pollution control systems, or other installations as may be necessary at any time during the term of this Easement to comply with the Environmental Laws as they relate to Grantee's use of the Easement Area.

B. Grantee shall not without first obtaining Grantor's prior written approval use, generate, handle, store, treat, transport, or sell any Hazardous Materials in, on, or about the Easement Area or the Public Areas. In the event, and only in the event, that Grantor approves any of the foregoing, Grantee agrees that such activity shall occur safely and in compliance with the Environmental Laws. Without limiting the foregoing sentences, Grantor agrees that Grantee may use, handle, store, transport, and dispose of reasonable amounts and types of ordinary cleaning supplies and similar items routinely used in the normal construction, operation, maintenance, repair, and occupancy of a residential building, to the extent consistent with all applicable Environmental Laws.

C. Grantee shall not cause or permit to occur any violation of the Environmental Laws on, under, or about the Easement Area or the Public Areas, or arising from Grantee's permitted use of the Easement Area or the Public Areas. Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, or negligent activities that result in a release or threatened release of Hazardous Materials. If Grantee's act, omission or breach of obligation under this Easement results in a release of Hazardous Materials into the environment

on, about, or migrating from the Easement Area or the Property that exceeds regulatory cleanup levels, then Grantee shall, at Grantee's sole expense, promptly take all actions necessary to mitigate such release and to fully and completely remove (and to dispose of such in accordance with applicable law) all of such Hazardous Materials.

D. Grantee shall, in a timely manner and at Grantee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental or regulatory authorities (the "**Authorities**" or "**Authority**") with jurisdiction under Environmental Laws in connection with Grantee's use of the Easement Area. If Grantee fails to fulfill any duty imposed under this Section 12.3 within the time specified by applicable law, or if no time is specified within a reasonable time, Grantor may take action; and in such case, Grantee shall cooperate with Grantor in order to prepare all documents Grantor deems necessary or appropriate to determine the applicability of the Environmental Laws to the Easement Area and/or the Public Areas and Grantee's use thereof, and for compliance with the Environmental Laws, and Grantee shall execute all documents promptly upon Grantor's request. No such action by Grantor and no attempt made by Grantor to mitigate damages shall constitute a waiver of any of Grantee's obligations under this Section 12.3. Grantee shall immediately notify Grantor if Grantee becomes actually aware of any of the following: (a) a release or threatened release of Hazardous Materials on the Easement Area or Property or any adjacent property; (b) any actual or alleged violation of any of the Environmental Laws, including any inspection reports or any other notice received from any Authority that Grantee may be in violation of any Environmental Law; and (c) any notification from any Authority that investigation, remediation or removal of Hazardous Materials is or may be required at the Easement Area..

E. Should any Authority demand that a remedial investigation and/or cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Easement and arises from Grantee's use or occupancy of the Easement Area, or which arises at any time from Grantee's use or occupancy of the Easement Area and/or the Public Areas, then Grantee shall, in a timely manner and at Grantee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Grantee shall carry out all such investigation and/or cleanup or remediation plans. Any such plans are subject to Grantor's prior written approval, such approval not to be unreasonably withheld. Although Grantor reserves the right to review and approve such plans, Grantor assumes no responsibility for such plans or their compliance with Environmental Laws.

F. If Grantor determines in its sole discretion that an emergency exists (i) because of the deposit, spill, discharge or other release of Hazardous Materials at or from the Easement Area or (ii) which arises from Grantee's use or occupancy of the Easement Area and/or the Public Areas, Grantor will take such action as Grantor, in its sole discretion, considers reasonable to contact Grantee and advise it of the emergency situation. If Grantee is unreachable, or is unwilling to take immediate action, Grantor may, but is not required to, take immediate action to address the emergency situation, and Grantee will reimburse Grantor for all of its costs and expenses related thereto, provided, with respect to clause (i) above, that the deposit, spill, discharge or other release of Hazardous Materials arises from Grantee's use or occupancy of the Easement Area. The fact that Grantor takes immediate action shall not relieve Grantee of any of its responsibilities under

this Easement and the Environmental Laws including, without limitation, Grantee's responsibility for complying with reporting requirements.

Section 12.3.3 Indemnification and Release.

A. Except as otherwise provided in this Section 12.3, Grantee shall be fully and completely liable to Grantor for, and shall indemnify, hold harmless and release Grantor from and against, any and all claims, liabilities, lawsuits, damages, demands, suits, losses, judgments, and costs, including but not limited to removal, remedial action, or other costs recoverable under CERCLA or MTCA; any and all other requirements, charges, interest, fees, oversight costs, or penalties (civil or criminal or both) imposed by any Authority; and all other expenses including but not limited to claims for bodily injury or death, property damage, diminution in value or loss of use, including attorney's fees and other costs of defense ("**Claims**") caused by or arising from (1) the use, disposal, transportation, generation, past, present or future release or threatened release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Grantee in, on, around, about, or emanating from the Easement Area, including but not limited any remediation activities conducted by Grantee or from Grantee's activities on the Easement Area or the Property, or from Grantee's activities on any adjoining property occurring during the term of the this Easement or at any time if caused by Grantee, including exacerbation or disturbance of existing Hazardous Materials that were released in, on or about the Easement Area prior to the Commencement Date of this Easement; or (2) Grantee's failure to comply with any obligation in this Section 12.3; or (3) any actions by Grantor under this Section 12.3. Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by the Parties. Grantee's duties under this Section 12.3 include the duty to pay or reimburse Grantor's direct and indirect costs to monitor or oversee Grantee's cleanup or other corrective work, including but not limited to engineering and other consulting services, sampling and studies, confirmatory testing, compliance monitoring, and administrative costs and expenses incurred in procuring and managing the same. Grantee's indemnity regarding Hazardous Materials and environmental compliance under this Section 12.3 is in addition to, and separate from, Grantee's indemnity obligations under Article 8 of this Easement.

B. Grantor agrees to indemnify, defend and hold Grantee harmless from and against all fines, penalties, administrative and judicial proceedings and orders, and all other direct costs and expenses incurred by Grantor or Grantee solely with respect to clean up or remediate any hazardous materials or substances that may be found to exist on the Property from past events or releases prior to the Effective Date of the Development Agreement or introduced by Grantor pursuant to any future use by Grantor of the Easement Area (collectively, "Cleanup Costs"), save and except to the extent that such Cleanup Costs result from Grantee's exacerbation of such pre-existing condition, nature and/or extent of such hazardous materials or releases of hazardous substances. Grantor's limited indemnity under this Section 12.3.3.B does not and shall not be construed to alter, reduce, or expand Grantee's separate indemnity obligations under this Easement, the Due Diligence Agreement, the Ground Lease, or the Development Agreement, all of which are ratified and reaffirmed.

Section 12.3.4 Reporting Requirements. Grantee shall comply with the Environmental

Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to Grantor a full copy of any such submission, filing or report as submitted within 15 days of such submission.

Section 12.3.5 Right to Check on the Grantee's Environmental Compliance. Grantor expressly reserves the right to conduct, and Grantee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Easement Area as Grantor, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

Section 12.3.6 Remedies. Upon any default by Grantee under this Section 12.3, and the expiration of any applicable notice and cure period provided in Article 5 of this Easement, Grantor shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to Grantor:

A. At Grantor's option, to exercise any and all remedies set forth in Section 5.2 and/or to perform such action as is required to bring the Easement Area and any other areas of the Property affected by Grantee's default into compliance with the Environmental Laws and to recover from Grantee all of Grantor's costs and expenses in connection therewith; and/or

B. To recover from Grantee any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs, expenses and charges, civil and criminal penalties and fees, adverse impacts on marketing the Easement Area or any other areas of the Property, loss of business and sales by Grantor and other Grantees of the Property, diminution of value of the Easement Area and/or other areas of the Property, the loss of or restriction of useful space in the Easement Area and/or other areas of the Property, and any and all damages and claims asserted by third parties, and Grantor's reasonable attorneys' fees, costs and expenses.

Section 12.3.7 Remediation on Termination of Easement. Upon the expiration or termination of this Easement, Grantee shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Easement Area caused by Grantee as required by applicable laws ("**Termination Cleanup**"). The process for such Termination Cleanup is subject to Grantor's prior written approval. Although Grantor reserves the right to review and approve the Termination Cleanup process, Grantor assumes no responsibility for it or its compliance with the Environmental Laws. If Grantee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, within the time specified by law or within a reasonable time if no time is specified, Grantor may elect to perform such Termination Cleanup after providing Grantee with written notice of Grantor's intent to commence Termination Cleanup, and after providing Grantee a reasonable opportunity, which shall not be less than ninety (90) days after such notice (unless Grantor is given notice by a government or regulatory agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time), to commence or resume the Termination Cleanup process. If Grantor performs such Termination Cleanup after said notice and Grantee's failure to perform same, Grantee shall pay all of Grantor's costs and expenses.



Section 12.3.8 Survival. Grantee's obligations and liabilities under this Section 12.3 shall survive the expiration or termination of this Easement.

12.4 Nondiscrimination. Grantee shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125, now and as hereafter amended. Grantee shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, King County Charter Section 840, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision that continues for more than thirty (30) days after written notice thereof to Grantee shall be considered a default of this Easement. Grantee's failure to comply with this Section 12.4 shall constitute a material breach of this Easement for purposes of Grantor's remedies set forth in Article 5.

**13. Venue and Jurisdiction.** This Easement shall be construed in accordance with the laws of the State of Washington without giving effect to its choice of law rules or conflicts of law provisions. Except as provided in Section 2.4 regarding dispute resolution, venue and jurisdiction for the resolution of disputes shall be in the Superior Court for King County, Washington. In the event of claim or litigation regarding the enforcement of the terms of this Easement, each party shall be responsible for its own legal costs and attorney fees except as noted in Section 2.4, Article 8, and Article 12. Nothing in this Easement shall preclude or be deemed to preclude Grantor from pursuing any legal or equitable remedy for Grantee's failure to perform its obligations.

**14. Notices.**

All notices, demands, approvals, and other communications provided for in this Easement shall be in writing and shall be effective (1) upon receipt when personally delivered to the recipient at the recipient's address set forth below; (2) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, or when such receipt is rejected; (3) one (1) business day after deposit with a recognized overnight courier or delivery service; or (4) when electronically transmitted (including email or facsimile) to the email address or facsimile number set forth below. A Party disputing delivery or receipt of email notice shall have the burden of proving that the email notice was not delivered or received or both. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or federal or state legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday. A Party may change its address or other contact information by giving notice as specified in this Article 14.

