



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of February 12, 2011**

DATE: January 21, 2011

SUBJECT: Approval of a Resubdivision of County Property Located at 4975 Columbia Pike, Arlington, Virginia, Known as the Arlington Mill Property, Arlington County, Virginia (RPC No. 22001004); and Adoption of a Resolution by the County Board of Arlington County, Virginia Approving an Option to Ground Lease Parcel A, Created by Such Resubdivision, Between the County Board of Arlington County, Virginia and the Arlington Mill Limited Partnership.

C. M. RECOMMENDATION:

1. Approve the resubdivision of the County's Arlington Mill property in accordance with the plat attached as "Exhibit A";
2. Adopt the attached Resolution (attached as "Exhibit B") approving an Option to Ground Lease of Parcel A (attached as "Exhibit C"), created by such resubdivision, between the County Board of Arlington County, Virginia and the Arlington Mill Limited Partnership; and
3. Authorize the Real Estate Bureau Chief, or his designee, to execute, on behalf of the County Board, the Option to Ground Lease and all related documents, including, without limitation, deeds or other instruments necessary to resubdivide the Arlington Mill property, subject to approval as to form by the County Attorney.

ISSUES: As part of the actions needed to implement the development by Arlington Mill Limited Partnership of a proposed affordable housing development on a resubdivided portion of the County's Arlington Mill property, the County Board is requested to approve a resubdivision of the Arlington Mill property, and to adopt a Resolution approving an Option to Ground Lease between the County Board of Arlington County, Virginia and the Arlington Mill Limited Partnership granting Arlington Mill Limited Partnership an option to ground lease Parcel A of the resubdivided property. There are no outstanding issues.

County Manager:

County Attorney:

Staff: Tim O' Hora, DES – Real Estate Bureau

28. B.

SUMMARY: County Board approval of the resubdivision of the Arlington Mill property, and approval and execution of the Option to Ground Lease, are necessary for Arlington Mill Limited Partnership to establish the “site control” required for an application by Arlington Mill Limited Partnership to the Virginia Housing and Development Authority (“VHDA”) for an allocation of Low Income Housing Tax Credits to be used in financing a proposed affordable housing development on a portion of the Arlington Mill property. Resubdivision of the Arlington Mill property is necessary to establish two separate parcels for different future uses: Parcel A, which would be ground leased to Arlington Mill Limited Partnership for the construction and operation of a privately owned and operated affordable housing development; and Parcel B, upon which the County will construct and operate a County-owned community center. If the Arlington Mill Limited Partnership exercises the Option in accordance with its terms, the County Board and Arlington Mill Limited Partnership would be required to execute and deliver a Ground Lease prior to the Option Deadline provided in the Option to Ground Lease. The Ground Lease, in its final terms, would materially conform to the terms set forth in the draft Ground Lease attached to the Option to Ground Lease, together with such additional terms as may agreed to by the parties.

BACKGROUND: The County is owner of the real property and improvements located at 4975 Columbia Pike, known as the County’s Arlington Mill property. In June 2008, the County Board approved Use Permit No. U-3199-08-2, consistent with the Columbia Pike Form Based Code (FBC), for the redevelopment of the Arlington Mill property through a public/private partnership with Public Private Alliances, LLC (PPA). Use Permit No. U-3199-08-2, as approved, authorized the redevelopment of the Arlington Mill property by the County and its private then-partner, Public Private Alliances, LLC (PPA), with a mixed use project, which was to include a six story, mixed use building consisting of an approximately 40,000 square foot community center, including a gymnasium, 3,000 square feet of retail space, and 33 residential units; and a five story residential building consisting of 159 units, of which 61 units were to be affordable housing units funded with Low-Income Housing Tax Credits. On July 22, 2008, PPA and the County entered into a Ground Lease on the entire Arlington Mill property to permit PPA to develop the entire site consistent with the Use Permit No. U-3199-08-2.

As a result of the mortgage lending crisis, and its economic impact on, among other things, the availability and terms of development financing, PPA determined that the approved project was no longer financially feasible. The ground lease of the Arlington Mill property from the County to PPA was subsequently terminated by the parties effective March 31, 2010.

In December 2009, the County Board approved an amendment to Use Permit U-3199-08-2 to permit the County to redevelop and construct the Arlington Mill Community Center independently from the residential portion of the approved Use Permit. The Use Permit was modified by the amendment to permit the phased redevelopment of the site: Phase I of the redevelopment includes the redevelopment of the southern portion of the site with a County-owned community center; Phase II includes the redevelopment of the northern portion of the site for residential use. A Request for Proposals (RFP) was issued by the County in June, 2010 to solicit proposals for the redevelopment of the northern portion of the Arlington Mill property with an affordable housing development.

In October 2010, the County selected Arlington Partnership for Affordable Housing (APAH) from the RFP finalists for development of the affordable housing project. The Arlington Mill Limited Partnership is a limited partnership established by APAH for developing the project. The APAH-proposed residential project is a four-story building, form-based code compliant, to be constructed over a transfer slab that is the roof of a two-level underground parking garage. The development will be 99% affordable. The building will include eight (8) efficiencies; 16 one-bedroom units; 73 two-bedroom units; and 25 three-bedroom units for a total of 122 units, approximately 131,100 sq. ft. One market-rate unit may be provided for support staff in a wing of the building that will contain supportive housing units. The remaining 121 units would be affordable to families or individuals earning 60% or less of the Area Median Income (AMI). Approximately 10% of the units will be made available as supportive housing for persons earning 40% of the AMI, and would be supplemented with social services and rental subsidy. A use permit amendment for the residential component of the Arlington Mill project is the subject of a companion board report.

County Board approval and execution of the Option to Ground Lease are necessary for the Arlington Mill Limited Partnership to establish the level of "site control" required for its application to VHDA for an allocation of Low Income Housing Tax Credits to be used in financing the proposed residential development. The tax credit application must be submitted by March 11, 2011. The Arlington Mill Limited Partnership and County staff are in the process of documenting the terms of a ground lease that will permit the Arlington Mill Limited Partnership to develop the resubdivided Parcel A of the Arlington Mill property consistent with final plans for the project approved by the County Board consistent with Use Permit No. U-3199-08-2, as amended. The complete terms of a ground lease cannot be fully documented until the plans for the affordable housing development are finalized and approved by the County Board. In the interim, the Arlington Mill Limited Partnership has proposed the attached Option to Ground Lease as a means to establish the level of site control necessary to meet the requirements of the VHDA Low Income Housing Tax Credits application.

DISCUSSION: Under the terms of the proposed Option to Ground Lease, the County would grant to the Arlington Mill Limited Partnership an option to ground lease the resubdivided Parcel A of the Arlington Mill property from the County on terms to be documented by the parties with due diligence and good faith in a detailed ground lease. The Option to Ground Lease would require that the terms of the ground lease include provisions that materially conform to the terms set forth in the draft ground lease attached to the Option to Ground Lease as "Exhibit B", together with such additional terms as may agreed to by the parties, if any. The Option to Ground Lease also provides, among other things, that:

- (a) The Arlington Mill Limited Partnership and/or its authorized agents or representatives, may enter the property at any time prior to the Option Deadline for the purposes of investigating the property and its feasibility and suitability for development and construction of the project. However, the Arlington Mill Limited Partnership shall not disturb or disrupt the normal operations of the Arlington Mill property or any construction activities by the County thereon, or perform any invasive testing without the County's prior written consent;

- (b) Upon the request of the Arlington Mill Limited Partnership, the parties are required to enter into a short form memorandum of the Option to Ground Lease, which would be recorded, at the Arlington Mill Limited Partnership's sole cost and expense, among the land records of Arlington County, Virginia. If a memorandum is recorded, upon expiration or early termination of the Option to Ground Lease, the Arlington Mill Limited Partnership is required to promptly record, at its sole cost and expense, a termination of the Option to Ground Lease, in form acceptable to the County; and
- (c) The Arlington Mill Limited Partnership has no right to assign the Option to Ground Lease without the prior written consent of the County, and an assignment will not release the Arlington Mill Limited Partnership from its obligations under the Option to Ground Lease.

The Arlington Mill Limited Partnership's right to exercise the Option to Ground Lease would commence on the effective date of the Option to Ground Lease, and would terminate on October 1, 2012 (the "Option Deadline") unless, no later than the Option Deadline, the Arlington Mill Limited Partnership provides written notice to the County exercising the Option to Ground Lease. If the Arlington Mill Limited Partnership has not received written notice from VHDA awarding low income housing tax credits for the project to the Arlington Mill Limited Partnership by August 1, 2012, then County will have the right to terminate the Option to Ground Lease, at the County's sole and absolute discretion, by providing written notice of such termination to the Arlington Mill Limited Partnership. If the Arlington Mill Limited Partnership timely and properly exercises the Option to Ground Lease in accordance with its terms, the County and the Arlington Mill Limited Partnership will be required to execute and deliver the ground lease prior to the Option Deadline. The ground lease, and its final terms, will be subject to review and approval by the County Board.

The Resolution also acknowledges that the below market terms of the proposed ground lease of Parcel A from the County Board to the Arlington Mill Limited Partnership is consistent with the County Board's support of the development of affordable housing options in the County.

