

DISCLAIMER: This document is intended for example and education purposes only, and not as the basis for any legal document. Consult MHP or your town counsel when creating an lease for your town.

The rules governing disposition of real property by governmental entities are complex and subject to change. MHP has made every reasonable effort to ensure that the information contained in the model lease is correct as of the date of this publication. However, as in all complex matters of this sort, specific legal advice should be sought before using the model lease for a particular property disposition.

The municipal entity must determine whether it wishes to lease the property to the developer for use as affordable housing, or to convey the property to the developer, subject to the continuing obligation to use the property for affordable housing. Massachusetts General Laws Chapter 184, Section 31 provides statutory requirements for an affordable housing covenant to restrict property conveyed by deed.

Please Note | Effort has been made by the author and sponsoring organizations to provide current and accurate information. However, readers should not rely on the information and are urged to review source material and consult with appropriate funding sources, practitioners and legal counsel before embarking on a particular course of action.

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PROPOSED FORM OF

LEASE

**TO BE UTILIZED IN CONNECTION WITH DISPOSITION OF [HOUSING
AUTHORITY/MUNICIPALLY-OWNED] LAND FOR AFFORDABLE HOUSING
DEVELOPMENT**

between

< _____ > (“Landlord”)

and

< _____ > (“Tenant”)

Dated as of _____, 200__

**From the Office of
Jeffrey W. Sacks, Esquire
Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110**



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LEASE

This lease (this "**Lease**") is entered into as of this ____ day of _____, 200__, by and between the <_____,>, a body politic and corporate of the Commonwealth of Massachusetts (the "**Landlord**") and _____, a _____ ("**Tenant**").

BACKGROUND

Pursuant to that certain Request for Proposals dated _____ (the "**RFP**"), the Landlord has accepted Tenant's proposal (the "**RFP Response**") for a lease of the Premises (as defined in Section 1.1 below) to [renovate the existing improvements thereon / construct certain improvements] for use as an affordable housing rental facility, subject to the terms and conditions set forth herein.

The Landlord and Tenant now agree as follows:

ARTICLE 1

PREMISES

1.1 **Lease of Premises.** The Landlord, for and in consideration of the covenants and agreements hereinafter contained on the part of Tenant to be paid, kept and performed, hereby leases to Tenant, and Tenant hereby leases from the Landlord, for the Term (as defined in Section 2.1 below) upon the terms and conditions set forth herein, the following described premises (hereinafter called the "**Premises**"):

A certain parcel of land (the "**Land**") located at _____, _____, Massachusetts, as more particularly described in **Exhibit A** attached hereto and made a part hereof and more particularly shown on the plan attached hereto as **Exhibit B** and made a part hereof; all of the improvements, buildings, structures, utility lines not owned by the respective utility company, parking areas and fixtures that are now or hereafter located on, installed in, or attached to, the Land (collectively, the "**Improvements**"); and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Land or the Improvements or the use or occupancy of the Land or the Improvements, whether or not of record.

DRAFTING NOTE RE: DEFINITION OF IMPROVEMENTS.
The definition of Premises must be adjusted to take into account the precise nature of the leasehold interest. A lease of land only will not include any Improvements. The renovations of an existing structure would include the existing improvements on the site as part of the Premises.

1 Tenant shall also have the following appurtenant rights: **[Note: If Tenant is entitled to**
2 **appurtenant rights, such as the right to cross over other land owned by the Landlord to**
3 **access the development, a provisions granting such rights should be inserted.]**

4 1.2 Reserved Rights. The Landlord reserves the following rights and imposes upon
5 Tenant the following obligations in connection with the Premises:

6 (a) Upon reasonable prior notice to Tenant, the Landlord shall have the
7 right to access and enter upon the Premises for the purposes of inspection, complying with all
8 applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions and orders and
9 requirements of all public authorities and exercising any right reserved to the Landlord by this
10 Lease. The Landlord shall use commercially reasonable efforts to minimize interference with or
11 disruption of Tenant, Tenant’s business, its occupants, its operators and its lessees.

12 (b) [easements, as needed (e.g. to be reserved by Landlord to assume
13 operations of adjacent parcels)]

14 1.3 Condition of the Premises. Tenant acknowledges that it has leased the Premises
15 and agreed to perform the Initial Improvements (as defined in Section 3.1 below) after a full and
16 complete examination of the Premises, including, without limitation, any encumbrances,
17 subsurface conditions, existing structures thereon, if any, the presence of any asbestos or other
18 Hazardous Materials (as defined in Section 12.4 below) located on, in or under the Premises or
19 within such structures, legal title, their present uses and non-uses, and laws, ordinances, and
20 regulations affecting the same and the ability of Tenant to use the Premises for their intended
21 purposes, and accepts the same in the same condition in which they or any part thereof now are,
22 and except as otherwise expressly provided in this Lease, waives all rights to object to the
23 condition thereof and assumes all risks in connection therewith, without any representation or
24 warranty, express or implied, in fact or by law, on the part of the Landlord, and without recourse
25 to the Landlord.

26 **ARTICLE 2**

27 **TERM.**

28 **DRAFTING NOTE RE: TERM OF LEASE**

The Department of Housing and Community Development promulgated a memo dated November 17, 2004 entitled “State Bid Laws and Leasing Municipality Owned Land for Affordable Housing Development” (the “DHCD Memo”) which should be consulted by all municipalities and housing authorities undertaking the leasing of land. The DHCD Memo gives direction to municipalities with respect to the structuring of leases in order to avoid a disposition of the land under lease being deemed a “public construction project” which would trigger public construction laws such as M.G.L. c. 149 (fair competition for bidders on construction, etc, of public works) M.G.L. c. 7 (public building construction) and M.G.L. c. 30 (contracts for construction materials, manner of awarding). The DHCD Memo states that, properly structured, “development of housing by a private developer on

municipally leased land will result in essentially private use and will not be subject to bidding laws.” The DHCD Memo gives the following guidance with respect to the term of the lease:

Although DHCD does not believe that by itself potential future municipal ownership would make the bidding laws applicable, if the lease term is short and the municipality would be receiving a valuable asset at the end of the short lease term, the circumstances would support a conclusion that the bidding laws are applicable. In order to avoid such receipt of a valuable asset it would be advisable for any municipal lease for affordable housing to have a term no less than what is computed to be the actual useful life of the housing. It might also be useful for the lease to contain a provision that the lessee shall own the buildings so constructed or for the lease to provide that the lessee may, at its option, remove any improvements.

Several authorities can be consulted with respect to the useful life of the housing. Generally, the transfer of the property pursuant to the Lease should be considered a “disposition” by the municipal entity. MHP advises municipalities and housing authorities to use a term considered to be tantamount to a disposition (i.e. 99 years) unless there is a important policy reason to use a shorter term. Generally, lenders will require a lease term which is at least 10 years longer than the term of any debt from a lender. For tax purposes, the leasehold improvements are generally given a 27.5 year life for depreciation under the tax code.

Towns should also be aware that Mass General Laws, chapter 40, section 3 provides that a town “may by its selectmen let or lease [a public building] for not more than 10 years”. Leases for longer periods require a home rule petition to the legislature. This statute does not limit the disposition of real estate by housing authorities which have authority to lease such property under M.G.L. c. 121B.

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2.1 Term. The Premises are hereby leased unto Tenant and its successors and assigns for a term (the “**Term**”), commencing on _____ (the “**Commencement Date**”) and unless [extended or] earlier terminated in accordance with the provisions hereof, ending on _____ (the “**Termination Date**”).

2.2 Early Termination. Tenant agrees that if construction of the Initial Improvements has not commenced (as defined in Section 3.1 below) by the Outside Construction Start Date (as defined in Section 3.1 below), the Landlord may elect to terminate this Lease upon thirty (30) days’ written notice to Tenant; provided, however, that if construction of the Initial Improvements commences within such 30-day period, such termination notice shall be null and void and this Lease shall continue in full force and effect.

2.3 Extension Term(s). [If the term is less than 99 years, an extension term should be considered.] Provided that no Event of Default (as defined in Section 14.1 below) shall then

1 exist either on the date of the Extension Notice (as defined below) or as of the commencement of
2 the applicable Extension Term (as defined below), Tenant shall have the option to extend the
3 Term of this Lease for ____ () successive terms of ____ () years each (each, an “**Extension**
4 **Term**”) by providing the Landlord with written notice of its intention to extend (the “**Extension**
5 **Notice**”) at least twelve (12) months prior to the expiration of the then-current term. If Tenant
6 timely makes the foregoing election, the Term shall be extended upon all of the terms and
7 conditions set forth in this Lease, except that there shall be one (1) less Extension Term for each
8 extension option exercised hereunder.

9
10 **ARTICLE 3**

11 **TENANT’S IMPROVEMENTS**

12
13 3.1 **Initial Improvements.** (a) Tenant shall commence work on the improvements
14 (the “**Initial Improvements**”) described in Exhibit C attached hereto and incorporated herein
15 (the “**Schematic Design Plans**”) as soon as reasonably possible following the Commencement
16 Date but not later than _____ [months] [year(s)] after the date hereof (the “**Outside**
17 **Construction Start Date**”), which construction Tenant shall thereafter diligently and
18 continuously prosecute to Final Completion (as defined below) in accordance with the Final
19 Plans (as defined in Section 3.3 below). For purposes of this Lease, construction of the Initial
20 Improvements shall be deemed to have “**commenced**” upon the commencement of actual
21 physical work (including, without limitation, site work) on the Premises pursuant to a full,
22 unconditional building permit for the construction of the Initial Improvements, and “**Final**
23 **Completion**” of the Initial Improvements will be deemed to have occurred upon the issuance of
24 a permanent certificate of occupancy for the Initial Improvements. The date upon which Final
25 Completion of the Initial Improvements occurs shall be referred to herein as the “**Final**
26 **Completion Date**,” which shall occur not later than [_____].

27
DRAFTING NOTE RE: DEFINITION OF IMPROVEMENTS

In a renovation project, the “Improvements” should be defined to be the renovations of the “shell” of the building and the interior construction. The Improvements will be owned by the Tenant, while the building shell will be leased to the Tenant under the terms of the Lease. This provision is relevant to surrender provisions at the end of the lease which is governed by Section 15.1. In a new construction project, in which only the land is being leased, the entire structure will be owned by the Tenant and will constitute the Improvements.

1 (b) Notwithstanding the foregoing, if the commencement of the Initial Improvements is
2 prevented or delayed beyond the Outside Construction Start Date because of strikes, lockouts,
3 labor troubles, inability to procure materials, power failures, riots, insurrection, war, appeals or
4 litigation relating to any comprehensive permit applications or other required permits or licenses
5 necessary to construct and use the Initial Improvements for the Permitted Uses (hereinafter
6 defined), or other causes beyond Tenant’s reasonable control (provided, however, that lack of
7 money shall not be deemed such a cause) (collectively, “**Force Majeure**”), then the
8 commencement of the Initial Improvements shall be excused for the period of delay and the
9 Outside Construction Start Date and Final Completion Date shall be extended for an equivalent
10 period.