If to Landlord:

King County Metro Transit Department  
Attn: Director of Capital Division, Metro Transit Department  
201 South Jackson Street  
KSC-TR-0415  
Seattle, WA 98104-3856

With a copy to: Facilities Management Division  
Real Estate Services Section  
201 South Jackson Street  
KSC-FMD-0XXX  
Seattle, WA 98104-3856

With a copy to: King County Prosecuting Attorney Office  
Attn: Chief Civil Deputy Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

If to Tenant: Northgate Affordable LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attention: Rebecca Hlebasko, General Counsel

With a copy to: Community Roots Housing  
1620 – 12<sup>th</sup> Ave., Suite 205  
Seattle, WA 98122  
Attn: Jeremy Wilkening, Vice President, Real Estate Development

With a copy to: Kantor Taylor PC  
1200 5<sup>th</sup> Avenue, Suite 1910  
Seattle, WA 98101  
Attn: Mark Kantor

**15. Binding Covenant; Recording.** This Easement is appurtenant to and shall run with the land that makes up the Project Site that is subject to the Ground Lease. The covenants, conditions, restrictions, obligations and liabilities of Grantee under this Easement are not personal, but run with, are binding upon and a covenant affecting the Project Site for the Term of the Ground Lease. As such, Grantor shall have the right, but not the obligation, to enforce the covenants, conditions, restrictions, obligations and liabilities of the Grantee under this Easement against the owner of the Project and its successors and assigns as well as against Grantee's successors and assigns under the Ground Lease. Grantee shall cause this Easement to be recorded against the Property at Closing.

**16. Entire Agreement and Effective Date; Survival.** This Easement contains the entire agreement between the Parties regarding the subject matter hereof and, in executing it, Grantor and Grantee do not rely upon any statement, promise, or representation, whether oral or written, not expressed in this Easement. This Easement shall be effective upon the last day executed below (Effective Date). Grantee's duties and obligations under Section 4.3, Article 8, and Section 12.3 shall survive the expiration or earlier termination of this Easement.



**17. Warranty of Authority to Execute.** Each person executing this Easement warrants that he/she has the requisite authority to bind the Party for whom that person is executing.

(signature page follows)

This Easement is executed and shall become effective as of the last date signed below.

**LANDLORD/GRANTOR:**

**KING COUNTY**, a home rule charter and  
Washington political subdivision:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form for King County:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT/AFFORDABLE HOUSING  
DEVELOPER:**

**NORTHGATE AFFORDABLE LLC**,  
a Washington limited liability company

**BY:**

**BRIDGE HOUSING CORPORATION**, a  
California corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**And**

**COMMUNITY ROOTS HOUSING**, a  
Washington public corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON )

: ss.

COUNTY OF KING )

I hereby certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she is authorized to execute the instrument on behalf of King County, and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

*-Notary Seal Must Appear Within This Box-*

IN WITNESS WHEREOF, I have hereunto set my hand and official seal  
the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC, in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

COUNTY OF KING )

)

*-Notary Seal Must Appear Within This Box-*

.....

NOTARY PUBLIC, in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

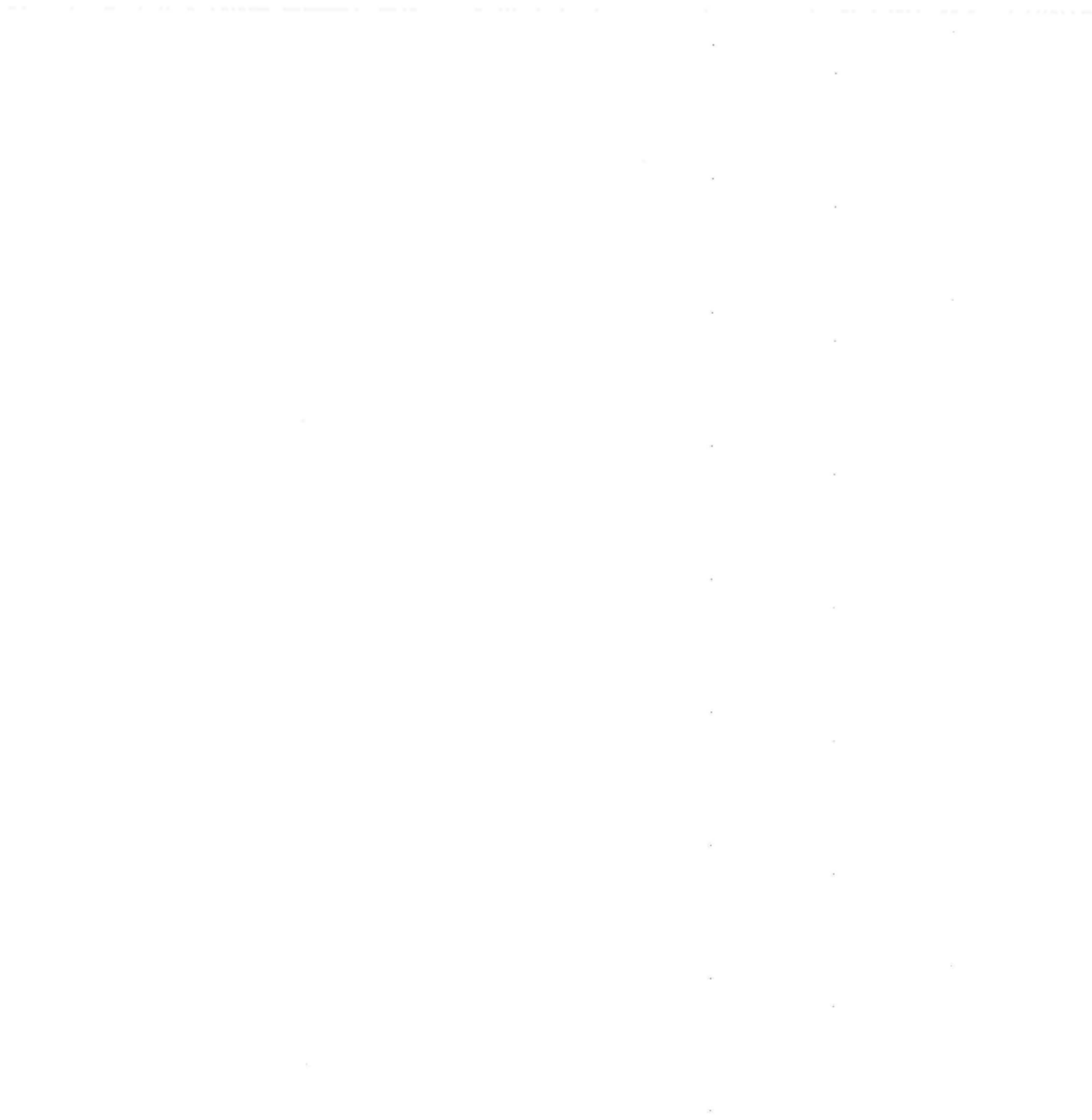
## EXHIBIT A

## LEGAL DESCRIPTION OF THE PROPERTY

**EXHIBIT A-1**

**SITE PLAN DEPICTING THE PROPERTY, THE ADJACENT PROPERTIES AND  
PUBLIC RIGHTS OF WAY**

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**EXHIBIT B**

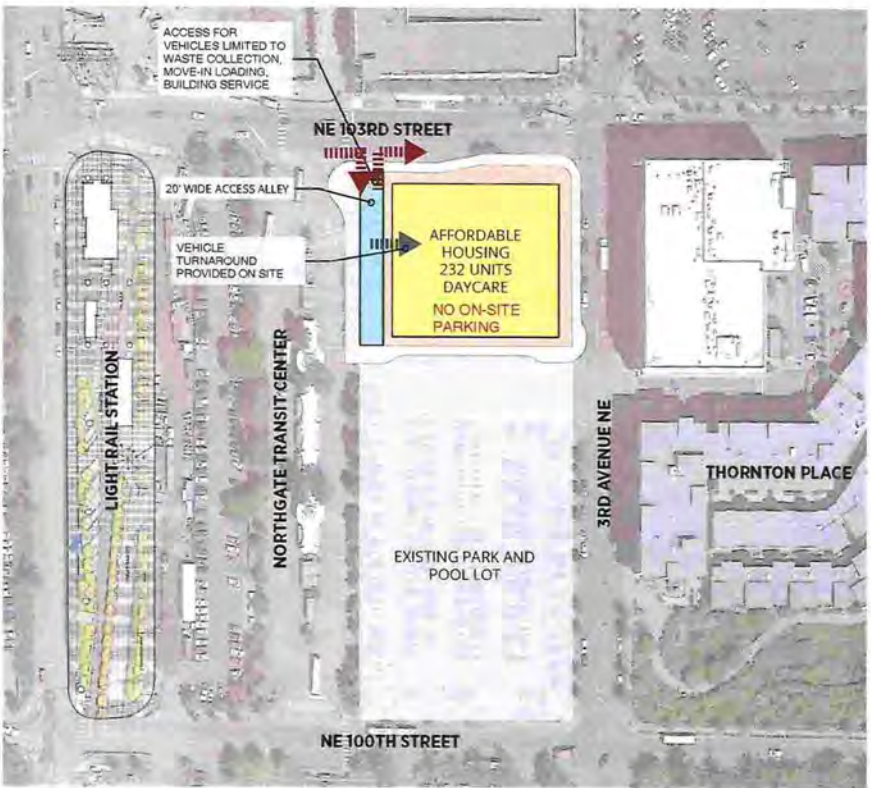
**LEGAL DESCRIPTION AND DEPICTION OF EASEMENT AREA**

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## **EXHIBIT H**

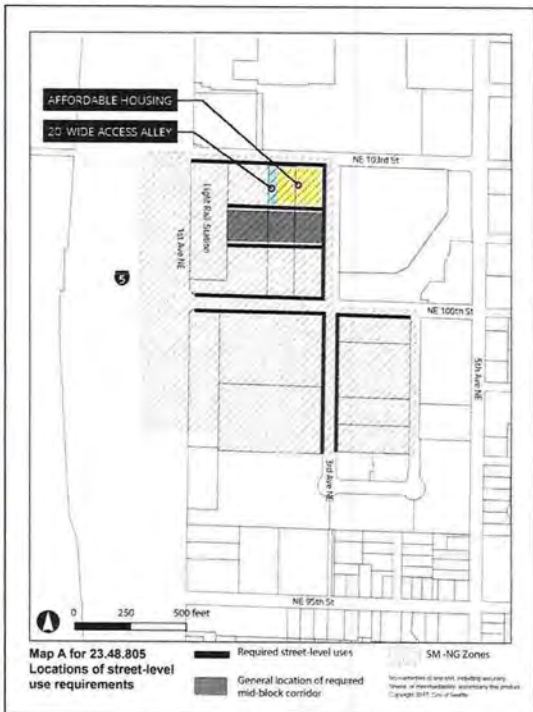
### **Conceptual Illustration of Potential Future Uses and Development on Parcels Adjacent to the Premises**

[See attached five (5) pages.]



Northgate Affordable Housing  
BRIDGE Housing / Community Roots Housing  
© Sotache-Matthys Architects, Inc.

