

COB - BOSAIR FORM

03/05/2026 4:03 PM (MST)

Submitted by Lupe.Fimbres@pima.gov



BOARD OF SUPERVISORS AGENDA ITEM REPORT (BOSAIR)

All fields are required. Enter N/A if not applicable. For number fields, enter 0 if not applicable.

Record Number: CT RPS CT2600000018

Award Type: Award

Is a Board Meeting Date Requested? Yes

Requested Board Meeting Date: 03/24/2026

Signature Only:

NO

Procurement Director Award / Delegated Award: • N/A

Supplier / Customer / Grantor / Subrecipient: Spire Development, Inc., an Ohio corporation

Project Title / Description: Ground Lease Option

Purpose: Pima County ("County") intends to enter into a Ground Lease Option Agreement with Spire Development, Inc. ("Spire") for approximately 2.08 acres of County-owned land located at the southeast corner of East Drexel Road and South Bonney Avenue. The Ground Lease Option grants Spire the option to ground lease the property for the development of a multi-family affordable housing project known as Drexel Commons. This option replaces and cancels the prior Development and Purchase Agreement between the parties executed by the Board of Supervisors on March 4, 2025 (CT2500000009, RPS File # Sale-0144). The change to a ground lease structure improves the project's competitiveness within the Arizona Department of Housing ("ADOH") scoring criterion for 9% LIHTC ("Low Income Housing Tax Credit") funding, thus improving the likelihood of securing necessary funding to ensure project viability and the ultimate delivery of housing units. The option period extends through March 1, 2028, subject to LIHTC application and award milestones. After LIHTC financing is secured, Spire would exercise the option to enter into the Ground Lease. If the project is unsuccessful in receiving an ADOH award for either its 2026 or 2027 LIHTC applications, County at its sole discretion may cancel the agreement. A.R.S. § 11-251.10 allows for the sale and lease of real property to provide affordable housing without holding a public auction and for less than the fair market value. Spire will pay \$100 for the Ground Lease Option. Once the Ground Lease Option exercised, the Ground Lease term is up to 75 years and the full-term base rent of \$5 per year, or \$375, will be paid upon execution. The Ground Lease contains an option to purchase the land for \$500. Total revenue to the County will be \$975.00. The project is anticipated to include a minimum of 72 affordable rental units to be developed in accordance with HUD definitions of affordable housing and applicable Low-Income Housing Tax Credit (LIHTC) requirements. The project will be subject to a 30-year County Affordability Restrictive Covenant and LIHTC extended use requirements. Additionally, during the first 30

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PAGES: 60

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years of the Ground Lease term, gross rents cannot exceed the maximum rents allowable for households earning an average of 50% of Area Median Income ("AMI"), adjusted for family size, as published periodically by HUD. After 30 years, for the remaining 45 years of the Ground Lease Term, unless earlier terminated, gross rents cannot exceed the maximum rents allowable for households earning an average of 60% of AMI, adjusted for family size, as published periodically by HUD. (RPS File # LCP-0249)

Procurement Method: Real Property Agreements, land Titles, Appraisals, Relocation, Property Management: Exempt per Section 11.04.020

Procurement Method Additional Info: N/A

Program Goals/Predicted Outcomes: The program goal is to facilitate development of not less than 72 affordable rental housing units in an area identified as housing disadvantaged and within the Pima Prospers TIA-110 Growth Area.

Public Benefit and Impact: This project will increase the supply of affordable housing units, provide long-term affordability protections through recorded restrictive covenants, and support infill development in an identified Housing, Workforce Tract, and Justice40 Disadvantaged Tract.

Budget Pillar

- Improve the quality of life

Support of Prosperity Initiative:

- 1. Increase Housing Mobility and Opportunity

Provide information that explains how this activity supports the selected Prosperity Initiatives This agreement supports Prosperity Initiative Policy 1 – Increase Housing Mobility and Opportunity by expanding the supply of long-term affordable rental housing and increasing access to housing in a workforce-disadvantaged area of Pima County.

Metrics Available to Measure Performance: The Ground Lease Option, Ground Lease, and Purchase Option will yield Pima County \$975.00 in revenue. Upon successful completion of the project, not less than 72 units of affordable housing units will be added to the local housing market for at least 30 years, and for as many as 75 years

Retroactive:

NO

Contract / Award Information

Record Number: CT RPS CT2600000018

Document Type: CT

Department Code: RPS

Contract Number: CT2600000018

Commencement Date: 03/24/2026

Termination Date: 02/28/2103

Total Expense Amount:

\$0.00

Total Revenue Amount:

\$975.00

Funding Source Name(s) Required: Transportation -Administration

Funding from General Fund?

NO

Contract is fully or partially funded with Federal Funds?

NO

Were insurance or indemnity clauses modified?

NO

Vendor is using a Social Security Number?

NO

Department: Real Property Services

Name: George Andros

Telephone: (520) 724-6308

Add Procurement Department Signatures

No

Add GMI Department Signatures

No

Department Director Signature: George Cardieri Date: 3/5/26

Deputy County Administrator Signature: [Signature] Date: 3/11/2024

County Administrator Signature: [Signature] Date: 3/11/2024

Ground Lease Option

Pursuant to and in conformance with that certain Request for Proposal for Pima County Owned Land for Affordable Housing Development in Various Locations of Tucson, Pima County, Arizona, release date August 16, 2024 (“RFP”), PIMA COUNTY, ARIZONA (“County” or “Landlord”, as the case may be), with a mailing address of 201 North Stone Avenue, 6th Floor, Tucson, AZ 85701, hereby grants to SPIRE DEVELOPMENT, INC., an Ohio corporation (the “Tenant” or “Developer”, as the case may be), with an address of 330 W Spring Street, Suite 430, Columbus, Ohio 43215, an option to lease the unimproved real property described herein on Exhibit A (the “Real Estate”), subject to the terms and conditions contain in this Ground Lease Option (“Option”, “Contract”, or “Agreement”, as the case may be). The consideration for the Option is \$100.00, the reasonableness of which is acknowledged by the respective signatures of the parties below, which shall be due and payable upon execution hereof, pursuant to the provisions of Section 8 below. Landlord or County and Tenant or Developer shall singularly be referred as the “Party” and collectively as the “Parties”:

1. Ground Lease Terms. The Ground Lease which is the subject of this Option is attached hereto as Exhibit C. The final form of the Ground Lease shall be in full and strict conformance with Exhibit C, except as follows: Developer has advised County that its project lender or lenders may require changes to the form of Exhibit C. County will consider in good faith any requested changes but reserves the right to reject any changes which, in its sole, absolute and unfettered discretion, it believes constitute a material adverse change from the form shown as Exhibit C at the time this Option was considered by the County Board of Supervisors. During the entire term for which the lease is outstanding, the Real Estate shall conform to its Committed Use, as defined in Section 7 below. It is in the best interest of Seller to convey the Real Estate for the Annual Rent for the Committed Use, as defined herein, pursuant to A.R.S. § 11-251.10. In the event of any conflict between the terms of this Agreement and the terms of the Ground Lease, the terms of the Ground Lease shall prevail.

2. Earnest Money Deposit. Within 10 business days after date that this Agreement is executed by both Tenant and Landlord (the “Acceptance Date”), Tenant shall deposit with a Title Company designated by Tenant (the “Title Company”), \$50.00 as an earnest money deposit (the “Earnest Money”). All Earnest Money shall at all times be applicable to the Lease Price for the duration of this Contract. The Earnest Money shall be refundable to the Tenant throughout the Inspection Periods, at any time if Landlord breaches or defaults hereunder or as otherwise set forth in this Contract.

3. Closing Date. Subject to all other terms and conditions set forth in this Agreement, the transaction shall close in collaboration with Pioneer Title Agency or such other place as the Parties may mutually agree upon in writing, on or before the March 1, 2026 . The exact date of closing (the “Closing Date”) shall be determined by a written notice from Tenant to Landlord at least 30 days prior to the closing, provided however that the Parties acknowledge that the exact date may be subject to minor adjustment in the days leading up to closing based on lender and equity investor readiness to close.

4. Closing Documents. At Closing, Landlord shall deliver: (a) a fully executed Ground Lease Agreement and Memorandum of Lease (the “Deed”) conveying to Tenant leasehold interest to the Real Estate free of any and all liens, encumbrances, easements, restrictions, covenants or other title defects that is prohibitive to the Committed Use (as defined below), except other matters, if any, disclosed in the Title Commitment (as defined herein) and approved by Tenant as provided in Section 8.2; (b) a Landlord’s Affidavit in form and substance satisfactory to Tenant and the Title Company; and (c) all other documents and/or funds, if any, required by Tenant or Landlord.

5. Date of Possession. Possession of the Real Estate shall be delivered to Tenant on the Closing Date, free and clear of all rights and claims of any other party other than those disclosed in the Title

Commitment (as defined herein) to the possession, use or control of the Real Estate consistent with the Ground Lease Agreement.

6. Taxes and Assessment; Closing Costs. Tenant assumes and agrees to pay all assessments for governmental and private improvements becoming a lien after the Closing Date. Landlord shall pay all assessments for governmental and private improvements not assumed by Tenant and both installments of real estate taxes payable during the prior calendar year which remain unpaid, and its pro rata portion of the real estate taxes assessed for the calendar year in which closing occurs (based upon the number of days in such calendar year prior to and including the Closing Date). The present tax rate and assessed values shall be used for the purposes of the pro-rations under this Section if the applicable tax rate and assessed values have not been set. Tenant will pay the premium for the Title Policy in the amount of the Up-Front Rent and any fees in connection with preparation of the sale documents. Purchaser will pay all costs associated with recording the Memorandum of Lease and financing documents (if any). The Earnest Money shall be credited against the Up-Front Rent at closing. Tenant and Landlord shall each pay their own attorney fees related to the closing of the transaction.

7. Committed Use. Landlord's and Tenant's intended use of the Real Estate shall be multi-family rental housing "developed in a manner that conforms to the HUD definition of Affordable Housing and in accordance with (ARS§ 11.251.01 or ARS§ 11.251.10)" as noted in the RFP, or as otherwise determined by Tenant and Landlord by mutual written agreement (the "Committed Use" or the "Project"). It is anticipated that closing on the Real Estate on the Closing Date shall occur simultaneously with the closing on Project financing described in Section 8.4 below. At such time the County Restrictive Covenant described in Section 22 below shall be executed and recorded and thereby provide assurance to the County of timely completion of the Project. Consistent with the RFP, it is anticipated that the Project shall include the following public benefits: not less than 72 units of affordable rental housing operated in compliance with the rent and occupancy restrictions required under IRC §42 with designated income limitations for all low-income units not to exceed sixty percent (60%) of Area Median Income, adjusted for family size, as determined by HUD. Located within the Pima Prospers Tucson International Airport/Interstate 10 (TIA-I-10) Growth Area and the Pima County CDBG Stravenues Target Area, this infill development will, upon completion, provide much-needed affordable housing supply to a Housing Disadvantaged Tract, Workforce Disadvantaged Tract, and Justice40 Disadvantaged Tract.

8. Conditions of Performance. Tenant's obligations under this Agreement are subject to the timely and complete satisfaction, in the Tenant's sole discretion, which shall not be unreasonable or in bad faith, of the following conditions, unless waived in writing by Tenant:

8.1 Reserved.

8.2 Title Insurance. Tenant, at its cost and expense shall procure (a) a title insurance commitment for the Real Estate issued by the Title Company, in which commitment the Title Company shall agree to (i) insure for the full amount of the appraised value of the Real Estate at the Closing Date marketable leasehold title to the Real Estate in the name of Tenant, free of all exceptions unless (including, without limitation, the standard exceptions), except such other matters that Tenant may approve as hereinafter provided, and (ii) issue such endorsements as Tenant may reasonably request (the "Title Commitment"); and (b) copies of all documents and matters disclosed or referred to in the Title Commitment (the "Title Documents"). If any exception in the Title Commitment is unacceptable to Tenant, Tenant shall notify Landlord in writing and Landlord shall then have 30 days to cure such unacceptable exception. If Landlord fails to cure such exception with such 30-day period and provide evidence to Tenant of such cure, then Tenant shall have the right but not the obligation to terminate this Agreement by written notice to the Landlord and the Earnest Deposits shall be returned to Tenant. Tenant, at its cost and expense, shall obtain an owner's policy of title insurance issued by the Title Company, in the

full amount of the Up-Front Rent and in conformity with the marked Title Commitment. Tenant shall pay the cost of any mortgage title insurance.

8.3 Reserved.

8.4 Project Timeline.

The Tenant shall have the unilateral right to exercise the option to ground lease until March 1, 2028 (the "Option Period"), at which point such option shall expire, provided that the Tenant causes the following acts or outcomes to occur on or before the respective dates stated below in subparagraphs 8.4(a)-(d):

- a. First Inspection Period Extension: Through July 31, 2026. Conditioned upon the submission of an application for Section 42 tax credits from the Arizona Department of Housing during its 2026 LIHTC application round.
- b. Second Inspection Period Extension: Through April 30, 2027. Conditioned upon either (i) reservation award of Section 42 tax credits from the Arizona Department of Housing for its 2026 LIHTC application round or (ii) written notice to Landlord indicating that the Tenant intends to make good faith efforts to enhance its application for Section 42 tax credits in preparation for resubmission of an application for Section 42 tax credits from the Arizona Department of Housing during its 2027 LIHTC application round. The Parties hereby acknowledge that if option (i) above applies, the Tenant shall in good faith use this Inspection Period to develop design documents, secure entitlements, and begin construction contract negotiations in preparation for the Closing Date which would in such case occur within 60 days of the expiration of the Second Inspection Period Extension unless otherwise agreed to in writing by the Parties.
- c. Third Inspection Period Extension: Through July 31, 2027. Conditioned upon the submission of an application for Section 42 tax credits from the Arizona Department of Housing during its 2027 LIHTC application round.
- d. Fourth Inspection Period Extension: Through December 31, 2027. Conditioned upon receipt of an award of Section 42 tax credits from the Arizona Department of Housing during its 2027 LIHTC application round. The Parties hereby acknowledge that the Tenant would in good faith use this Inspection Period to develop design documents, secure entitlements, and begin construction contract negotiations in preparation for the Closing Date which would in such case occur within sixty (60) days of the expiration of the Fourth Inspection Period Extension unless otherwise agreed to in writing by the Parties.

8.5 Litigation and Representation. As of the Closing Date, no action or proceeding before a court or other governmental agency or officer shall be pending (and to the best of either Landlord's or Tenant's knowledge, no such action or proceeding shall be threatened) that might impair the value of the Real Estate or prevent Tenant from undertaking and completing the Committed Use and development of the Real Estate. As of the Closing Date, the representation and warranties set forth in Section 10 shall be true and accurate.

8.6 Exercise of Option. The Tenant may exercise the Option by providing written notice to the Landlord and the Title Company, executed by an authorized representative of Tenant, within the Option Period specified herein. The Tenant must also execute and deliver the Ground Lease Agreement in strict conformance with its terms, ensuring compliance with all introductory provisions of the lease.

Concurrently, the Tenant shall remit payment to the County of all upfront rents and option costs, as well as cover any title costs that are its responsibility under Section 6.

9. Nonperformance.

9.1 Landlord Nonperformance. In the event that one or more of the conditions set forth in Section 8 are not timely and completely satisfied, Tenant, at its sole discretion, may grant additional time to Landlord to remedy any defect or may cancel this Agreement and all of its obligations hereunder by written notice to Landlord, in which event (without limiting Tenant's other rights or remedies for any breach of this Agreement by Landlord) all Earnest Money deposited to date, shall be immediately refunded to Tenant. If pursuant to any provision of this Agreement the Tenant elects to grant Landlord additional time to remedy a defect or meet a condition of the Contract, all time limits affecting the Tenant shall be extended by the amount of time given the Landlord.