FISCAL IMPACT: None

EXHIBIT A
ATTACH SUBDIVISION PLAT

EXHIBIT B

ATTACH COUNTY BOARD RESOLUTION

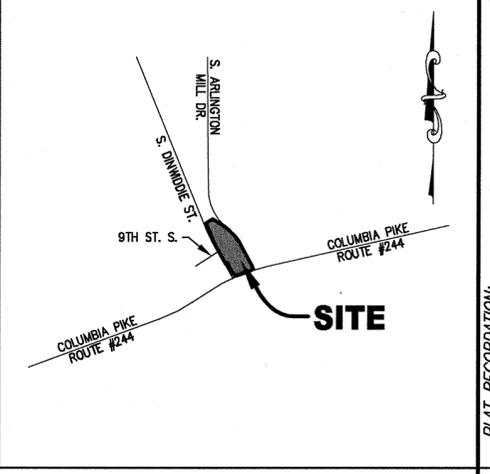
EXHIBIT C

**ATTACH OPTION TO GROUND LEASE
WITH EXHIBIT B DRAFT GROUND LEASE ATTACHED**

NOTES:

1. THE PROPERTY DELINEATED ON THIS PLAT APPEARS ON ARLINGTON COUNTY REAL PROPERTY IDENTIFICATION MAP 72-16 AS REAL PROPERTY CODE (RPC) NO. 22001004.
2. THE HORIZONTAL DATUM SHOWN HEREON IS REFERENCED TO VCS '83.
3. THE PROPERTY SHOWN HEREON IS CURRENTLY IN THE NAME OF THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA AS RECORDED IN DEED BOOK 2784 AT PAGE 1541 AND DEED BOOK 1027 AT PAGE 578, ALL AMONG THE LAND RECORDS OF ARLINGTON COUNTY, VIRGINIA.
4. THE SUBJECT PROPERTY LIES IN FLOOD ZONE "A7" (AREAS OF 100-YEAR FLOOD; BASE FLOOD ELEVATIONS AND FLOOD HAZARD FACTORS DETERMINED), "B" (AREAS BETWEEN LIMITS OF THE 100-YEAR FLOOD AND 500-YEAR FLOOD; OR CERTAIN AREAS SUBJECT TO 100-YEAR FLOODING WITH AVERAGE DEPTHS LESS THAN ONE (1) FOOT OR WHERE THE CONTRIBUTING DRAINAGE AREA IS LESS THAN ONE SQUARE MILE; OR AREAS PROTECTED BY LEVEES FROM THE BASE FLOOD) AND "C" (AREAS OF MINIMAL FLOODING) AS SHOWN ON THE FLOOD INSURANCE RATE MAP (F.I.R.M.) COMMUNITY-PANEL 515520 0010 B, DATED MAY 3, 1982.
5. THIS PROPERTY IS SUBJECT TO THE CONTROL OF USE PERMIT #U-3199-08-2 APPROVED BY THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, ON JUNE 24, 2008 AND APPROVAL OF THIS PLAT NEITHER ENLARGES NOR REDUCES THE OBLIGATIONS IMPOSED BY THE USE PERMIT AS IT RELATES TO THIS PARCEL. USE PERMIT #U-3199-08-2 IS ON FILE IN THE OFFICE OF THE ZONING ADMINISTRATOR OF ARLINGTON COUNTY, VIRGINIA.
6. NO TITLE REPORT WAS FURNISHED FOR THE SUBJECT PROPERTY.

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHD BRG	CHORD
C1	200.79'	470.00'	24°28'39"	101.95'	S 41°09'44" E	199.27'
C2	93.76'	397.08'	13°31'42"	47.10'	N 51°29'11" W	93.54'
C3	80.08'	160.65'	28°33'45"	40.89'	N 43°58'09" W	79.26'
C4	110.98'	500.00'	12°43'04"	55.72'	N 47°02'32" W	110.76'
C5	134.70'	470.00'	16°25'16"	67.82'	S 45°11'25" E	134.24'
C6	66.09'	470.00'	8°03'23"	33.10'	S 32°57'06" E	66.03'



AREA TABULATION:

EXISTING AREA	94,885 SQ. FT. OR 2.17826 AC.
STREET DEDICATION: SOUTH ARLINGTON MILL DRIVE 9TH STREET SOUTH	1,771 SQ. FT. OR 0.04066 AC. 2,290 SQ. FT. OR 0.05257 AC.
REMAINING AREA	90,824 SQ. FT. OR 2.08503 AC.

VICINITY MAP
SCALE: 1"=1000'

OWNER'S CONSENT

THE PLATTING OF THE PROPERTY SHOWN HEREON IS WITH FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNER, PROPRIETOR, AND TRUSTEES, IF ANY.

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

NAME: _____ DATE: _____
TITLE: _____

SURVEYOR'S CERTIFICATE:

I, J. THOMAS HARDING, A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE. THE SUBJECT PROPERTIES WERE ACQUIRED BY THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA AS RECORDED IN DEED BOOK 2784 AT PAGE 1541 AND DEED BOOK 1027 AT PAGE 578 ALL AMONG THE LAND RECORDS OF ARLINGTON COUNTY, VIRGINIA.



J. THOMAS HARDING
LICENSED LAND SURVEYOR
VA NO. 1836

DATE: _____

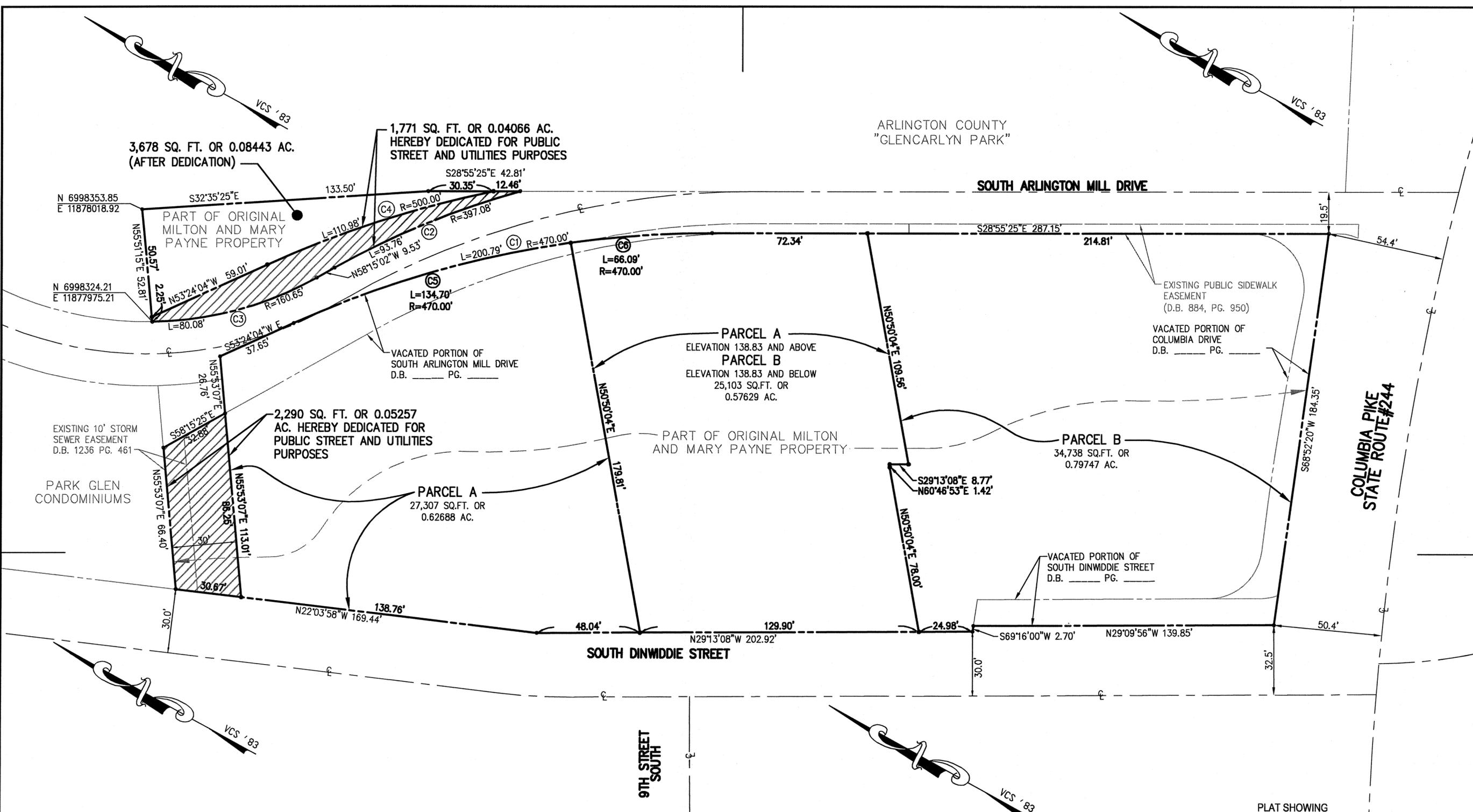


PLAT SHOWING
DEDICATION FOR
PUBLIC STREET AND UTILITIES PURPOSES
AND
PARCELS "A" AND "B"
BEING THE RESUBDIVISION,
VACATION AND REDEDICATION
OF
PART OF THE ORIGINAL
MILTON AND MARY PAYNE PROPERTY
DEED BOOK Q-4, PAGE 469

ARLINGTON COUNTY, VIRGINIA
SCALE: N/A DATE: JANUARY 21, 2011
PAGE 1 OF 2

ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ G.P.S. SERVICES
VKA INCORPORATED
8180 GREENSBORO DRIVE SUITE 200 ■ McLEAN, VIRGINIA 22102
(703)442-7800 ■ FAX (703)761-2787
McLEAN, VA GERMANTOWN, MD

PLAT RECORDATION: Pn / Dh. P:\Surveys\1103-PROJECTS\7125-RP\dwg\7125606.dwg 1/21/2011 12:43:08 PM EST



ARLINGTON COUNTY
"GLENCARLYN PARK"

SOUTH ARLINGTON MILL DRIVE

**COLUMBIA PIKE
STATE ROUTE #244**

SOUTH DINWIDDIE STREET

**9TH STREET
SOUTH**

PARCEL A
ELEVATION 138.83 AND ABOVE
PARCEL B
ELEVATION 138.83 AND BELOW
25,103 SQ.FT. OR
0.57629 AC.

PARCEL B
34,738 SQ.FT. OR
0.79747 AC.

PARCEL A
27,307 SQ.FT. OR
0.62688 AC.

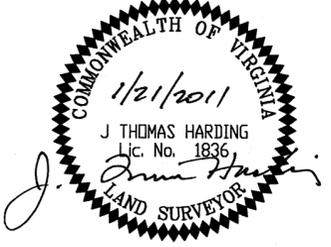
3,678 SQ. FT. OR 0.08443 AC.
(AFTER DEDICATION)

1,771 SQ. FT. OR 0.04066 AC.
HEREBY DEDICATED FOR PUBLIC
STREET AND UTILITIES PURPOSES

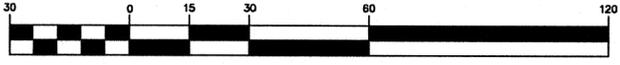
2,290 SQ. FT. OR 0.05257
AC. HEREBY DEDICATED FOR
PUBLIC STREET AND UTILITIES
PURPOSES

PLAT SHOWING
DEDICATION FOR
PUBLIC STREET AND UTILITIES PURPOSES
AND
PARCELS "A" AND "B"
BEING THE RESUBDIVISION,
VACATION AND REDEDICATION
OF
PART OF THE ORIGINAL
MILTON AND MARY PAYNE PROPERTY
DEED BOOK Q-4, PAGE 469

ARLINGTON COUNTY, VIRGINIA
SCALE: 1" = 30' DATE: JANUARY 21, 2011
PAGE 2 OF 2



GRAPHIC SCALE



(IN FEET)
1 inch = 30 ft.

ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ G.P.S. SERVICES

VKA INCORPORATED
8180 GREENSBORO DRIVE SUITE 200 ■ McLEAN, VIRGINIA 22102
(703)442-7800 ■ FAX (703)761-2787
McLEAN, VA GERMANTOWN, MD

RP#665

P:\Surveys\1.DD3-PROJECTS\7125-RP\dwg\7125606.dwg 1/21/2011 12:43:08 PM EST

February 2, 2011

RESOLUTION

**APPROVAL OF AN OPTION TO GROUND LEASE
A CERTAIN PARCEL OF COUNTY OWNED LAND LOCATED AT
4975 COLUMBIA PIKE, ARLINGTON, VIRGINIA,
BETWEEN THE COUNTY BOARD OF ARLINGTON COUNTY
AND ARLINGTON MILL LIMITED PARTNERSHIP**

WHEREAS, in 1998 the County Board of Arlington County (the “**County Board**”) announced the creation of the Columbia Pike Initiative with the goal of building a safer, cleaner, more competitive and vibrant Columbia Pike community with a mix of housing options and types as well as active retail and office options, all easily accessed by public transportation; and

WHEREAS, the County Board is the owner of the real property and improvements located at 4975 Columbia Pike (the “**Arlington Mill Property**”); and

WHEREAS, in December 2009, the County Board approved an amendment to Use Permit No. U-3199-08-2 to permit the phased redevelopment of the Arlington Mill Property: phase I of the redevelopment includes the redevelopment of the southern portion of the Arlington Mill Property with a County owned community center and phase II includes the redevelopment of the northern portion of the Arlington Mill Property for residential use; and

WHEREAS, in October 2010, the County Board selected the Arlington Partnership for Affordable Housing, Inc. (“**APAH**”) to develop a privately-owned and operated, four-story, form-based code compliant, 122 unit affordable residential development (the “**Residential Development**”), on the phase II northern portion of the Arlington Mill Property; and

WHEREAS, APAH formed and organized Arlington Mill Limited Partnership (“**AMLP**”) for the purpose of financing and constructing the Residential Development; and

WHEREAS, AMLP intends to finance construction of the Residential Development, in part, by utilizing low income housing tax credits allocated through the Virginia Housing Development Authority (“**VHDA**”); and

WHEREAS, on February 12, 2011, the County Board approved a resubdivision of the Arlington Mill Property to create a definable parcel on which the Residential Development can be constructed (“**Parcel A**”); and

WHEREAS, an appraisal prepared by Robert Paul Jones Company, Ltd. as of November 10, 2010 established the unencumbered as-is value of Parcel A at \$7,500,000; and

WHEREAS, in order to support and facilitate the advancement of the Residential Development, the County Board has agreed to enter into an Option to Ground Lease Agreement, attached hereto as Exhibit 1 (the “**Option to Ground Lease**”) with AMLP, granting AMLP an option to ground lease Parcel A at a below market lease rate; and

WHEREAS, if AMLP exercises the option to ground lease Parcel A in accordance with the terms of the Option to Ground Lease, the County Board and AMLP will execute a below market rate ground lease which will include provisions that materially conform to the terms set forth in the form of ground lease attached to the Option to Ground Lease (the “**Ground Lease**”); and

WHEREAS, pursuant to the terms of the Ground Lease, AMLP will pay the following rent (“**Base Rent**”) to the County, without set off, deduction or counterclaim (i) an initial installment of base rent in the amount of \$500,000.00 and (ii) annual base rent installments, subject to adjustment, of \$70,000 for the term of the Ground Lease; and

WHEREAS, based on the appraised value of Parcel A, the amount of the Base Rent that AMLP will pay over the fifteen year tax VHDA credit compliance period for the affordable housing Residential Development is at least \$5,950,000 less than the amount the County could have realized from a sale of Parcel A, at fair market value consistent with the appraisal, for a market rate residential development; and

WHEREAS, the County Board acknowledges that its commitment of financial support of the Residential Development by permitting AMLP to ground lease Parcel A for the construction and operation of the Residential Development at a below market rate, rather than leasing Parcel A for the construction and operation of a market rate residential development, will further the County Board’s goals of ensuring an adequate supply of affordable housing exists in the County; and

NOW, THEREFORE, BE IT RESOLVED, that the County Board hereby approves the attached Option to Ground Lease between the County Board and Arlington Mill Limited Partnership and authorizes the Real Estate Bureau Chief, or his designee, to execute, on behalf of the County Board, the Option to Ground Lease, subject to approval as to form by the County Attorney.

BE IT FURTHER RESOLVED, that the County Board hereby acknowledges that the below market Ground Lease to AMLP for Parcel A is consistent with its support of the development of affordable housing options in the County.

OPTION TO GROUND LEASE

(Arlington Mill Residences)

This Option to Ground Lease (this "Agreement") is made and entered into as of the ____ day of _____, 2011, by and among The County Board of Arlington County, Virginia, a body politic (the "County"), and Arlington Mill Limited Partnership, a Virginia limited partnership ("AMLP"), with reference to the following recitals of fact:

R E C I T A L S:

A. WHEREAS, the County owns fee title to certain real property located in Arlington, Virginia, more fully described on Exhibit A attached hereto and incorporated herein by this reference (the "Land");

B. WHEREAS, AMLP has proposed to ground lease the Land from the County for the development of a rental affordable housing project, comprised of approximately 122 rental residential dwelling units, of which 121 such units will be affordable dwelling units (collectively, the "Project"); and

C. WHEREAS, AMLP has requested, and the County has agreed, that the County grant an option to ground lease the Land to AMLP as more fully set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A G R E E M E N T:

1. Grant of Option. The County hereby grants to AMLP an option (the "Option") to ground lease the Land on the terms set forth in this Agreement. AMLP's right to exercise the Option shall commence on the date hereof, and shall terminate on October 1, 2012 (the "Option Deadline") unless, no later than the Option Deadline, AMLP delivers written notice to the County (the "Option Notice"), exercising the Option granted hereunder; provided, however, if AMLP does not receive written notice from the Virginia Housing Development Authority ("VHDA"), awarding low income housing tax credits for the Project, by August 1, 2012, then County shall have the right to terminate the Option, at County's sole and absolute discretion, by providing written notice of such termination to AMLP. Upon County's issuance of such written notice of termination, the Option shall terminate and be of no further force or effect.

2. Execution of Ground Lease. Upon receipt of the Option Notice as set forth hereinabove, the parties hereto shall with due diligence and in good faith document the terms of a ground lease in a detailed ground lease agreement (the "Ground Lease"). The Ground Lease document shall include provisions that materially conform to the terms set forth in the form of ground lease attached hereto and made a part hereof as Exhibit B (the "Approved Form of Ground Lease") and such other terms as may be agreed to by the parties, if any. If AMLP exercises the Option in accordance with the terms herein, the County and AMLP shall execute and deliver the Ground Lease within thirty (30) days of the County's receipt of the Option Notice.

3. Ground Lease. Subject to Paragraph 2 hereof, the Ground Lease shall include provisions that materially conform to the Approved Form of Ground Lease and such other terms as may be agreed to by the parties, if any.

4. Due Diligence. The County agrees to allow AMLP and/or AMLP's authorized agents or representatives, at its sole risk and expense, to enter the Land at any time prior to the

Option Deadline for the purposes of investigating the Land and its feasibility and suitability for development and construction of the Project; provided, however, AMLP shall not disturb or disrupt the normal operation of the Land or any construction activities by the County thereon or perform any invasive testing without the County's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the County shall not unreasonably withhold its consent for AMLP or professionals hired by AMLP to perform test borings, surveys, or testing and inspections related to soils, geologic hazards, underground or other storage tanks, utility lines and systems, and environmental hazards on the Land or the testing of construction materials. AMLP will repair any material physical damage to the Land arising solely from AMLP's inspection of the Land. AMLP shall indemnify and hold the County harmless from and against any claim, suit, judgment, decree, liability, damage, loss or expense for any bodily injury, including death, or property damage occurring on the Land, including without limitation, attorneys' fees, arising from AMLP's, its agents', representatives' or professionals' testing or conducting inspection activities upon the Land.

5. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia.

6. Time of Essence. Time is of the essence in this Agreement.

7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

8. Time for Notices. If the deadline for any notice to be provided hereunder is a Saturday, Sunday or a state or federal holiday under the laws of the Commonwealth of Virginia or the United States of America, as applicable, or a banking holiday, such date shall be extended to the first business day thereafter that is not a Saturday, Sunday or such holiday.

9. Memorandum. Upon the request of AMLP, the County and AMLP shall enter into a short form memorandum of this Agreement ("Memorandum"), which shall be recorded at AMLP's sole cost and expense in the official land records of Arlington County, Virginia. If a Memorandum is recorded, upon expiration or early termination of the Option, AMLP shall promptly record, at AMLP's sole cost and expense, a termination of the Option in form acceptable to the County.

10. Assignment of Option. AMLP shall not have the right to assign this Option without the prior written consent of the County, which consent may be withheld in the sole and absolute discretion of the County. Notwithstanding the foregoing, AMLP shall have the right to assign its rights and obligations under this Agreement (including without limitation, the Option) to an AMLP Affiliate without the consent of County, but with prior written notice to County. For purposes of this Agreement, the term "AMLP Affiliate" shall mean an entity that (a) controls AMLP, is controlled by AMLP, or is under common control with AMLP, and (b) operates rental affordable housing projects in accordance with the VHDA tax credit program. For purposes of this Agreement, the terms "controls," "controlled by" and "under common control with" refer to the legal right to operate and manage the subject entity and/or the ownership of greater than 50% of the voting rights of the subject entity. No assignment shall release AMLP from its obligations hereunder.

11. Authority. Each party represents and warrants to the other that any and all consents and/or resolutions needed by the party so representing to enter into this Agreement have been obtained and that the individual signing on behalf of each party has the authority to so bind such party.

12. Notices. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to County or AMLP (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i)(A) 48 hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (B) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service, or (ii) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party.

