

**GROUND LEASE  
(602 GALENA)**

between

Town of Frisco, a Colorado home rule municipal corporation, as Landlord

and

NHPF Galena, LLC, a Colorado limited liability company, as Tenant

Dated: [DATE], 2025

## GROUND LEASE

### (602 GALENA)

THIS GROUND LEASE (as amended, modified or supplemented, this “**Lease**”) is made as of the [DAY] day of [MONTH], 2025 (the “**Effective Date**”), by and between Town of Frisco, a Colorado home rule municipal corporation, having an address of P.O. Box 4100, Frisco, Colorado 80443 (together with its successors and assigns, “**Landlord**” or the “**Town**”), and NHPF Galena, LLC, a Colorado limited liability company, having an address of c/o The NHP Foundation, 1090 Vermont Ave NW, Suite 400 Washington DC 20005 (together with its permitted successors and assigns, “**Tenant**”).

### RECITALS

A. Landlord is the owner of that real property located in the Town of Frisco, Colorado (the “**Town**”), which is legally described in the attached Exhibit A (the “**Land**”), which Landlord has agreed to lease to Tenant under the terms and conditions hereof, for Tenant’s development, construction, ownership, and operation of an affordable housing rental project (“**Project**”) comprised of not less than 54 rental units (collectively, the “**Units**”), or as many as may be separately approved by the Town in its regulatory capacity, and related amenities, all as further described in Exhibit B (the “**Redevelopment Plan**”).

B. To further Landlord’s goals under the Redevelopment Plan (the “**Lease Purpose**”), as well as to secure the benefits to which Tenant is entitled under this Lease, Tenant has agreed to enter into this Lease.

C. Tenant and Landlord intend that all of the Units of the Project shall be rented to lessees who are eligible under the criteria set forth in the Regulatory Agreements, subject to the rights any Permitted Leasehold Mortgagee under this Lease, the documents evidencing the Operating Agreement, the Permitted Leasehold Mortgages, and the applicable Regulatory Agreements, as each such term is hereinafter defined in Section 1.1.

**NOW THEREFORE, IN CONSIDERATION** of the covenants hereinafter set forth and for other good and valuable consideration, Landlord leases to Tenant and Tenant leases from Landlord the Land, together with any rights, alleys, ways, privileges, easements, appurtenances and advantages, to the same belonging or in any way appertaining (collectively, the “**Leasehold Estate**” and, together with the Tenant Improvements (defined below) and the Equipment (defined below) now or hereafter located thereon, the “**Premises**”),

**SUBJECT TO THE OPERATION AND EFFECT** of the Permitted Encumbrances (as defined below),

**TO HAVE AND TO HOLD** the Premises unto Tenant, its successors and permitted assigns, for the purposes and term of years set forth herein,

**ON THE TERMS AND SUBJECT TO THE CONDITIONS** which are hereinafter set forth:

## **SECTION 1.     DEFINITIONS.**

1.1     **Specific.** As used herein, the following terms have the following meanings:

**“Additional Rent”** has the meaning given to it in Section 3.1.2.

**“Annual Rent”** has the meaning given it in Section 3.1.1.

**“Award”** has the meaning given to it in Section 12.2.

**“Bankruptcy”** shall be deemed, for any Person, to have occurred either

(i)     if and when such Person (i) applies for or consents to the appointment of a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of its creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with its creditors or seeks to take advantage of any insolvency law, (v) performs any other act of bankruptcy, or (vi) files an answer admitting the material allegations of a petition filed against such Person in any bankruptcy, reorganization or insolvency proceeding, as to any of the above, not dismissed within 60 days thereafter; or

(ii)    if (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating such Person a bankrupt or an insolvent, approving a petition seeking such an adjudication, or reorganization, or appointing a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, or (ii) there otherwise commences with respect to such Person or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for any period of 90 consecutive days after the expiration of any stay thereof.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Commencement Date”** has the meaning given it in Section 2.1.1.

**“Depository”** means a federally-insured bank or trust company designated by Landlord having capital of not less than \$50,000,000 and having its main office in Colorado, or if no such bank or trust company is willing to act as such, Landlord. For purposes of this Lease, (a) a qualified bank or trust company shall be deemed willing to act as Depository hereunder if in connection therewith it employs its customary form of escrow agreement which does not contain provisions inconsistent with those of this Lease, and agrees to undertake the duties provided for herein, and (b) no such bank or trust company shall be deemed willing to act as Depository if Landlord gives notice to Tenant that no qualified bank or trust company to which it has applied is willing to act as Depository, and Tenant does not, within 30 days after being given such notice, designate as Depository a bank or trust company having such qualifications of a Depository as set forth above and willing to act as such.

**“Effective Date”** has the meaning given in the first paragraph of this Lease.

**“Environmental Laws”** shall mean any and all Federal, State or local statutes, laws, rules, regulations, ordinances, orders, codes, determinations, decrees, or rules of common law pertaining to the environment now or at any time hereafter in effect and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment relating to the environment or Hazardous Materials (as hereafter defined), or exposure to Hazardous Materials) including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, as amended, and any other environmental or health conservation or protection laws.

**“Equipment”** means all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter located on or within the Premises or the Tenant Improvements and necessary or desirable for the proper operation and maintenance of the Premises or the Tenant Improvements (other than moveable equipment belonging to any management company servicing the Tenant Improvements or belonging to any Resident of a Unit), including any and all awnings, shades, screens and blinds; asphalt, vinyl, composition and other floor, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators and hoists; heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts and tanks; oil burners, furnaces, heaters, incinerators and boilers; air-cooling and air-conditioning equipment; washroom, toilet and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring and equipment; tools, building supplies, lobby decorations and window washing hoists and equipment; garage equipment, security systems, and gardening and landscaping equipment; swimming pool, recreational furniture and equipment; refrigerators, dishwashers, disposals, ranges, if any, washers, if any, dryers, and other kitchen appliances and all additions thereto and replacements thereof, but specifically excluding personal property of Residents or other occupants under Tenancy Agreements.

**“Event of Default”** has the meaning given it in Section 14.1.

**“FCHDA”** means Frisco Community Housing Development Authority, a Colorado public body, corporate and politic.

**“Fee Estate”** means the fee simple estate in the Land, subject to the operation and effect of this Lease.

**“First Mortgage Lender”** means the construction and permanent lender of the Mortgage loan listed in first priority in the Permitted Encumbrances.

**“Force Majeure”** means any (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, including any federal, state, or local declaration of emergency or “shelter in place” order restricting movement or construction activity, (c) failure or shortage of electrical power, gas, water, fuel oil, or other utility or service, (d) riot, war, insurrection, threat of or terrorist action or other national or local emergency, (e) accident, flood, fire or other casualty, (f) unusually adverse weather conditions resulting in cessation of work on the Project for in excess

of one week, (g) other act of God, (h) inability to obtain a building permit or a certificate of occupancy not resulting from Tenant's acts or negligent omissions, (i) pandemic, epidemic or other public health emergency, and any governmental orders related thereto or stoppages or delays resulting therefrom, or (j) other cause similar to any of the foregoing and beyond the reasonable control of the Person in question, but not including delays caused by Tenant's lack of capital.

**"Hazardous Materials"** shall have the meaning ascribed in, and shall include those substances listed in Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. and the regulations promulgated thereunder (as amended) and the Clean Air Act, 42 U.S.C. 7401, et seq. and the regulations promulgated thereunder (as amended) and includes oil, petroleum distillates or by-products, waste oil and used oil as those terms are defined in the Clean Air Act, 33 U.S.C. 1251, et seq. and regulations promulgated thereunder (as amended) and the Resource, Conservation and Recovery Act, 42 U.S.C. 6901 et seq. and regulations promulgated thereunder (as amended) and the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq. and regulations promulgated thereunder (as amended), and shall include any (a) groundwater contaminated by such Hazardous Materials and (b) other pollutant or contaminant designated as a hazardous substance or hazardous material by Congress or the United States Environmental Protection Agency (EPA) or defined by any other federal or State law, ordinance, code, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

**"Holdover Rent"** has the meaning given it in Section 2.3(b).

**"Insurance Requirements"** has the meaning given it in Section 5.2(a).

**"Land"** has the meaning given it hereinabove.

**"Landlord"** means Landlord and its successors and assigns as owner of the Fee Estate.

**"Land Records"** means the official public records as maintained by the Clerk and Recorder of the County of Summit, Colorado.

**"Lease Year"** means (a) the period commencing on the Commencement Date and terminating on the first (1st) anniversary of the last day of the calendar month containing the Commencement Date, and (b) each successive period of 12 calendar months thereafter during the Term.

**"Leasehold Estate"** means the leasehold estate in the Land held by Tenant under this Lease, as defined above.

**"Legal Requirements"** has the meaning given it in Section 5.2(a).

**"Managing Member"** means [INSERT].

**"Mortgage"** means any mortgage or deed of trust at any time encumbering any or all of the Land, and any other security interest therein existing at any time under any other form of security instrument or arrangement used in the locality of the Land (including any such other form

of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein. Notwithstanding anything to the contrary herein, all Mortgages shall be subordinate in all respects to this Lease.

**“Mortgagee”** means the Person secured by a Mortgage.

**“Operating Agreement”** means [INSERT], as may be amended from time to time.

**“Partial Taking”** has the meaning given it in Section 12.4.

**“Permitted Encumbrances”** means the instruments and matters of public record listed as exceptions on Tenant’s Leasehold Policy of Title Insurance issued by Land Title Guarantee Company, as well as those set forth on Exhibit C (Permitted Encumbrances) to this Lease.

**“Permitted Leasehold Mortgage”** shall mean, as applicable, the Leasehold Construction Deed of Trust, Assignment of Lease and Rents, Security Agreement and Fixture Filing dated of even date with this Lease, to be recorded among the Land Records subsequent to the recordation of this Lease, or a memorandum hereof, and documents related thereto, by and between Tenant as grantor, the Public Trustee for the County of Summit, as Trustee, and First Mortgage Lender, as beneficiary, and securing the promissory note of even date therewith made by the Tenant, payable to the First Mortgage Lender, and all assignments of leases or rents, security agreements and any other instruments executed as collateral or additional security for each such note, and together with any modification, amendment, extension, increase, refinancing or recasting of such note or mortgage; and any other Mortgage approved by Landlord as a Permitted Leasehold Mortgage hereunder and covering the Leasehold Estate in the Premises or any portion thereof at any time during the Term, each only for so long as such Mortgage covers the Leasehold Estate in the Premises or any portion thereof and is immediately junior in priority to the Leasehold Estate in the Premises or such portion thereof created by this Lease.

For the avoidance of doubt, a Permitted Leasehold Mortgage shall encumber Tenant’s interest in the Leasehold Estate only and shall not encumber any of Landlord’s interest in the Fee Estate.

**“Permitted Leasehold Mortgagee”** means each lender of a Mortgage loan approved by Landlord and any other Person from time to time secured by a Permitted Leasehold Mortgage.

**“Person”** means a natural Person, a trustee, a corporation, a partnership, a limited liability company and any other form of legal entity.

**“Plans and Specifications”** has the meaning given it in Section 8.1.1.

**“Premises”** means the Leasehold Estate and all buildings; provided, that if at any time hereafter any portion of the Premises becomes no longer subject to this Lease, “Premises” shall thereafter mean so much thereof as remains subject to this Lease.

**“Project”** has the meaning given in Recital A of this Lease.

**“Regulatory Agreements”** shall mean the following: (i) the Town Covenant; and (ii) any other declaration of land use restrictive covenants, regulatory agreement, or similar agreement executed with any federal, state or local governmental authority pertaining to the Project.

**“Rent”** means all Annual Rent and all Additional Rent.

**“Resident”** shall mean a Person occupying a Unit in the Project pursuant to a Tenancy Agreement.

**“Restoration”** means the repair, restoration or rebuilding of any or all of the Premises after any damage thereto or destruction thereof, with such alterations or additions thereto as are made by Tenant in accordance with this Lease, together with any temporary repairs or improvements made to protect the Premises pending the completion of such work.

**“State”** means the State of Colorado.

**“Taking”** has the meaning given it in Section 12.1.

**“Taxes”** has the meaning given it in Section 6.1.

**“Tenancy Agreement”** shall mean the form of lease agreement between Tenant and a Resident under the terms of which a Resident is entitled to enjoy possession of a Unit in the Project.

**“Tenant”** means Tenant and its successors and permitted assigns as holder of the Leasehold Estate.

**“Tenant Improvements”** has the meaning given it in Section 5.1(b).

**“Term”** has the meaning given it in Section 2.1.1.

**“Termination Date”** has the meaning given it in Section 2.1.1.

**“Total Taking”** has the meaning given it in Section 12.3.

**“Town Covenant”** means the affordable housing covenant titled “Declaration of Restrictive Covenants for Affordable Rental Housing (602 Galena)” and attached hereto as Exhibit G.

**“Transfer”** has the meaning given it in Section 13.1(i).

**“Units”** has the meaning given it in Recital A.

1.2 **General.** Any other term to which meaning is expressly given in this Lease shall have such meaning.

1.3 **Construction.** Any Rent or Additional Rent or any other amount paid hereunder shall be construed as made by Tenant solely for the use of the Premises, as Tenant shall be deemed

to own the Tenant Improvements for all purposes during the Term. Any covenants contained herein made by Tenant regarding the Tenant Improvements shall be construed to protect Landlord from liability in connection with the Tenant Improvements, but shall not be construed to create any obligation on behalf of Tenant to complete such Tenant Improvements (beyond the use of Tenant's best efforts to do so pursuant to Section 8.1) or any rights in favor of Landlord to control the construction, development, or maintenance of the Tenant Improvements except to the extent expressly set forth herein.

## **SECTION 2.     TERM.**

### **2.1     Length.**

2.1.1 **Original Term.** This Lease shall be for a minimum term ("**Term**") (i) commencing on the Effective Date ("**Commencement Date**"), and (ii) terminating at 11:59 P.M. on the day immediately before the 75<sup>th</sup> anniversary of the first day of the first full calendar month during the Term (the "**Termination Date**"), except that if the date of such termination is hereafter advanced to an earlier date or postponed pursuant to any provision of this Lease, or by express, written agreement of the parties hereto, or by operation of law, the date to which it is advanced or postponed shall thereafter be the Termination Date for all purposes of this Lease).

2.1.2 **Confirmation of Commencement and Termination.** Landlord and Tenant shall upon either's request therefor, within 15 days after, respectively, confirm in writing by instrument in recordable form the expiration of the Term or any earlier termination of this Lease by action of law or in any other manner.

2.2 **Surrender.** Tenant shall, at its expense and subject to Section 2.4, at the expiration of the Term or any earlier termination of this Lease, (a) promptly yield up to Landlord the Premises, the Units, and the rest of the Tenant Improvements, and the Equipment, in good order and repair (ordinary wear and tear, and damage by casualty, subject to Section 11, excepted) and broom clean, (b) remove therefrom Tenant's signs, goods and effects and any machinery, trade fixtures and equipment used in conducting Tenant's trade or business and not part of the Units or the Equipment or otherwise owned by Landlord, and (c) repair any damage to the Premises caused by such removal. Upon such expiration or termination, whether by reason of an Event of Default or otherwise, (a) neither Tenant nor its creditors and representatives shall thereafter have any right at law or in equity in or to any or all of the Premises (including the Units and the rest of the Tenant Improvements) or to repossess any of same, or in, to or under this Lease, and Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of any creditor of Tenant or any other Person whatsoever (but subject to the rights of any Person then holding any lien, right, title or interest in or to the Fee Estate and subject to the rights of any Resident occupying a Unit in the Project pursuant to a Tenancy Agreement), and (b) Tenant hereby waives any and all rights of redemption which it may otherwise hold under any applicable law.

### **2.3     Holding Over.**



(a) Nothing in this Lease shall be deemed in any way to permit Tenant to use or occupy the Premises after the expiration of the Term or any earlier termination of this Lease. If and only if Tenant continues to occupy the Premises after such expiration or termination after obtaining Landlord's express, written consent thereto;

(i) such occupancy shall (unless the parties otherwise agree in writing) be deemed to be under a month-to-month tenancy, which shall continue until either party notifies the other in writing, by at least 30 days before the end of any calendar month, that the party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate;

(ii) the Annual Rent payable with respect to each such monthly period shall equal one-twelfth (1/12) of the Annual Rent for the Lease Year during which such expiration or termination occurred, and the Additional Rent payable under Section 3; and

(iii) such month-to-month tenancy shall be on the same terms and subject to the same conditions as those set forth in this Lease, except that if Landlord gives Tenant, by at least 30 days before the end of any calendar month during such month-to-month tenancy, written notice that such terms and conditions (including any relating to the amount and payment of Rent) shall, after such month, be modified in any manner specified in such notice, then such tenancy shall, after such month, be on the said terms and subject to the said conditions, as so modified.

(b) If Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease without having obtained Landlord's express, written consent thereto, then without altering or impairing any of Landlord's rights under this Lease or applicable law, (a) Tenant hereby agrees to pay to Landlord immediately on demand by Landlord as holdover rental ("**Holdover Rent**") for the Premises, for each calendar month or portion thereof after such expiration of the Term or such earlier termination of this Lease until Tenant surrenders possession of the Premises to Landlord, a sum equaling the Annual Rent attributable to such monthly period plus \$100.00 per each day of such holdover occupancy, and (b) Tenant shall surrender possession of the Premises to Landlord immediately on Landlord's having demanded the same. Nothing in this Lease shall be deemed in any way to give Tenant any right to remain in possession of the Premises after such expiration or termination, regardless of whether Tenant has paid any such Holdover Rent to Landlord, without Landlord's express written approval.

**2.4 Title to and Alterations of Tenant Improvements.** At all times during the Term of this Lease, the Tenant Improvements shall be owned by Tenant and during the Term, Tenant alone shall be entitled to all of the tax attributes of ownership of the same, including the right to claim depreciation or cost recovery deductions, and Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises. At the expiration or earlier termination of the Term, or any portion thereof, Tenant shall peaceably leave, quit and surrender the Premises in the manner required under Section 2.2, subject to the rights of Residents in possession of Units under Tenancy Agreements with Tenant (provided, however, that such Residents are not then in default thereunder, and attorn to Landlord as their lessor). Upon such expiration or termination, the Premises and the Tenant Improvements, or any portion thereof

so terminated, shall become the sole property of Landlord at no cost to Landlord, and shall be free of all liens and encumbrances and in good condition, subject only to reasonable wear and tear, the rights of any Person then holding any lien, right, title or interest in the Fee Estate and in the event of a casualty, to the provisions of Section 11.