9.2 Tenant Nonperformance. In the event that the Project does not receive a reservation award of Section 42 tax credits from the Arizona Department of Housing for its 2026 LIHTC application round and does not receive a reservation award of Section 42 tax credits from the Arizona Department of Housing for its 2027 LIHTC application round as contemplated in Section 8.4, Landlord, at its sole discretion, may cancel this Agreement and all of its obligations hereunder by written notice to Tenant, in which event (without limiting Landlord's other rights or remedies for any breach of this Agreement by Tenant) all Earnest Money deposited to date, shall be immediately be given to Landlord. Tenant shall also deliver any surveys, engineering reports and other documents related to the condition of the Real Estate to Landlord at no cost.

10. Representations and Warranties. Landlord hereby represents and warrants to and covenants and agrees with Tenant (and shall be deemed to represent and warrant and covenant and agree on the Closing Date) that (a) there is no condemnation or similar proceeding which is pending or threatened against the Real Estate or any part thereof; (b) after the Acceptance Date, Landlord will not enter into any lease or other agreement affecting the Real Estate or the possession, use or control thereof or terminate, modify or amend any existing lease or other agreement without first obtaining the Tenant's written consent; (c) after the Acceptance Date, Landlord will not create, permit or suffer any lien or other encumbrance to attach to or affect the Real Estate and improvements thereon, if any, except for the lien of non-delinquent real estate taxes; (d) to the best of its knowledge (it being acknowledged and agreed that the Landlord has not undertaken any diligence in making the limited representation in this subparagraph 10(d)), there are no underground fuel, chemical or other storage tanks or associated equipment located in the Real Estate, or the Real Estate has not been used for the treatment, storage or disposal of or otherwise contaminated by any hazardous or special wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations); (e) Landlord has fee simple, marketable, indefeasible and insurable right and title to the Real Estate; (f) Landlord has no knowledge of the existence of karst terrain on the Real Estate; (g) to the best of Landlord's knowledge, there has been no release nor is there currently any threatened release of any hazardous, special or other wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations) on the Real Estate; (h) to the extent there are contracts or agreements affecting the Real Estate (including, for example, management or service agreements), Landlord will: (i) cancel before closing all such contracts and agreements; (ii) pay all amounts due under, and settle all accounts with respect to, any such contracts and agreements; and (iii) deliver to Tenant at closing evidence that any such contracts and agreements have been canceled and all such amounts and accounts have been paid and settled; (i) to the extent Landlord is an entity, it is duly organized, validly existing and in good standing in its jurisdiction or organization; and (j) that this Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of Landlord, enforceable in accordance with its terms.

11. Damage and Condemnation. If at any time after the Acceptance Date (a) the Real Estate shall be condemned, damaged or destroyed, in whole or in part; or (b) any notice of condemnation shall be given, then Tenant, at its sole option, may cancel this Agreement or proceed with closing. If Tenant elects to proceed with closing, then Tenant may accept an assignment of such proceeds resulting from condemnation by a governmental authority other than Landlord or by a utility other than Landlord. If Tenant elects to cancel this Agreement, as provided in this paragraph, all Earnest Money deposited shall be immediately refunded to Tenant. Landlord shall bear all risk of loss of any nature whatsoever to the Real Estate until closing. If and to the extent that another governmental entity condemns the project, the County will share in the condemnation proceeds in conformance with then-existing legal standards.

12. Inspection. Tenant, its employees, agents and independent contractors shall have the right to enter upon the Real Estate and conduct all tests and examinations which Tenant deems necessary at its sole cost and expense upon 5 business days written notice to Landlord. Tenant indemnifies Landlord from any damages occasioned thereby. Tenant shall restore Real Estate to the existing condition before said tests or examinations were conducted.

13. Notices. All notices, demands, instructions or requests to be given to either party hereunder shall be in writing and sent by: (a) electronic mail; (b) overnight delivery service; (c) personal delivery; or (c) registered or certified U.S. Mail, return receipt requested; and addressed to the addresses noted below. Any notice that is actually received shall be effective regardless of the manner in which it was sent or delivered. The Parties will notify the other within 10 business days of any change of addresses for purposes of this section.

If to Landlord: c/o Director, Pima County Real Property Services,
201 N Stone Ave, 6th Flr, Tucson, AZ 85701-1207
E-mail: george.cardieri@pima.gov

If to Tenant: c/o Scott Harrold, Principal, Spire Development, Inc.
330 W Spring Street, Suite 430, Columbus, Ohio 43215
E-mail: Scott@livespired.com

14.1 Default by Landlord. In the event of a breach by Landlord, Tenant shall be entitled to: (a) the remedy of specific performance to enforce the terms hereof; and/or (b) cancel this Contract and all of its obligations hereunder by written notice to Landlord, in either of which events the Earnest Money shall be refunded immediately to Tenant. In the event of any such breach, Tenant shall be entitled to recover, in addition to all other remedies, reasonable attorneys' fees and court costs incurred.

14.2 Default by Tenant. In the event of a breach of this Agreement by Tenant, Landlord may, as its sole remedy hereunder, rescind this Agreement and retain the Earnest Money as liquidated damages and Tenant shall deliver all surveys, plans, engineering reports and other documents related to the Real Estate.

15. Assignment/ Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the Parties. This Agreement may not be assigned by Landlord. Tenant may assign this Agreement to an affiliated entity upon Landlord's written consent which shall not be unreasonably withheld. An "affiliated entity" is an entity that Landlord directly controls or is under common control with Landlord. It is anticipated that Drexel Commons L.P., which is an affiliate of Tenant, will be the eventual tenant under the Ground Lease.

16. Survival and Indemnity. All representations and warranties set forth in this Agreement, shall survive the closing, and for a period of 1 year after the Closing Date, Tenant shall indemnify and hold

Landlord harmless from and against all costs and damages (including attorneys' fees and court costs) incurred as a result of any breach of any representation or warranty by Landlord.

17. General. The terms and provisions of this Agreement shall be governed and construed in accordance with the laws of the State of Arizona. The captions and section numbers shall not be considered in any way to affect the interpretation of this Contract. This Agreement is the final expression of the complete and exclusive agreement between the Parties and supersedes all prior offers, negotiations and discussions. This Agreement may be executed in 2 or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

18. Authority. Except as expressly provided otherwise herein, each undersigned person signing on behalf of any party that is a corporation, partnership or other entity certifies that (a) they are fully empowered and duly authorized by any and all necessary action or consent required under any applicable articles of incorporation, by-laws, partnership agreement or other agreement to execute and deliver this Agreement for and on behalf of said party; (b) that said party has full capacity, power and authority to enter into and carry out its obligations under this Contract; and (c) that this Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

19. Attorneys' Fees. Either party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party to this Agreement brought under or with relation to the Agreement or the transaction contemplated hereby shall, in addition to any other remedy at law or provided for herein, be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

20. RESERVED.

21. Real Estate Brokerage Representation. The Parties represent and warrant to one another that no real estate brokers or agents have been used or consulted in connection with the purchase and sale of the Real Estate. Any fees, real estate commissions, costs and/or expenses due to Landlord's real estate brokers or agents will be paid exclusively by Landlord. Each party covenants and agrees to defend, indemnify and save the other harmless from any actions, damages, fees, real estate commissions, costs and/or expenses (including reasonable attorneys' fees) relating to a breach or alleged breach of the foregoing representation and warranty.

22. Affordable Housing Restrictive Covenants. Consistent with the RFP, the Parties hereto acknowledge that in order to provide assurance that the Real Estate shall remain as its Committed Use after completion of the Project, the Real Estate "may be restricted by a regulatory agreement to remain continually for use as affordable housing to low-income persons for a period of not less than 30 years" (the "County Restrictive Covenant"). The Tenant agrees to execute and record such County Restrictive Agreement in a form similar to that of the attached Exhibit B, consistent with the RFP if required by the County on the Closing Date. Additionally, the Parties hereto acknowledge that as a part of such closing, the Tenant intends to execute and record the Declaration of Affirmative Land Use and Restrictive Covenants Agreement ("LURA") required by the Arizona Department of Housing to ensure that projects financed with the Internal Revenue Code § 42 tax credits ("LIHTC Affordability Period") will remain affordable housing long-term.

23. Americans with Disabilities Act. Developer will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

24. Non-Discrimination. Developer will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Developer will not discriminate against any employee, renters, buyers, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in alignment with the Fair Housing Act and other federal laws.

25. Cancellation for Conflict of Interest. This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

26. Ethics. During the term of this Agreement, Developer will maintain business ethics standards aimed at avoiding any impropriety or conflict of interest that could be construed to have an adverse impact on the County's best interests.

26.1 Developer will take reasonable steps to prevent any actions or conditions that could result in a conflict with County's best interests. These obligations apply to the activities of Developer employees, agents, consultants, subcontractors, and subcontractor employees and consultants.

26.2 Developer employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to County's representatives, employees or their relatives.

26.3 Developer employees, agents or subcontractors (or their relatives) should not receive any payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.

26.4 Developer will notify a designated County representative within 48 hours of any instance where the Developer becomes aware of a failure to comply or possible failure to comply with the provisions of this Section.

26.5 Upon request by County, Developer agrees to provide a certified Management Representation Letter executed by selected Developer representatives in a form agreeable to County stating that they are not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.

26.6 Developer will include this clause in all contracts with subcontractors and material suppliers receiving more than \$25,000.00 in funds in connection with the Project.

26.7 Developer will permit interviews of employees, reviews and audits of accounting or other records by County representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Developer's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Developer in their relations with County's current or former employees or employee relatives.

26.8 Developer will implement a program requiring its employees to sign acknowledgements that they have read and understand County's Business Ethics Expectations as outlined in this Agreement.

27. Non-Appropriation. Notwithstanding any other provision in this Agreement, County may terminate this Agreement if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Agreement. In the event of such termination, County will have no further obligation to Developer, other than to pay for services rendered prior to termination.

28. Books and Records. Developer will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Developer will retain all records relating to this Agreement for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

29. Public Records.

29.1 Disclosure. All documents submitted in response to the solicitation resulting in award of this Agreement, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

29.2 Records Marked Confidential; Notice and Protective Order. If Developer reasonably believes that some of those records contain proprietary, financial, trade-secret or otherwise-confidential information, Developer must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Developer of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Developer has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

30. Legal Arizona Workers Act Compliance. Developer hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Developer will further ensure that each subcontractor who performs any work for Developer under this Agreement likewise complies with the State and Federal Immigration Laws. County has the right at any time to inspect the books and records of Developer and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

31. Israel Boycott Certification. Pursuant to A.R.S. § 35-393.01, if Developer engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000.00 or more, Developer certifies it is not currently engaged in and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

32. Forced Labor of Ethnic Uyghurs. Pursuant to A.R.S. § 35-394, if Contractor engages in for profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Agreement to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) and goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Agreement that the Company is not in compliance with A.R.S. § 35-

394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within 180 days.

33. Cancellation of Existing Purchase Contract. In consideration of the mutual agreements contained herein, the Parties hereby agree to cancel and terminate that certain "Development and Purchase Agreement" (the "Original Agreement") previously entered into by and between Spire Development, Inc. and PIMA COUNTY, with an effective date of March 4, 2025. As of the date of execution of this cancellation, all terms, obligations, and conditions under the aforementioned Original Agreement shall be deemed null and void, and neither Party shall have any further rights, claims, or obligations thereunder. Each Party releases the other from any and all claims arising out of or relating to the Original Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

This Option to Ground Lease is hereby executed this 26 day of February 2028 as to Tenant.

TENANT:

Spire Development, Inc.

By: _____



Printed Name: Scott Harrold

Title: Executive Vice President and COO

LANDLORD:

PIMA COUNTY, a political subdivision of the State of Arizona:

Chair, Board of Supervisors Date

ATTEST:

Melissa Manriquez, Clerk of Board Date

APPROVED AS TO CONTENT:

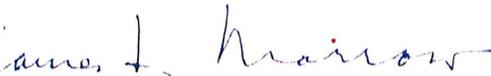


George Cardieri, Director, Real Property Services

 3/11/2024

Carmine DeBonis, Deputy County Administrator, Public Works

APPROVED AS TO FORM:



Jim Morrow, Deputy County Attorney

EXHIBIT A

(Located in the vicinity of the southeast corner of East Drexel Road and South Bonney Avenue, Tucson, Pima County, Arizona 85706)

Parcel/Tax ID number(s):

140-31-1230; 140-31-1240; 140-31-1250

+/- 2.08 acres

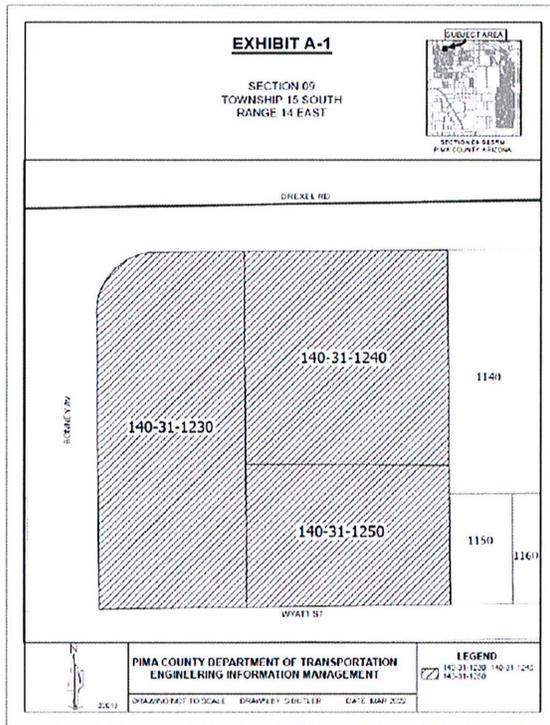


EXHIBIT B

[Form of (County) Affordability Restrictive Covenant]

Exhibit B – Form of Affordability Restrictive Covenant (9 pages)

When Recorded, Please Return To:

Director, Pima County Community & Workforce Development
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713-6223

AFFORDABLE HOUSING RESTRICTIVE COVENANT

1. Background and Purpose.

1.1. Pima County ("County"), _ [TO BE FORMED SPIRE ENTITY] ("Owner") Spire Development, Inc. ("Developer") have entered into a Development and Purchase Agreement ("Agreement"), Pima County Contract No. CT-CR-xx-xxx. Under that Agreement, County provided to Developer the real property defined herein as the "Project Property" at a nominal fee to complete an affordable-housing project, _____ ("Project"), subject to, among others, the requirement that the Project remain affordable for a period of 30 years ("County Affordability Period"). The Project is also subject to affordability restrictions tied to other funding sources, including a Low-Income Housing Tax Credit ("LIHTC") extended use period, which is in effect through _____, unless earlier terminated in accordance with the LIHTC "qualified contract" process described in Internal Revenue Code § 42(h)(f)(6) ("LIHTC Affordability Period").

1.2. The Project consists of _____ two bedroom units, _____ three bedroom units, and _____ four bedroom units for a total of _____ rental units, and is located on a parcel of land, legally described in attached **Exhibit D-1** and further identified by Pima County Assessor Tax Parcel Number _____ - _____ - _____ ("Project Property"). Owner owns the Project Property.

1.3. In order to effectuate the County Affordability Restriction, County, Owner and Developer (collectively "Parties") desire to enter into this Affordable Housing Restrictive Covenant ("Covenant") to be recorded against the Project Property to ensure that any subsequent sale of the Project Property would be subject to the County Affordability Period.

2. Use Restrictions. The Project Property will be subject to the following covenants and restrictions (collectively the "Affordability Restrictions") regulating and restricting the use and transfer of the Project Property, commencing on the date hereof. These restrictions shall be covenants running with the land and will bind Developer, Owner and their respective successors and assigns as set forth in this Covenant.

2.1. **Residential Use.** Owner will cause all occupants to use the Property only for residential purposes and any incidental activities related to residential use that are currently permitted by applicable state and local zoning laws.

3. Term and termination. This Covenant takes effect upon its execution by the last Party to sign it and, unless earlier terminated by written consent of all Parties or through foreclosure, deed in lieu of foreclosure, or exercise of the power of sale under the senior Deed of Trust identified on **Exhibit D-2** and terminates 30 years after the effective date.