To County: The County Board of Arlington County, Virginia
2100 Clarendon Boulevard - Suite 302
Arlington, VA 22201
Attention: County Manager

With copies to: Arlington County Office of the County Attorney
2100 Clarendon Boulevard, Suite 403
Arlington, VA 22201
Attention: County Attorney

And: Arlington County Real Estate Bureau
2100 Clarendon Boulevard, Suite 800
Arlington, VA 22201
Attention: Real Estate Bureau Chief

And: Arlington County Housing Division
2100 Clarendon Boulevard, Suite 700
Arlington, VA 22201
Attention: Housing Division Director

And: Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
8405 Greensboro Drive, Suite 100
McLean, VA 22102
Attention: Colin J. Smith

To AMLP: Arlington Mill Limited Partnership
c/o Arlington Partnership for Affordable Housing, Inc.
2704 N. Pershing Drive
Arlington, VA 22201
Attn: President

With copies to: Bocarsly, Emden, Cowan, Esmail & Arndt, LLP
7200 Wisconsin Avenue, Suite 900
Bethesda, MD 20814
Attn: Craig Emden

And: Bean, Kinney & Korman, P.C.
2300 Wilson Blvd, 7th floor
Arlington, VA 22201
Attn: Real Estate and Zoning Section

Any notice required or permitted to be given under this Agreement shall be deemed given if provided in accordance with this Paragraph 12; provided, however, that any party may change its address for notice purposes by timely notice to the other party.

13. Role of County/ County Decisions; No Waiver. AMLP hereby acknowledges that County has entered into this Agreement in its role as the owner of the Land and not as a

governing authority. Accordingly, County's execution of this Agreement shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, including, without limitation, for the construction of the Project, or for any other governmental approval or consent required to be obtained by AMLP. Whenever in this Agreement County is required to join in, consent, give its approval, or otherwise act under this Agreement, it is understood that such obligations are meant to apply to County acting in its capacity as a landlord and not in its capacity as a governing authority. Further, AMLP hereby acknowledges that any and all decisions, determinations, consents, notifications or any other actions taken or to be taken by County pursuant to this Agreement, whether or not specifically contemplated hereunder, may be taken by the County Manager or by another Arlington County official or body pursuant to any means, mechanism or process as determined by Arlington County in its sole discretion, and AMLP shall have no right to question or challenge the propriety, authority or legality of any such Arlington County official or body, or means, mechanism or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by County; provided such decision, determination, consent, notification, or other action by the County is taken in accordance with all applicable laws, rules, regulations, ordinances, codes, procedures, processes and orders. Notwithstanding the foregoing, nothing in this Agreement shall be construed to waive any of County's powers, rights or obligations as a governing authority or local governing body, whether or not affecting the Land or Project, including, but not limited to, its police power, right to grant or deny permits, right to collect taxes or other fees, or any other power, right or obligation whatsoever.

14. No Waiver of Sovereign Immunity by County. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement nor any action taken by County pursuant to this Agreement nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of County, or of its elected and appointed officials, officers and employees in its capacity as a governing authority.

15. No Rights in Third Parties. The parties hereto mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than those signing this Agreement as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party or authorized assignee hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.

16. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Agreement to the contrary, County shall have no obligation to explicitly or implicitly indemnify or hold harmless AMLP or any third party or parties from any liability whatsoever.

Signatures contained on following pages

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

Approved as to Form:

COUNTY:

**THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA**, a body public

County Attorney

By: _____
Name: _____
Its: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2011, by _____, the authorized representative of The County Board of Arlington County, Virginia, a body public.

Notary Public

My commission expires: _____

Notary I.D.# _____

AMLP:

ARLINGTON MILL LIMITED PARTNERSHIP, a
Virginia limited partnership

By: Arlington Partnership for Affordable Housing, Inc., a
Virginia corporation, its General Partner

By: _____
Nina Janopaul, President/CEO

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2011, by Nina Janopaul, President/CEO of Arlington Partnership for Affordable Housing, Inc., a Virginia corporation, the General Partner of ARLINGTON MILL LIMITED PARTNERSHIP, a Virginia limited partnership.

Notary Public

My commission expires: _____

Notary I.D.# _____

EXHIBIT A

LAND

Legal Description

Parcel A, Arlington Mill

EXHIBIT B
APPROVED FORM OF GROUND LEASE
[to be attached]

**DEED OF GROUND LEASE
(Arlington Mill Residences)**

THIS DEED OF GROUND LEASE (this “Lease”) is made as of this ___ day of _____ 2011, by and between (i) **The County Board of Arlington County, Virginia**, a body politic (“Landlord”), and (ii) **Arlington Mill Limited Partnership**, a Virginia limited partnership (“Tenant”).

RECITALS

A. Landlord is the owner of certain Land (all capitalized terms used in these Recitals are defined below), which Land immediately abuts another parcel of land also owned by Landlord which is to be improved with a community center building (the “Community Center Parcel”).

B. Landlord issued a Request for Proposals (“RFP”) from developers for the redevelopment of the Land in June 2010. Based on Tenant’s response to the RFP, Landlord selected Tenant to develop the Land.

C. Landlord and Tenant entered into a non-binding letter of intent with regard to Tenant’s proposal to develop the Land dated October 6, 2010.

D. Landlord has agreed to lease the Land, under the terms and conditions hereof, to Tenant for Tenant’s and its Affiliates’ development of a rental affordable housing project on the Land, comprised of approximately 122 rental residential units, of which 121 such units shall be Affordable Dwelling Units (collectively, the “Project), fully consistent with the Second Amendment to the Form – Based Code Use Permit for the Project approved by the County Board at its regular meeting of February 12, 2011 (the “Use Permit Amendment”).

E. Tenant will be the owner of the Improvements (including without limitation, the Project and the Residential Garage (as hereinafter defined)) on the Land, subject to the terms of this Lease.

F. To facilitate the financing and development of the Land, Landlord has subdivided the Land from the Community Center Parcel, such that the Land and the Community Center Parcel are two (2) separate subdivided parcels.

G. The Land is comprised of an air rights parcel (the “Air Rights Parcel”), as to which Tenant shall have no rights to any below-grade areas, and a full rights parcel (the “Full Rights Parcel”), as to which Tenant’s leasehold rights hereunder shall apply to both the above and below-grade areas, as more particularly described on Exhibit A attached hereto and made a part hereof.

H. Landlord intends to develop and construct (i) a new community center facility (the “New Community Center”) on the Community Center Parcel, (ii) an underground parking garage to be located on the Community Center Parcel and on the Land pursuant to the terms of the MOU (the “Parking Garage”), to serve both the New Community Center and the Project, and (iii) the Site Work (as hereinafter defined).

I. Landlord and Tenant shall enter into a reciprocal easement agreement (“REA”), to address ingress and egress through, and the operation, maintenance and repair of, the Parking

Garage, the operation, maintenance and repair of other shared facilities and utilities, a fire separation agreement (if needed), and other matters, which REA shall be recorded among the Land Records (hereinafter defined).

NOW, THEREFORE, IN CONSIDERATION of the foregoing and the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord all of that tract of Land in Arlington County, Virginia,

TOGETHER WITH any and all rights, alleys, ways, privileges, servitudes, appurtenances and advantages, now or hereafter to the same belonging or in any way appertaining (all of which, together with the Land, are hereinafter referred to collectively as the “Premises”),

TO HAVE AND TO HOLD the Property unto Tenant, its successors and permitted assigns, for the sole purpose and term of years set forth herein,

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

ARTICLE I DEFINITIONS

Section 1.01 Specific. As used herein, the following terms have the following meanings:

“*Affiliate*” means an entity that controls Tenant or is controlled by Tenant or under common control such that Tenant either (a) operates and manages the entity, and/or (b) has greater than 50% of the voting rights in the entity.

“*Affordability Covenants*” shall mean the covenants providing restrictions on the use of the Affordable Dwelling Units described in Section 4.04.

“*Affordable Dwelling Units*” shall mean the Residential Dwelling Units in the Improvements to be operated consistent with the Affordable Housing Program at all times and to be operated, following Construction Completion, so as (i) to qualify for Low-Income Housing Tax Credits, or (ii) to satisfy financing requirements, including but not limited to the County Requirements.

“*Affordable Housing Program*” means the required “for lease” Affordable Dwelling Units to be developed by Tenant on the Property and the income level and size of families to be served by the Project, as specified on Exhibit C attached hereto and made a part hereof and any amendments thereto approved by Landlord and Tenant.

“*Air Rights Parcel*” has the meaning given it in Recital G hereof.

“*Annual Base Rent Installments*” has the meaning given it in Section 3.01(c).

“*Applicable Law*” shall mean all Federal, State and local laws, ordinances and regulations applicable to all or any portion of the Property, the Project and/or the transactions contemplated by the terms of this Lease, and all requirements of the Use Permit Amendment applicable to the Property.

“*Area Median Income*” shall be the median income for the Washington, D.C. Metropolitan Area, as adjusted annually for household size, as published by the United States Department of Housing and Urban Development.

“*Bankruptcy*” shall be deemed, for any person or entity, to have occurred either:

(a) if and when such person or entity (i) applies for or consents to the appointment of a receiver, trustee or liquidator of such person or entity or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (iii) files a petition or an answer seeking a reorganization or an arrangement with its creditors or seeks to take advantage of any insolvency law, or (iv) files an answer admitting the material allegations relating to bankruptcy or insolvency of a petition filed against such person or entity in any bankruptcy, reorganization or insolvency proceeding; or

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

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

“*Commencement Date*” means the date that Tenant closes on its Construction Mortgage for the Project.

“*Community Center Parcel*” has the meaning given it in Recital A hereof.

“*Condemnation Award*” means the aggregate amount of any condemnation award or awards payable with respect to a Taking, whether by agreement or pursuant to a judgment or otherwise, with any interest payable on such amount, including consequential damages to any portion of the Property not taken, net of any costs and expenses of collecting the same.

“*Construction Completion*” means that the Project has received all applicable final certificates of occupancy and the Project architect has issued a certificate of substantial completion for the Project.

“*Construction Mortgage*” any Mortgage or Mortgages providing funding for the construction of the Project.

“*County Manager*” means the County Manager of Arlington County, Virginia, or his or her designee.

“*County Requirements*” means all generally applicable legal requirements established by Arlington County, Virginia from time to time that are applicable to the Property.

“*Date of Taking*” means the date as of which Tenant is deprived of possession of any property involved in a Taking.

“*Depository*” shall mean any Permitted Leasehold Mortgagee, which is an Institutional Lender, which is qualified to do business in Virginia that serves as Depository from time to time.

“*Development Documents*” has the meaning given it in Section 8.01(a).