### **SECTION 3.     RENT.**

3.1     **Amount.** As rent for the Premises, Tenant shall pay to Landlord

3.1.1     **Annual Rent.** Upon execution of this Lease, Tenant shall pay to Landlord an initial installment of rent equal to One Dollar and 00/100 Dollars (\$1.00) (the “**Annual Rent**”) The Annual Rent shall be due and payable annually on the anniversary of the Effective Date.

3.1.2     **Additional Rent.** Additional rent (“**Additional Rent**”) is any required payment referred to as such in this Lease which accrues while this Lease is in effect, and includes any amount which Landlord, at its option, pays on behalf of Tenant for amounts Tenant is obligated to pay under Section 6 of this Lease if Tenant has not made payment therefor, such as taxes, insurance costs, and utility charges. Such Additional Rent, unless required to be paid sooner hereunder, shall be due and payable within 30 days of Landlord’s written demand therefor and shall be used by Landlord to make the delinquent payments for which the Additional Rent was collected or to reimburse Landlord for such payments. Tenant shall reimburse Landlord, promptly upon demand, for all reasonable actual out-of-pocket costs and expenses actually incurred by Landlord in connection with the Project as long as such amounts were incurred pursuant to, or consistent with, the terms of this Lease. For the avoidance of doubt, Tenant agrees that Tenant will pay to Landlord all reasonable out-of-pocket costs and expenses (including attorneys’ fees and disbursements) actually incurred by Landlord in connection with (a) Tenant’s ongoing performance of and compliance with Tenant’s agreements and covenants contained in this Lease on its part to be performed or complied with after the Commencement Date, including confirming compliance with the Legal Requirements and the Insurance Requirements; (b) Landlord’s ongoing performance of and compliance with all agreements and covenants contained in this Lease on its part to be performed or complied with after the Commencement Date, including Landlord’s and any of Landlord consultants’ review of requests to join in governmental approvals initiated by Tenant and any other items that require Landlord’s review and/or consent or approval; (c) any action required in the course of an Event of Default; and (d) the negotiation, preparation, execution, delivery and administration of any estoppel certificates, consents, amendments, waivers or other modifications to this Lease and any other documents related to this Lease.

3.2     **Tax on Lease.** If federal, state, or local law now or hereafter imposes any tax, assessment, levy, or other charge, directly or indirectly, upon (a) Landlord with respect to this Lease, the Premises, or the value thereof, (b) Tenant’s use or occupancy of the Premises, (c) the Annual Rent, Additional Rent, or any other sum payable under this Lease, or (d) this transaction, Tenant shall pay the amount thereof as Additional Rent to Landlord upon demand unless Tenant is prohibited by law from doing so.

3.3     **Net Lease.** Other than as is expressly set forth in this Lease and except for Landlord’s legal fees, and costs of third party consultants retained by Landlord and Landlord’s

own personnel costs, all costs, expenses, liabilities, charges, or other deductions whatsoever with respect to the Premises, including all costs and expenses related to any easements benefiting the Premises, and the construction, rehabilitation, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of Tenant's Leasehold Estate in the Premises or with respect to any leasehold mortgage (including any Permitted Leasehold Mortgage) shall be the sole responsibility of and payable by Tenant, including any reasonable costs, expenses, liabilities, charges, or other sums in connection with the closing of such Mortgages or otherwise incurred by Landlord in connection with such leasehold mortgages; all of which reasonable costs, expenses, liabilities and charges shall be deemed Additional Rent hereunder.

**3.4 Condition of the Premises.** Tenant acknowledges and agrees that the Premises shall be leased to Tenant and Tenant shall accept the Premises, "as is, where is, and with all faults." Landlord hereby expressly disclaims any and all representations and warranties of any kind or character, express or implied, with respect to the Premises, except as otherwise set forth in Section 4. Without limiting the generality of the preceding sentence or any other disclaimer set forth herein, Tenant acknowledges that Landlord has not made and is not making any representations or warranties, express or implied, written or oral, except as set forth in Section 4, as to (a) the nature or condition, physical or otherwise, of the Premises or any aspect thereof, including any warranties of habitability, suitability, merchantability, or fitness for a particular use or purpose; (b) the soil conditions, drainage conditions, topographical features, access to public rights-of-way, availability of utilities or other conditions or circumstances which affect or may affect the Premises or any use to which Tenant may put the premises; (c) any conditions at or which affect or may affect the Premises with respect to any particular purpose, use, development potential or otherwise, including whether the Premises is located wholly or partially in any flood plain or flood hazard boundary or similar area; (d) any environmental, geological, meteorological, structural or other condition or hazard or the absence thereof, heretofore, now, or hereafter affecting in any manner the Premises, including the absence of asbestos, lead paint, or any other hazardous materials on, in, under or adjacent to the Premises, the existence or non-existence of underground storage tanks, any other matter affecting the stability or integrity of the Land, the potential for further development of the Premises, or any other matter or attribute whatsoever regarding the Premises; and (e) the compliance of the premises or the operation or use of the Premises with any applicable restrictive covenants, or any laws, ordinances, or regulations of any governmental body, including any zoning laws or regulations, any building codes, any Environmental Laws, and the Americans with Disabilities Act of 1990, all as amended; or (f) the value of the Premises.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES.**

**4.1 Landlord's Representations and Warranties.** Landlord hereby represents and warrants to Tenant that:

(a) Landlord is organized and lawfully existing as a home rule municipal corporation, under the laws of the State.

(b) Landlord owns fee simple title to the Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies,

occupancies or agreements and other matters affecting title, except for the Permitted Encumbrances.

(c) The entry by Landlord into this Lease with Tenant and the performance of all of the terms, provisions and conditions contained herein does not and will not violate or cause a breach of or default under any agreement or obligation to which Landlord is a party or by which it is bound.

(d) There are no tenants, lessees or other occupants of the Premises having any right or claim to possession or use of the Premises.

(e) There are no unpaid special assessments that are due and owing of which Landlord has received written notice, or of which Landlord is otherwise aware, for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Premises. There are no special assessments assessed or due with respect to pending or completed public improvements.

(f) Landlord has no actual knowledge of any contract, lease or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Premises which would adversely affect the Redevelopment Plan except as stated on Exhibit C (Permitted Encumbrances).

(g) Landlord has full right, power and authority to make, execute, deliver and perform its obligations under this Lease. Landlord has obtained and received all required and necessary consents and approvals to enter into this Lease with Tenant.

(h) There is no action, suit, litigation or proceeding pending or, to Landlord's knowledge, threatened against Landlord, which could prevent or impair Landlord's entry into this Lease and performance of its or any of Tenant's obligations hereunder or materially and adversely impact Tenant's rights hereunder.

(i) The person signing this Lease on behalf of Landlord is duly and validly authorized to do so.

(j) Landlord has received no written notices of the institution or the proposed institution of condemnation proceedings relating to any portion of the Premises or of any other proceedings against or any taking of all or any part of the Premises.

(k) Landlord has no actual knowledge of any notice from any governmental authorities or any person has been served upon Landlord, claiming a violation of a legal requirement, or any liability thereunder, pertaining to Hazardous Materials, which has not been cured, except as has been disclosed in writing by Landlord to Tenant.

**4.2 Tenant's Representations and Warranties.** Tenant hereby warrants and represents to Landlord that:

(a) Tenant is organized and lawfully existing as a limited liability company under the laws of the State.

(b) Tenant has the full right, power, and authority to make, execute, deliver, and perform this Lease.

(c) Tenant's execution and delivery of this Lease has been authorized by all requisite action on the part of Tenant, and the execution and delivery of this Lease by Tenant and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.

(d) There is no action, suit, litigation, or proceeding pending or, to Tenant's knowledge, threatened against Tenant that could prevent or impair Tenant's entry into this Lease and performance of its obligations hereunder.

(e) The person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

(f) Tenant shall not amend Tenant's Operating Agreement in any manner that would impact the order and priority in which the Rent is payable to Landlord without the prior written consent of Landlord.

## **SECTION 5. USE OF PROPERTY.**

5.1 **Nature of Use.** Tenant shall throughout the Term continuously use and operate the Premises only for the following uses and such other uses as are customarily attendant or related, in the normal course of business, to such uses: construction, renovation, alteration, development, marketing for lease and leasing of the Units in a manner which strictly satisfies the requirements of this Lease. Specifically, regardless of whether any Regulatory Agreement remains in effect, all of the Units shall be made available for rental to and occupied by households whose incomes are at or below 120% of the then current area median income ("**AMI**") for the applicable Metropolitan Statistical Area as determined by the U.S. Department of Housing and Urban Development in effect at the time each household initially occupies their rental unit (the "**Affordable Units**"). In addition or supplementation to the foregoing:

(a) It is a material condition of this Lease that the Tenant ensure that the Project is at all times operated in accordance with the provisions of the Regulatory Agreements while in effect, including but not limited to the Town Covenant. The Tenant shall promptly provide any and all leasing and subtenant records or other information reasonably requested by the Town from time to time to determine compliance with the Town Covenant;

(b) In conjunction with the foregoing, the following improvements to the Premises (all of which, together with the Units, are herein referred to collectively as "**Tenant Improvements**") shall be maintained by Tenant on the Premises:

(i) construction or rehabilitation of the Units and all facilities and common space incidental thereto in accordance with the Plans and Specifications;

(ii) any replacement of or addition to the Units or any of such parking facilities, driveways, sidewalks, utility lines and facilities, landscaping or other

improvements, provided that such replacement or addition is approved by Landlord pursuant to Section 8 of this Lease and, to the extent required, by the Town, acting in its regulatory capacity;

(iii) the Equipment, and any replacements, alterations, additions or repairs thereto;

(iv) such number of off-street parking spaces as is required for the Premises by the applicable zoning ordinances, or other applicable law; and

(v) any and all structures and appurtenances of every type or kind that are part of the uses permitted under this Lease, including buildings, outbuildings, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, bicycle trails, sprinkler pipes, garages, carports, roads, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning, and water softener fixtures.

(c) Such other uses as may be approved by Landlord in writing, in its reasonable discretion, as consistent with the Lease Purpose, such as temporary contractor storage.

**5.2 Compliance with Law and Covenants.** Tenant, throughout the Term and at its sole expense, in its construction, rehabilitation, possession, and use of the Premises,

(a) shall comply with (a) all applicable laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments and all departments, commissions, boards and officers thereof (all of the foregoing are hereinafter referred to collectively as “**Legal Requirements**”); and (b) all requirements imposed by any policy of insurance covering any or all of the Premises and required by Section 7 to be maintained by Tenant (all of which are hereinafter referred to collectively as “**Insurance Requirements**”); and (c) the provisions of the other Permitted Encumbrances, all if and to the extent that any of the Legal Requirements, the Insurance Requirements or the said provisions relate to any or all of the Premises, the Tenant Improvements, the Equipment, the fixtures and equipment upon the Premises, or the use or manner of use thereof

(b) without limiting the generality of the foregoing provisions of this Section, shall keep in force throughout the Term all licenses, consents and permits required by applicable law to permit the Premises to be used in accordance with this Lease as multifamily housing;

(c) shall pay or cause to be paid before past due, as applicable, all personal property taxes, income taxes, license fees and other taxes or special assessments assessed, levied or imposed upon Tenant in connection with the operation of any business upon the Premises or its use thereof in any other manner. Notwithstanding the foregoing, the payment of the foregoing shall be permitted to be contested by Tenant; provided, however, Tenant (a) is in good faith, by appropriate proceedings, contesting the validity, the applicability, or the amount of any asserted taxes or fees or assessments, and pending such contest, diligently prosecutes such contests in a manner not prejudicial to the rights, liens and security interests of the Permitted Leasehold Mortgagees and (b) pays to the Landlord promptly after the demand therefor all costs and expenses incurred by the Landlord or the Permitted Leasehold Mortgagees in connection with such contest,



and promptly causes to be paid any amount adjudged by the governmental or quasi-governmental agency to be due, with all costs, penalties and interest thereon, after such judgment becomes final and non-appealable;

(d) shall not take any action which shall materially impair Landlord's Fee Estate or its reversionary right, title, or interest in and to any or all of the Premises; and

(e) shall not, either with or without negligence: (a) cause the escape, disposal or release of any Hazardous Materials, or (b) allow the storage or use of such substances or materials in any manner not sanctioned by law, or (c) allow any such materials or substances to be brought onto the Premises except to use in the ordinary course of Tenant's business. If any lender or governmental agency reasonably requires testing to ascertain whether or not there has been any release of Hazardous Materials on the Premises while this Lease is in effect, then the costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional rent if such requirement applies to the Premises. Tenant shall execute affidavits, representations and the like at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials on the Premises. Notwithstanding the foregoing, the use and storage of all the supplies (e.g., copier toner, white-off correction fluid, etc.), cleaning supplies, gasoline and other hazardous substances or materials in such amounts as are typically found in ordinary office, household, or multifamily residential rental operation use shall be permitted provided such use and storage complies with all applicable Legal Requirements. Further, notwithstanding the above, to the extent that Landlord or its affiliates, employees, officers, directors or agents causes or executes and delivers a writing permitting such matters, Landlord shall be solely responsible for remedying same, at its sole cost and expense.

### **5.3 Restrictions Applicable to Units.**

(a) All Units are subjected to and benefited by the terms and conditions of the Town Covenant and the Regulatory Agreements, and all requirements of the Town Covenant and Regulatory Agreements, and requirements of this Section 5 with respect to applicable Units shall be binding upon Landlord and Tenant and their respective successors and assigns to the extent of the provisions therein. In its role as landlord under this Lease, Landlord shall have no control or participation in the control or operation of the Project and shall not be entitled to any benefits from or uses thereof except for the Rent required hereunder.

(b) Tenant and Landlord agree that, with the exception of: (A) the Permitted Leasehold Mortgages, or any other Permitted Encumbrances listed in Exhibit C; (B) Tenancy Agreements to Residents; and (C) normal uses and equipment leases associated with the operation of the Project, neither the Project nor any portion thereof shall be encumbered in any way, nor the assets of the Project pledged as collateral for a loan, without the prior written approval of Landlord.

(c) Tenant may enter into Tenancy Agreements with Residents provided that Tenant shall use and cause all Residents to use the Units and Tenant Improvements only in accordance with the Regulatory Agreements, the Tenancy Agreement, and the policies and procedures of Tenant established to implement or enforce the terms and conditions of the Regulatory Agreements, the Tenancy Agreements, and this Lease.

5.4 **No Discrimination.** Tenant shall comply with the provisions of the Federal, State and local law prohibiting discrimination in housing on the grounds of race, color, creed, national origin, sex, marital status, or a physical or mental handicap, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352), Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), the Fair Housing Act (42 U.S.C. §§3601-3620), and the Colorado Anti-Discrimination Act (CRS Sections 24-34-101 et seq.), as the same may be amended from time to time.

## **SECTION 6. TAXES AND OPERATING EXPENSES.**

6.1 **Tenant to Pay Taxes.** To the extent that the Fee Estate or the Leasehold Estate does not qualify for a property tax exemption, Tenant (a) shall bear the full expense of any and all real property or other taxes, including any and all payments in lieu of taxes, if applicable, metropolitan district charges, or other assessments or charges levied against any or all of the Premises, the Units, the other Tenant Improvements and the Equipment, the Fee Estate, or the Leasehold Estate, and payable with respect to any calendar or tax year or other period falling wholly or partly within the Term, including any assessments or fees levied against the Units pursuant to any Permitted Encumbrances (all of which are hereinafter referred to collectively as “**Taxes**”), except that if any such tax, charge or assessment is levied with respect to a period beginning before the Commencement Date or ending after the Termination Date, Tenant shall bear the full expense of only that percentage thereof equaling the percentage of such period falling within the Term; (b) shall pay the same prior to becoming past due and before any penalty is incurred for late payment thereof; and (c) shall deliver to Landlord the receipted bill for such Taxes within 10 days after Landlord requests it from Tenant in writing.

6.2 **Delivery of Bills and Notices.** Each party shall deliver to the other, promptly after such party’s receipt thereof, the originals of any and all bills for Taxes and notices of assessments or reassessments made or to be made for the purpose of levying any Taxes. If the Premises is not now treated as a separate tax lot by the assessing authority, Tenant shall use its reasonable efforts promptly hereafter to have the Premises so treated. Landlord agrees to take such commercially reasonable action as Tenant may request (at Tenant’s expense) to assist Tenant in obtaining the separation of the Premises from the Fee Estate with respect to Taxes.

6.3 **Proceedings to Contest.** Tenant may bring proceedings to contest the validity or the amount of any Taxes, or to recover any amount thereof paid by Tenant, provided that prior thereto Tenant notifies Landlord in writing that Tenant intends to take such action. To the extent allowable by State law, Tenant shall indemnify and hold harmless Landlord against and from any expense arising out of any such action. Landlord shall, upon written request by Tenant, cooperate with Tenant in taking any such action, provided that Tenant indemnifies and holds harmless Landlord to the extent allowable by State law against and from any expense or liability arising out of such cooperation, and provided further and notwithstanding the foregoing, the payment of the foregoing shall be permitted to be contested by Tenant; provided, however, Tenant (a) is in good faith by appropriate proceedings, contesting the validity, the applicability, or the amount of any asserted taxes or fees or assessments, and pending such contest, diligently prosecutes such contests in a manner not prejudicial to the rights, liens and security interests of the Permitted Leasehold Mortgagees and (b) paid Landlord promptly after the demand therefor all reasonable costs and expenses directly incurred by Landlord in connection with such contest, and promptly caused to



be paid any amount adjudged by the governmental or quasi-governmental agency to be due, with all costs, penalties and interests thereon, after such judgment becomes final and non-appealable.