11 3.2 Schedule of Performance. Subject to Force Majeure, the Initial Improvements
12 shall be developed by Tenant in accordance with a time schedule approved by the Landlord (the
13 “**Schedule of Performance**”), which approval shall not be unreasonably withheld, conditioned
14 or delayed. Upon written request, Tenant shall submit to the Landlord on or before each
15 deadline set forth in the Schedule of Performance satisfactory evidence that each deadline has
16 been met. The satisfaction of the matters set forth in the Schedule of Performance by the dates
17 set forth therefor is an essential part of this Lease. In the event that the Landlord grants an
18 extension of any such date, which the Landlord may grant or withhold in its reasonable
19 discretion, the Landlord shall not be deemed thereby to be waiving any other rights hereunder or
20 implying the extension of any other dates.

21 3.3 Approval and Delivery of Final Plans. On or before the date specified in the
22 Schedule of Performance, Tenant shall demonstrate to the Landlord that the proposed
23 construction drawings for the Initial Improvements are consistent with the plans submitted as
24 part of the RFP Response (the construction drawings approved by the Landlord are hereinafter
25 referred to as the “**Final Plans**”). Any disapprovals shall be accompanied by a written
26 explanation setting forth in reasonable detail the reasons for disapproval. In the event the
27 Landlord disapproves of any item, Tenant shall cause such item to be appropriately revised as
28 soon as possible after receipt of a notice of disapproval and resubmit the same to the Landlord
29 for approval pursuant to this Section 3.3. The Landlord and Tenant agree to cooperate
30 reasonably and in good faith with each other to resolve any objections of the other to such item
31 and/or requested modifications by the other.

32 3.4 Required Permits. (a) Tenant shall obtain all permits, approvals and licenses
33 from governmental authorities (“**Required Permits**”) required for construction and use of the
34 Initial Improvements, and for any other alterations, removals, installations, additions, changes,
35 replacements or improvements to the Premises (collectively with the Initial Improvements,
36 “**Tenant Work**”), and shall, upon written request, provide the Landlord with a copy of each.
37 Upon full or partial completion of the Initial Improvements and prior to occupying any part of
38 the Premises for any purpose other than performing the Initial Improvements, and upon
39 completion of any other Tenant Work, Tenant shall obtain from each authority granting the
40 Required Permits such evidence of approval (“**Required Approval**”) as may be necessary to
41 permit such part of the Premises to be used and occupied for the Permitted Uses (as defined in
42 Section 8.1 below). Tenant may occupy all or part of the Premises under temporary or
43 conditional certificates of occupancy, but shall not be relieved from the obligation of obtaining

1 permanent certificates of occupancy for the Improvements or other similar licenses or permits
2 required to permit the Premises to be used and occupied for the Permitted Uses.

3 (b) The Landlord promptly shall execute and deliver any reasonable documents which
4 may be necessary to obtain or maintain any Required Permit or Required Approval and shall
5 further cooperate with Tenant in obtaining or maintaining any Required Permit or Required
6 Approval, as Tenant may from time to time reasonably request; provided, however, that with the
7 exception of zoning or other matters, where the Landlord's execution of petitions, application,
8 appeals or other documents or joinder in proceedings may be required as a condition to Tenant's
9 proposed action, the Landlord shall in no event be required to join in or become a party to any
10 document or proceeding in which it will oppose the [City] [Town] of <> or the Commonwealth
11 of Massachusetts or any agency, authority, branch, Landlord, division, office or subdivision of or
12 for the [City] [Town] of <> or the Commonwealth of Massachusetts, nor shall the Landlord be
13 required in connection with any such document or proceeding or otherwise to oppose in any way
14 any policy previously established by the Landlord nor to take a position inconsistent with a
15 position previously taken and made public by the Landlord. The Landlord shall not be required
16 to incur any costs in connection with any documentation under this Section. Tenant agrees to
17 reimburse the Landlord for any reasonable third party costs it may incur in connection with the
18 review of such documentation.

19 (c) Tenant may contest, in good faith and on the same terms and conditions as provided
20 in Section 8.4, the validity or applicability of any Legal Requirement (as defined in Section 8.3
21 below) which is the basis for any Required Permit or Required Approval.

22 3.5 General Contractor; Development Team. To the extent that the RFP Response
23 did not include the names of each member of Tenant's development team, Tenant shall provide
24 to Landlord such information as may be reasonably requested by Landlord to assure Landlord
25 that Tenant's general contractor, architect and landscape architect for the design and construction
26 of the Initial Improvements shall have sufficient experience and capacity to undertake and
27 complete their respective portions of the Improvements.

28 3.6 Ownership. During the Term, the Improvements shall be vested in Tenant, and
29 Tenant shall be entitled to any depreciation deductions and investment tax credits thereon for
30 income tax purposes. Upon the expiration or earlier termination of this Lease, if Tenant does not
31 remove the Improvements, in accordance with the provisions of Section 15.1 hereof, title to the
32 Improvements shall immediately vest in the Landlord and shall be surrendered at that time in
33 accordance with Section 15.1 below.

34 3.7 Reproducible Drawings. Within ninety (90) days after Final Completion of the
35 Initial Improvements or any other Tenant Work affecting the exterior of the Premises, Tenant
36 shall prepare at its expense and deliver to the Landlord one complete, legible and reproducible
37 full-sized set of as-built plans showing the Initial Improvements or such Tenant Work, as the
38 case may be, together with a certified survey plan.

39 3.8 Manner of Construction; Cost of Initial Improvements. Tenant shall construct all
40 Tenant Work in a good and workmanlike manner, in compliance with Legal Requirements and
41 good engineering and construction practices. The Initial Improvements shall be constructed in

1 material compliance with the Final Plans and in strict compliance with the Required Permits.
2 Tenant shall take all reasonably necessary measures to (i) minimize dust, noise and construction
3 traffic, (ii) minimize any damage, disruption or inconvenience caused by Tenant Work, and (iii)
4 make adequate provision for the safety and convenience of all persons affected thereby and to
5 properly police same. Dust, noise and other effects of such work shall be controlled using
6 commercially accepted methods customarily utilized in order to control deleterious effects
7 associated with construction projects in a populated or developed area. Tenant shall pay (or
8 cause to be paid) all costs and expenses associated with any Tenant Work (including, without
9 limitation, all architectural, engineering, construction, legal and consultant fees and costs) and
10 shall defend, indemnify and hold the Landlord Parties (as defined in Section 7.13 below)
11 harmless from and against any and all claims, damages, losses, penalties, costs, expenses and
12 fees (including without limitation reasonable legal fees) (collectively, "**Claims**") attributable to
13 the performance of any Tenant Work.

14 3.9 Tenant's Responsibility to Discharge Liens. (a) If any mechanic's, laborer's or
15 materialman's lien shall at any time during the Term be filed against the Premises, the
16 underlying fee, or any part thereof with respect to the performance of any labor or the furnishing
17 of any materials to, by or for Tenant or anyone claiming by, through or under Tenant, Tenant,
18 within thirty (30) days after notice of the filing thereof, shall cause the same to be discharged of
19 record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If
20 Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition
21 to any other right or remedy, the Landlord may, but shall not be obligated to, discharge the same
22 either by paying the amount claimed to be due or by procuring the discharge of such lien by
23 deposit or by bonding proceedings. Any amount so paid by the Landlord and all costs and
24 expenses incurred by the Landlord in connection therewith, together with interest at the prime
25 rate of interest reported from time to time in the Wall Street Journal or any successor publication
26 plus two percentage points (the "**Default Rate**") from the respective dates of the Landlord's
27 making of the payment or incurring of the cost and expense until paid in full, shall constitute
28 Additional Rent (as defined in Section 4.1 below) under this Lease and shall be paid by Tenant to
29 the Landlord on demand.

30 (b) Notwithstanding the foregoing, Tenant may contest, in good faith by
31 appropriate proceedings, at Tenant's sole expense, the amount or validity in whole or in part of
32 any mechanic's, laborer's or materialman's lien, and may defer the discharge of record thereof,
33 provided that:

34 (i) Tenant shall provide the Landlord with security reasonably
35 satisfactory to the Landlord or shall bond over to assure payment of contested items;

36 (ii) Tenant shall immediately pay or shall bond over such contested
37 item or items if the protection of the Premises or of the Landlord's interest therein from any lien
38 or claim shall, in the reasonable judgment of the Landlord, require such payment;

39 (iii) The Landlord shall not be required to join in any proceedings
40 referred to herein unless the provisions of any law, rule or regulation at the time in effect shall
41 require that such proceedings be brought by or in the name of the Landlord. The Landlord shall
42 not be subjected to any liability for the payment of any loss, costs or expenses in connection with

1 any such proceedings, and Tenant shall defend, indemnify and save the Landlord Parties
2 harmless from and against any such loss, costs and expenses; and

3 (iv) Notwithstanding the provisions of Subsection (iii) above, the
4 Landlord shall not be required to join in or become a party, nominal or otherwise, to any
5 proceeding in which it will oppose the [City] [Town] of <> or the Commonwealth of
6 Massachusetts or any agency, authority, branch, Landlord, division, office or subdivision of or
7 for the [City] [Town] of <> or the Commonwealth of Massachusetts, nor shall the Landlord be
8 required in connection with any such proceeding or otherwise to oppose in any way any policy
9 previously established by the Landlord nor to take any position inconsistent with a position
10 previously taken and made public by the Landlord.

11 Subject to the foregoing, and without cost to it, the Landlord shall promptly execute and
12 deliver any reasonable documents which may be necessary to permit Tenant so to contest any
13 such lien and shall further cooperate with Tenant in such contest, as Tenant may from time to
14 time reasonably request.

15 3.10 No Consent. Nothing contained in this Lease shall be deemed or construed in any
16 way as constituting the consent to payment or request of the Landlord, express or implied, by
17 inference or otherwise, to any contractor, subcontractor, laborer or materialman for the
18 performance of any labor or the furnishing of any materials for any specific improvement,
19 alteration to, or repair of the Premises or any part thereof.

20 **ARTICLE 4**

21 **RENT**

23

DRAFTING NOTE RE: RENT

The factors noted in the DHCD Memo should be considered when determining the rent under the Lease:

The municipality may decide to charge a reasonable amount for the affordable housing use. This would be much less than rent for a market-rate housing use. Rent for affordable housing use would be based on the value of the land as used for affordable housing. In this way a municipality could charge a fair market rent for the restricted affordable use and still charge much less than what would be charged for market housing. Although DHCD does not believe that charging a nominal rent would be a municipal involvement sufficient to implicate the bidding laws, it might be considered a factor. Such a result can be avoided by computing a low rent that is nevertheless appropriate for the affordable housing use.