“*Environmental Laws*” shall mean any and all federal, state or local statutes, laws, rules, regulations, ordinances, or codes pertaining to the environment in effect and any judicial or administrative interpretation thereof specifically relating to the Property (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment or Hazardous Materials, or exposure to Hazardous Materials on the Property) including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, and the Toxic Substances Control Act, as amended.

“*Event of Default*” has the meaning given it in Section 14.01.

“*Expiration Date*” means the seventy-fifth (75th) anniversary of the Commencement Date.

“*Extended Term*” means the 25-year Option Period for which the Term will continue beyond the Initial Term resulting from Tenant exercising its option to extend the Term provided in Section 2.01 of this Lease.

“*Extended Use Agreement*” means the agreement to be entered into between the limited partnership that undertakes the rental part of the Project and the Virginia Housing Development Authority as required pursuant to Section 42 of the Code.

“*Fee Mortgage*” shall mean a Mortgage encumbering Landlord’s fee interest in the Property, subject to the terms of this Lease.

“*Fee Mortgagee*” means the holder of a Fee Mortgage.

“*Full Rights Parcel*” has the meaning given it in Recital G hereof.

“*General Contractor*” means Paradigm Development Company and/or such other entities as may be designated by Tenant and approved by Landlord to undertake all or a part of the construction of the Project provided for in the Development Documents.

“*Governmental Authority*”/“*Governing Authority*” means all federal, state, county, municipal and other governments and all subdivisions, agencies, authorities, departments, courts, commissions, boards, bureaus and instrumentalities of any of them having jurisdiction over Landlord, Tenant and the Land, or any of them.

“*Hazardous Materials*” has the meaning given it in Section 4.02(b).

“*Improvements*” means the buildings and other improvements on the Land described in the Recitals, including without limitation the Project and the Residential Garage, together with all appurtenances thereto and any buildings and other improvements that may be hereafter constructed on the Land, as the same may be hereafter repaired, restored, altered or improved, and together with all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter attached or affixed to the Premises or the other Improvements and necessary for the proper operation and maintenance of the Premises or the Improvements. The Improvements shall include the rights over, upon, across and under the Land for all purposes

strictly related to uses permitted by Section 4.01, including, but not limited to the rights to use the Land for sub-adjacent support and ingress and egress, including the right to remove or relocate the Improvements, subject to the terms hereof.

"Initial Base Rent Installment" has the meaning given it in Section 3.01(a).

"Initial Term" means the 75-year period beginning on the Commencement Date and expiring on the Expiration Date.

"Institutional Lender" means any entity which is either a commercial bank, savings bank, savings and loan institution, credit union, pension fund, business trust (including, without limitation, real estate investment trust), insurance company authorized to do business in the Commonwealth of Virginia, governmental revenue or development authority, any governmental agency or entity or any bondholder or bondholder representative, any entity which is regularly engaged in financing the purchase, construction or rehabilitation of real estate and which is subject to regulatory oversight by any federal or state governmental authority, or any affiliate or subsidiary of any of the foregoing entities.

"Indemnified Party" has the meaning given it in Section 19.01.

"Investor Limited Partner" means any entity or entities identified as a limited partner in Tenant's partnership agreement, as it may be amended from time to time.

"Land" shall mean that tract of realty including air rights located in Arlington County, Virginia, which is defined in Recital G above and is further described in Exhibit A attached hereto.

"Landlord" means The County Board of Arlington County, Virginia and its successors and assigns as holder of fee simple interest in the Land.

"Landlord Event of Default" has the meaning given it in Section 14.05.

"Land Records" means the Official Public Records of Real Property of Arlington County, Virginia.

"Leasehold Estate" means the leasehold estate in the Property held by Tenant under this Lease.

"Leasehold Mortgagee" means any lender holding a Mortgage on all or any part of the Leasehold Estate and/or Improvements.

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

"LIHTC Housing Requirements" means applicable Low-Income Housing Tax Credits requirements as provided in Section 42 of the Code, and as required during the compliance period specified therein and any extended use period under the Extended Use Agreement.

"Low-Income Housing Tax Credits" shall mean the Low-Income Housing Tax Credit provided for under Section 42 of the Code, or any corresponding provision or provisions of succeeding law.

"Material Understatement" has the meaning given it is Section 3.01(b).

“*Mortgage*” means any mortgage or deed of trust, together with any regulatory agreement or other documents or agreements relating thereto and recorded therewith, at any time encumbering any or all of the Property, and any other security interest therein existing at any time under any other form of security instrument or arrangement used from time to time in the locality of the Property (including but not limited to any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein.

“*Mortgagor*” means the Person having obligations secured by a Mortgage.

“*Mortgagee*” means the holder of a Mortgage.

“*MOU*” means that certain Memorandum of Understanding, or those certain Memoranda of Understanding, as the case may be, by and between Landlord and Tenant, addressing the parties’ rights and responsibilities with respect to the design, bidding, construction, permitting and payment of and for the Parking Garage and Site Work, and other related issues, copies of which are attached hereto and made a part hereof as Exhibit E.

“*New Community Center*” has the meaning given it in Recital H hereof.

“*Notice*” shall mean any notice(s), request(s) or other communication(s) required or permitted to be given under this Lease, shall be in writing, and shall be delivered by hand or reputable courier (including Federal Express and other such services), or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth hereunder.

“*Option Period*” has the meaning given it in Section 2.01.

“*Parking Garage*” has the meaning given it in Recital H hereof.

“*Partial Taking*” means a Taking that is not a Total Taking or a Temporary Taking.

“*Permitted Leasehold Mortgage*” has the meaning given in Section 7.02.

“*Permitted Transfer*” has the meaning given in Section 13.02.

“*Permitted Leasehold Mortgagee*” means a Mortgagee secured by a Permitted Leasehold Mortgage, as defined in Section 7.02.

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

“*Premises*” has the meaning given it in the Recitals hereinabove.

“*Prime Rate*” shall mean the then applicable *Wall Street Journal* Prime Rate (U.S. money center commercial banks) or its successor publication (or in the absence thereof, such similar rate as Landlord may reasonably designate).

“*Project*” has the meaning given it in Recital D above.

“*Property*” means the Premises and the Improvements.

“*Property Expenses*” has the meaning given it in Section 3.01(c).

“*Property Revenue*” has the meaning given it in Section 3.01(c).

“*REA*” has the meaning given it in Recital J hereof.

“*Rent*” means all rent payable under Article III.

“*Requirements of Governmental Authority*” means all laws, statutes, codes, acts, constitutions, ordinances, judgments, decrees, injunctions, orders, resolutions, rules, regulations, permits, licenses, authorizations, administrative orders and other requirements of any Governmental Authority.

“*Resident*” shall mean a Person occupying a Residential Dwelling Unit, including but not limited to an Affordable Dwelling Unit, pursuant to a Tenancy Agreement.

“*Residential Dwelling Unit*” shall mean a rental dwelling unit in the Improvements.

“*Residential Garage*” means that portion of the Parking Garage to be constructed by Landlord pursuant to the terms of the MOU on the Full Rights Parcel.

“*Residential Garage Completion*” means the date upon which the construction of the concrete structure of the Residential Garage is substantially complete pursuant to the terms of the MOU, prior to the issuance by the County of a certificate of occupancy or use permit for the Residential Garage.

“*Residential Garage Cost*” means all of the costs and expenses incurred by Landlord in the design, permitting and construction of the Residential Garage pursuant to the MOU.

“*RFP*” has the meaning given it in Recital B.

“*Site Work*” means that certain site work to be performed by Landlord on the Land pursuant to the terms of the MOU, as more particularly described in the Use Permit Amendment.

“*State and Local Laws and Ordinances*” shall mean all applicable laws, regulations, codes, and ordinances in the Commonwealth of Virginia and Arlington County relating to health, safety, the environment, liens, housing and building requirements and conditions.

“*Substantial Completion*” or “*Substantially Complete*” shall mean for each Residential Dwelling Unit, the date that (a) the Work for the Residential Dwelling Unit is sufficiently complete, in accordance with the Development Documents related thereto, such that the Residential Dwelling Unit can be occupied, (b) the Architect has issued a Certificate of Substantial Completion for such Residential Dwelling Unit or the building of which it is part, and (c) the Residential Dwelling Unit can be legally occupied. (For avoidance of doubt, it is acknowledged that this definition shall not be applicable to the construction of the Parking Garage.)

“*Taking*” means any taking or damaging of all or any part of, interest in, or right appurtenant to the Property by any Governmental Authority as a result of or in lieu of or in anticipation of or under threat of the power of condemnation or eminent domain, including severance, damage and any change in grade.

“*Tax*” and “*Taxes*” have the meanings given in Section 5.01.

“*Tax Credits*” shall mean the Low-Income Housing Tax Credit.

"Temporary Taking" means a temporary Taking that does not extend beyond the Term, so that Landlord's interest in the Property is unaffected by such Taking.

"Tenancy Agreement" shall mean the lease agreement between Tenant and a Resident under the terms of which a Resident is entitled to enjoy possession of a Residential Dwelling Unit.

"Tenant's Fiscal Year" has the meaning given it in Section 3.01(c).

"Tenant's Value in the Improvements" means the "AS IS" value of the Improvements as of the date of the Taking, taking into account the effect on such value of this Lease (had the Taking not occurred) and all other matters effecting such interest; provided, however, in no event shall Tenant's Value in the Improvements be less than the then-current balance owed by Tenant under all Permitted Leasehold Mortgages of record on the Property as of the date of the Taking.

"Term" has the meaning given it in Section 2.01.

"Total Taking" means a Taking, whether permanent or temporary, the effect of which is that the portion or portions of the Property remaining cannot, in the good faith judgment of Tenant, be practically and economically used or converted for use by Tenant for the purposes for which the Property were being used prior to the Taking or for other uses acceptable to Tenant, in Tenant's sole and absolute discretion.

"Transfer" has the meaning given it in Section 13.01.

"Use Permit Amendment" has the meaning given it in Recital D.

"VHDA" means the Virginia Housing Development Authority.

"Work" has the meaning given it in Section 12.03(b).

Section 1.02 General. Any other term to which meaning is expressly given in this Lease shall have such meaning.

Section 1.03 Interpretation. Any Rent or any other amount paid hereunder shall be construed as made by Tenant solely for the use of the Land, as Tenant shall be deemed to own the Improvements for all purposes, subject to the terms of this Lease. Any covenants contained herein made by the Tenant regarding the Improvements shall be construed solely to protect Landlord from liability in connection with the Improvements.

Section 1.04 Incorporation of Recitals. The Recitals set forth above are hereby incorporated and made a part of this Lease.

