

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

Date: September 18, 2025

To: Board of Commissioners

From: Benjamin M. Bentley, Secretary

Subject: **AGENDA**
Board Meeting of the Board of Commissioners
Thursday, September 25, 2025, 5 p.m.
901 N. Broadway Street
Knoxville, TN 37917

1. Call to Order.
2. Motion to add, delete or postpone agenda items.
3. Reports of officers and special presentations.
4. Approval is requested to execute the minutes for the *regular* meeting held on July 31, 2025 (no August meeting held). **(Item 4 Attachment)**

NEW BUSINESS

PROCUREMENT (Terry McKee)

5. Approval is requested to award the RFP of the mowing services (Q2514) to Tennessee Turf and Landscape. **(Item 5 Attachment)**

FINANCE (Nancy White)

6. Resolution authorizing the formation of Eastport ILP Holdings Corporation to assume the Limited Partnership and Special Limited Partnership interests of Eastport Development LP. **(Item 6 Attachment)**

REDEVELOPMENT (Jim Hatfield)

7. Resolution authorizing KCDC to enter into a PILOT agreement with DGA Fifth Ave LP to effectuate the closing for the development of 121 new affordable housing units located at 525 Fifth Avenue. **(Item 7 Attachment)**
8. Resolution authorizing a PILOT agreement between KCDC and Morningside Gardens Apts LP to effectuate a PILOT to support the acquisition and rehab of a 268-unit affordable housing complex at 1800 and 1837 Linden Avenue, Knoxville. **(Item 8 Attachment)**

9. Resolution authorizing a PILOT agreement between KCDC and Summit Towers Apts LP to effectuate a PILOT to support the acquisition and rehab of a 277-unit affordable housing complex at 201 Locust Street, Knoxville. **(Item 9 Attachment)**
10. Approval is requested to authorize the execution of an architecture design agreement with Design Innovation Architects in an amount not to exceed \$550,000 for the design of the renovation and expansion of the Boys and Girls Club at Western Heights. **(Item 10 Attachment)**

Unfinished Business
Public Forum
Adjournment

Next month's agenda review meeting will be held

Thursday, October 23, 2025 @ 5 p.m.

Next month's board meeting will be held

Thursday, October 30, 2025 @ 5 p.m.

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

BOARD MEETING MINUTES

The Board of Commissioners of Knoxville's Community Development Corporation met on **July 31, 2025** at 901 N. Broadway, Knoxville, Tennessee.

The meeting was called to order and a quorum declared present at 5:10 p.m.

Present: Chair Scott Broyles
Vice Chair Felix Harris
Treasurer Becky Wade
Commissioner Kim Henry
Commissioner Nadim Jubran
Commissioner Martha Tate

Absent: Commissioner Robert Whetsel

Approval to execute the minutes for the *regular* meeting held on June 26, 2025. **Commissioner Wade moved to approve. Commissioner Henry seconded the motion. All other Commissioners present voted "Aye."**

REDEVELOPMENT (Jim Hatfield)

Resolution regarding an amendment to the Development Agreement with respect to a redevelopment project located at approximately 203 of South Gay Street. **Commissioner Jubran moved to approve. Commissioner Henry seconded the motion. All other Commissioners present voted "Aye." Resolution 2025-20 is attached.**

Resolution authorizing the execution of a Development Agreement with Union Development Holdings, LLC with respect to the development of a project at 0 Lovell Road and authorizing the formation of Union at Smoky Mountain GP Corporation and Union at Smoky Mountain, LP. **Commissioner Wade moved to approve. Commissioner Henry seconded the motion. All other Commissioners present voted "Aye." Resolution 2025-21 is attached.**

Preliminary Bond Resolution authorizing the issuance of \$20M of revenue bonds to support the financing of new affordable housing development project consisting of approximately 100 units located at 338 Lovell Road in Knoxville. **Commissioner Jubran moved to approve. Commissioner Harris seconded the motion. Commissioner Henry was recused. All other Commissioners present voted "Aye." Resolution 2025-22 is attached.**

PUBLIC FORUM

None

UNFINISHED BUSINESS

None

ADJOURNMENT

With no further business to come before the Board, the meeting adjourned by consent at 5:19 p.m.

Scott J. Broyles, Chair

Approved: September 26, 2025

ATTEST:

Benjamin M. Bentley, Secretary

Approved: September 26, 2025

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

BOARD ACTION FORM - ITEM #5

MEETING DATE	September 25, 2025
AGENDA ITEM DESCRIPTION	Approval is request to award the RFP for Mowing Services Q2514 to East Tennessee Turf and Landscape.
SUBMITTED BY	Name, Title / Department: Terry McKee, Procurement Director
MEETING TYPE	<input checked="" type="checkbox"/> Regular <input type="checkbox"/> Special <input type="checkbox"/> Annual
CLASSIFICATION	<input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Approval
BUDGET / FINANCIAL IMPACT	Budgeted: \$ 626,949.10 Expenditure: \$ 626,949.10 Source of Funds: Operating Funds
APPROVAL / REVIEWS	<input checked="" type="checkbox"/> Department Head /VP <input checked="" type="checkbox"/> Budget/Finance <input checked="" type="checkbox"/> Executive Director/CEO <input type="checkbox"/> Legal Counsel: Other – Name/Title: Terry McKee/Procurement Director
<u>BACKGROUND</u>	
<p>1. What is the objective of this action? This provides a vendor for mowing services as needed by KCDC's properties.</p>	
<p>2. Why is the action needed now? The current award has reached its maximum length of five years. Accordingly KCDC issued a RFP and received proposals for these services.</p>	
<p>3. Who are the parties involved and what are their roles (if appropriate)? When Property Managers and KCDC's Maintenance Director decide, the vendor will begin the mowing season under the terms of the proposal. KCDC can delay mowings when conditions warrant but KCDC is obligated to a minimum of 28 cuts per year. KCDC has past positive experiences with the recommended vendor (incumbent).</p>	
<p>4. What are the long-term and short-term exposures? The short and long term exposures to KCDC are paying the vendor for the minimum of 28 cuts per year (plus any additional services needed). The \$626,949.10 is reflective of 28 cuts in a year for all properties. Actual costs may vary due to a longer mowing season and leaf removal service required.</p>	
HISTORICAL / TRANSACTIONAL INFORMATION (who, when, where)	KCDC needs mowing services during the mowing season (March through September) and during the leaf collection season. This award provides a vendor at a fixed rate to provide these services.
ATTACHMENTS	Proposal tabulation form with pertinent information



Benjamin M. Bentley, Executive Director/CEO

901 N. Broadway • Knoxville, TN 37917
865.403.1100 • Fax 865 403 1117
800.848.0298 (Tennessee Relay Center)
www.kcdc.org

TO: The KCDC Board

FROM: Benjamin M. Bentley, Secretary

DATE: September 3, 2025

SUBJECT: Approval of staff awarding the RFP for Mowing Services Q2514.

KCDC's Procurement Policy requires written formal solicitations (publicly advertised and opened) for services that may exceed \$50,000. Staff requests Board approval of the following recommendation.

Scope of Work	Mowing Services (as needed)
Funding Source	Operating funds
Total Award Amount	\$626,949.10 (this is an approximation based on the guaranteed 28 cuts and is subject to fluctuation depending on weather cycles).
Review Committee	Darlene Farmer, Property Manager Tim Hatmaker, Maintenance Director James Pruitt, Property Manager Terry McKee, IT and Procurement Director
Solicitation Type	Request for Proposals
Vendor for Award	Tennessee Turf and Landscape

Scoring Matrix	
Company	
Alpha One Lawn Care Service	201.00
East Tennessee Turf and Lawn	256.58
Greenway Lawn Care, Inc.	242.82

Notice of this solicitation was distributed through the following KCDC centric methods to achieve the widest possible dissemination of the opportunity:

Registered Vendors. Vendors who have registered on-line with KCDC and indicated an interest in providing these goods or services receive an automated email with a link to the solicitation document.

KCDC Webpage. The solicitation document and all related documents are posted to KCDC's Web Page for all interested parties to have access to whether they have ever registered with KCDC.

KCDC Bulletin Boards. KCDC property offices receive a copy of each solicitation to post on their bulletin boards for residents to consider should they own, work for or otherwise know of businesses that may be interested in the work.

This solicitation was distributed through the following "distribution" groups for possible distribution to their members and/or contacts. This is part of our outreach to the widest possible marketplace as well as our outreach to small, minority, woman and veteran owned businesses:

Black Contractors Association+

Centro Hispano de East Tennessee+

Dodge Data & Analytics

Knox County's Supplier Diversity Office*+

Knoxville Area Urban League+

Knoxville Chamber Partnership

Knoxville's DBAC Office*+

Knoxville Equity Partners+

SCORE

SERC

Small Business Administration

Tennessee Minority Supplier Development Council+

Tennessee Small Business Development Center

Tennessee Valley Authority Diversity Outreach*+

U.S. Department of Commerce Minority Business Development Agency+

WJBE Radio+

* Denotes an organization promoting/assisting Woman Owned Businesses

+ Denotes an organization promoting/assisting Minority Owned Businesses

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

BOARD ACTION FORM - ITEM #6

MEETING DATE	September 25, 2025
AGENDA ITEM DESCRIPTION	Resolution authorizing the formation of Eastport ILP Holdings Corporation to assume the Limited Partnership and Special Limited Partnership interest of Eastport Development LP.
SUBMITTED BY	Name, Title / Department: Nancy White, CFO
MEETING TYPE	<input checked="" type="checkbox"/> Regular <input type="checkbox"/> Special <input type="checkbox"/> Annual
CLASSIFICATION	<input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Approval
BUDGET / FINANCIAL IMPACT	Budgeted: \$ <u>n/a</u> Expenditure: \$ <u>n/a</u> Source of Funds:
APPROVAL / REVIEWS	<input checked="" type="checkbox"/> Department Head /VP <input type="checkbox"/> Budget/Finance <input checked="" type="checkbox"/> Executive Director/CEO <input checked="" type="checkbox"/> Legal Counsel: <u>BBS</u> Other – Name/Title:

BACKGROUND

1. What is the objective of this action?

Approval for formation of Eastport ILP Holdings Corporation to assume partner ownership interest from current partner's due to the expiration of the statutory tax credit compliance period ending December 31, 2025 and current partner's interest in exiting the Eastport Development LP partnership.

2. Why is the action needed now?

In order to assume LP and SLP partnership interest of Eastport Development LP.

3. Who are the parties involved and what are their roles (if appropriate)?

Passport Development Corporation, a KCDC instrumentality, is the General Partner of Eastport Development LP. The proposed Eastport ILP Holdings Corporation will assume BF Garden Empire Tax Credit Fund's limited partnership (LP) interest and BCCC, Inc. special limited partnership (SLP) interest.

4. What are the long-term and short-term exposures?

None.

HISTORICAL / TRANSACTIONAL INFORMATION (who, when, where)	This will be a new KCDC entity to transfer ownership interest in an existing Limited Partnership.
ATTACHMENTS	Resolution

RESOLUTION NO. 2025-_____

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION AUTHORIZING THE FORMATION OF EASTPORT ILP HOLDINGS CORPORATION

WHEREAS, Knoxville's Community Development Corporation ("KCDC") is the housing, redevelopment and urban renewal authority of the City of Knoxville, Tennessee (the "Municipality") and is duly incorporated pursuant to Sections 13-20-101 *et seq.*, Tennessee Code Annotated (the "Act"); and

WHEREAS, pursuant to Tenn. Code Ann. § 13-20-104(a)(6), housing and redevelopment authorities in Tennessee are authorized to own, operate, assist, or otherwise participate in (directly or through a partnership, a limited liability company, or other entity in which the authority, or an entity affiliated with an authority, is a partner, member, or otherwise participates in the activities of the entity) mixed-finance projects; and

WHEREAS, pursuant to Tenn. Code Ann. § 13-20-104(b), housing and redevelopment authorities in Tennessee are authorized to cause the formation of corporations to carry out their powers under the Act; and

WHEREAS, Passport Development Corporation, an instrumentality of KCDC, is the general partner of Eastport Development LP (the "Partnership"), a Tennessee limited partnership which owns The Residences at Eastport located at 539 McConnell Street (the "Project") under a ground lease from KCDC; and

WHEREAS, the Project previously received an allocation of Low-Income Housing Tax Credits, resulting in an equity investment in the Project by Boston Capital Direct Placement, a Limited Partnership, as the Investment Limited Partner and BCCC, Inc. as the Special Limited Partner (collectively, together with each of their respective successors and assigns, "Boston Capital"); and

WHEREAS, in anticipation of the expiration of the statutory tax credit compliance period on December 31, 2025, KCDC and Boston Capital have agreed that Boston Capital will assign its limited partnership interest(s) in the Partnership (the "Investor Partnership Interests") to an instrumentality of KCDC; and

WHEREAS, the Board desires to approve and authorize such documentation as is necessary for KCDC to form Eastport ILP Holdings Corporation (the "Corporation"), including, but not limited to, the charter (the "Charter") and bylaws (the "Bylaws") of the Corporation

(collectively, the "Corporate Documents"), the forms of which have been submitted to KCDC and shall be filed with the records of KCDC; and

WHEREAS, the Corporation will accept the assignment of the Limited Partnership Interests and will hold such Limited Partnership Interests; and

WHEREAS, as set forth in the Charter submitted to KCDC, KCDC desires to appoint its Chairman, Vice-Chairman and Treasurer as the initial Board of Directors of the Corporation.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION:

RESOLVED, that the Chairman, Vice Chairman, Secretary, Assistant Secretary and/or any other officer of KCDC, acting alone or in combination with one another (individually and collectively the "Authorized Officers"), is/are authorized and empowered to execute and cause to be filed or recorded, as applicable, the Corporate Documents; and, further

RESOLVED, that the Charter and the Bylaws shall be in substantially the forms submitted, which are hereby approved, with such completions, omissions, insertions and changes as may be approved by the officers executing them, their execution to constitute conclusive evidence of their approval of any such completions, omissions, insertions and changes; and, further

RESOLVED, that the Authorized Officers, acting alone or in combination with one another, are authorized and empowered to execute and cause to be filed or recorded, as applicable, any and all other instruments, documents and agreements deemed necessary or desirable by the Authorized Officers in order to form the Corporation, all in the form approved by the Authorized Officers executing same, the execution of same by such Authorized Officers to constitute conclusive evidence of the approval of same; and, further

RESOLVED, that it is in the best interest of KCDC to organize the Corporation for the purposes herein described and to enter into, file and/or record the Charter and Bylaws; and, further,

RESOLVED, that any and all other actions heretofore taken on behalf of KCDC by the Authorized Officers to execute and deliver any of the agreements, documents or instruments authorized by the foregoing resolutions, or to take any of the other actions authorized by the foregoing resolutions, and all acts of the Authorized Officers that are in conformity with the purposes and intent of these resolutions, are hereby approved, ratified and confirmed in all respects.

BE IT THEREFORE RESOLVED that this Resolution shall be effective this 25th day of September, 2025.

**KNOXVILLE'S COMMUNITY
DEVELOPMENT CORPORATION**

By: _____
Secretary

35140872.1

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

BOARD ACTION FORM #7

MEETING DATE	September 25, 2025
AGENDA ITEM DESCRIPTION	Resolution authorizing KCDC to enter into a PILOT agreement with DGA Fifth Ave LP to effectuate the closing for the development of 121 new affordable housing units located at 525 Fifth Avenue.
SUBMITTED BY	Name, Title / Department: James Hatfield, CDO
MEETING TYPE	<input checked="" type="checkbox"/> Regular <input type="checkbox"/> Special <input type="checkbox"/> Annual
CLASSIFICATION	<input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Approval
BUDGET / FINANCIAL IMPACT	Budgeted: \$ <u>n/a</u> Expenditure: \$ <u>n/a</u> Source of Funds:
APPROVAL / REVIEWS	<input checked="" type="checkbox"/> Department Head /VP <input type="checkbox"/> Budget/Finance <input checked="" type="checkbox"/> Executive Director/CEO <input checked="" type="checkbox"/> Legal Counsel: BBS Other – Name/Title:
<u>BACKGROUND</u>	
<p>1. What is the objective of this action? A PILOT agreement is needed to provide economic support for this new affordable housing development. The project is expected to start construction late this year and will be complete by mid-2027. The development will consist of a mix of one, two and three bedroom units and will have a total project cost of \$48M.</p>	
<p>2. Why is the action needed now? Closing for this project is scheduled for late October or early November and board approval is needed in advance of closing.</p>	
<p>3. Who are the parties involved and what are their roles (if appropriate)? KCDC as ground lessor under the PILOT. DGA Fifth Ave LP as the lessee under the PILOT. DGA Residential as project sponsor and developer. US Bank as project tax credit equity and construction lender and Walker Dunlap as perm lender originator.</p>	
<p>4. What are the long-term and short-term exposures? There is minimal exposure to KCDC under the development agreement terms with DGA residential for this project.</p>	
HISTORICAL / TRANSACTIONAL INFORMATION (who, when, where)	KCDC board approved the entity formation and development agreement for this project in June 2024. DGA Residential have partnered on previous deals together including Grosvenor, Willow Place, and Bluegrass.
ATTACHMENTS	Resolution

RESOLUTION NO. 2025-_____

RESOLUTION OF THE BOARD OF COMMISSIONERS OF KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION REGARDING A PAYMENT IN LIEU OF TAX TRANSACTION WITH DGA FIFTH AVE LP

WHEREAS, the Board of Commissioners of Knoxville's Community Development Corporation ("KCDC") has met pursuant to proper notice; and

WHEREAS, KCDC is the housing, redevelopment and urban renewal authority of the City of Knoxville, Tennessee (the "City") and is duly incorporated pursuant to Sections 13-20-101 et seq., Tennessee Code Annotated; and

WHEREAS, to induce DGA Fifth Ave LP, a Tennessee limited partnership (the "Applicant"), to acquire, construct and equip an approximately 121-unit housing facility for low income citizens to be known as Riella at 5th (the "Project"), KCDC will acquire certain real and personal property related to the Project, and KCDC will lease said property to the Applicant on the terms and conditions set forth in the Lease referenced herein; and

WHEREAS, KCDC has received a letter from the Mayor of the City expressing her support for the Project pursuant to Tenn. Code Ann. § 48-101-312(b)(4)(C); and

WHEREAS, there has been submitted to KCDC a form of Lease (the "Lease"), between KCDC and the Applicant, which provides certain payments in lieu of tax as provided therein and which KCDC proposes to execute to carry out the transaction described above, a copy of which instrument shall be filed with the records of KCDC.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION:

1. It is hereby found and determined that the acquisition and ownership of the Project will promote industry, trade, commerce and housing in the State of Tennessee and will increase the availability of affordable housing and employment in the City.