#### PHASE I - CONSTRUCTION AND COMPLETION OF AFFORDABLE HOUSING



Map A for 23.48.805  
Locations of street-level  
use requirements  
2021.07.08

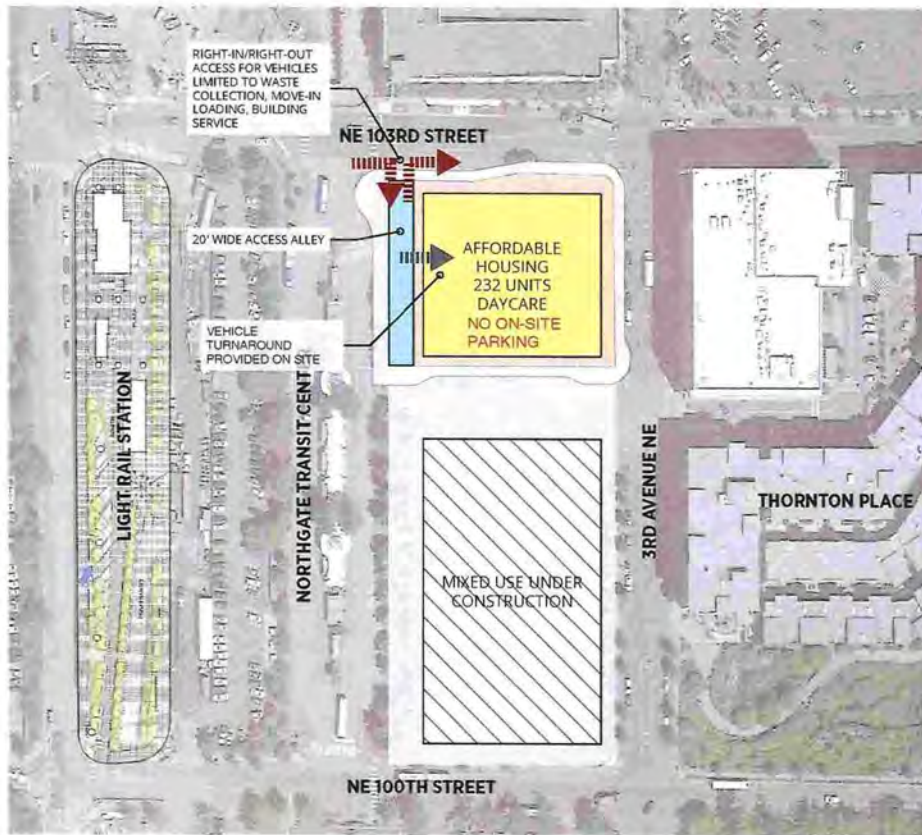
SITE ACCESS DIAGRAMS  
2021.07.08

15  
SDC Project #: 3037586-EG

08/05/2021 Exhibit H to Ground Lease – Conceptual Illustration of Potential Future Uses and Development on  
Parcels Adjacent to the Premises

GROUND LEASE

08/05/2021  
PAGE 2



Northgate Affordable Housing  
BRIDGE Housing / Community Roots Housing  
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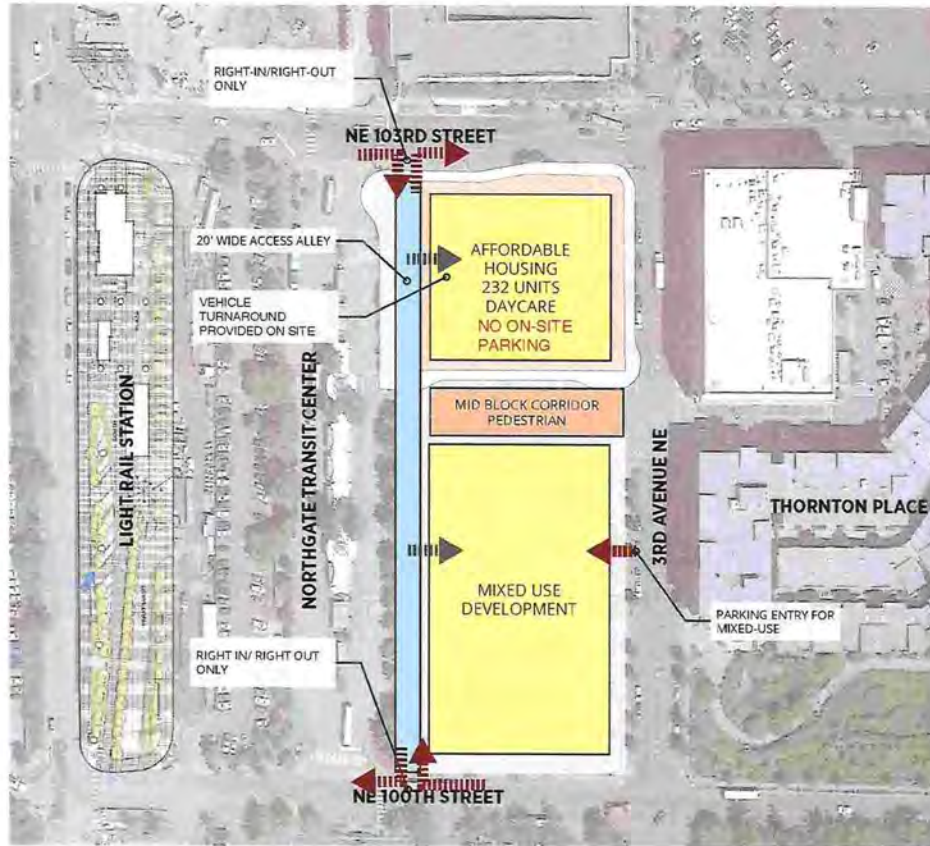
PHASE II - CONSTRUCTION OF MIXED-USE



SITE ACCESS DIAGRAMS  
2021.07.08

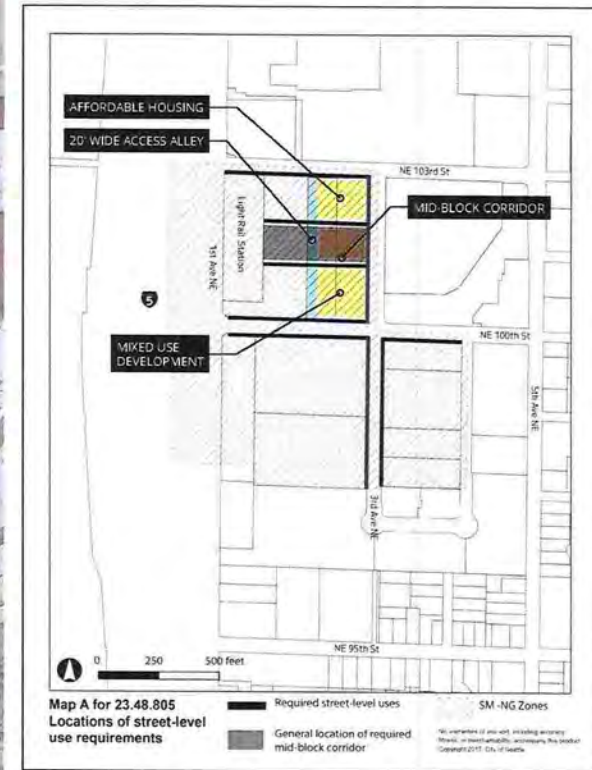
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SDCI Project #: 3037566-EG





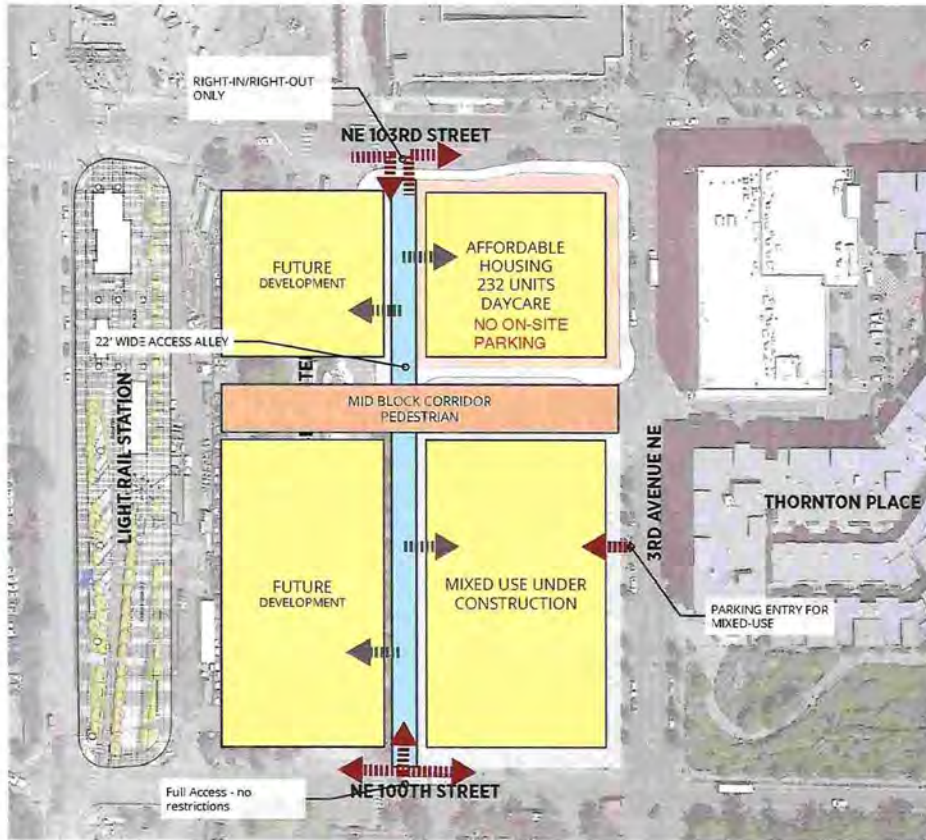
Northgate Affordable Housing  
BRIDGE Housing / Community Roots Housing  
© Ambiam Motion Graphics, Inc.