4. Affordability Restrictions.

4.1. Pursuant to the terms of that certain Declaration of Affirmative Land Use and Restrictive Covenants Agreement by and between Owner and the State of Arizona and Arizona Department of Housing, recorded and effective as of _____, when the LIHTC Affordability Period is in effect, all _____ rental units comprising the Project are to be leased in accordance with applicable LIHTC Income and Rent Limits, which are published annually by the Arizona Department of Housing (for demonstrative purposes, a copy of the LIHTC Income and Rent Limits applicable at the time of the execution of this Covenant is attached as **Exhibit D-3**). Such LIHTC Income and Rent Limits are subject to change, and nothing herein shall bind Owner or Developer to continue complying with such LIHTC Income and Rent Limits to the extent that the same are revised from time to time, and further the County shall have no right to enforce such LIHTC Income and Rent Limits.

4.2. After the LIHTC Affordability Period expires, but before expiration of the County Affordability Period, all _____ rental units comprising the Project (collectively, the "County Affordable Units") must be leased to tenants whose household income does not exceed 80% of the area median income ("AMI") for Pima County, as determined and promulgated by the Department of Housing and Urban Development (HUD), as applicable at the time the unit is rented. During this period, the total monthly rent for any one of the County Affordable Units may not at any time exceed the allowable rent limit as established by the Arizona Department of Housing as published for the applicable year for 80% AMI tenants ("80% AMI Rent"), which includes the required utilities pursuant to the government program (for demonstrative purposes, a copy of the 80% AMI Rent applicable at the time of the execution of this Covenant is attached as **Exhibit D-4**).

4.3. **Physical Condition Standards.** During the Affordability Period, the Owner must maintain the Project suitable for occupancy; and, in decent, safe, and sanitary condition and good repair in accordance with the applicable local, state, and federal health, safety, and building codes and regulations.

4.4. **Project Completion.** The Owner shall adhere to all applicable placed in-service deadlines under IRC § 42(h)(1) which ensure timely Project completion for affordable housing projects financed by the low-income housing tax credit.

5. Eligibility Verification. Owner must ensure that, for the duration of the County Affordability Period, the household income for each household occupying a County Affordable Unit in the Project is verified to be within the applicable limits described in Section 4, based on the tenant's current household income. Eligibility verification requires some form of income documentation (e.g., pay stubs, direct deposit images, third-party government verification of income within applicable limits), which must be retained for the duration of that household's tenancy and for at least 1 year after termination of that tenancy.

6. Monitoring and Enforcement.

- 6.1. In order to ensure compliance with and enforce this Covenant, County may:
- 6.1.1. At any reasonable time and in a reasonable manner and upon reasonable notice enter and inspect the Project Property to inspect any facility, document book, and record of the Owner relating to the Project.
 - 6.1.2. With at least 30 days' prior written notice, take any reasonable action to cure any violations of the provisions of this Covenant.
- 6.2. Owner covenants and agrees to inform County by written notice of any breach of the Owner's obligations hereunder within 20 calendar days of first discovering any such breach. Violations must be cured within the deadlines described in paragraph 6.4 below.
- 6.3. If County believes Owner has violated any provision of this Covenant, County will serve Owner or Developer with written notice of the alleged default. The notice must specify both the violation alleged and the actions County believes are necessary and feasible to remedy the violation.
- 6.4. If Owner fails to cure the violation after more than 30 days after written notice of the violation from County (or for a longer period as may be reasonably required under the circumstances to cure the violation, provided that the Owner has commenced the cure within the initial 30-day period and is thereafter diligently pursuing the cure to completion), County, at its option (without liability to any party for failure to do so), may, in addition to any other remedies available at law:
- 6.4.1. Apply to an Arizona court of competent jurisdiction for specific performance of this Covenant or an injunction to remedy the violation, or for such other relief as may be appropriate.
- 6.5. In any action brought under this Covenant, the prevailing Party is entitled to recover its reasonable costs and fees incurred in the action, including its reasonable attorney fees.
- 6.6. The Parties each acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Covenant are to assure compliance of the Project and the Owner with the program requirements, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING THE PROJECT PROPERTY FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT COUNTY AND THE LOW-INCOME TENANT(S) (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANTS OF THE PROJECT) (OR EITHER OR ALL OF THEM) WILL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS COVENANT IN ANY ARIZONA STATE COURT OF COMPETENT JURISDICTION. Owner hereby further specifically acknowledging that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
7. **Representations, Covenants and Warranties of Owner.** Owner hereby warrants and covenants that the warranties, covenants, and declaration of obligations and duties set forth herein may be relied upon by County and all persons interested in Project compliance under the Agreement requirements. In performing its duties and obligations hereunder, County may

rely upon statements and certificates of the Owner pertaining to occupancy of the Project. The Owner further represents, covenants and warrants to County that:

7.1. The Owner:

7.1.1. has the power and requisite authority to own its properties and assets as owned, where owned, and to carry on its business as now being conducted (and as now contemplated) by this Covenant and the Agreement.

7.1.2. has the full legal right, power, and authority to execute and deliver this Covenant and the Agreement and to perform all undertakings of the Owner hereunder; and

7.2. The execution and performance of this Covenant and the Agreement by the Owner:

7.2.1. will not violate or, if applicable, have not violated any provision of law, rule or regulation, or any order of any court or other governmental agency;

7.2.2. is not in default under any indenture, declaration, mortgage, mortgage note or other instrument to which the Owner is a party or by which it or the Project is bound; and

7.2.3. will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

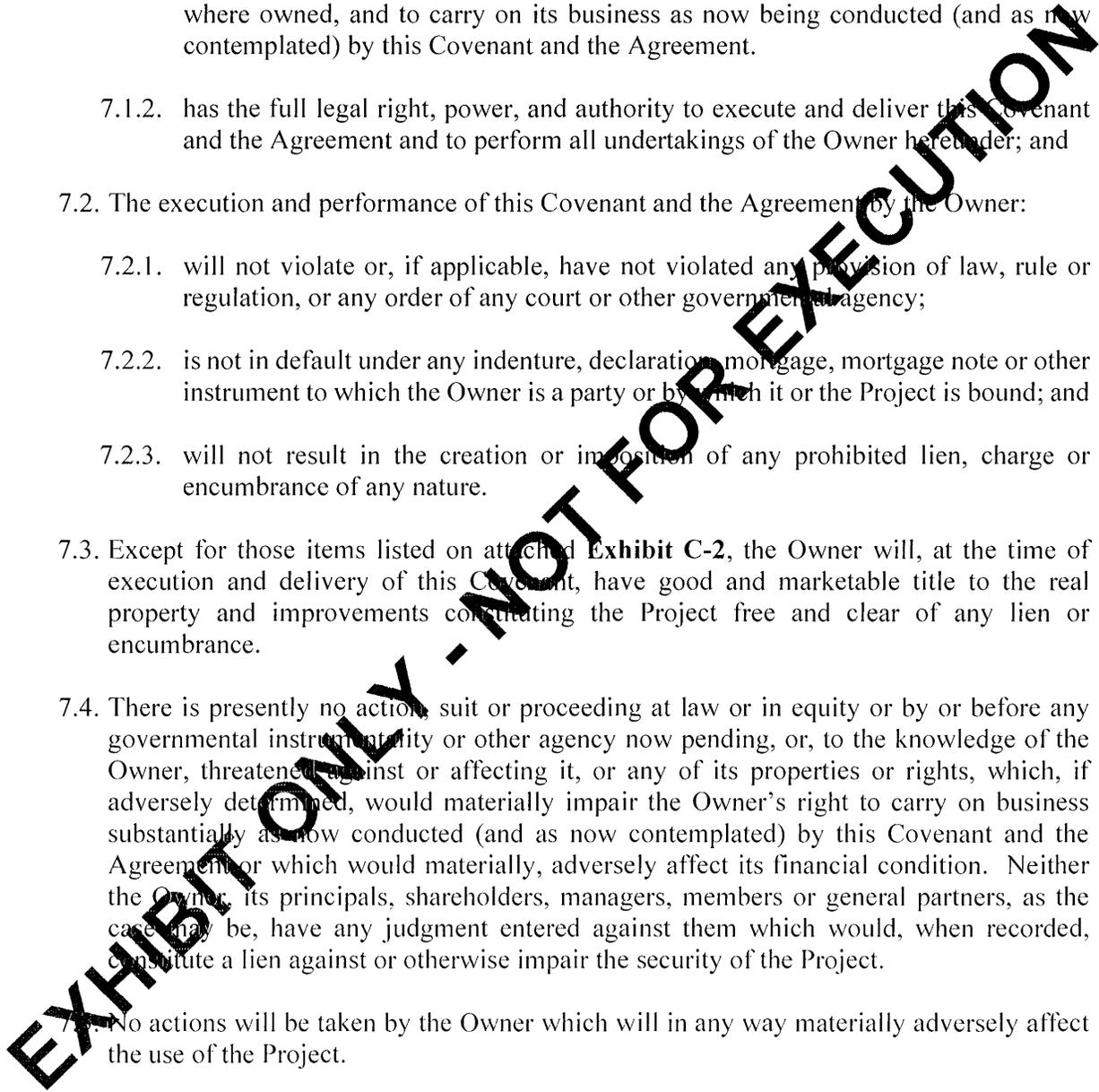
7.3. Except for those items listed on attached Exhibit C-2, the Owner will, at the time of execution and delivery of this Covenant, have good and marketable title to the real property and improvements constituting the Project free and clear of any lien or encumbrance.

7.4. There is presently no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair the Owner's right to carry on business substantially as now conducted (and as now contemplated) by this Covenant and the Agreement or which would materially, adversely affect its financial condition. Neither the Owner, its principals, shareholders, managers, members or general partners, as the case may be, have any judgment entered against them which would, when recorded, constitute a lien against or otherwise impair the security of the Project.

7.5. No actions will be taken by the Owner which will in any way materially adversely affect the use of the Project.

8. **Preservation of Records.** Owner or Developer must maintain records related to compliance with Pima County's affordability restrictions for the duration of each household's tenancy and for at least 1 year following the termination of any household's tenancy.

9. **Recordation of Documents.** Owner and Developer are authorized to record and file any notices or instruments appropriate to assure the enforceability of the Affordability Restrictions.



Owner and Developer will execute any such instruments upon request. The benefits of the Affordability Restrictions may be assignable by County to any successor institution performing substantially similar functions. The Parties intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

- 10. Nondiscrimination.** Owner and Developer may not discriminate in the lease, use, or occupancy of any of the rental units on the basis of any of the following: race, color, ethnicity, religion, sex, age, disability, marital or familial status, sexual or gender identity, or lawful source of income.
- 11. Covenant Runs with the Land.** Upon execution Owner will cause this Covenant and all amendments and attachments hereto to be recorded and filed in the official records of the Pima County Recorder's Office in the count in which the Project is located, and pay all fees and charges incurred in conjunction with said recording. The restrictions and other provisions in this Covenant burden and run with the Project Property, bind any of Owner's successors or assigns, and inure to the benefit of County and any of its assigns.
- 12. Severability.** The provisions of this Covenant are severable. If any provision of this Covenant, or any application of any of its provisions, to the Parties or any person or circumstances, is held invalid, that invalidity will not affect other provisions or applications of this Covenant that can be given effect without regard to the invalidity.
- 13. Restraint on Alienation.** If the Affordability Restrictions are deemed unenforceable by virtue of its scope in terms of purpose or eligibility of tenants, but would be enforceable by reducing or increasing, as applicable, any part or all thereof, the same will be enforced to the fullest extent permissible under the laws and public policies applied in the State of Arizona.
- 14. No Waiver.** No waiver by County of any breach of this Covenant, or any other act or omission by County, may be deemed a waiver of any other or subsequent breach.
- 15. Governing Law.** This Covenant is governed by and must be interpreted in accordance with Arizona law.
- 16. Conflict of Interest.** This Covenant is subject to the provisions of Arizona Revised Statutes § 38-511.
- 17. Entire Agreement; Amendment.** This document constitutes the entire agreement among the Parties pertaining to its subject matter. This Covenant may be modified, amended, altered, or extended only by a written agreement signed by all Parties.

The remainder of the page is intentionally left blank.

Signatures are on following pages

PIMA COUNTY

Rex Scott
Chair, Board of Supervisors

Date

ATTEST

Clerk of the Board

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20__ by _____.

Notary Public

My Commission Expires:

EXHIBIT ONLY - NOT FOR EXECUTION

OWNER:

[TO BE FORMED SPIRE ENTITY SIGNATURE BLOCK]

Date

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20__ by _____

Notary Public

My Commission Expires: _____

EXHIBIT ONLY - NOT FOR EXECUTION

EXHIBIT C

[Form of Ground Lease Agreement]

GROUND LEASE

THIS GROUND LEASE (“Lease” or “Ground Lease”), is made this ____ day of _____, 20____, by and between Pima County, Arizona, a county formed and operating under the laws of the State of Arizona (“Landlord”), and Drexel Commons, L.P., an Ohio limited partnership (“Tenant”).

RECITALS

WHEREAS, Landlord is the owner of certain real property (described in Exhibit A), located in Pima County, State of Arizona (the “Leased Premises”); and

WHEREAS, Tenant desires to lease the Leasehold Premises in order to construct a multifamily rental housing project, (the “Project”) consisting of not less than 77 units developed in a manner that conforms to the definition of Affordable Housing (as defined herein) for a term of seventy-five (75) years and is in accordance with A.R.S. Sections 11-251.01 and/or 11-251.10.;

WHEREAS, the Board of Supervisors of the Landlord (the “Board”) has authority under A.R.S. Section 11-254.04 to engage in any “activity that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the county, including particularly the “acquisition, improvement, leasing or conveyance of real or personal property.” Based on representation of the Tenant and information contained in the Application of the Tenant for tax credits appertaining to the Project, the Board has determined that Tenant’s development of the Leased Premises, and, accordingly, this Ground Lease, will have a significant positive impact on the economic welfare on the inhabitants of Pima County.

WHEREAS, Landlord and Tenant desire to enter into this Lease for the lease of the Leased Premises in accordance with the terms and conditions contained herein.

WHEREAS, based on, among other things, the foregoing, Landlord is willing to Lease the Leased Premises to the Tenant and Tenant is willing to Lease the Leased Premises from the Landlord, all upon and subject to the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant, represent, warrant and agree as follows:

1. Definitions. The following terms for purposes of this Lease shall have the following meanings:

(a) “Affordable Housing” shall mean residential rental housing that qualifies as a qualified low-income housing project within the meaning of Section 42 of the Code (“IRC §42”), and the regulations promulgated thereunder. Such housing shall be operated

in compliance with the rent and occupancy restrictions required under IRC §42, including the income-averaging set-aside election pursuant to IRC §42(g)(1)(C), whereby the average of the designated income limitations for all low-income units shall not exceed sixty percent (60%) of Area Median Income (“AMI”), adjusted for family size, as determined by HUD. In addition, during the first thirty (30) years of the term of the Lease, the gross rents (including any utility allowance) for the Affordable Housing units shall be restricted so as not to exceed the maximum rents allowable for households earning an average of fifty percent (50%) of AMI, adjusted for family size, as published periodically by HUD, notwithstanding that the income-averaging election permits an overall project average of up to sixty percent (60%) of AMI. All income determinations, rent calculations, utility allowances, and compliance requirements shall be made in accordance with IRC §42, applicable Treasury Regulations, HUD guidance, and any applicable state housing finance agency requirements.

(b) “**Base Rent**” means and refers to the base rent set forth in paragraph 4(a) hereof.

(c) “**Code**” means the Internal Revenue Code of 1986, as the same may be amended from time to time (or any corresponding provisions of any successors law).

(d) “**Commencement Date**” means the date of this Lease.

(e) “**Compliance Period**” means with respect to any building involved in the construction of Project, the fifteen (15) taxable years beginning with the first taxable year of the credit period with respect thereto as defined in Section 42(i)(1) of the Code.