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4.1 Rent. Commencing on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to the Landlord annual base rent (“**Base Rent**”) in the amount of \diamond , which amount shall be paid on \diamond and on the first day of _____ in each calendar year thereafter during the Term /OR/ in equal monthly installments of \$ _____, partial months to be prorated. [Base Rent shall be adjusted annually throughout the Term, as of the anniversary of the first day of the first full calendar month following the Commencement Date, to the extent of any percentage change which occurred in the Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics for all Urban Consumers, Boston, Subgroup “all items” (1982-84=100) (“CPI-U”) during the preceding twelve (12) months. The Landlord shall promptly notify Tenant of each Base Rent adjustment]. In addition, Tenant shall pay any fee, charge or other amount required to be paid by Tenant to the Landlord under this Lease as additional rent (“**Additional Rent**”). Base Rent and Additional Rent (collectively, “**Rent**”) shall be paid without counterclaim, notice, demand, abatement or offset at the Landlord’s address set out in Section 18.2. It is the intention of the parties that the Rent payable hereunder shall be net to Landlord.

4.2 Late Payments. Any payment of Rent due hereunder not paid when due shall bear interest for each month or fraction thereof from the due date until paid in full at the Default Rate.

ARTICLE 5
TAXES AND UTILITIES

5.1 Impositions. Tenant shall pay or cause to be paid as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, assessments, special use or assessment district taxes, water and sewer charges, excises, levies, license and permit fees and all other governmental charges of any kind and nature which during the Term may be assessed, levied, imposed upon or become due with respect to, or become a lien on the Premises or the leasehold, or any part thereof, or any appurtenance thereto, and payments in lieu of such taxes, assessments, charges or fees, whether such charges are made directly to Tenant or through or in the name of the Landlord. All such charges shall be referred to herein as “**Impositions**.” Tenant shall have the right to contest or object to the amount or validity of any Imposition but shall not withhold payment of any Imposition while any such contest or objection is pending. Tenant, upon request of the Landlord, shall furnish to the Landlord within thirty (30) days of the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to the Landlord, evidencing payment thereof.

5.2 Personal Property Taxes. Tenant shall pay promptly when due all taxes which may be imposed upon personal property (including fixtures taxed as personal property) in, on or within the Premises directly to the assessing party.

5.3 Utilities. (a) Tenant shall pay, or shall cause to be paid, directly to the utility provider, all charges by any public authority or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises, and service inspections made

1 therefor, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether
2 such charges are made directly to Tenant or through or in the name of the Landlord (“Utility
3 Charges”).

4 (b) The Landlord agrees to provide reasonable access easements over the Premises to
5 utility companies for the purposes of bringing and connecting utility service to the Premises.

6 5.4 No Liability of the Landlord. The Landlord shall not be required to furnish to
7 Tenant any facilities or services of any kind whatsoever during the Term, such as, but not limited
8 to, water, steam, heat, gas, hot water, electricity, light and power. The Landlord makes no
9 representation or warranty that existing sources of supply, distribution points or utilities are
10 adequate or sufficient to supply the Improvements.

11 **ARTICLE 6**

12 **REPAIRS AND MAINTENANCE**

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14 6.1 Repair and Maintenance. Throughout the Term of this Lease, Tenant, at its sole
15 cost and expense, shall take good care of the Premises (including all Improvements) and all
16 roadways, sidewalks, curbs, landscaped areas, fences and entranceways adjoining the same, and
17 shall keep the same in good order and condition (except for reasonable wear and tear and damage
18 from a Taking (as defined in Section 11.1 below) or from fire or other casualty after the last
19 repair, replacement, restoration or renewal required to be made by Tenant pursuant to its
20 obligations hereunder), and shall make all necessary repairs thereto, interior and exterior,
21 structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen in order to
22 keep the Premises in safe, clean and sanitary condition throughout the Term. Without limitation,
23 Tenant shall keep the common driveway and sidewalks shown on Exhibit B in good order and
24 condition and shall be responsible for removing ice and snow therefrom. Tenant shall keep the
25 Premises free of accumulations of dirt and rubbish, and shall use all reasonable precautions to
26 prevent waste, damage or injury to the Premises.

27 6.2 No Obligation of the Landlord. Except as otherwise expressly provided herein,
28 the Landlord shall in no event be required to maintain or repair or to make any alterations,
29 restoration, replacements, changes, additions or improvements to the Premises during the Term
30 of this Lease.

31 **ARTICLE 7**

32 **INSURANCE AND INDEMNITY**

DRAFTING NOTE RE: INSURANCE PROVISIONS

The Landlord must evaluate these provisions in light of its risk management policies. Does the Landlord carry liability insurance or self-insure? Given the financial condition of the developer, what is an appropriate deductible for the developer’s casualty and liability policies? Does the

Landlord want to be involved in the insurance adjustment process after a casualty?

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7.1 Casualty Insurance. During the Term, Tenant, at its sole cost and expense, shall keep in full force and effect property insurance on the Improvements and other property installed or used in, on or about any Improvement in amounts sufficient at all times to prevent the Landlord or Tenant from becoming a co-insurer under the provisions of applicable policies of insurance, but, in any event, at least equal to the full replacement cost thereof (exclusive of cost of excavations, foundations and footings), without deduction for depreciation, against all risks of direct physical loss or damage as may from time to time be included within the definition of an “All Risks Insurance Policy” and extended to include coverage against earthquake, earth movement, flood (including back-up of sewers and drains), sprinkler leakage, breakdown of boilers, machinery and electrical equipment, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke and demolition. Such insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount endorsement satisfactory to the Landlord.

7.2 Builder’s Risk. During the period of any construction or structural alteration of the Premises or the Improvements, Tenant shall also keep in full force and effect, at its sole cost and expense, “Builder’s All Risk” insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the Landlord may reasonably require.

7.3 Liability Insurance. Throughout the Term, Tenant shall maintain, for the benefit of the Landlord and Tenant, and identifying the Landlord and Tenant as additional insureds, commercial general liability insurance against claims for personal injury, death, and property damage occurring upon, in or about the Premises or the Improvements, and on, in or about the adjoining sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) for at least \$<_____> combined single limit, including bodily injury and death and for property damage. If Tenant has other locations that it owns or leases, the policy shall include an aggregate limit per location endorsement. Such liability insurance shall be primary and not contributing to any insurance available to the Landlord, and the Landlord’s insurance shall be in excess thereto.

7.4 Boiler Insurance. Throughout the Term, the Tenant shall maintain boiler insurance, including pressure vessels and pipes, if there be any such vessel or pipes on the Premises, in an amount not less than \$_____.

7.5 Personal Property Insurance. Throughout the Term, Tenant shall maintain personal property insurance insuring all equipment, trade fixtures, inventory, fixtures and personal property located on or in the Premises for perils covered by the cause of loss – special form (“special form”). Such insurance shall be written on a replacement cost basis in an amount equal to no less than eighty percent (80%) of the full insurable replacement value of the aggregate of the foregoing.

1 7.6 Insurance Carried by Contractors. During the construction of the Initial
2 Improvements, Tenant shall also require the construction manager and/or general contractor for
3 the Initial Improvements to maintain (i) for the benefit of Tenant and the Landlord, as additional
4 insureds, commercial general liability insurance, including products and completed operations
5 coverage, against any claims for personal injury, death and property damage occurring upon, in
6 or about the Premises and on, in and about the adjoining sidewalks and passageways during the
7 construction of the Initial Improvements for at least \$<_____> combined single limit; (ii)
8 worker's compensation in amounts required by state statute; (iii) employer's liability insurance
9 with limits of not less than <_____> Dollars (\$<_____>); and (iv) automobile
10 liability insurance, including the ownership, maintenance and operation of any automotive
11 equipment, owned, hired or nonowned, in an amount not less than <_____> Dollars
12 (\$<_____>) combined single limit.

13 7.7 Insurance Coverage Increases. The minimum coverage stated in this Section 7
14 shall be reviewed every five (5) years by the Landlord and Tenant, and shall be increased at such
15 intervals if such increases are reasonably necessary to reflect inflation or changes in the nature or
16 degree of risks insured or to protect against judgments from time to time being awarded in
17 Massachusetts for injury, death and property damage.

18 7.8 Insurance Carriers, Policies. All insurance provided for in this Section 7 shall be
19 effected under valid and enforceable policies, issued by insurers of recognized responsibility
20 licensed and doing business in Massachusetts and having a so-called Best's Rating of "A:X" or
21 better, or, if such rating is no longer issued, an equal or better rating by a successor insurance
22 carrier rating service reasonably acceptable to the Landlord. Any deductible amounts under any
23 insurance policies required hereunder shall not exceed _____ Dollars (\$_____.00).
24 Upon the execution of this Lease, and thereafter not less than fifteen (15) days prior to the
25 expiration dates from time to time of the policies required pursuant to this Section 7, binders of
26 such insurance or, upon written request of the Landlord, duplicate originals of the policies, shall
27 be delivered by Tenant to the Landlord.

28 7.9 Blanket Policy. Nothing in this Section 7 shall prevent Tenant from taking out
29 insurance of the kind and in the amounts provided for under this Section 7 under a blanket
30 insurance policy or policies covering other properties as well as the Premises, provided,
31 however, that any such policy or policies of blanket insurance (i) shall specify therein, or in a
32 written statement from the insurers under such policy or policies specifying, the amount of the
33 total insurance allocated to the Premises, which amounts shall not be less than the amounts
34 required by this Section 7, and (ii) such amounts so specified shall be sufficient to prevent any of
35 the insureds from becoming a co-insurer within the terms of the applicable policy or policies, and
36 provided further, however, that any such policy or policies of blanket insurance shall, as to the
37 Premises, otherwise comply as to endorsements and coverage with the provisions of this Section
38 7.

39 7.10 No Separate Insurance. Tenant shall not take out separate insurance concurrent in
40 form or contributing in the event of loss with that required in this Section 7 to be furnished by, or
41 which may reasonably be required to be furnished by, Tenant unless the Landlord and Tenant are
42 included therein as insureds, with loss payable as in this Lease provided. Tenant shall

1 immediately notify the Landlord of the placing of any such separate insurance and shall cause
2 the same to be delivered as in Section 7.8 hereof required.

3 7.11 Adjustment. All policies of insurance provided for in Section 7 hereof shall name
4 the Landlord and Tenant as the insureds as their respective interests may appear. The loss, if
5 any, under such policies shall be adjusted with the insurance companies by Tenant, and shall be
6 payable to Tenant. All such policies shall provide that the loss, if any, thereunder shall be
7 adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable,
8 contain a provision that no act or omission of any of the Tenant Parties (as defined in Section
9 7.13 below) shall affect or limit the obligation of the insurance company so to pay the amount of
10 any loss sustained.

11 7.12 Non-cancellation. Each policy or binder issued by an insurer shall, to the extent
12 obtainable, contain an agreement by the insurer that such policy shall not be canceled, non-
13 renewed or substantially modified without at least thirty (30) days' prior written notice to the
14 Landlord, Tenant and any Permitted Institutional Mortgagee (as defined in Section 13.2 below)
15 named therein.