#### **6.4 Operating Expenses.**

6.4.1 **Tenant's Obligation.** Tenant shall pay (or cause to be paid) directly to the providers of such services all costs and expenses attributable to or incurred at Tenant's request in connection with the development, construction, rehabilitation, completion, marketing, leasing, maintenance, management and occupancy of the Premises and the Tenant Improvements (collectively, "**Operating Expenses**") including (a) all energy sources for the Tenant Improvements, such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) all water, sewer and trash disposal services; (c) all maintenance, repair, replacement and rebuilding of the Tenant Improvements including all Equipment; (d) all landscaping, maintenance, repair and striping of all parking areas; (e) all insurance premiums relating to the Premises and the Tenant Improvements, including fire and extended coverage, public liability insurance, rental insurance and all risk insurance; (f) the cost and expenses of all capital improvements or repairs (whether structural or non-structural) required to maintain the Tenant Improvements in good order and repair, including any required by any governmental or quasi-governmental authority (excluding Landlord) having jurisdiction over the Premises or the Tenant Improvements; and (g) and all amounts due and owing pursuant to the Permitted Encumbrances encumbering the Premises.

6.4.2 **Permits and Licenses.** Tenant shall also procure, or cause to be procured, at Tenant's sole cost and expense, any and all necessary permits, licenses, or other authorizations required for compliance with Tenant's use and operation of the Premises and for the lawful and proper installation and maintenance upon the Premises of wires, cables, pipes, conduits, tubes, fiber optics and other equipment and appliances for use in supplying any such service desired by Tenant to the Tenant Improvements and upon the Premises. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

### **SECTION 7. INSURANCE AND INDEMNIFICATION.**

#### **7.1 Insurance to be Maintained by Tenant.**

(a) Tenant shall maintain at its expense throughout the Term insurance adequate to protect Tenant's and Landlord's interests in the Premises, in such amounts and with such coverages as may be reasonably required by Landlord, and not less than the minimum insurance coverage shown on Exhibit F to this Lease and any greater insurance coverage required by each Mortgage encumbering the Project. Nothing in this Section 7 is intended, nor shall be construed to relieve Tenant from full compliance with all of the insurance requirements imposed upon Tenant under any Permitted Leasehold Mortgage or the Operating Agreement. All of Tenant's casualty and commercial general liability insurance coverages shall have waiver of subrogation provisions reasonably acceptable to Landlord, to the extent agreed to by the applicable insurer. Approval, disapproval, or failure to act by Landlord regarding any insurance applied by Tenant shall not relieve Tenant of full responsibility or liability for damages or accidents as set

forth in this Lease. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Tenant from any such liability.

(b) On the fifth anniversary of the Commencement Date, and every five years thereafter, the amounts and coverages of insurance required of Tenant hereunder shall be reviewed and adjusted, if necessary, by the Landlord and the Tenant to amounts and coverages then carried by prudent tenants of comparable improved premises operating in accordance with first class operational standards. If Landlord reasonably increases or otherwise changes its insurance requirements, Tenant hereby agrees to comply with such changed insurance requirements.

7.2 **Insureds.** Each casualty and commercial general liability policy of Tenant shall name as an insured thereunder Tenant, and as additional insured, Landlord, and, to the extent required under a Mortgage, the applicable Mortgagee. Landlord's and any Fee Mortgagee's entitlement to proceeds from Tenant's insurance policies is subordinate to the rights of all Permitted Leasehold Mortgagees under all Permitted Leasehold Mortgages.

7.3 **Insurer.** All insurance required and all renewals of insurance shall be issued by companies of recognized responsibility licensed to issue such policies and otherwise transact business in the State. To the extent available, all insurance policies will expressly provide that such policies will not be canceled or altered without 30 days' prior written notice to Landlord, with respect to both "All Risk" coverage and commercial general liability insurance. Such insurance will, to the extent obtainable, provide that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained; and will, to the extent obtainable, contain a waiver by the insurer of its rights of subrogation against Landlord. Upon issuance, Tenant shall deliver a complete original or complete certified copy of each insurance policy to Landlord.

7.4 **Evidence.** Tenant shall deliver to Landlord no later than the Commencement Date an original insurance certificate, or upon request, a complete certified copy of each such policy, and at least thirty (30) days before any such policy expires, Tenant shall deliver to Landlord an original insurance certificate, or upon request, a signed duplicate copy of a replacement policy therefor. All public liability, property damage liability, and casualty policies maintained by Tenant will be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry.

7.5 **Indemnification.**

7.5.1 To the extent allowable by State law, Tenant shall defend, indemnify and hold harmless Landlord and Landlord's Related Parties against and from any and all liability, claim of liability or expense arising out of or in any way connected with (a) the use, occupancy, conduct, operation or management of the Premises during the Term, or (b) any work or thing whatsoever done or not done on the Premises during the Term, or (c) any breach or default by Tenant in performing any of its material obligations under this Lease or applicable law, or (d) any negligent, intentionally tortious or other act or omission of Tenant or any of Tenant's Related Parties, or (e) any injury to or death of any person, or damage to

any property, occurring on the Premises during the Term (whether or not such event results from a condition existing before the execution of this

Lease, provided the Landlord did not conceal such condition), or (f) any material default or material breach by Tenant of any of the Permitted Leasehold Mortgages, whether or not such default or breach is claimed or asserted by any of the Permitted Leasehold Mortgagees, and from and against all expenses and liabilities incurred in connection with any such claim or any action or proceeding brought thereon (including the reasonable fees of attorneys, investigators and experts), all regardless of whether such claim is asserted during or after the expiration of the Term or any earlier termination of this Lease, but excluding, however, the portion of any liability, claim of liability or expense caused by the gross negligence or willful misconduct of Landlord, its employees or agents. As used herein, “**Landlord’s Related Parties**” shall mean and refer to Landlord’s officers, directors, affiliates, agents, contractors, volunteers and employees, and their respective successors and assigns. As used herein, “**Tenant’s Related Parties**” shall mean Tenant’s agents, contractors, employees, patrons, business invitees and guests.

7.5.2 To the extent allowable by State law, if permissible under Constitution of the State of Colorado and otherwise under the laws of the state of Colorado, Landlord shall defend, indemnify and hold harmless Tenant and Tenant’s Related Parties against and from any and all liability, claim of liability or expense arising out of or in any way connected with (a) any material breach or default by Landlord in performing any of its obligations under this Lease or applicable law, or (b) any grossly negligent, intentionally tortious or other act or omission of Landlord or any of Landlord’s Related Parties, or (c) any material default or breach by Landlord under any Mortgage encumbering the Fee Estate, whether or not such default or breach is claimed or asserted by any of the Mortgagees, and from and against all expenses and liabilities incurred in connection with any such claim or any action or proceeding brought thereon (including the fees of attorneys, investigators and experts), all regardless of whether such claim is asserted during or after the expiration of the Term or any earlier termination of this Lease.

7.5.3 Tenant acknowledges that Landlord is not required to provide security for Persons or property in or about the Project. Subject to Section 7.5.4, Tenant waives and releases any claim against Landlord, in its capacity as Landlord, for injury to or death of any Person and any property damage arising out of or attributable to any criminal activity in or about the Project, specifically including but not limited to, vandalism, theft, burglary, robbery, murder or assault.

7.5.4 Notwithstanding anything in this Section 7.5 to the contrary, in no event shall Tenant be liable to Landlord or Landlord’s Related Parties for (i) any condition to the extent caused by Landlord or Landlord’s Related Parties, or (ii) any environmental contamination migrating onto the Premises from adjacent property not owned or controlled by Tenant.

## 7.6 **Increase in Risk.**

(a) Tenant shall not do or permit to be done any act or thing as a result of which either (a) any policy of insurance of any kind covering any or all of the Premises or any liability of Landlord in connection therewith may become void or suspended, or (b) the insurance risk under any such policy would, in the opinion of the insurer thereunder, be made greater; and

(b) if such insurance is maintained by Landlord, Tenant shall pay as Additional Rent the amount of any increase in any premium for such insurance resulting from any breach of such covenant, within 10 days after Landlord notifies Tenant in writing of such increase.

## **SECTION 8.     TENANT IMPROVEMENTS TO PREMISES.**

### **8.1     Construction of Tenant Improvements.**

**8.1.1 Plans and Specifications.** Landlord authorizes Tenant, and Tenant obligates itself, to use its best efforts to construct the Project in substantial accordance with the plans and specifications stamped and approved by the Town, acting in its regulatory capacity, on March 21, 2024, which were previously submitted to and approved by Landlord (collectively, the “**Plans and Specifications**”), and in a manner consistent with the Redevelopment Plan.

**8.1.2 Utilities.** Prior to the commencement of any construction, excavation, or renovation activities by Tenant, Tenant shall contact all appropriate utility agencies for the purpose of verifying the location, depth and nature of all utilities affecting the Project and any areas bordering upon the Premises.

**8.1.3 Alterations.** After completion of construction of the Tenant Improvements, Tenant shall not thereafter make any alteration, improvement or addition to the Project, or demolish any portion thereof, which results in any material structural alteration of the Tenant Improvements, change in the current use of the Project, change in the number of Units, or material alteration of the appearance of the exterior of the Project, without first presenting to Landlord complete plans and specifications therefor and obtaining Landlord’s written consent thereto, which consent shall not unreasonably be withheld, conditioned or delayed so long as, in Landlord’s reasonable judgment such alteration, improvement, addition or demolition will not violate this Lease, or impair the value of the Project. Any improvements made to the Project by either party hereto shall be made only in good and workmanlike manner using new, materials of the same quality as the original Tenant Improvements, and in accordance with all applicable building codes and other applicable laws.

**8.1.4 Safety.** Tenant shall comply in all respects with commercially reasonable safety programs promulgated by Landlord, if any, and all governmental or quasi-governmental agencies with jurisdiction over the Project or the Premises. Landlord shall not be responsible for the safety of the site where construction of Tenant Improvements is occurring or for conditions related to the Tenant Improvements or the land on which they are constructed.

**8.1.5 Construction Traffic.** After the date hereof, and during the period of construction of the Tenant Improvements, Tenant, its contractors, subcontractors, employees, and agents shall utilize public roads to be designated by Landlord to access the Premises for construction purposes, and Tenant shall be responsible for keeping such designated roads and other property in the vicinity of the Premises reasonably free of dirt, mud, and debris which results from construction related activities on the Premises. Tenant shall pay the costs of repairing any damage to such designated roads and other property in the vicinity of the Premises, other than damage resulting from ordinary wear and tear and latent defects therein, to the extent such damage results from Tenant’s construction-related activities on the Premises. Tenant shall hold harmless and indemnify Landlord and its agents and contractors from any loss, cost, claim, or damage, including reasonable attorney fees, arising from such damage.

8.1.6 **Construction Trailer.** During such periods of time when Tenant is actively engaged in construction of the Tenant Improvements on the Premises, Tenant shall have the right to install, operate and maintain a construction trailer on the Premises. Such construction trailers shall be subject to Landlord's approval with respect to exterior appearance, size, and location, which approval shall not be unreasonably withheld, conditioned or delayed.

8.1.7 **Protective Measures.** At all times during which Tenant is engaged in the performance of construction activities ("**Construction Activities**"), Tenant shall bear the exclusive responsibility and expense of maintaining all land and improvements (the "**Properties**") owned or maintained by the owners of adjacent land, governmental entities, utility companies, special districts, which are impacted by the Construction Activities. The Properties shall include, but shall not be limited to, streets, curbs, gutters, sidewalks, streetlights, underground utilities, walls, landscaping and irrigation improvements, irrigation ditches, all entry, parking and paving facilities, as well as any other property not owned by Tenant. Tenant shall repair and restore the Properties to their original condition as of the date of commencement of Tenant's work or as subsequently improved prior to termination of the Construction Activities. Tenant shall bear the exclusive responsibility and expense of maintaining erosion control, storm water drainage, weed abatement and street cleaning programs as required by the governmental authority. Tenant shall keep the Premises clean and free of equipment, building materials, dirt, trash, weeds and debris, other than building materials needed immediately for construction of Tenant Improvements. Tenant will protect development work under construction in addition to existing landscape facilities (walls, berms, and streetscape) adjacent to site boundaries by the installation of a temporary chain link fence at the property line or other protective device approved by Landlord. Any damages to existing improvements caused by Tenant or Tenant's contractors will be repaired or replaced at the direction of Landlord at the expense of Tenant. Tenant shall save and protect landscaping located in the medians of any streets within the development from damage caused by Tenant, its employees, agents, contractors and subcontractors. Tenant shall maintain at least one trash receptacle on the Premises at all times when construction activities are taking place thereon, and shall empty such trash receptacle before it overflows, but not less frequently than once per week.

8.1.8 **Warranty.** Tenant warrants to Landlord that material and equipment furnished in connection with the construction of the Tenant Improvements, or any repair, alteration or addition of the Tenant Improvements, will be of good quality, that all construction work associated with the Tenant Improvements will be free from any material defects, and that such construction work will comply in all material respects with the requirements of the approved Plans and Specifications. All construction work not conforming to these requirements, including substitutions not approved by Landlord, acting in its capacity as landlord, shall be considered defective. Without limiting the indemnification provisions of Section 7, but intending to elaborate thereon, Tenant shall defend, indemnify and hold harmless to the extent allowable by State law Landlord against and from any and all liability, claim of liability or expense arising directly or indirectly, wholly or in part out of any failure of Tenant's warranties hereunder to be true, complete and accurate in all material respects for a period of 12 months after the completion of the Project.

8.1.9 **Completion of Redevelopment.** The obligation to develop the Premises in accordance with the Redevelopment Plan shall be deemed satisfied upon issuance of the initial certificate of occupancy for the apartments in the Project by the Town.



#### 8.1.10 Permitted Leasehold Mortgages and Operating Agreement.

Neither Tenant nor any successor in interest to the Premises or any part thereof shall, without the prior written consent of Landlord in each instance, which consent may be withheld in Landlord's sole discretion, engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Premises, except an inchoate lien for taxes or municipal obligations; provided, however, that Landlord consents to the Permitted Encumbrances listed in Exhibit C specifically, none of which instruments related to a Permitted Leasehold Mortgage shall encumber any of Landlord's Fee Estate.

With respect to a Permitted Leasehold Mortgage and in certain cases, the following provisions shall apply:

(i) Tenant shall provide Landlord with a copy of any notice of default from a Permitted Leasehold Mortgagee (which notice may be a copy of that notice which has been served upon Tenant in regard thereto) and Landlord shall be permitted 15 business days after the later of (i) the expiration of any cure period provided Tenant under the Permitted Leasehold Mortgage for the default in question, and (ii) receipt by Landlord of the notice of default from the Permitted Leasehold Mortgagee, to cure any default by Tenant under the Permitted Leasehold Mortgage's loan documents, whether the default consists of the failure to pay money or the failure to perform any obligation that Tenant is required to perform pursuant to such loan documents;

(ii) In connection with any Permitted Leasehold Mortgage, provided the Permitted Leasehold Mortgagee shall deliver to Landlord a true copy thereof (except for the Permitted Leasehold Mortgage for the benefit of First Mortgage Lender recorded in connection with construction financing which is deemed delivered), together with written notice specifying the name and address of the Permitted Leasehold Mortgagee (except notice of name and address of the First Mortgage Lender which Landlord acknowledges receipt of) and the pertinent recording data with respect to the Permitted Leasehold Mortgage as of the Effective Date, that, Landlord agrees that for so long as such Permitted Leasehold Mortgage remains a Permitted Encumbrance, the following provisions shall apply:

a. There shall be no cancellation, surrender, or modification of this Lease by joint action of Landlord and Tenant, other than as expressly contemplated hereunder, without the prior written consent of the Permitted Leasehold Mortgagee, which consent shall not be unreasonably withheld, delayed or conditioned, and any attempt to cancel, surrender or modify the Lease by joint action of Landlord and Tenant without such consent shall be ineffective;

b. Notwithstanding any other provision of this Lease, Landlord shall not have any right pursuant to this Lease or otherwise to terminate this Lease due to Tenant's default unless Landlord shall have first given a copy of the written notice of default to each Permitted Leasehold Mortgagee and each Permitted Leasehold Mortgagee shall have failed to cure or cause to be cured the event of default within the Cure Period (defined below); and

c. If Landlord elects to terminate this Lease by reason of any default of Tenant, the Permitted Leasehold Mortgagee shall not only have the right to nullify any such notice of termination by curing such defaults, but shall also have the right to postpone and extend the specified date for the termination of this Lease as fixed by Landlord in its notice of termination for the time to cure as provided in Section 14.3 below.

(iii) Notwithstanding any other provision in this Lease which may be to the contrary, no Permitted Leasehold Mortgagee shall have any obligation to (i) cure any default by Tenant, or (ii) discharge any lien on the Premises with respect to a Permitted Leasehold Mortgagee.

(iv) Landlord agrees that a Permitted Leasehold Mortgagee may upon an event of default under the Permitted Leasehold Mortgage, if such event of default is not cured by Landlord as provided in Section 14.3, hold a foreclosure sale and take title to the Tenant's interest in the Premises, accept a deed to the Leasehold Estate in lieu of a foreclosure sale, or exercise any other remedy available to the Permitted Leasehold Mortgagee, all without Landlord's consent. In no event shall the Permitted Leasehold Mortgagee have any interest in the Fee Estate. The Permitted Leasehold Mortgagee shall not have any personal liability under this Lease until such time as the Permitted Leasehold Mortgagee takes title to the Premises. Additionally, upon a default under a Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee may exercise any and all rights under the Permitted Leasehold Mortgage to take possession of the Leasehold Estate.

(v) If the Leasehold Estate and Fee Estate are held by the same owner, such estates shall remain separate and distinct estates and shall not merge without Permitted Leasehold Mortgagee's and any Fee Mortgagee's written consent, except that if there is no Permitted Leasehold Mortgagee and no Fee Mortgagee, then the person holding the Leasehold Estate and Fee Estate may cause such estates to be merged, by a written instrument to that effect, signed by such person.