PHASE III - COMPLETION OF MIXED-USE DEVELOPMENT



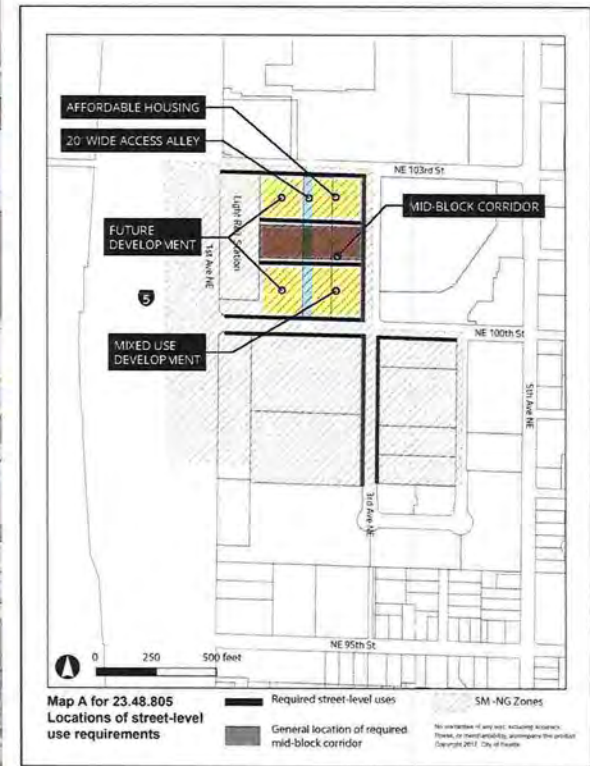
Map A for 23.48.805  
Locations of street-level  
use requirements

SITE ACCESS DIAGRAMS  
2021.07.08



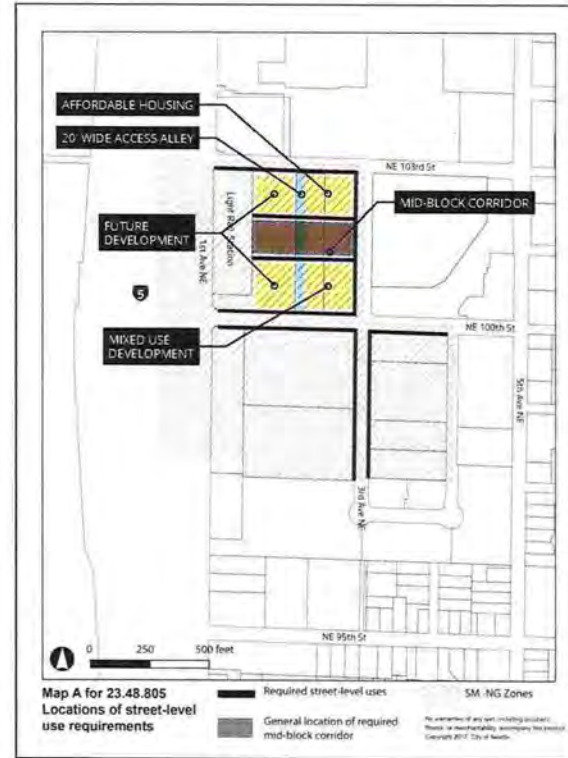
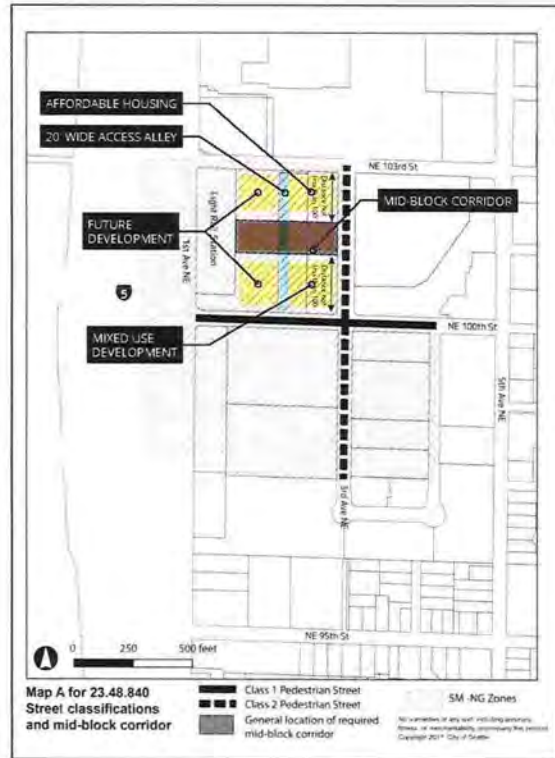
Northgate Affordable Housing  
BRIDGE Housing / Community Roots Housing  
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PHASE IV- REDEVELOPMENT OF TRANSIT CENTER



SITE ACCESS DIAGRAMS  
2021.07.08





## EXHIBIT I

### Comfort Station Sublease

[To be attached at execution]

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## SUBLEASE AGREEMENT

### Comfort Station

THIS SUBLEASE AGREEMENT (this “Sublease”) is made effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”) between NORTHGATE AFFORDABLE LLC, a Washington limited liability company (“Sublandlord”), and KING COUNTY, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle (“Subtenant”), with reference to the following:

### RECITALS

A. In 2018, Subtenant issued that certain Request for Qualifications and Concepts (“RFQ/C”) No. 1207-18-VLN. Through the RFQ/C, Subtenant sought proposals for the development of its Northgate Park & Pool lot and ultimately negotiated a transaction with Sublandlord in which Subtenant, as the “Landlord” (“Ground Lessor”) and Sublandlord, as the “Lessee,” are the parties to a development agreement (the “Development Agreement”) for a significant affordable housing project, and that certain Ground Lease dated of even date herewith, a memorandum of which is recorded as document # \_\_\_\_\_ (the “Ground Lease”), pursuant to which Ground Lessor leases to Sublandlord certain premises (the “Ground Lease Premises”) legally described in Exhibit B to the Ground Lease, for that affordable housing project (the “Project”).

B. Pursuant to the Ground Lease and the Development Agreement, Sublandlord has constructed and intends to operate the Project on the Ground Lease Premises under the terms and conditions more fully set forth therein, which Project includes a comfort station constructed for benefit of Subtenant and other transit agency operators as approved by Subtenant, and which comfort station Subtenant has accepted as provided under the Ground Lease and in Section 5 below of this Sublease.

C. Pursuant to the Ground Lease, Sublandlord has agreed to sublease 250 square feet of space located on the ground floor of the Project as depicted on the diagram attached hereto as Exhibit A (the “Comfort Station Premises”) to Subtenant, to be used and operated by Subtenant during the entire Term of the Ground Lease as a comfort station for Subtenant’s transit employees and other transit agency employees as approved by Subtenant.

D. Each of Sublandlord and Subtenant are sometimes referred to individually as a “Party” and collectively as the “Parties.” Capitalized terms used herein shall have their meanings set forth in the Ground Lease or the Development Agreement, except as otherwise defined herein.

Accordingly, in consideration of the foregoing and the mutual covenants herein contained, it is hereby agreed as follows:

### AGREEMENT

1. Recitals. The recitals are incorporated herein.

2. Sublease of Comfort Station Premises. Sublandlord does hereby lease to Subtenant, and Subtenant does hereby lease from Sublandlord, upon the terms and conditions herein set forth, the Comfort Station Premises.
3. Sublease Term; Subtenant's Early Termination Option. The term of this Sublease (the "Term") shall commence on the date that a memorandum of sublease is recorded in the real property records of King County as contemplated in Section 23(c) of this Sublease. Sublandlord shall deliver exclusive possession of the Comfort Station Premises to Subtenant on the Commencement Date. This Sublease shall expire on the day on which the Ground Lease expires. However, Subtenant may, upon sixty (60) days' prior written notice to Sublandlord, elect to terminate this Sublease early on any date selected by Subtenant.
4. No Rent. In consideration of the fact that Sublandlord shall pay only nominal rent to Subtenant as provided under the Ground Lease, Subtenant shall pay no monthly rent to Sublandlord under this Sublease. Any amount otherwise due from Subtenant to Sublandlord hereunder shall hereinafter be referred to as "Rent" and shall be due and payable within thirty (30) days after invoice from Sublandlord.
5. Construction and Delivery of Comfort Station Premises. Design and construction of the Comfort Station Premises (including without limitation the Parties' respective responsibilities for payment of the costs thereof) shall be governed by the Ground Lease. Sublandlord has delivered and Subtenant has accepted the Comfort Station Premises in the Required Delivery Condition set forth in Exhibit B attached hereto. Subtenant was responsible for the construction cost of the Comfort Station as provided in the Ground Lease.
6. Permitted Uses. Except as otherwise provided herein, the Comfort Station Premises will be used only as a comfort station (which may include at Subtenant's election and without limitation bathroom facilities, locker and personal property storage for clothing, equipment, daily use items, and a short-term rest area) for (1) Subtenant's transit operators and other employees, and (2) with Subtenant's approval, employees of other public transit agencies that serve the Northgate Transit Center or the Northgate Link Light Rail Station, and for no other use or purpose without Sublandlord's reasonable prior consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Provided, that from time to time during the Term, and consistent with Section 9 of this Sublease, Subtenant may make new, different, or additional uses of or internal improvements to the Comfort Station Premises so long as such new, different, or additional uses do not (1) impose any new or additional uncompensated costs on Sublandlord, or (2) unreasonably interfere with the affordable housing functions of the Project. Subtenant shall not cause or permit the Comfort Station Premises to be used in any way which violates any law, ordinance, or governmental regulation or order. Subtenant shall be responsible for complying with all laws applicable to the Comfort Station Premises as a result of the Permitted Use, and Subtenant shall be responsible for making any changes or alterations as may be required by law, rule, regulation, or order for the Permitted Use at its sole cost and expense. Subtenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Comfort Station Premises, nor take any other action which would constitute a nuisance or which would disturb or endanger any other tenants or occupants of the Project or unreasonably interfere

with such the residential tenants of the Project; provided that Sublandlord acknowledges that use of the Comfort Station Premises for the Permitted Uses does not violate this sentence. Subtenant agrees not to do or permit anything to be done in or about the Comfort Station Premises which will in any manner obstruct or interfere with the rights of other tenants or occupants of the Project, or injure or unreasonably annoy them, or use or allow the Comfort Station Premises to be used for any unlawful or unreasonably objectionable purpose. Subtenant shall neither commit nor suffer any waste to the Comfort Station Premises or the Project.

7. Taxes, Services, and Utilities.

a. If the Comfort Station Premises is separately assessed for tax purposes, Subtenant shall pay before due any such real estate taxes and assessments due and owing with respect thereto. If the Comfort Station Premises is not separately assessed, Sublandlord shall reasonably and in good faith allocate real estate taxes and assessments imposed with respect to the improvements at the Project to the Comfort Station, and to the extent that Subtenant is liable for such taxes then Subtenant shall pay such allocable share within thirty (30) days after invoice from Sublandlord. Provided, however, that nothing contained herein shall modify the right of Sublandlord to contest any such tax, and Sublandlord shall not be deemed to be in default as long as it shall, in good faith, be contesting the validity or amount of any such tax.

b. Subtenant shall also, as part of its installation of Alterations described below, arrange for all utilities and services (including electricity and water/sewer service) required by it in connection with the use and operation of the Comfort Station Premises. Sublandlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause.

8. Care of Comfort Station Premises.

a. Subtenant shall use, operate, maintain, insure, clean (including routine trash removal, cleaning and sweeping), repair, and keep in good operating condition and at its sole cost and expense the Comfort Station Premises and the area emanating from the Comfort Station Premises and caused by its users. Subtenant shall remove or cause the removal of all garbage, recyclables and other debris emanating from the Comfort Station Premises to those reasonable locations and spaces as may be specified by Sublandlord from time to time during hours and subject to such reasonable controls as may be established by Sublandlord from time to time. Subject to the waiver of subrogation provisions herein, Subtenant shall not damage any demising wall or disturb the structural integrity of the Project, and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Subtenant or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees.

b. Pursuant to the Ground Lease, Sublandlord shall repair, insure, and maintain in good operating condition the structural components of the Project in and around the Comfort Station Premises, the exterior surfaces of the Building/Comfort Station Premises, and all building systems, utility lines, and equipment serving the Comfort Station Premises. If Subtenant fails to perform Subtenant's obligations under this Section, Sublandlord may at Sublandlord's option enter upon the Comfort Station Premises after thirty (30) days' prior notice to Subtenant and put the

same in good order, condition and repair and the cost thereof together with interest thereon at the rate of 12% per annum shall be due and payable as additional rent to Sublandlord. If Sublandlord fails to timely perform Sublandlord's obligations under this Section after the giving of notice and expiration of the above-mentioned cure period, Subtenant may at Subtenant's option enter upon the Project after thirty (30) days' prior notice to Sublandlord and put the utility lines or equipment serving the Comfort Station Premises in good order, condition and repair and the cost thereof together with interest thereon at the rate of 12% per annum shall be due and payable to Subtenant upon Subtenant's presentation to Sublandlord of an invoice for the same.