16 7.13 Indemnification. (a) Tenant shall defend (with counsel reasonably acceptable to
17 the indemnified party), indemnify and save the Landlord Parties (as defined below) harmless
18 against and from any and all Claims which may be imposed upon or incurred by or asserted
19 against the Landlord Parties by reason of any of the following occurrences:

20 (i) any work or thing done during the Term of this Lease in, on or about the
21 Premises or any part thereof, including during construction of the Initial Improvements and any
22 other Tenant Work, by Tenant or any other party other than the Landlord, its commissioners,
23 employees, contractors, agents, servants, or licensees (collectively with the Landlord, the
24 "**Landlord Parties**");

25 (ii) any use, non-use, possession, occupation, condition, operation,
26 maintenance or management of the Premises or any part thereof, including any sidewalk or curb
27 appurtenant to the Premises, during the Term of this Lease by Tenant or any other party other
28 than the Landlord Parties;

29 (iii) any negligence or willful misconduct on the part of Tenant or any of its
30 agents, contractors, servants, employees, subtenants, occupants, guests, licensees, operators, or
31 invitees (together with Tenant, the "**Tenant Parties**");

32 (iv) any accident, injury or damage to any person or property occurring in, on
33 or about the Premises or any part thereof, including any sidewalk or curb appurtenant to the
34 Premises, unless the same occurs solely as a result of the gross negligence or wrongful act of any
35 of the Landlord Parties; and

36 (v) any failure on the part of Tenant to perform or comply with any of the
37 covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its
38 part to be performed or complied with.

1 (b) If the Landlord obtains separate counsel due to reasonable concerns that its
2 interests and that of Tenant may be adverse or that counsel provided by Tenant may have a
3 conflict in interest or is not providing effective representation of the Landlord, then the
4 reasonable expenses of such separate counsel shall be at Tenant's expense.

5 (c) The foregoing express obligation of indemnification shall not be construed to
6 negate or abridge any other obligation of indemnification running to the Landlord which would
7 exist at common law or under any other provision of this Lease, and the extent of the obligation
8 of indemnification shall not be limited by any provision of insurance undertaken in accordance
9 with this Section 7. This Lease is made on the express condition that the Landlord shall not be
10 liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings or
11 other improvements, or to any person or persons, at any time on the Premises, specifically including
12 any damage or injury to the person or property of Tenant or any of the Tenant Parties, from
13 whatever cause, in any way connected with the condition, use, occupational safety or occupancy
14 of the Premises, unless caused by the gross negligence or willful misconduct of the Landlord.

15 (d) The provisions of this Section 7.13 shall survive termination or expiration of this
16 Lease.

17 **ARTICLE 8**

18 **USE OF PREMISES**

19 **DRAFTING NOTE RE: USE**

Municipalities or housing authorities may seek to create mixed use developments including offices which may be used by the housing authority or the municipality. This public use of the property, even if limited, is likely to result in the application of public bidding and procurement laws to an otherwise "private" development. The DHCD Memo notes the following:

Municipalities should not use a lease with a private developer as a means to circumvent the bidding laws on a construction project that the public entity would otherwise undertake itself. For example, the Attorney General's Bid Protest Unit in four separate decisions has held that, although certain buildings were being constructed by private entities, the construction was subject to the bidding laws because the buildings would be used for a public purpose as charter schools and because the funding was public. See the following decisions: In re Sabis International Charter School (9/17/97), In re Sabis International Charter School (2/1/00), In re Enlace DeFamilias DeHolyoke/Holyoke community Charter School (7/15/02) and In re

**Renovations to 160 Ashlanve Avenue, Springfield, MA,
New Leadership Charter School (5/7/03).**

This Lease has been drafted to reflect a project which is 100% affordable. In addition to mixed uses, which would incorporate commercial use with the affordable housing use, municipalities and housing authorities may consider mixed income housing which would include higher income residents. Article 8 and Article 9 must reflect the proposed range of uses for each Project.

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2 8.1 Permitted Uses. The Premises and the Improvements shall be used exclusively
3 for purposes of affordable rental housing and uses which are ancillary thereto (collectively, the
4 “**Permitted Uses**”), subject to the affordability commitments set forth in Article 9.

5 8.2 Abandonment of Use. Subject to Force Majeure, except during construction of
6 the Initial Improvements and thereafter during reasonable periods of repair, remodeling and/or
7 restoration, Tenant covenants and agrees to continuously and uninterruptedly use the Premises
8 for the Permitted Uses. If the Premises shall be abandoned, deserted, or vacated by the Tenant
9 (such decision to abandon, desert or vacate or discontinue construction or operation of the
10 facilities located on the Premises shall be referred to as a decision to “**Discontinue**
11 **Operations**”), or if less than ____ percent (___%) of the rental units located on the Premises are
12 leased and occupied in accordance with Section 8.1 for a period of one hundred eighty (180)
13 consecutive days or for more than one hundred eighty (180) days in any calendar year for any
14 reason, the Landlord shall have the right to terminate the Lease and recover exclusive possession
15 of the Premises by written notice to Tenant. In the event the Landlord exercises its right to
16 terminate the Lease under this Section 8.2, the Lease shall terminate as of the date that is sixty
17 (60) days after the date of the Landlord’s notice to Tenant thereof, and Tenant’s liability with
18 respect to the Lease shall terminate as of such date, unless within such sixty (60) day period,
19 more than ____ percent (___%) of the rental units located on the Premises are leased and occupied
20 in accordance with Section 8.1 (in which event such termination notice shall have no effect).

21 8.3 Legal Requirements. Throughout the Term of this Lease, Tenant, at its expense,
22 shall promptly comply with and shall cause all Tenant Parties to promptly comply with, all
23 present and future laws, ordinances, orders, rules, regulations and requirements of all federal,
24 state and municipal governments, departments, housing authorities, boards and officers, foreseen
25 or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and
26 the sidewalks and curbs adjoining the same, or to the use or manner of use of the same or to any
27 of the Tenant Parties, whether or not such law, ordinance, rule, regulation or requirement is
28 specifically applicable or related to the conduct of the Permitted Uses, or shall affect the interior
29 or exterior of the Improvements or any Tenant Work, or shall necessitate structural changes or
30 improvements, or shall interfere with the use and enjoyment of the Premises (collectively,
31 “**Legal Requirements**”). Tenant shall, in the event of any violation or any attempted violation
32 of this Section by any Tenant Party, take steps, immediately upon knowledge of such violation,

1 as Tenant determines to be reasonably necessary to remedy or prevent the same as the case may
2 be.

3 8.4 Contests. Tenant shall have the right to contest by appropriate legal proceedings
4 diligently conducted in good faith, in the name of Tenant, without cost or expense to the
5 Landlord, the validity or application of any Legal Requirement, subject to Tenant providing the
6 Landlord with written notice thereof on or before the date of contesting same, and further subject
7 to the following:

8 (a) If, by the terms of any such Legal Requirement, compliance therewith
9 pending the prosecution of any such proceeding may legally be delayed without the incurrence of
10 any lien, charge or liability of any kind against the Premises or any part thereof and without
11 subjecting Tenant or the Landlord to any liability, civil or criminal, for failure so to comply
12 therewith, Tenant may delay compliance therewith until the final determination of such
13 proceeding; and

14 (b) If any lien, charge or civil liability would be incurred by reason of any
15 such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that
16 such delay would not subject the Landlord to criminal liability or fine, and provided that Tenant
17 (i) bonds over such lien or furnishes to the Landlord security, reasonably satisfactory to the
18 Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the
19 contest with due diligence; and

20 (c) The Landlord shall not be required to join in or become a party, nominal
21 or otherwise, to any proceeding in which it will oppose the [City] [Town] of <> or the
22 Commonwealth of Massachusetts or any agency, authority, branch, division, office or
23 subdivision of or for the [City] [Town] of <> or the Commonwealth of Massachusetts, nor shall
24 the Landlord be required in connection with any such proceeding or otherwise to oppose in any
25 way any policy previously established by the Landlord nor to take a position inconsistent with a
26 position previously taken and made public by the Landlord.

27 8.5 Compliance with Insurance Requirements. Throughout the Term of this Lease,
28 Tenant, at its expense, shall observe and comply with the requirements of all policies of public
29 liability, casualty and all other policies of insurance required to be supplied by Tenant at any
30 time in force with respect to the Premises, and Tenant shall, without limiting any other
31 requirements of this Lease, in the event of any violation or any attempted violation of the
32 provisions of this Section by any Tenant Party, take all reasonable steps, immediately upon
33 knowledge of such violation or attempted violation, to remedy or prevent the same as the case
34 may be.

35 8.6 Property Management. Tenant will either manage the Premises personally or
36 hire a reputable and experienced property management company to manage the Premises. If
37 Tenant will not personally manage the Premises, prior to the Final Completion Date, Tenant shall
38 submit to the Landlord for approval (a) the name of Tenant's proposed property management
39 company, (b) evidence that such company has (i) a good business and character reputation in the
40 community, and (ii) proven property management experience with affordable housing

1 developments, and (c) the identity, background and experience of the senior operational officer,
2 and all agents and employees who will be engaged in the management of the Premises;

3 **ARTICLE 9**

4
5 **RESIDENT SELECTION; AFFORDABILITY COMMITMENTS**

6 9.1 Resident Selection. Prior to selecting residents, Tenant shall establish that its
7 resident selection policies and criteria for the affordable rental housing facility are consistent
8 with the RFP, (the resident selection policies and criteria approved by the Landlord are
9 hereinafter referred to as the “**Resident Selection Criteria**”). The Resident Selection Criteria
10 shall provide for a preference for residents of the [City] [Town] of <>, to the extent allowed by
11 Legal Requirements. Tenant shall select tenants for the Premises in a fair and impartial manner,
12 based on the Resident Selection Criteria, which shall be made available to such tenants upon
13 request.

14 9.2 Affordability Commitments. From and after the Final Completion Date until the
15 expiration or earlier termination of the Term of this Lease, Tenant covenants to operate
16 multifamily housing on the Premises in accordance with the affordability commitments
17 (“**Affordability Commitments**”) set forth in this Section 9.2. Not fewer than <> (<>) units in
18 the facility will be leased to low- and moderate-income households in accordance with the
19 following schedule:

- 20 (i) <> (<>) units will be leased to households with annual income at or
21 below _____ percent (___%) of area median gross income;
- 22 (ii) <> (<>) units will be leased to households with annual income at or
23 below _____ percent (___%) of area median gross income; and
- 24 (iii) <> (<>) units will be leased to households with annual income at or
25 below _____ percent (___%) of area median gross income

26 For purposes of this Section 9.2, “**area median gross income**” shall mean the standard defined
27 from time to time by the Department of Housing and Urban Development (or any successor
28 thereto) as adjusted for household size, or, if defined differently in Section 42 of the Internal
29 Revenue Code and regulations thereto (or any successor statute and/or regulations) (collectively,
30 “**Section 42**”), then in accordance with the requirements, from time to time, of Section 42. For
31 purposes of this Section 9.2, “household” shall mean one or more individuals occupying a unit
32 and satisfying the standards adopted by HUD for the so-called Section 8 program under the
33 United States Housing Act of 1937, as amended, and the regulations promulgated thereunder (the
34 “**Section 8 Program**”). Notwithstanding the foregoing, a household comprised of a full-time
35 student or students shall not qualify as a “household” except as permitted under the Low-Income
36 Housing Tax Credit Program, Internal Revenue Code Section 42(I)(3)(D). A household’s annual
37 income will be the anticipated total income from all sources received by the head of the
38 household and such person’s spouse and by each additional member of the household (other than
39 children under the age of 18). Annual income shall be determined in a manner consistent with
40 the Section 8 Program.