(vi) Landlord shall give prompt notice to each Permitted Leasehold Mortgagee if this Lease is terminated for any reason, including a termination by any rejection of the Lease in a bankruptcy proceeding, or if Tenant fails to exercise any option to extend the term of this Lease, together with a statement of all unpaid sums due under the Lease but for its termination. The most senior Permitted Leasehold Mortgagees or its permitted designee shall have 60 days from such notice to enter into a new lease ("**New Lease**") with Landlord on terms identical to this Lease for the remainder of the Term or extended Term of this Lease, provided that, once cured by the Permitted Leasehold Mortgagee, any uncured Events of Default under this Lease shall not be deemed to be uncured Events of Default under the new lease between Landlord and the Permitted Leasehold Mortgagee. A Permitted Leasehold Mortgagee shall exercise its right to a New Lease by giving notice to Landlord, and paying the amounts listed in Landlord's statement which are due to Landlord in accordance with this Lease, which payment shall be without prejudice to the Permitted Leasehold Mortgagee's right to contest the amounts paid. Landlord and the Permitted Leasehold Mortgagee shall execute the New Lease within 10 business days of the Permitted Leasehold Mortgagee's notice to Landlord. If the Permitted Leasehold Mortgagee fails to exercise its right to a New Lease within the 60-day period provided under this Section 8.1.10(vi), each other Permitted Leasehold Mortgagee hereunder, in order of lien priority, shall have the same

rights to a New Lease as the Permitted Leasehold Mortgagee upon cure of any default, exercisable within 10 days after the expiration of the foregoing 60-day period. Nothing in this Lease obligates a Permitted Leasehold Mortgagee to enter into a New Lease.

(vii) Each Permitted Leasehold Mortgagee shall be permitted 30 days after the later of (i) the expiration of any cure period provided Tenant under this Lease for the default in question and (ii) receipt by that Permitted Leasehold Mortgagee of notice of the Event of Default from Landlord (which notice may be a copy of that notice which has been served upon Tenant in regard thereto) (the **“Cure Period”**) to cure any default by Tenant, whether an Event of Default consists of the failure to pay money or the failure to perform any other obligation which Tenant is required to perform; provided however that if the Event of Default is non-monetary and cannot reasonably be completed within such 30 day period, each Permitted Leasehold Mortgagee shall be provided an additional period of up to 120 days to cure such non-monetary default provided that such Permitted Leasehold Mortgagee is diligently pursuing such cure during such extended period. If there shall be any non-monetary default that is personal to the Tenant and not capable of cure by the Permitted Leasehold Mortgagee, there shall be no required cure by the Permitted Leasehold Mortgagee and notwithstanding anything in this Lease to the contrary in respect thereof, Landlord shall have no right to terminate the lease without entering into a direct lease with the Permitted Leasehold Mortgagee which lease shall have substantially the same terms as this Lease, including those terms and conditions applicable to the use of the Premises.

(viii) Landlord agrees to accept payment or performance by each Permitted Leasehold Mortgagee as though the same had been done by Tenant.

(ix) Landlord agrees that, in connection with any construction loan or permanent loan sought by Tenant in connection with the Premises, Landlord will execute and deliver an estoppel certificate, if requested by Tenant or the lender in connection with such loan certifying: (A) that the Lease is in full force and effect, (B) whether the Lease has been amended, and (C) the date through which rent has been paid.

(x) If any Permitted Leasehold Mortgagee's rights against Tenant remain applicable after the Lease has terminated, such rights shall survive the termination.

(xi) Landlord shall cause any mortgage encumbering the Fee Estate to subordinate to any new lease entered into whereby the Permitted Leasehold Mortgagee succeeds to Tenant's interest in the Leasehold Estate.

(xii) A Permitted Leasehold Mortgage may not encumber the Fee Estate and no foreclosure of a Permitted Leasehold Mortgage shall ever result in a foreclosure of the Fee Estate.

(xiii) Tenant shall be entitled to refinance any Permitted Leasehold Mortgage on commercially reasonable terms upon Landlord consent, which consent shall not be unreasonably withheld, delayed or conditioned.

(xiv) This Lease may be assigned, without the consent of Landlord, to or by a Permitted Leasehold Mortgagee or its nominee, pursuant to foreclosure or similar proceedings, or the sale, assignment, or other transfer of this Lease in lieu thereof, and such Permitted Leasehold Mortgagee shall be liable to perform the obligations herein not personal to the Tenant imposed on Tenant only during the period it is in possession or ownership of the Leasehold Estate.

## **8.2 Mechanics' or Other Liens.**

(a) Tenant shall (a) within 60 days after it is filed or claimed, have released (by bonding or otherwise) any mechanics', materialman's or other lien filed or claimed against any or all of the Premises or any other property owned or leased by Landlord, by reason of labor or materials provided for or about any or all of the Premises during the Term, or otherwise arising out of Tenant's use or occupancy of any or all of the Premises, and (b) defend, indemnify and hold harmless to the extent allowable by State law Landlord against and from any and all liability, claim of liability or expense, including that of reasonable attorney's fees, incurred by Landlord on account of any such lien or claim.

(b) If Tenant fails to discharge any such lien described in Section 8.2 within 60 days after it first becomes effective against any of the Premises, then, in addition to any other right or remedy held by Landlord on account thereof, Landlord may (a) discharge it by paying the amount claimed to be due or by deposit or bonding proceedings, or (b) in any such event compel the prosecution of any action for the foreclosure of any such lien by the lienor and pay the amount of any judgment in favor of the lienor with interest, costs and allowances. Tenant shall reimburse Landlord promptly upon Landlord's demand therefor for any amount paid by Landlord to discharge any such lien and all expenses incurred by Landlord in connection therewith, together with interest thereon at a rate equal to the lesser of (a) 4% above the Prime Rate (as defined below), per annum from the respective dates of Landlord's making such payments or incurring such expenses (all of which shall constitute Additional Rent), until such payments or expenses, together with all interest accrued thereon, have been paid in full to Landlord. For purposes hereof, the "**Prime Rate**" shall mean the greater of (a) that prime rate published by the Wall Street Journal or successor newspaper, or (b) 12%.

(c) Nothing in this Lease shall be deemed in any way (a) to constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair to any or all of the Premises, or (b) to give Tenant any right, power or authority to contract for or permit to be furnished any service or materials, if doing so would give rise to the filing of any mechanics' or materialman's' lien against any or all of the Premises or Landlord's estate or interest therein, or (c) to evidence Landlord's consent that the Premises be subjected to any such lien.

**8.3 Fixtures.** Any and all improvements, repairs, alterations and all other property attached to or otherwise installed as a fixture within the Premises by Landlord or Tenant shall, immediately on the completion of their installation, become part of the Units and remain with the Units at the expiration or earlier termination of this Lease, except that any machinery, equipment or fixtures installed by Tenant at no expense to Landlord and used in the conduct of Tenant's trade or business (rather than to service the Premises generally) and not part of the Equipment shall

remain Tenant's property, and shall be removed from the Premises by Tenant at the end of the Term and any damage to the Premises caused by such removal shall be repaired at Tenant's expense.

8.4 **Joinder.** Without limiting Landlord's obligations under any other provision of this Lease, Landlord shall, promptly at Tenant's request and expense at any time during the Term (and provided that Landlord thereby assumes no liability or obligation), join in any and all applications for building permits, subdivision plat approvals, public works or other agreements and permits for sewer, water or other utility services, other instruments of dedication or other permits or approvals, the granting of or entry into which by any governmental or quasi-governmental authority having jurisdiction over the Premises is necessary to permit the construction, rehabilitation, development, improvement, use and occupancy of the Premises for the purposes permitted by this Lease, without violating applicable law.

8.5 **Signs.** Tenant shall have the right to erect about the Units, in accordance with applicable law, such signs as it desires and are approved by Landlord, acting in its capacity as landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and the Town, acting in its regulatory capacity; provided that any such sign has been approved by all architectural review committees having jurisdiction over any portion of the Premises pursuant to any Permitted Encumbrance, if any. Moreover, Tenant shall erect, at Tenant's expense, and upon the reasonable request of Landlord, about the Units, in accordance with applicable law, such signs as Landlord desires in order to advise the public of Landlord's participation in the Project, subject to the limitations set forth in the prior sentence.

## **SECTION 9.     REPAIRS AND MAINTENANCE.**

9.1 **Repairs.** Tenant shall, throughout the Term and at its expense,

(a) take good care of the Premises and keep it in good order and condition; and

(b) promptly make any and all repairs, ordinary or extraordinary, foreseen or unforeseen, to the Premises (including the landscaping thereon) as are necessary to maintain it in good condition (including any and all such repairs to any roof, foundation, exterior wall, and structural components, and to the plumbing, heating, ventilating, air-conditioning, electrical and other systems for the furnishing of utilities or services to the Premises), and replace or renew the same where necessary (using replacements at least equal in quality and usefulness to the original improvements, equipment or things so replaced), and Landlord shall have no obligation hereunder as to the same.

9.2 **Maintenance.** Tenant shall keep and maintain all of the Premises in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice in accordance with applicable Town code.

9.3 **Landscaping.** Tenant shall keep and maintain all of the landscaping on the Premises in accordance with applicable Town code.

## **SECTION 10.   LANDLORD'S RIGHT OF ENTRY.**

**10.1 Inspection and Repair.** Subject to the rights of any Resident under a Tenancy Agreement, Landlord and its authorized representatives shall be entitled to enter the Project and Units and the rest of the Premises at any time during Tenant's business hours and at any other reasonable time, upon reasonable advance notice of at least 48 hours (except in the case of emergency), to (a) inspect the Premises at any time upon prior written notice, and (b) make any repairs thereto and take any other action therein which is required by applicable law, or which Landlord is permitted to make by any provision of this Lease, after giving Tenant prior written notice of Landlord's intention to take such action (provided, that in any situation in which, due to an emergency or otherwise, the health, welfare or safety of the Residents or physical condition of the Project and Units or any other part of the Premises would be unreasonably jeopardized unless Landlord were to take such action immediately, Landlord shall give such notice, if any, to Tenant as is reasonable under the circumstances, and may enter the same at any time). Nothing in this Section shall be deemed to impose any duty upon Landlord to make any such repair or take any such action, and Landlord's performance thereof shall not constitute a waiver of Landlord's right hereunder to have Tenant perform such work. Landlord may, while taking any such action upon the Premises, store therein any and all necessary materials, tools and equipment, and Tenant shall have no liability to Landlord for any damage to or destruction of any such materials, tools and equipment, except if and to the extent that such damage or destruction is proximately caused by the gross negligence or willful misconduct of Tenant or its agents and employees. Except as caused by Landlord's or Landlord's agent's gross negligence or willful misconduct, Landlord shall not in any event be liable to Tenant for any inconvenience, annoyance, disturbance, loss of business or other damage sustained by Tenant by reason of the making of such repairs or the taking of such action, or on account of the bringing of materials, supplies and equipment onto the Premises during the course thereof, and Tenant's obligations under the provisions of this Lease shall not be affected thereby. During such access, Landlord shall be responsible to third parties for any and all loss or damage occasioned by its entrance onto the Premises and use its good faith, reasonable efforts to minimize any interference or disruption of Tenant's work or Tenant's use or operation of the Premises. Tenant shall have the right to have a representative present during any such entry by Landlord or its authorized representative.

**10.2 Exhibiting the Premises.** Landlord and its business invitees may after giving at least 24 hours' prior written notice thereof to Tenant and the property manager, and subject to the rights of any Resident under a Tenancy Agreement, enter the Project and the Units and the rest of the Premises to exhibit the Premises for purposes of (a) to the extent permitted under this Lease, pledging any or all of Landlord's right, title, and interest in and to the Premises or under this Lease, (b) during the last 24 months of the Term (or at any time after Landlord or Tenant has exercised any right to terminate this Lease which it holds hereunder), leasing the Premises to any prospective tenant thereof, and (c) exhibiting the same to any governmental or quasi-governmental authorities or other third-parties which may have an interest in developments similar to the Premises or similarly financed or for any other business purpose; provided that in doing so Landlord and each such business invitee observes all reasonable safety standards and procedures which Tenant may require. In exercising its rights under this Section 10.2, Landlord shall use its good faith, reasonable efforts to minimize any interference or disruption of Tenant's work or Tenant's use or operation of the Premises. Tenant shall have the right to have a representative present during any such entry by Landlord or its authorized representative.

## **SECTION 11. FIRE AND OTHER CASUALTIES.**



**11.1 Where Cost of Restoration Exceeds Specified Sum.** If any or all of the Premises is damaged or destroyed, Tenant shall (a) immediately notify Landlord thereof if the cost of restoration on account thereof equals or exceeds \$25,000, (b) for so long as any Permitted Leasehold Mortgage is in place, restore the Project as provided in the Permitted Leasehold Mortgage, provided that the Permitted Leasehold Mortgage permits restoration whenever feasible, regardless of the dollar amount of such damage or loss and regardless of whether the cost of restoration is less than or greater than \$25,000, commence and complete restoration with reasonable diligence at Tenant's expense, as nearly as possible to the Premises' value, condition, and character immediately before such damage or destruction, to the extent that adequate insurance proceeds are made available to Tenant by the applicable insurers and Permitted Leasehold Mortgagees, and (c) if no Permitted Leasehold Mortgage is in place, promptly restore or repair the Premises and provide any additional funds necessary to restore or repair the Premises in the event any insurance proceeds are not sufficient. Such restoration shall be consistent with the Redevelopment Plan and in accordance with plans and specifications approved in writing by Landlord, acting in its capacity as landlord, which approval shall not be unreasonably withheld, conditioned, or delayed.

11.1.1 All insurance proceeds (other than any proceeds which are separately paid on account of any damage to or destruction of Tenant's personal property, inventory or work-in-process, all of which shall be paid to Tenant) payable as a result of such casualty identified in the previous Section under policies of insurance held by or for the account of Tenant pursuant to Section 7 against such casualty and received by Tenant, any Permitted Leasehold Mortgagee or the Depository, as the case may be (less such reasonable attorneys' fees or other expenses as are incurred by the Permitted Leasehold Mortgagee, the Depository, Landlord or Tenant in the collection thereof, which shall be paid out of such proceeds), for so long as any Permitted Leasehold Mortgage is in place, shall be applied as set forth in the Permitted Leasehold Mortgage. Thereafter, such insurance proceeds:

(i) shall be paid to the Depository, and

(ii) shall, unless Tenant is in default hereunder, be paid by the Depository to Tenant or as Tenant may direct, from time to time as such restoration progresses, to pay or reimburse Tenant for the cost of such restoration, upon Tenant's written request accompanied by evidence satisfactory to Landlord that an amount equaling the amount requested is then due and payable or has been paid, and is properly a part of such cost, and that the net insurance proceeds not yet advanced will be sufficient to complete such restoration, and if the same are not sufficient to complete such restoration, Tenant has deposited the shortfall in the Depository. Before such construction commences and at any time thereafter upon notice to it from Landlord, Tenant shall deposit with the Depository such sums as are required (in addition to any amount then held by the Depository for such purpose) to complete such restoration. Upon receipt by Landlord of evidence satisfactory to them that such restoration has been completed and the cost thereof paid in full, and that no mechanics', materialmen's or similar lien for labor or materials supplied in connection therewith may attach to the Project, the balance, if any, of such proceeds shall be paid to Tenant or as it may direct.

11.1.2 Regardless of any contrary provision herein, in the event that Tenant shall determine, subject to the rights of the Permitted Leasehold Mortgagee, by notice to Landlord given within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically practical to restore the Tenant Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty and/or the Permitted Leasehold Mortgagee will not permit such use of insurance proceeds, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Tenant terminates this Lease pursuant to this Section 11.1.2, Tenant shall surrender possession of the Premises to Landlord, immediately and assign to Landlord (or, if same has already been received by Tenant, pay to Landlord) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises, subject to the prior rights of any Permitted Leasehold Mortgagee therein, as referenced below. In the event that this Lease is terminated pursuant to this Section hereof, the insurance proceeds received as the result of such casualty shall be distributed as follows: (a) first, if a Permitted Leasehold Mortgage is in place, to the Permitted Leasehold Mortgagee to the extent of any indebtedness then owed to such Permitted Leasehold Mortgagee payable in the respective recording order of priority; (b) second, the balance, if any, of such insurance proceeds shall be paid to Tenant or, if applicable, as set forth above, assigned or paid over to Landlord.

11.2 **No Termination.** Except during the last 18 months of the Term, no total or partial damage to or destruction of any or all of the Premises shall entitle Tenant to surrender or terminate this Lease, or shall relieve Tenant from its liability hereunder to pay in full the Annual Rent, any Additional Rent and all other sums and charges which are otherwise payable by Tenant hereunder, or from any of its other obligations hereunder, and Tenant hereby waives any right now or hereafter conferred upon it by statute or otherwise, on account of any such damage or destruction, to surrender this Lease, to quit or surrender any or all of the Premises, or to have any suspension, diminution, abatement or reduction of the Annual Rent or any Additional Rent or other sum payable by Tenant hereunder (except that, if and to the extent that Landlord has, on account of any such Rent or other sum, received for its own account the proceeds of any rent insurance pursuant to the provisions of this Lease, Tenant shall be entitled to a credit therefor against its obligations hereunder to pay such Rent and other sums, by applying such credit toward the unpaid installments of Annual Rent in the order in which they fall due hereunder).

## **SECTION 12. CONDEMNATION.**

12.1 **Notice of Taking.** Upon receipt by either Landlord or Tenant of notice of the institution of any proceedings for the taking or condemnation of all or a portion of the Premises by the government of the United States, State of Colorado, the Town or any other governmental authority, or any corporation under the right of eminent domain (a "**Taking**"), the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice. The time a Taking is deemed to occur shall be the earlier of (a) the date when the entity effecting the Taking is authorized by agreement, stipulation, or court order to take possession of the relevant portion of the Premises, or (b) the date of trial or hearing to assess the final compensation due for the Taking.