9. Alterations and Additions. During the Term Subtenant may, with Sublandlord's prior consent, which consent shall not be unreasonably withheld, conditioned, or delayed, make additional alterations, improvements, additions, and utility installations in and to the Comfort Station Premises (collectively, "Alterations"), provided that no such Alterations shall materially increase any maintenance, insurance or other costs or expenses with respect to the operation of the Project, unless Subtenant agrees to pay for any such increased costs or expenses. Upon Sublandlord's request, Subtenant shall provide copies of any permits required for Alterations. All Alterations shall be at Subtenant's sole cost and expense. Notwithstanding the foregoing, Subtenant shall have the right to make Alterations to the Comfort Station Premises costing less than \$10,000 per calendar year that do not involve changes to the exterior surfaces or structural components of the Project and that do not require permits, without Sublandlord's prior consent.

10. Liens and Encumbrances. Subtenant shall keep the Comfort Station Premises and the Project and clear of, and shall indemnify, defend and hold Sublandlord harmless from, any and all liens and encumbrances arising or growing out of Subtenant's acts or omissions, or breach of this Sublease by Subtenant or Subtenant's use, improvement or occupancy of the Comfort Station Premises. If any such lien is so filed against the Comfort Station Premises or the Project, Subtenant shall cause the same to be fully discharged and released of record within ten (10) business days of filing or provided that such lien does not jeopardize the interest of any lender to Sublandlord (each a "Lender") having a deed of trust or mortgage encumbering Sublandlord's interests in the Comfort Station Premises or Project and within such period provide Sublandlord with cash or other security acceptable to Sublandlord in an amount equal to the amount of the claimed lien as security for its prompt removal. Sublandlord shall have the right to disburse such security to cause the removal of the lien if a judgment is entered against Subtenant in the lien proceeding, if such lien causes difficulties for Sublandlord in connection with its financing of the Project or covenants burdening the Project, or if Subtenant is otherwise in default under this Sublease.

11. Assignment and Subletting; Permitted Uses and Transfers. Subtenant shall not assign, hypothecate, encumber, or otherwise grant any security interest in or to the Sublease, the Comfort Station Premises, or any Alterations therein, or sublet, license, grant any concessions, or otherwise give permission to anyone other than Subtenant and its transit operators and other employees to use or occupy all or any part of the Comfort Station Premises, nor shall this Sublease be transferred by operation of law, without the prior written consent of Sublandlord, which consent shall be subject to Sublandlord's commercially reasonable discretion; provided, that the following actions are exempt from Sublandlord's consent under this Section: any assignment, transfer, assumption, or sublease of this Sublease to, among, by, or between any duly-constituted public transit or public transportation agencies or authorities.



11. Access by Sublandlord. Subtenant shall permit Sublandlord and its agents to enter the Comfort Station Premises at all reasonable times for the purpose of inspecting the same and to perform all functions and duties required of it hereunder and as the "Tenant" under the Ground Lease.

12. Insurance. Subtenant agrees to maintain, at their sole cost and expense, the following insurance coverage throughout the duration of Sublease, with carriers maintaining a minimum AM Best Rating of A- VII and approved to do business in the State in of Washington or the equivalent coverage through its fully funded self-insurance program described in Section 12(l):

- a. Commercial General Liability insurance in an amount not less than \$1,000,000 per occurrence; \$2,000,000 general aggregate; \$2,000,000 products and completed operations aggregate. A Commercial Umbrella and/or Excess Liability policy(ies) of not less than \$5,000,000 per occurrence/annual aggregate must be maintained in addition to the Commercial General Liability policy, which is to be scheduled as an underlying policy on the Umbrella and/or Excess Liability policy(ies) along with the Commercial Automobile Liability and Employers Liability policies required herein. The Commercial General Liability coverage shall be provided under the Insurance Services Office form CG 00 01 or equivalent and shall provide protection against claims resulting from bodily injury and/or property damage arising out of Subtenant's operations and contractual obligations pursuant to the Sublease of the Comfort Station Premises, and shall include by endorsement if not contained within the coverage form, at least the following coverage within the policy form: personal and advertising injury; blanket contractual liability; bodily injury and broad form property damage; fire legal liability; and products and completed operations liability.
- b. Commercial Automobile Liability insurance covering all of the Subtenant's operations arising out of the use or maintenance of owned, hired and non-owned automobiles, trucks, trailers and semi-trailers, including any machinery or equipment attached thereto. Coverage shall be for limits no less than \$1,000,000 per accident, combined single limit for bodily injury and property damage.
- c. Workers' Compensation insurance as required by the statutes of the State of Washington. In addition, Tenant shall maintain Employers Liability insurance with limits of not less than \$1,000,000. An Employers Liability Stop Gap endorsement on Subtenant's Commercial General Liability policy is acceptable in lieu of Employers Liability coverage being provided within the Workers Compensation policy.
- d. Property insurance coverage at least as broad as that provided by the Insurance Services Office Form CP 10 30 "Causes of Loss-Special Form" or equivalent form, including broadening endorsements to protect against the perils of water intrusion, and sewer/drain backup, providing for the risks of direct physical loss or damage to cover all Leasehold Improvements related to the Comfort Station Premises, Subtenant's property, contents, business personal property, inventories, data processing equipment, tools, machinery and other equipment, as well as any nonstandard building improvements within the Comfort Station Premises. Policy shall name Sublandlord as Loss Payee, as their interest may appear.

- e. Additional Insured. All liability insurance policies required within the Sublease, and any other liability policy(ies) which Subtenant maintains independent of such requirements, shall name the Sublandlord, BRIDGE Housing Corporation, BRIDGE Property Management Company, Community Roots Housing, and each of their respective lenders, investors, members, partners, officers, directors, employees, agents and assigns (collectively, the "Additional Insureds") shall be named as additional insureds pursuant to endorsements in the form of CA 20 48 10 13 or equivalent policy provisions as respects commercial automobile liability, and ISO Forms CG 20 10 07 04 as respects commercial general liability and umbrella/excess liability.
- f. Primary & Non-Contributory. All policies required of Subtenant shall include a provision stating that the Subtenant's insurance shall be primary and that any insurance maintained by the Sublandlord and/or Additional Insureds shall be excess and non-contributing.
- g. Waiver of Subrogation. All property policies required of Subtenant shall contain a Waiver of Subrogation endorsement naming the Sublandlord and the Additional Insureds.
- h. All liability insurance policies required in the Sublease shall be written to cover all claims incurred during the term of the Sublease or out of any activities, operations, work or services performed pursuant to the Sublease, regardless of when such claim shall be first made against Subtenant, Sublandlord and/or any of the Additional Insureds.
- i. All deductibles and/or self-insured retentions on any policy or self-funded insurance program maintained by Subtenant shall be their sole responsibility.
- j. Subtenant is to require any sub-subtenant to maintain the same coverage and limits as is required of Subtenant herein.
- k. Subtenant is to require any contractor, subcontractor, vendor, supplier and consultant performing any work or services at the Comfort Station Premises to maintain the same coverage and limits as is required of the Subtenant in the Sublease. Subtenant is required to provide Sublandlord with certificates of insurance and applicable endorsements evidencing the coverages maintained by contractors/subcontractors upon request by Sublandlord.
- l. Sublandlord acknowledges that Subtenant, a home rule charter county government and political subdivision of the State of Washington, maintains a fully-funded self-insurance program for the protection, fulfillment, and handling of Subtenant's liabilities and insurance proceeds, including injuries to persons and damage to property. Subtenant shall, at its own expense, maintain, through its self-funded insurance program, coverage sufficient to satisfy all of its liability exposures and insurance requirements for this Sublease. Subtenant shall provide Sublandlord with at least thirty (30) days' prior written notice of any material change in Subtenant's self-insurance program and shall provide Sublandlord with a certificate of self-insurance as evidence of compliance with the insurance requirements herein, upon execution of this Sublease and annually thereafter, and as may further be requested from time to time by Sublandlord's written

request. Sublandlord further acknowledges that Subtenant does not maintain a commercial general liability insurance policy and is a self-insured government entity; therefore Subtenant does not have the ability to add Sublandlord as an additional insured to a traditional commercial general liability policy. Subtenant shall at all times maintain its self-funded program or a commercial general liability insurance policy, each in an amount sufficient to cover its liability exposure under this Sublease. If Subtenant ceases self-insuring its liability exposures and instead purchases a commercial general liability and excess liability insurance policy(ies), then Subtenant shall add Sublandlord as an additional insured to such policy.

13. Indemnity. Each Party shall defend, indemnify and hold the other harmless from and against any claims, suits, causes of action, judgments, damage, loss or liability for injuries to persons or property (excluding consequential damages such as lost profits) (collectively, "Claims") to the extent caused by the negligent acts or omissions of their respective agents, officers and employees, arising out of or incidental to the exercise of rights and obligations under this Sublease. Where such Claims result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's negligence. Each of the Parties agrees that its obligations under this Section extend to any claim, demand, cause of action and judgment brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party and no other person or entity, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. If it is determined that RCW 4.24.115 applies to this Sublease, then each Party agrees to defend, hold harmless, and indemnify the other Party to the maximum extent thereunder.

14. Waiver of Subrogation. Notwithstanding any provision in this Sublease to the contrary, to the extent any loss would be covered by property insurance required pursuant to Section 13 above (whether through a program of self-insurance or a commercial insurance policy) or the Ground Lease, or is actually covered by property insurance carried by a party, Sublandlord and Subtenant hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under the other by way of subrogation or otherwise) for any loss or damage to real or personal property in, around, and serving the Comfort Station Premises and the Project caused by fire or any other insured peril, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible, provided that the foregoing waivers shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of Sublandlord or Subtenant

16. Damage, Destruction, and Condemnation. In the event any portion of the Project is taken, appropriated, or condemned under power of eminent domain during the Term of this Sublease (including any transfer made under threat of any such taking, appropriation, or condemnation), as contemplated in Article 9 of the Ground Lease (a "Condemnation"), or in the event of any Casualty (as defined in Article 10 of the Ground Lease), then if either Ground Lessor or Sublandlord elects to terminate the Ground Lease as permitted therein, this Sublease shall terminate on the same date on which the Ground Lease terminates. If the Ground Lease is not so terminated, and if the Comfort Station Premises are damaged, destroyed or rendered untenable as a consequence of any Condemnation or Casualty, Subtenant may, at its option: (a) terminate this Sublease, or (b) require Sublandlord to restore at its sole cost the damaged portions of the Comfort Station Premises

(but only to the extent of work and improvements originally provided by Sublandlord pursuant to the Required Delivery Condition), in which event Subtenant shall be responsible for restoration at its sole cost all Alterations and other tenant improvements originally made by or for Subtenant to the Comfort Station Premises. If this Sublease is terminated due to a Condemnation, the entire award of "just compensation" shall be allocated as provided in the Ground Lease.