1 If, after initial occupancy, the income of a tenant of an affordable housing unit increases, and, as
2 a result of such increase, exceeds the maximum income permitted hereunder for such a tenant,
3 Tenant shall not be in default hereunder so long as either (a) the tenant income does not exceed
4 one hundred forty percent (140%) of the maximum income permitted or (b) Tenant rents the next
5 available unit at the Premises as an affordable housing unit in conformance with the
6 Affordability Commitments, or otherwise demonstrates compliance with the Affordability
7 Commitments.

8 [replacement paragraph if project is 100% affordable: If, after initial occupancy, the income of a
9 tenant of an affordable housing unit increases and, as a result of such increase, exceeds the
10 maximum income permitted hereunder for such a tenant, the Tenant shall not be in default
11 hereunder so long as either (i) the tenant income does not exceed one hundred forty percent
12 (140%) of the maximum income permitted or (ii) if the tenant income does exceed one hundred
13 forty percent (140%) of the maximum income permitted, at the expiration of the applicable lease
14 term, the occupancy agreement of such tenant is not renewed or extended, the Tenant uses
15 diligent efforts to terminate the tenant's occupancy, and upon the unit becoming vacant, the
16 Tenant fills the vacant unit with an income eligible tenant.]

17 As a condition to occupancy, each potential tenant of a unit shall be required to sign and deliver
18 to Tenant an income certification using a form adopted for such use by Tenant and reasonably
19 approved by the Landlord.

20 The annual rental expense for each unit, including the provision of heat, electricity, water and hot
21 water, shall not exceed thirty percent (30%) of the applicable income limit for such unit, adjusted
22 for household size, assuming that a unit which does not have a separate bedroom is occupied by
23 one individual, and that a unit which has one or more separate bedrooms is occupied by 1.5
24 individuals for each separate bedroom. Notwithstanding the foregoing, the allowable rent for an
25 affordable housing unit that is a single room occupancy unit shall be seventy-five percent (75%)
26 of the allowable rent for a studio apartment. However, the maximum annual rent for any
27 affordable housing unit shall not fall below the rent level set at the time that the Premises are first
28 occupied in accordance with this Lease. Notwithstanding the foregoing, if an affordable housing
29 unit has a subsidy commitment through the Section 8 Program, or any comparable rental
30 assistance program, then the maximum rent shall be that permitted by the Section 8 Program, or
31 the comparable program.

32 Tenant shall ensure that all affordable housing units shall be of comparable quality to the other
33 units in the Premises, and, to the greatest extent practicable, shall be dispersed evenly throughout
34 the Premises. If the Improvements are comprised of more than one (1) building, each building
35 shall have a proportionate share of affordable housing units.

1 Tenant covenants and agrees to secure and maintain on file for inspection and copying by the
2 Landlord such information, reports and certifications as the Landlord may reasonably require in
3 writing in order to ensure that the Affordability Commitments are being complied with. Tenant
4 further covenants and agrees to notify the Landlord in writing if Tenant discovers non-
5 compliance with any restrictions hereunder.

6 ARTICLE 10

7 8 DAMAGE OR DESTRUCTION

9 If the whole or any part of the Premises shall be damaged or destroyed by any cause whatsoever,
10 whether insured or uninsured, at any time during the Term of this Lease, Tenant will, irrespective
11 of insurance proceeds, promptly commence to replace or repair the portion of the Premises that is
12 damaged or destroyed, and complete such repair and/or restoration with due diligence and at its
13 sole cost and expense, with such changes, alterations or modifications as are reasonably
14 determined by Tenant so long as such changes, alterations or modifications (a) do not diminish
15 the overall utility for the Permitted Uses, and (b) comply with the design criteria contained in the
16 RFP. The parties recognize that such damage or destruction may require emergency replacement
17 or repair. Tenant will be entitled to all insurance proceeds in order to effect such replacement,
18 modifications or alterations. However, if (i) Tenant reasonably determines that replacement and
19 repair of the Premises is not in furtherance of the Permitted Uses or that the continued operation
20 of the Premises after such replacement and repair in substantially the same manner as conducted
21 prior to the damage or destruction will not be economic and feasible, and (ii) the damage to or
22 destruction of the Premises was covered by such property insurance as may be required pursuant
23 to Section 7 hereof or by insurance otherwise carried by Tenant, and (iii) upon the Landlord's
24 request, Tenant demolishes any destroyed buildings and secures any damaged buildings, in each
25 case to a safe condition reasonably satisfactory to the Landlord and in compliance with Legal
26 Requirements, then Tenant may elect, within one hundred eighty (180) days after the date of
27 such casualty, not to repair or replace the portion of the Premises damaged and may terminate
28 this Lease by giving notice to the Landlord (the "**Casualty Termination Notice**"). After
29 delivery of the Casualty Termination Notice to the Landlord, (i) Tenant will vacate the Premises
30 as soon as reasonably possible; and (ii) assign to the Landlord all of its right, title and interest in
31 and to any and all insurance proceeds related to such casualty. Notwithstanding the foregoing,
32 however, the Landlord shall not share in any casualty award with respect to the Improvements
33 unless and until the unpaid balance of the Permitted Institutional Mortgage (as defined in Section
34 13.2 below) on the Premises, if any, is paid in full, all such casualty proceeds being used first to
35 pay off and discharge such Permitted Institutional Mortgage. Tenant's obligations pursuant to
36 Section 10.1(iii) shall survive the termination of the Lease.

37 ARTICLE 11

38 39 TAKING

40 11.1 Award. In the event that the Premises, or any part thereof, shall be taken in
41 condemnation proceedings or by exercise of any right of eminent domain or by agreement
42 between the Landlord and Tenant and those authorized to exercise such right (any such matters
43 being herein referred as a "**Taking**"), the Landlord and Tenant shall have the right to participate

1 in any Taking proceedings or agreement for the purpose of protecting their interests hereunder.
2 Each party so participating shall pay its own expenses therein.

3 11.2 Termination. (a) If at any time during the Term of this Lease there shall be a
4 Taking of the whole or substantially all of the Premises, this Lease shall terminate and expire on
5 the earlier of (i) the date upon which the condemning authority takes possession of the real estate
6 subject to the Taking; or (ii) the date title to the real estate is vested in the condemning authority.
7 Rent hereunder shall be paid to the date of such Taking. For the purpose of this Article,
8 “**substantially all of the Premises**” shall be deemed to have been taken if the untaken part of the
9 Premises shall be insufficient for the restoration of the Improvements such as to allow the
10 economic and feasible operation thereof by Tenant. Tenant’s interest in any Taking award will
11 equal the value to Tenant of the remaining Term of this Lease, the value to Tenant of the use and
12 enjoyment of the Improvements, and Tenant’s relocation expenses insofar as relocation expenses
13 are paid by the Taking authority (collectively, the “**Tenant’s Share**”). The Landlord’s interest in
14 any taking by Condemnation will equal the value of its fee interest plus the remaining interest in
15 the Improvements (the “**Landlord’s Share**”). All awards from the Taking will be divided
16 between Tenant and the Landlord in the proportion that Tenant’s Share bears to the Landlord’s
17 Share. Notwithstanding the foregoing, however, the Landlord shall not share in any Taking
18 award with respect to the Improvements unless and until the unpaid balance of the Permitted
19 Institutional Mortgage (as defined in Section 13.2 below) on the Premises, if any, is paid in full,
20 all such Taking proceeds being used first to pay off and discharge such Permitted Institutional
21 Mortgage.

22 (b) No such termination of this Lease under this Section 11 shall release Tenant from
23 any obligation hereunder for Rent accrued or payable for or during any period prior to the
24 effective date of such termination, and any prepaid rent and insurance premiums beyond the
25 effective date of such termination shall be adjusted.

26 11.3 Insubstantial Taking. If a portion of the Premises is taken and Section 11.2 does
27 not apply, then this Lease will automatically terminate on the date of the Taking only as to the
28 portion of the Premises Taken and this Lease will continue in full force and effect with respect to
29 the remaining portion of the Premises with Base Rent proportionately reduced. In such event,
30 any partial Taking award shall be paid first to the Tenant in an amount equal to the greater of (i)
31 the unamortized cost of any Improvements constructed by Tenant on the portion of the Premises
32 subject to the Taking; or (ii) the amount necessary to discharge or, if such amount is insufficient,
33 to reduce any Permitted Institutional Mortgage. The balance, if any, of the Taking award shall
34 be paid to the Landlord.

35 11.4 Temporary Taking. If the whole or any part of the Premises shall be the subject
36 of a temporary Taking of ninety (90) days or less, this Lease shall remain in full force, and
37 Tenant shall be entitled to receive the entirety of any award so made for the period of the
38 temporary Taking which is within the Term.

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ARTICLE 12

ENVIRONMENTAL

DRAFTING NOTE RE: ENVIRONMENTAL RISKS

The developer will not want to take on a large risk concerning environmental matters. The Landlord should conduct environmental testing, or allow the developer to conduct such testing, to determine what types of hazardous materials, if any, are located on the property. The environmental testing will establish a baseline, which may be used to determine responsibility for future remediation that may be required by law. The allocation of environmental risk between the Landlord and the developer must be clearly articulated.

12.1 Environmental Laws Defined. “**Environmental Laws**” means, collectively, any federal, state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. (“**CERCLA**”); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“**RCRA**”); the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq. (“**SARA**”); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. (“**TSCA**”); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Massachusetts Hazardous Waste Management Act, Mass.Gen.L. c. 21C §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass.Gen.L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, Mass.Gen.L. c. 21I §§ 1 et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, Mass.Gen.L. c. 21J §§ 1 et seq.; or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (as defined in Section 12.4 below) or providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

12.2 Tenant’s Environmental Representations, Warranties and Covenants. Tenant hereby represents, warrants and covenants as follows:

1 (a) Except as may be permitted by and only in accordance with Environmental Laws,
2 Tenant shall not allow any Hazardous Materials (as defined in Section 12.4 below) to exist or be
3 stored, located, discharged, possessed, managed, processed, or otherwise handled on the
4 Premises, and shall strictly comply with all Environmental Laws affecting the Premises.
5 Without limiting the generality of the foregoing, Tenant is not, and will not become, involved in
6 operations at the Premises involving Hazardous Materials, except as expressly permitted by
7 Legal Requirements.