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

(f) “**Hazardous Substances**” means all of the following: (A) any substances, materials, or wastes that are or may become regulated by Environmental Laws; (B) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste”, or words of similar import in any Environmental Law; (C) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); (D) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical; (E) asbestos; (F) hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, urea formaldehyde insulation, radioactive materials, biological substances and any other kind and/or type of pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), sewage sludge, industrial slag, solvents and/or any other similar substances, or materials which are included under or regulated by any Environmental Laws; and (G) such other toxic or

hazardous substances, materials or wastes that are or may become regulated under any other applicable municipal, county, state or federal law, rule, ordinance, direction or regulation.

(g) **“HUD”** shall mean the U.S. Department of Housing and Urban Development.

(h) **“Limited Partner”** means, together, OEF Investment Fund LLC, an Ohio limited liability company, as investor limited partner, , and any permitted assignee and/or entity which succeeds to their respective interests as a limited partner in Tenant.

(i) **“Operating Expenses”** means and refers to all ordinary and necessary operating expenses (including those replacement and maintenance reserves or accruals required by generally accepted accounting principles) as well as those other reserves and accruals that are required to operate, maintain, and keep the Project in a neat, safe and orderly condition.

(j) **“Partnership Agreement”** means that certain Amended and Restated Agreement of Limited Partnership dated on or about the date hereof by and among Drexel Commons GP, LLC, an Ohio limited liability company, Spire Investor Member, LLC, an Ohio limited liability company (as the withdrawing Limited Partner), and the Limited Partner, as amended, modified or supplemented from time to time.

(k) **“Permitted Leasehold Mortgage”** means those mortgages described on Exhibit B of this Agreement.

(l) **“Permitted Leasehold Mortgagee”** means those mortgagees described on Exhibit B of this Agreement.

(m) **“Project”** means the construction of not less than 72 rental apartment units, set aside for residents qualifying for occupancy pursuant to Section 42 of the Code, along with related site improvements and amenities. The Project shall be constructed on the Leased Premises and shall be commonly known as Drexel Commons.

(n) **“Senior Permitted Leasehold Mortgagee”** means the Permitted Leasehold Mortgagee whose Permitted Leasehold Mortgage constitutes a first-priority lien on the Leasehold Estate, as evidenced by the order of lien priority or applicable intercreditor agreement.

(o) **“State”** means the State of Arizona, unless clearly indicated otherwise.

(p) **“Term”** means the term of this Lease as provided in Section 3 hereof.

2. Grant.

(a) Landlord hereby conveys and leases to Tenant, and Tenant hereby accepts and leases from Landlord, the Leased Premises, together with all easements and rights-of-

way pertaining thereto for the sole purpose of constructing and operating the Project and for no other use;

(b) The Leased Premises are leased to Tenant in its present condition without representation or warranty by Landlord except as otherwise set forth in this Lease and subject to the existing state of title, to all applicable Legal Requirements (as defined below) now or hereafter in effect and to the exceptions set forth on, and incorporated herein by reference as, Exhibit B (the “**Permitted Exceptions**”). Except as expressly provided in Section 27 of this Lease, all buildings and other improvements hereafter on the Leased Premises, including, without limitation, all of the improvements developed and constructed by the Tenant pursuant to the plans for the Project (the “**Improvements**”) and all personal property located thereon are not the subject of this Lease, and Landlord shall not acquire pursuant to this Lease any right, title or interest therein or thereto, nor in any additions, alterations, restorations and repairs to and replacements of any of the foregoing. Accordingly, Landlord’s Fee Estate in the Land and its interest in this Ground Lease shall not be subject to any mechanics’ liens related to any design, development or construction by Tenant on the Leased Premises. Any Improvements hereafter located or constructed on or placed upon the Leased Premises shall be and remain the property of Tenant, except as otherwise provided in this Lease.

3. Term. The term of this Ground Lease (the “**Term**”) shall commence on the date hereof and continue until that date which is seventy-five (75) years from the Commencement Date, unless this Ground Lease expires or is terminated earlier pursuant to the provisions contained herein.

4. Ground Rent. Tenant covenants and agrees to pay Landlord rent as follows:

(a) Base Rent. Tenant shall pay to Landlord a Base Rent of \$5.00 per year over the Term which shall be paid up front upon execution of the Lease, in the amount of \$375.00.

(b) Additional Rent. It is the intention of Landlord and Tenant that Landlord shall receive the Base Rent free from all taxes, charges, expenses, costs and deductions of every description, and as such, Tenant hereby agrees to pay as “**Additional Rent**” all taxes, costs, expenses and amounts which Tenant is required to pay pursuant to this Ground Lease, together with every fine, penalty, interest and cost which may be added for non-payment or late payment thereof, including interest accrued and payable, without demand therefor and without offset or deduction of any kind whatsoever. If any Additional Rent payment date falls on a day which is not a business day, the Additional Rent due and payable on such date shall be due and payable on the next succeeding business day without interest or penalty if paid on such succeeding business day.

(c) Rent. Base Rent and Additional Rent shall be referred to collectively as “**Rent**.” Landlord and Tenant agree and represent that the Rent is fair market value based on the circumstances.

5. Construction of the Project.

(a) The Project (including fixtures) constructed by Tenant on the Leased Premises shall be or become part of the Leased Premises upon substantial completion of construction, but the improvements which comprise the Project shall be owned by Tenant until the expiration or earlier termination of this Ground Lease and during the Term hereof. Tenant alone shall be entitled to the tax attributes of ownership, including, but not limited to, depreciation deductions and low income housing tax credits for income tax purposes.

(b) Landlord agrees that Landlord shall not unreasonably withhold, condition or delay its consent, and shall join with Tenant from time to time during the Term in the following: (i) the granting of easements affecting the Leased Premises which are for the purpose of providing utility services for the Project; and (ii) the dedication or conveyance, as required, of portions of the Leased Premises for road, highway and other public purposes to provide access for the Project or to permit widening of existing roads or highways. Any such easements shall conform to then-existing Landlord requirements for form and content of Easements and for highway and road standards.

(c) In accordance with this Ground Lease, all applicable Pima County zoning and construction rules, code requirements, and all other requirements applicable to the Project as a low income housing Project. Tenant will develop and construct the Project consistent with such prior approvals as may have been granted hereunder or as otherwise granted by any agency of the Landlord. Such construction shall commence not later than ninety days (90) after the Commencement Date, and be completed not later than twenty-four months after the Commencement Date. Completion shall only be evidenced by the issuance of a Certificate of Occupancy for all housing units in the Project.

6. Use of Leased Premises.

(a) Tenant may use the Leased Premises for any lawful purpose in accordance with Federal, State, and County rules and regulations governing the Project.

(b) Use Restriction for Affordable Housing. Tenant covenants and agrees that, throughout the entire Term of this Lease, the Leased Premises shall be used, operated, and maintained solely for Affordable Housing and for no other purpose, except for ancillary uses customarily incidental to multifamily residential rental housing. Any use of the Leased Premises that is inconsistent with the foregoing restrictions shall constitute a material default under this Lease.

7. Insurance. On or prior to the date hereof, and continuing throughout the term of this Ground Lease, Tenant shall carry and maintain, at its sole cost and expense, the types of insurance, in the amounts, specified and, in the form, as follows:

(a) Commercial General Liability covering the Leased Premises and Tenant's use thereof against claims for bodily injury or death, personal injury and property damage occurring upon, in or about the Leased Premises regardless of when such claims may be made. Such insurance shall have a combined single limit of at least \$1,000,000 each occurrence, and \$2,000,000 general aggregate. Umbrella and/or Excess insurance

collectively with minimum policy limits of \$5,000,000. Policy limits required can be met with any combination of primary, umbrella or excess policies of insurance. The insurance coverage required under this paragraph shall include coverage for liability hazards as defined in the policy forms and endorsements for premises and operations liability, per project and aggregate endorsements, personal injury liability, broad form property damage liability and contractual liability arising out of this Lease. Landlord shall be an additional insured on a primary and non-contributory basis; the policy shall also include a waiver of subrogation waiving rights of subrogation against Landlord and any indemnified party under this Lease. If required by Landlord from time to time, acting in accordance with its insurance advisors, Tenant shall increase limits of its commercial general liability insurance to then commercially reasonable amounts.

(b) Statutory Workers' Compensation Insurance to comply with Applicable Law and Employer's Liability Insurance with limits of not less than \$1,000,000 for bodily injury by accident or disease. This policy include waiver of subrogation waiving rights of subrogation against Landlord and any indemnified party under the Ground Lease.

(c) Special Causes of Loss Property Insurance covering Tenant's furniture, fixtures, merchandise (if any) and personal property in on or about the Leased Premises, and all leasehold improvements to the Leasehold Premises specifically including any heating and cooling facilities serving the Leased Premises which may be located outside the Leased Premises. Such insurance (A) shall be written on a replacement cost basis in an amount at least equal to one hundred percent (100%) of the replacement cost of the insured property, subject to reasonable deductibles approved by Landlord; (B) shall provide protection against perils that are covered under the Special Causes of Loss insurance form, naming Landlord and such other parties as Landlord may reasonable determine as additional loss payees as their interests may appear; and (C) business income with extra expense insurance (ISO form CP 00 30, or equivalent acceptable to Landlord) in an amount reasonably acceptable to Landlord but not less than twelve (12) months of Rent. Tenant's obligation to provide insurance pursuant to this paragraph shall apply to all improvements and fixtures described herein, notwithstanding that some or shall such improvements and fixtures may have been installed by Tenant, Landlord, or any other party at any time before or after the delivery of the Leased Premises to the Tenant.

(d) All such policies and certificates of insurances shall be on forms reasonable acceptable to Landlord and shall state explicitly that such insurance shall not be cancellable or subject to reduction of coverage or other modification except upon at least thirty (30) days' advance writing notice by the insurer to Landlord. All deductible amounts in the insurance required to be carried by Tenant hereunder shall be subject to Landlord's reasonable approval. Tenant shall furnish Landlord with renewals or binders thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant upon demand. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies offered in this Section. Either party may provide any required insurance under a so-called blanket policy or policies covering other parties or locations and may maintain the required coverage by a so-called umbrella policy or policies, so long as the required coverage is not thereby diminished.

Notwithstanding any other provision in this Ground Lease to the contrary, Tenant and Landlord each hereby waives any and all rights of recovery against the other, or against the officers, partners, employees, members, managers, agents, and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against and actually covered (or where such loss or damage is required hereunder to be insured against and if so insured would have been covered) under any property insurance in force at the time of such loss or damage, but such waiver extends only to the extent of the actual insurance coverage or the coverage that would have applied if the insurance that is required hereunder had been obtained. Tenant and Landlord shall, upon obtaining the policies of insurance required under this Ground Lease, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Ground Lease. If the Project shall be damaged or destroyed by any casualty during the Term of this Ground Lease, this Ground Lease shall continue in full force and effect and the entire compensation or proceeds payable in connection with any such damage or destruction shall be payable to Tenant, but only after all Rent payable hereunder is paid to the then current amount. Upon bringing Rent current, Tenant shall restore and repair the damage to the Project. All insurance proceeds payable with respect to the Leasehold Estate or Improvements shall be subject to the lien of any Permitted Leasehold Mortgage and may be applied in accordance with the terms of such Permitted Leasehold Mortgage.

8. Taxes.

(a) Tenant shall pay, prior to delinquency:

(i) all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time during the Term hereof imposed or levied upon or assessed against (A) the Leased Premises, (B) Rent or other sums payable hereunder, (C) this Ground Lease or the leasehold estate hereby created, or (D) the operation, possession or use of the Leased Premises;

(ii) all gross receipts, privilege or similar taxes (i.e., taxes based upon gross income which fail to take into account deductions with respect to depreciation, interest, taxes or ordinary and necessary business expenses, in Rent or any other amounts payable hereunder;

(iii) all sales, value added, ad valorem, use and similar taxes at any time levied, assessed or payable to account of the acquisition ownership, leasing, operation, possession or use of the Leased Premises; and

(iv) all charges of utilities, communications and similar services serving the Leased Premises.

(b) If at any time during the Term of this Ground Lease, the method of taxation shall be such that there shall be assessed, levied, charged or imposed on Landlord a capital levy or other tax directly on the rents received therefrom, or

upon the value of the Leased Premises or any present or any future improvement or improvements on the Leased Premises, then all such levies and taxes or the part thereof so measured or based shall be payable by Tenant and Tenant shall pay and discharge the same as herein provided (collectively, the “**Impositions**”). In addition to the foregoing, Tenant shall pay any realty transfer tax that is payable as a result of the execution and delivery of this Ground Lease, or the recordation of a memorandum thereof. Tenant shall furnish to Landlord, within ten (10) business days after the due date thereof, proof of payment of all such Impositions. If any Imposition may legally be paid in installments, Tenant may pay such Imposition in installments; in such event Tenant shall be liable only for installments which become due and payable during the Term hereof.

(c) Presently, the Leased Premises is not subject to the imposition, accrual or payment of property taxes as Landlord-owned property. Once Improvements are developed and constructed by Tenant, however, such Improvements will become eligible for the imposition, accrual and payment of property taxes from all primary and secondary tax districts applicable to the Leased Premises pursuant to Legal Requirements (“**Applicable Property Taxes**”). Certain of these property taxes, specifically the County primary tax, the County secondary tax, the County free library tax and the County flood control tax, is collected and retained by Pima County (“**County Applicable Property Taxes**”).

(d) Tenant acknowledges that under current Legal Requirements, because Tenant is fully responsible for the development, construction and operation of the Improvements on the Leased Premises, such Improvements will be valued and taxable as improvements on possessory rights pursuant to Legal Requirements and that Tenant shall have the obligation to pay Applicable Property taxes on such Improvements.

9. Utilities. Tenant shall pay all utilities used, provided or supplied upon or in connection with the development, construction, and operation of the Project, including, but not limited to, all charges for gas, electricity, telephone and other communications services, water and sewer service charges, and all sanitation fees or charges levied or charged against the Leased Premises during the Term; provided, however, that Tenant shall have no obligation to pay utilities supplied directly to residents by the respective utility providers for such residents who are in connection with the occupancy of their respective residential units.

10. Indemnity. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims arising from Tenant’s use of the Leased Premises, from the conducts of Tenant’s business or from any activity, work, or things done, permitted, or suffered by Tenants in or about the Leased Premises or elsewhere, and shall further indemnify defend and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant’s part to be performed under the terms of this Lease or arising from any negligence or gross negligence of Tenant, or any of the Tenant’s authorized agents, contractors sublessees, invitees or employees, and from and against all costs, attorneys’ fees, expenses, and liabilities incurred in the defense of any such claim or any

action or proceeding brought thereon. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon, or about the Leased Premises arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord. Tenant hereby agrees that Landlord and its agents shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise, equipment or other property of Tenant. Landlord shall not be liable for injury to Tenant's employees, residential tenants, authorized agents, contractors, or any other person in or about the Leased Premises. No supervisors, employees, authorized agents, contractors or other individual affiliated with Landlord shall be subject to personal liability while acting with the scope of their employment by Landlord with respect to any of the covenants or conditions of this Lease.

11. Assignment of Lease by Tenant.

(a) Tenant must obtain the prior written consent from Landlord (and, if during the Compliance Period, the Limited Partner) to assign this Lease or to let the Leased Premises, as well as a written assumption agreement from Tenant's transferee in a form satisfactory to Landlord (and, if during the Compliance Period, the Limited Partner); provided, however, that such requirements shall not apply to the rental of units in the Project for residential use by tenants. Tenant agrees for itself and its successors and assigns in interest hereunder that it will not, other than by a Permitted Leasehold Mortgage or any foreclosure or deed in lieu of foreclosure of a Permitted Leasehold Mortgage or by an Acquiring Party in accordance with Section 28 of this Lease (1) assign this Lease or any of its rights under this Lease as to all or any portion of the Leased Premises, or (2) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Leased Premises, or the occupancy or use thereof, other than in accordance with this Lease (including but not limited to (i) any sale at foreclosure or by the execution of any judgment of any or all of Tenant's rights hereunder, or (ii) any Transfer by operation of law), without first obtaining Landlord's written consent thereto.