2. The Chairman or the Vice Chairman of KCDC is hereby authorized and directed to execute, and, where requested, the Secretary or Assistant Secretary is authorized to attest, and/or any other officer of KCDC, acting alone or in combination with one another (individually and collectively the "Authorized Officers"), is (are) hereby authorized and empowered to execute the Lease and deliver the Lease to the Applicant.

3. KCDC is hereby authorized and directed to own the Project pursuant to the terms of the Lease.

4. The Lease shall be in substantially the form submitted, which is hereby approved, with such completions, omissions, insertions and changes as may be approved by the officer executing it, his or her execution to constitute conclusive evidence of his or her approval of any such omissions, insertions and changes.

5. The officers of KCDC are hereby authorized and directed to execute, deliver and file such other certificates and instruments and to take all such further action as they may consider necessary or desirable in connection with the consummation of the transactions described above, including, without limitation, executing such documents as any lender of the Applicant may request in connection with its liens on the Project.

6. Any authorization herein to execute any document shall include authorization to record such document where appropriate.

7. All other acts of the officers of KCDC which are in conformity with the purposes and intent of this resolution are hereby approved and confirmed.

Approved this 25th day of September, 2025.

**KNOXVILLE'S COMMUNITY
DEVELOPMENT CORPORATION**

By: _____
Secretary

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

BOARD ACTION FORM #8

MEETING DATE	September 25, 2025
AGENDA ITEM DESCRIPTION	Resolution authorizing a PILOT agreement between KCDC and Morningside Gardens Apts LP to effectuate a PILOT to support the acquisition and rehab of a 268-unit affordable housing complex at 1800 and 1837 Linden Avenue, Knoxville.
SUBMITTED BY	Name, Title / Department: Jim Hatfield, CDO, Redevelopment
MEETING TYPE	<input checked="" type="checkbox"/> Regular <input type="checkbox"/> Special <input type="checkbox"/> Annual
CLASSIFICATION	<input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Approval
BUDGET / FINANCIAL IMPACT	Budgeted: \$ <u>n/a</u> Expenditure: \$ <u>n/a</u> Source of Funds:
APPROVAL / REVIEWS	<input checked="" type="checkbox"/> Department Head /VP <input type="checkbox"/> Budget/Finance <input checked="" type="checkbox"/> Executive Director/CEO <input checked="" type="checkbox"/> Legal Counsel: BBS Other – Name/Title:

BACKGROUND

1. What is the objective of this action?

This resolution will provide for a 20-year PILOT to assist in the economics in order to facilitate the acquisition and renovation of the Morningside Gardens. The \$15M+ reno scope include the replacement of roofs and siding as needed, repaving and striping of parking lots, upgrading mechanical systems and electrical systems, plumbing upgrades, upgrading landscaping, a full overhaul of security systems (monitored 24/7) and upgraded exterior lighting. In-unit improvements include the replacement of kitchen cabinets, countertops, vanities, interior and exterior doors, and tubs and showers as needed; all new LVT flooring, plumbing fixtures, windows, smoke detectors, new energy-efficient appliances, ceiling fans and lighting as well as painting throughout. Additionally, the site will be updated to meet UFAS standards throughout.

2. Why is the action needed now?

The sponsor, Paths Development, has received an allocation of volume cap and 4% credits earlier this year. They are planning on closing later this year on the debt and equity and beginning the renovation next year.

3. Who are the parties involved and what are their roles (if appropriate)?

KCDC as lessor under the PILOT lease. Paths Development as sponsor of the project and lessee under the lease. Paths Management Services and Paths Development are the affiliated property management and real estate development divisions of Nuveen Real Estate that have extensive affordable housing experience in 14 states with over 14,200 affordable housing units under management. Paths is based in NYC.

4. What are the long-term and short-term exposures?

This PILOT lease structure is customary and is typical for affordable housing developments in Knoxville.

HISTORICAL / TRANSACTIONAL INFORMATION (who, when, where)	None.
ATTACHMENTS	Resolution, mayor support letter and draft PILOT lease

RESOLUTION NO. 2025-_____

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF KNOXVILLE'S
COMMUNITY DEVELOPMENT CORPORATION REGARDING A PAYMENT
IN LIEU OF TAX TRANSACTION WITH MORNINGSIDE GARDENS APTS LP**

WHEREAS, the Board of Commissioners of Knoxville's Community Development Corporation ("KCDC") has met pursuant to proper notice; and

WHEREAS, KCDC is the housing, redevelopment and urban renewal authority of the City of Knoxville, Tennessee (the "City") and is duly incorporated pursuant to Sections 13-20-101 et seq., Tennessee Code Annotated; and

WHEREAS, to induce Morningside Gardens Apts LP, a Delaware limited partnership (the "Applicant"), to acquire, construct, rehabilitate and equip the Morningside Gardens Apartments, a 268 unit housing facility for low income citizens (the "Project"), KCDC will acquire certain real and personal property related to the Project, and KCDC will lease said property to the Applicant on the terms and conditions set forth in the Lease referenced herein; and

WHEREAS, KCDC has received a letter from the Mayor of the City expressing her support for the Project pursuant to Tenn. Code Ann. § 48-101-312(b)(4)(C); and

WHEREAS, there has been submitted to KCDC a form of Lease (the "Lease"), between KCDC and the Applicant, which provides certain payments in lieu of tax as provided therein and which KCDC proposes to execute to carry out the transaction described above, a copy of which instrument shall be filed with the records of KCDC.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION:

1. It is hereby found and determined that the acquisition and ownership of the Project will promote industry, trade, commerce and housing in the State of Tennessee and will increase the availability of affordable housing and employment in the City.

2. The Chairman or the Vice Chairman of KCDC is hereby authorized and directed to execute, and, where requested, the Secretary or Assistant Secretary is authorized to attest, and/or any other officer of KCDC, acting alone or in combination with one another (individually and collectively the "Authorized Officers"), is (are) hereby authorized and empowered to execute the Lease and deliver the Lease to the Applicant.

3. KCDC is hereby authorized and directed to own the Project pursuant to the terms of the Lease.

4. The Lease shall be in substantially the form submitted, which is hereby approved, with such completions, omissions, insertions and changes as may be

approved by the officer executing it, his or her execution to constitute conclusive evidence of his or her approval of any such omissions, insertions and changes.

5. The officers of KCDC are hereby authorized and directed to execute, deliver and file such other certificates and instruments and to take all such further action as they may consider necessary or desirable in connection with the consummation of the transactions described above, including, without limitation, executing such documents as any lender of the Applicant may request in connection with its liens on the Project.

6. Any authorization herein to execute any document shall include authorization to record such document where appropriate.

7. All other acts of the officers of KCDC which are in conformity with the purposes and intent of this resolution are hereby approved and confirmed.

Approved this 25th day of September, 2025

KNOXVILLE'S COMMUNITY
DEVELOPMENT CORPORATION

By: _____
Secretary



August 18, 2025

Benjamin Bentley
Knoxville's Community Development Corporation
901 N. Broadway
Knoxville, Tennessee 37917

Re: Support Letter for Morningside Gardens Apts, LP

Dear Mr. Bentley:

I understand that Knoxville's Community Development Corporation ("KCDC"), through its proposed lessee, Morningside Gardens Apts, LP, is undertaking the acquisition and renovation of a multi-family apartments located at 1800 Linden Ave and 1837 Linden Ave currently owned by Morningside 2192 TN LLC. I understand that this project entails renovating a 268-unit apartment development providing seniors affordable housing for the local community. To provide financing for this project, Morningside Gardens Apt, LP, intends to apply for an allocation of low-income housing tax credits from the Tennessee Housing Development Agency to ensure these apartments remain as affordable for the next 20 years.

Pursuant to Tennessee Code Annotated §48-101-312, and because the City has not formed a health, educational, and housing facility corporation, KCDC is permitted to enter into an agreement for payments in lieu of taxes with respect to this project provided that I, as the chief executive officer of the City, provide a letter in support of the project. Provided that the project receives an allocation of low-income housing tax credits, please accept this letter as evidence of my support of this project for payments in lieu of taxes for a term of up to 20 years with payment amount set at \$76,739.36 to City of Knoxville and \$55,322.00 to Knox County. The provision of affordable housing for low-income senior residents is an important goal for the City and this project is consistent with that goal.

Sincerely,



Indya Kincannon
Mayor

Approved as to form:



Charles W. Swanson
Director of Law

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

(a housing and redevelopment authority of
the City of Knoxville, Tennessee organized under Tennessee law)

TO

MORNINGSIDE GARDENS APTS LP

(a Delaware limited partnership)

LEASE

DATED AS OF _____, 2025

... ..
This instrument prepared by:
BASS, BERRY & SIMS PLC (RES)
900 S. Gay Street, Suite 1700
Knoxville, Tennessee 37902

LEASE

This Lease, made and entered into as of _____, 2025, by and between KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION, a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Tennessee Housing Authorities Law, Tenn. Code Ann. §§ 13-20-101, et seq. ("Lessor"), and MORNINGSIDE GARDENS APTS LP, a Delaware limited partnership ("Lessee").

WITNESSETH:

WHEREAS, Lessor is a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Tennessee Housing Authorities Law, Tenn. Code Ann. §§ 13-20-101, et seq., as amended (the "Act"), and is authorized under the Act to acquire, whether by purchase, exchange, gift, lease, or otherwise, and to own, lease and dispose of properties for the purpose of providing safe and sanitary dwelling accommodations for persons of low income;

WHEREAS, in order to encourage Lessee to cause the acquisition and renovation of a low-income housing facility consisting of approximately 268 apartment units known as Morningside Gardens Apartments located in the City of Knoxville, Tennessee (the "Project"), thereby furthering the purposes of the Act, Lessor desires to lease to Lessee and Lessee desires to rent from Lessor certain real property and equipment hereinafter more particularly described, on the terms and conditions set forth herein; and

WHEREAS, pursuant to Tenn. Code Ann. § 48-101-312(b)(4)(C), the Mayor of the City of Knoxville, Tennessee submitted a letter dated August 18, 2025 to the Lessor supporting the Project and approving the Lessor to negotiate and accept from Lessee payments in lieu of ad-valorem taxes; and

NOW, THEREFORE, Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and the covenants and agreements hereinafter contained to be kept and performed by Lessee, does by these presents demise, lease and let unto Lessee, and Lessee does by these presents hire, lease and rent from Lessor, for the Term (as defined below) and upon the conditions hereinafter stated, the real property described in Exhibit A attached hereto, together with all facilities and improvements now existing or hereafter constructed thereon by Lessee or otherwise and the equipment described in Exhibit B attached hereto;

UNDER AND SUBJECT, however, to deed restrictions, covenants, easements, reservations, rights of way and other encumbrances applicable to the real property and equipment to be leased and existing as of the date hereof and any other encumbrance hereafter existing that is not created by Lessor; and

UNDER AND SUBJECT to the following terms and conditions:

ARTICLE I.

Definitions

Section 1.01 In addition to the words, terms and phrases elsewhere defined in this Lease, the following words, terms and phrases as used in this Lease shall have the following respective meanings:

"Acquisition Deed" shall mean the deed pursuant to which Lessor acquires title to the Leased Land.

"Act" shall mean Tenn. Code Ann. §§ 13-20-101, et seq., as amended.

"Basic Rent" shall mean the amounts described in Section 4.01.

"Buildings" shall mean the Buildings to be renovated on the Leased Land by Lessee pursuant to Article XI.

"City" shall mean the City of Knoxville, Tennessee.

"Completion Date" shall mean the earlier of (i) the date that is thirty-six (36) months after the date hereof and (ii) the date that the renovations to the Buildings described in Article XI are substantially complete, as evidenced by the issuance of a certificate of occupancy. Lessee shall provide a certificate to Lessor evidencing the Completion Date no later than thirty (30) days after the occurrence of the Completion Date.

"County" shall mean Knox County, Tennessee.

"Equipment" shall mean the machinery, equipment and other tangible personal property described on Exhibit B attached hereto as from time to time supplemented.

"Force Majeure" means fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the applicable party's reasonable control. Where this Lease expressly provides that a party's obligations are subject to Force Majeure, then delay or non-performance on the part of such party will be excused upon the occurrence and during the continuance of such event of Force Majeure, provided that such party promptly gives the other party written notice of the occurrence and abatement of such event of Force Majeure.

"Improvements" shall mean the Buildings and the other improvements on the Leased Land.

"Investor Limited Partner" shall mean [CREA Morningside Gardens, LLC, a Delaware limited liability company], as the investor limited partner of Lessee, and its successors and assigns.

"Lease" shall mean this instrument as originally executed or as it may from time to time be supplemented or amended by one or more instruments supplemental hereto.

"Leased Land" shall mean the real property described in Exhibit A attached hereto.

"Leased Property" shall mean the Equipment and the Leased Land, together with the Buildings and related improvements.

"Lender" shall mean [Berkadia Commercial Mortgage LLC, a Delaware limited liability company] and its successors and assigns.

"Lessee" shall mean Morningside Gardens Apts LP, a Delaware limited partnership.

"Lessor" shall mean Knoxville's Community Development Corporation, a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Act.

"Rent" shall mean collectively, the Basic Rent and the Additional Rent.

"Tax Credits" shall mean any low income housing tax credits available at the Leased Property pursuant to Section 42 of the Internal Revenue Code of 1986, as amended.

"Tax Year" shall mean each annual period beginning on January 1 of each year and ending on December 31 of that year.

"Term" shall mean the term described in Article III.

ARTICLE II.

Representations of Lessee

Section 2.01 Lessee makes the following representations and warranties to induce Lessor to enter into this Lease:

(a) Lessee is a limited partnership duly formed, existing and in good standing under the laws of the State of Delaware and duly authorized to conduct business in the State of Tennessee, has full power and authority to enter into this Lease and to perform all obligations contained herein and therein, and has, by proper action, been duly authorized to execute and deliver this Lease and, when executed and delivered by the parties thereto, this Lease will constitute the valid and binding obligation of Lessee enforceable in accordance with its terms.

(b) Neither the execution and delivery of this Lease, nor the consummation of the transactions contemplated herein by Lessee, nor the fulfillment of or compliance with the terms and conditions of this Lease, does or will conflict with or result in a breach of the terms, conditions or provisions of any restriction or internal governing document of Lessee or any agreement or instrument to which Lessee is now a party or by which it is bound, or any existing law, rule, regulation, judgment, order or decree to which it is subject, or constitutes a default under any of the foregoing or, except as contemplated hereby, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessee under the terms of any instrument or agreement.

(c) There are no proceedings pending, or to the knowledge of Lessee threatened, against or affecting Lessee in any court or before any governmental authority, arbitration board or tribunal which involve the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of Lessee, or the ability of Lessee to perform its obligations under this Lease. Lessee is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(d) No event has occurred and no condition exists with respect to Lessee that would constitute an Event of Default under this Lease, as defined in Article XIV, or which, with the lapse of time or with the giving of notice, or both, would become such an Event of Default.

(e) To the knowledge of Lessee, and in reliance upon, and except as disclosed in, an independent third-party report obtained by Lessee, there are no substances, materials, wastes, pollutants or contaminants located on the Leased Property that are regulated under any environmental law or regulation except those materials and substances that are maintained in compliance with such laws and regulations, and Lessee shall not permit material quantities of such substances, materials, wastes, pollutants or contaminants to exist on the Leased Property during the Term of this Lease except in compliance with such laws and regulations.

ARTICLE III.

Lease Term

Subject to the provisions contained in this Lease, this Lease shall be in full force and effect for a Term commencing on the date hereof and ending on the twentieth (20th) anniversary of the Completion Date, unless terminated earlier, in accordance with the terms hereof. Lessee shall provide a certificate to Lessor evidencing the Completion Date no later than thirty (30) days after the occurrence of the Completion Date.

Notwithstanding the foregoing, the Term of this Lease may be terminated upon exercise by Lessee of the purchase option described in Article XV hereof.

ARTICLE IV.

Rent

Section 4.01 Basic Rent. Lessee will pay to Lessor without notice or demand, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, as Basic Rent on each January 1 during the Term, the sum of \$1.00. Lessor acknowledges that Lessee has prepaid the Basic Rent for the Term on the date hereof.

Section 4.02 Additional Rent. Lessee agrees to pay, as additional rent, all other amounts, liabilities and obligations which Lessee herein assumes or agrees to pay (including, without limitation, the obligations in Article XI hereof). Without limiting the foregoing, Lessor and Lessee recognize that the Leased Property has been conveyed to Lessor subject to or contemporaneously with the execution of a deed of trust securing the financing of the acquisition of and renovations to the Leased Property. Lessee agrees to make all payments of debt service relating to such financing. Lessor will execute and deliver commercially reasonable documents pledging its interest in the Leased Property, by joinder or otherwise, in connection with Lessee's financing or refinancing of the Leased Property. In the event of any failure on the part of Lessee to pay any amounts, liabilities or obligations described in this paragraph, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of the Basic Rent. Notwithstanding the terms of this Lease, the Additional Rent shall not be treated as rent for federal or state tax purposes and the items of Additional Rent shall be treated for tax purposes as determined by the Lessee in its sole discretion as the owner of the Leased Property for federal and state tax purposes.

ARTICLE V.

Compliance with Laws; Permitted Contests;

Lessee's Acceptance of Leased Property; Reports; Lease of Equipment; Net Lease

Section 5.01 Compliance with Laws. Lessee shall throughout the Term and at no expense to Lessor promptly cure any violations under all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities, which are or shall become lawfully applicable to the Leased Property, the repair and alteration thereof, and the use or manner of use of the Leased Property, whether or not such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not they shall involve any change of governmental policy or shall require structural or extraordinary repairs, alterations or additions, irrespective of the cost thereof.