8 (b) No activity shall be undertaken on the Premises by Tenant which would cause (i)
9 the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined
10 under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into
11 any watercourse, surface or subsurface water or wetlands, or the discharge into the atmosphere of
12 any Hazardous Materials in each case requiring a permit under any Environmental Laws and for
13 which no such permit has been issued.

14 (c) Tenant shall, with all due diligence, at its own cost and expense and in accordance
15 with Environmental Laws (and in all events in a manner reasonably satisfactory to the Landlord),
16 take all actions (to the extent and at the time or from time to time) as shall be necessary or
17 appropriate for the remediation of all releases of Hazardous Materials at or from the Premises
18 including all removal, containment and remedial actions. Tenant shall pay or cause to be paid at
19 no expense to the Landlord all clean-up, administrative, and enforcement costs of applicable
20 government agencies or the parties protected by such Environmental Laws which may be
21 asserted against the Premises.

22 (d) Tenant, upon execution of this Lease, shall furnish the Landlord with a copy of
23 any Material Safety Data Sheets and any updates thereto or any list of substances listed on the
24 so-called Massachusetts Substance List, established pursuant to Mass. Gen. L. c. 111F which
25 Tenant is required to prepare, file or maintain pursuant to said chapter for any substances used or
26 stored on the Premises. If said Material Safety Data Sheets or lists should be changed or updated
27 during the Term of this Lease, Tenant shall promptly furnish a copy of such updated or changed
28 Material Safety Data Sheets or list to the Landlord.

29 12.3 The Landlord's Environmental Representations, Warranties and Covenants. The
30 Landlord hereby represents, warrants and covenants as follows:

31 (a) Except for Existing Contamination (hereinafter defined), neither the Landlord nor,
32 to the Landlord's knowledge, the Premises (i) has received notice of any private or governmental
33 lien or judicial or administrative notice, order or action relating to Hazardous Materials or
34 environmental liabilities or violations with respect to the Premises, or (ii) is in, or with any
35 applicable notice or lapse of time, or failure to take certain curative or remedial actions, will be
36 in, either direct or indirect violation of any Environmental Laws. For purposes hereof, "**Existing**
37 **Contamination**" shall mean any and all pollution or contamination caused by any Hazardous
38 Material that previously existed or exists in, or was released onto the Premises as of the
39 Commencement Date, the types and quantities of which have been disclosed in the
40 environmental assessment reports described in Exhibit D.

1 (b) No activity shall be undertaken on the Premises by the Landlord which would
2 cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility
3 as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous
4 Materials into any watercourse, surface or subsurface water or wetlands, or the discharge into the
5 atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental
6 Laws and for which no such permit has been issued.

7 12.4 Hazardous Materials Defined. For purposes of this Lease, “**Hazardous**
8 **Materials**” shall mean, but shall not be limited to, any oil, petroleum product and any hazardous
9 or toxic waste or substance, any substance which because of its quantitative concentration,
10 chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or
11 may reasonably be expected to constitute or contribute to a danger or hazard to public health,
12 safety or welfare or to the environment, including without limitation any asbestos (whether or
13 not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and
14 chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and
15 compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical,
16 biological and radioactive wastes, or any other similar materials which are included under or
17 regulated by any Environmental Law.

18 12.5 Notices. (a) Tenant shall provide the Landlord with copies of any notices of
19 releases of Hazardous Materials which are given by or on behalf of Tenant to any federal, state
20 or local agencies or authorities with respect to the Premises. Such copies shall be sent to the
21 Landlord concurrently with mailing or delivery to the governmental agencies or authorities.
22 Tenant also shall provide the Landlord with copies of any notices of responsibility or any other
23 notices received by or on behalf of Tenant from any such agencies or authorities concerning any
24 non-compliance with Environmental Laws on or about the Premises, including but not limited to
25 notices regarding Hazardous Materials or substances located on or about the Premises. In
26 addition, in connection with any litigation or threat of litigation affecting the Premises, Tenant
27 shall deliver to the Landlord any documentation or records as the Landlord may reasonably
28 request and which are in Tenant’s possession and may be lawfully delivered to the Landlord, and
29 the Landlord shall deliver to Tenant any documentation or records as Tenant may reasonably
30 request and which are in the Landlord’s possession and may be lawfully delivered to Tenant.

31 (b) Tenant or the Landlord shall immediately notify the other party in writing should
32 Tenant or the Landlord become aware of (iii) any release or threatened release of Hazardous
33 Materials or the occurrence of any other environmental problem or liability with respect to the
34 Premises or any real property adjoining or in the vicinity of the Premises or such other property
35 which could subject the Landlord, Tenant or the Premises to a Claim under any Environmental
36 Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under
37 any Environmental Laws; (iv) any lien filed, action taken or notice given of the nature described
38 in Sections 12.2(b) or 12.3(b) above; (v) any notice given to Tenant from any occupant of the
39 Premises or any notice from any governmental authority with respect to any release or threatened
40 release of Hazardous Materials; or (vi) the commencement of any litigation or any information
41 relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous
42 Materials or other environmental contamination, liability or problem with respect to or arising
43 out of or in connection with the Premises.

1 12.6 Environmental Indemnity. Tenant hereby presently, unconditionally, irrevocably
2 and absolutely agrees to pay, indemnify, defend with counsel acceptable to the Landlord and
3 save harmless the Landlord Parties for, from and against any and all Claims (including, without
4 limitation attorneys’ and experts’ fees and expenses, clean-up costs, waste disposal costs and
5 those costs, expenses, penalties and fines within the meaning of CERCLA), of any kind or nature
6 whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against
7 any of the Landlord Parties and arising from any violation or alleged violation of Environmental
8 Laws, environmental problem or other environmental matter described herein, relating to the
9 Premises, or as a consequence of any of Tenant’s or the Landlord’s interest in or operation of the
10 Premises, including, without limitation, matters arising out of any breach of Tenant’s covenants,
11 representations and warranties. Tenant does further agree and covenant that except as otherwise
12 set forth in this Lease, none of the Landlord Parties shall assume any liability or obligation for
13 loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or
14 other wastes or materials on or relating to the Premises regardless of any inspections or other
15 actions made or taken by the Landlord on such property or as a result of any re-entry by the
16 Landlord onto the Premises or otherwise. All warranties, representations and obligations set
17 forth herein shall be deemed to be continuing and shall survive termination of this Lease. In
18 addition, the covenants and indemnities of Tenant contained herein shall survive any exercise of
19 any remedy by the Landlord under the Lease. Tenant agrees that the indemnification granted
20 herein may be enforced by any of the Landlord Parties; provided, however, that nothing
21 contained herein shall prevent the Landlord from exercising any other rights under the Lease.

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ARTICLE 13

TRANSFER OF TENANT’S INTEREST

25 13.1 Assignment by Tenant. Tenant will not assign this Lease or any interest in this
26 Lease or sublet or permit any other person to occupy or use the Premises or any portion thereof
27 without the prior written consent of the Landlord, which consent shall not be unreasonably
28 withheld, delayed or conditioned provided such assignee or transferee shall (i) have a good
29 reputation in the community, and (ii) agree to use the Premises for the Permitted Uses. The
30 foregoing prohibition on transfers shall include any reorganization, dissolution or merger of
31 Tenant or its general partner, whether by operation of law or otherwise, the admission of any
32 new general partner or the withdrawal of its current general partner, a transfer of ten percent
33 (10%) or more of the ownership interests in Tenant or any similar transaction. Any such consent
34 shall not be unreasonably withheld, conditioned or delayed.

35 13.2 Leasehold Mortgages. (a) Notwithstanding anything to the contrary contained in
36 this Lease, Tenant may, upon prior written notice to the Landlord, from time to time, encumber,
37 hypothecate or mortgage its interest in the Premises with one or more mortgages, assignments of
38 leasehold interest or any other security instruments in favor of an institutional lender or lenders
39 as partial security for a loan or loans (a **“Permitted Institutional Mortgage”** and the holder of
40 such Permitted Institutional Mortgage, a **“Permitted Institutional Mortgagee”**). Each such
41 Permitted Institutional Mortgage shall be expressly subject to the terms and conditions of this
42 Lease. Tenant shall promptly deliver to the Landlord a true copy of the Permitted Institutional
43 Mortgage and any assignment thereof. Tenant shall notify the Landlord of the address of the

1 Permitted Institutional Mortgagee to which notices may be sent. The Landlord and Tenant
2 hereby agree that there shall be no cancellation, surrender or any modification of this Lease that
3 would adversely affect such Permitted Institutional Mortgagee's rights hereunder without the
4 prior consent in writing of the Permitted Institutional Mortgagee.

5 (b) Permitted Institutional Mortgages not Assignment. For the purpose of this
6 Section 13, the making of a Permitted Institutional Mortgage shall not be deemed to constitute an
7 assignment or transfer of this Lease, nor shall any Permitted Institutional Mortgagee, as such, be
8 deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to
9 require such Permitted Institutional Mortgagee, as such, to assume the performance of any of the
10 terms, covenants or conditions on the part of Tenant to be performed hereunder; but the
11 purchaser at any sale of the leasehold interest created by this Lease in any proceedings for the
12 foreclosure of any Permitted Institutional Mortgage, or the assignee or transferee of such
13 leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any
14 Permitted Institutional Mortgage, shall be deemed to be an assignee or transferee (without
15 requiring the consent of the Landlord pursuant to Section 13.1) and shall be deemed to have
16 assumed the performance of all of the terms, covenants and conditions on the part of Tenant to
17 be performed hereunder from and after the date of such purchase and assignment, and shall
18 execute a written instrument assuming Tenant's obligations hereunder promptly upon request by
19 the Landlord.