ARTICLE II TERM

Section 2.01 Length. This Lease shall be for a term (“Term”) commencing on the Commencement Date, and expiring at 11:59 p.m. on the Expiration Date, except that if the date of such expiration or termination is hereafter advanced to an earlier date, extended or postponed pursuant to any provision of this Lease or by operation of law, the date to which it is advanced, extended or postponed shall thereafter be the “Expiration Date” for all purposes of this Lease). So long as Tenant is not in default of any term or condition of this Lease and has paid all Annual Base Rent Installments due prior to the Expiration Date, Tenant shall have an option to extend the Term by twenty-five (25) years (the “Option Period”). Tenant shall be deemed to have exercised the option to so extend the Term if Tenant provides Landlord with written notice of Tenant’s desire to so extend the Term at least twelve (12) months prior to the original Expiration Date. For avoidance of doubt, it is acknowledged that Tenant shall have no right to extend the Term for the Option Period unless, (i) prior to Tenant’s exercise of such option, Tenant has paid all Annual Base Rent Installments due prior to the Expiration Date, including any accrued Annual Base Rent Installments that had been deferred pursuant to the terms of Section 3.01 below, and (ii) after Tenant’s exercise of such option, Tenant pays in a timely fashion all Annual Base Rent Installments due after the exercise of the Option and prior to the Expiration Date. In the event that Tenant fails to timely and properly exercise its option to extend the Term as aforesaid, the Term of this Lease shall expire upon the original Expiration Date. If Tenant timely exercises the option to so extend the Term, all of the terms and conditions of this Lease shall continue to apply during the Option Period, including without limitation, Tenant’s obligation to pay Annual Base Rent Installments pursuant to Section 3.01(c) below.

Section 2.02 Surrender. Tenant shall, at its expense as provided herein, at the expiration of the Term or any earlier termination of this Lease, (a) remove from the Property Tenant’s signs, goods and effects and any machinery, trade fixtures and equipment used in conducting Tenant’s trade or business and not made part of the Property or otherwise owned by Landlord, (b) repair any damage to the Property caused by such removal, and (c) promptly yield up to Landlord the Property (and execute any documents necessary for such legal transfer), in a good repair and condition (except as may otherwise be provided in Article IX) and in compliance with all applicable state and local laws and ordinances, subject to ordinary wear and tear, and as affected by condemnation or damaged by casualty (subject to restoration, as provided herein), subject to Article XI and Article XII. Upon such expiration or termination (whether by reason of an Event of Default or otherwise), (x) neither Tenant nor its creditors and representatives shall thereafter have any right at law or in equity in or to any or all of the Property or to repossess any of same, or in, to or under this Lease, and Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of any creditor of Tenant or any other person whatsoever (but subject to any rights hereunder of Permitted Leasehold Mortgagees, if any, and subject to the rights of any person then holding any lien, right, title or interest in or to the Land), and (y) Tenant hereby waives any and all rights of redemption which it may otherwise hold under any applicable law.

Section 2.03 Ownership of Improvements. Upon the occurrence of the Commencement Date, the beneficial ownership of the Residential Garage shall be deemed to be automatically transferred from Landlord to Tenant subject and pursuant to the terms of this Lease. For federal income tax purposes, Tenant (its assigns and successors) alone, during the

Term of this Lease, shall be the owner of the Improvements and shall be entitled to all of the tax attributes of ownership of the Improvements, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the Tax Credits.

Section 2.04 Landlord Termination Rights. Landlord shall have the right, by Notice to Tenant, to terminate this Lease in the event Tenant fails to achieve any of the following requirements, which Notice shall be given by Landlord, if at all, not later than sixty (60) business days following the date on which the applicable requirement was to have been satisfied:

(a) Close on its Construction Mortgage for the Project within twelve (12) months after Residential Garage Completion.

(b) Procure the initial construction permit and commence construction of the Project within twelve (12) months after Residential Garage Completion, and thereafter to diligently pursue the construction of the Project and all other Improvements required by the Use Permit Amendment to completion, using all available and reasonable commercial means; or

(c) Substantially complete the construction of the Project and all other Improvements required by the Use Permit Amendment within thirty-six (36) months after Residential Garage Completion.

Notwithstanding the foregoing, Tenant's deadlines to commence and to substantially complete the construction of the Project and all other Improvements required by the Use Permit Amendment as aforesaid shall be extended by any and all Landlord Delays and/or Force Majeure Delays (as such terms are defined in the MOU).

Section 2.05 Tenant Termination Rights. Tenant shall have the right, by Notice to Landlord, to termination this Lease in the event Landlord fails to achieve either of the following requirements, which Notice shall be given by Tenant, if at all, not later than sixty (60) business days following the date on which the applicable requirement was to have been satisfied:

(a) Commence construction of the Parking Garage pursuant to the terms of the MOU by [_____, 20____]; or

(b) Substantially complete the construction of the Parking Garage pursuant to the terms of the MOU by [_____, 20____].

Notwithstanding the foregoing, Landlord's deadlines to commence and to substantially complete the construction of the Parking Garage as aforesaid shall be extended by any and all Tenant Delays and/or Force Majeure Delays (as such terms are defined in the MOU).

ARTICLE III RENT

Section 3.01 Rent. In consideration of the Landlord transferring to Tenant the beneficial ownership of the Residential Garage and the leasing of the Land to Tenant, Tenant agrees to pay Rent to Landlord during the Term, without set off, deduction or counterclaim, as follows:

(a) On the Commencement Date, Tenant shall pay to Landlord the amount of the Residential Garage Cost, as and for Rent hereunder.

(b) On the date of Construction Completion of the Project, Tenant shall pay to Landlord the initial installment of base rent ("Initial Base Rent Installment") in the amount of Five Hundred Thousand Dollars and ^{No}/₁₀₀ Dollars (\$500,000.00).

(c) Commencing on that date which is sixty (60) days from and after the date of the Construction Completion of the Project and continuing thereafter throughout the Term, Tenant shall pay additional annual installments of base rent in the amount of Seventy Thousand and ^{Zero}/₁₀₀ Dollars (\$70,000.00) (the "Annual Base Rent Installments"), which Annual Base Rent Installments shall be paid in arrears within one hundred eighty (180) days of the close of the Tenant's fiscal year, which is the twelve (12) month period from January 1 to December 31 ("Tenant's Fiscal Year"). The amount of the first Annual Base Rent Installment shall be prorated for the portion of such Tenant's Fiscal Year beginning on the date of Construction Completion of the Project. The Annual Base Rent Installments shall be paid from fifty percent (50%) of Tenant cash flow remaining after deducting all reasonable and customary costs and expenses of the Tenant in connection with the Tenant's management and operation of the Property, including but not limited to capital expenditures, amounts allocated to reserves, debt service on loans, any payment of deferred development fee (except for any loans payable solely out of cash flow) and accounting, audit and compliance costs including the asset management fee to the Investor Limited Partner (collectively, "Property Expenses"), from any and all revenues received from Tenant in connection with the operation of the Property ("Property Revenue"). Notwithstanding the foregoing, Tenant shall only be entitled to deduct Property Expenses from Property Revenue for purposes of determining cash flow if and to the extent such Property Expenses are consistent with an annual Property operating budget prepared by Tenant and approved in writing by Landlord, such approval not to be unreasonably withheld, conditioned or delayed, plus emergency expenditures incurred by Tenant and approved by Landlord. The form of such annual Property operating budget shall be as reasonably required by Landlord from time to time. Tenant shall provide Landlord with annual reports and audited financial statements with respect to the operation of the Property for each Tenant's Fiscal Year within one hundred eighty (180) days after the completion of each Tenant's Fiscal Year, time being of the essence. If Tenant fails to timely provide such audited financial statements, Landlord shall have the right at any time, upon reasonable prior written notice, to audit Tenant's books and records with regard to the operation of the Property within twelve (12) months after the expiration of any Tenant's Fiscal Year. In the event such a Landlord audit reveals that cash flow was understated for any Tenant's Fiscal Year, then Tenant shall pay to Landlord, within thirty (30) days after Landlord provides its audit report to Tenant, any Annual Base Rent Installments that were deferred as a result of such understatement of cash flow. If Landlord's audit reveals that cash flow was understated for any Tenant's Fiscal Year by more than five percent (5%) (a "Material Understatement") then, in addition to the payment of any Annual Base Rent Installments that were deferred as the result of such understatement, Tenant shall reimburse Landlord, within ten (10) days after written demand, for all third-party out-of-pocket costs incurred by Landlord to perform such audit, and Landlord shall be permitted to audit the Tenant's two (2) Fiscal Years immediately preceding. If and to the extent Tenant's cash flow in any year is insufficient to pay all or a portion of the Annual Base Rent Installment then due, such unpaid portion of the Annual Base Rent Installment shall accrue, with interest thereon until actually paid at the rate of two percent (2%) per annum, and be payable from fifty percent (50%) of Tenant cash flow in subsequent years.

(d) Commencing on the first day of the Tenant's Fiscal Year after any deferred development fee is paid in full, and on the first day of each subsequent Tenant's Fiscal Year (the "**Adjustment Date**"), the Annual Base Rent Installments shall be increased by multiplying the most recent year's Annual Base Rent Installments (as previously increased hereunder) by [_____ percent (___%)]. **[OPEN ISSUE]**

(e) Upon the occurrence of the Substantial Completion Date, Landlord and Tenant shall execute a document, as prepared by Landlord, confirming the Substantial Completion Date. Upon the occurrence of the Annual Base Rent Commencement Date, Landlord and Tenant shall execute a document, as prepared by Landlord, confirming the Annual Base Rent Commencement Date. Tenant's failure to execute either of such confirmations shall not in any manner affect the Substantial Completion Date or the Annual Base Rent Commencement Date otherwise established pursuant to the terms of this Section 3.01.

(f) Tenant's obligation to pay the Rent as aforesaid shall fully survive the expiration or earlier termination of the Term of this Lease.

Section 3.02 Tax on Lease. If federal, state or local law now or hereafter imposes any tax, assessment, levy or other charge (other than any income tax) directly or indirectly upon Landlord with respect to this Lease or the value thereof, Tenant shall pay the amount thereof within thirty (30) days of Landlord's written demand therefor.

Section 3.03 Security Deposit. NONE.