Section 5.02 Permitted Contests. Lessee shall not be required to comply or cause compliance with the laws, ordinances, orders, rules, regulations or requirements referenced in Section 5.01, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

Section 5.03 Acceptance of Leased Property. Lessee acknowledges that, as between Lessor and Lessee, it has examined the Leased Land and the state of Lessor's title thereto prior to the making of this Lease and knows the condition and state thereof, including, without limitation, the environmental and soil

conditions, as of the first day of the term of this Lease, and accepts the same in said condition and state; that no representations as to the condition or state thereof have been made by representatives of Lessor; and that in entering into this Lease, Lessee is relying solely upon its own examination thereof. Lessee shall have sole and exclusive possession of the Leased Property during the Term.

Section 5.04 Lease of Equipment. Lessor does hereby demise, lease and let unto Lessee, and Lessee does hereby lease and rent from Lessor, for the Term and upon the conditions herein stated, all Equipment. Lessee shall have sole and exclusive possession of the Equipment during the Term.

Section 5.05 Net Lease. This is a "net lease" and the Rent and all other sums payable hereunder to or for the account of Lessor shall be paid promptly and without set off, counterclaim, abatement, suspension, deduction, diminution or defense.

ARTICLE VI.

Title and Tax Benefits

Section 6.01 No Conveyance of Title by Lessor. Lessor covenants and agrees that, except as set forth herein, during the Term of this Lease, it will not convey, pledge, encumber or suffer or permit the conveyance of, by any voluntary act on its part, its title to the Leased Property to any person, firm, corporation, or other entity whatsoever, irrespective of whether any such conveyance or attempted conveyance shall recite that it is expressly subject to the terms of this Lease unless such conveyance is consented, in writing, to by Lessee, its mortgagee and Investor Limited Partner. Lessor will not create any lien, encumbrance or charge upon its interest in the Leased Property except for any such lien, encumbrance or charge otherwise created by this Lease or consented to by Lessee.

Section 6.02 Tax Benefits. Lessee shall be deemed throughout the term of this Lease to own all Improvements and all alterations, additions, equipment and fixtures built, made or installed by Lessee in, on or under the Improvements or on the Property for federal tax purposes and shall be entitled to all of the tax attributes of ownership thereof, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Code, with respect to the Improvements and the equipment therein, and Lessee shall have the right to amortize and depreciate capital costs and to claim any other federal tax benefits attributable to the Improvements and the equipment therein. The Lessor expressly waives and relinquishes in favor of the Lessee any rights to claim the benefit of or to use any federal or state tax credits or depreciation benefits that are currently or may become, available during the Term as a result of any equipment, furniture or fixtures installed by the Lessee on the Improvements whether or not such items become a part of the realty, and the Lessor agrees to execute and deliver to Lessee any election form required to evidence the Lessee's right to claim tax credits or depreciation benefits on improvements made or property installed by the Lessee. Lessor shall execute and deliver other and further certificates, documents, and amendments to this Lease as reasonably requested by Lessee to confirm and establish that Lessee is the owner of the Leased Property for federal income and state franchise and excise tax purposes.

Section 6.03 Taxation of Improvements. This Lease is intended to be a lawful agreement between the Lessee and Lessor, as an instrumentality of a local government, for payments in lieu of taxes and therefore, the Buildings are assessed solely to Lessor and are subject to all applicable exemptions, all in accordance with Tennessee Code Annotated § 67-5-502(d).

ARTICLE VII.
Taxes and Other Charges

Section 7.01 **Taxes and Other Governmental Charges.** Lessee agrees, subject to the provisions of Section 7.04, to pay and discharge, as Additional Rent, punctually as and when the same shall become due and payable without penalty, all ad valorem taxes that at any time during the Term shall be or become due and payable by Lessor or Lessee and that shall be levied, assessed or imposed upon, or that shall be or become liens upon, the Leased Property or any portion thereof or any interest of Lessor or Lessee therein, under and by virtue of any present or future law, statute, regulation or other requirement of any governmental authority.

Section 7.02 **Lessee Subrogated to Lessor's Rights.** To the extent of any payments of Additional Rent by Lessee under this Article VII, Lessee shall be subrogated to Lessor's rights in respect to the proceedings or matters relating to such payments, and any recovery in such proceedings or matter shall be used to reimburse Lessee for the amount of such Additional Rent so paid by Lessee.

Section 7.03 **Utility Services.** Lessee agrees that Lessor is not, nor shall it be, required to furnish to Lessee or any other user of the Leased Property any gas, water, sewer, electricity, light, heat, power or any other facilities, equipment, labor, materials or services of any kind pursuant to this Lease and Lessee agrees that it shall pay all costs and expenses related to the foregoing.

Section 7.04 **Payments in Lieu of Taxes.**

(a) **Recognition of Tax Status.** Lessee recognizes that under present law, including specifically the Act, the properties owned by Lessor are exempt from all taxation in the State of Tennessee. Lessee further recognizes that present law, including specifically the Act and Tenn. Code Ann. § 48-101-312(b)(4)(C), provides legal authority to Lessor to enter into agreements for payments in lieu of ad valorem property taxes, such as this Lease.

(b) **Administrative Provisions.** In furtherance of the agreements in this Section, it is agreed by and between the parties hereto that Lessee, in cooperation with Lessor, shall cause all of the Leased Property, including but not limited to, the Leased Land, the Buildings, the Equipment located in the Buildings or on the Leased Land, each expansion of any Building, the Equipment located in each expansion of any Building, and any other Equipment conveyed to Lessor hereunder to be valued and assessed separately by the assessor or other official or officials charged with the responsibility of assessing privately owned property in the area where the Leased Property is located at the time such privately owned property is valued or assessed. Lessee, in cooperation with Lessor, shall cause to be applied to the appropriate taxable value of each such portion of the Leased Property the tax rate or rates that would be applicable for state and local tax purposes if the property were then privately owned, and shall cause the county trustee or other official or officials charged with the responsibility of collecting taxes to submit annually to Lessor and Lessee a statement of the taxes which would otherwise then be chargeable to each such portion of the Leased Property. The right is reserved to Lessee to the same extent as if Lessee were the owner of the Leased Property to contest the validity or amount of any such assessment.

(c) **Payments in Lieu of Taxes.** In addition to Basic Rent and Additional Rent hereunder, Lessee and Lessor agree that Lessee shall pay directly to the City and the County: (i) for each Tax Year occurring during the period commencing on the date hereof through and including the day prior to the Completion Date, a payment in lieu of taxes equal to the ad valorem taxes that would otherwise be payable with respect to the Leased Property if such Leased Property were owned by Lessee and (ii) for each Tax Year occurring during the period commencing on the Completion Date through and including the

twentieth (20th) anniversary of the Completion Date, an annual payment in lieu of taxes to the County equal to \$55,322.00 and an annual payment in lieu of taxes to the City equal to \$76,739.36.

Amounts payable with respect to any partial Tax Years included within the Term will be prorated based upon the actual number of days included within such Tax Year. Any payment due with respect to a Tax Year that is not paid prior to the termination or expiration of this Lease shall not be extinguished as a result of such termination or expiration and shall survive such termination or expiration.

Notwithstanding anything to the contrary contained in this Section, this Lease shall not be extended except pursuant to an amendment in writing and executed by both the Lessor and Lessee. Such reduction in taxes otherwise payable shall not apply with regard to any other tax assessed against Lessee, its income, its other real property or its personalty. In the event Lessee assumes ownership of the Leased Property, Lessee shall begin paying all applicable ad valorem and other taxes directly to the City and the County, as assessed, but shall not make, from the date of such acquisition, any in lieu payments with respect to such property other than those payments that were unpaid at the time of such acquisition.

Notwithstanding anything to the contrary contained in this Section, in the event that Lessee fails to complete the renovation of the Buildings in accordance with Article XI hereof or the Leased Property becomes ineligible for Tax Credits due to a violation of the use restrictions (related to the Tax Credits) applicable to the Leased Property, then Lessee shall make a payment in lieu of taxes with respect to each Tax Year remaining in the Term on behalf of the Lessor to the City and the County in an amount equal to the ad valorem taxes that would otherwise be payable with respect to the Leased Property if such Leased Property were owned by Lessee.

(d) Credit for Taxes Paid. Nothing contained in this Section 7.04 is intended or shall be construed to require the payment by Lessee of any greater amounts in lieu of taxes than would be payable as taxes if the Leased Property were owned by Lessee. It is accordingly understood and agreed that the amount payable by Lessee in any year under the provisions of this Section 7.04 shall be reduced by the amount of any ad valorem taxes lawfully levied upon the Leased Property or any part thereof, or upon Lessee's leasehold estate therein, and actually paid by Lessee pursuant to the requirements of Section 7.01 hereof to the City and the County and to the extent that any such tax payments paid by Lessee pursuant to the requirements of Section 7.01 hereof for any year shall exceed the in-lieu-of-tax payments for such year otherwise provided in this Section 7.04 the amount payable by Lessee in any subsequent year under the provisions of this Section 7.04 shall be reduced by such excess amount.

(e) Timing of Payments. Each payment in lieu of taxes required by this Section 7.04 with respect to any Tax Year or partial Tax Year shall be paid not later than February 28th of the following year.

(f) Reports. On behalf of Lessor, Lessee shall, during the term of this Lease, submit on or before October 1 of each year to the Tennessee State Board of Equalization the annual report required to be submitted by it. In addition, within ninety (90) days after the conclusion of each Tax Year during the term hereof, Lessee agrees to provide a report to Lessor, in a form reasonably acceptable to Lessor, that includes the following information pertaining to tenant evictions: (i) the number of tenant evictions completed as well as initiated (however, not taken through the full eviction process but which resulted in the tenant relocating from the property) during the Tax Year; and (ii) for each such eviction or initiated eviction that resulted in a relocation, an explanation of the reason(s) for the eviction and unit type (one bedroom, two bedroom, etc.) involved, and (b) the period of time such tenant(s) have been residents of the Project.

(g) Payment Upon Termination or Expiration. Upon the termination of this Lease for any reason during a Tax Year, Lessee shall pay a pro-rated amount of the payments in lieu of taxes, if any, required by this Section 7.04 for the period that this Lease is in effect and for which no payments in lieu of taxes have been made up to the date of such termination.

(h) Cessation of Business. Except in the event Lessee shall terminate this Lease pursuant to Article IX of this Lease, in the event Lessee ceases the active operation (excluding temporary cessations due to Force Majeure events) of a low-income housing facility for eligible residents at the Leased Property, and notwithstanding any provision herein to the contrary, Lessee shall make payments in lieu of taxes beginning as of the date Lessee ceases such operation equal to the ad valorem taxes that Lessee otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by Lessee.

Section 7.05 Permitted Contests. Lessee shall not be required to pay any tax or assessment against the Leased Property or any part thereof, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings which shall operate to prevent the collection of the tax or assessment so contested or resulting from such contest and the sale of the Leased Property or any part thereof to satisfy the same. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

ARTICLE VIII.

Maintenance and Repair

Lessor shall not be required to rebuild or to make any repairs, replacements or renewals of any nature or description to the Leased Property or to make any expenditures whatsoever in connection with this Lease or to maintain the Leased Property in any way. Lessee expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of Lessor.

Lessee shall keep and maintain in good order, condition and repair (including any such repair as is required due to fire, storm or other casualty) the Leased Property and every part thereof and any and all appurtenances thereto. Lessee shall save Lessor harmless on account of claims for mechanics and materialmen's liens in connection with any work by Lessee, and any such liens shall exist only against Lessee's leasehold interest and shall be discharged, by bond or otherwise, within sixty (60) days after filing. Lessee shall keep and maintain the Leased Property in accordance with all directions, rules and regulations of the proper officials of the government agencies having jurisdiction, at the sole cost and expense of Lessee, provided that Lessee shall not be required to repair or restore the Leased Property following material damage from a fire or other casualty except that Lessor may require Lessee to remove any debris from the Leased Property following a fire or other casualty.

ARTICLE IX.

Condemnation

If during the Term, all or any part of the Leased Property be taken by the exercise of the power of eminent domain or condemnation, Lessee shall be entitled to and shall receive the entire award for the taking. If title to or control of all of the Leased Property shall be taken by the exercise of the power of eminent domain or condemnation, or if such use or control of a substantial part of the Leased Property shall be taken as to result in rendering a substantial part of the Leased Property untenable or of materially

reduced value to Lessee, Lessee may terminate this Lease and exercise the purchase option purchase to Article XV by giving written notice to the Lessor and thereafter shall have no further liability hereunder except as specifically provided herein, provided, as a condition of such termination, Lessor may require Lessee to remove all or a portion of the improvements from the remaining portion of the Leased Property.

ARTICLE X.

Insurance and Indemnification

Section 10.01 Insurance. Lessee shall carry commercial general liability insurance covering the Leased Property and the use and occupancy of the same in a company or companies licensed to do business in Tennessee under a policy satisfactory to Lessor both as to amount and coverage and shall provide evidence of same to Lessor. Lessor shall be listed as an additional insured on such policy. Lessee shall also insure all improvements on the Leased Property at their full replacement value, with Lessor being included as an additional insured, and Lessee shall provide evidence of same to Lessor. Each policy described above shall not be canceled without first giving Lessor not less than thirty (30) days prior written notice. Lessee shall provide to Lessor evidence of all insurance policies contemplated by this Section, including, upon request, annual certificates of continued coverage.

Section 10.02 Indemnification. Lessee covenants and agrees, at its expense, to pay, and to indemnify and save Lessor and its directors, agents and employees (collectively, the "Indemnified Parties") harmless against and from any and all claims by or on behalf of any person, firm, corporation, or governmental authority, arising from the occupation, use, possession, conduct or management of or from any work or activity done in or about the Leased Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Leased Property or the occupancy or use thereof. Lessee also covenants and agrees, at its expense, to pay, and to indemnify and save the Indemnified Parties harmless against and from, any and all claims, costs or expenses arising from (i) any condition, including any environmental condition, now existing or hereafter arising, on the Leased Property, (ii) any breach or default on the part of Lessee in the performance of any covenant or agreement to be performed by Lessee pursuant to this Lease, (iii) any act or negligence of Lessee, or any of its agents, contractors, servants, employees or licensees, (iv) the failure of the Acquisition Deed to convey title to the Leased Land to Lessor on the date hereof other than as described in the Acquisition Deed, (v) any disputes, demands or claims related to the title of the Leased Land or any liens or other encumbrances affecting the Leased Land (other than claims originating from an action in violation of Section 6.01 hereof), or (vi) any accident, injury or damage whatever caused to any person, firm or corporation in or about the Leased Property and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section. In the event that any action or proceeding is brought against any Indemnified Party by reason of any such claims, Lessee, upon notice from such Indemnified Party, covenants to resist or defend such action or proceeding. Notwithstanding anything in this Lease to the contrary, Lessee shall not be required to indemnify any of the Indemnified Parties in the event of any acts of gross negligence or willful misconduct or intentional misconduct of any of the Indemnified Parties or for any claim or liability which the Indemnified Parties was not given the opportunity to contest. The indemnification provided shall survive termination of this Lease.

ARTICLE XI.

Renovation of Buildings; Alterations

Lessee shall have the right to construct buildings and other improvements on the Leased Land from time to time and to make additions to and alterations of any such buildings and improvements and any existing buildings and improvements. All work done in connection with such additions, alterations, improvements or construction shall be done promptly, and in good and workmanlike manner, and in

compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and offices thereof. Lessee shall maintain or cause to be maintained, at all times when any work is in process in connection with such additions, alterations, improvements or construction, workmen's compensation insurance covering all persons employed in connection with such work and with respect to whom death or bodily injury claims could be asserted against Lessor, Lessee or the Leased Property.

Lessee covenants and agrees at its expense to cause the acquisition of the Leased Land and the renovation of the apartment buildings and improvements located on the Leased Land (the "Buildings"), and in connection therewith, Lessee agrees to incur capital expenditures for the renovation of the Buildings in an aggregate amount of not less than \$15,000,000. It is understood and agreed that the Buildings, together with all other improvements or fixtures from time to time placed on the Leased Land, shall become the property of Lessor and part of the Leased Property, subject to the purchase option set forth in Article XV. Lessee agrees to complete the renovation of the Buildings prior to the date that is thirty-six (36) months after the date hereof, provided that such time period shall be extended in the event of an event of Force Majeure.

ARTICLE XII.

Acquisition of Equipment

Section 12.01 Acquisition of Equipment. As of the date of this Lease, Lessee has acquired the Equipment, if any, shown on Exhibit B for location in the Buildings or on the Leased Land. In furtherance of the foregoing, upon the execution of this Lease, Lessee shall convey the Equipment shown on Exhibit B to Lessor by a bill of sale in substantially the form of Exhibit C attached hereto and thereafter such Equipment shall become the property of Lessor, but shall be for the sole use and benefit of Lessee during the Term.

Unless Lessee gives Lessor written notice to the contrary, any machinery and equipment hereafter acquired by Lessee to be located on the Leased Land or any improvement thereon by means of a bill of sale in substantially the form of Exhibit C attached hereto, and thereafter such equipment likewise shall become the property of Lessor and part of the Equipment subject to the provisions hereof, but shall be for the sole use and benefit of Lessee during the Term, and Exhibit B shall be deemed to have been supplemented to include such equipment.

Any Equipment removed from the Leased Property, other than for ordinary maintenance, shall no longer be deemed part of the Leased Property for purposes of this Lease and, upon the written request of Lessee, shall be conveyed to Lessee pursuant to Article XV.

Section 12.02 Installation and Removal of Other Equipment. Lessee may at any time or times during the Term install or commence the installation on the Leased Land or any improvement thereon of any equipment in addition to the Equipment as Lessee may deem desirable, and Lessee may also remove any such equipment at its discretion. All such equipment shall be acquired and installed at the expense of Lessee and shall remain the property of Lessee and shall not be part of the Equipment unless otherwise added to Exhibit B.

Section 12.03 Alteration, Improvement, Removal and Modifications of Equipment by Lessee. Lessee may alter, improve and modify the Equipment from time to time as it may determine is desirable for its uses and purposes. Lessee shall be responsible for all costs of such alterations, improvements and modifications. All such alterations, improvements and modifications shall become a part of the Equipment and the property of Lessor as made. Lessee shall use its best efforts to cause all work done in connection with such alterations, improvements and modifications to be done in a good and workmanlike manner and

in compliance with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities. Lessee may remove and dispose of any Equipment that Lessee determines is not necessary for Lessee's operations provided Lessee purchases such Equipment pursuant to Article XV.

ARTICLE XIII.