(b) Notwithstanding anything contained herein to the contrary, (i) upon foreclosure or deed in lieu of foreclosure, a Permitted Leasehold Mortgagee shall be permitted to take assignment of Tenant's interest of the Lease and (ii) if a Permitted Leasehold Mortgagee succeeds to the interest of Tenant under this Lease, then such Permitted Leasehold Mortgagee shall be permitted to transfer and assign its interest in this Lease without Landlord's consent. The Permitted Leasehold Mortgagees are hereby permitted to foreclose without Landlord's consent and to acquire the Lease in its own name or in the name of a nominee upon foreclosure or deed in lieu of foreclosure.

(c) Notwithstanding any provision of the foregoing, no such assignment or mortgage shall modify or limit any right or power of Landlord hereunder or affect or reduce any obligation of Tenant hereunder, and all such obligations shall continue in full effect as obligations of a principal and not of a guarantor or surety, as though no assignment or mortgage had been made. If Tenant shall validly assign its interest in this Ground Lease (other than a collateral assignment thereof as security), the assignee shall execute an

agreement assuming the obligations of Tenant under this Lease from and after such Assignment. As assignment or mortgage made otherwise than as permitted by this Section 11 shall be void. Tenant shall, within ten (10) days after the execution of any permitted mortgage or assignment (other than a collateral assignment for security) deliver a conformed copy thereof to Landlord. Landlord shall not be required to subordinate Landlord's Fee Estate in the land comprising the Leased Premises, or any other property, the lien of any mortgage financing obtained or otherwise join in such financing.

12. Assignment of Lease by Landlord. If the Landlord assigns or transfers its interest in this Ground Lease Tenant shall attorn to such Landlord's assignee and to continue to comply with all of the obligations, covenants, and conditions of Tenant under this Lease throughout the remainder of the Term. Notwithstanding the prior provisions of this Section 12, Landlord shall give the Tenant not less than forty-five (45) days prior written notice of such assignment and Tenant shall have the right to acquire the Fee Estate as set forth in Section 17, below;

13. Environmental Provisions.

(a) For the purpose of this Lease, the term "**Environmental Laws**" as used herein includes, but is not limited to the following: Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; Clean Air Act, 42 U.S.C. §§ 741 et seq.; The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; The Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; The Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; The Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq.; The Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, et seq.; The Hazardous Materials Transportation Act; The Marine Protection, Research and Sanctuaries Act; and all regulations promulgated thereunder.

(b) Landlord has heretofore authorized Tenant, its agents, employees, contractors and subcontractors, to conduct environmental and other assessments of the Leased Premises. Landlord acknowledges that all previous entries onto the Leased Premises by Tenant, its agents, employees, contractors and subcontractors were duly authorized and approved by Landlord. Landlord has made and shall continue to make available to Tenant, without representation or warranty from Landlord, all studies, reports or other documents and any "as-built" drawings which, to the best of Landlord's knowledge, are in the possession or control of Landlord and pertain to the presence of any Environmental Condition (as defined below) in, on or under the Leased Premises; provided, however, that Landlord shall bear no liability in the event of unintentional nondisclosure of any such document.

(c) Tenant's agent delivered to Landlord an environmental assessment for the Leased Premises in a form acceptable to Landlord and Tenant and performed by a contractor approved by Landlord ("**Phase 1 Environmental Assessment**"), the cost of which was borne by Tenant.

(d) Landlord, whether by express representation, the delivery of any information directly or indirectly in connection with this Ground Lease or otherwise, or in the negotiation or performance of this Ground Lease, has not made any representation of any nature with respect to the environmental status or condition of the Leased Premises. In accepting this

Ground Lease, Tenant acknowledges the absence of any such representation.

(e) Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household materials, all of which are used, stored and disposed of in compliance with all applicable federal, state and local laws, rules and regulations and in quantities not in excess of those reasonable necessary to conduct the permitted uses of the Leased Premises under this Ground Lease, Tenant agrees not to introduce any Hazardous Substances in, on or adjacent to the Leased Premises without (i) obtaining Landlord's prior written approval, (ii) providing Landlord with sixty (60) days' prior written notice of the exact amount, nature, and manner of intended use of such Hazardous Substances, and (iii) complying with all applicable federal, state and local laws, rules, regulations, policies and authorities relating to the storage, use, disposal and clean-up of Hazardous Substances, including, but not limited to, the obtaining of all proper permits.

(f) Tenant shall immediately notify Landlord of any inquiry, test, investigation, or enforcement proceeding by, against or directed at Tenant or the Leased Premises concerning Hazardous Substances. Tenant acknowledges that Landlord, as the owner of the Leased Premises, shall the right, at its election, in its own name or as Tenant's agent, to negotiate, defend, approve, and appeal, at Tenant's expense, any action taken or order issued by any applicable governmental with regard to Hazardous Substances used, stored, disposed of or released on or from the Leased Premises by Tenant or its agents, employees, contractors or invitees.

(g) If Tenant's storage, use, disposal or release of any Hazardous Materials in, on or adjacent to the Leased Premises results in any contamination of the Leased Premises, the soil, surface or groundwater thereunder or the air above or around the Leased Premises (a) requiring remediation under federal, state or local statutes, ordinances, regulations or policies, or (b) at levels which are unacceptable to Landlord, in Landlord's sole and absolute discretion, Tenant shall clean up the contamination immediately, at Tenant's sole cost and expense. Tenant further agrees to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action, costs, damages, loss and fees, including reasonable attorneys' fees and costs arising out of or in connection with (y) any clean up work, inquiry or enforcement proceeding relating Hazardous Materials currently or hereafter used, stored, disposed of or released by Tenant or its agents, employees, contractor or invitees on or about the Premises, and (z) the use, storage, disposal or release by Tenant or its agents, employees, contractors or invitees of any Hazardous Materials on or about the Leased Premises.

(h) Notwithstanding any other right of entry granted to Landlord under this Ground Lease, with reasonable cause Landlord shall have the right to enter the Leased Premises or to have consultants enter the Leased Premises throughout the Term at reasonable times for the purpose of determining: (a) whether the Leased Premises are in conformity with federal state and local statutes, regulations, ordinances and policies, including those pertaining to the environmental condition of the Leased Premises; (b) whether Tenant has complied with this Section 13; and (c) the corrective measures, if any, required of Tenant to ensure the safe use, storage and disposal of Hazardous Substances Tenant agrees to provide access and reasonable assistance for such inspections. Such inspections may include, but are not limited to, entering the Leased Premises with machinery for the purpose of obtaining laboratory

samples. Landlord shall not be limited in the number of such inspections during the Term. If, during such inspections, it is found that Tenant's use, storage, disposal or release of Hazardous Substances constitutes a violation of this Ground Lease, in addition to any other remedies available to Landlord by reason of such violation, Tenant shall reimburse Landlord for the cost of such inspections within ten (10) days of receipt of a written statement therefor. If such consultants determine that the Leased Premises are contaminated with Hazardous Substances or in violation of any applicable Environmental Law, Tenant shall, in a timely manner, at its expense, remove such Hazardous Substances or otherwise comply with the recommendations of such consultants to the reasonable satisfaction of Landlord and applicable governmental agencies. If Tenant fails to do so, Landlord, at its sole discretion, may, in addition to all other remedies available to Landlord under this Ground Lease and at law and in equity, cause the violation and the contamination to be remedied at Tenant's sole cost and expense. The right granted to Landlord herein to inspect the Leased Premises shall not create a duty on Landlord's part to inspect the Leased Premises or liability of Landlord for Tenant's use, storage or disposal of Hazardous Substances, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

(i) Tenant shall surrender the Leased Premises to Landlord upon the expiration or earlier termination of this Ground Lease free of Hazardous Substances used, stored, disposed of or released on or from the Leased Premises by Tenant or its agents, employees, contractors or invitees and in a condition which complies with all governmental statutes, ordinances, regulations and policies, recommendations of consultants hired by Landlord, and such other reasonable requirements as may be imposed by Landlord.

(j) Tenant's obligations under this Section 13 and all indemnification obligations of Tenant under this Ground Lease shall survive the expiration or earlier termination of this Ground Lease.

14. Eminent Domain. In the event of condemnation or taking by governmental authority or entity having the power of eminent domain, Landlord and Tenant agree as follows:

(a) Landlord assigns to Tenant any award, compensation or insurance payment to which Landlord may become entitled by reason of Tenant's interest in the Leased Premises, if the use, occupancy or title of the Leased Premises or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person having the power of eminent domain ("**Condemnation**"), subject to any rights of Landlord with respect thereto as hereafter provided. For purposes of this Ground Lease, all amounts payable pursuant to any agreement with any condemning authority which has been made in settlement of or under threat of such taking shall be deemed to constitute an award made in such proceeding, and all awards, compensation on account of any Condemnation are hereinafter collectively referred to an "**Compensation**". Tenant may appear in any such proceeding or action, to negotiate, prosecute and adjust any claim for any Compensation with respect to the Leased Premises, and Tenant shall collect any such Compensation. Landlord shall be entitled to participate in any such proceeding, action, negotiation, prosecution or adjustment. All Compensation with respect to the Leased Premises shall be applied pursuant to this Section 14, and all such Compensation (less the expense of collecting such Compensation) is herein

called the "Net Proceeds".

(b) If a Condemnation (a) of the entire Leased Premises or (b) that results in the loss of use of or access to more than twenty-five percent (25%) of the Improvements (herein, a "Major Condemnation"), then Tenant may, not later than one hundred twenty (120) days after such Condemnation, deliver to Landlord (i) notice of its intention to terminate this Ground Lease on the initial business day of the next succeeding calendar month (the "Termination Date") which occurs not less than thirty (30) days after the delivery of such notice, and (ii) a certificate of Tenant describing the event giving rise to such termination and stating that Tenant has determined in good faith that such Major Condemnation has rendered the Leased Premises unsuitable for restoration for continued use and occupancy for their intended use. This Ground Lease shall terminate on the Termination Date, except with respect to obligations and liabilities of Tenant hereunder, actual or contingent, which have arisen on or prior to the Termination Date, upon payment by Tenant of all Rent, Additional Rent and other sums then due and payable hereunder to and including the Termination Date.

(c) If, after a Condemnation, Tenant does not give notice of its intention to terminate this Lease as provided above in this Section 14, then this Ground Lease shall continue in full force and effect. To the extent that Tenant incurs costs in repairing any damage to the Leased Premises caused by a Condemnation and such costs exceed Tenant's allocable share of the Net Proceeds (determined pursuant to Section 14 of this Ground Lease), Tenant shall be entitled to receive such portion of Landlord's allocable share of the Net Proceeds (as determined pursuant to Section 14 (hereof) to complete such repair, but only against certificates of Tenant delivered to Landlord from time to time as such repair progresses, each such certificate describing the work for which Tenant is requesting payment and the cost incurred by Tenant in connection therewith and stating that Tenant has not theretofore received payment for such work. In the event of any temporary requisition, this Ground Lease shall remain in full effect and Tenant shall be entitled to receive the Net Proceeds allocable to such temporary requisition, except that such portion of the Net Proceeds allocable to the period after the expiration or termination of the Term of this Ground Lease shall be paid to Landlord.

(d) All Compensation shall be paid as follows: (i) if on account of the Leased Premises, allocated between Landlord and Tenant in accordance with the relative values of their respective interests in the Leased Premises, taking into account the terms of this Ground Lease, and (ii) if on account of the Improvements, to Tenant. If the Compensation in question does not specifically identify the amount allocable to the Leased Premises between Landlord and Tenant based on their respective interests as provided above, then, and in such event, such amounts shall be determined in the following manner: Landlord and Tenant shall each appoint a Qualified Appraiser, and the amount of the Compensation in question allocable to the Leased Premises and the Improvements, respectively or the allocation between Landlord and Tenants of the amount of the Compensation allocable to the Leased Premises, as the case may be, shall be determined by the two (2) Qualified Appraisers so appointed within a period of no less than thirty (30) business days. If the appointed Qualified Appraisers are unable to agree to upon such allocation, the allocation

shall be determined by a third Qualified Appraiser (selected by the originally appointed Qualified Appraisers) within an additional period of thirty (30) business days. For purposes of this Ground Lease, the term “Qualified Appraiser” means an appraiser that is a member in good standing of the American Institute of Real Estate Appraisers or any organization succeeding thereto, having at least ten (10) years of experience in the evaluation of commercial real estate and be located and practicing in the State of Arizona. Landlord and Tenant shall each bear the costs of its respective Qualified Appraiser and shall share equally the cost of the third Qualified Appraiser if such third Qualified Appraiser is required. All Compensation allocable to Tenant or the Leasehold Estate shall be subject to the lien of any Permitted Leasehold Mortgage and may be applied in accordance with the terms thereof.

15. Default by Tenant.

The following shall constitute an Event of Default hereunder:

- (a) failure of Tenant to pay any Base Rent, Additional Rent or charge due hereunder;
- (b) failure of Tenant to comply with the material terms, conditions or covenants of this Lease that Tenant is required to observe or perform;
- (c) abandonment of any portion of the Project or the Leased Premises by Tenant;
- (d) If any material representation or warranty of Tenant set forth herein or in any notice, certificate, demand, request or other document or instrument delivered to Landlord in connection with this Ground Lease shall prove to be incorrect in any material respect as of the time when the same shall have been made;
- (e) If Tenant shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any federal or state law, or shall be adjudicated a bankrupt or adjudicated insolvent, or if a petition or answer proposing the adjudication of Tenant as a bankrupt or its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law shall be filed in any court and Tenant shall have colluded in, consented to or acquiesced in the filing thereof petition or answer shall not be discharged or denied within ninety (90) business days after the filing thereof;
- (f) If a receiver, trustee or liquidator of Tenant or of all or substantially all of the assets of Tenant shall be appointed in any judicial proceeding brought by Tenant, or if any such receiver, trustee or liquidator shall be appointed in any judicial bankruptcy proceeding brought against Tenant and shall not be discharged within ninety (90) business days after such appointment, or if Tenant shall consent to or acquiesce in such appointment;
- (g) If Tenant shall fail to maintain any insurance required to be maintained by Tenant in accordance with the provisions of this Ground Lease or if, within fifteen (15) business days after demand therefor, Tenant shall fail to deliver to Landlord any insurance

policies required to be maintained pursuant to this Lease or a certificate, binder or other evidence of the renewal of any such insurance policies.

Landlord shall deliver written notice to Tenant upon the occurrence of and Event of Default. Tenant shall have a period of ten (10) days from the due date for any requisite payment to cure its default if the Event of Default is a failure to pay any Rent of any character or charge hereunder. Tenant shall have a period of thirty (30) days from the date it receives notice to cure default upon the occurrence of any other Event of Default. If a non-monetary Event of Default cannot be reasonably cured within a thirty day period, Tenant shall have a longer period, not to exceed 90 days, to cure such Event of Default, provided such extension shall only originate and exist as long as Tenant (or any lender curing on behalf of Tenant) is acting with commercially reasonable and continuous diligence to cure such default. Any notice required to be given to a Permitted Mortgagee may be given contemporaneously with notice to Tenant and a notice to any Permitted Mortgagee shall be considered notice to all Permitted Mortgagee if, at the time of such notice, more than one Permitted Mortgagee exists.

16. Remedies. If Tenant or Limited Partner, as applicable, fails to cure an Event of Default within the time provided therefor, Landlord shall have the right to:

(a) If an Event of Default shall have occurred and be continuing, Landlord shall be entitled to all remedies available at law or in equity. Without limiting the foregoing, Landlord shall have the right to give Tenant Notice of Landlord's termination of this Lease. Upon the giving of such Notice, the Term of this Ground Lease and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the Term of this Ground Lease, and all rights of Tenant under shall expire and terminate, but Tenant shall remain liable as hereinafter provided.

(b) If an Event of Default shall have occurred and be continuing beyond any applicable cure period, Landlord shall have the immediate right, whether or not the Term of this Ground Lease shall have been terminated pursuant to Section 16(a) of this Ground Lease, to re-enter and repossess the Leased Premises and the right to remove all persons and property therefrom by summary proceedings, ejectment, any other legal action or in any lawful manner Landlord determines to be necessary or desirable. Landlord shall be under no liability by reason of any such re-entry, repossession or removal. No such re-entry, repossession or removal shall be construed as an election by Landlord to terminate this Ground Lease unless a Notice of such termination is given to Tenant pursuant to Section 16 (a) of this Ground Lease.