12.2 **Special Account.** The full amount of any award whether pro tanto or final for any Taking (the “**Award**”), shall, notwithstanding any allocation made by the awarding authority, and subject to the provisions of any Permitted Leasehold Mortgage, be paid, and allocated as set forth below provided that there shall first be deducted from the Award in the order stated (A) all reasonable fees and expenses of collection, including reasonable attorney’s fees and experts’ fees, which shall be paid to the party which has incurred such fees and expenses, (B) any rental amount due and outstanding prior to the Taking owed by Tenant, which shall be paid to Landlord, (C) any outstanding amounts secured by Permitted Leasehold Mortgages to the extent required under such Permitted Leasehold Mortgages, which shall be paid to the Permitted Leasehold Mortgagees in their respective order of priority; and (D) any outstanding amounts secured by Fee Mortgages to the extent required under such Fee Mortgages, which shall be paid to the Fee Mortgagees in their respective order of priority.

In the event of a Total Taking, pursuant to Section 12.3, or a Partial Taking, pursuant to Section 12.4, the Award shall be allocated (x) to the Landlord, an amount equal to the product of the amount allocated to the Premises multiplied by the Landlord’s Percentage (hereafter defined), and (y) to the Tenant, an amount equal to the product of the amount allocated to the Premises multiplied by the Tenant’s Percentage (hereafter defined). The “**Lease Parcel Value**” shall equal the fair market value, at the time of the Taking, of the affected portion of the Land, taking into account valuation impacted by this Lease, and any other encumbrances on the Fee Estate, including any regulatory agreements or use agreements. The “**Improvements Value**” shall equal the fair market value of the Tenant Improvements, Units, and Equipment as of the date of the Taking. The “**Landlord’s Percentage**” shall equal the residual fair market Lease Parcel Value as of the expiration of the Term, divided by the sum of the Lease Parcel Value and the Improvements Value. The “**Tenant’s Percentage**” shall equal the Improvements Value plus, if this Lease will not be terminated, the fair market value, at the time of the Taking, of the affected portion of the Land for the remaining Term of the Lease, divided by the sum of the Lease Parcel Value and the Improvements Value. The portion of the Award so allocated to the Landlord shall be known herein as the “**Landlord’s Award**,” and the portion so allocated to the Tenant shall be known herein as the “**Tenant’s Award**.”

12.3 **Total Taking.** In the event of a permanent Taking of the fee title to or of control of the Premises or of the entire Leasehold Estate hereunder (a “**Total Taking**”), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that any rental payable or obligations owed by Tenant to Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full.

12.4 **Partial Taking; Procedures and Criteria for Course of Action.** In the event of a permanent Taking of less than all of the Premises (a “**Partial Taking**”),

(i) if Tenant reasonably determines that the continued use and occupancy of the remainder of the Premises by Tenant is or can reasonably be made to be economically viable, structurally sound, consistent with and subject to the provisions of all Permitted Leasehold Mortgages and otherwise feasible based upon the amount of eminent domain proceeds and any available other funds of Tenant as, at Tenant’s option, are demonstrably available for the purpose of paying for such restoration (the “**Restoration Criteria**”), then the Premises shall be restored pursuant to Section 11.

(ii) if the Tenant determines that the continued use and occupancy of the remainder of the Premises by Tenant is not or cannot be made to be economically viable, structurally sound, consistent with and subject to the provisions of all Permitted Leasehold Mortgages and otherwise feasible, then this Lease shall be terminated pursuant to Section 12.6.

**12.5 Restoration.** If a decision is made pursuant to Section 12.4 to restore the remainder of the Premises, Tenant and Landlord shall reasonably agree upon and approve plans and specifications to modify the remaining Premises, which plans and specifications must also comply with then-applicable laws, including Town code. Upon obtaining the approval of said plans from all necessary parties, Tenant shall promptly proceed, at its expense, to commence and complete the restoration pursuant to the provisions of Section 11 of this Lease. Tenant may use the entire Tenant's Award for such restoration, and may retain for its own use any portion of Tenant's Award remaining after the completion of the restoration subject to the rights of Landlord to require that any such excess be applied first to the extent necessary to pay any outstanding rental owed by Tenant to Landlord pursuant to this Lease. If Tenant has decided pursuant to Section 12.4 to restore the remainder of the Premises, and if the cost of the restoration shall exceed the amount of Tenant's Award, the deficiency shall be paid by Tenant. Tenant's obligation hereunder shall not be affected by the unavailability or insufficiency of Tenant's Award, except to the extent that Tenant's Award is unavailable by virtue of the failure or refusal of Landlord to release it to Tenant to pay for restoration.

**12.6 Termination upon Non-Restoration.** Following a Partial Taking, if a decision is made by Tenant pursuant to Section 12.4 that the remaining portion of the Premises is not to be restored: (a) Tenant shall surrender the Premises to Landlord; (b) Tenant shall pay to Landlord such portion of the Tenant's Award as is reasonably determined by Landlord and Tenant to be necessary to ensure (i) the remaining portion of the Tenant Improvements is restored to a legally compliant condition with design characteristics reasonably consistent with the existing Tenant Improvements or (ii) any demolished portion of the Tenant Improvements is razed and restored to a legally compliant condition that is reasonably consistent with the condition of the rest of the Premises; and (c) this Lease shall thereupon be terminated without liability or further recourse to the parties hereto, provided that any rental or obligations owed by Tenant to Landlord as of the date of the Taking shall have been paid in full. Tenant's Award shall be applied to the extent necessary to pay such amounts.

**12.7 No Waiver.** No provisions in this Lease shall limit the rights of either Landlord or Tenant to seek compensation from a condemning authority as provided by statute, common law, the State of Colorado, or the United States Constitution.

## **SECTION 13. ASSIGNMENT AND SUBLETTING.**

### **13.1 Prohibited Transfers.**

(i) Tenant acknowledges that Landlord has entered into this Lease because of Tenant's financial strength, goodwill, ability and expertise and that, accordingly, this Lease is one which is personal to Tenant. Tenant agrees for itself and its successors and assigns in interest hereunder that it will not, other than by the Permitted Leasehold Mortgages: (i) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises, or (ii) make

or permit any voluntary or involuntary total or partial sale, lease (other than the leases of Units in the ordinary course of business), assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises or the occupancy or use thereof, other than in accordance with this Lease (each of which is hereinafter referred to as a “**Transfer**”), without first obtaining Landlord’s express written consent thereto pursuant to this Section 13.

(ii) So long as a proposed Transfer does not result in a party other than Tenant owning, holding, leasing, or subleasing (other than leases of Units in the ordinary course of business) all or any part of the Leasehold Estate, Landlord’s consent to such Transfer shall not be unreasonably withheld, conditioned, or delayed. For all other proposed Transfers, Landlord may withhold or grant its consent in its sole discretion.

(iii) Consent shall not be deemed to have been given by Landlord’s acceptance of the payment of Rent after any such Transfer occurs with or without Landlord’s knowledge, or by any other act or failure to act by Landlord other than the giving of such express written consent. Landlord shall be entitled, at its sole discretion, to condition its consent to any Transfer upon the condition of the proposed transferee’s entry (other than a Permitted Leasehold Mortgagee) into an agreement with and in form and substance satisfactory to Landlord, providing for such transferee’s assumption of all of Tenant’s obligations hereunder.

(iv) Any person to whom any Transfer is attempted without the consent required by this Section 13 shall have no claim, right or remedy whatsoever hereunder against Landlord, and Landlord shall have no duty to recognize any person claiming under or through the same.

(v) In addition, Tenant’s right to transfer the Tenant Improvements or Tenant’s interest in the Premises is subject to the Town’s Right of First Offer and Refusal Agreement to be entered into by the parties concurrently with this Lease, the form of which is attached hereto as Exhibit E.

**13.2 Permitted Transfers.** Notwithstanding anything to the contrary set forth elsewhere in this Section 13, the following shall be permitted Transfers and shall not require the Landlord’s consent, provided that Tenant must provide Landlord with at least 20 days’ advance notice: (1) transfer of title to the Premises to a Permitted Leasehold Mortgage pursuant to foreclosure or assignment or deed in lieu thereof, and any subsequent transfer by such Permitted Leasehold Mortgagee or other assignee, designee or purchaser at the foreclosure sale, (2) any transfers permitted under any Regulatory Agreements, (3) any transfer in the ordinary course of business encumbering the Premises including any residential lease and any utility and access easement, (4) any transfer required by the Regulatory Agreements, subject to the rights of any Permitted Leasehold Mortgagee and the terms of the Permitted Leasehold Mortgage, or (5) any transfer to FCHDA pursuant to any Right of First Offer Agreement between Tenant and FCHDA. Despite anything in this Lease to the contrary, Landlord’s consent is required for any change to the Managing Member (or majority ownership or control of the Managing Member). Landlord’s consent to replacement of the Managing Member shall not be unreasonably withheld provided the replacement managing member meets Landlord’s then-current approval standards for affordable housing owners in the Town.

13.3 **Effect on Obligations.** No such Transfer shall alter or impair the obligations hereunder of Tenant or any other Person constituting Tenant or holding any interest hereunder before any such Transfer.

13.4 **Binding on Successors and Assigns.** Subject to the foregoing provisions of this Section 13, this Lease shall be binding on and inure to the benefit of the successors and assigns of the Landlord and Tenant, except that Tenant may not assign or sublet (other than the leases of Units in the ordinary course of business) its interest in this Lease without the prior written consent of the Landlord (provided, this provision shall not apply to any Permitted Leasehold Mortgagee that becomes the tenant hereunder). Any attempted transfer without such consents shall be null and void. The covenants, conditions and restrictions contained herein shall be construed as covenants running with the Land and the Premises, and every person who now or hereafter owns or acquires any right, title, estate or interest in or to the Land or the Premises is and shall be conclusively deemed to have consented and to have agreed to every covenant, condition and restriction contained in this Lease, whether or not any reference to this Lease is contained in the instrument by which such person acquires an interest.

13.5 **Transfer by Landlord.** After 5 business days' notice to Tenant, Landlord may transfer its interest in the Fee Estate and the Premises, subject to this Lease.

#### **SECTION 14. DEFAULT.**

14.1 **Definition.** As used in this Lease, each of the following events, once any applicable notice required in this Lease has been given, and any applicable cure periods have lapsed without such event having been cured, shall constitute an “**Event of Default**”:

(a) if Tenant fails (a) to pay any Annual Rent, Additional Rent or other sum which it is obligated to pay under this Lease, when and as it is due and payable hereunder and without demand therefor, and such failure shall continue for a period of 15 days after notice thereof has been given by Landlord to Tenant, or (b) to perform any of its obligations under this Lease in all material respects, including an obligation to construct the Tenant Improvements in the manner and within the time frame contemplated hereunder;

(b) Tenant becomes insolvent, files a petition for protection under the U.S. Bankruptcy Code (or similar law) or a petition is filed against Tenant under such laws that is not dismissed within 90 days after the date of such filing, makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts when due;

(c) A first lien Permitted Leasehold Mortgagee, in connection with a proposed foreclosure of the Premises, files a notice of election and demand demonstrating that such mortgagee has commenced foreclosure proceedings with respect to the Premises;

(d) if Tenant fails to comply in all material respects with Tenant's obligations under any instrument, lease, mortgage or other agreement to which Landlord is a party and for which a default under this Lease would constitute a default under such instrument, lease, mortgage or other agreement, which failure is not cured by Tenant within any permissible cure period provided in such instrument, lease, mortgage or other agreement;

(e) Tenant fails to comply in any material respect with any obligation of this Lease under which Tenant is to comply or cause the Project to comply with any provision of a Regulatory Agreement, including but not limited to the provisions of the Town Covenant; or

(f) If Tenant fails, on or before September 30, 2025 to have made application to the Town, including the payment of building permit fees therefor, for a building permit authorizing the construction of a substantial portion of the Project pursuant to the approved development plan for the Town Property; provided, however, that there shall be no default under this subsection under this section to the extent that Tenant's failure to satisfy the deadline stated above is due to the Town's failure to timely execute this Ground Lease, the Town Loan Documents (as defined in that certain Second Amended and Restated Development Agreement (602 Galena Street), dated as of [\_\_\_\_], 2025 by and between the Town of Frisco, a Colorado home rule municipal corporation, The NHP Foundation, a District of Columbia nonprofit corporation, NHPF Galena, LLC, a Colorado limited liability company and wholly owned subsidiary of NHPF, and Frisco Community Housing Development Authority, a Colorado body corporate and politic (the "Development Agreement")), or the demolition permit.

(g) Notwithstanding the foregoing, a default shall constitute an Event of Default only after notice has been provided to Tenant and each Permitted Leasehold Mortgagee and all applicable cure periods have elapsed.

**14.2 Notice; Grace Period; Limitation on Remedies.** Landlord shall provide written notice of any Event of Default to Tenant and all Permitted Leasehold Mortgagees. Each noticed party shall have the right to cure such Event of Default, and Landlord shall not terminate this Lease for such Event of Default unless and until Landlord has given such Permitted Leasehold Mortgagees notices of such default and 30 days in which to cure it. If such Event of Default cannot be reasonably cured within 30 days, then each of the Permitted Leasehold Mortgagees shall have such additional time as it shall reasonably require, so long as Tenant or a Permitted Leasehold Mortgagee is proceeding with reasonable diligence and such breach is capable of being cured, but in no event more than an additional 60 days. For any Event of Default that cannot be cured without possession of the Premises, Landlord shall allow such additional time as shall reasonably be required to prosecute and complete a foreclosure or equivalent proceeding and obtain such possession including time to obtain relief from a bankruptcy stay in Tenant's bankruptcy. If a Permitted Leasehold Mortgagee completes a foreclosure of its Leasehold Mortgage or otherwise diligently exercise its rights and remedies hereunder, then Landlord shall waive any Events of Default having occurred prior to the date of such foreclosure which Events of Default are of a nature that cannot reasonably be cured by such Mortgagee.

### **14.3 Landlord's Rights on Event of Default.**

(a) If an Event of Default occurs, Landlord may (subject to the provisions of Section 14.2) take any or all of the following actions:

(i) re-enter and repossess any or all of the Premises and any or all Tenant Improvements thereon and additions thereto in any manner permitted by Colorado law;

(ii) declare the amount of any accrued but deferred Annual Rent for the remainder of the Term to be due and payable immediately, and collect such balance in any manner not inconsistent with applicable law; provided that if Landlord elects to relet any or all of the Premises following such acceleration of Annual Rent, the provisions of Section 14.3(a) shall be applicable to the rights of Landlord and Tenant. Accelerated payments payable hereunder shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment of Annual Rent in advance;

(iii) terminate this Lease by giving written notice of such termination to Tenant and Permitted Leasehold Mortgagees, which termination shall be effective as of the date of such notice or any later date therefor specified by Landlord therein (provided, that without limiting the generality of the foregoing provisions of this Section 14.3(a)), Landlord shall not be deemed to have accepted any abandonment or surrender by Tenant of any or all of the Premises or Tenant's Leasehold Estate under this Lease unless Landlord has so advised Tenant expressly and in writing, regardless of whether Landlord has re-entered or relet any or all of the Premises or exercised any or all of Landlord's other rights under this Section or applicable law); and, on the date specified in such notice, Tenant's right to possession of the Premises will cease and the Leasehold Estate conveyed by this Lease upon Tenant shall revert in Landlord;

(iv) relet any or all of the Premises, with or without any additional premises, for any or all of the remainder of the Term (or, if this Lease has then been terminated, for any or all of the period which would, but for such termination, have constituted the remainder of the Term) or for a period exceeding such remainder, on such terms and subject to such conditions as are acceptable to Landlord in its sole discretion (including the alteration of any or all of the Premises in any manner which, in Landlord's judgment, is necessary or desirable as a condition to or otherwise in connection with such reletting, and the allowance of one or more concessions or "free-rent" or reduced-rent periods), and collect and receive the rents therefor. Anything in this Lease or applicable law to the contrary notwithstanding, (i) Landlord shall not have any duty or obligation to relet any or all of the Premises as the result of any Event of Default, or any liability to Tenant or any other person for any failure to do so or to collect any rent or other sum due from any such reletting; (ii) Tenant shall have no right in or to any surplus which may be derived by Landlord from any such reletting, if the proceeds of such reletting exceed any Rent, installment thereof or other sum owed by Tenant to Landlord hereunder; and (iii) Tenant's liability hereunder shall not be diminished or affected by any such failure to relet or the giving of any such initial or other concessions or "free-rent" or reduced rent periods in the event of any such reletting. In the event of any such reletting, Tenant shall pay to Landlord, at the times and in the manner specified by Section 3 (unless Landlord has elected to accelerate Rent as provided in Section 14.3(c), in which event Tenant shall be obligated to pay such accelerated amount as provided in such Section), both (i) the installments of the Annual Rent and any Additional Rent accruing during such remainder (or, if this Lease has then been terminated, damages equaling the respective amounts of such installments of the Annual Rent and any Additional Rent which would have accrued during such remainder, had this Lease not been terminated), less any monies received by Landlord with respect to such remainder from such reletting of any or all of the Premises, plus (ii) the cost to Landlord of any such reletting (including any reasonable attorneys' fees, leasing or brokerage commissions, repair or improvement expenses and the expense of any other actions taken in connection with such reletting), plus (iii) any other sums for which Tenant is liable under



Section 14.3 (and Tenant hereby waives any and all rights which it may have under applicable law, the exercise of which would be inconsistent with this Section 14.3(a));

(v) cure such Event of Default in any other manner and seek reimbursement from Tenant for such amounts spent in connection with such cure;

(vi) bring a proceeding at law or in equity against Tenant to enjoin any acts of Tenant in violation of this Lease; or

(vii) pursue any combination of such remedies or any other right or remedy available to Landlord on account of such Event of Default under this Lease or at law or in equity.

Nothing herein shall limit or prejudice Landlord's right to prove for and obtain as damages, by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved.

(b) No such expiration or termination of this Lease, or summary dispossession proceedings, abandonment, reletting, bankruptcy, re-entry by Landlord, injunction, or vacancy, shall relieve Tenant of any of its liabilities and obligations under this Lease (whether or not any or all of the Premises are relet), and Tenant shall remain liable to Landlord for all damages resulting from any Event of Default, including any damage resulting from the breach by Tenant of any of its obligations under this Lease to pay Rent and any other sums which Tenant is obligated to pay hereunder.