Subletting, Assignments and Mortgaging

Section 13.01 Except for (i) leases in the ordinary course of business or otherwise desirable for operation of an apartment complex, (ii) a leasehold deed of trust pursuant to which Lessee mortgages its leasehold estate in the Leased Property, (iii) removal of the general partner of Lessee in accordance with the terms of its partnership agreement (the "Partnership Agreement") or by the Lender pursuant to the loan documents related to the loan from the Lender to Lessee (the "Loan Documents") so long as any new general partner of Lessee is approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved, and (iv) any other transfer of a partnership interest of Lessee in accordance with the terms of its Partnership Agreement or by the Lender pursuant to the Loan Documents so long as (A) Morningside Gardens Apts GP LLC or an affiliate thereof remains a direct or indirect partner of Lessee or (B) the transferee is approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved (each of the foregoing being a "Permitted Transfer" which shall not require Lessor's consent), Lessee shall not have the right to sublet the Leased Property or assign or otherwise transfer its rights and interest hereunder except with the prior written consent of Lessor or as explicitly permitted in this Lease. In the event that the Lender becomes the successor lessee hereunder pursuant to this section, the Lender shall be eligible to make the payments in lieu of taxes pursuant to Section 7.04 hereof; and further provided that any successor or assign of the Lender, or any purchaser at a foreclosure sale other than the Lender, shall be entitled to make payments in lieu of taxes pursuant to Section 7.04 hereof so long as Lessor has reasonably approved such person or entity, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved. If such successor or assign of the Lender or any purchaser at a foreclosure sale other than the Lender is not approved by Lessor (the "Non-Approved Party") in accordance with the foregoing sentence, then the Non-Approved Party shall make payments in lieu of taxes beginning as of the date of such assignment or purchase equal to the ad valorem taxes that Lessee otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by Lessee.

Section 13.02 If a mortgagee or Investor Limited Partner of Lessee shall have given Lessor, before any Event of Default shall have occurred hereunder, a written notice specifying the name and mailing address of the mortgagee or Investor Limited Partner, then Lessor shall not terminate this Lease by reason of the occurrence of any Event of Default hereunder unless Lessor shall have given the mortgagee and Investor Limited Partner a copy of its notice to Lessee of such Event of Default addressed to the mailing address last furnished by the mortgagee and Investor Limited Partner, and such Event of Default shall not have been cured by said mortgagee or Investor Limited Partner, as applicable, within the time permitted herein (which such time period, with respect to mortgagee and Investor Limited Partner, shall begin upon receipt of the respective notice by mortgagee and Investor Limited Partner), provided that mortgagee and Investor Limited Partner shall have the right to extend the period of time for the curing of any such Event of Default for an additional period of thirty (30) days from the date contained in the notice given pursuant to Section 16.03 herein, or in the case of an Event of Default which cannot be cured within said thirty (30) day period, for such additional period (not to exceed an additional sixty (60) days) as, with all due diligence and in good faith, is necessary to cure the Event of Default. Lessor acknowledges that it has received written notice that (a) Lender is a mortgagee hereunder, and that Lessor shall send notices required to be sent to a mortgagee hereunder to Lender at the address provided in Section 16.03 and (b) the Investor Limited Partner

is an investor limited partner hereunder, and that Lessor shall send notices required to be sent to an investor limited partner hereunder to the Investor Limited Partner at the address provided in Section 16.03.

Section 13.03 Lessee irrevocably directs that Lessor accept, and Lessor agrees to accept, performance by any such mortgagee or Investor Limited Partner of the Lessee's, as applicable, right to terminate this Lease granted to Lessee by Article XV hereof, regardless whether an Event of Default has occurred. After the date hereof, and in addition to any rights the mortgagee or Investor Limited Partner may have by virtue of this Lease, if, within ninety (90) days after the mailing of a notice of termination, or such later date as may be provided in this Lease following the expiration of the cure period, if any, afforded to the Lessee (the "Mortgagee/Investor Cure Period"), such mortgagee or Investor Limited Partner shall pay, or arrange to the satisfaction of Lessor for the payment of, a sum of money equal to any and all Basic Rent, Additional Rents, and other payments due and payable by Lessee hereunder with respect to the portion of the Leased Property to which such mortgagee or Investor Limited Partner claims an interest as of the date of the giving of notice of termination, in addition to their pro rata share of any and all expenses, costs and fees, including reasonable attorneys' fees, incurred by Lessor in preparation for terminating this Lease, and in acquiring possession of the Leased Property, then, upon the written request of such mortgagee or Investor Limited Partner made any time prior to the expiration of the Mortgagee/Investor Cure Period, Lessor and the party making such request (or its nominee) (the "New Lessee") shall mutually execute prior to the end of such Mortgagee/Investor Cure Period a new Lease of the Leased Property (or such portion thereof as they have an interest in or mortgage on) for the remainder of the Term of this Lease and on the same terms and conditions, and with the same priority over any encumbrances created at any time by Lessor, its successors and assigns which Lessee has or had by virtue of this Lease; provided, however, that in addition to the above payments such New Lessee shall have paid to Lessor a sum of money equal to the Basic Rent and other payments for such portion of the Leased Property accruing from the date of such termination to the date of the commencement of the term of such new Lease, together with its pro rata share of all expenses, including reasonable attorneys' fees, incident to the preparation, printing, execution, delivery and recording of such new lease and provided, further, that such New Lessee is approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved. Such priority shall exist by virtue of the notice created by this Lease to any transferee of Lessor or person receiving an encumbrance from Lessor, and the priority shall be self-operative and shall not require any future act by Lessor. Such new Leases shall contain the same clauses subject to which this demise is made, and shall be at the rents and other payments for such portion of the Leased Property due Lessor and upon the terms as are herein contained. New Lessees under any such new Leases shall have the same right, title and interest in and to and all obligations accruing thereafter under this Lease with respect to the applicable portion of the Leased Property as Lessee has under this Lease. Nothing in this Section 13.03 shall require the Investor Limited Partner or mortgagee, as a condition to the exercise of its rights under this Section 13.03, to cure any default of Lessee not reasonably susceptible of being cured by any investor limited partner or mortgagee.

Section 13.04 Simultaneously with the making of such new leases, the party obtaining such new lease and all other parties junior in priority of interest in the Leased Property shall execute, acknowledge and deliver such new instruments, including new mortgages and new subleases, as the case may be, and shall make such payments and adjustments among themselves, as shall be necessary and proper for the purpose of restoring to each of such parties as nearly as reasonably possible, the respective interest and status with respect to the Leased Property which was possessed by the respective parties prior to the termination of this Lease as aforesaid.

Section 13.05 Nothing herein contained shall be deemed to impose any obligation on the part of Lessor to deliver physical possession of the Leased Property to such mortgagee or their respective nominee until the new leases have been executed by all pertinent parties. Lessor agrees, however, that Lessor will,

at the cost and expense of such mortgagee or respective nominee, cooperate in the prosecution of judicial proceedings to evict the then defaulting Lessee or any other occupants of the Leased Property.

Section 13.06 Notwithstanding the term of any mortgage, Lessee's mortgagee shall have no further rights in the Lease except as stated herein. As used in this Section and throughout this Lease, the noun "mortgage" shall include a leasehold deed of trust, the verb "mortgage" shall include the creation of a leasehold deed of trust, the word "mortgagee" shall include the beneficiary under a leasehold deed of trust, and the terms "foreclose" or "foreclosure" shall include a trustee's sale under a deed of trust as well as a foreclosure by judicial process.

ARTICLE XIV. **Events of Default; Termination**

If any one or more of the following events (herein called "Events of Default") shall happen:

(a) if Lessee fails to maintain the commercial general liability insurance required by Section 10.01 after being given notice of such failure and not curing such failure within ten (10) days of receipt of such notice; or

(b) if default shall be made in the due and punctual payment of any payment due pursuant to Section 7.04 hereof, and such default shall continue for more than thirty (30) days after Lessee's receipt of written notice of such default to Lessee from Lessor; or

(c) if default shall be made by Lessee in the due performance of or compliance with any of the terms hereof, other than that referred to in the foregoing subdivisions (a) and (b), and such default shall continue for sixty (60) days after Lessor shall have given Lessee written notice of such default (or in the case of any such default which cannot with due diligence be cured within such 60-day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any such default not susceptible of being cured with due diligence within the sixty (60) days that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence);

then in any such event Lessor at any time thereafter and while such Event of Default shall continue may give a written termination notice to Lessee, which notice shall specify the nature of the Event of Default and a date of termination of this Lease not less than ninety (90) days after the giving of such notice. Upon such termination, Lessor shall have the right, but not the obligation, to enter upon the Leased Property and repossess the Leased Property. This termination right is subject to Lessee's right to purchase the Leased Property pursuant to Section 15.01 and at any time during or within 30 days after the term of this Lease, Lessee may exercise its right in Section 15.01 to purchase the Leased Property without regard to whether an Event of Default has occurred.

ARTICLE XV. **Purchases and Purchase Prices**

Section 15.01 Option to Purchase. Lessee (and upon an event of default under any mortgage, such mortgagee) shall have an irrevocable and exclusive option to purchase the Leased Property as a whole or any part thereof at any time during the Term or within thirty (30) days after the termination or expiration of the Lease for the amount provided in Section 15.03. To exercise such option Lessee or mortgagee shall (i) give Lessor at least ten (10) days prior written notice of its intent to exercise any option granted pursuant to this Section 15.01, which notice shall state the purchase date, and (ii) comply with the provisions of Section 15.03 hereof. The option to be exercised by Lessee or mortgagee hereunder may be exercised whether or not a default or Event of Default has occurred hereunder. Lessee or mortgagee shall also have

the option to purchase any item of Equipment upon ten (10) days' prior written notice of its intent to exercise its option to purchase such item and upon compliance with Section 15.03.

Section 15.02 Granting of Easements. From time to time during the Term, Lessee shall have the right, at Lessee's expense, to cause Lessor (i) to grant easements affecting the Leased Land, (ii) to dedicate or convey, as required, portions of the Leased Land for road, highway and utilities and other public purposes, and (iii) to execute petitions to have the Leased Land or portions thereof annexed to any municipality or included within any utility, highway or other improvement or service district. Lessor shall also promptly execute and deliver estoppels, joinders, non-disturbance agreements and other documents required in connection with Lessee's use, financing, and refinancing of the Leased Property.

Section 15.03 Exercise of Option.

(a) To exercise any option contained in Section 15.01, Lessee shall pay, or cause to be paid, on or prior to the purchase date, as the purchase price the sum of (i) \$1.00 plus (ii) any other amounts that are then due or that have accrued under this Lease (including, without limitation, any amounts due upon termination or expiration of this Lease), but excluding any amounts required to be expended pursuant to Article XI.

(b) On the purchase date for the purchase of the Leased Property pursuant to Section 15.01, this Lease shall terminate and Lessor shall convey Lessor's interest in the Leased Property to Lessee (or its assigns) by quitclaim deed and/or bill of sale, as appropriate, without warranty of any type. The form of the quitclaim deed and bill of sale pursuant to which property will be conveyed pursuant to this Section shall be in substantially the forms attached hereto as Exhibit D and Exhibit E respectively. Lessee shall pay all expenses relating to such conveyance.

ARTICLE XVI.

Miscellaneous

Section 16.01 Applicable Law. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee.

Section 16.02 Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 16.03 Notices and Demands. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Lease shall be in writing, and shall be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by a nationally recognized overnight courier service, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the Lessor:

Knoxville's Community Development Corporation
901 N. Broadway
Knoxville, Tennessee 37917
Attention: Benjamin M. Bentley

with copies to: Bass, Berry & Sims PLC
900 S. Gay Street
1700 Riverview Tower
Knoxville, Tennessee 37902
Attention: Russell E. Stair, Esq.

To the Lessee:

Morningside Gardens Apts LP
1800 Linden Avenue
Knoxville, Tennessee 37917
Attention: _____

with copies to: Reno & Cavanaugh
424 Church Street, Suite 2910
Nashville, Tennessee 37219
Attention: Dwayne Barrett

To Lender (as mortgagee as provided in Article XIII):

Berkadia Commercial Mortgage LLC
323 Norristown Road, Suite 300
Ambler, PA 19002

To the Investor Limited Partner
(as an investor limited partner as provided in Article XIII):

CREA Morningside Gardens LLC
30 South Meridian Street, Suite 400
Indianapolis, Indiana 46204

Section 16.04 Headings and References. The headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof. All references in this Lease to particular Articles or Sections are references to Articles or Sections of this Lease, unless otherwise indicated.

Section 16.05 Successors and Assigns. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 16.06 Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 16.07 Expenses and Closing Fee. Lessee shall pay all costs and expenses of Lessor in connection with the preparation, negotiation and execution of this Lease and the performance hereof, including the reasonable fees and expenses of Lessor's attorneys. In addition, in the event that Lessor shall be required to engage legal counsel for the enforcement of any of the terms of this Lease, whether or not such employment shall require institution of suit or other legal services required to secure compliance on the part of Lessee, Lessee shall be responsible for and shall promptly pay to Lessor the reasonable value of said attorneys' fees, and any other reasonable expenses incurred by Lessor as a result of such default. Furthermore, simultaneously with the execution hereof, Lessee shall pay to Lessor a closing fee in the amount of \$35,000.00 in accordance with Lessor's policies.

Section 16.08 No Liability of Officers, Etc. No recourse under or upon any obligation, covenants or agreement contained in this Lease shall be had against any incorporator, members, director or officer, as such, past, present or future, of Lessor, either directly or through the Lessor. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer is hereby expressly waived and released by Lessee as a condition of and consideration for the execution of this Lease.

Section 16.09 No Liability of City, County, Officers, Etc. The City, County and the officers and agents of the City and County shall not in any event be liable for the performance of any obligation or agreement of any kind whatsoever herein, and none of the agreements or obligations of Lessor contained in this Lease or otherwise shall be construed to constitute an indebtedness of the City, County or the officers or agents of the City or County, within the meaning of any constitutional or statutory provision whatsoever.

Section 16.10 Limitation of Liability. Notwithstanding any other provision hereof, Lessor's liability hereunder shall be limited to its interest in the Leased Property and the payments to be made pursuant to this Lease, and Lessee shall not have any recourse against any other assets of Lessor.

Section 16.11 Interest. In addition to all other amounts payable under this Lease, Lessee shall also pay interest on any payment due hereunder that is not paid on the date such payment is due until paid at the interest rate, as it may vary from time to time, that the City would impose on a delinquent tax payment during the period such payment was due.

Section 16.12 Amendments and Modifications. The Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings whether written or oral. Any amendments, modifications or revisions to this Lease shall be signed by both Lessor and Lessee and only with the prior written consent of Investor Limited Partner.

[Signatures appear on following page.]

IN WITNESS WHEREOF, this Lease has been duly executed by the parties hereto as of the date and year first above written.

KNOXVILLE'S COMMUNITY DEVELOPMENT
CORPORATION

ATTEST:

By: _____
Scott Broyles, Vice Chair

Secretary

MORNINGSIDE GARDENS APTS LP,
a Delaware limited partnership

By: Morningside Gardens Apts GP LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name:
Title:

EXHIBIT A

Legal Description of Leased Land

EXHIBIT B

Leased Equipment

None.

EXHIBIT C

BILL OF SALE

Knox County, Tennessee

_____, 20____

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby transfers and conveys to Knoxville's Community Development Corporation, a public nonprofit corporation, all of its right, title, claim and interest in law and equity in and to all personal property, fixtures, machinery and equipment described on Exhibit A attached hereto.

The undersigned warrants that it has good and lawful right to make this conveyance.

IN WITNESS WHEREOF, _____ has caused its name to be signed by its duly authorized officer on the day and year first above written.

MORNINGSIDE GARDENS APTS LP,
a Delaware limited partnership

By: Morningside Gardens Apts GP LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name:
Title:

Sworn to and subscribed before me, this _____ day of _____, 20__.

Notary Public

My Commission Expires:

EXHIBIT D

This Instrument Prepared By:
Russell E. Stair, Esq.
BASS, BERRY & SIMS PLC
1700 Riverview Tower
900 South Gay Street
Knoxville, Tennessee 37902

QUITCLAIM DEED

THIS INDENTURE, made this ____ day of _____, _____, between:

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION, a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Tennessee Housing Authorities Law.

First Party, and

MORNINGSIDE GARDENS APTS LP, a Delaware limited partnership.

Second Party,

WITNESSETH: that said First Party, for and in consideration of the sum of ONE DOLLAR (\$1.00) cash and other good and valuable considerations in hand paid by Second Party, the receipt and sufficiency of which is hereby acknowledged, has quitclaimed and does hereby quitclaim unto the said Second Party the following described premises:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A AND MADE A PART HEREOF.

THIS CONVEYANCE is made subject to applicable easements, restrictions and building set back lines of record.

TOGETHER with all the estate, right, title and interest of the First Party therein, with the hereditaments and appurtenances thereto appertaining releasing all claims therein.

In this instrument in every case the plural shall include the singular and vice-versa and each gender the others.

IN WITNESS WHEREOF, this instrument has been executed on behalf of First Party by its duly authorized officer on the day and year first above written.

KNOXVILLE'S COMMUNITY DEVELOPMENT
CORPORATION

By: _____
Chair

STATE OF TENNESSEE)
)
COUNTY OF _____)

Personally appeared before me the undersigned authority, a Notary Public in and for said City and in said state, _____, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Chair of Knoxville's Community Development Corporation, the within named bargainor, a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Tennessee Housing Authorities Law, and that he as such Chair, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chair.

Witness my hand and official seal at office, this _____ day of _____, 20____.

Notary Public

My Commission Expires:

Name and address of property owner:

who is responsible for payment of taxes.

CLT CODE: _____

I hereby swear or affirm that the actual consideration or true value of this transfer, whichever is greater is \$1.00.

Subscribed and sworn to before me, this _____ day of _____, 20____.

Affiant

My Commission Expires:

Notary Public

EXHIBIT E

BILL OF SALE

Knox County, Tennessee

_____, 20____

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby transfers and conveys to Morningside Gardens Apts LP, a Delaware limited partnership, all of its right, title, claim and interest in law and equity in and to all personal property, fixtures, machinery and equipment described on Exhibit A attached hereto.

The undersigned makes no warranty as to title of the property transferred and conveyed.

IN WITNESS WHEREOF, Knoxville's Community Development Corporation has caused its name to be signed by its duly authorized officer on the day and year first above written.