(c) At any time or from time to time after a re-entry, repossession or removal pursuant to Section 16(b) of this Ground Lease, whether or not the Term of this Ground Lease shall have been terminated pursuant to Section 16(a) of this Ground Lease, Landlord may (but shall be under no obligation to) relet the Leased Premises or any portion thereof for the account of Tenant, in the name of Tenant or Landlord or otherwise, without notice to Tenant, for such term or terms and on such conditions and for such uses as Landlord, in its absolute discretion, may determine. Landlord may collect any rents payable by reason of such reletting.

(d) No expiration or termination of the Term of this Ground Lease pursuant to Section 16(a) of this Ground Lease, by operation of law or otherwise, and no re-entry, repossession or removal pursuant to Section 16(b) of this Ground Lease or otherwise, and no reletting of the Leased Premises pursuant to Section 16(c) of this Ground Lease or otherwise, shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, re-entry, repossession, removal or reletting.

(f) In the event of any expiration or termination of the Term of this Ground Lease or re-entry, repossession of the Leased Premises, or removal of persons or property therefrom by reason of the occurrence of an Event of Default beyond any applicable cure period, Tenant shall pay to Landlord all Rent in accordance with the provisions of this Ground Lease from the due date thereof to and including the date of such expiration, termination, re-entry, repossession or removal. Thereafter, Tenant shall be liable to Landlord for, as liquidated and agreed current damages for Tenant's default, until the end of what would have been the Term of this Ground Lease in the absence of such expiration, termination, re-entry, repossession, or removal and whether or not the Leased Premises or any portion thereof shall have been relet:

- (1) All Rent and Additional Rent and other sums which would be payable under this Ground Lease by Tenant in the absence of any such expiration, termination, re-entry, repossession, or removal.
- (2) As liquidated damages, an amount equal to the excess, if any, of (i) the aggregate of all Tenant Base Rent, Tenant Additional Rent and other sums which would be payable under this Ground Lease, in each case from the date of such demand (or, if it be earlier, the date to which Tenant shall have satisfied in full its obligations under Section 16(c) of this Ground Lease to pay liquidated and agreed current damages) for what would be the then-unexpired Term of this Ground Lease in the absence of such expiration, termination, re-entry, repossession or removal.

17. Quiet Possession.

(a) As long as no Event of Default has occurred and is continuing hereunder, Landlord shall not interfere with the quiet enjoyment of the Leased Premises by Tenant, provided that Landlord and its agents and/or designees may, upon reasonable notice and at reasonable times, enter upon and examine the Leased Premises to assure compliance with the terms of this Ground Lease. Tenant shall and may peaceably and quietly have, hold and enjoy the Leased Premises during the Term provided that Tenant pays the Rent and performs all the covenants and conditions of this Lease that Tenant is required to perform; and Landlord warrants that it has full right and sufficient title to lease the Leased Premises to Tenant for the Term herein stated.

(b) At any time after the Project has received its certificates of occupancy and the Tenant has executed and recorded the restrictive use covenant for low income housing tax

credits for a term of fifty (50) years, and so long as the no Event of Default exists, Tenant shall have the right, but not the obligation, to acquire the Fee Estate in the Leased Premises. Tenant may exercise this right by providing Landlord with at least sixty (60) days' prior written notice and making payment of any unpaid Base Rent and Additional Rent, if any, due as of the closing date. Upon satisfaction of these conditions, Landlord and Tenant shall enter into a Purchase and Sale Agreement on the terms and conditions stated in Exhibit D hereto, provided the closing of such sale shall occur not more than forty five (45) days after notice provided by Tenant to Landlord, unless closing is otherwise extended by mutual agreement of the parties. Upon satisfaction of these conditions, Landlord shall convey the Fee Estate in the Premises to Tenant by a special warranty deed, subject to all liens and encumbrances existing as of the Commencement Date or otherwise agreed to by Tenant, at the sole cost and expense of the Tenant.

(c) At any time after the Project has received its certificate of occupancy and the Tenant has executed and recorded the restrictive use covenant or low income housing tax credits for a term of fifty (50) years, Landlord shall have the right, but not the obligation, to require Tenant to acquire the Fee Estate in the Leased Premises. Landlord may exercise this option by delivering to Tenant not less than sixty (60) days' prior written notice. Upon exercise of this option, Tenant shall be obligated to accept the Fee Estate in the Leased Premises on the same terms applicable to the Tenant's option stated in Section 17(b) above. Closing of the transfer shall occur within sixty (60) days following expiration of the notice period, and Landlord shall convey the fee simple interest to Tenant by special warranty deed, subject to all liens and encumbrances existing as of the Commencement Date or otherwise agreed to by Tenant, at the sole cost and expense of the Tenant.

18. Compliance with Law.

(a) Tenant shall comply with and cause the Leased Premises to comply with and shall assume all obligations and liabilities with respect to (i) all laws, ordinances and regulations, and other governmental rules, orders and determinations presently in effect or hereafter enacted, made or issued, both foreseen and unforeseen and ordinary and extraordinary applicable to the Leased Premises or the ownership, operation, use or possession thereof and (ii) all contracts (included but not limited to insurance policies), agreements, covenants, conditions and restrictions now or hereafter applicable to the Leased Premises, or the ownership, operation, use or possession thereof and existing on the date hereof or hereafter into with the consent of Tenant (collectively, "**Legal Requirements**"), including but not limited to all such Legal Requirements which require structural, unforeseen or extraordinary changes.

(b) Tenant shall obtain all necessary licenses, permits and inspections necessary to operate the Project on the Leased Premises at its own expense. Landlord shall cooperate with Tenant fully to help Tenant obtain all necessary licenses, permits and inspections required to operate the Project on the Leased Premises provided that the costs of obtaining such licenses, permits and inspection are paid by Tenant.

19. Mechanic's Liens.

(a) Tenant will promptly remove and discharge (which may be accomplished by bonding) any charge, lien, security interest or encumbrance upon the Leased Premises or any Rent or other sums payable hereunder which arise for any reason, including all liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of the Leased Premises or by reason of labor or materials furnished or claimed to have been furnished to Tenant or for the Premises. Nothing contained in this Ground Lease shall be construed as constituting the consent or request of Landlord, express or implied, to or for the performance by any contractor, laborer, materialman, or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Leased Premises or any part thereof. Notice is hereby given that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone (other than Landlord) holding an interest in the Leased Premises or any part thereof through or under Tenant, and that no mechanics or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Leased Premises. Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Leased Premises shall be subject to any lien for Improvements made by Tenant on the Leased Premises. Landlord shall not be liable for any lien for any Improvement made by Tenant, such liability being expressly prohibited by the terms of this Lease, and Tenant agrees to inform all contractors and material suppliers performing work in or for or supplying materials to the Leased Premises of the existence of said prohibition.

(b) Within fifteen (15) business days after a lien has been filed against the Leased Premises on account of labor or material furnished in connection with Tenant's development of the Project, Tenant shall either (i) discharge the lien filed against the Leased Premises, or (ii) post a bond with the clerk of court of competent jurisdiction with instructions to apply the sum towards payment of the lien if it is upheld upon final judgement or return the bond to Tenant if the lien is discharged. Landlord may discharge the lien by paying the amount of the claim due or posting a bond with the clerk of court if Tenant fails to do so within the time required under this Lease. Tenant shall reimburse Landlord the costs incurred to pay or have the lien discharged upon demand. Such amounts due from Tenant shall be charged as Additional Rent under the terms of this Lease.

20. Notices. Each notice, request, demand, consent, approval or another communication (hereafter in this Section 20 referred to collectively as "**Notices**" and referred to individually as a "**Notice**") which Landlord or Tenant is required or permitted to give to the other party pursuant to this Ground Lease shall be in writing and given (a) in person, (b) by a commercial overnight air or ground courier that guarantees next day delivery and provides a delivery receipt, or (c) by e-mail (followed by hard copy delivered in accordance with preceding clauses (a) and (b) on the next business day after receipt of the notice by e-mail. Any Notice shall be effective only upon receipt unless such Notice is refused by the party to which it is to be delivered or because such Notice cannot be delivered because of failure to provide written Notice to the other party of a change of address, in which event Notice shall be deemed to be given on the date of such refusal, in the case of a refusal, in the case of a refusal to accept delivery of a Notice, or the date of the attempted delivery in the case of a change of address. All Notices shall be addressed to the parties at the addresses shown on Exhibit B hereto and

incorporated herein by this reference.

Any party may, by Notice given pursuant to this Section 20, change the person or persons and/ or address or addresses or designate and additional person or persons or an additional address or addresses, for its Notices. Copies of Notices are for informational purposes only, and a failure to give or receive copies of any Notice shall not be deemed a failure to give Notice. The attorney for a party has the authority to send Notices on behalf of such party.

Landlord agrees, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to the Limited Partner at its address indicated on Exhibit B, or such other address as the Limited Partner provides to Landlord. The Limited Partner shall have the right, but not the obligation, during the periods given to Tenant for remedying any Event of Default hereunder, itself remedy any Event of Default or cause the same to be remedied, and Landlord agrees to accept such performance or payment on the part of the Limited Partner as though the same had been done, tendered, or performed by Tenant.

21. Waiver. The rights and remedies of Landlord under this Lease, as well as those provided or accorded by law, shall be cumulative, and none shall be exclusive of any other rights or remedies hereunder or allowed by law. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants of this lease shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies provided herein upon the Event of Default shall not be deemed or construed to constitute a waiver of such default. Acceptance of any installment of Rent by Landlord subsequent to the date that it is due shall not alter or affect the covenant and obligation of Tenant to pay subsequent installments of Rent promptly upon the date thereof.

22. Applicable Law and Parties Bound. Landlord and Tenant hereby and agree that this Ground Lease and all matters, suits (whether in equity or at law), causes of action, claims, cross-claims, counterclaims, demands, obligations actions, survival claims, rights to damages, cross, attorneys' fees or expenses of any kind or in any way relating to the subject matter of this Ground Lease shall be governed, interpreted, construed and enforced in all respects by the internal laws, and not the law of conflicts, of the State of Arizona.

23. Interpretation.

(a) The words "**Landlord**" and "**Tenant**" as used herein, shall include, apply to, bind and benefit, as the context permits or requires, the parties executing this Lease and their respective successors and permitted assigns.

(b) Wherever the context permits or requires, words of any gender used in this Lease shall be construed to include any other gender, and words in the singular numbers shall be construed to include the plural.

24. Captions. The headings and captions contained in this Lease are inserted only as a matter of convenience and in no way define, limit or describe the scope or intent of this Lease nor of any provision contained herein.

25. Care of the Project. Tenant, at its own expense, will maintain all parts of the Leased Premises in good repair and condition, except for ordinary wear and tear, and will take all action and will make all foreseen and unforeseen and ordinary and extraordinary changes and repairs which may be required to keep all parts of the Leased Premises in good repair and condition, ordinary wear and tear excepted. Landlord shall not be required to maintain or repair the Leased Premises. Tenant waives the right to (a) require Landlord to maintain or repair the Leased Premises, or (b) make repairs at the expense of Landlord pursuant to any Legal Requirement, contract, agreement, covenant, condition or restriction, at any time in effect.

26. Net Lease.

(a) This is a “**Net Lease**” and, any present or future law to the contrary notwithstanding, shall not terminate except as otherwise expressly provided herein, nor shall Tenant be entitled to any abatement, reduction, diminution, set-off, counterclaim, defense or deduction with respect to any Rent, or other sums payable hereunder except as otherwise expressly provided herein, nor shall the obligations of Tenant hereunder be affected, by reason of: (i) any damage to, destruction of, or casualty with respect to, the Leased Premises or any portion thereof, (ii) any taking of the Leased Premises or any part thereof by condemnation or otherwise, (iii) any prohibition, limitation, interruption, cessation restriction or prevention of Tenant’s use, occupancy or enjoyment of the Premises, or any interference with such use, occupancy or enjoyment by any person, (iv) any eviction by paramount title or otherwise, (v) any default by Landlord hereunder or under any other Agreement, (vi) the impossibility or illegality of performance by Landlord, Tenant, or both, (vii) any action of any federal state or local governmental authority (“**Governmental Authority**”) (including, without limitation, changes in Legal Requirements), or (viii) any other cause whether similar or dissimilar to the foregoing. The Parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to any express provision of this Lease.

(b) Tenant shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Ground Lease, notwithstanding any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Landlord or any action with respect to this Ground Lease which may be taken by any trustee, receiver or liquidator or by any court. Except as otherwise expressly provided herein, Tenant waives all rights to terminate or surrender this Lease, or to any abatement of Rent or other sums payable hereunder.

27. Surrender of Leased Premises.

(a) Tenant shall surrender possession of the Leased Premises at the expiration of the Term, along with all alterations, additions, and improvements, thereto, in good condition and repair, reasonable wear and tear and damage by casualty excepted. Tenant

shall remove all its personal property not required to be surrendered to Landlord from the Leased Premises before surrendering possession of the Leased Premises, and shall repair any damage to the Project caused by the removal of Tenant's personal property. Any personal property remaining in the Project at the expiration of the Lease Term shall become property of Landlord and Landlord shall not have any liability to Tenant therefor under any circumstances.

(b) Tenant shall indemnify Landlord from and against all losses, claims and liability resulting from Tenant's failure to deliver possession of the Leased Premises upon the expiration of the Term or termination after an Event of Default, including, but not limited to, claims made by a succeeding tenant based on Tenant's delay in delivering possession of the Leased Premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term.

28. Permitted Leasehold Mortgages. Neither Tenant nor any successor in interest to the Leased 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 Leased Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Leased Premises, except for the Permitted Leasehold Mortgages. With respect to the Permitted Leasehold Mortgages, notwithstanding any other provisions in this Lease to the contrary, the following provisions shall apply:

(a) Upon an Event of Default in the observance or performance of any covenant in this Ground Lease, Landlord shall send written Notice of such default to the Permitted Mortgagee, at Permitted Mortgagee's address set forth on Exhibit B or as the Permitted Mortgagee may request in a writing delivered to Landlord. The Permitted Mortgagee shall have (i) ten (10) business days after the Event of Default to cure or remove any default in the payment of Rent or other monetary obligations, and (ii) thirty (30) business days after the Event of Default to cure or remove any other default. If any non-monetary Event of Default cannot reasonably be cured within such thirty (30) business day period, the cure period shall be extended for an additional reasonable time, not to exceed ninety (90) days from the date of such notice, provided that the Permitted Mortgagee commences the cure within the initial thirty (30) business day period and thereafter diligently prosecutes the cure to completion. Notwithstanding any other provision of this Ground Lease, Landlord shall not have any right pursuant to this Ground Lease or otherwise to terminate this Ground Lease due to such Event of Default unless Landlord shall have first given written notice thereof to the Permitted Mortgagee and unless Permitted Mortgagee shall have failed to cure or remove, or cause to be cured or removed, such default, within the time set forth in this Section 28. No notice of an Event of Default to Tenant shall be effective unless delivered to all Permitted Leasehold Mortgagees. All insurance proceeds payable with respect to the Leasehold Estate or Improvements shall be subject to the lien of any Permitted Leasehold Mortgage and may be applied in accordance with the terms of such Permitted Leasehold Mortgage.

(b) The Limited Partner shall be permitted the time period for cure provided to

Tenant as set forth in this Lease.

(c) Landlord agrees to accept payment or performance by any Permitted Leasehold Mortgagee or Limited Partner as though the same had been done by Tenant.

(d) So long as any Permitted Leasehold Mortgage is outstanding and the Permitted Leasehold Mortgagee (or any Acquiring Party) is not in default beyond applicable cure periods under this Lease, Landlord shall not terminate this Lease, accept a voluntary surrender thereof, or disturb the possession, use or quiet enjoyment of the Leasehold Estate by such Permitted Leasehold Mortgagee or Acquiring Party except in accordance with this Section 28.