(c) If an Event of Default occurs, Tenant shall, immediately on its receipt of a written demand therefor from Landlord, reimburse Landlord for (a) all reasonable expenses, including any and all repossession costs, management expenses, operating expenses, legal expenses and reasonable attorney's fees, incurred by Landlord (i) in curing or seeking to cure any Event of Default, (ii) in exercising or seeking to exercise any of Landlord's rights and remedies under this Lease or at law or in equity on account of any Event of Default, (iii) otherwise arising out of any Event of Default, and (iv) regardless of whether it constitutes an Event of Default, in connection with any action, proceeding or matter of the types referred to in this Section 14, plus (b) interest on all such expenses, at the rate of highest rate then permitted on account thereof by applicable law, all of which expenses and interest shall be Additional Rent and shall be payable by Tenant immediately on demand therefor by Landlord.

(d) Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to re-enter provided for in any statute, and except as is herein otherwise provided, Tenant, for itself and all Persons claiming through or under Tenant (excluding any Permitted Leasehold Mortgagee(s) or other creditors), also waives any and all right of redemption or re-entry or repossession in case Tenant is dispossessed by a judgment or warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter," "re-enter," "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meanings.

**SECTION 15. ESTOPPEL CERTIFICATE; MEMORANDUM OF LEASE.**

**15.1 Estoppel Certificate.** Each party shall, at any time and within 10 days after being requested to do so by the other party, any Mortgagee or Permitted Leasehold Mortgagee in writing, execute, acknowledge, and address and deliver to the requesting party (or, at the latter's request, to any existing or prospective Mortgagee, transferee or other assignee of the requesting party's interest in the Premises or under this Lease which acquires such interest in accordance with this Lease) a certificate in recordable form, certifying (a) that this Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) that Tenant has accepted possession of the Premises, and the date on which the Term commenced; (c) as to the dates to which Annual Rent and any Additional Rent and other charges arising hereunder have been paid; (d) as to the amount of any prepaid rent or any credit due to Tenant hereunder; (e) as to whether, to the best of such party's knowledge, information, and belief, the requesting party is then in default in performing any of its obligations hereunder and, if so, specifying the nature of each such default; and (f) as to any other fact or condition reasonably requested by the requesting party; and acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

**15.2 Memorandum of Lease.** The parties shall, at the request of Landlord, Tenant, a Permitted Leasehold Mortgagee, or any Mortgagee, execute, acknowledge and deliver simultaneously with the execution of this Lease or at any time hereafter, in recordable form, a Memorandum of Lease, in form and substance satisfactory to each party in its reasonable judgment, for recordation among the said Land Records at the expense of the Person so requesting.

**15.3 Mortgage of Fee Estate.** Notwithstanding anything to the contrary contained herein, Landlord shall not be entitled to, beyond the Permitted Encumbrances existing as of the date of this Lease, mortgage, hypothecate, or encumber the Fee Estate without the prior written consent of any Permitted Leasehold Mortgagee and Tenant. The holder ("**Fee Mortgagee**") of any mortgage, encumbrance or hypothecation consented to by Tenant and a Permitted Leasehold Mortgagee(s) (a "**Fee Mortgage**") shall enter into a non-disturbance and subordination agreement in form and substance reasonably acceptable to Landlord, Fee Mortgagee, Tenant and Permitted Leasehold Mortgagee pursuant to which such Fee Mortgagee shall agree that this Lease is and shall be prior to the lien and terms of such Fee Mortgage and, in the event, the Fee Mortgagee succeeds to the interests of Landlord in the Fee Estate, the Fee Mortgagee shall recognize and be obligated by this Lease, shall provide for notice and cure rights benefitting Tenant, and Permitted Leasehold Mortgagee and shall provide that this Lease and any Permitted Leasehold Mortgagee will not be disturbed in the event of judicial or non-judicial foreclosure of such Fee Mortgage.

## **SECTION 16. CONDITION OF TITLE AND PREMISES.**

**16.1 Limited Warranties.** Tenant acknowledges that it has examined the Premises, the title thereto, the zoning thereof, the streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and subsurface conditions thereof, and the present uses thereof, if any, and, that it accepts each of them in its present condition or state. Landlord represents and warrants that it has no actual knowledge of any material adverse facts respecting any of the above matters.

**16.2 Quiet Enjoyment.** Landlord warrants that Tenant will have quiet use and enjoyment of the Premises during the Term so long as no Event of Default has occurred and is



continuing beyond applicable notice and cure periods and this Lease has not terminated and all of Tenant's obligations hereunder are timely performed, except if and to the extent that such possession is terminated pursuant to any other provision of this Lease.

**16.3 Limitation on Liability.** Nothing in this Lease shall be deemed to impose on Landlord any liability on account of any act or failure to act by any Person other than Landlord (or, where expressly so provided herein, Landlord's agents and employees).

## **SECTION 17. NOTICES.**

**17.1** Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i) (1) 48 hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (2) the next business day, after having been deposited in time for delivery by such service on such business day, with Federal Express or another national courier service, or (3) if such party's receipt thereof is acknowledged in writing, upon having been sent by email or other means of immediate electronic communication, in each case to the address of such party set forth hereinabove or to such other address in the United States of America as such party may designate by notice to each other party hereto, or (ii) if such party's receipt thereof is acknowledged in writing, its having been given by hand or other actual delivery to such party. Any notice required or permitted to be given under this Lease shall be deemed given if provided in accordance with the foregoing Section of this Section 17, and addressed as indicated on the attached Exhibit D; provided, however, that any party may change its address for notice purposes by timely notice to the other party.

## **SECTION 18. GENERAL.**

**18.1 Effectiveness.** This Lease shall become effective upon its execution and delivery by each party.

**18.2 Complete Understanding.** This Lease represents the complete understanding between the parties as to the subject matter hereof, the Premises, the Units, the rest of the Tenant Improvements, the Equipment, and the rest of the Property, and the rights and obligations of the parties as to the same, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in this Lease. Neither party has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein.

**18.3 Amendment.** This Lease may be amended by mutual agreement of the Landlord and Tenant subject to the prior written approval of any Permitted Leasehold Mortgagee, and provided that all amendments must be in writing and signed by both parties and that no amendment shall impair the obligations of the Tenant to develop and operate the Project in accordance with the Regulatory Agreements. Landlord and Tenant agree to cooperate to accommodate such amendments to this Lease, or to enter into a separate agreement with respect to the Project, as reasonably required in the judgment of bond counsel to allow Tenant to be the beneficiary of

qualified 501(c)(3) bonds (as defined in Section 141(e) of the Internal Revenue Code of 1986) issued to finance the Project, provided that Tenant agrees to pay for all costs, including attorney's fees, of any such amendments and that such amendments to not adversely affect Landlord, as determined by Landlord in its sole discretion.

**18.4 Waiver.** No party shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not taken by Landlord under this Section or any other provision of this Lease (including Landlord's acceptance of the payment of Rent after an Event of Default occurs) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which Landlord would otherwise have against Tenant on account of such Event of Default under this Lease or applicable law (Tenant hereby acknowledging that, in the interest of maintenance of good relations between Landlord and Tenant, there may be instances in which Landlord chooses not immediately to exercise some or all of its rights if an Event of Default occurs).

**18.5 Applicable Law.** This Lease shall be given effect and construed by application of the law of the State of Colorado, and any action or proceeding arising hereunder shall be brought in the courts of the State of Colorado; provided, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in United States District Court in Denver, Colorado or any successor federal court having original jurisdiction.

**18.6 Time of Essence.** Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

**18.7 Construction.** As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such section, subsections, paragraph or subparagraph of this Lease. The provisions of this Agreement shall be construed as to their fair meaning, and no inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Agreement. The parties have participated substantially in its negotiation, drafting, and revision, with advice from counsel and such other advisers as they deemed necessary or appropriate. The words "include" and "including" shall be construed to be followed by the words "without limitation." Every reference to any document, including this Agreement, refers to that document as modified from time to time by agreement of all the parties, and includes all exhibits, schedules, and riders to that document. The word "or" includes "and."

Captions of the articles and sections of this Agreement are for convenience only and shall not be considered to expand, modify or aid in interpretation, construction or meaning.

18.8 **Exhibits.** Each writing or plat referred to herein as being attached as an exhibit or otherwise designated herein as an exhibit is hereby made a part hereof.

18.9 **Severability.** No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

18.10 **Commissions.** Each party hereby represents and warrants to the other that, in connection with the leasing of the Premises hereunder, the party so representing and warranting has not dealt with any real estate broker, agent, or finder, and there is no commission, charge or other compensation due on account thereof. Each party shall, to the extent allowable by State law, defend, indemnify and hold harmless the other against and from any liability, claim of liability or expense arising out of any inaccuracy in such party's representation.

18.11 **Prevailing Party.** In the event either party hereunder initiates judicial action against the other in order to enforce the terms, covenants and provisions of this Lease, the non-prevailing party in such judicial action shall reimburse the prevailing party in such judicial action for all expenses, fees, costs, including attorneys' fees incurred by the prevailing party in connection with such judicial action.

18.12 **Records.** Tenant agrees to grant a right of access upon at least 24-hour notice to the Landlord or any of its authorized representatives, with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

18.13 **No Merger.** The voluntary or other surrender of this Lease by Tenant or the cancellation of this Lease by mutual agreement of Tenant and Landlord or the termination of this Lease on account of Tenant's default will not work a merger, and will, at Landlord's option, (a) terminate all or any Tenancy Agreements and other subleases (if any) and subtenancies (if any), or (b) operate as an assignment to Landlord of all or any Tenancy Agreements and other subleases (if any) or subtenancies (if any). Landlord's option under this Section will be exercised by written notice to Tenant and all known Residents and other sublessees (if any) or subtenants (if any) in the Premises or any part of the Premises.

18.14 **Conflict.** In the event of a conflict or inconsistency between any requirement contained in this Lease (or between any requirement contained in any document referred to in this Lease, including any Permitted Leasehold Mortgage) and the Regulatory Agreements in all instances the Regulatory Agreement or other in the priority specified in the Permitted Encumbrances set forth on Exhibit C, and subject and to the extent of the terms thereof shall be controlling.

18.15 **Third-Party Beneficiaries.** Landlord and Tenant each acknowledge and agree that the Permitted Leasehold Mortgagees are intended third-party beneficiaries of this Lease and shall have all of the rights and remedies of third-party beneficiaries allowable under applicable law.

18.16 **Disclaimer of Partnership Status.** Nothing in this Lease shall be deemed in any way to create between the parties any relationship of partnership, joint venture, or association, and the parties hereby disclaim the existence of any such relationship.

*(The remainder of this page has been left blank intentionally. Signature page to follow.)*

Each party has executed this Lease or caused it to be executed on its behalf by its duly authorized representatives, the day and year first above written.

**LANDLORD**

**Town of Frisco,**  
a Colorado home rule municipal corporation

By: \_\_\_\_\_  
Frederick J. Ihnken, Mayor

STATE OF COLORADO   §  
                                     §  
COUNTY OF SUMMIT   §

This instrument was acknowledged before me on or about this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Frederick J. Ihnken, as Mayor of the Town of Frisco, a Colorado home rule municipal corporation.

Witness my hand and seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**TENANT**

**NHPF Galena, LLC,**  
a Colorado limited liability company

By: The NHP Foundation, Manager

By: \_\_\_\_\_  
Neal Drobenare, Senior Vice President

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by Neal Drobenare, on behalf of The NHP Foundation, as Manager of NHPF Galena, a Colorado limited liability company. Witness my hand and seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

## **EXHIBIT A**

### **Legal Description of the Land**

Lots 13,14,15,16,17,18,19,20 and 21, Block 3, Frisco Town Subdivision, County of Summit, State of Colorado.

Addressed as 602 Galena Street, Frisco, CO, 80443



## **EXHIBIT B**

### **Redevelopment Plan**

That certain plan (the “Redevelopment Plan”) approved by the Town of Frisco as set forth in the Notice of Decision - Major Site Plan, dated March 21, 2024, for Town of Frisco Planning File No. MAJ-23-007, and as described and depicted in the Town of Frisco Planning Commission Staff Memo dated March 21, 2024 for said planning file, and the various attachments thereto, including but not limited to the Site Plan for the Property; all of which documents are on file in the Community Development Department of the Town of Frisco.

## **EXHIBIT C**

### **Permitted Encumbrances**

1. EASEMENTS, NOTES AND DEDICATIONS AS SHOWN ON PLAT FOR TOWN OF FRISCO RECORDED FEBRUARY 5, 1899 UNDER RECEPTION NO. 16089 AND ANY AND ALL AMENDMENTS THERETO.
2. RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED JANUARY 11, 1892 IN BOOK 62 AT PAGE 562 AND RE-RECORDED APRIL 25, 1975 IN BOOK 264 AT PAGE 727 UNDER RECEPTION NO. 148106.
3. DECLARATION OF RESTRICTIVE COVENANTS FOR AFFORDABLE RENTAL HOUSING (602 GALENA).
4. ALL OTHER MATTERS LISTED AS OF RECORD IN THE SUMMIT COUNTY RECORDER'S OFFICE.

## **EXHIBIT D**

### **Notice Addresses**

Landlord:

Town of Frisco  
P.O. Box 4100  
Frisco, Colorado 80443  
Attn: Town Manager

With a copy to:

Thad W. Renaud  
Murray Dahl Beery & Renaud LLP  
710 Kipling Street, Suite 300  
Lakewood, CO 80215

Tenant:

NHPF Galena, LLC  
c/o The NHP Foundation  
Attn: Neal Drobenare  
1090 Vermont Ave NW, Suite 400  
Washington DC 20005

With a copy to:

New Communities Law PLLC  
1919 14th St., Suite 700  
Boulder, CO 80302  
Attn: Ben Doyle

## EXHIBIT E

### Form of Landlord's Right of First Offer / Right of First Refusal (Tenant's Interests)

**Upon recording, return to:**

Town of Frisco  
P.O. Box 4100  
Frisco, Colorado 80  
443  
Attn: Town Manager

### LANDLORD'S RIGHT OF FIRST OFFER AND REFUSAL AGREEMENT

(602 Galena)

This Landlord's Right of First Offer and Refusal Agreement (602 Galena) ("**Agreement**") is made as of the [DAY] day of [MONTH], 2025 (the "**Effective Date**"), by and between Town of Frisco, a Colorado home rule municipal corporation, having an address of P.O. Box 4100 Frisco, Colorado 80443 (together with its successors and assigns, "**Landlord**"), and NHPF Galena, LLC, a Colorado limited liability company, having an address of c/o The NHP Foundation 1090 Vermont Ave NW, Suite 400 Washington DC 20005 (together with its permitted successors and assigns, "**Tenant**"). Tenant and Landlord shall hereinafter sometimes be referred to individually as a "**Party**" and collectively as the "**Parties**."

### RECITALS

A. Landlord and Tenant are parties to that certain ground lease dated of even date herewith (the "**Ground Lease**"), recorded in the records of the Office of the Clerk and Recorder of the County of Summit, Colorado (the "**Real Estate Records**") at Reception No. \_\_\_\_\_, pursuant to which Landlord has leased certain real property to Tenant, legally described on Exhibit A attached hereto (the "**Property**").

B. Tenant has agreed to grant to Landlord a right of first offer and a right of first refusal to purchase the Premises (as such term is defined in the Ground Lease), in each case upon and subject to the terms, covenants and conditions of this Agreement and subject and subordinate to certain other purchase option(s) and right(s) of first refusal, as set forth herein.

C. Landlord has made or intends to make a loan to Tenant in such amount and on such terms (the "**Town Loan**") as are set forth in that Loan Agreement between the Town and Tenant, [dated of even date herewith,] and in accordance with such other loan documents evidencing the Town Loan.

D. The Parties desire to set forth their understanding and Agreement with regard to such rights.

NOW, THEREFORE, the Parties hereby agree as follows:

1. **First Offer Right; Notice.** Subject to Section 22 (Subordination) below, in the event Tenant shall desire to directly or indirectly convey its leasehold interest in the Premises or its interests in its membership interest in Tenant (or any upper tier entity involving a change in control of Tenant) (an “**Interest**”) to a party other than an affiliate of Tenant, then prior to any marketing of the Premises or the Interests for sale, Tenant shall make a written offer to Landlord (the “**ROFO Notice**”) specifying the proposed purchase price and other terms of the sale which Tenant shall certify is its best estimate of the fair market value of the Premises or the Interests, as applicable (the “**FMV**”). The price payable by Landlord (the “**ROFO Price**”) shall be the greater of (a) the FMV of the Premises or the Interests, or (b) the outstanding indebtedness secured by the Premises, provided that the ROFO Price otherwise payable under (a) or (b) shall be reduced by fifty percent (50%) of the amount by which the FMV of the Premises exceeds the amount of outstanding debt secured by the Premises and owed by Tenant, with such reduction in ROFO Price in no event to exceed the outstanding and unforgiven amount of the Town Loan. The Town shall have a period of ninety (90) days from the date of receiving the ROFO Notice to purchase the Premises or Interests, as applicable, on the specified terms. If the Town does not give notice electing to exercise its ROFO Notice within such ninety (90) day period, the Tenant shall have the right, for one year thereafter, to sell the Premises or Interests for sale, as applicable, to a third party at a price no less than the price specified in the offer pursuant to the ROFO Notice. If the Tenant fails to comply with the provisions of this Section 1), the Landlord shall continue to have the right of first refusal on the purchase described in Section 4 at a price that is ten percent (10%) less than the price set forth in Section 4 below.

2. **Negotiations; Purchase Agreement.** Landlord shall have a period of ninety (90) days from the date of receiving the ROFO Notice to purchase the Premises or Interests, as applicable, on the specified terms. If Landlord does not give notice electing to exercise its ROFO Notice within such ninety (90) day period, the Tenant shall have the right, for one year thereafter, to sell the Premises or Interests for sale, as applicable, to a third party at a price no less than the price specified in the offer pursuant to the ROFO Notice. shall have 30 days following its receipt of the ROFO Notice within which to respond to such Right of First Offer and to advise Tenant whether it is willing to enter into negotiations for the purchase and sale of the Premises or the Interests. If Landlord fails to timely reply to Tenant, in writing, confirming its desire to enter into negotiations for the purchase of the Premises within such 30-day period, Landlord shall be deemed to have declined such Right of First Offer and Tenant shall be free to list, market for sale, and sell the Premises to any party that it so chooses on such terms and conditions as it deems acceptable in its sole and absolute discretion.