KNOXVILLE'S COMMUNITY DEVELOPMENT
CORPORATION

By: _____
Title: _____

Sworn to and subscribed before me, this ____ day of ____, 20____.

Notary Public

My Commission Expires:

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

BOARD ACTION FORM #9

MEETING DATE	September 25, 2025
AGENDA ITEM DESCRIPTION	Resolution authorizing a PILOT agreement between KCDC and Summit Towers Apts LP to effectuate a PILOT to support the acquisition and rehab of a 277-unit affordable housing complex at 201 Locust Street, Knoxville.
SUBMITTED BY	Name, Title / Department: Jim Hatfield, CDC, Redevelopment
MEETING TYPE	<input checked="" type="checkbox"/> Regular <input type="checkbox"/> Special <input type="checkbox"/> Annual
CLASSIFICATION	<input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Approval
BUDGET / FINANCIAL IMPACT	Budgeted: \$ <u>n/a</u> Expenditure: \$ <u>n/a</u> Source of Funds:
APPROVAL / REVIEWS	<input checked="" type="checkbox"/> Department Head /VP <input type="checkbox"/> Budget/Finance <input checked="" type="checkbox"/> Executive Director/CEO <input checked="" type="checkbox"/> Legal Counsel: BBS Other – Name/Title:

BACKGROUND

1. What is the objective of this action?

This resolution will provide for a 20-year PILOT to assist in the economics in order to facilitate the acquisition and renovation of the Summit Towers. The \$16.3M reno scope include the replacement of roofs and siding as needed, repaving and striping of parking lots, upgrading mechanical systems and electrical systems, plumbing upgrades, upgrading landscaping, a full overhaul of security systems (monitored 24/7) and upgraded exterior lighting. In-unit improvements include the replacement of kitchen cabinets, countertops, vanities, interior and exterior doors, and tubs and showers as needed; all new LVT flooring, plumbing fixtures, windows, smoke detectors, new energy-efficient appliances, ceiling fans and lighting as well as painting throughout. Additionally, the site will be updated to meet UFAS standards throughout.

2. Why is the action needed now?

The sponsor, Paths Development, has received an allocation of volume cap and 4% credits earlier this year. They are planning on closing later this year on the debt and equity and beginning the renovation next year.

3. Who are the parties involved and what are their roles (if appropriate)?

KCDC as lessor under the PILOT lease. Paths Development as sponsor of the project and lessee under the lease. Paths Management Services and Paths Development are the affiliated property management and real estate development divisions of Nuveen Real Estate that have extensive affordable housing experience in 14 states with over 14,200 affordable housing units under management. Paths is based in NYC.

4. What are the long-term and short-term exposures?

This PILOT lease structure is customary and is typical for affordable housing developments in Knoxville.

HISTORICAL / TRANSACTIONAL INFORMATION (who, when, where)	None.
ATTACHMENTS	Resolution, mayor support letter and draft PILOT lease

RESOLUTION NO. 2025-_____

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF KNOXVILLE'S
COMMUNITY DEVELOPMENT CORPORATION REGARDING A PAYMENT
IN LIEU OF TAX TRANSACTION WITH SUMMIT TOWERS APTS LP**

WHEREAS, the Board of Commissioners of Knoxville's Community Development Corporation ("KCDC") has met pursuant to proper notice; and

WHEREAS, KCDC is the housing, redevelopment and urban renewal authority of the City of Knoxville, Tennessee (the "City") and is duly incorporated pursuant to Sections 13-20-101 et seq., Tennessee Code Annotated; and

WHEREAS, to induce Summit Towers Apts LP, a Delaware limited partnership (the "Applicant"), to acquire, construct, rehabilitate and equip the Morningside Gardens Apartments, a 277 unit housing facility for low income citizens (the "Project"), KCDC will acquire certain real and personal property related to the Project, and KCDC will lease said property to the Applicant on the terms and conditions set forth in the Lease referenced herein; and

WHEREAS, KCDC has received a letter from the Mayor of the City expressing her support for the Project pursuant to Tenn. Code Ann. § 48-101-312(b)(4)(C); and

WHEREAS, there has been submitted to KCDC a form of Lease (the "Lease"), between KCDC and the Applicant, which provides certain payments in lieu of tax as provided therein and which KCDC proposes to execute to carry out the transaction described above, a copy of which instrument shall be filed with the records of KCDC.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION:

1. It is hereby found and determined that the acquisition and ownership of the Project will promote industry, trade, commerce and housing in the State of Tennessee and will increase the availability of affordable housing and employment in the City.

2. The Chairman or the Vice Chairman of KCDC is hereby authorized and directed to execute, and, where requested, the Secretary or Assistant Secretary is authorized to attest, and/or any other officer of KCDC, acting alone or in combination with one another (individually and collectively the "Authorized Officers"), is (are) hereby authorized and empowered to execute the Lease and deliver the Lease to the Applicant.

3. KCDC is hereby authorized and directed to own the Project pursuant to the terms of the Lease.

4. The Lease shall be in substantially the form submitted, which is hereby approved, with such completions, omissions, insertions and changes as may be

approved by the officer executing it, his or her execution to constitute conclusive evidence of his or her approval of any such omissions, insertions and changes.

5. The officers of KCDC are hereby authorized and directed to execute, deliver and file such other certificates and instruments and to take all such further action as they may consider necessary or desirable in connection with the consummation of the transactions described above, including, without limitation, executing such documents as any lender of the Applicant may request in connection with its liens on the Project.

6. Any authorization herein to execute any document shall include authorization to record such document where appropriate.

7. All other acts of the officers of KCDC which are in conformity with the purposes and intent of this resolution are hereby approved and confirmed.

Approved this 25th day of September, 2025

KNOXVILLE'S COMMUNITY
DEVELOPMENT CORPORATION

By: _____
Secretary



August 14, 2025

Benjamin Bentley
Knoxville's Community Development Corporation
901 N. Broadway
Knoxville, Tennessee 37917

Re: Support Letter for Summit Towers Apts, LP

Dear Mr. Bentley:

I understand that Knoxville's Community Development Corporation ("KCDC"), through its proposed lessee, Summit Towers Apts, LP, is undertaking the acquisition and renovation of a multi-family apartments located at 201 Locust Street currently owned by Summit 2192 TN LLC. I understand that this project entails renovating a 277-unit apartment development providing seniors affordable housing for the local community. To provide financing for this project, Summit Towers Apts, LP, intends to apply for an allocation of low-income housing tax credits from the Tennessee Housing Development Agency to ensure these apartments remain as affordable for the next 20 years.

Pursuant to Tennessee Code Annotated § 48-101-312, and because the City has not formed a health, educational, and housing facility corporation, KCDC is permitted to enter into an agreement for payments in lieu of taxes with respect to this project provided that I, as the chief executive officer of the City, provide a letter in support of the project. Provided that the project receives an allocation of low-income housing tax credits, please accept this letter as evidence of my support of this project for payments in lieu of taxes for a term of up to 20 years with payment amount set at \$123,300.32 to City of Knoxville and \$88,889.00 to Knox County. This property will still be responsible for the tax levy for the special assessment of the Central Business Improvement District ("CBID") for the term of the PILOT. The provision of affordable housing for low-income senior residents is an important goal for the City and this project is consistent with that goal.

Sincerely,

Indya Kincannon
Mayor

Approved as to form:

Charles W. Swanson
Director of Law

CITY COUNTY BUILDING • ROOM 691 • 400 MAIN STREET • P.O. BOX 1631 • KNOXVILLE, TENNESSEE 37901

PHONE: 865-215-2040 • FAX: 865-215-2085 • EMAIL: MAYOR@KNOXVILLE.TN.GOV

WWW.KNOXVILLETN.GOV

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

(a housing and redevelopment authority of
the City of Knoxville, Tennessee organized under Tennessee law)

TO

SUMMIT TOWERS APTS LP

(a Delaware limited partnership)

LEASE

DATED AS OF _____, 2025

This instrument prepared by:
BASS, BERRY & SIMS PLC (RES)
900 S. Gay Street, Suite 1700
Knoxville, Tennessee 37902

LEASE

This Lease, made and entered into as of __ . __ . __, 2025, by and between KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION, a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Tennessee Housing Authorities Law, Tenn. Code Ann. §§ 13-20-101, et seq. ("Lessor"), and SUMMIT TOWERS APTS LP, a Delaware limited partnership ("Lessee").

W I T N E S S E T H:

WHEREAS, Lessor is a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Tennessee Housing Authorities Law, Tenn. Code Ann. §§ 13-20-101, et seq., as amended (the "Act"), and is authorized under the Act to acquire, whether by purchase, exchange, gift, lease, or otherwise, and to own, lease and dispose of properties for the purpose of providing safe and sanitary dwelling accommodations for persons of low income;

WHEREAS, in order to encourage Lessee to cause the acquisition and renovation of a low-income housing facility consisting of approximately 277 apartment units known as Summit Towers Apartments located in the City of Knoxville, Tennessee (the "Project"), thereby furthering the purposes of the Act, Lessor desires to lease to Lessee and Lessee desires to rent from Lessor certain real property and equipment hereinafter more particularly described, on the terms and conditions set forth herein; and

WHEREAS, pursuant to Tenn. Code Ann. § 48-101-312(b)(4)(C), the Mayor of the City of Knoxville, Tennessee submitted a letter dated August 14, 2025 to the Lessor supporting the Project and approving the Lessor to negotiate and accept from Lessee payments in lieu of ad-valorem taxes; and

NOW, THEREFORE, Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and the covenants and agreements hereinafter contained to be kept and performed by Lessee, does by these presents demise, lease and let unto Lessee, and Lessee does by these presents hire, lease and rent from Lessor, for the Term (as defined below) and upon the conditions hereinafter stated, the real property described in Exhibit A attached hereto, together with all facilities and improvements now existing or hereafter constructed thereon by Lessee or otherwise and the equipment described in Exhibit B attached hereto;

UNDER AND SUBJECT, however, to deed restrictions, covenants, easements, reservations, rights of way and other encumbrances applicable to the real property and equipment to be leased and existing as of the date hereof and any other encumbrance hereafter existing that is not created by Lessor; and

UNDER AND SUBJECT to the following terms and conditions:

ARTICLE I.

Definitions

Section 1.01 In addition to the words, terms and phrases elsewhere defined in this Lease, the following words, terms and phrases as used in this Lease shall have the following respective meanings:

"Acquisition Deed" shall mean the deed pursuant to which Lessor acquires title to the Leased Land.

"Act" shall mean Tenn. Code Ann. §§ 13-20-101, et seq., as amended.

"Basic Rent" shall mean the amounts described in Section 4.01.

"Buildings" shall mean the Buildings to be renovated on the Leased Land by Lessee pursuant to Article XI.

"City" shall mean the City of Knoxville, Tennessee.

"Completion Date" shall mean the earlier of (i) the date that is thirty-six (36) months after the date hereof and (ii) the date that the renovations to the Buildings described in Article XI are substantially complete, as evidenced by the issuance of a certificate of occupancy. Lessee shall provide a certificate to Lessor evidencing the Completion Date no later than thirty (30) days after the occurrence of the Completion Date.

"County" shall mean Knox County, Tennessee.

"Equipment" shall mean the machinery, equipment and other tangible personal property described on Exhibit B attached hereto as from time to time supplemented.

"Force Majeure" means fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the applicable party's reasonable control. Where this Lease expressly provides that a party's obligations are subject to Force Majeure, then delay or non-performance on the part of such party will be excused upon the occurrence and during the continuance of such event of Force Majeure, provided that such party promptly gives the other party written notice of the occurrence and abatement of such event of Force Majeure.

"Improvements" shall mean the Buildings and the other improvements on the Leased Land.

"Investor Limited Partner" shall mean [CREA Summit Towers, LLC, a Delaware limited liability company], as the investor limited partner of Lessee, and its successors and assigns.

"Lease" shall mean this instrument as originally executed or as it may from time to time be supplemented or amended by one or more instruments supplemental hereto.

"Leased Land" shall mean the real property described in Exhibit A attached hereto.

"Leased Property" shall mean the Equipment and the Leased Land, together with the Buildings and related improvements.

"Lender" shall mean [Berkadia Commercial Mortgage LLC, a Delaware limited liability company] and its successors and assigns.

"Lessee" shall mean Summit Towers Apts LP, a Delaware limited partnership.

"Lessor" shall mean Knoxville's Community Development Corporation, a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Act.

"Rent" shall mean collectively, the Basic Rent and the Additional Rent.

"Tax Credits" shall mean any low income housing tax credits available at the Leased Property pursuant to Section 42 of the Internal Revenue Code of 1986, as amended.

"Tax Year" shall mean each annual period beginning on January 1 of each year and ending on December 31 of that year.

"Term" shall mean the term described in Article III.

ARTICLE II.

Representations of Lessee

Section 2.01 Lessee makes the following representations and warranties to induce Lessor to enter into this Lease:

(a) Lessee is a limited partnership duly formed, existing and in good standing under the laws of the State of Delaware and is duly authorized to conduct business in the State of Tennessee, has full power and authority to enter into this Lease and to perform all obligations contained herein and therein, and has, by proper action, been duly authorized to execute and deliver this Lease and, when executed and delivered by the parties thereto, this Lease will constitute the valid and binding obligation of Lessee enforceable in accordance with its terms.

(b) Neither the execution and delivery of this Lease, nor the consummation of the transactions contemplated herein by Lessee, nor the fulfillment of or compliance with the terms and conditions of this Lease, does or will conflict with or result in a breach of the terms, conditions or provisions of any restriction or internal governing document of Lessee or any agreement or instrument to which Lessee is now a party or by which it is bound, or any existing law, rule, regulation, judgment, order or decree to which it is subject, or constitutes a default under any of the foregoing or, except as contemplated hereby, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessee under the terms of any instrument or agreement.

(c) There are no proceedings pending, or to the knowledge of Lessee threatened, against or affecting Lessee in any court or before any governmental authority, arbitration board or tribunal which involve the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of Lessee, or the ability of Lessee to perform its obligations under this Lease. Lessee is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(d) No event has occurred and no condition exists with respect to Lessee that would constitute an Event of Default under this Lease, as defined in Article XIV, or which, with the lapse of time or with the giving of notice, or both, would become such an Event of Default.

(e) To the knowledge of Lessee, and in reliance upon, and except as disclosed in, an independent third-party report obtained by Lessee, there are no substances, materials, wastes, pollutants or contaminants located on the Leased Property that are regulated under any environmental law or regulation except those materials and substances that are maintained in compliance with such laws and regulations, and Lessee shall not permit material quantities of such substances, materials, wastes, pollutants or contaminants to exist on the Leased Property during the Term of this Lease except in compliance with such laws and regulations.

ARTICLE III.

Lease Term

Subject to the provisions contained in this Lease, this Lease shall be in full force and effect for a Term commencing on the date hereof and ending on the twentieth (20th) anniversary of the Completion Date, unless terminated earlier, in accordance with the terms hereof. Lessee shall provide a certificate to Lessor evidencing the Completion Date no later than thirty (30) days after the occurrence of the Completion Date.

Notwithstanding the foregoing, the Term of this Lease may be terminated upon exercise by Lessee of the purchase option described in Article XV hereof.

ARTICLE IV.

Rent

Section 4.01 Basic Rent. Lessee will pay to Lessor without notice or demand, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, as Basic Rent on each January 1 during the Term, the sum of \$1.00. Lessor acknowledges that Lessee has prepaid the Basic Rent for the Term on the date hereof.

Section 4.02 Additional Rent. Lessee agrees to pay, as additional rent, all other amounts, liabilities and obligations which Lessee herein assumes or agrees to pay (including, without limitation, the obligations in Article XI hereof). Without limiting the foregoing, Lessor and Lessee recognize that the Leased Property has been conveyed to Lessor subject to or contemporaneously with the execution of a deed of trust securing the financing of the acquisition of and renovations to the Leased Property. Lessee agrees to make all payments of debt service relating to such financing. Lessor will execute and deliver commercially reasonable documents pledging its interest in the Leased Property, by joinder or otherwise, in connection with Lessee's financing or refinancing of the Leased Property. In the event of any failure on the part of Lessee to pay any amounts, liabilities or obligations described in this paragraph, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of the Basic Rent. Notwithstanding the terms of this Lease, the Additional Rent shall not be treated as rent for federal or state tax purposes and the items of Additional Rent shall be treated for tax purposes as determined by the Lessee in its sole discretion as the owner of the Leased Property for federal and state tax purposes.

ARTICLE V.

Compliance with Laws; Permitted Contests;

Lessee's Acceptance of Leased Property; Reports; Lease of Equipment; Net Lease

Section 5.01 Compliance with Laws. Lessee shall throughout the Term and at no expense to Lessor promptly cure any violations under all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities, which are or shall become lawfully applicable to the Leased Property, the repair and alteration thereof, and the use or manner of use of the Leased Property, whether or not such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not they shall involve any change of governmental policy or shall require structural or extraordinary repairs, alterations or additions, irrespective of the cost thereof.

Section 5.02 Permitted Contests. Lessee shall not be required to comply or cause compliance with the laws, ordinances, orders, rules, regulations or requirements referenced in Section 5.01, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

Section 5.03 Acceptance of Leased Property. Lessee acknowledges that, as between Lessor and Lessee, it has examined the Leased Land and the state of Lessor's title thereto prior to the making of this Lease and knows the condition and state thereof, including, without limitation, the environmental and soil

conditions, as of the first day of the term of this Lease, and accepts the same in said condition and state; that no representations as to the condition or state thereof have been made by representatives of Lessor; and that in entering into this Lease, Lessee is relying solely upon its own examination thereof. Lessee shall have sole and exclusive possession of the Leased Property during the Term.

Section 5.04 Lease of Equipment. Lessor does hereby demise, lease and let unto Lessee, and Lessee does hereby lease and rent from Lessor, for the Term and upon the conditions herein stated, all Equipment. Lessee shall have sole and exclusive possession of the Equipment during the Term.

Section 5.05 Net Lease. This is a "net lease" and the Rent and all other sums payable hereunder to or for the account of Lessor shall be paid promptly and without set off, counterclaim, abatement, suspension, deduction, diminution or defense.

ARTICLE VI.