20 (c) Permitted Institutional Mortgagee Cure Rights. In the event of any default in the
21 payment of money, Permitted Institutional Mortgagee, without being under any obligation to do
22 so, shall have the right to cure such monetary default within ninety (90) days after the giving of
23 notice to it by the Landlord. In the case of any default by the Tenant other than in the payment
24 of money hereunder, the Landlord will take no action pursuant to Article 14 hereunder by reason
25 of any such default without first giving to the Permitted Institutional Mortgagee notice thereof
26 simultaneously with notice given to Tenant, and the right, but not the obligation, for a period of
27 one hundred twenty (120) days after notice of such Tenant default, to cure such default, or, if
28 such default cannot reasonably be cured within such one hundred and twenty (120) days, such
29 longer period as is required to cure such default, including such period of time as may reasonably
30 be required for Permitted Institutional Mortgagee to obtain possession of the Premises or title to
31 the Tenant's leasehold estate created hereby, provided, that the Permitted Institutional Mortgagee
32 shall have commenced cure or appropriate measures to obtain possession of the Premises or title
33 to the Tenant's leasehold estate created hereby, within such one hundred and twenty (120) day
34 period and thereafter continues diligently to effect such cure, or obtain such possession or title.
35 The Permitted Institutional Mortgagee shall not be required to continue such foreclosure
36 proceedings if the default shall be cured by Tenant; provided, further, that nothing herein shall
37 preclude the Landlord from exercising any rights or remedies under this Lease with respect to
38 any other default by Tenant during any period of such forbearance, provided the exercise of such
39 rights or remedies are subject to the same cure rights of the Permitted Institutional Mortgagee as
40 set forth herein. Upon the expiration of any applicable cure period, the Landlord shall notify the
41 Permitted Institutional Mortgagee whether or not Tenant has effectuated a cure within said cure
42 period. The provisions of this Section 13.2(c) are conditioned on the following provisions:

1 (i) Acquisition of Possession. The Permitted Institutional Mortgagee shall,
2 within sixty (60) days after notice of such Tenant non-monetary default, notify the Landlord of
3 its election to proceed with due diligence promptly to acquire possession of the Premises or to
4 foreclose the Permitted Institutional Mortgage or otherwise to obtain ownership of Tenant's
5 interest in this Lease. Such notice from the Permitted Institutional Mortgagee shall be
6 accompanied by an instrument in writing wherein such Permitted Institutional Mortgagee agrees
7 that:

8 (A) during the period that such Permitted Mortgagee shall be in
9 possession of the Premises and so long as it remains in possession and/or during the pendency of
10 any such foreclosure or other proceedings and until the interest of Tenant in this Lease shall
11 terminate or such proceeding shall be discontinued, it will pay or cause to be paid to the
12 Landlord all sums from time to time becoming due hereunder during such period; and

13 (B) if delivery of possession of the Premises shall be made to such
14 Permitted Institutional Mortgagee, whether voluntarily or pursuant to any foreclosure or other
15 proceedings or otherwise, such Permitted Institutional Mortgagee shall, promptly following such
16 delivery of possession, perform all the covenants and agreements thereafter arising and herein
17 contained on Tenant's part to be performed (including, but not limited to the Affordability
18 Commitments and the payment of Rent and Additional Rent) except such covenants and
19 agreements which cannot with the exercise of due diligence be performed by such Permitted
20 Institutional Mortgagee. Nothing in this subclause (B) shall be construed to require such
21 Permitted Institutional Mortgagee to perform any of the Tenant's obligations hereunder accruing
22 after such Permitted Institutional Mortgagee ceases to be in possession.

23 (d) Additional Rights of Permitted Institutional Mortgagee and Landlord's
24 Covenants. In addition to the matters set forth above, the Landlord agrees, for so long as a
25 Permitted Institutional Mortgage is outstanding, as follows:

26 (i) Notwithstanding anything to the contrary contained in this Lease, in the
27 event that the Landlord would otherwise have the right to terminate this Lease by reason of any
28 Event of Default by Tenant which cannot be cured by a Permitted Institutional Mortgagee, e.g.,
29 an Event of Default under Section 14.1(e), or if a Permitted Institutional Mortgagee, its
30 successors or assigns shall acquire Tenant's interest in this Lease, the Landlord will enter into an
31 amendment or other agreement naming the Permitted Institutional Mortgagee or its nominee as
32 Tenant hereunder for the remainder of the Term effective as of the date of such termination,
33 upon the same terms, provisions, covenants, and agreements as herein contained, provided the
34 Permitted Institutional Mortgagee or its nominee shall make written request upon the Landlord
35 for such amendment or other agreement within sixty (60) days after the later of (a) the date of
36 such termination or acquisition, or (b) date of receipt of notice of the termination;

37 (ii) The Landlord and Tenant shall not (i) consent to any action taken or to be
38 taken, the result of which would diminish or impair the priority of a Permitted Institutional
39 Mortgage; or (ii) subordinate or consent to the subordination of this Lease to any subsequent,
40 underlying lease or mortgage. If this Lease is rejected or disaffirmed by the Landlord or Tenant
41 pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law, the Landlord

1 shall offer the Permitted Institutional Mortgagee a new lease upon the same terms and conditions
2 within ten (10) days after the date of such rejection; and

3 (iii) The fee title to the Premises and the leasehold estate of Tenant therein
4 shall not merge but shall remain separate and distinct notwithstanding the acquisition of said fee
5 title by the Landlord, Tenant, or any third party by purchase or otherwise.

6 (iv) Notwithstanding anything to the contrary contained in this lease, in the
7 event that a Permitted Institutional Mortgagee, its nominee successors or assigns, shall acquire
8 Tenant's interest in this Lease, (whether voluntarily or pursuant to any foreclosure or other
9 proceedings or otherwise, or as purchaser at any sale of the leasehold interest created by this
10 Lease or as assignee or transferee of such leasehold interest under any instrument of assignment
11 or transfer in lieu of foreclosure) said Permitted Institutional Mortgagee or its nominee shall not
12 be required to perform the Affordability Commitments if it reasonably determines that
13 performance of some or all of the Affordability Commitments is financially infeasible, as defined
14 below, in which event the Landlord shall enter into an amendment or other agreement adjusting
15 or eliminating the Affordability Commitment to the extent deemed necessary by the Permitting
16 Institutional Mortgagee. In such case, said Permitted Mortgagee or its nominee shall nevertheless
17 use its best efforts to maintain as affordable as many units of the Premises as it economically
18 feasible.

19 "Financially infeasible" shall mean that, on an annualized basis, the rent and other income from
20 the Premises, including rents (or proposed rents) paid by the occupants, rental subsidies and
21 utility charges, is, or is reasonably projected to be, less than the reasonable expenses required for
22 the Tenant to maintain and operate the Premises in the condition required by this Lease and by
23 law, including, without limitation, debt service of mortgages approved by the Landlord, taxes,
24 repairs and maintenance, necessary improvements amortized over the expected useful life of
25 such improvement, management services and funding of reasonable reserves and all other costs
26 necessary for Tenant to perform its other obligations under this Lease.

27 ARTICLE 14

28 TERMINATION AND DEFAULT

29
30 14.1 Events of Default. Each of the following events shall be deemed an "Event of
31 Default" hereunder:

32 (a) if Tenant shall fail to pay, as and when due, any payment of Rent or other sums
33 payable under this Lease, and such failure shall continue for a period of sixty (60) days after
34 notice from the Landlord to Tenant;

35 (b) if Tenant shall fail to comply with the provisions of Sections 8.2 or 9.2 hereof;

36 (c) If Tenant shall fail to maintain any insurance required to be maintained by Tenant
37 hereunder;

1 (d) if Tenant shall fail to perform or comply with any other of the agreements, terms,
2 covenants or conditions in this Lease, other than those referred to in Subsections (a) - (c) of this
3 Section 14.1, for a period of ninety (90) days after notice from the Landlord to Tenant specifying
4 the items in default, or in the case of a default or a contingency which cannot with due diligence
5 be cured within such ninety (90) day period, within such additional time reasonably necessary
6 provided Tenant commences to cure the same within such 90-day period and thereafter
7 prosecutes the curing of such default with diligence; and

8 (e) if Tenant shall initiate the appointment of a receiver to take possession of all or
9 any portion of the Premises or Tenant's leasehold estate for whatever reason, or Tenant shall
10 make an assignment for the benefit of creditors, or Tenant shall initiate voluntary proceedings
11 under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be
12 initiated against Tenant any such proceedings which are not dismissed or stayed on appeal or
13 otherwise within ninety (90) days, or if, within ninety (90) days after the expiration of any such
14 stay, such appointment shall not be vacated or stayed on appeal.

15 14.2 Remedies. Upon an Event of Default, the Landlord at any time thereafter may
16 give written notice to Tenant specifying such Event or Events of Default and stating that this
17 Lease and the Term hereby demised shall expire and terminate on the date specified in such
18 notice, which shall be at least ninety (90) days after the giving of such notice. Upon the date
19 specified in such notice, this Lease and the Term hereby demised and all rights of Tenant under
20 this Lease shall expire and terminate (unless prior to the date specified for termination the Event
21 or Events of Default shall have been cured, in which case this Lease shall remain in full force
22 and effect), and Tenant shall remain liable as hereinafter provided and all Improvements shall
23 become the property of the Landlord without the necessity of any deed or conveyance from
24 Tenant to the Landlord. Tenant agrees upon request of the Landlord to immediately execute and
25 deliver to the Landlord any deeds, releases or other documents deemed necessary by the
26 Landlord to evidence the vesting in the Landlord of the ownership of all Improvements. Upon
27 such termination, the Landlord may re-enter the Premises and dispossess Tenant and anyone
28 claiming by, through or under Tenant by summary proceedings or other lawful process.

29 14.3 Landlord's Right To Perform Tenant's Covenants. (a) Upon an Event of Default,
30 the Landlord may, but shall be under no obligation to, cure such default. The Landlord may
31 enter upon the Premises (after five (5) days' written notice to Tenant except in the event of
32 emergency) for any such purpose, and take all such action thereon, as may be necessary.

33 (b) The Landlord shall not be liable for inconvenience, annoyance, disturbance or
34 other damage to Tenant or any operator or occupant thereof by reason of making such repairs or
35 the performance of any such work, or on account of bringing materials, tools, supplies and
36 equipment onto the Premises during the course thereof, and the obligations of Tenant under this
37 Lease shall not be affected thereby. The Landlord shall use commercially reasonable efforts to
38 minimize interference with or disruption of Tenant or Tenant's business, occupants, operators
39 and or lessees.

40 (c) All reasonable sums so paid by the Landlord and all reasonable costs and
41 expenses incurred by the Landlord, including reasonable attorneys' fees and expenses, in
42 connection with the performance of any such act, together with interest at the Default Rate from

1 the date of such payment or incurrence by the Landlord of such cost and expense until the date
2 paid in full, shall be paid by Tenant to the Landlord, as Additional Rent, on demand. If the
3 Landlord shall exercise its rights under Section 14.3(a) to cure a default of Tenant, Tenant shall
4 not be relieved from the obligation to make such payment or perform such act in the future, and
5 the Landlord shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail
6 to pay such obligation to the Landlord upon demand. All costs incurred by the Landlord
7 hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear
8 error, or fraud.

9 14.4 No Waiver. No failure by either the Landlord or Tenant to insist upon the strict
10 performance of any agreement, term, covenant or condition hereof or to exercise any right or
11 remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the
12 continuance of any such breach, shall constitute a waiver of any such breach or of such
13 agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be
14 performed or complied with by either the Landlord or Tenant, and no breach thereof, shall be
15 waived, altered or modified except by a written instrument executed by the other party. No
16 waiver by the Landlord or Tenant of any breach shall affect or alter this Lease, but each and
17 every agreement, term, covenant and condition hereof shall continue in full force and effect with
18 respect to any other then existing or subsequent breach thereof.

19 14.5 Injunctive Relief. In the event of any breach or threatened breach by Tenant of
20 any of the agreements, terms, covenants or conditions contained in this Lease, the Landlord shall
21 be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right
22 and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary
23 proceedings, and other remedies were not provided for in this Lease.