3. **Negotiations; Purchase Agreement.** If Landlord elects to enter into negotiations for the purchase of the Premises followings its receipt of a ROFO Notice, the Parties shall then enter into good faith negotiations for the purchase and sale of the Premises for a purchase price not less than the ROFO Price and shall have a period not to exceed 30 days (the “**Negotiation Period**”) to execute a mutually acceptable purchase and sale agreement for the same (the “**Purchase Agreement**”) with the purchase price determined as set forth in Section 1 above. If the Parties are unable at the end of the Negotiation Period to reach Agreement on the purchase and sale of the Premises and execute a mutually acceptable Purchase Agreement for the same, Tenant shall thereafter be free to list, market for sale and sell the Premises to any party that it so chooses on such terms and conditions as it deems acceptable in its sole and absolute discretion, subject to Landlord’s rights under Section 3 hereof. If Tenant and Landlord are able to reach

agreement on such purchase and sale and they execute a Purchase Agreement for the Premises prior to the expiration of the Negotiation Period, Landlord and Tenant shall proceed under and in accordance with such Purchase Agreement to close on the purchase and sale of the Premises.

4. **Third Party Offer.** If the Tenant receives a bona fide, third party offer, which the Tenant intends to accept, to directly or indirectly acquire the Premises or its Interests (the “**Offer**”), the Landlord or its affiliate shall have a first right of first refusal (the “**ROFR**”) to acquire the Premises or the Interests at the price (the “**Offer Price**”) and in accordance with the terms of such third party offer; provided that the purchase price by the Town under the ROFR (the “**ROFR Price**”) shall be reduced by fifty percent (50%) of the amount by which the Offer Price exceeds the amount of outstanding debt secured by the Town Property and owed by the Town Property Ownership Entity, with such reduction in ROFR Price in no event to exceed the outstanding and unforgiven amount of the Town Loan. Tenant shall provide Landlord a written copy of the Offer within five business days of its receipt thereof and notice of Landlord’s right to exercise the ROFR (the “**ROFR Notice**”). If Landlord elects to purchase the Premises in accordance with the terms of such Offer (except as such terms are revised herein), Landlord shall notify Tenant of such election no later than sixty (60) days following receipt of the Offer and shall thereafter proceed to closing on the Premises within ninety (90) days thereafter. If Landlord does not timely exercise its rights with respect to the ROFR specified in the ROFR Notice, Tenant may sell and convey the Premises to such third party in accordance with the terms and provisions of such Offer, the ROFR shall automatically terminate with regard to the Premises sold pursuant to such Offer, and this Agreement shall become null and void and of no further force and effect whatsoever. As used herein, the term “**Affiliate**” means any entity controlling, controlled by or under common control with a Party, and the term “**control**” means the power to direct the management affairs and operations of an entity, whether by contract, voting securities, or otherwise. The term “**business day**” as used herein means any day on which national banks are open for business in Denver, Colorado, excluding Saturdays, Sundays and federal and state holidays.

5. **Term.** Notwithstanding anything to the contrary contained herein, the Right of First Offer and First Refusal Right, if not sooner exercised by Landlord with regard to the Premises in accordance with the terms and provisions of this Agreement, shall automatically expire and be of no further force and effect on the earlier to occur of the following (the “**ROFO/ROFR Expiration Date**”): (i) Landlord’s sale, transfer, or conveyance of the Fee Estate to any party not an Affiliate of Landlord, whether voluntarily, by operation of law, or otherwise; (ii) any default by Landlord under the Ground Lease which is not cured; (iii) 75 years following the Effective Date of this Agreement. While such termination shall be automatic and shall not require any further action on the part of Tenant or Landlord, if requested by Tenant, Landlord shall execute and deliver a written termination of the Right of First Offer, First Refusal Right and this Agreement in recordable form following the ROFR Expiration Date.

6. **Estoppel Certificates.** During the term of this Agreement, upon the request of either Party (the “**Requesting Party**”) the other Party (the “**Non-Requesting Party**”) shall, no later than 15 days following receipt of a written request from the Requesting Party, execute an estoppel certificate in favor of such Requesting Party, its lender and/or prospective purchaser, as applicable, confirming the status of this Agreement, whether the same remains in full force and effect and whether, to such Non-Requesting Party’s current actual knowledge, the Requesting

Party is in breach or default hereunder. Such request shall be made no more frequently than twice annually during the term hereof. If the Non-Requesting Party does not timely respond, the Requesting Party, its lender and/or prospective purchaser, as applicable, shall be entitled to rely on an estoppel certificate executed by such Requesting Party confirming the status of the Agreement and each Party hereby irrevocably appoints the other Party as its attorney-in-fact for the purpose of executing such estoppel certificate upon the failure of the Non-Requesting Party to timely provide such estoppel certificate, which appointment is irrevocable and is coupled with an interest.

7. **Expense of Negotiations.** Landlord and Tenant shall each pay their respective attorneys' fees and costs in the negotiation and drafting of any Purchase Agreement executed by the Parties for the purchase and sale of the Premises pursuant to this Agreement.

8. **Notices.** All notices required hereunder shall be in writing and shall be delivered to the Parties as follows:

Landlord:	Town of Frisco P.O. Box 4100 Frisco, Colorado 80443 Attn: Town Manager
With a copy to:	Thad W. Renaud Murray Dahl Beery & Renaud LLP 710 Kipling Street, Suite 300 Lakewood, CO 80215
Tenant:	NHPF Galena, LLC c/o The NHP Foundation Attn: Neal Drobenare 1090 Vermont Ave NW, Suite 400 Washington DC 20005
With a copy to:	New Communities Law PLLC 1919 14th St., Suite 700 Boulder, CO 80302 Attn: Ben Doyle

Such addresses may be changed by written notice to the other Party. Such notices shall be effective upon receipt (if delivered personally or by email transmission, with confirmation of transmission); three business days after mailing (if delivered by registered or certified mail); or one business day after mailing (if delivered by overnight courier service).

9. **Entire Agreement.** This Agreement contains the entire Agreement of the Parties concerning the subject matter hereof, and supersedes all prior and contemporaneous communications, understandings and Agreements concerning the subject matter herein between



the Parties, and may be amended only by an instrument in writing signed by all Parties. No representations, promises or Agreements, oral or otherwise, not contained herein shall be of any force or effect.

10. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Colorado.

11. **Invalidity.** Should any provision of this Agreement be held to be invalid, illegal, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions shall not be affected thereby, unless the severance of the invalid, illegal or unenforceable provision eliminates the material benefit of this Agreement for either Party.

12. **Draft of Agreement.** The Parties acknowledge that this Agreement has been negotiated at arm's length and in good faith, and that each Party has been or has been given the opportunity to be represented by independent legal counsel, and that this Agreement is the result of such mutual Agreement and negotiation, and shall not be deemed to have been drafted solely by either Party, and neither Party shall be deemed to be the draftsman and the Parties hereby waive the benefit of any rule of contract interpretation or construction requiring that the same be construed against the drafting Party in the event of ambiguity.

13. **Attorneys' Fees and Costs.** If any action, proceeding arising out of or relating to the performance of this Agreement is commenced, regardless of whether it is later dismissed, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs, including, but not limited to, expert witness fees and expenses, in addition to any other relief to which that prevailing party may be granted.

14. **Waiver.** The failure of either Party at any time to require performance of any provision of this Agreement shall not limit that Party's right to enforce the provision in the future. Waiver of any breach of any provision shall not be deemed a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

15. **Injunctive Relief.** It is agreed that, in the event of default of the terms herein, and in addition to and not in lieu of seeking any damages as allowed by law, either and each Party shall have the unequivocal right to obtain injunctive relief (including obtaining a temporary restraining order).

16. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be fully effective as an original, but all of which together shall constitute one and the same instrument.

17. **Time of Essence.** Time is of the essence in the performance of this Agreement.

18. **Further Assurances.** The Parties shall execute such further documents and instruments and undertake such further actions as may reasonably be necessary to effectuate the transactions contemplated in this Agreement.

19. **Headings.** The article and section headings herein are for convenience only and shall not affect the construction hereof.

20. **Use of Terms.** As used herein words in any gender shall be deemed to include the other genders and the singular shall be deemed to include the plural, and vice versa.

21. **Binding on Tenant's Successors.** All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties and Tenant's successors and assigns.

22. **Subordination.** The rights of Landlord under this Agreement are subject and subordinate in all respects to the terms and conditions of: the deeds of trust encumbering the Premises recorded prior to this Agreement (or the memorandum of this Agreement); the lien of any deed of trust recorded after the date of this Agreement in connection with any financing or refinancing related to the Premises; any purchase options, rights of first refusal, or rights of first offer granted to an Affiliate of Tenant. Landlord shall take title to the Project subject to any and all such liens and encumbrances. Upon any foreclosure of a deed of trust or other lien or deed in lieu thereof, this Agreement shall automatically terminate. Each leasehold lender is a third-party beneficiary of this Section of this Agreement and Landlord agrees to execute such separate subordination agreement(s) confirming the provisions of this Agreement as may be reasonably requested by a leasehold lender.

23. **Recording.** Either party may cause this Agreement to be recorded in the Real Estate Records.

(Remainder of page left intentionally blank.)

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first written above.

**LANDLORD**

**Town of Frisco,**  
a Colorado home rule municipal corporation

By: \_\_\_\_\_  
Frederick J. Ihnken, Mayor

STATE OF COLORADO   §  
                                     §  
COUNTY OF SUMMIT   §

This instrument was acknowledged before me on or about this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Frederick J. Ihnken, as Mayor of the Town of Frisco, a Colorado home rule municipal corporation.

Witness my hand and seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**TENANT**

**NHPF GALENA, LLC,**  
a Colorado limited liability company

By: \_\_\_\_\_  
[NAME], [TITLE]

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by  
[NAME], on behalf of the limited liability company. Witness my hand and seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**Exhibit A**  
**Legal Description**

Lots 13,14,15,16,17,18,19,20 and 21, Block 3, Frisco Town Subdivision, County of Summit, State of Colorado.

Addressed as 602 Galena Street, Frisco, CO, 80443

## **EXHIBIT F**

### **Insurance Requirements**

Tenant shall and maintain at its sole cost and expense throughout any period of construction of improvements to the Property insurance against claims for injuries to persons or damages to property which may arise from or in connection with any construction activities maintained by the Tenant, its contractors, agents and representatives. Tenant acknowledges that it has familiarized itself with the extent and scope of work to be performed and certifies that its insurance policies provide coverage for losses that might arise from the types of hazards to be found therein.

(a) Payment and performance bond from a surety acceptable to Landlord naming Landlord as a dual obligee.

(b) An "All Risk" Builder's Risk Property Insurance Policy naming the Tenant as an insured shall be required during the course of construction and be provided in an Accord 27 or Accord 28 form and naming the Landlord as an additional insured. The amount of the insurance shall be 100% of the completed value. The insurance shall cover buildings, machinery, equipment, materials, supplies, temporary structures and all other properties of any nature including the foregoing owned by the contractor, which is used in fabrication, erection, installation and completion of the project until it is accepted by the Tenant. The insurance shall cover "resulting" loss or damage, the expense for debris removal and provide permission by the insurer for occupancy and use of the premises. More specifically, the Builder's Risk policy shall include:

- Special Perils "Risks of Direct Physical Loss"
- Include Boiler and Machinery coverage
- Delay in Completion (Loss of Rents – Business Income min of 12 months)
- Full Collapse coverage provided including CP 11 20 or its equivalent
- Non-reporting, completed value form
- Debris removal – not less than 25% of the loss plus \$100,000
- Expediting Expense – not less than \$100,000
- Pollutant Clean Up and Removal – not less than \$50,000
- Ordinance of Law – (A) undamaged portion; (B) Demolition Costs; (C) Increased Cost of Construction with Coverage A at 100% replacement cost of the building and coverage B&C at not less than \$1,000,000
- Property coverage includes while in temporary storage or in transit of \$100,000
- Water damage from backup of sewers and drains not less than \$100,000
- Minimum \$1,000,000 limits for Earth Movement
- Permission to Occupy – Permission is granted to occupy the covered building for its intended purposes during the course of construction for at least 60 days.

Tenant shall procure and maintain at its sole cost and expense throughout the Term, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of any of the obligations hereunder by the Tenant, its contractors, agents and representatives. Tenant acknowledges that it has familiarized itself with the extent and scope of work to be performed and certifies that its insurance policies provide

coverage for losses that might arise from the types of hazards to be found therein. Landlord shall be listed as an additional insured on all such policies.

i. Certificates of Insurance and endorsements shall be furnished to Landlord and approved by Landlord before it commences activity on the Premises. Landlord shall be listed as an additional insured on all such policies.

ii. The following standard insurance policies shall be required:

(a) Commercial General Liability

(b) Workers' Compensation

(c) Automobile Liability

(d) Property

(b) The following requirements are applicable to all policies:

i. Commercial General Liability and Workers Compensation insurance shall be written by a carrier with an A-:VIII or better rating in accordance with current A.M. Best Key Rating Guide.

ii. Only insurance carriers licensed or duly authorized to do business in the State of Colorado will be accepted.

iii. Only deductibles applicable to property damage are acceptable; if applicable they must be shown on the certificate of insurance and approved by Landlord.

iv. "Claims made" policies will not be accepted.

v. Landlord, its commissioners, officers, directors, employees, and volunteers, are to be added as "Additional Insured" to the General Liability and the Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to Landlord, its commissioners, officers, directors, employees, and volunteers.

vi. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to Landlord, if such coverage is available.

vii. Upon request, certified copies of all insurance policies shall be furnished to Landlord.

(c) COMMERCIAL GENERAL LIABILITY INSURANCE -- The following Commercial General Liability Insurance is required:

i. Minimum Limits of \$1,000,000 per Occurrence with an annual Aggregate of \$2,000,000 for Bodily Injury, Personal Injury and Property Damage.



ii. Coverage shall be provided for premises/operations and product/completed operations hazards.

iii. The ISO Commercial General Liability Policy form ("Occurrence" form CG 0001, Ed. 11/88) or broader with no deletions of coverage. Any exclusions, changes or limitations of coverage must be submitted with contractor's written proposal and must be approved in writing by the Landlord risk manager.

iv. A Waiver of Subrogation in favor of Landlord must be endorsed to the policy.

v. Tenant shall also procure and maintain at its sole cost and expense throughout the term, a sexual abuse/molestation endorsement to the Commercial General Liability insurance policy or, in the alternative, Tenant shall procure and maintain a separate policy that covers sexual abuse and molestation.

(d) **WORKERS' COMPENSATION INSURANCE** -- The following Workers' Compensation is required by Tenant or its property manager, as applicable:

i. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable law, including minimum Employers' Liability limits of:

(a) By Accident -- \$500,000 each accident;

(b) By Disease -- \$500,000 each Employee and Policy limit.

ii. "Colorado," must appear in Item 3A of the declarations page or Item 3C must contain the following: "All states except those listed in Item 3A and the states of NV, ND, OH, WA, WV, and WY"

iii. A Waiver of Subrogation in favor of Landlord must be endorsed to the policy.

(e) **AUTOMOBILE LIABILITY**

The following Automobile Liability Insurance will be required by Tenant or its property manager, as applicable:

i. On Owned, Non-owned or Hired motor vehicles used on the site or in connection therewith, a minimum Combined Single limit of \$1,000,000 each Accident for Bodily Injury and Property Damage.

ii. Landlord, its commissioners, officers, directors, employees and volunteers, shall be added as "Additional Insureds."

iii. There shall be no special limitations regarding the scope of protection afforded to Landlord, its commissioners, officers, directors, employees and volunteers.

iv. A Waiver of Subrogation in favor of Landlord must be endorsed in the policy.

(f) PROPERTY – Tenant must obtain and maintain insurance against loss or damage to real property and property, including coverage against all risks of direct physical loss (which shall include flood insurance if the Premises are located within a 100-year floodplain), as determined by an approved insurance company, in amounts sufficient to prevent Landlord from becoming a co-insurer under the applicable policies, and in any event, after application of deductible, in amounts not less than 100% of the full insurable replacement cost values and sublimits satisfactory to Landlord, as determined from time to time at Landlord's request but not more frequently than once in any 24-month period.

(g) CERTIFICATES OF INSURANCE -- All Certificates of Insurance shall be prepared and executed by the insurance Tenant or its authorized agent, and shall contain provisions warranting the following:

- i. Tenant is authorized to do business in the State of Colorado.
- ii. The insurance set forth by the insurance Tenant is written on forms which have been approved by the Colorado State Board of Insurance or ISO.
- iii. Sets forth all endorsement and insurance coverage according to requirements and instructions contained herein.
- iv. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to Landlord.
- v. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

(h) VERIFICATION OF COVERAGE – The following requirement pertains to all Certificates of Insurance. Tenant shall furnish Landlord with certificates of insurance and with certified copies of endorsements effecting coverage by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and written on forms which have been approved by the Colorado Department of Insurance or Insurance Services Office. They must set forth all coverage and deductibles as well as the notice of cancellation, termination or change in coverage provisions to Landlord according to requirements and instructions contained herein. Certificates of insurance (or certified copies of policies) and any required endorsements shall be furnished to and approved by Landlord before any activity commences on the Premises. Landlord reserves the right to require complete, certified copies of all required insurance policies at any time.

Any insurance company engaged by the Tenant providing the foregoing insurance coverages shall have an A rating or better for financial safety by A.M. Best or Standard & Poor's and a financial performance of at least VIII or better from Best's Key Rating Guide or Standard & Poor's.

**EXHIBIT G**  
**Form of Town Covenant**

(attached)

**DECLARATION OF RESTRICTIVE COVENANTS  
FOR AFFORDABLE RENTAL HOUSING  
(602 Galena)**

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR AFFORDABLE RENTAL HOUSING (602 Galena) (this “Restrictive Covenant”) dated \_\_\_\_\_, 2025, is made by the Town of Frisco, a Colorado municipal corporation (the “Town”).