Title and Tax Benefits

Section 6.01 No Conveyance of Title by Lessor. Lessor covenants and agrees that, except as set forth herein, during the Term of this Lease, it will not convey, pledge, encumber or suffer or permit the conveyance of, by any voluntary act on its part, its title to the Leased Property to any person, firm, corporation, or other entity whatsoever, irrespective of whether any such conveyance or attempted conveyance shall recite that it is expressly subject to the terms of this Lease unless such conveyance is consented, in writing, to by Lessee, its mortgagee and Investor Limited Partner. Lessor will not create any lien, encumbrance or charge upon its interest in the Leased Property except for any such lien, encumbrance or charge otherwise created by this Lease or consented to by Lessee.

Section 6.02 Tax Benefits. Lessee shall be deemed throughout the term of this Lease to own all Improvements and all alterations, additions, equipment and fixtures built, made or installed by Lessee in, on or under the Improvements or on the Property for federal tax purposes and shall be entitled to all of the tax attributes of ownership thereof, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Code, with respect to the Improvements and the equipment therein, and Lessee shall have the right to amortize and depreciate capital costs and to claim any other federal tax benefits attributable to the Improvements and the equipment therein. The Lessor expressly waives and relinquishes in favor of the Lessee any rights to claim the benefit of or to use any federal or state tax credits or depreciation benefits that are currently or may become, available during the Term as a result of any equipment, furniture or fixtures installed by the Lessee on the Improvements whether or not such items become a part of the realty, and the Lessor agrees to execute and deliver to Lessee any election form required to evidence the Lessee's right to claim tax credits or depreciation benefits on improvements made or property installed by the Lessee. Lessor shall execute and deliver other and further certificates, documents, and amendments to this Lease as reasonably requested by Lessee to confirm and establish that Lessee is the owner of the Leased Property for federal income and state franchise and excise tax purposes.

Section 6.03 Taxation of Improvements. This Lease is intended to be a lawful agreement between the Lessee and Lessor, as an instrumentality of a local government, for payments in lieu of taxes and therefore, the Buildings are assessed solely to Lessor and are subject to all applicable exemptions, all in accordance with Tennessee Code Annotated § 67-5-502(d).

ARTICLE VII.
Taxes and Other Charges

Section 7.01 **Taxes and Other Governmental Charges.** Lessee agrees, subject to the provisions of Section 7.04, to pay and discharge, as Additional Rent, punctually as and when the same shall become due and payable without penalty, all ad valorem taxes that at any time during the Term shall be or become due and payable by Lessor or Lessee and that shall be levied, assessed or imposed upon, or that shall be or become liens upon, the Leased Property or any portion thereof or any interest of Lessor or Lessee therein, under and by virtue of any present or future law, statute, regulation or other requirement of any governmental authority.

Section 7.02 **Lessee Subrogated to Lessor's Rights.** To the extent of any payments of Additional Rent by Lessee under this Article VII, Lessee shall be subrogated to Lessor's rights in respect to the proceedings or matters relating to such payments, and any recovery in such proceedings or matter shall be used to reimburse Lessee for the amount of such Additional Rent so paid by Lessee.

Section 7.03 **Utility Services.** Lessee agrees that Lessor is not, nor shall it be, required to furnish to Lessee or any other user of the Leased Property any gas, water, sewer, electricity, light, heat, power or any other facilities, equipment, labor, materials or services of any kind pursuant to this Lease and Lessee agrees that it shall pay all costs and expenses related to the foregoing.

Section 7.04 **Payments in Lieu of Taxes.**

(a) **Recognition of Tax Status.** Lessee recognizes that under present law, including specifically the Act, the properties owned by Lessor are exempt from all taxation in the State of Tennessee. Lessee further recognizes that present law, including specifically the Act and Tenn. Code Ann. § 48-101-312(b)(4)(C), provides legal authority to Lessor to enter into agreements for payments in lieu of ad valorem property taxes, such as this Lease.

(b) **Administrative Provisions.** In furtherance of the agreements in this Section, it is agreed by and between the parties hereto that Lessee, in cooperation with Lessor, shall cause all of the Leased Property, including but not limited to, the Leased Land, the Buildings, the Equipment located in the Buildings or on the Leased Land, each expansion of any Building, the Equipment located in each expansion of any Building, and any other Equipment conveyed to Lessor hereunder to be valued and assessed separately by the assessor or other official or officials charged with the responsibility of assessing privately owned property in the area where the Leased Property is located at the time such privately owned property is valued or assessed. Lessee, in cooperation with Lessor, shall cause to be applied to the appropriate taxable value of each such portion of the Leased Property the tax rate or rates that would be applicable for state and local tax purposes if the property were then privately owned, and shall cause the county trustee or other official or officials charged with the responsibility of collecting taxes to submit annually to Lessor and Lessee a statement of the taxes which would otherwise then be chargeable to each such portion of the Leased Property. The right is reserved to Lessee to the same extent as if Lessee were the owner of the Leased Property to contest the validity or amount of any such assessment.

(c) **Payments in Lieu of Taxes.** In addition to Basic Rent and Additional Rent hereunder, Lessee and Lessor agree that Lessee shall pay directly to the City and the County: (i) for each Tax Year occurring during the period commencing on the date hereof through and including the day prior to the Completion Date, a payment in lieu of taxes equal to the ad valorem taxes that would otherwise be payable with respect to the Leased Property if such Leased Property were owned by Lessee and (ii) for each Tax Year occurring during the period commencing on the Completion Date through and including the twentieth (20th) anniversary of the Completion Date, an annual payment in lieu of taxes to the County equal

to \$88,889.00 and an annual payment in lieu of taxes to the City equal to \$123,300.32. Additionally, notwithstanding any provision herein to the contrary, Lessee shall also pay to the City for each Tax Year that the Lease is in effect as additional payments in lieu of taxes amounts equal to the additional property taxes that would have been levied upon the Leased Premises due to the location of the Leased Premises in the Central Business Improvement District ("CBID") of the City.

Amounts payable with respect to any partial Tax Years included within the Term will be prorated based upon the actual number of days included within such Tax Year. Any payment due with respect to a Tax Year that is not paid prior to the termination or expiration of this Lease shall not be extinguished as a result of such termination or expiration and shall survive such termination or expiration.

Notwithstanding anything to the contrary contained in this Section, this Lease shall not be extended except pursuant to an amendment in writing and executed by both the Lessor and Lessee. Such reduction in taxes otherwise payable shall not apply with regard to any other tax assessed against Lessee, its income, its other real property or its personalty. In the event Lessee assumes ownership of the Leased Property, Lessee shall begin paying all applicable ad valorem and other taxes directly to the City and the County, as assessed, but shall not make, from the date of such acquisition, any in lieu payments with respect to such property other than those payments that were unpaid at the time of such acquisition.

Notwithstanding anything to the contrary contained in this Section, in the event that Lessee fails to complete the renovation of the Buildings in accordance with Article XI hereof or the Leased Property becomes ineligible for Tax Credits due to a violation of the use restrictions (related to the Tax Credits) applicable to the Leased Property, then Lessee shall make a payment in lieu of taxes with respect to each Tax Year remaining in the Term on behalf of the Lessor to the City and the County in an amount equal to the ad valorem taxes that would otherwise be payable with respect to the Leased Property if such Leased Property were owned by Lessee.

(d) Credit for Taxes Paid. Nothing contained in this Section 7.04 is intended or shall be construed to require the payment by Lessee of any greater amounts in lieu of taxes than would be payable as taxes if the Leased Property were owned by Lessee. It is accordingly understood and agreed that the amount payable by Lessee in any year under the provisions of this Section 7.04 shall be reduced by the amount of any ad valorem taxes lawfully levied upon the Leased Property or any part thereof, or upon Lessee's leasehold estate therein, and actually paid by Lessee pursuant to the requirements of Section 7.01 hereof to the City and the County and to the extent that any such tax payments paid by Lessee pursuant to the requirements of Section 7.01 hereof for any year shall exceed the in-lieu-of-tax payments for such year otherwise provided in this Section 7.04 the amount payable by Lessee in any subsequent year under the provisions of this Section 7.04 shall be reduced by such excess amount.

(e) Timing of Payments. Each payment in lieu of taxes required by this Section 7.04 with respect to any Tax Year or partial Tax Year shall be paid not later than February 28th of the following year.

(f) Reports. On behalf of Lessor, Lessee shall, during the term of this Lease, submit on or before October 1 of each year to the Tennessee State Board of Equalization the annual report required to be submitted by it. In addition, within ninety (90) days after the conclusion of each Tax Year during the term hereof, Lessee agrees to provide a report to Lessor, in a form reasonably acceptable to Lessor, that includes the following information pertaining to tenant evictions: (i) the number of tenant evictions completed as well as initiated (however, not taken through the full eviction process but which resulted in the tenant relocating from the property) during the Tax Year; and (ii) for each such eviction or initiated eviction that resulted in a relocation, an explanation of the reason(s) for the eviction and unit type (one

bedroom, two bedroom, etc.) involved, and (b) the period of time such tenant(s) have been residents of the Project.

(g) Payment Upon Termination or Expiration. Upon the termination of this Lease for any reason during a Tax Year, Lessee shall pay a pro-rated amount of the payments in lieu of taxes, if any, required by this Section 7.04 for the period that this Lease is in effect and for which no payments in lieu of taxes have been made up to the date of such termination.

(h) Cessation of Business. Except in the event Lessee shall terminate this Lease pursuant to Article IX of this Lease, in the event Lessee ceases the active operation (excluding temporary cessations due to Force Majeure events) of a low-income housing facility for eligible residents at the Leased Property, and notwithstanding any provision herein to the contrary, Lessee shall make payments in lieu of taxes beginning as of the date Lessee ceases such operation equal to the ad valorem taxes that Lessee otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by Lessee.

Section 7.05 Permitted Contests. Lessee shall not be required to pay any tax or assessment against the Leased Property or any part thereof, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings which shall operate to prevent the collection of the tax or assessment so contested or resulting from such contest and the sale of the Leased Property or any part thereof to satisfy the same. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

ARTICLE VIII. **Maintenance and Repair**

Lessor shall not be required to rebuild or to make any repairs, replacements or renewals of any nature or description to the Leased Property or to make any expenditures whatsoever in connection with this Lease or to maintain the Leased Property in any way. Lessee expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of Lessor.

Lessee shall keep and maintain in good order, condition and repair (including any such repair as is required due to fire, storm or other casualty) the Leased Property and every part thereof and any and all appurtenances thereto. Lessee shall save Lessor harmless on account of claims for mechanics and materialmen's liens in connection with any work by Lessee, and any such liens shall exist only against Lessee's leasehold interest and shall be discharged, by bond or otherwise, within sixty (60) days after filing. Lessee shall keep and maintain the Leased Property in accordance with all directions, rules and regulations of the proper officials of the government agencies having jurisdiction, at the sole cost and expense of Lessee, provided that Lessee shall not be required to repair or restore the Leased Property following material damage from a fire or other casualty except that Lessor may require Lessee to remove any debris from the Leased Property following a fire or other casualty.

ARTICLE IX. **Condemnation**

If during the Term, all or any part of the Leased Property be taken by the exercise of the power of eminent domain or condemnation, Lessee shall be entitled to and shall receive the entire award for the

taking. If title to or control of all of the Leased Property shall be taken by the exercise of the power of eminent domain or condemnation, or if such use or control of a substantial part of the Leased Property shall be taken as to result in rendering a substantial part of the Leased Property untenable or of materially reduced value to Lessee, Lessee may terminate this Lease and exercise the purchase option purchase to Article XV by giving written notice to the Lessor and thereafter shall have no further liability hereunder except as specifically provided herein, provided, as a condition of such termination, Lessor may require Lessee to remove all or a portion of the improvements from the remaining portion of the Leased Property.

ARTICLE X.

Insurance and Indemnification

Section 10.01 Insurance. Lessee shall carry commercial general liability insurance covering the Leased Property and the use and occupancy of the same in a company or companies licensed to do business in Tennessee under a policy satisfactory to Lessor both as to amount and coverage and shall provide evidence of same to Lessor. Lessor shall be listed as an additional insured on such policy. Lessee shall also insure all improvements on the Leased Property at their full replacement value, with Lessor being included as an additional insured, and Lessee shall provide evidence of same to Lessor. Each policy described above shall not be canceled without first giving Lessor not less than thirty (30) days prior written notice. Lessee shall provide to Lessor evidence of all insurance policies contemplated by this Section, including, upon request, annual certificates of continued coverage.

Section 10.02 Indemnification. Lessee covenants and agrees, at its expense, to pay, and to indemnify and save Lessor and its directors, agents and employees (collectively, the "Indemnified Parties") harmless against and from any and all claims by or on behalf of any person, firm, corporation, or governmental authority, arising from the occupation, use, possession, conduct or management of or from any work or activity done in or about the Leased Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Leased Property or the occupancy or use thereof. Lessee also covenants and agrees, at its expense, to pay, and to indemnify and save the Indemnified Parties harmless against and from, any and all claims, costs or expenses arising from (i) any condition, including any environmental condition, now existing or hereafter arising, on the Leased Property, (ii) any breach or default on the part of Lessee in the performance of any covenant or agreement to be performed by Lessee pursuant to this Lease, (iii) any act or negligence of Lessee, or any of its agents, contractors, servants, employees or licensees, (iv) the failure of the Acquisition Deed to convey title to the Leased Land to Lessor on the date hereof other than as described in the Acquisition Deed, (v) any disputes, demands or claims related to the title of the Leased Land or any liens or other encumbrances affecting the Leased Land (other than claims originating from an action in violation of Section 6.01 hereof), or (vi) any accident, injury or damage whatever caused to any person, firm or corporation in or about the Leased Property and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section. In the event that any action or proceeding is brought against any Indemnified Party by reason of any such claims, Lessee, upon notice from such Indemnified Party, covenants to resist or defend such action or proceeding. Notwithstanding anything in this Lease to the contrary, Lessee shall not be required to indemnify any of the Indemnified Parties in the event of any acts of gross negligence or willful misconduct or intentional misconduct of any of the Indemnified Parties or for any claim or liability which the Indemnified Parties was not given the opportunity to contest. The indemnification provided shall survive termination of this Lease.

ARTICLE XI.
Renovation of Buildings; Alterations

Lessee shall have the right to construct buildings and other improvements on the Leased Land from time to time and to make additions to and alterations of any such buildings and improvements and any existing buildings and improvements. All work done in connection with such additions, alterations, improvements or construction shall be done promptly, and in good and workmanlike manner, and in compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and offices thereof. Lessee shall maintain or cause to be maintained, at all times when any work is in process in connection with such additions, alterations, improvements or construction, workmen's compensation insurance covering all persons employed in connection with such work and with respect to whom death or bodily injury claims could be asserted against Lessor, Lessee or the Leased Property.

Lessee covenants and agrees at its expense to cause the acquisition of the Leased Land and the renovation of the apartment buildings and improvements located on the Leased Land (the "Buildings"), and in connection therewith, Lessee agrees to incur capital expenditures for the renovation of the Buildings in an aggregate amount of not less than \$16,000,000. It is understood and agreed that the Buildings, together with all other improvements or fixtures from time to time placed on the Leased Land, shall become the property of Lessor and part of the Leased Property, subject to the purchase option set forth in Article XV. Lessee agrees to complete the renovation of the Buildings prior to the date that is thirty-six (36) months after the date hereof, provided that such time period shall be extended in the event of an event of Force Majeure.

ARTICLE XII.
Acquisition of Equipment

Section 12.01 Acquisition of Equipment. As of the date of this Lease, Lessee has acquired the Equipment, if any, shown on Exhibit B for location in the Buildings or on the Leased Land. In furtherance of the foregoing, upon the execution of this Lease, Lessee shall convey the Equipment shown on Exhibit B to Lessor by a bill of sale in substantially the form of Exhibit C attached hereto and thereafter such Equipment shall become the property of Lessor, but shall be for the sole use and benefit of Lessee during the Term.

Unless Lessee gives Lessor written notice to the contrary, any machinery and equipment hereafter acquired by Lessee to be located on the Leased Land or any improvement thereon by means of a bill of sale in substantially the form of Exhibit C attached hereto, and thereafter such equipment likewise shall become the property of Lessor and part of the Equipment subject to the provisions hereof, but shall be for the sole use and benefit of Lessee during the Term, and Exhibit B shall be deemed to have been supplemented to include such equipment.

Any Equipment removed from the Leased Property, other than for ordinary maintenance, shall no longer be deemed part of the Leased Property for purposes of this Lease and, upon the written request of Lessee, shall be conveyed to Lessee pursuant to Article XV.

Section 12.02 Installation and Removal of Other Equipment. Lessee may at any time or times during the Term install or commence the installation on the Leased Land or any improvement thereon of any equipment in addition to the Equipment as Lessee may deem desirable, and Lessee may also remove any such equipment at its discretion. All such equipment shall be acquired and installed at the expense of Lessee and shall remain the property of Lessee and shall not be part of the Equipment unless otherwise added to Exhibit B.

Section 12.03 Alteration, Improvement, Removal and Modifications of Equipment by Lessee. Lessee may alter, improve and modify the Equipment from time to time as it may determine is desirable for its uses and purposes. Lessee shall be responsible for all costs of such alterations, improvements and modifications. All such alterations, improvements and modifications shall become a part of the Equipment and the property of Lessor as made. Lessee shall use its best efforts to cause all work done in connection with such alterations, improvements and modifications to be done in a good and workmanlike manner and in compliance with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities. Lessee may remove and dispose of any Equipment that Lessee determines is not necessary for Lessee's operations provided Lessee purchases such Equipment pursuant to Article XV.

ARTICLE XIII.

Subletting, Assignments and Mortgaging

Section 13.01 Except for (i) leases in the ordinary course of business or otherwise desirable for operation of an apartment complex, (ii) a leasehold deed of trust pursuant to which Lessee mortgages its leasehold estate in the Leased Property, (iii) removal of the general partner of Lessee in accordance with the terms of its partnership agreement (the "Partnership Agreement") or by the Lender pursuant to the loan documents related to the loan from the Lender to Lessee (the "Loan Documents") so long as any new general partner of Lessee is approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved, and (iv) any other transfer of a partnership interest of Lessee in accordance with the terms of its Partnership Agreement or by the Lender pursuant to the Loan Documents so long as (A) Summit Towers Apts GP LLC or an affiliate thereof remains a direct or indirect partner of Lessee or (B) the transferee is approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved (each of the foregoing being a "Permitted Transfer" which shall not require Lessor's consent), Lessee shall not have the right to sublet the Leased Property or assign or otherwise transfer its rights and interest hereunder except with the prior written consent of Lessor or as explicitly permitted in this Lease. In the event that the Lender becomes the successor lessee hereunder pursuant to this section, the Lender shall be eligible to make the payments in lieu of taxes pursuant to Section 7.04 hereof; and further provided that any successor or assign of the Lender, or any purchaser at a foreclosure sale other than the Lender, shall be entitled to make payments in lieu of taxes pursuant to Section 7.04 hereof so long as Lessor has reasonably approved such person or entity, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved. If such successor or assign of the Lender or any purchaser at a foreclosure sale other than the Lender is not approved by Lessor (the "Non-Approved Party") in accordance with the foregoing sentence, then the Non-Approved Party shall make payments in lieu of taxes beginning as of the date of such assignment or purchase equal to the ad valorem taxes that Lessee otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by Lessee.