24 14.6 Remedies Cumulative. Each right and remedy provided for in this Lease shall be
25 cumulative and shall be in addition to every other right or remedy provided for in this Lease or
26 now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or
27 beginning of the exercise by the Landlord or Tenant of any one or more of the rights or remedies
28 provided for in this Lease or now or hereafter existing at law or in equity or by statute or
29 otherwise shall not preclude the simultaneous or later exercise by the party in question of any or
30 all other rights or remedies provided for in this Lease or now or hereafter existing at law or in
31 equity or by statute or otherwise.

32 **ARTICLE 15**

33 **SURRENDER; HOLD-OVER**

34
35 15.1 Surrender. (a) Tenant shall on the last day of the Term, or upon any earlier
36 termination of this Lease, quit and peacefully surrender and deliver up the Premises, subject to
37 the rights of a Permitted Institutional Mortgagee hereunder, to the possession and use of the
38 Landlord without delay [and in good order, condition and repair (excepting only reasonable wear
39 and tear and damage from a Taking or from a fire or other casualty after the last repair,
40 replacement, restoration or renewal required to be made by Tenant, all as provided under this
41 Lease)]. Tenant, at Tenant's sole cost and expense shall have the right, but not the obligation, to
42 remove the Initial Improvements from the Premises. The Premises shall be surrendered free and

1 clear of all liens and encumbrances other than those existing at the commencement of the Term,
2 those permitted under this Lease or created or suffered by the Landlord and shall be surrendered
3 without any payment by the Landlord on account of the Improvements. Upon or at any time
4 after the expiration or earlier termination of this Lease, the Landlord shall have, hold and enjoy
5 the Premises and the right to receive all income from the same.

DRAFTING NOTE: TENANT’S RIGHT TO REMOVE IMPROVEMENT

The DHCD Memo cautions that the obligation of the Tenant with respect to removal of the improvements at the end of the term could be a factor in determining if the lease constitutes a disposition of the property leading to unintended consequences in the event of an early termination of the lease. The alternate language in Article 15 of this Lease gives an option to the Tenant, but not the obligation, to remove the Initial Improvements, which is the buildout undertaken by the Tenant. At the end of the term, the Improvements will be fully depreciated. Upon an earlier termination, either the municipality or the housing authority may obtain possession of the Premises and the Initial Improvements.

With respect to the point raised in the DHCD Memo regarding ownership of the Improvements following termination, it is essential to recall that the intent of the construction of the project by the Tenant was not to deliver the possession of these Improvements to the public entity. Rather, only through a failure of the development plan or the operations of the development, a termination of the Tenant’s rights resulted thereby forcing the Tenant out of the property. Such an event was not anticipated by the public entity, and therefore, should not implicate the public bidding laws. It should also be noted that giving the Tenant rights in the Initial Improvements, as suggested in the DHCD Memo in the event of an early termination could result in additional leverage for the Tenant in the event of a default by the Tenant and expose the Landlord to greater risk than ought to be borne by the Landlord in this type of transaction.

6
7 (b) Tenant shall remove from the Premises all personal property within thirty (30) days
8 after the termination of this Lease and shall repair at Tenant’s sole cost any damage to the
9 Premises caused by such removal, unless the Landlord permits such property to remain.

10 15.2 Holdover. If Tenant or any party claiming by, through or under Tenant, retains
11 possession of the Premises or any part thereof after the expiration or earlier termination of this
12 Lease, then the Landlord may, at its option, serve written notice upon Tenant that such holding
13 over constitutes (i) an Event of Default under the Lease, or (ii) a month-to-month tenancy, upon
14 the terms and conditions set forth in this Lease, or (iii) the creation of a tenancy-at-sufferance, in
15 any case upon the terms and conditions set forth in this Lease. Tenant shall also pay to the
16 Landlord all damages sustained by the Landlord resulting from retention of possession by

1 Tenant. The provisions of this Section 15.2 shall not constitute a waiver by the Landlord of any
2 right of re-entry as set forth in this Lease; nor shall receipt of any Rent or any other act in
3 apparent affirmance of the tenancy operate as a waiver of the Landlord's right to terminate this
4 Lease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be
5 performed.

6 **ARTICLE 16**

7 **ESTOPPEL CERTIFICATES**

8 The Landlord and Tenant promptly shall execute and deliver to each other or to any Permitted
9 Institutional Mortgagee, within fifteen (15) business days after request, a certificate as to matters
10 customarily requested in connection with estoppel certificates, including, without limitation,
11 whether or not (i) the Lease is in full force and effect, (ii) the Lease has been modified or
12 amended in any respect and describing such modifications or amendments, if any, and (iii) there
13 are any existing defaults thereunder to the knowledge of the party executing the certificate, and
14 specifying the nature of such defaults, if any. Any such certificate may be relied upon by the
15 Landlord, Tenant, any Permitted Institutional Mortgagee, and any transferee or assignee of a
16 Permitted Institutional Mortgagee.

17 **ARTICLE 17**

18 **NON-DISCRIMINATION COVENANTS**

19
20 17.1 Non-Discrimination. With respect to its exercise of all rights and privileges
21 granted herein, Tenant agrees that Tenant, its successors in interest, sublessees, licensees,
22 operators, and assigns shall not discriminate against any person, employee, or applicant for
23 employment because of race, color, creed, religion, national origin, age, sex, sexual orientation,
24 marital status, handicap, veteran status or any other basis prohibited by law in Tenant's use of the
25 Premises, including the hiring and discharging of employees, the provision or use of services,
26 and the selection of suppliers and contractors.

27 17.2 Non-Compliance. Tenant shall defend, indemnify and hold the Landlord Parties
28 harmless from and against any and all Claims of third persons resulting from Tenant's non-
29 compliance with any of the provisions of this Article 17.

30 **ARTICLE 18**

31 **MISCELLANEOUS**

32
33 18.1 Amendments to Lease. This Lease may not be amended, modified, supplemented
34 or extended except by a written instrument executed by the Landlord and Tenant.

35 18.2 Notices. Any and all notices, demands, requests, submissions, approvals,
36 consents, disapprovals, objections, offers or other communications or documents required to be
37 given, delivered or served, or which may be given, delivered or served, under or by the terms and
38 provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be delivered

1 by hand, nationally recognized overnight express commercial service such as “Federal Express”
2 (in either case with evidence of delivery or refusal thereof) or by registered or certified mail,
3 return receipt requested, addressed if to Tenant to:

4
5 with a copy to:

6
7

8 or to such other address as Tenant may from time to time designate by written notice to the
9 Landlord, or if to the Landlord addressed to:

10
11 with a copy to:

12
13

14 or to such other address as the Landlord may from time to time designate by written notice to
15 Tenant, or to such other agent or agents as may be designated in writing by either party. The
16 earlier of: (i) the date of delivery by overnight express commercial service, or (ii) the date of
17 delivery or upon which delivery was refused as indicated on the registered or certified mail
18 return receipt shall be deemed to be the date such notice or other submission was given.

19 18.3 Severability. If any term or provision of this Lease or the application thereof to
20 any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of
21 this Lease, or the application of such term or provision to persons or circumstances other than
22 those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term
23 and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

24 18.4 WAIVER. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY
25 AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR
26 THEIR SUCCESSORS OR ASSIGNS UNDER OR CONNECTED WITH THIS LEASE OR
27 ANY OF ITS PROVISIONS, ANY NEGOTIATIONS IN CONNECTION THEREWITH, OR
28 TENANT’S USE OR OCCUPATION OF THE PREMISES.

29 18.5 Quiet Enjoyment. Tenant, upon paying the Rent and other charges herein
30 provided for and observing and keeping all covenants, agreements and conditions of this Lease
31 on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease
32 without hindrance by anyone claiming by, through or under the Landlord, subject, however, to
33 the exceptions, reservations and conditions of this Lease and matters of record. The foregoing
34 shall not create any liability on the part of the Landlord for any defects in or encumbrances on
35 the Landlord’s title existing as of the date hereof.

1 18.6 Integration. All prior understandings and agreements between the parties with
2 respect to this Lease are merged within this Lease, which alone fully and completely sets forth
3 the understanding of the parties.

4 18.7 Bind and Inure. The covenants and agreements herein contained shall bind and
5 inure to the benefit of the Landlord, its successors and assigns, and Tenant, its successors and
6 assigns.

7 18.8 Notice of Lease. The Landlord and Tenant mutually agree to execute herewith, in
8 triplicate, a Notice of Lease in recordable form with respect to this Lease, which shall be
9 recorded forthwith with the <> District Registry of Deeds, and agree to execute, upon
10 termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable
11 form for recording with said Registry of Deeds.

12 18.9 Enforcement of the Landlord's Liability. Anything contained in this Lease to the
13 contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, the
14 Landlord's liability under this Lease shall be enforceable only out of the Landlord's interest in
15 the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment
16 against, the Landlord, nor shall there be any personal liability on the part of the Landlord or any
17 member of its board of directors, or any officer or employee of the Landlord, with respect to any
18 obligations to be performed hereunder. Without limitation of the foregoing, the Landlord shall
19 not be liable for any loss, damage or injury of whatever kind caused by, resulting from, or in
20 connection with (i) the supply or interruption of water, gas, electric current, oil or any other
21 utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility
22 line or subsurface area or from any part of the Premises, or (iii) other leakage from pipes,
23 appliances, sewer or plumbing works therein or from any other place. In no event shall the
24 Landlord be liable to Tenant for any indirect, special or consequential or punitive damages or
25 loss of profits or business income arising out of or in connection with this Lease.

26 18.10 No Merger. There shall be no merger of this Lease or of the leasehold estate
27 hereby created with the fee estate in the Premises by reason of the fact that the Landlord may
28 acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or
29 in such leasehold estate, unless the Landlord executes and records an instrument affirmatively
30 electing otherwise.

31 18.11 Captions. The captions of this Lease are for convenience and reference only and
32 in no way define, limit or describe the scope or intent of this Lease nor in any way affect this
33 Lease.

34 18.12 Table of Contents. The Table of Contents preceding this Lease but under the
35 same cover is for the purpose of convenience and reference only and is not to be deemed or
36 construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

37 18.13 Massachusetts Law Governs. This Lease shall be governed exclusively by, and
38 construed in accordance with, the laws of the Commonwealth of Massachusetts.

39 18.14 Time of the Essence. Time shall be of the essence hereof.

1 EXECUTED as of the date first set forth above.

2 LANDLORD:

3 <>

4

5

6 _____
By:

7 Its:

8

9 TENANT:

10 <>

11

12 _____

13 By:

14 Its:

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20 Exhibits

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22 Exhibit A – Legal Description of Premises

23 Exhibit B – Plot Plan of Premises

24 Exhibit C – Schematic Design Plans

25 Exhibit D – Environmental Reports

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Exhibit A

LEGAL DESCRIPTION OF PREMISES

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Exhibit B

PLOT PLAN OF PREMISES

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Exhibit C

SCHEMATIC DESIGN PLANS

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Exhibit D

ENVIRONMENTAL REPORTS