(e) If this Ground Lease shall be terminated for any reason hereunder by Landlord, or in the event of the rejection or disaffirmance of this Ground Lease pursuant to any bankruptcy law or another law affecting creditors' rights, Landlord will enter into a new lease of the Leased Premises (on the same terms as this Ground Lease) demised by this Ground Lease with the Permitted Mortgagee, or any party designated by the Permitted Mortgagee, not less than ten (10) nor more than thirty (30) days after the request of the Permitted Mortgagee referred to below, for the remainder of the Term of this Ground Lease, effective as of the date of such termination, rejection or disaffirmance upon all the terms and provisions contained in this Ground Lease, provided that the Permitted Mortgagee makes a written request to Landlord for a such new lease within thirty (30) days after the effective date of such termination, rejection or disaffirmance, as the case may be, and such written request is accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to the lessee thereunder, and the Permitted Mortgagee cures all defaults under this Ground Lease which can be cured by the payment of money and pays Landlord all Rent, Additional Rent and other sums which would at the time of such execution and delivery be due and payable by Tenant under this Ground Lease but for such rejection, disaffirmance or termination. If the Permitted Mortgagee designates another party to enter into such new lease, Landlord must approve such new party, which approval shall not be unreasonably withheld. If the Permitted Mortgagee, or the party so designated by the Permitted Mortgagee, shall have entered into a new lease with Landlord pursuant to this Section 28(d), then any default under this Ground Lease which cannot be cured by the payment of money shall be deemed cured. Any new lease made pursuant to this Section 28(d) shall have the same priority with respect to other interests in the Leased Premises as this Ground Lease and shall be accompanied by a conveyance of Landlord's interest, if any, to the Improvements for a term of years equal in duration to the term of the new lease as the same may be extended pursuant to the provisions of said new lease. The provisions of this Section 28(d) shall survive the termination, rejection or disaffirmance of this Ground Lease and shall continue in full effect thereafter to the same extent as if this Section 28(d) were a separate and independent contract made by Landlord, Tenant and Permitted Mortgagee and, from the effective date of such termination, rejection or disaffirmance of this Ground Lease to the date of execution and delivery of such new lease, the Permitted Mortgagee may use and enjoy the leasehold estate created by this Ground Lease with hindrance by Landlord. From and after the time the Permitted Leasehold Mortgagee shall

deliver to Landlord a true copy thereof, together with written notice specifying the name and address of the Permitted Leasehold Mortgagee (if not otherwise set forth on Exhibit B) and the pertinent recording data with respect to the Permitted Leasehold Mortgage (except with respect to the Mortgages referenced in Exhibit B), Landlord agrees that, for so long as such Permitted Leasehold Mortgage remains a Permitted Mortgage, the following provisions shall apply:

(f) So long as any Permitted Leasehold Mortgage is outstanding and the Permitted Leasehold Mortgagee (or any Acquiring Party) is not in default beyond applicable cure periods under this Lease, Landlord shall not terminate this Lease, accept a voluntary surrender thereof, or disturb the possession, use or quiet enjoyment of the Leasehold Estate by such Permitted Leasehold Mortgagee or Acquiring Party except in accordance with this Section 28.

- i. there shall be no termination, cancellation or surrender of this Lease, nor shall Landlord permit or accept Tenant to waive any rights under the Lease, without the prior written consent of each Permitted Leasehold Mortgagee.
- ii. there shall be no amendment or modification of this Lease, without the prior written consent of each Permitted Leasehold Mortgagee, which, in the case of an amendment or modification that does not materially adversely affect such Permitted Leasehold Mortgagee, shall not be unreasonably withheld, conditioned or delayed.

(g) If this Ground Lease shall be terminated for any reason hereunder by Landlord, or in the event of the rejection or disaffirmance of this Ground Lease pursuant to any bankruptcy law or other law affecting creditors' rights, Landlord will enter into a new lease of the Leased Premises (on the same terms as this Ground Lease) demised by this Ground Lease with this Permitted Mortgagee, or any party designated by the Permitted Mortgagee, not less than ten (10) nor more than thirty (30) days after the request of the Permitted Mortgagee for the remainder of the Term of this Ground Lease, effective as of the date of such termination, rejection or disaffirmance upon all the terms and provisions contained in this Lease, provided that the Permitted Mortgagee makes a written request to Landlord for such new lease within thirty (30) days after the effective date of such termination, rejection or disaffirmance as the case may be, and such written request is accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the lessee thereunder and the Permitted Mortgagee cures all defaults under this Ground Lease which can be cured by the payment of money and pays Landlord all Rent and other sums which would at the time of such execution and payable under this Ground Lease but for such rejection, disaffirmance or termination. If the Permitted Mortgagee designates another party to enter into such new lease, the Landlord must approve such new party, which approval shall not be unreasonably withheld. If the Permitted Mortgagee, or the party so designated by the Permitted Mortgagee, shall have entered into a new lease with Landlord pursuant to this Section 28, then any default under this Ground Lease which cannot be cured by the payment of money shall be deemed cured. Any new lease made pursuant to

this Section 28 shall have the same priority with respect to other interests in the Leased Premises as this Ground Lease and shall be accompanied by a conveyance of Landlord's interest, if any to the Project (free of any mortgage or other lien, charge or encumbrance created or suffered to be created by Landlord except for any mortgage otherwise permitted herein) for a term of years equal in duration to the term of the new lease as the same may be extended pursuant to the provisions of said new lease. The provisions of this Section 28 shall survive the termination, rejection or disaffirmance of this Ground Lease and shall continue in full effect thereafter to the same extent as if this Section 28 were a separate and independent contract made by Landlord, Tenant and Permitted Mortgagee and, from the effective date of such termination, rejection or disaffirmance of this Ground Lease to the date of execution and delivery of such new lease, the Permitted Mortgagee may use and enjoy the leasehold estate created by this Ground Lease without hindrance by Landlord.

(h) Nothing in this section shall require any Permitted Leasehold Mortgagee or its designee as a condition to the exercise of rights provided under this section to cure any default of Tenant not reasonably susceptible of being cured by such Permitted Leasehold Mortgagee or its designee and Landlord shall not terminate this Lease due to the existence of a default not reasonably susceptible of being cured by such Permitted Leasehold Mortgagee. The foregoing shall not be deemed to excuse a Permitted Leasehold Mortgagee from performing covenants relating to the condition of the Leased Premises or other similar matters requiring access to and/or control of the Leased Premises from and after such time as such Permitted Leasehold Mortgagee acquires Tenant's interest in this Lease by foreclosure or otherwise.

(i) Any Permitted Leasehold Mortgagee shall have the right to accelerate loan payments and/or foreclose upon the leasehold estate pursuant to the terms of such Permitted Leasehold Mortgagee's Mortgage and if such Permitted Leasehold Mortgagee or another third party ("Acquiring Party") acquires title to the leasehold estate pursuant to a foreclosure sale or a deed in lieu of foreclosure, said Acquiring Party shall be recognized and considered as the tenant under this Lease and shall have all of the rights and benefits as Tenant hereunder, subject to the approval rights of Landlord specified above in this Section 28.

Tenant hereby assigns to the Permitted Leasehold Mortgagees Tenant's right to (i) reject the Lease under Section 365 of the Bankruptcy Code, and (ii) seek an extension of the sixty (60) day period within which Tenant must accept or reject the Lease under Section 365 of the Bankruptcy Code. Landlord acknowledges the potential assignment referenced above to the Permitted Leasehold Mortgagees, and reserves the right to approve the form thereof, such approval not to be unreasonably withheld.

29. Limitation of Leasehold Mortgagee Liability. A Permitted Leasehold Mortgagee shall have no liability under this Ground Lease arising prior to the date upon which it becomes a holder in possession following a foreclosure or deed in lieu of foreclosure or a tenant under a New Lease as set forth herein.

30. Permitted Fee Mortgages. Neither Landlord nor any successor of Landlord in

interest to the Fee Estate in the Leased Premises or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Fee Estate of Landlord in the Leased Premises, whether by express agreement or operation of law, other than those permitted encumbrances listed on Schedule B of the Owner's Policy of Title Insurance (the "**Permitted Encumbrances**") and liens for taxes or municipal obligations, in the absence of a commercially reasonable Non-Disturbance and Attornment Agreement among the holder of Landlord's Mortgage and Permitted Mortgagee and any other than-relevant party to Tenant's interest under this Ground Lease.

31. Damage by Casualty. Tenant shall rebuild the Project or any part thereof if damaged or destroyed by casualty, subject to the rights of the Permitted Leasehold Mortgagees and the requirements of the Partnership Agreement. In all events, this Ground Lease shall continue in full force and effect.

32. Estoppel Certificate. Each party hereto shall, at any time and from time to time within ten (10) days after being requested to do so by the other party, the Limited Partner, and/or any Permitted Leasehold Mortgagee in writing, execute, seal, 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 Leased Premises or under this Ground Lease which requires such interest in accordance with this Ground Lease) a certificate in recordable form certifying (a) that this Ground 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 Leased Premises, and the date on which the Term commenced; (c) as to the dates to which Base 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. If a party fails to deliver such certificate within ten (10) business days after written request, such party shall be deemed to have certified that this Lease is in full force and effect and that no default exists, unless written notice to the contrary is delivered within such period.

33. Alterations. Tenant, at its expense, may demolish the Improvements, make additions to and alterations of the Improvements and/or construct new or additional Improvements, and Tenant may remove and make substitutions and replacements for any Improvements, provided that (i) the fair market value of the Leased Premises shall not be lessened thereby, and (ii) such work shall be performed in a good and workmanlike manner and in compliance with all applicable Legal Requirements and the requirements of all insurance policies required to be maintained by Tenant hereunder. All such additions, alterations, substitutions and replacements shall be the property of Tenant. Tenant shall promptly pay all costs and expenses of each such addition, alteration, removal, substitution or replacement and shall discharge all liens filed against the Leased Premises arising out of the same. Tenant shall procure and pay for all permits and licenses required in connection with any such addition,

alteration, removal, substitution, or replacement.

34. No Merger. As long as any Permitted Leasehold Mortgage is outstanding, the Leased Premises shall not merge with Landlord's Fee Estate. In addition, the Permitted Leasehold Mortgagees' liens shall extend to the Fee Estate in the event that Tenant acquires title to the Fee Estate. No voluntary surrender, cancellation, or termination of this Lease by agreement between Landlord and Tenant shall be effective without the prior written consent of the Senior Permitted Leasehold Mortgagee, and any such consent shall be binding upon all other Permitted Leasehold Mortgagees.

35. Modification of Lease. This Ground Lease may not be terminated, modified, altered, or changed in any manner other than by a written agreement between Landlord and Tenant, executed by both parties, and with the prior written consent of Limited Partner and the Senior Permitted Leasehold Mortgagee, and any such consent shall be binding upon all other Permitted Leasehold Mortgagees.

36. Partial Invalidity. If any part of this Ground Lease is invalid or unenforceable, the remainder of this Ground Lease shall not be affected thereby and shall remain in full force and effect.

37. Non-Recourse. Notwithstanding anything to the contrary contained herein, neither Tenant nor any of its partners shall have any personal liability for the payment and performance obligations hereunder, but such liability shall be limited to Tenant's interest in the Project.

38. Limited Third-Party Rights. Notwithstanding anything to the contrary set forth elsewhere in this Ground Lease, Landlord and Tenant hereby acknowledge and agree that the Limited Partner and Permitted Leasehold Mortgagees shall be deemed third-party beneficiaries of the provisions of this Lease which specifically grant the Limited Partner and Permitted Leasehold Mortgagees rights and/or benefits, including, without limitation, those provisions which entitle the Limited Partner and Permitted Leasehold Mortgagees to receive notice and exercise the right to cure. In connection therewith, the Limited Partner and Permitted Leasehold Mortgagees may seek any and all remedies available to the Limited Partner and Permitted Leasehold Mortgagees in order to enforce such provisions. Limited Partner's rights hereunder shall terminate at any time when Limited Partner no longer has an interest in Tenant. Without limitation, Permitted Leasehold Mortgagees are intended third-party beneficiaries of Section 28 and may enforce the provisions thereof directly against Landlord.

39. Counterparts. This Ground Lease may be executed in counterparts, each of which shall be deemed to be an original, but all of which together will constitute one instrument.

40. Representations and Warranties.

A. Representations and Warranties of Landlord.

1. Landlord has the full power and authority to executed and deliver this Ground Lease and to perform its obligations hereunder; the execution,

delivery and performance of this Ground Lease by Landlord has been duly and validly authorized and all requisite action has been taken by Landlord to make this Ground Lease valid and binding on Landlord and enforceable in accordance with its terms.

2. This Ground Lease constitutes the valid and legally binding obligations of Landlord and is enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by principles of equity.

B. Tenant's Representations and Warranties.

1. Tenant has full power and authority to execute and deliver this Ground Lease and to perform its obligations hereunder; the execution, delivery and performance of this Lease by Tenant has been duly and validly authorized and all requisite has been taken by Tenant to make this Ground Lease valid and binding upon Tenant and enforceable in accordance with its terms.

2. This Ground Lease constitutes the valid and legally binding obligations of Tenant and is enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by principles of equity.

3. There are no actions, suits or proceedings at law or in equity or by or before any Governmental Authority (whether purportedly on behalf of Tenant) pending or, to the knowledge of Tenant, overtly threatened against Landlord, which, if adversely determined, could call into question the validity or enforceability of this Ground Lease, or could result in the rescission, termination or cancellation of any franchise, right, license, permit or similar authorization held by Tenant.

4. All consents, approvals and authorizations required for the execution, delivery and performance of this Ground Lease by Tenant have been obtained, and no other consent, authorization or approval of, filing with, notice to, or exemption by, any Governmental Authority or other person or entity (except for those which have been obtained, made or given) is required to authorize, or is required in connection with the execution delivery and performance of this Ground Lease by Tenant, or is required as a condition to the validity or enforceability of this Ground Lease against Tenant. No provision of any applicable statute, law (including, without limitation, any applicable usury or similar law), rule or regulation of any Governmental Authority prevents the execution, delivery or performance of this Ground Lease by Tenant or affects the validity of this Ground Lease.

5. Tenant is not in default under any mortgage, indenture, contract or agreement to which it is a party or by which it or any of its property is bound that would be reasonably be expected to have a material adverse effect on the financial condition, business or property of Tenant. The execution, delivery or carrying out of the terms of this Ground Lease will not result in the breach of any term or provision of any of Tenant's governing documents or constitute a default thereunder, or result in the creation or imposition of, or obligation to create, any lien or other encumbrance upon any property of Tenant or result in a breach of or require the mandatory repayment of or other acceleration of payment under or pursuant to the terms of any such mortgage, indenture, contract or agreement.

41. Title; LIHTC Provisions.

a. It is the purpose and intent of Landlord and Tenant that Tenant shall be accorded all burdens and benefits of ownership of the Project for as long as this Ground Lease shall remain in effect. Accordingly, at all times during the Term, Tenant shall be deemed to exclusively own the Project for federal tax purposes, and Tenant alone shall be entitled to all of the tax attributes of ownership thereof including, without limitation, the right to claim depreciation or cost recovery deductions, the right to claim the federal low-income housing tax credits available to Tenant under Section 42 of the Code with respect to the Project, and the right to amortize capital costs and the right to claim any other federal tax benefits attributable to the Project.

b. Landlord acknowledges that the Project is intended to qualify for low-income housing tax credits under Section 42 of the Code (the "**Tax Credits**") and agrees that it will not intentionally act in any manner under this Ground Lease so as to cause the Project to fail to qualify for the Tax Credits.

c. Notwithstanding anything to the contrary set forth herein, the following shall be permitted without consent of Landlord and shall not constitute an involuntary assignment, transfer, sale or Event of Default or result in any fee: (i) the transfer of any limited partner interest in Tenant pursuant to the terms of the Partnership Agreement; (ii) the removal and replacement of the general partner of the Tenant in accordance with the terms of the Partnership Agreement, and/or (iii) an amendment of the Partnership Agreement memorializing the transfers or removal in subsection (i) or (ii) of this Section 41(c).