Section 13.02 If a mortgagee or Investor Limited Partner of Lessee shall have given Lessor, before any Event of Default shall have occurred hereunder, a written notice specifying the name and mailing address of the mortgagee or Investor Limited Partner, then Lessor shall not terminate this Lease by reason of the occurrence of any Event of Default hereunder unless Lessor shall have given the mortgagee and Investor Limited Partner a copy of its notice to Lessee of such Event of Default addressed to the mailing address last furnished by the mortgagee and Investor Limited Partner, and such Event of Default shall not have been cured by said mortgagee or Investor Limited Partner, as applicable, within the time permitted herein (which such time period, with respect to mortgagee and Investor Limited Partner, shall begin upon receipt of the respective notice by mortgagee and Investor Limited Partner), provided that mortgagee and Investor Limited Partner shall have the right to extend the period of time for the curing of any such Event of Default for an additional period of thirty (30) days from the date contained in the notice given pursuant

to Section 16.03 herein, or in the case of an Event of Default which cannot be cured within said thirty (30) day period, for such additional period (not to exceed an additional sixty (60) days) as, with all due diligence and in good faith, is necessary to cure the Event of Default. Lessor acknowledges that it has received written notice that (a) Lender is a mortgagee hereunder, and that Lessor shall send notices required to be sent to a mortgagee hereunder to Lender at the address provided in Section 16.03 and (b) the Investor Limited Partner is an investor limited partner hereunder, and that Lessor shall send notices required to be sent to an investor limited partner hereunder to the Investor Limited Partner at the address provided in Section 16.03.

Section 13.03 Lessee irrevocably directs that Lessor accept, and Lessor agrees to accept, performance by any such mortgagee or Investor Limited Partner of the Lessee's, as applicable, right to terminate this Lease granted to Lessee by Article XV hereof, regardless whether an Event of Default has occurred. After the date hereof, and in addition to any rights the mortgagee or Investor Limited Partner may have by virtue of this Lease, if, within ninety (90) days after the mailing of a notice of termination, or such later date as may be provided in this Lease following the expiration of the cure period, if any, afforded to the Lessee (the "Mortgagee/Investor Cure Period"), such mortgagee or Investor Limited Partner shall pay, or arrange to the satisfaction of Lessor for the payment of, a sum of money equal to any and all Basic Rent, Additional Rents, and other payments due and payable by Lessee hereunder with respect to the portion of the Leased Property to which such mortgagee or Investor Limited Partner claims an interest as of the date of the giving of notice of termination, in addition to their pro rata share of any and all expenses, costs and fees, including reasonable attorneys' fees, incurred by Lessor in preparation for terminating this Lease, and in acquiring possession of the Leased Property, then, upon the written request of such mortgagee or Investor Limited Partner made any time prior to the expiration of the Mortgagee/Investor Cure Period, Lessor and the party making such request (or its nominee) (the "New Lessee") shall mutually execute prior to the end of such Mortgagee/Investor Cure Period a new Lease of the Leased Property (or such portion thereof as they have an interest in or mortgage on) for the remainder of the Term of this Lease and on the same terms and conditions, and with the same priority over any encumbrances created at any time by Lessor, its successors and assigns which Lessee has or had by virtue of this Lease; provided, however, that in addition to the above payments such New Lessee shall have paid to Lessor a sum of money equal to the Basic Rent and other payments for such portion of the Leased Property accruing from the date of such termination to the date of the commencement of the term of such new Lease, together with its pro rata share of all expenses, including reasonable attorneys' fees, incident to the preparation, printing, execution, delivery and recording of such new lease and provided, further, that such New Lessee is approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved. Such priority shall exist by virtue of the notice created by this Lease to any transferee of Lessor or person receiving an encumbrance from Lessor, and the priority shall be self-operative and shall not require any future act by Lessor. Such new Leases shall contain the same clauses subject to which this demise is made, and shall be at the rents and other payments for such portion of the Leased Property due Lessor and upon the terms as are herein contained. New Lessees under any such new Leases shall have the same right, title and interest in and to and all obligations accruing thereafter under this Lease with respect to the applicable portion of the Leased Property as Lessee has under this Lease. Nothing in this Section 13.03 shall require the Investor Limited Partner or mortgagee, as a condition to the exercise of its rights under this Section 13.03, to cure any default of Lessee not reasonably susceptible of being cured by any investor limited partner or mortgagee.

Section 13.04 Simultaneously with the making of such new leases, the party obtaining such new lease and all other parties junior in priority of interest in the Leased Property shall execute, acknowledge and deliver such new instruments, including new mortgages and new subleases, as the case may be, and shall make such payments and adjustments among themselves, as shall be necessary and proper for the purpose of restoring to each of such parties as nearly as reasonably possible, the respective interest and status with respect to the Leased Property which was possessed by the respective parties prior to the termination of this Lease as aforesaid.

Section 13.05 Nothing herein contained shall be deemed to impose any obligation on the part of Lessor to deliver physical possession of the Leased Property to such mortgagee or their respective nominee until the new leases have been executed by all pertinent parties. Lessor agrees, however, that Lessor will, at the cost and expense of such mortgagee or respective nominee, cooperate in the prosecution of judicial proceedings to evict the then defaulting Lessee or any other occupants of the Leased Property.

Section 13.06 Notwithstanding the term of any mortgage, Lessee's mortgagee shall have no further rights in the Lease except as stated herein. As used in this Section and throughout this Lease, the noun "mortgage" shall include a leasehold deed of trust, the verb "mortgage" shall include the creation of a leasehold deed of trust, the word "mortgagee" shall include the beneficiary under a leasehold deed of trust, and the terms "foreclose" or "foreclosure" shall include a trustee's sale under a deed of trust as well as a foreclosure by judicial process.

ARTICLE XIV.

Events of Default; Termination

If any one or more of the following events (herein called "Events of Default") shall happen:

(a) if Lessee fails to maintain the commercial general liability insurance required by Section 10.01 after being given notice of such failure and not curing such failure within ten (10) days of receipt of such notice; or

(b) if default shall be made in the due and punctual payment of any payment due pursuant to Section 7.04 hereof, and such default shall continue for more than thirty (30) days after Lessee's receipt of written notice of such default to Lessee from Lessor; or

(c) if default shall be made by Lessee in the due performance of or compliance with any of the terms hereof, other than that referred to in the foregoing subdivisions (a) and (b), and such default shall continue for sixty (60) days after Lessor shall have given Lessee written notice of such default (or in the case of any such default which cannot with due diligence be cured within such 60-day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any such default not susceptible of being cured with due diligence within the sixty (60) days that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence);

then in any such event Lessor at any time thereafter and while such Event of Default shall continue may give a written termination notice to Lessee, which notice shall specify the nature of the Event of Default and a date of termination of this Lease not less than ninety (90) days after the giving of such notice. Upon such termination, Lessor shall have the right, but not the obligation, to enter upon the Leased Property and repossess the Leased Property. This termination right is subject to Lessee's right to purchase the Leased Property pursuant to Section 15.01 and at any time during or within 30 days after the term of this Lease, Lessee may exercise its right in Section 15.01 to purchase the Leased Property without regard to whether an Event of Default has occurred.

ARTICLE XV.

Purchases and Purchase Prices

Section 15.01 Option to Purchase. Lessee (and upon an event of default under any mortgage, such mortgagee) shall have an irrevocable and exclusive option to purchase the Leased Property as a whole or any part thereof at any time during the Term or within thirty (30) days after the termination or expiration of the Lease for the amount provided in Section 15.03. To exercise such option Lessee or mortgagee shall (i) give Lessor at least ten (10) days prior written notice of its intent to exercise any option granted pursuant

to this Section 15.01, which notice shall state the purchase date, and (ii) comply with the provisions of Section 15.03 hereof. The option to be exercised by Lessee or mortgagee hereunder may be exercised whether or not a default or Event of Default has occurred hereunder. Lessee or mortgagee shall also have the option to purchase any item of Equipment upon ten (10) days' prior written notice of its intent to exercise its option to purchase such item and upon compliance with Section 15.03.

Section 15.02 Granting of Easements. From time to time during the Term, Lessee shall have the right, at Lessee's expense, to cause Lessor (i) to grant easements affecting the Leased Land, (ii) to dedicate or convey, as required, portions of the Leased Land for road, highway and utilities and other public purposes, and (iii) to execute petitions to have the Leased Land or portions thereof annexed to any municipality or included within any utility, highway or other improvement or service district. Lessor shall also promptly execute and deliver estoppels, joinders, non-disturbance agreements and other documents required in connection with Lessee's use, financing, and refinancing of the Leased Property.

Section 15.03 Exercise of Option.

(a) To exercise any option contained in Section 15.01, Lessee shall pay, or cause to be paid, on or prior to the purchase date, as the purchase price the sum of (i) \$1.00 plus (ii) any other amounts that are then due or that have accrued under this Lease (including, without limitation, any amounts due upon termination or expiration of this Lease), but excluding any amounts required to be expended pursuant to Article XI.

(b) On the purchase date for the purchase of the Leased Property pursuant to Section 15.01, this Lease shall terminate and Lessor shall convey Lessor's interest in the Leased Property to Lessee (or its assigns) by quitclaim deed and/or bill of sale, as appropriate, without warranty of any type. The form of the quitclaim deed and bill of sale pursuant to which property will be conveyed pursuant to this Section shall be in substantially the forms attached hereto as Exhibit D and Exhibit E respectively. Lessee shall pay all expenses relating to such conveyance.

ARTICLE XVI.
Miscellaneous

Section 16.01 Applicable Law. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee.

Section 16.02 Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 16.03 Notices and Demands. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Lease shall be in writing, and shall be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by a nationally recognized overnight courier service, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the Lessor:

Knoxville's Community Development Corporation
901 N. Broadway
Knoxville, Tennessee 37917
Attention: Benjamin M. Bentley

with copies to:

Bass, Berry & Sims PLC
900 S. Gay Street
1700 Riverview Tower
Knoxville, Tennessee 37902
Attention: Russell E. Stair, Esq.

To the Lessee:

Summit Towers Apts LP
201 Locust Street
Knoxville, Tennessee 37917
Attention: _____

with copies to:

Reno & Cavanaugh
424 Church Street, Suite 2910
Nashville, Tennessee 37219
Attention: Dwayne Barrett

To Lender (as mortgagee as provided in Article XIII):

Berkadia Commercial Mortgage LLC
323 Norristown Road, Suite 300
Ambler, PA 19002

To the Investor Limited Partner
(as an investor limited partner as provided in Article XIII):

CREA Summit Towers LLC
30 South Meridian Street, Suite 400
Indianapolis, Indiana 46204

Section 16.04 Headings and References. The headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof. All references in this Lease to particular Articles or Sections are references to Articles or Sections of this Lease, unless otherwise indicated.

Section 16.05 Successors and Assigns. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 16.06 Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 16.07 Expenses and Closing Fee. Lessee shall pay all costs and expenses of Lessor in connection with the preparation, negotiation and execution of this Lease and the performance hereof, including the reasonable fees and expenses of Lessor's attorneys. In addition, in the event that Lessor shall

be required to engage legal counsel for the enforcement of any of the terms of this Lease, whether or not such employment shall require institution of suit or other legal services required to secure compliance on the part of Lessee, Lessee shall be responsible for and shall promptly pay to Lessor the reasonable value of said attorneys' fees, and any other reasonable expenses incurred by Lessor as a result of such default. Furthermore, simultaneously with the execution hereof, Lessee shall pay to Lessor a closing fee in the amount of \$35,000.00 in accordance with Lessor's policies.

Section 16.08 No Liability of Officers, Etc. No recourse under or upon any obligation, covenants or agreement contained in this Lease shall be had against any incorporator, members, director or officer, as such, past, present or future, of Lessor, either directly or through the Lessor. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer is hereby expressly waived and released by Lessee as a condition of and consideration for the execution of this Lease.

Section 16.09 No Liability of City, County, Officers, Etc. The City, County and the officers and agents of the City and County shall not in any event be liable for the performance of any obligation or agreement of any kind whatsoever herein, and none of the agreements or obligations of Lessor contained in this Lease or otherwise shall be construed to constitute an indebtedness of the City, County or the officers or agents of the City or County, within the meaning of any constitutional or statutory provision whatsoever.

Section 16.10 Limitation of Liability. Notwithstanding any other provision hereof, Lessor's liability hereunder shall be limited to its interest in the Leased Property and the payments to be made pursuant to this Lease, and Lessee shall not have any recourse against any other assets of Lessor.

Section 16.11 Interest. In addition to all other amounts payable under this Lease, Lessee shall also pay interest on any payment due hereunder that is not paid on the date such payment is due until paid at the interest rate, as it may vary from time to time, that the City would impose on a delinquent tax payment during the period such payment was due.

Section 16.12 Amendments and Modifications. The Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings whether written or oral. Any amendments, modifications or revisions to this Lease shall be signed by both Lessor and Lessee and only with the prior written consent of Investor Limited Partner.

[Signatures appear on following page.]

IN WITNESS WHEREOF, this Lease has been duly executed by the parties hereto as of the date and year first above written.

KNOXVILLE'S COMMUNITY DEVELOPMENT
CORPORATION

ATTEST:

By: _____
Scott Broyles, Vice Chair

Secretary

SUMMIT TOWERS APTS LP,
a Delaware limited partnership

By: Summit Towers Apts GP LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name:
Title:

EXHIBIT A

Legal Description of Leased Land

EXHIBIT B

Leased Equipment

None.

EXHIBIT C

BILL OF SALE

Knox County, Tennessee

_____, 20__

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby transfers and conveys to Knoxville's Community Development Corporation, a public nonprofit corporation, all of its right, title, claim and interest in law and equity in and to all personal property, fixtures, machinery and equipment described on Exhibit A attached hereto.

The undersigned warrants that it has good and lawful right to make this conveyance.

IN WITNESS WHEREOF, _____ has caused its name to be signed by its duly authorized officer on the day and year first above written.

SUMMIT TOWERS APTS LP,
a Delaware limited partnership

By: Summit Towers Apts GP LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name:
Title:

Sworn to and subscribed before me, this ____ day of _____, 20__.

Notary Public

My Commission Expires:

EXHIBIT D

This Instrument Prepared By:
Russell E. Stair, Esq.
BASS, BERRY & SIMS PLC
1700 Riverview Tower
900 South Gay Street
Knoxville, Tennessee 37902

QUITCLAIM DEED

THIS INDENTURE, made this _____ day of _____, 20____, between:

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION, a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Tennessee Housing Authorities Law.

First Party, and

SUMMIT TOWERS APTS LP, a Delaware limited partnership.

Second Party,

WITNESSETH: that said First Party, for and in consideration of the sum of ONE DOLLAR (\$1.00) cash and other good and valuable considerations in hand paid by Second Party, the receipt and sufficiency of which is hereby acknowledged, has quitclaimed and does hereby quitclaim unto the said Second Party the following described premises:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A AND MADE A PART HEREOF.

THIS CONVEYANCE is made subject to applicable easements, restrictions and building set back lines of record.

TOGETHER with all the estate, right, title and interest of the First Party therein, with the hereditaments and appurtenances thereto appertaining releasing all claims therein.

In this instrument in every case the plural shall include the singular and vice-versa and each gender the others.

IN WITNESS WHEREOF, this instrument has been executed on behalf of First Party by its duly authorized officer on the day and year first above written.

KNOXVILLE'S COMMUNITY DEVELOPMENT
CORPORATION

By: _____
Chair

STATE OF TENNESSEE)
)
COUNTY OF _____)

Personally appeared before me the undersigned authority, a Notary Public in and for said City and in said state, _____, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Chair of Knoxville's Community Development Corporation, the within named bargainor, a housing and redevelopment authority of the City of Knoxville, Tennessee organized under the Tennessee Housing Authorities Law, and that he as such Chair, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chair.

Witness my hand and official seal at office, this _____ day of _____, _____

Notary Public

My Commission Expires:

Name and address of property owner:

who is responsible for payment of taxes.

CLT CODE: _____

I hereby swear or affirm that the actual consideration or true value of this transfer, whichever is greater is \$1.00.

Subscribed and sworn to before me, this _____ day of _____, _____.

Affiant

My Commission Expires:

Notary Public

EXHIBIT E

BILL OF SALE

Knox County, Tennessee

_____, 20____

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby transfers and conveys to Summit Towers Apts LP, a Delaware limited partnership, all of its right, title, claim and interest in law and equity in and to all personal property, fixtures, machinery and equipment described on Exhibit A attached hereto.

The undersigned makes no warranty as to title of the property transferred and conveyed.

IN WITNESS WHEREOF, Knoxville's Community Development Corporation has caused its name to be signed by its duly authorized officer on the day and year first above written.

KNOXVILLE'S COMMUNITY DEVELOPMENT
CORPORATION

By: _____
Title: _____

Sworn to and subscribed before me, this ____ day of _____, 20____.