Recitals

A. The Town is the owner of the real property described in Section 1 of this Restrictive Covenant (the “Property”);

B. The Town and the Frisco Community Housing Development Authority have entered into the Second Amended and Restated Development Agreement (602 Galena) (the “Development Agreement”) with The NHP Foundation, a District of Columbia nonprofit corporation, and NHPF Galena, a Colorado limited liability company (the “Developer”), dated on or about March \_\_\_\_\_, 2025, whereby the Town provides certain incentives to the Developer for the construction and operation of an affordable housing development specifically intended to provide affordable workforce housing as further set forth herein (the “Project”);

C. It is a condition of the Development Agreement and of the Town’s approval of the land use application made by Developer for the Project that the Property is restricted by this Restrictive Covenant and that the Property be used hereafter as limited hereby; and

D. If required for the construction of the project, the Developer may enter into a regulatory agreement (the “Regulatory Agreement”) restricting the use of Units (defined below) as more specifically described therein. Any conflict between this Restrictive Covenant and the Regulatory Agreement shall be resolved in favor of the Regulatory Agreement, provided that no Unit (as defined below) in the Project may be occupied except by a Qualified Occupant (defined below).

NOW, THEREFORE, the Town declares as follows:

1. Property Subject to Covenant. This Restrictive Covenant applies to the following real property located in the Town of Frisco, Summit County, Colorado:

LOTS 13, 14, 15, 16, 17, 18, 19, 20 AND 21, BLOCK 3, FRISCO TOWN  
SUBDIVISION, COUNTY OF SUMMIT, STATE OF COLORADO

Also known as: 602 GALENA STREET, FRISCO, CO, 80433

2. Definitions. In addition to those terms that are defined parenthetically, as used in this Restrictive Covenant:

“Area Median Income” or “AMI” means the median annual income for Summit County, Colorado (or such next larger statistical area calculated by HUD that includes the County, if HUD does not calculate the area median income for the County on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD (or any successor index thereto acceptable to the Town, in its reasonable discretion).

“County” means Summit County, Colorado.

“Dependent” means a person, including a child, step-child, or a child in the permanent legal custody of a person lawfully residing in a Unit in compliance with the terms and conditions of this Restrictive Covenant. A Dependent must occupy the Unit as his or her place of residence, and be financially dependent upon the support of the legal resident. Dependent shall also include any person included within the definition of “Familial Status” as defined in 42 U.S.C. § 3602(k), as that act shall from time to time be amended.

“HUD” means the U.S. Department of Housing and Urban Development.

“Property” means the real property described in Section 1 of this Restrictive Covenant.

“Qualified Occupant” means (i) a natural person aged 18 or older, along with the Qualified Occupant’s roommates, if any, (and their respective Dependents) who at all times during occupancy of a Unit, earns a living from a business operating in and serving the Summit County area, by working at such business an average of at least thirty (30) hours per week on an annual basis; or (ii) for individuals claiming self-employment, their employment must be at least thirty (30) hours per week on an annual basis for a legally formed business entity provided such entity is approved by the Town in writing as having demonstrated that its principal place of business is located within Summit County, and provides a significant amount of goods and/or services locally within Summit County to the residents, property owners, or visitors located in Summit County, whether or not for profit. If a person is a work from home employee for a business, the person must work at least thirty (30) hours per week on an annual basis in Summit County, be approved in writing by the Town, and the business must provide a significant amount of goods and/or services to the residents, property owners, or visitors of Summit County, whether or not for profit. A Qualified Occupant who becomes disabled after commencing occupancy of a Unit such that the Qualified Occupant cannot work the required number of hours each week required by this Restrictive Covenant shall remain a Qualified Occupant; provided that such person is permitted to occupy the Unit only for a maximum period of one (1) year following the commencement of said person’s disability, unless a longer period of occupancy is authorized by the Town, based on the submittal of medical documentation that substantiates the disability and the inability to resume working the number of hours each week required by this Restrictive Covenant. The Town or its designee shall have the discretion to determine any person’s eligibility as a Qualified Occupant under this section and may request such evidence as is necessary to make said determination.

“Priority Employee” means (i) a natural person aged 18 or older, along with the Priority Employee’s roommates, if any, who at all times during occupancy of a Unit, earns a living from a business operating in and serving the Town, by working at such business an average of at least thirty (30) hours per week on an annual basis; or (ii) for individuals claiming self-employment, their employment must be at least thirty (30) hours per week on an annual basis for a legally formed business entity provided such entity is approved by the Town in writing as having demonstrated that its principal place of business is located within the Town, and provides a significant amount of goods and/or services locally within the Town to the residents, property owners, or visitors located in the County, whether or not for profit. If a person is a work from home employee for a business, the person must work at least thirty (30) hours per week on an annual basis in the Town, be approved in writing by the Town, and the business must provide a significant amount of goods and/or services to the residents, property owners, or visitors of the Town, whether or not for profit. A Priority Employee who becomes disabled after commencing occupancy of a Unit such that the Priority Employee cannot work the required number of hours each week required by this Restrictive Covenant shall remain a Priority Employee; provided that such person is permitted to occupy the Unit only for a maximum period of one (1) year following the commencement of said person’s disability, unless a longer period of occupancy is authorized by the Town, based on the submittal of medical documentation that substantiates the disability and the inability to resume working the number of hours each week required by this Restrictive Covenant. The Town or its designee shall have the discretion to determine any person’s eligibility as a Priority Employee under this section and may request such evidence as is necessary to make said determination.

“Town Employee” means a natural person aged 18 or older, along with the Town Employee’s roommates, if any, who at all times during occupancy of a Unit, earns a living as an employee of the Town (or affiliates thereof), by working at least thirty (30) hours per week on an annual basis. A Town Employee who becomes disabled after commencing occupancy of a Unit such that the Town Employee cannot work the required number of hours each week required by this Restrictive Covenant shall remain a Town Employee; provided that such person is permitted to occupy the Unit only for a maximum period of one (1) year following the commencement of said person’s disability, unless a longer period of occupancy is authorized by the Town, based on the submittal of medical documentation that substantiates the disability and the inability to resume working the number of hours each week required by this Restrictive Covenant. The Town or its designee shall have the discretion to determine any person’s eligibility as a Town Employee under this section and may request such evidence as is necessary to make said determination.

“Unit” means a residential unit located on the Property.

3. Purpose of Occupancy and Rent Restrictions. The purpose of this Restrictive Covenant is to restrict the occupancy of each Unit in such a fashion as to provide, on a permanent basis, reasonably priced housing for Qualified Occupants, or to individuals who, because of their income, may not otherwise be in a position to afford to occupy or lease other similar properties and to help establish and preserve a supply of workforce housing to help meet the needs of the locally employed residents of the Town of Frisco or the wider Summit County area. This Restrictive Covenant shall be interpreted and enforced in accordance with this purpose.

4. Tenant and Occupancy Restrictions. The following provisions shall apply to the extent not otherwise prohibited by Federal or state law, including, without limitation, fair housing laws:

A. Each of the Units shall be rented by the Developer only to a Qualified Occupant; and

B. Each of the Units shall at all times be occupied by (or held available for occupancy by) at least one Qualified Occupant as a principal residence, and said Qualified Occupant's roommates and temporary guests, if any; provided, however, if a tenant's lease term commences and the tenant is a Qualified Occupant, but during the term of the lease fails to continue to be a Qualified Occupant, the Developer shall be under no obligation to terminate the lease during the term, but the Developer shall not renew said tenant's lease, subject to applicable tenant protections required under applicable law.

Notwithstanding the foregoing, in the event the Developer is unable to lease a Unit to a Qualified Occupant after 30 calendar days, during which the Developer used commercially reasonable efforts to lease the Unit in question to a Qualified Occupant, the Developer may lease the Unit in question to another prospective tenant meeting the AMI set asides for a term of one year.

5. Rent Restriction and Income Limitations.

A. *Rent Restriction in line with HUD Multifamily Tax Subsidy Rents.* Throughout the term of this Restrictive Covenant, subject to the potential partial inapplicability set forth in Section 7 below, each Unit shall be rented only to a Qualified Occupant for a monthly rental amount (excluding tenant-paid utilities) that is equal to or less than the maximum rental amount that is permitted to be charged hereunder with 100% of the Units rented at 120% AMI rent (excluding utilities). For example, if a two-bedroom Unit is set aside for someone making at or below 120% AMI, the rental amount shall be as determined by HUD for a 120% AMI unit that is two bedrooms and located in Summit County, Colorado. To the extent HUD does not publish rent limits for a specific set-aside, it will be extrapolated from rents published by HUD (e.g. the rent for 100% Units will be double the amount of rent set for units affordable to individuals or families whose income is 50% AMI, as published by HUD). In the event the rent limit cannot be extrapolated from HUD-published rent limits, then the methodology set forth in Section 5(B) shall govern.

B. *Rent Restriction if HUD Rents are Unavailable.* In the event HUD has not provided a specific rental maximum or if HUD rent maximums are otherwise inapplicable or unavailable, then the maximum permissible rental amounts (excluding utilities) for Units with a rent limit will be determined in accordance with the following:

1. Determine the AMI in effect immediately prior to the beginning of the term of each sublease or rental of the Unit (but in no event less than the highest amount of HUD published rent levels commencing in 2025 through the time of rent-up); and

2. Multiply the AMI times the applicable AMI set aside (i.e., 120%)

3. Multiply that amount by 30%; and



4. Divide the product thereof by 12 to obtain the maximum permissible monthly rent (excluding utilities) for such Unit.

In the event AMI is flat or declines, as compared to the prior period, the maximum permissible monthly rental (excluding utilities) may increase by no more than three percent (3%) over the prior year, provided that if the annual percentage increase in the Denver-Aurora-Lakewood Consumer Price Index ("CPI") or its successor index reported for the most recent quarter is more than three percent (3%), the permissible monthly rent may increase by an amount over the prior year that equals the percentage increase in the CPI, . In such event, the Developer will consider market conditions when determining whether to increase monthly rent and, if so, to what extent; provided, however, that such determination shall be made in the Developer's sole and absolute discretion.

*C. Income Limitation on the Units.* The Units shall be leased only to Qualified Occupants earning at or below 120% of the AMI in the first year of their occupancy.

*D. Town of Frisco Master Lease and Preference for Local Employees.*

1. Upon written request of the Town, the Developer shall enter into one or more master lease(s) with the Town and/or an entity affiliated with the Town for which the Town is contractually obligated to provide housing, or of which the Town has assigned this benefit, for up to five (5) total Units. Unless otherwise agreed to in the sole discretion of the Developer, any master lease(s) that may be entered into pursuant to this subparagraph shall be at the same rates and charges that would be applicable to a lease that complies with this Restrictive Covenant for the Unit to be leased individually to a Qualified Occupant. Any such master lease shall be conditioned on occupancy of the subject unit by a Qualified Occupant in accordance with this Restrictive Covenant.

2. Upon a Unit becoming available for rent, the Developer will offer to Town Employees for at least ten (10) business days; and if not rented within that timeframe, then for the next five (5) business days the Developer will offer the Units to Priority Employees; finally, thereafter, the Developer may rent the Unit to any Qualified Occupant. For the avoidance of doubt, the business day periods set forth herein shall begin to toll when the Town Manager is notified in writing by the Developer of the availability.

*E. Matching Tenants to Units.* At the time of application, each tenant will provide the tenant's current income to the Developer or its property manager. The Developer shall cause its property manager to identify the most appropriate Unit that is available for the income stated. The prospective tenant will ultimately decide whether to enter into a lease for that identified Unit at the then-applicable rate.

6. Additional Lease Restrictions. The Town and the Developer further agree that:

A. A Qualified Occupant may not sublease all or any portion of the rented Unit; and

B. A Unit may not be rented for an initial nor renewal term of fewer than 90 days.

All subleases or rentals of a Unit not in compliance with the requirements of this Section 6 are void, and a violation of this Restrictive Covenant.

7. Regulatory Agreement. The beneficiary of the Regulatory Agreement shall enforce the terms of the Regulatory Agreement, if any, and the Town shall enforce the terms of this Restrictive Covenant. The Regulatory Agreement and this Restrictive Covenant shall not be deemed to conflict merely because one provides for greater, lesser, or different restrictions or obligations than the other where compliance with both is possible.

8. Records.

A. The Town may examine, inspect, and copy the Developer's records concerning the use and occupancy of the Units upon reasonable advance notice.

B. The Developer will submit to the Town any information, document, or certificate regarding the occupancy and use of the Units which the Town reasonably deems to be necessary to confirm the Developer's compliance with the provisions of this Restrictive Covenant (which may be in the form of a copy of information, document, or certificate provided by the Developer to the bond issuer during the term of the Regulatory Agreement, if any).

C. The Town's rights under this Section 8 may also be exercised by the Town's authorized agent.

9. Default; Notice.

A. If the Developer fails to comply with this Restrictive Covenant, the Town may notify the Developer by written notice of such failure (including a writing in e-mail) and provide the Developer a period of time to correct such failure. If the failure is not corrected to the satisfaction of the Town within the specified time, which will be at least 30 days but not more than 60 days after the date the Town mails the written notice to the Developer, or within such longer time as the Town determines is necessary to correct the violation (but not to exceed any limitation set by applicable law), the Town may, without further notice, declare a default under this Restrictive Covenant effective on the date of such declaration of default. The Town may then proceed to enforce this Restrictive Covenant, subject to any applicable "tenant protections" required by applicable law.

B. Concurrently with the issuance of a written notice to Developer pursuant to section A of this Section 9, the Town shall also provide a copy of such notice to any lender with a recorded interest in the Property, and to the Developer's investor member (if applicable) if the Developer has provided notice to the Town of the identity of such investor member. Such lender may, but shall not be required to, correct the Developer's violation of this Restrictive Covenant to the satisfaction of the Town within the specified time, which will be at least 30 days but not more than 60 days after the date the Town mails the written notice to the lender, or within such further time as the Town determines is necessary to correct the violation (but not to exceed any limitation set by applicable law).

10. Town Authority to Enforce. The restrictions, covenants, and limitations created by this Restrictive Covenant are only for the benefit of the Town. Only the Town or its designated

agents may enforce this Restrictive Covenant. The Developer shall provide a report, no later than September 1 of each calendar year or other mutually agreeable date, that illustrates the rental status of each unit and rental rate.

11. Equitable Relief. The Town may specifically enforce this Restrictive Covenant. The Town may obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction, and permanent injunction to obtain specific performance. Any equitable relief provided for in this Section may be sought singly or in combination with such legal remedies as the Town may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Colorado.

12. Waiver; Termination; Modification of Covenant. During the term of this Restrictive Covenant, the restrictions, covenants, and limitations hereof may be waived, terminated, or modified only with the written consent of the Town. No waiver, modification, or termination pursuant to this section will be effective until the proper instrument is executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado.

13. Statute of Limitations. The Developer hereby waives the benefit of and agrees not to assert in any action brought by the Town to enforce this Restrictive Covenant any applicable statute of limitation, including, but not limited to, the provisions of Section 38-41-119, C.R.S. If any statute of limitation may lawfully be asserted by the Developer in connection with an action brought by the Town to enforce the terms of this Restrictive Covenant, each day during which any violation of this Restrictive Covenant occurs is to be deemed to be a separate breach of this Restrictive Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

14. Waiver. The failure of the Town to exercise any of its rights under this Restrictive Covenant shall not be a waiver of those rights. The Town may waive its rights under this Restrictive Covenant by a signed instrument specifically waiving its rights.

15. Attorney's Fees. If any action is brought in a court of law by either party concerning the enforcement, interpretation, or construction of this Restrictive Covenant, the prevailing party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

16. Notices. All notices provided for or required under this Restrictive Covenant must be in writing, signed by the party giving the notice, and will be deemed properly given when received or two (2) days after mailed, postage prepaid, certified, return receipt requested, addressed to the parties hereto at their addresses appearing on the signature pages. Each party, by written notice to the other party, may specify any other address for the receipt of such instruments or communications. E-mail is a valid method of giving notice under this Restrictive Covenant.

17. Recording And Filing; Covenant Running With The Land.

A. This Restrictive Covenant is to be recorded in the real property records of Summit County, Colorado.

B. The regulatory and restrictive covenants contained in this Restrictive Covenant are covenants running with the land and are binding upon the Developer, and the Developer's successors and assigns in and to the Ground Lease under which Developer holds a possessory interest in the Property, or any other interest in the Property. All requirements of privity of estate are intended to be satisfied, or in the alternative, an equitable servitude is created to ensure that these restrictions run with the land.

18. Applicable Law. This Restrictive Covenant is to be interpreted in accordance with the laws of the State of Colorado without regard to its conflict of laws rules.

19. Vesting and Term. The Town's rights and interests under this Restrictive Covenant are vested immediately, and this Restrictive Covenant, and any amendments hereto, are binding and in full force and effect in perpetuity, unless terminated as provided in Section 12. Each provision contained in this Restrictive Covenant that is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation will continue and remain in full force and effect for the period of twenty-one years following the death of the last survivor of the issue of President Donald J. Trump, and the now living children of said issue, or until this Restrictive Covenant is terminated earlier by recorded instrument as provided in Section 12.

20. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Restrictive Covenant.

21. Terminology. Wherever applicable, the pronouns in this Restrictive Covenant designating the masculine or neuter apply equally to all genders. Wherever applicable within this Agreement, the singular includes the plural, and the plural includes the singular.

22. Severability. If any provision of this Restrictive Covenant is finally determined to be invalid, illegal, or unenforceable, such determination does not affect the remaining provisions of this Restrictive Covenant.

23. Binding Effect. This Restrictive Covenant is binding upon and inures to the benefit of the Town, the Developer and their successors and assigns in and to the Property.

24. Authority. The execution of this Restrictive Covenant has been approved by the Town Council of the Town of Frisco under its approval of the Development Agreement.

TOWN OF FRISCO,  
a Colorado municipal corporation

\_\_\_\_\_  
Frederick J. Ihnken, Mayor

ATTEST:

\_\_\_\_\_  
Stacey Nell, Town Clerk

Town's Address:

P.O. Box 4100  
1 East Main Street  
Frisco, CO 80443

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF SUMMIT     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by Frederick J. Ihnken, as Mayor of the Town of Frisco, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public