42. Memorandum of Lease. Upon the execution and delivery hereof, Landlord and Tenant shall execute, acknowledge, deliver and cause to be recorded in the real estate records of Pima County, Arizona, a memorandum of this Lease substantially in the form of Exhibit C attached hereto (the "**Memorandum**"). Tenant shall be responsible for all costs and expenses in connection with the recording of this Lease or the Memorandum.

43. Jurisdiction Venue and Process. Each of the parties hereby irrevocably and unconditionally submits to the jurisdiction of the federal and state courts located in the state of Arizona (and any appellate court from any such court) in any suit, action or proceeding arising out of or relating to this Ground Lease, or for recognition or enforcement of any judgment, and each hereby irrevocably and unconditionally agrees that all claims in respect of any such suit, action or proceeding shall be brought in and may be heard and determined in such federal or state courts located in the state of Arizona. Each of the parties hereby agrees that a final judgment in any suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so (a) any objection that it may not or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Ground Lease in any state or federal court located in the state of Arizona and (b) the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court.

44. Waiver of Trial by Jury. Each of the parties hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim filed by the other party, whether in contract, tort or otherwise, which right or claim relates directly or indirectly to this Ground Lease, any documentation related thereto, or any acts or omissions in connection with this Ground Lease. This waiver has been agreed to after consultation with legal counsel selected independently by the Tenant and Landlord.

45. Non-Waiver. No waiver of any covenant, condition or provision of this Ground Lease shall be deemed, or construed, to have been made unless expressed in writing and signed by the party against whom such waiver has been charged. The failure of any party to insist in any one or more cases upon the performance of any of the provisions, covenants or conditions of this Ground Lease or to exercise any option or right set forth in this Ground Lease shall not be deemed, or construed, as a waiver or relinquishment for the future of any such provisions, covenants or conditions. The acceptance of performance of anything required by this Ground Lease to be performed with knowledge of the breach or failure of a covenant, condition or provision hereof shall not be deemed or construed to be a waiver of such breach or failure. No waiver by any party of one breach by another party shall be construed or deemed to be a waiver with respect to any other subsequent breach or failure of a party to declare any default immediately upon its occurrence, or delay in taking any action in connection with a default shall not constitute a waiver of such default, nor shall it constitute an estoppel against such party, but such party shall have the right to declare the default at any time and take such action as is lawful or authorized under this Ground Lease.

46. No Partnership or Joint Venture. Nothing contained in this Ground Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of rent nor any other provision contained in this Ground Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

47. Cancellation for Conflict of Interest. This Ground Lease may be cancelled for conflict of interest pursuant to A.R.S. § 38-511, the provisions of which are incorporated in this Ground Lease by this reference.

48. Non Discrimination. Tenant will comply with applicable local, state and federal laws, rules and regulations concerning equal employment opportunity and non-discrimination; and with all provisions and requirements of Arizona Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this Ground Lease by this reference.

49. Non-Appropriation. Landlord's performance of payment obligations under this Ground Lease, if any, may be dependent upon the appropriation of funds by the Board of Supervisors or the availability of funding from other sources. Should the Board of Supervisors fail to appropriate the necessary funds to meet Landlord's payment obligations hereunder, or if funding for Landlord's payment obligations hereunder is otherwise not available to Landlord for the purpose of fulfilling Landlord's payment obligations under this Ground Lease, Landlord will be relieved of that payment obligation and Landlord or Tenant may terminate this Ground Lease, in which case neither Landlord nor Tenant shall have any further rights or obligations hereunder other than those which specifically survive the termination of this Ground Lease.

50. Remedies Not Exclusive. Subject to the rights of the Lender as a third party beneficiary to this Ground Lease, the various rights, options, elections, powers, and remedies of Landlord contained in this Ground Lease shall be construed as cumulative and no one of them shall be exclusive of any of the others, or of any other legal and equitable remedy which Landlord might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by Landlord shall not impair its rights to any other right or remedy until all obligations imposed upon the other party have been fully performed.

51. Attorneys' Fees and Legal Expenses. In any action or proceeding brought by either party against the other under this Ground Lease, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, and other reasonable legal expenses and court costs incurred by such party in such action or proceeding as the court may find to be reasonable.

52. Brokers. Landlord and Tenant represent and warrant to each other that neither of them has dealt with any broker with respect to this Ground Lease and each agrees to defend, indemnify, save and hold the other harmless from and against any and all fees, commissions, other liabilities, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) suffered by either Landlord or Tenant, as applicable, as a result of acts of Tenant or Landlord, as applicable, or any of their respective agents that would constitute a breach of its representation and warranty in this Section 52. The provisions of this Section 52 shall survive the termination or expiration of this Ground Lease.

53. Audit Rights. During the term of this Agreement, on thirty (30) days notice and during regular business hours, Landlord may at its own expense inspect, or have its representatives or an independent third party inspect, the Premises and audit Tenant's books, records, and other documents specifically related to this Ground Lease as necessary to verify compliance with the terms and conditions of this Ground Lease.

54. Counterparts. This Ground Lease may be executed and delivered in one or more counterparts (and by different parties on different counterparts), each of which shall constitute an original and together which shall constitute one and the same instrument. To facilitate execution of this agreement, the parties may execute and exchange by electronic (e-mail) delivery different counterparts of the signature pages, which shall be as effective as originals for all purposes.

[SIGNATURES FOLLOW ON NEXT PAGE]

EXHIBIT ONLY - NOT FOR EXECUTION

IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease to be executed as of the day and year first written above.

LANDLORD:

PIMA COUNTY,
an Arizona local government entity

By: _____
Print Name: _____
Title: _____

TENANT:

DREXEL COMMONS L.P.,
an Ohio limited partnership

By: Drexel Commons GP, LLC,
an Ohio limited liability company
its General Partner

By: Spire Real Estate Holdings, LLC,
an Ohio limited liability company
its Sole Member

By: _____
Print Name: Scott E. Harrold
Title: Authorized Member

EXHIBIT ONLY - NOT FOR EXECUTION

Exhibit A

Legal Description

The following described property situate in Pima County, Arizona:

Lot 312 of Los Ranchitos No. 8, according to Book 9 of Maps, Page 2, records of Pima County, Arizona.

EXHIBIT ONLY - NOT FOR EXECUTION

Exhibit B

Permitted Mortgagees and Mortgagors

Permitted Leasehold Mortgages:

Deed of Trust, Assignment of Leases and Rents and Security Agreement in favor of Ohio Capital Finance Corporation securing a construction loan in the approximate principal amount of \$23,000,000.

Deed of Trust, Assignment of Leases and Rents and Security Agreement in favor of Ohio Capital Finance Corporation securing a permanent loan in the approximate principal amount of \$6,000,000.

Deed of Trust, Assignment of Leases and Rents and Security Agreement in favor of the City of Tucson securing a HOME loan in the approximate principal amount of \$500,000.

Notice Addresses:

Landlord: PIMA COUNTY

Attn: _____

Tenant: DREXEL COMMONS, L.P.
330 W. Spring Street, Suite 430
Columbus, Ohio 43215
Attn: Thomas A. Grywalkski, President

Limited Partner: OEF INVESTMENT FUND LLC
671 South High Street, 6th Floor
Columbus, Ohio 43206
Attn: Asset Management

With a copy to: SAAD & SAAD LLP
500 S. Front Street, Suite 250
Columbus, Ohio 43215
Attn: Adam F. Saad, Esq.

EXHIBIT ONLY - NOT FOR EXECUTION

Permitted Leasehold Mortgagee:

Ohio Capital Finance Corporation

671 South High Street, 6th Floor
Columbus, Ohio 43206
Attn: Jonathan D. Welty, President

Other Permitted Leasehold Mortgagees:

City of Tucson
Housing and Community Development Department
Housing and Community Development Division
P.O. Box 27210
Tucson, AZ 85726
Attn: HOME Program Manager

EXHIBIT ONLY - NOT FOR EXECUTION

Exhibit C

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease (“Memorandum”) is made as of the _____ day of _____, 20____, by and between PIMA COUNTY, ARIZONA, a local government entity (“Landlord”), and DREXEL COMMONS, L.P., an Ohio limited partnership (“Tenant”).

1. Ground Lease. Landlord and Tenant entered into that certain Ground Lease dated _____, 20____ (the “Lease”). This Memorandum is executed for the purpose of giving record notice of the Lease.

2. Leased Premises. See Exhibit A attached hereto.

3. Term. The Lease term commenced on _____, 20____ and shall continue for seventy-five (75) years unless sooner terminated in accordance with the Lease.

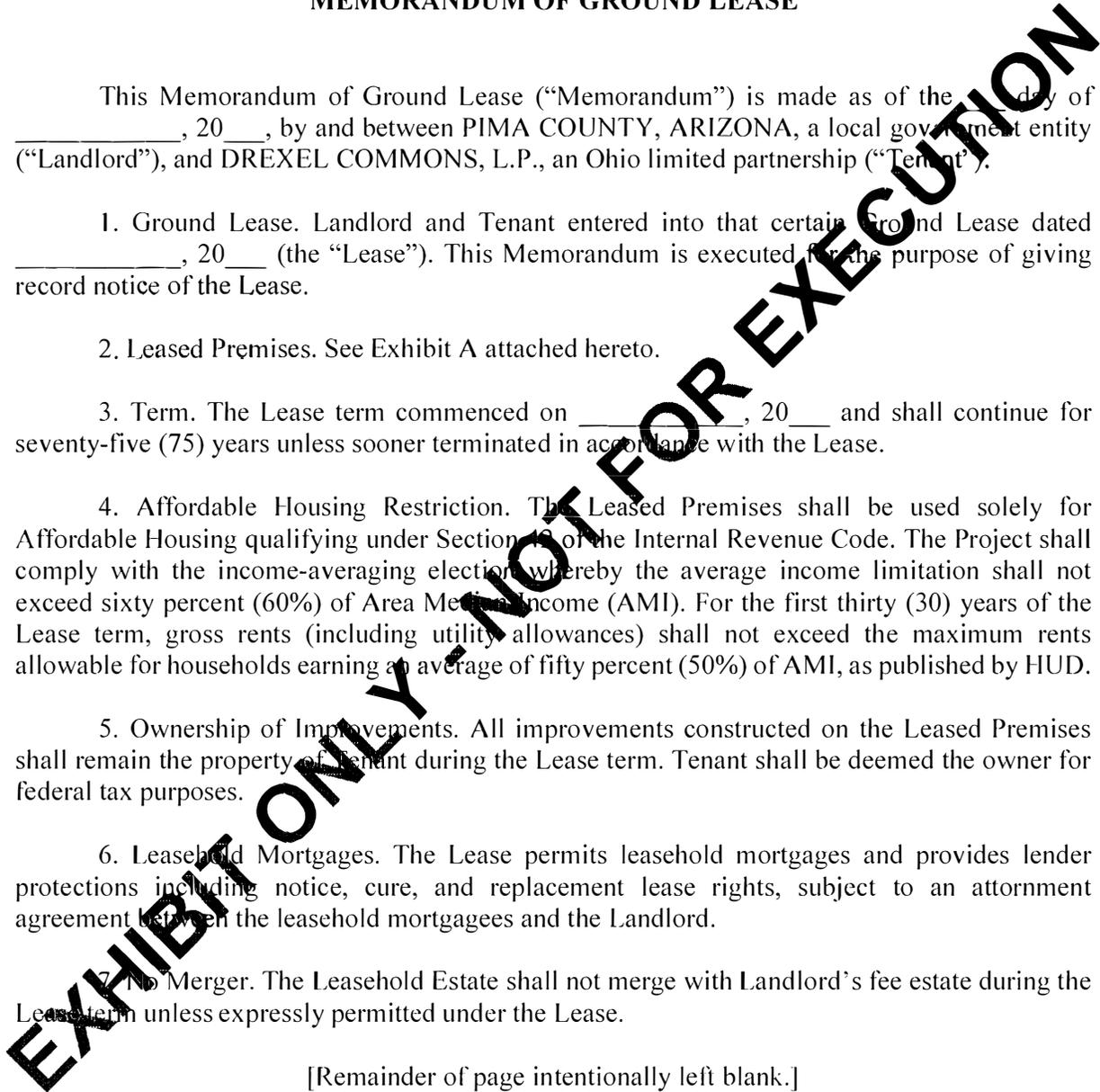
4. Affordable Housing Restriction. The Leased Premises shall be used solely for Affordable Housing qualifying under Section 42 of the Internal Revenue Code. The Project shall comply with the income-averaging election whereby the average income limitation shall not exceed sixty percent (60%) of Area Median Income (AMI). For the first thirty (30) years of the Lease term, gross rents (including utility allowances) shall not exceed the maximum rents allowable for households earning an average of fifty percent (50%) of AMI, as published by HUD.

5. Ownership of Improvements. All improvements constructed on the Leased Premises shall remain the property of Tenant during the Lease term. Tenant shall be deemed the owner for federal tax purposes.

6. Leasehold Mortgages. The Lease permits leasehold mortgages and provides lender protections including notice, cure, and replacement lease rights, subject to an attornment agreement between the leasehold mortgagees and the Landlord.

7. No Merger. The Leasehold Estate shall not merge with Landlord’s fee estate during the Lease term unless expressly permitted under the Lease.

[Remainder of page intentionally left blank.]



This Memorandum of Ground Lease is executed by Landlord and Tenant as of the date first set forth above.

LANDLORD:

PIMA COUNTY, ARIZONA

By: _____

Name: _____

Title: _____

State of Arizona,

County of Pima,

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

Notary Public: _____

My Commission Expires: _____

EXHIBIT ONLY - NOT FOR EXECUTION

TENANT:

DREXEL COMMONS, L.P.

By: Drexel Commons GP, LLC,
its General Partner

By: Spire Real Estate Holdings, LLC,
its Sole Member

By: _____
Name: Scott E. Harrod
Title: Authorized Member

State of _____,

County of _____,

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

Notary Public: _____
My Commission Expires: _____

WHEN RECORDED RETURN TO

EXHIBIT ONLY - NOT FOR EXECUTION

Exhibit A

Legal Description

The following described property situate in Pima County, Arizona:

Lot 312 of Los Ranchitos No. 8, according to Book 9 of Maps, Page 2, records of Pima County, Arizona.

EXHIBIT ONLY - NOT FOR EXECUTION

Exhibit D

Schedule of Key Terms for Purchase and Sale Agreement

- 1. Parties:** Seller: Pima County, Arizona; Buyer: Drexel Commons, L.P., an Ohio limited partnership (or permitted assignee under the Ground Lease)
- 2. Property:** The fee simple estate in the real property described in Exhibit A to the Ground Lease. Improvements are owned by Buyer pursuant to the Ground Lease and shall not be separately conveyed except to the extent of any reversionary interest.
- 3. Purchase Price:** Purchase Price: \$500.00 plus payment of any unpaid Base Rent or Additional Rent through Closing.
- 4. Deposit:** No earnest money deposit required.
- 5. Closing:** Closing shall occur not later than forty-five (45) days after delivery of the exercise notice, unless otherwise agreed in writing. Closing shall occur through an Arizona title company selected by Buyer.
- 6. Conveyance:** Seller shall convey fee simple title by Special Warranty Deed. Conveyance subject to: Permitted Exceptions, matters of record existing as of the Ground Lease Commencement Date, Leasehold mortgages and other encumbrances created by Buyer, Real estate taxes not yet due and payable.
- 7. Title:** Buyer shall provide a current title commitment and title policy at its sole cost and expense.
- 8. Prorations:** None; Buyer to assume all Real estate taxes and assessments, utilities and operating expenses.
- 9. Condition of Property:** Conveyed 'AS IS, WHERE IS.'
- 11. Costs:** Buyer pays: Title insurance premium, Escrow fees, Recording fees, Transfer taxes (if any). Each party pays its own legal fees.
- 12. Ground Lease:** Permitted Leasehold Mortgagee consent required, and no merger of estates (or Leasehold Mortgages modified for fee simple mortgages).

EXHIBIT ONLY - NOT FOR EXECUTION