17. Surrender. Subject to the terms of this Sublease and the Ground Lease relating to events of damage, destruction, or condemnation, upon expiration of the Term of this Sublease, whether by lapse of time or otherwise, Subtenant shall promptly and peacefully surrender the Comfort Station Premises to Sublandlord "broom-clean" and in operating condition and repair, reasonable use, wear and tear excepted. Subtenant shall remove all of its personal property and trade fixtures from the Comfort Station Premises at the expiration of the Term; any property not so removed shall be deemed abandoned and may be sold or otherwise disposed of as Sublandlord deems advisable. Notwithstanding anything to the contrary herein, Sublandlord shall not be liable to Subtenant for destruction or damage to any of Subtenant's property including fixtures, equipment or other improvements, or for damages or compensation for inconvenience, loss of business or disruption arising from damages, destruction, repairs or restoration of any portion of the Subtenant's personal property at, and its improvements and Alterations to, the Comfort Station Premises, except to the extent such damage arises out of or is related to Sublandlord's breach of this Sublease, or the negligence or willful misconduct of Sublandlord or its agents, employees, or contractors.

18. Holding Over. If Subtenant remains in possession of the Comfort Station Premises or any part thereof after the expiration of the term of this Sublease without the express written consent of Sublandlord, then, in addition to all of Sublandlord's rights and remedies for such holdover pursuant to the terms of the Ground Lease, Subtenant may also be liable to Sublandlord for any and all damages or expenses which Sublandlord may have to incur as a result of Subtenant's holdover.

19. Default/Remedies. The following occurrences shall each be deemed an "Event of Default" by a Party: (i) failure to pay Rent or any other monetary amount due and owing to the other Party under this Sublease, and such failure continues for ten (10) days after written notice; (ii) failure to perform any other agreement, term or covenant of this Sublease other than one requiring the payment of money, and such failure continues for thirty (30) days after written notice (provided that such 30-day period shall be reasonably extended if the curing Party reasonably requires additional time to complete the cure, not to exceed 90 days); and (iii) any default under the Ground Lease. In the event of an uncured Event of Default by a Party hereunder, the other Party shall have all remedies available hereunder or at law or in equity.

20. Subordination to Ground Lease. This Sublease is subject and subordinate to the Ground Lease and to all renewals, extensions, hypothecations, and modifications thereof.

21. Estoppel Certificates; Recognition Agreements. Sublandlord and Subtenant agree that at any time and from time to time upon not less than forty-five (45) days' prior written notice by the other Party, or upon request from any Leasehold Mortgagee or permitted assignee (as defined in the Ground Lease) of Sublandlord, then Sublandlord or Subtenant will execute, acknowledge and deliver to the other Party or to such Leasehold Mortgagee a statement in writing certifying (1) that this Sublease is unmodified and in full force and effect if such be the case or, if not, the extent to



which this Sublease has been modified; (2) the date through which the Rent has been paid; and (3) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Sublandlord or Subtenant, as applicable, other than those, if any, so specified under the provisions of this Sublease or such statement. Sublandlord shall have the right to ignore and to strike out as non-compliant any other statement, term, condition, or provision of any estoppel certificate or recognition agreement other than the specific statements set forth in the preceding sentence. The Parties intend that any such statement may be relied upon by any persons proposing to acquire the interest of Sublandlord, Subtenant, or any Leasehold Mortgagee of Sublandlord, as the case may be, in the Sublease, or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgage of Sublandlord; provided that no such statement shall be deemed to modify or amend this Sublease or to affect the rights or remedies of the party providing such statement. Upon Sublandlord's request, Subtenant agrees to countersign and acknowledge, as Subtenant hereunder, any Recognition Agreement which Ground Lessor executes pursuant to the Ground Lease.

22. Limitation of Sublandlord's Liability. Except for injuries to persons or property damage, Sublandlord shall not be liable to Subtenant for incidental or consequential damages or lost profits arising out of an Event of Default by Sublandlord under this Sublease, and any monetary judgment obtained by Subtenant arising therefrom shall be satisfied solely from Sublandlord's estate and interest in the Project, including the rents and other income therefrom and the insurance, condemnation, and sales proceeds thereof, and not from any other property or assets of Sublandlord, and shall be subject to all other limitations of liability set forth elsewhere in this Sublease. Neither Sublandlord, nor any agent, officer, director, or employee of Sublandlord shall be personally liable for any portion of such a judgment.

23. Miscellaneous.

a. Entire Agreement. This Sublease (and the Exhibits hereto) contains the entire agreement and understanding between Sublandlord and Subtenant concerning the subject matter of this Sublease, and supersede all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Sublandlord or Subtenant concerning the Comfort Station Premises or the other matters which are the subject of this Sublease. The Parties acknowledge that each Party and its counsel have reviewed this Sublease and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting Party shall not be employed nor applied in the interpretation of this Sublease.

b. Governing Law; Choice of Venue; Attorneys' Fees. The interpretation, construction and enforcement of this Sublease, and all matters relating hereto, shall be governed by the laws of the State of Washington without giving effect to its conflicts of law rules or choice of law provisions. Subject to matters governed by the Dispute Process set forth in Article 19 of the Ground Lease, incorporated by reference herein, any judicial proceeding brought by either of the Parties against the other Party or any dispute arising out of this Sublease or the Comfort Station Premises, or any matter relating thereto, shall be brought in the Superior Court of the State of Washington (in King County), or in the United States District Court for the Western District of Washington. In that regard, each Party hereby waives any defense of inconvenient forum and any bond or other security that might otherwise be required of the other Party with respect to such choice of judicial forum. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating

to, this Sublease, the non-prevailing Party shall pay the prevailing Party's actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post judgment motion, and any action to enforce or collect the judgment including contempt, garnishment, levy, discovery and bankruptcy. For purposes of this Section 23(b), "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing Party" shall mean the Party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.

c. Binding Effect; Memorandum of Sublease. This Sublease shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, administrators, executors, and permitted assigns. Subtenant shall record a Memorandum of Sublease to commence the Term of this Sublease, which Memorandum shall be substantially in the form of Exhibit C to this Sublease.

d. Severability. The provisions of this Sublease are intended to be severable and enforced to the maximum extent permitted by law. If for any reason any provision of this Sublease shall be held invalid, illegal or unenforceable in whole or in part, then that provision shall be ineffective only to the extent of the invalidity, illegality or unenforceability, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions of the Sublease. The unaffected portion and provisions of this Sublease will be enforced to the maximum extent permitted by law.

e. Further Assurances. From and after the date of this Sublease, Sublandlord and Subtenant, at the request of the other Party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Sublease, provided that the same may be done at no material cost to the Party receiving such request; and provided further, that where this Sublease provides for specific forms of or limitations on such further instruments, the Parties shall abide by the same.

f. References; Construction. Unless otherwise indicated, (1) all section and exhibit references are to the sections and exhibits of this Sublease, and (2) all references to days are to calendar days. The Exhibits hereto are incorporated herein by this reference. Whenever under the terms of this Sublease the time for performance of a covenant or condition falls upon a Saturday, Sunday or State of Washington holiday, such time for performance shall be extended to the next business day. The headings used in this Sublease are provided for convenience only and this Sublease shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires.

g. Rights Cumulative; Amendments and Waivers. Except as expressly limited by the terms of this Sublease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity. No addition to or modification of this Sublease shall be effective unless set forth in writing and signed by the Party against whom the addition or modification is sought to be enforced. The Party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by the other Party unless made in writing and signed by the waiving Party. No delay or failure to require performance of any provision of this



Sublease shall constitute a waiver of that provision. Any waiver granted shall apply solely to the specific instance expressly stated.

h. Notices. All notices, demands, approvals, and other communications provided for in this Sublease shall be in writing and shall be effective (1) upon receipt when personally delivered to the recipient at the recipient's address set forth below; (2) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, or when such receipt is rejected; (3) one (1) business day after deposit with a recognized overnight courier or delivery service; or (4) when electronically transmitted (including email or facsimile) to the email address or facsimile number set forth below. A Party disputing delivery or receipt of email notice shall have the burden of proving by a preponderance of the evidence that the email notice was not delivered or received or both. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or federal or state legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday. A Party may change its address or other contact information by giving notice as specified in this Section 23(h).

If to Subtenant:           King County Metro Transit Department  
                                  Attn: Director of Capital Division, Metro Transit Department  
                                  201 South Jackson Street  
                                  KSC-TR-0415  
                                  Seattle, WA 98104-3856

With a copy to:           Facilities Management Division  
                                  Real Estate Services Section  
                                  201 South Jackson Street  
                                  KSC-FMD-0XXX  
                                  Seattle, WA 98104-3856

With a copy to:           King County Prosecuting Attorney Office  
                                  Attn: Chief Civil Deputy Prosecuting Attorney  
                                  W400 King County Courthouse  
                                  516 Third Avenue  
                                  Seattle, WA 98104

If to Sublandlord:       Northgate Affordable LLC  
                                  c/o BRIDGE Housing Corporation  
                                  600 California Street, Suite 900  
                                  San Francisco, CA 94108  
                                  Attention: Rebecca Hlebasko, General Counsel

With a copy to:           Community Roots Housing  
                                  1620 – 12th Ave., Suite 205  
                                  Seattle, WA 98122  
                                  Attn: Jeremy Wilkening, Vice President, Real Estate Development

With a copy to:           Kantor Taylor PC

1200 5th Avenue, Suite 1910  
Seattle, WA 98101  
Attn: Mark Kantor

i. Counterparts. This Sublease may be executed and delivered in counterparts as a PDF file delivered by email, or as a facsimile copy, and each counterpart so executed and delivered is original, and such counterparts together shall constitute but one and the same instrument. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. It shall not be necessary in making proof of this Sublease to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each Party hereto. Any executed signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it such additional executed signature pages.

j. Time of Essence. Time is of the essence in the performance of the Parties' respective obligations under this Sublease, and no notice of a Party's intent to require strict compliance with the deadlines set forth in this Sublease is required.

k. No Third-Party Beneficiaries. Nothing in this Sublease, express or implied, is intended to confer any rights or remedies under or by reason of this Sublease on any person other than the Parties to it, nor is anything in this Sublease intended to relieve or discharge any obligation of any third person to any Party hereto or give any third person any right of subrogation or action over or against any Party to this Sublease.

l. Relationship of Parties. Nothing contained in this Sublease shall be construed to create, nor shall either Party represent the existence of, a partnership, a joint venture, an association, a corporation, a trust or other entity, nor to constitute either Party the agent of the other.