Section 3.04 Net Lease. Other than as is expressly set forth in this Lease (and except for Landlord's legal fees, third-party consultants retained by Landlord and Landlord's own costs), all costs, expenses, liabilities, or other charges whatsoever with respect to the Property and the acquisition, construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of the Property shall be the sole responsibility of and payable by Tenant. Nothing contained herein will require the Tenant to indemnify, hold harmless or pay any costs, expenses or liabilities for the Landlord for any such claim or liability resulting from the Landlord's negligence or the Landlord's willful and wrongful acts or that of its agents, representatives, board members, contractors, or employees.

Section 3.05 Late Payment Interest. In the event that Tenant shall fail to pay within fifteen (15) days after when due any Rent payable under this Lease, interest shall accrue thereon at the rate of the Prime Rate plus two (2) percentage points per annum until such late Rent is paid, and, Tenant shall pay Landlord such late payment interest within fifteen (15) days after demand, in addition to all other Landlord rights and remedies hereunder.

Section 3.06 No Offset, Abatement or Deduction. Tenant shall pay all Rent to Landlord without notice or demand and free of any offset, diminution, abatement, counterclaim or other deduction whatsoever, except as contained herein. The parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease.

Section 3.07 Form and Place of Payment. Tenant shall pay all Rent in the lawful money of the United States of America to Landlord at Landlord's address for Notices as determined pursuant to Article XVII or to such other Person or address (or account, for

electronic fund transfers) as may have been identified in a Notice given by Landlord to Tenant pursuant to Article XVII.

ARTICLE IV USE OF PROPERTY

Section 4.01 Nature of Use. Tenant and its successors and assigns, and any entity which succeeds to Tenant's interests in the Property by foreclosure or an assignment or deed in lieu of foreclosure, shall only use the Property for the development, construction, ownership, use, maintenance, repair and replacement of the Project and for no other purpose, without the prior written consent of Landlord, which consent may be withheld or denied at Landlord's sole and absolute discretion.

The use of the Property shall be further restricted by all Applicable Laws and by the terms of the Affordability Covenants. Notwithstanding the foregoing provisions in this Section 4.01, in the event of foreclosure on the portion of the Improvements comprising the Affordable Dwelling Units by a Permitted Mortgagee under its Permitted Leasehold Mortgage or an assignment or deed of all or any part of the Leasehold Estate and/or Improvements in lieu of foreclosure thereunder, the occupancy restrictions applicable to the Affordable Dwelling Units shall, subject to the terms of Section 4.04(c) below, remain in effect as long as is necessary to comply with the LIHTC Housing Requirements, the Affordability Covenants, and any other requirements, as applicable.

Tenant may only alter the use of the Property as set out in the first paragraph of this Section 4.01 with Landlord's prior written consent, which consent may be withheld or denied at Landlord's sole and absolute discretion, subject, however, to compliance with any applicable Low-Income Housing Tax Credit or other regulatory requirement.

Section 4.02 Compliance With Law and Covenants. Tenant, throughout the Term and at its sole expense, in its development, possession and use of the Premises and the Improvements shall:

(a) materially and promptly comply with (i) all applicable Federal, State and Local Laws and Ordinances; and (ii) all requirements to keep in force throughout the Term all licenses, consents and permits required from time to time by applicable law to the Property;

(b) not (either with or without negligence) knowingly cause or permit Hazardous Materials on the Property, except any use thereof in the ordinary course of Tenant's and/or an Affiliate's business or by Residents and only in compliance with all applicable Environmental Laws. Notwithstanding the foregoing, if during the Term, Tenant allows Hazardous Materials on the Property in violation of this Lease, then to the extent required by the relevant or lead governmental enforcement agency, the Tenant shall diligently take the steps necessary to adopt a plan of remediation by a qualified environmental consultant with respect to any such Hazardous Materials and take prompt action for the containment of any such Hazardous Materials or the removal of any such Hazardous Materials in compliance with all applicable federal, state, and local regulations. For purposes of this Lease, "Hazardous Materials" shall include those substances described as such in any Environmental Law.

Section 4.03 Easements and Approvals. Solely in Landlord's role as landlord under this Lease and not as a Governing Authority, (a) Landlord shall grant or join in granting, or assist in obtaining and, if necessary, modifying or abandoning such rights-of-way, easements and other

interest on or over the Land as may be required to provide the Land with ingress and egress, and electric, telephone, gas, water, sewer and other public utilities reasonably necessary to the development and operation of the Project on the Land and consistent with the engineering and architectural drawings approved at the February 12, 2011 meeting of the Arlington County Board, approving the Use Permit Amendment, and (b) if requested by Tenant, Landlord shall join in (but only if strictly required by Applicable Law) Tenant's applications, at Tenant's sole cost and expense, to obtain zoning approvals, easements and arrangements to enable Tenant to construct the Project, pursuant to the Arlington County Zoning Ordinance (i) as it exists on the date of execution of this Lease, (ii) as may be modified in the future during the Term of this Lease, and/or (iii) pursuant to the Use Permit Amendment (and any subsequent amendment approved by the February 12, 2011 meeting of the Arlington County Board).

Section 4.04 Affordable Dwelling Units.

(a) The Affordable Dwelling Units shall be leased and operated so as (i) to qualify for and maintain compliance with all provisions and requirements of the Low-Income Housing Tax Credit program throughout the Low-Income Housing Tax Credit compliance period or other affordable housing programs as applicable and appropriate, or (ii) to satisfy the terms and conditions of the County Requirements.

(b) Rents and utilities for the Affordable Dwelling Units, commencing upon Construction Completion through the Expiration Date, as extended, shall be determined based on any applicable LIHTC Housing Requirements or other regulatory requirements, as applicable.

(c) Subject to the applicable provisions of LIHTC Housing Requirements, including without limitation Section 42(h)(6)(E)(ii) of the Code or other program requirements, upon foreclosure of a Leasehold Mortgagee's interest in a Residential Dwelling Unit, this Section 4.04 shall no longer apply.

ARTICLE V TAXES AND OPERATING EXPENSES

Section 5.01 Tenant To Pay. Tenant (a) shall bear the full responsibility for the expense of any and all real property or other taxes relating to the Property, including any and all payments in lieu of taxes, if applicable, special and general assessments, and any water and sewer charges charged against any or all of the Premises, the Residential Dwelling Units, and the other Improvements and payable with respect to any calendar or tax year or other period falling wholly or partly within the Term, including but not limited to any assessments or fees levied against the Land and the Improvements by a Governmental Authority (each a "Tax" and all of which are "Taxes"), except that if any such Tax is levied with respect to a period beginning before the Commencement Date or ending after the Expiration Date, Tenant shall bear the full expense of only that percentage thereof equaling the percentage of such period falling within the Term; (b) shall pay the same before any penalty is incurred for late payment thereof; and (c) shall deliver to Landlord the receipted bill for such Taxes within 10 business days after Landlord requests it from Tenant in writing. Tenant shall not be required to pay any income taxes otherwise chargeable to the Landlord. Tenant shall have the rights, to the extent permitted by law, to apply for the conversion of any assessment for local improvements assessed during the Term of this Lease in order to cause the same to be payable in annual installments, and upon such conversion, the Tenant shall discharge such installments as they become due and payable during the Term. If to the extent strictly required by Applicable Law, then, subject to review and

approval by the County Attorney, Landlord agrees to permit the application for the foregoing conversion to be filed, if necessary, in the Landlord's name, but at Tenant's sole cost and expense, and shall execute any and all reasonably acceptable documents requested by Tenant to accomplish the foregoing result

Section 5.02 Proceedings To Contest. Tenant may bring proceedings to contest the validity or the amount of any Taxes or to recover any amount thereof paid by Tenant, provided that prior thereto Tenant pay any and all Taxes then due and Tenant notify Landlord in writing that Tenant intends to take such action. Tenant shall indemnify and hold harmless Landlord against and from any expense arising out of any such action. Any refunds or credits relating to any successfully contested taxes shall be paid to the Tenant.

Section 5.03 Operating Expenses. Since this is a "Triple Net Lease," Tenant shall obtain on its own account and pay or cause to be paid any and all charges for water, electricity, gas, sewage, waste and trash removal and garbage disposal, telephone and other utility services furnished to the Property and for any and all other costs and expenses related to the ownership, operation, management, maintenance, repair and replacement of the Project.

ARTICLE VI INSURANCE

Section 6.01 Insurance To Be Maintained by Tenant. Tenant shall maintain at its expense throughout the Term the insurance required in Exhibit B attached hereto and made a part hereof. Approval, disapproval or failure to act by Landlord regarding any such insurance shall not relieve Tenant of full responsibility or liability for damages or accidents as set forth in this Lease. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Tenant from any such liability. Tenant may include the interest of each Permitted Leasehold Mortgagee in all fire and other hazard insurance policies pursuant to a standard mortgagee clause or endorsement, may name each Permitted Leasehold Mortgagee as a loss payee, and may deposit an original or copy of such policies with each Permitted Leasehold Mortgagee. Tenant may name each Permitted Leasehold Mortgagee as an additional insured in all comprehensive general liability insurance policies.

Section 6.02 Insureds. Each such liability insurance policy shall name as insureds or additional insureds thereunder (a) Tenant and (b) Landlord, as their interests may appear.

Section 6.03 Insurer. All insurance required and all renewals of insurance shall be issued by companies that satisfy the requirements of Exhibit B, and that are authorized to issue such policies and otherwise transact business in the Commonwealth of Virginia. All insurance policies will expressly provide that such policies will not be canceled or altered without 30 days' (10 days in the event of a failure to pay premiums) prior written notice to Landlord. Such insurance will, to the extent obtainable, at no material cost to the Tenant, provide that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained; and all property insurance will, to the extent obtainable at customary and commercially reasonable cost to the Tenant, contain a waiver by the insurer of its rights of subrogation against the Landlord.

Section 6.04 Evidence. Upon written request of Landlord, Tenant shall deliver to Landlord within 30 days a copy of each such insurance policy or certificates thereof, and Tenant

shall keep such originals available on the Property or elsewhere for Landlord's inspection, as provided herein.

Section 6.05 Increase in Risk. Tenant shall not do or permit to be done (within its commercially reasonable control) any act or thing as a result of which any policy of insurance of any kind covering any or all of the Property or any liability of Landlord in connection therewith may become void or suspended.

Section 6.06 Insurance Proceeds. The Landlord and the Tenant hereby agree that for so long as any Permitted Leasehold Mortgage is outstanding, any and all insurance proceeds received by the Tenant in connection with the Property shall be applied in accordance with the most senior Permitted Leasehold Mortgage governing the application of such proceeds.

ARTICLE VII MORTGAGES

Section 7.01 Mortgages on the Land.