Notary Public

My Commission Expires:

KNOXVILLE'S COMMUNITY DEVELOPMENT CORPORATION

BOARD ACTION FORM #10

MEETING DATE	September 25, 2025
AGENDA ITEM DESCRIPTION	Approval is requested to authorize the execution of an architecture design agreement with Design Innovation Architects in an amount not to exceed \$550,000 for the design of the renovation and expansion of the Boys and Girls Club at Western Heights.
SUBMITTED BY	Name, Title / Department: Jim Hatfield, CDO
MEETING TYPE	<input checked="" type="checkbox"/> Regular <input type="checkbox"/> Special <input type="checkbox"/> Annual
CLASSIFICATION	<input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Approval
BUDGET / FINANCIAL IMPACT	Budgeted: \$ 550,000 Expenditure: \$ 550,000 Source of Funds: NMTC, philanthropic, CNI funds
APPROVAL / REVIEWS	<input checked="" type="checkbox"/> Department Head /VP <input type="checkbox"/> Budget/Finance <input checked="" type="checkbox"/> Executive Director/CEO <input checked="" type="checkbox"/> Legal Counsel: BBS Other – Name/Title:
<u>BACKGROUND</u>	
<p>1. What is the objective of this action? Approval to enter execute a AIA B108 architect agreement with DIA architects of Knoxville related to the design of the renovation and expansion of the Boys and Girls Club at Western Heights. The renovation and expansion of this facility is one of the key Neighborhood projects that was identified in the Choice Neighborhoods application and master plan. In summary, the project contemplates a renovation of the existing facility as well as an approximate 8,000 SF expansion to include new programming spaces, administrative offices, a teen area and outdoor play area.</p> <p>2. Why is the action needed now? KCDC is mid-way through the execution of the CNI plan and is intending on closing on the capitalization for this project in early Q2 2026. Design needs to begin now to meet that closing time line.</p> <p>3. Who are the parties involved and what are their roles (if appropriate)? KCDC as project developer and owner. DIA as the project architect.</p> <p>4. What are the long-term and short-term exposures? None.</p>	
HISTORICAL / TRANSACTIONAL INFORMATION (who, when, where)	
ATTACHMENTS	Concept Plan and Draft B108 agreement



PUBLIC ACTIVITY SPACE, POTENTIAL COMMUNITY GARDEN

SCALE 1'-0" : 20'-0"

24004

09/17/2024

FIRST FLOOR PLAN

KCDC B+GC WESTERN HEIGHTS RENOVATION

1417 W. OLDHAM AVE. KNOXVILLE, TN 37921

DIA

Design Innovation

1111 1/2 West End Avenue, Suite 200, Knoxville, TN 37902

423.753.1111

AIA® Document B108® – 2009

Standard Form of Agreement Between Owner and Architect for a Federally Funded or Federally Insured Project

AGREEMENT made as of the day of September in the year Two Thousand Twenty-Five

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner
(Name, legal status, address and other information)

Knoxville's Community Development Corporation (KCDC)
901 N. Broadway
Knoxville, TN 37917

and the Architect
(Name, legal status, address and other information)

Design Innovation Architects, Inc.
402 S. Gay Street, Suite 201
Knoxville, TN 37902

for the following Project
(Name, location and detailed description)

Western Heights Boys & Girls Club -- Phase II
1417 W. Oldham Avenue
Knoxville, TN 37921

Renovation and addition to an existing Boys & Girls Club facility located in the Western Heights neighborhood of Knoxville, Tennessee.

The Owner and Architect agree as follows

ADDITIONS AND DELETIONS:

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 OPTIONAL SERVICES AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1
(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

See Exhibit A.

§ 1.2 Check one box below to indicate whether the Owner will provide estimates of the Cost of the Work or whether the Architect will provide estimates of the Cost of the Work

- ☒ Owner-provided estimates
☐ Architect-provided estimates

§ 1.3 The Owner's anticipated dates for commencement of construction, Substantial Completion, and final completion of the Work are set forth below.

- 1 Commencement of construction date

April 15, 2026

- 2 Substantial Completion date

June 30, 2027

- 3 Final completion date

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User Notes (540e2aeff442e4498d09689f)

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July 31, 2027

§ 1.4 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects and other applicable design professionals practicing in the same or similar locality under the same or similar circumstances, and who have experience on projects of a similar size, nature, schedule and budget. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project, and in accordance with the schedule approved by the Owner pursuant to Section 3.1.3

§ 2.2.1 The Architect shall be responsible for the acts and omissions of its agents, employees and consultants, and all other persons and entities providing services to the Project through or on behalf of the Architect, and all other persons and entities for which the Architect is responsible (collectively, the "Architect Parties").

§ 2.2.2 The Architect, the Architect Parties, their services and the Construction Documents shall comply with all applicable laws, statutes, codes, ordinances, rules, regulations, and lawful orders and requirements of public authorities, including those that relate to hazardous materials, accessibility for the physically challenged (including the Americans with Disabilities Act), privacy and protection of confidential information

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Hereafter, the Architect's representative shall not change unless approved by the Owner in writing.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project. The Architect shall not remove or replace any consultant or key personnel working on the Project, or assign them to other projects in a manner that adversely affects their ability to perform their duties on the Project, unless and until the Owner has approved such removal, replacement or assignment in writing.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

1 General Liability

Commercial General Liability with Policy Limits of not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

2 Automobile Liability

Automobile Liability covering vehicles owned, and non-owned vehicles used by the Architect with policy limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

3 Workers' Compensation

Worker's Compensation at statutory limits and Employers Liability with policy limits of Five Hundred Thousand Dollars (\$500,000) each accident, Five Hundred Thousand Dollars (\$500,000) each employee, and Five Hundred Thousand Dollars (\$500,000).

4 Professional Liability

Professional Liability covering the Architect's negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. If such insurance is written on a claims-made basis, the Architect shall maintain such insurance for at least five years after Substantial Completion of the Project and shall furnish the Owner with satisfactory evidence of such continuation of coverage prior to final payment and every year thereafter for five years.

§ 2.6 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations

§ 2.7 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in Sections 2.5 and 2.6

§ 2.8 All services of the Architect's consultants shall be provided pursuant to written agreements with the Architect that specifically bind such consultants to the terms of this Agreement, to the extent applicable. Such agreements shall require the consultants to carry and maintain insurance coverage similar to the coverage described in this Section 2.5, with reasonably prudent limits and coverages in light of the services to be rendered. The Architect shall furnish the Owner with copies of such agreements at the Owner's request

§ 2.9 To the full extent permitted by law, the Architect shall defend, indemnify and hold harmless the Owner and its officers and employees from and against claims, damages, losses, liabilities, expenses and judgments arising out of, related to or in connection with the Architect's services under this Agreement, including reasonable attorneys' fees and expenses incurred in defending those claims, but only to the extent caused by the negligent acts or omissions of the Architect or any of the Architect Parties

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Articles 2, 3, 4 and any exhibits to this Agreement as Basic Services and include usual and customary structural, mechanical, and electrical engineering services. Services not identified in this Agreement as Basic Services set forth in Article 3 are Optional Services and Additional Services

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion and final completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction

Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project

§ 3.1.7 The Owner's written approval of the Schematic Design Documents, Design Development Documents, Construction Documents, any estimate of the Cost of the Work, or any other item or service provided by the Architect does not relieve or release the Architect of its obligations or duties, or waive any of the Owner's rights, under or arising out of this Agreement

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies or errors discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and request the Owner's approval

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels

§ 3.3.2 The Architect shall submit the Design Development Documents to the Owner and request the Owner's approval

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; ~~(2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions)~~ The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms

§ 3.4.4 The Architect shall submit the Construction Documents to the Owner and request the Owner's approval

§ 3.5 Bidding or Negotiation Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals, (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding ~~and preparing~~ contracts for construction

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents, if applicable, shall consist of bidding requirements and proposed Contract Documents

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

1. procuring the reproduction of Bidding Documents for distribution to prospective bidders;
2. distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
3. organizing and conducting a pre-bid conference for prospective bidders;
4. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
5. organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents, if applicable, shall consist of proposal requirements and proposed Contract Documents

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

1. procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
2. organizing and participating in selection interviews with prospective contractors; and
3. participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's and Architect Parties' negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. The Architect shall advise and obtain the consent of the Owner prior to rejecting any Work and prior to requiring any inspection or testing of the Work

§ 3.6.2.3 The Architect shall interpret and advise the Owner or Contractor, as applicable, about ~~decide~~ matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness

§ 3.6.2.4 Interpretations ~~and decisions~~ of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretation and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts

The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect, after consulting with the Owner, may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Architect shall notify the Owner in advance of all such inspections, and the Owner or its designated representative shall have the right to participate in such inspections

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance

ARTICLE 4 OPTIONAL SERVICES AND ADDITIONAL SERVICES

§ 4.1 ~~Optional~~ Unless designated as such, the Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Optional Services only if specifically designated in the table below as the Architect's responsibility (in which case, such services are included in Basic Services), or such services are otherwise authorized by the Owner in accordance with Section 4.2.

(Designate the Optional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Optional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys	Not Provided	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)		
§ 4.1.6 Building Information Modeling (B202™-2008)		
§ 4.1.7 Civil engineering	Architect	Section 4.2
§ 4.1.8 Landscape design	Architect	Section 4.2
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	Section 4.2
§ 4.1.10 Value Analysis (B204™-2007)		
§ 4.1.11 Detailed cost estimating	Not Provided	
§ 4.1.12 On-site project representation (B207™-2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-designed record drawings		
§ 4.1.15 As-constructed record drawings		
§ 4.1.16 Post occupancy evaluation		

§ 4.1.17	Facility Support Services (B210™-2007)		
§ 4.1.18	Tenant-related services		
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design		
§ 4.1.21	Security Evaluation and Planning (B206™ 2007)		
§ 4.1.22	Commissioning (B211™-2007)		
§ 4.1.23	Extensive environmentally responsible design		
§ 4.1.24	LEED® Certification (B214™-2012)		
§ 4.1.25	Fast-track design services		
§ 4.1.26	Historic Preservation (B205™-2007)		
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	Not Provided	
§ 4.1.28	Structural Engineering	Architect	Section 4.2
§ 4.1.29	Mechanical Engineering and Plumbing	Architect	Section 4.2
§ 4.1.30	Electrical Engineering	Architect	Section 4.2

§ 4.2 Insert a description of each Optional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document

Civil Engineering - Design Innovation Architects, Inc.
Landscape Architecture - Hedstrom Landscape Architecture
Structural Engineering - Fe Design & Engineering, P.C.
Interior Design - Design Innovation Architects, Inc.
Mechanical Engineering and Plumbing - Facility Systems Consultants
Electrical Engineering - Facility Systems Consultants

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Prior to providing any services the Architect believes are Supplemental or Additional Services, the Architect shall notify the Owner of such belief in writing and provide a proposed schedule for, and an estimate of, or proposal for the additional fees and expenses to be incurred as a result of, such services. After receipt of such notice and information, if the Owner authorizes such services as Supplemental or Additional Services in writing, the Architect shall provide such services in accordance with the terms and conditions of such authorization and this Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.2 and an appropriate adjustment in the Architect's schedule. The Owner shall have no obligation to pay additional compensation or expenses associated with any such services unless such services are authorized by the Owner in writing pursuant to this Section 4.3.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
2. When the Owner has provided cost estimating services, making revisions in Drawings, Specifications, or other documents pursuant to Section 6.6;
3. Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
4. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
5. Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
6. Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;

- 7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- 8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- 9 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- 10 Evaluation of the qualifications of bidders or persons providing proposals;
- 11 Consultation concerning replacement of Work resulting from fire or other cause during construction, or
- 12 Assistance to the Initial Decision Maker, if other than the Architect.

~~§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of these services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services.~~

- 13 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect.
- 214 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- 315 Preparing Change Orders that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- 416 Evaluating an extensive number of Claims as the Initial Decision Maker;
- 517 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- 618 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier

~~§ 4.3.32~~ The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- 1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- 2 Twenty-four (24) visits to the site by the Architect over the duration of the Project during construction
- 3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- 4 One (1) inspections for any portion of the Work to determine final completion

~~§ 4.3.43~~ If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights. If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the

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orderly and sequential progress of the Architect's services

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests

§ 5.9 The Owner ~~or the Architect~~ shall provide prompt written notice to the ~~Architect~~ ~~other party~~ if the ~~Owner~~ ~~either of them~~ becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service

§ 5.10 The Owner shall promptly notify the Architect of any direct communications between the Owner and the Contractor that may affect the Architect's services

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress

§ 5.13 The Owner, unless otherwise provided in Article 12, shall furnish all legal, accounting, planning, and other services and expenses required to prepare, present and process any application for governmental or private financing, mortgage insurance or subsidy.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Section 5.2. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or

equipment; the Contractor's methods (if determining bid prices), or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work agreed to by the Architect.

§ 5.3 If the Owner is providing cost estimating services, the estimate of the Cost of the Work shall include appropriate contingencies for design, building or negotiating, price escalation, and market conditions. The Owner shall provide estimates of the Cost of the Work at intervals agreed upon by the Owner and the Architect. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to inaccuracies or incompleteness in the Owner's cost estimates. The Architect may review the estimates solely for the Architect's guidance in completion of its services; however, the Architect shall report to the Owner any potential inaccuracies and incompleteness noted during any such review.

§ 5.4 If the Architect is preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, building and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect shall provide an initial estimate of the Cost of the Work at the conclusion of the Schematic Design Phase. The Architect shall update the estimate of the Cost of the Work at the conclusion of the Design Development and Construction Documents Phases.

§ 5.5 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

1. give written approval of an increase in the budget for the Cost of the Work;
2. authorize rebidding or renegotiating of the Project within a reasonable time;
3. terminate in accordance with Section 9.5;
4. in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
5. implement any other mutually acceptable alternative.

§ 5.6 If the Owner chooses to proceed under Section 5.5.4, the Architect, subject to Section 4.3, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 5.5.4. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7. COPYRIGHTS AND LICENSES

§ 7.1 The Instruments of Service are the Drawings, Specifications and other documents and communications, including those of all third parties, from project to the Architect and the Architect's consultants to describe and define the Work. The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information in documentation in digital form, they shall endeavor to establish necessary protocols governing such transmission.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, ~~including~~ including for similar purposes in connection with the Project is not to be construed as publication or derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive, irrevocable license of use, ~~reproduction and distribution~~ of the Architect's Instruments of Service ~~solely and exclusively~~ for purposes of constructing, ~~modifying, permitting, financing, selling, operating, maintaining, siting, maintaining, altering and adding to~~ the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions

of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service on another project without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses on that project. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service by the Owner shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

~~§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. Intentionally omitted.~~

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. The Owner and Architect shall include a similar mediation provision in all agreements with contractors and consultants retained for the Project, thereby providing for mediation among and between all other persons and entities performing any portion of the services to be provided under this Agreement or the Work on the Project.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as

settlement agreements in any court having jurisdiction thereof

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution to this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of

services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice or such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.6

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement; provided, however, that the Owner may provide a collateral assignment of this Agreement to a lender without its assuming the Owner's rights and obligations under this Agreement

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence

handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 ~~If authorized in writing by the Owner,~~ the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. ~~If so authorized,~~ the Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information ~~if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary.~~ The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3 and Optional Services described under Section 4.1, the Owner shall compensate the Architect as follows:
(Insert stipulated amount of compensation.)

Five Hundred Twenty-One Thousand Nine Hundred Seventy-One and 00/100 Dollars (\$521,971.00)

§ 11.2 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows regardless of whether federal funding or federally guaranteed insurance is available:
(Insert amount of, or basis for, compensation.)

The Owner and Architect shall agree on compensation for any Supplemental Services or Additional Services before they are provided.

§ 11.2.1 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 shall be the amount invoiced to the Architect plus ten percent (10 %), or as otherwise stated below.

The Owner and Architect shall agree on compensation for any Supplemental Services or Additional Services before they are provided.

§ 11.3 Compensation for Basic and Optional Services is based on a stipulated sum. Unless otherwise indicated, compensation for each phase of services shall be as follows:

<u>Programming (not included in Agreement, previously paid)</u>	<u>four percent (4 %)</u>
Schematic Design Phase	<u>sixteen percent (16 %)</u>
Design Development Phase	<u>twenty-five percent (25 %)</u>
Construction Documents Phase	<u>twenty-five percent (25 %)</u>
Bidding or Negotiation Phase	<u>five percent (5 %)</u>
Construction Phase	<u>twenty-five percent (25 %)</u>
Total Basic Compensation	One hundred percent (100 %)

§ 11.4 ~~To the extent they become applicable,~~ the hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates ~~may~~ shall be adjusted ~~no more than once annually~~ in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit B

Employee or Category

Rate (\$0.00)

§ 11.5 Compensation for Reimbursable Expenses

§ 11.5.1 Reimbursable Expenses are in addition to compensation for Basic, Optional, and Additional Services, and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures, if authorized in advance by the Owner in writing

§ 11.5.2 For Reimbursable Expenses the Owner shall compensate the Architect as follows regardless of whether federal funding or federally guaranteed insurance is available. Compensation for Reimbursable Expenses shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred. The total amount of Reimbursable Expenses shall not exceed \$ ——— 7,500.00, without the Owner's prior written approval.

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§ 11.6 Compensation for Use of Architect's Instruments of Service

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.7 Payments to the Architect

§ 11.7.1 An initial payment of Zero & 00/100 Dollars (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

Twelve percent (12 %) per annum

§ 11.7.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.7.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 Any written notice given under this Agreement shall be deemed duly served and received (1) immediately upon hand delivery to an officer of the intended recipient; (2) three business days after depositing in the U.S. Mail to the applicable address provided in this Agreement, by registered, certified, or regular mail; or (3) one business day after depositing with a nationally recognized courier service that provides confirmation of delivery to the applicable address provided in this Agreement, by express or overnight delivery.

§ 12.2 All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Owner and the Architect that logically should survive completion or termination of this Agreement shall survive completion or termination of the Architect's services under this Agreement.

§ 12.3 No action or failure to act by the Owner or Architect shall constitute a waiver of any right, remedy, obligation or duty afforded them under this Agreement or law, nor shall such action or failure to act constitute approval of or acquiescence in any breach of contract or negligence of the other party, except as provided herein or specifically agreed in writing.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect

§ 13.2 This Agreement is comprised of the following documents listed below

1. AIA Document B108™-2009, Standard Form of Agreement Between Owner and Architect for a Federally Funded or Federally Insured Project
2. AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following

N/A

3. Other documents
(List other documents, if any, including additional scopes of service and agency-required documents, if any forming part of the Agreement.)

Exhibit A: Architect's Proposal dated August 4, 2025 (pages 1-2 only, excluding Terms and Conditions)

Exhibit B: Architect's Standard Hourly Rates dated

This Agreement entered into as of the day and year first written above

OWNER (Signature)

(Printed name and title)

ARCHITECT (Signature)

(Printed name and title)