m. Force Majeure. The Parties hereby acknowledge and agree that the times set forth in this Sublease shall not be subject to delay, except to the extent a Force Majeure Event has occurred, and then only as provided in this Section. For purposes of this Sublease, a "Force Majeure Event" shall mean any delay due to war, insurrection, riots, civil disturbances, floods, fires, casualties, earthquakes, tsunamis, acts of God, acts of the public enemy, epidemics, quarantine restrictions of more than three (3) consecutive calendar months in duration, any actions by any Governmental Authorities beyond a Party's reasonable control (other than issuance or an appeal of any permits, approval, or other entitlements); provided, however, any financial inability, or an economic downturn as the result of any of the foregoing or any other cause, shall not be deemed a Force Majeure Event. A Force Majeure Event shall not toll or extend the Expiration Date.

n. Waiver of Jury Trial. SUBLANDLORD AND SUBTENANT IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS SUBLEASE, THE RELATIONSHIP OF SUBLANDLORD AND SUBTENANT UNDER THIS SUBLEASE, THE ENFORCEMENT OF THIS SUBLEASE, SUBTENANT'S USE OR OCCUPANCY OF THE COMFORT STATION PREMISES, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN SUBLANDLORD AND SUBTENANT, OR ANY ACTIONS

OF SUBLANDLORD IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS SUBLEASE.

o. Acceptance of Service of Process. In the event that Subtenant commences any legal action against Sublandlord, service of process on Sublandlord shall be made by personal service upon Sublandlord, or in such manner as may be provided by law, and shall be valid whether made within or without the State of Washington.

p. Nondiscrimination. Sublandlord, on behalf of itself and its successors and assigns, as a part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state and local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Sublandlord shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Chapter 12.16, as now codified and as hereafter amended. Sublandlord shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, King County Charter Section 840, Chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default by Sublandlord under this Sublease and shall be grounds for cancellation, termination, or suspension, in whole or in part, by Subtenant of this Sublease and may result in Sublandlord's ineligibility for further agreements between the Parties.

q. List of Exhibits. The following Exhibits are attached to this Sublease and are incorporated herein by reference:

- A. Diagram of Comfort Station Premises
- B. Required Delivery Condition
- C. Memorandum of Sublease

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Sublease is made and entered into in multiple original counterparts on the day and year first above written.

**SUBTENANT:**

**KING COUNTY**, a home rule charter and  
Washington political subdivision:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form for King County:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SUBLANDLORD:**

**NORTHGATE AFFORDABLE LLC**, a  
a Washington limited liability company

**BY:**

**BRIDGE HOUSING CORPORATION**, a  
California corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**And**

**COMMUNITY ROOTS HOUSING**, a  
Washington public corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON

SS:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a home rule charter and Washington political subdivision, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the State of Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

SS:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of BRIDGE HOUSING CORPORATION, a California corporation, the Manager of NORTHGATE AFFORDABLE LLC, a Washington limited liability company, the General Partner of \_\_\_\_\_ LLLP to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the State of Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

**EXHIBIT A  
TO  
COMFORT STATION SUBLEASE**

**DIAGRAM OF COMFORT STATION PREMISES**

[Attach if known at execution; otherwise, to be determined pursuant to the Development Agreement]

**EXHIBIT A  
TO  
COMFORT STATION SUBLEASE**



**EXHIBIT B  
TO  
COMFORT STATION SUBLEASE**

**REQUIRED DELIVERY CONDITION**

[Attach at execution]

**EXHIBIT B  
TO  
COMFORT STATION SUBLEASE**

**EXHIBIT C  
TO  
COMFORT STATION SUBLEASE**

FORM OF MEMORANDUM OF SUBLEASE

RECORDED AT THE REQUEST OF  
AND AFTER RECORDING RETURN TO:

Metro Transit Department  
201 South Jackson Street  
Seattle, WA 98104  
Attn: Capital Projects Division Director

**MEMORANDUM OF SUBLEASE**

Subtenant: KING COUNTY, a home rule charter county and  
legal successor in interest to the Metropolitan  
Municipality of Seattle, as "Subtenant"

Sublandlord: NORTHGATE AFFORDABLE LLC, a Washington  
limited liability company, as "Sublandlord"

Legal Description: \_\_\_\_\_

Assessor's Tax Parcel ID#: \_\_\_\_\_

**RECITALS**

A. Sublandlord is the tenant of the real property more particularly described on **Exhibit "A"** attached hereto (the "**Premises**") under that certain Ground Lease dated \_\_\_\_\_, a memorandum of which has been recorded in the real property records of King County under Auditor's File No. \_\_\_\_\_, official records of King County, Washington; and

B. Sublandlord and Subtenant entered into that certain Sublease dated \_\_\_\_\_, (the "**Effective Date**") (together with all amendments, substitutions, replacements and renewals thereto from time to time, collectively, the "**Sublease**"), pursuant to

EXHIBIT C  
TO  
COMFORT STATION SUBLEASE

which Sublandlord has subleased to Subtenant and Subtenant has subleased from Landlord the Comfort Station Premises as defined in the Sublease; and

C. Pursuant to the Sublease, the Parties have agreed to execute and Subtenant shall at its sole expense record this Memorandum of Sublease (this “**Memorandum**”) against the Premises in the real property records of King County, Washington (the “**Records**”). Each of Sublandlord and Subtenant are sometimes referred to hereinafter individually as a “**Party**” and collectively as the “**Parties**.”

## AGREEMENT

NOW, THEREFORE, in consideration of the Sublease and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Sublandlord and Subtenant agree as follows:

1. Incorporation of Recitals; Capitalized Terms. The foregoing Recitals shall be incorporated as though fully set forth herein. Any capitalized terms not defined in this Memorandum shall have the meanings ascribed thereto in the Lease or the Sublease.
2. The Sublease. Sublandlord has subleased to Subtenant, and Subtenant has subleased from Sublandlord, pursuant to the terms and conditions of the Sublease, the Comfort Station Premises.
3. Sublease Term. The Term of the Sublease is a period of seventy-five (75) years, commencing on the Commencement Date defined in the Sublease and expiring on the expiration date of the Ground Lease.
4. Assignments, Subleases, and Other Transfers Restricted. Subtenant shall not assign, hypothecate, encumber, or otherwise grant any security interest in or to the Sublease, the Comfort Station Premises, or any Alterations therein, or sublet, license, grant any concessions, or otherwise give permission to anyone other than Subtenant and its transit operators and other employees to use or occupy all or any part of the Comfort Station Premises, nor shall this Sublease be transferred by operation of law, without the prior written consent of Sublandlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Provided, that the following actions are exempt from Sublandlord’s consent: (1) All uses of the Comfort Station Premises contemplated under Section 6 of the Sublease; and (2) any assignment, transfer, assumption, or sublease of the Sublease to, among, by, or between any duly-constituted public transit or public transportation agencies or authorities.
5. Additional Provisions. The Sublease contains additional rights, terms and conditions not enumerated in this instrument.
6. Purpose and Intention; Conflict. This Memorandum is executed for the purpose of recordation in the Records, and is not intended, and shall not be construed, to define, limit or modify the Sublease except as otherwise provided therein. The subleasehold estate created and conveyed hereby with respect to the Comfort Station Premises is intended to be one and the same estate as was created with respect to the Comfort Station Premises by the Sublease and is further intended to be governed in all respects solely by the Sublease and all of the provisions

## EXHIBIT C TO COMFORT STATION SUBLEASE

thereof. In the event of any inconsistency between the provisions of this Memorandum and the Sublease, the provisions of the Sublease shall control.

7. Cancellation of Memorandum of Sublease. Unless sooner terminated by specific written agreement of Sublandlord and Subtenant, this Memorandum shall expire and be of no further force or effect immediately, and without further action, upon the expiration or earlier termination of the Sublease. To evidence such termination or expiration pursuant to this Section, each Party agrees, within five (5) business days after the written request of the other Party, to enter into and record an appropriate release and/or cancellation instrument, in proper form for recordation in the Records, acknowledging the expiration or earlier termination of the Sublease (the "**Cancellation**").

8. Binding Effect. All of the provisions of this Memorandum shall inure to the benefit of and shall be binding upon the successors and assigns of Sublandlord and Subtenant; provided, however, any such assignment shall be subject to the terms and conditions of the Sublease.

9. Counterparts. This Memorandum may be executed and delivered in counterparts as a PDF file delivered by email, or as a facsimile copy, and each counterpart so executed and delivered is original, and such counterparts together shall constitute but one and the same instrument. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. It shall not be necessary in making proof of this Memorandum to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each Party hereto. Any executed signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it such additional executed signature pages.

*[Signatures on Following Page]*

EXHIBIT C  
TO  
COMFORT STATION SUBLEASE

IN WITNESS WHEREOF, this Memorandum of Sublease is made and entered into in multiple original counterparts on the day and year first above written.

**SUBTENANT/KCM:**

**KING COUNTY**, a home rule charter and Washington political subdivision:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form for King County:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SUBLANDLORD/AFFORDABLE HOUSING DEVELOPER:**

**NORTHGATE AFFORDABLE LLC**, a Washington limited liability company

**BY:**

**BRIDGE HOUSING CORPORATION**, a California corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**And**

**COMMUNITY ROOTS HOUSING**, a Washington public corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT C  
TO  
COMFORT STATION SUBLEASE

STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a home rule charter and Washington political subdivision, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of

Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

EXHIBIT C  
TO  
COMFORT STATION SUBLEASE



STATE OF WASHINGTON

COUNTY OF KING

ss:

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of BRIDGE HOUSING CORPORATION, a California corporation, the Manager of NORTHGATE AFFORDABLE LLC, a Washington limited liability company, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of

Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF KING

ss:

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of CAPITOL HILL HOUSING IMPROVEMENT PROGRAM, a Washington public corporation, the Manager of NORTHGATE AFFORDABLE LLC, a Washington limited liability company, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of

Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

EXHIBIT C  
TO  
COMFORT STATION SUBLEASE

**EXHIBIT A**  
**To**  
**Memorandum of Sublease**

**Legal Description of the Comfort Station Premises**

[Attach at execution]

**EXHIBIT A**  
**TO**  
**MEMORANDUM OF SUBLEASE**

**Attachment 6 to Development Agreement – Development and Milestone Schedule**

**[see attached]**

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## ATTACHMENT 6

### DEVELOPMENT & MILESTONE SCHEDULE

Task Name	Duration (Weeks)	Start	Finish	Outside Start Dates
<b>NOTICE TO PROCEED</b>				
<b>Schematic Design (SD)</b>				
Prepare EDG package	6	11/02/21	12/14/21	05/01/22
Complete SD documents	16	11/02/21	02/22/22	
Submit SD for cost est.	6	02/22/22	04/05/22	
<b>Design Development (DD)</b>				
Prepare MUP documents	18	12/31/21	05/02/22	06/29/22
Complete DD documents	20	06/23/22	11/07/22	
Submit DD package for cost est.	10	11/07/22	01/16/23	
Team Pause for MUP review	7	05/02/22	06/23/22	
Prepare REC [DRB] Package	8	10/20/22	12/12/22	
<b>Construction Documents (CD)</b>				
Prepare Building Permit Set	18	11/10/22	03/13/23	
Prepare GMP Set	8	05/04/23	06/26/23	
QC Review [Bridge/CRH Confirm]	3	03/27/23	04/17/23	
GMP Bid Set Issued - 100%				
<b>[90%]CD</b>	0	06/26/23	06/26/23	
Complete for-Construction Set	16	10/31/22	09/25/23	
<b>ENTITLEMENTS</b>				
<b>Submit EDG Packets</b>	0	12/14/21	12/14/21	12/14/21
EDG Meeting	0	12/28/21	12/28/21	
Submit MUP Documents	18	12/28/21	05/03/22	10/30/22
<b>DPD</b> Zoning & Land Use Review of MUP	18	12/28/21	05/03/22	
Submit DRB [REC] Recommendation Packets	0	12/15/22	12/15/22	
Recommendation Meeting	0	12/23/22	12/23/22	
Update MUP to incorporate DRB comments	3	12/23/22	01/13/23	
Submit MUP corrections	3	01/13/23	02/04/23	
<b>DPD</b> review	6	02/04/23	03/18/23	
MUP Publication	8	03/18/23	05/12/23	
Appeal Period	2	05/12/23	05/25/23	
Routing and Final	2	05/25/23	06/08/23	
MUP Issued	2	06/10/23	06/26/23	12/07/23
<b>PERMITTING - BUILDING</b>				
Building Permit Intake	0	03/13/23	03/13/23	09/09/23
DPD Review	28	03/13/23	09/25/23	
Issue Building Permit	0	09/25/23	09/25/23	03/23/24

<b>PERMITTING - STREET</b>				
Develop Preliminary SDOT Plans	3	11/02/21	11/23/21	
Submit 30% SIP	0	11/24/21	11/24/21	
SDOT Review Period	3	11/25/21	12/16/21	
30% SIP Design Guidance Meeting	0	12/16/21	12/16/21	
Prepare 60% SIP	3	08/30/22	08/30/22	
SDOT Review Period	10	08/30/22	11/08/22	
60% Design Guidance Meeting	12	11/09/22	02/01/23	
60% SIP Approval	12	02/02/23	04/27/23	
Final SIP Approval	16	04/27/23	08/17/23	
<b>BLA</b>				
BLA Intake	18	12/14/21	04/19/22	
<b>K.C.M. REVIEW</b>				
<i>Metro Initial Review [EDG]</i>	<i>4</i>	<i>04/30/21</i>	<i>05/28/21</i>	
Metro 100% SD Review [Discretionary]	4	04/19/22	05/17/22	10/16/22
Metro MUP Review [Discretionary]	4	04/19/22	05/17/22	10/16/22
Metro 100% DD Review	4	11/08/22	12/06/22	05/07/23
Metro Building Permit Review [Draft]	4	02/28/23	03/28/23	08/27/23
<b>COST ESTIMATES</b>				
SD Cost Estimate	4	02/22/22	03/22/22	
DD Cost Estimate	4	11/07/22	12/05/22	
Building Permit Cost Verification	4	03/13/23	04/10/23	
GMP Bid	6	06/26/23	08/07/23	
Negotiate Contract	12	08/07/23	10/30/23	
<b>CONSTRUCTION</b>				
Start	0	11/02/23	11/02/23	04/30/24
Completion	108	11/02/23	11/27/25	

**Attachment 7 to Development Agreement – Form of Memorandum of Ground Lease**

**[see attached]**



RECORDED AT THE REQUEST OF  
AND AFTER RECORDING RETURN TO:

Kantor Taylor PC  
1200 5th Avenue, Suite 1910  
Seattle, WA 98101  
Attn: Mark Kantor, Esq.

### MEMORANDUM OF GROUND LEASE

Grantor: KING COUNTY, a home rule charter county and legal  
successor in interest to the Metropolitan Municipality of  
Seattle, as "Landlord"

Grantee: NORTHGATE AFFORDABLE LLC, a Washington  
limited liability company, as "Tenant"

Legal Description: \_\_\_\_\_

Assessor's Tax Parcel ID#: \_\_\_\_\_

### RECITALS

A. Landlord is the owner of the real property more particularly described on Exhibit "A" attached hereto (the "**Premises**"); and

B. Landlord and Tenant entered into that certain Ground Lease dated \_\_\_\_\_, 2021 (the "**Effective Date**") (together with all amendments, substitutions, replacements and renewals thereto from time to time, collectively, the "**Lease**"), pursuant to which Landlord has leased to Tenant and Tenant has leased from Landlord the Premises; and

C. Pursuant to the Lease, the parties have agreed to execute and Tenant shall at its sole expense record this Memorandum of Ground Lease (this "**Memorandum**") against the Premises in the real property records of King County, Washington (the "**Records**"). Each of Landlord and Tenant are sometimes referred to hereinafter individually as a "**Party**" and collectively as the "**Parties**."

## AGREEMENT

NOW, THEREFORE, in consideration of the Lease and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Incorporation of Recitals; Capitalized Terms. The foregoing Recitals shall be incorporated as though fully set forth herein. Any capitalized terms not defined in this Memorandum shall have the meanings ascribed thereto in the Lease.
2. The Lease. Landlord has leased to Tenant, and Tenant has leased from Landlord, pursuant to the terms and conditions of the Lease, the Premises.
3. Lease Term. The Term of the Lease is a period of seventy-five (75) years, commencing on the Commencement Date defined in the Lease.
4. Assignments, Subleases, and Other Transfers Restricted. Tenant acknowledges that: (i) Landlord is relying on the real estate and development expertise of Tenant to assure the quality of the development of the Project; (ii) the design, use, operation and maintenance of the Project and its components are deemed critical by Landlord; (iii) a change in ownership or control of Tenant, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership, could have a material adverse impact on the development of the Project; and (iv) the qualifications and identity of the Tenant are of particular concern to Landlord. Tenant further recognizes that it is because of such qualifications and identity that Landlord is entering into the Lease with Tenant. Accordingly, except to the extent expressly permitted in Article 7 of the Lease (Leasehold Mortgages), and except in connection with Exempt Transfers and Permitted Rental Agreements described in Article 16 of the Lease, Tenant shall not voluntarily, involuntarily, or by operation of any law, sell, convey, mortgage, assign, sublet or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or the Premises (any of the foregoing, a "**Transfer**") without Landlord's prior written consent in each instance, which consent may be withheld in Landlord's sole and absolute discretion except as otherwise provided in Article 16 of the Lease, and any attempt by Tenant to do so without this consent shall be, at Landlord's election, null and void and without any effect whatsoever, and may be deemed by Landlord as a default under the Lease and no cure provision shall apply. Without limiting the generality of the foregoing, in no event may Tenant enter into any Transfer to or with a party that is not a non-profit entity that is in the business of providing affordable housing to low-income occupants as contemplated elsewhere in the Lease.
5. Additional Provisions. The Lease contains additional rights, terms and conditions not enumerated in this instrument.
6. Purpose and Intention; Conflict. This Memorandum is executed for the purpose of recordation in the Records, and is not intended, and shall not be construed, to define, limit or modify the Lease. The leasehold estate created and conveyed hereby with respect to the Premises is intended to be one and the same estate as was created with respect to the Premises by the Lease and is further intended to be governed in all respects solely by the Lease and all of the provisions thereof. In the event of any inconsistency between the provisions of this Memorandum and the Lease, the provisions of the Lease shall control.

7. Cancellation of Memorandum of Lease. Unless sooner terminated by specific written agreement of Landlord and Tenant, this Memorandum shall expire and be of no further force or effect immediately, and without further action, upon the expiration or earlier termination of the Lease. To evidence such termination or expiration pursuant to this Section, each Party agrees, within five (5) business days after the written request of the other Party, to enter into and record an appropriate release and/or cancellation instrument, in proper form for recordation in the Records, acknowledging the expiration or earlier termination of the Lease (the "**Cancellation**"). If Tenant fails to timely deliver the Cancellation, and such failure continues for an additional five (5) business days after a second written notice, Tenant hereby appoints Landlord as Tenant's attorney-in-fact for the limited purpose to prepare, execute and record the Cancellation. This appointment shall be coupled with an interest and irrevocable.

8. Binding Effect. All of the provisions of this Memorandum shall inure to the benefit of and shall be binding upon the successors and assigns of Landlord and Tenant; provided, however, any such assignment shall be subject to the terms and conditions of the Lease.

9. Counterparts. This Memorandum may be executed and delivered in counterparts as a PDF file delivered by email, or as a facsimile copy, and each counterpart so executed and delivered is original, and such counterparts together shall constitute but one and the same instrument. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. It shall not be necessary in making proof of this Memorandum to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each Party hereto. Any executed signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it such additional executed signature pages.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, this Memorandum of Ground Lease is made and entered into in multiple original counterparts on the day and year first above written.

**LANDLORD/KCM:**

**KING COUNTY**, a home rule charter and Washington political subdivision:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form for King County:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT/AFFORDABLE HOUSING DEVELOPER:**

**NORTHGATE AFFORDABLE LLC**, a Washington limited liability company

**BY:**

**BRIDGE HOUSING CORPORATION**, a California corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**And**

**COMMUNITY ROOTS HOUSING**, a Washington public corporation  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of KING COUNTY, a home rule charter  
and Washington political subdivision, to be the free and voluntary act of such entity for the uses  
and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of

Washington,

residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of BRIDGE HOUSING  
CORPORATION, a California corporation, the Manager of NORTHGATE AFFORDABLE  
LLC, a Washington limited liability company, to be the free and voluntary act of such entity  
for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of

Washington,

residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss:

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of CAPITOL HILL HOUSING  
IMPROVEMENT PROGRAM, a Washington public corporation, the Manager of  
NORTHGATE AFFORDABLE LLC, a Washington limited liability company, to be the free  
and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the State of  
Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_



**EXHIBIT A**  
**To**  
**Memorandum of Ground Lease**

**Legal Description of the Premises**

[To be attached at execution]

## Schedule 5.4-1 to Development Agreement - List of Design Team

Team	Company and Address (email below)	Disciplines	Role	Work	Mobile
Northgate Affordable Housing	ANKROM MOISAN			503.245.7100	
	38 NW Davis St Portland, OR 97209				
	Jason Roberts		Principal		
	Laurie Linville-Gregston		Project Manager		503.924.9142
	Tania Feliciano		Sr Project Architect		
	Jenny Chapman		Sr Designer		
	Claire Corey		Associate		
	Leah Wheary		Interiors		503-702-7973
	COUGHLINPORTERLUNDEEN	CIVIL		206.343.0460	
	801 SECOND AVE SUITE 900 SEATTLE WA 98104				
	Kyle Malaspino, P.E.		Associate Principal	206.343.0460	206-228-7336
	Kevin Caprio		Engineer	206-343-0460	
HEWITT	101 Stewart Street, Suite 200, Seattle, Washington 98101 1048	LANDSCAPE		206.624.8154	
	Matthew Porteous				
	Kris Snider		Principal, Director of Design		
	Reese Cowan-Stewart				
KPFF	1601 Fifth Avenue, Suite 1600, Seattle, Washington 98101	STRUCTURAL		206.622.5822	
	Manny Golez		PE SE	206.926.0439	
	Greg Varney		PIC	206.926.0561	253.278.2665