(a) Subordination. Each and every Fee Mortgage which may now or hereafter affect the Property, or any portion thereof, and all renewals, extensions, supplements, amendments, modifications, consolidations, and replacements thereof or thereto, substitutions therefor, and advances made thereunder, shall be subject to this Lease. In confirmation of the foregoing, Landlord shall execute and obtain execution of the Fee Mortgagee and deliver to Tenant at the time of entering into the Fee Mortgage, an instrument evidencing such subordination and non-disturbance that Tenant reasonably may request in a form acceptable to Landlord and the Fee Mortgagee. Upon any foreclosure or other exercise of remedies by a Fee Mortgagee, all rights of Tenant and any Leasehold Mortgagee under this Lease shall remain in full force and effect. No Fee Mortgagee shall have any rights pursuant to this Lease until Tenant has received Notice of such Fee Mortgagee's status as same, name and address.

(b) Attornment. If any Fee Mortgagee, or any of its successors or assigns, or any other person claiming by or through any such Fee Mortgagee or by or through any foreclosure proceeding of any such Fee Mortgagee shall succeed to the rights of Landlord under this Lease, such Fee Mortgagee or other person shall accept this Lease and recognize Tenant as the holder of all of the rights of Tenant hereunder, and Tenant shall attorn to and recognize such successor as Tenant's landlord under this Lease, and such successor and Tenant shall promptly execute and deliver at any time any instrument that may be reasonably necessary to evidence such acceptance and attornment. In addition, any Fee Mortgage shall provide that in the event that the Fee Mortgagee thereunder shall succeed to the rights of Landlord under this Lease pursuant to foreclosure, deed in lieu of foreclosure or other proceedings, such Fee Mortgagee shall recognize all Tenancy Agreements which were in effect immediately prior to such foreclosure or other proceedings pursuant to their terms, including any covenant of quiet enjoyment contained in such Tenancy Agreements, so long as the particular Resident is not in default beyond any applicable cure period set forth in its Tenancy Agreements. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between Tenant and such successor Landlord, upon and subject to all of the then executory terms, covenants and conditions of this Lease. The provisions of this Section 7.01(b) shall be self-operative and no instrument of any such attornment shall be required or needed by the holders of any such Fee Mortgage. In confirmation of any such attornment, Tenant shall, at Landlord's request or at the

request of any such Fee Mortgagee, promptly execute and deliver such further instruments as may be reasonably required by any such Fee Mortgagee.

(c) Liability of Fee Mortgagee. Neither the Fee Mortgagee nor anyone claiming by, through or under such Fee Mortgagee shall be:

(i) liable for any act or omission of any prior Landlord (including without limitation, the then defaulting Landlord), or

(ii) bound by any payment of Rent which Tenant might have paid for more than one (1) year in advance to any prior Landlord (including without limitation, the then defaulting Landlord), or

(iii) bound by any covenant to make any payment to Tenant which was required to be made prior to the time such Fee Mortgagee succeeded to any prior Landlord's interest, or

(iv) bound by any amendment or modification of this Lease that decreases the rental obligation, shortens the length of the Term, if such amendment or modification is made without the written consent of such Fee Mortgagee, or

(v) bound by any warranties or representations made by Landlord in the Lease other than the representations and warranties set forth in Section 16.03 below, or

(vi) bound to Tenant subsequent to the date on which such Fee Mortgagee shall transfer its interest in the Property to any other party, so long as said other party delivers to Tenant a subordination and non-disturbance agreement to the extent required by Section 7.01(a) above.

(d) Notice of Default. Provided that Tenant has received Notice of a Fee Mortgagee, Tenant hereby agrees to give to any such Fee Mortgagee copies of all Notices of default by Landlord under this Lease at the same time and in the same manner as and whenever Tenant shall give any such Notice of default to Landlord, and no such Notice of default shall be deemed given to Landlord hereunder unless and until a copy of such Notice has been so delivered to such Fee Mortgagee. Such Fee Mortgagee shall have the right to remedy any default of Landlord under this Lease or to cause any default of Landlord under this Lease to be remedied and for such purpose Tenant hereby grants such Fee Mortgagee such additional period of time as may be reasonable to enable such Fee Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default; provided, however, that in no event shall such additional period of time granted to such Fee Mortgagee exceed ten (10) days in the case of a monetary default or thirty (30) days in the case of all other defaults. Tenant shall accept performance by such Fee Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under this Lease with the same force and effect as though performed by Landlord. No default under this Lease shall exist or shall be deemed to exist (i) as long as such Fee Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence subject to delays beyond Fee Mortgagee's reasonable control, or (ii) if possession of the Property is required in order to cure such default, or if such default is not susceptible of being cured by such Fee Mortgagee, as long as such Fee Mortgagee, in good faith, shall have notified Tenant that such Fee Mortgagee intends to institute proceedings under the Fee Mortgage, and thereafter, within fourteen (14) days after the giving of such Notice, commences such foreclosure

proceedings and prosecutes such proceedings with reasonable diligence and continuity (subject to delays beyond Fee Mortgagee's reasonable control), and upon obtaining such possession, commences promptly to cure the default and prosecutes the same to completion with reasonable diligence and continuity (subject to delays beyond Fee Mortgagee's reasonable control). Neither such Fee Mortgagee nor its designee or nominee shall become liable under this Lease unless and until such Fee Mortgagee or its designee or nominee becomes, and then only for so long as such Fee Mortgagee or its designee or nominee remains, the fee owner of the Land. As provided in Section 7.01(c)(i) above, neither the Fee Mortgagee nor anyone claiming by, through or under such Fee Mortgagee shall be liable for any act or omission of any prior Landlord. Such Fee Mortgagee shall have the right, without Tenant's consent, to foreclose the Fee Mortgage or to accept a deed in lieu of foreclosure of such Fee Mortgage, provided that no such foreclosure or deed in lieu of foreclosure shall have any impact on Tenant's rights under this Lease.

Section 7.02 Mortgages on the Leasehold Estate or Improvements. The Tenant shall not, without prior written consent of the Landlord, encumber the Leasehold Estate or the Improvements with any Mortgage (or record any such Mortgage) other than Permitted Leasehold Mortgages described in this Section. The total loan to value ratio for all Permitted Leasehold Mortgages, in the aggregate, on the Leasehold Estate and/or the Improvements shall not, (a) if the Property is valued subject to the Affordability Covenants, exceed one hundred percent (100%), or (b) if the Property is valued free of the Affordability Covenants, exceed eighty percent (80%). Tenant shall, prior to granting a Mortgage on the Leasehold Estate, provide Landlord with a then-current appraisal of the Property prepared by an independent MAI appraiser in compliance with FIRREA, in order to support Tenant's compliance with the foregoing loan to value ratio limits; provided, however, Landlord agrees to accept the Appraisal for this purpose for two (2) years after the Commencement Date. The compliance with such loan to value ratio limits shall be determined as aforesaid prior to Tenant's granting a Mortgage on the Leasehold Estate, and such loan to value ratio limits shall not be applicable to a particular Mortgage after such Mortgage has been granted by Tenant. Any Mortgage permitted by this Section 7.02 without the consent or approval of the Landlord and any other Mortgage on all or any part of the Leasehold Estate or the Improvements to which the Landlord consents shall be a Permitted Leasehold Mortgage.

Additionally, Tenant, at its option and without the consent of Landlord, shall have the unlimited and unrestricted right, at any time and from time to time, at Tenant's own expense, to negotiate and obtain one or more loans financed by an Institutional Lender (or any other lender approved by the Landlord, which approval shall not be unreasonably conditioned, delayed, or denied) and secured by Mortgages on all or any part of the Leasehold Estate and/or the Improvements, provided all loan proceeds are used exclusively for one or more of the following purposes: the construction of the Project or any of the Improvements including, without limitation, all design, financing, legal, and other costs and fees; redemption or purchase of one or more of the Investor Limited Partner's interests; refinancing of existing debt; repair, demolition, expansion or renovation of any Improvements, or construction of new improvements allowed under the terms of this Lease, including all design, financing, legal, and other costs and fees related to such purposes. Notwithstanding the foregoing, the total loan to value ratio for all Permitted Leasehold Mortgages on the Leasehold Estate and/or the Improvements, shall not, (i) if the Property is valued subject to the Affordability Covenants, exceed one hundred percent (100%), or (ii) if the Property is valued free of the Affordability Covenants, exceed eighty percent (80%). The compliance with such loan to value ratio limits shall be determined as

aforesaid prior to Tenant's granting a Mortgage on the Leasehold Estate, and such loan to value ratio limits shall not be applicable to a particular Mortgage after such Mortgage has been granted by Tenant.

Upon the recording of a Permitted Leasehold Mortgage, Tenant shall notify Landlord thereof and in such notice shall specify the address of the Leasehold Mortgagee to which notices shall be sent pursuant to this Lease. Tenant shall not record any Mortgage against all or any part of the Leasehold Estate and/or the Improvements unless it is a Permitted Leasehold Mortgage.

Section 7.03 Nonmerger. This Lease shall not terminate as to the Permitted Leasehold Mortgagee because of any conveyance of Tenant's Leasehold Estate or any portion thereof to Landlord or of the Landlord's interest in the Property to the Tenant. Accordingly, if the Leasehold Estate and the fee estate are commonly held, then they shall remain separate and distinct estates. They shall not merge without the written consent of all Permitted Leasehold Mortgagees.

Section 7.04 Foreclosure. Upon foreclosure or assignment or deed in lieu of foreclosure of all or any part of the Leasehold Estate and/or the Improvements, any Permitted Leasehold Mortgagee (or its designee or nominee) or any purchaser at foreclosure shall have the right to acquire all or any part of the Leasehold Estate and/or Improvements without consent or approval of Landlord and shall also have the right to further sell, transfer, assign or sublet all or any part of the Leasehold Estate and/or Improvements to a third party without the consent or approval of Landlord. In the event of any such transfer by foreclosure or by assignment or deed in lieu of foreclosure, the transferee and its successors and assigns shall have no liability for the payment of any sums or the performance of any obligation required by this Lease to be paid or performed by Tenant prior to such transfer. Such transferee and each of its successors and assigns shall become Tenant, as applicable, shall be the owner of all or any part of the Leasehold Estate and/or Improvements (or part thereof) so transferred for all purposes under this Lease, shall be responsible for the payment of all sums and the performance of all obligations as Tenant, as applicable, thereafter becoming due or arising under this Lease, and shall be entitled to all of the rights, benefits and privileges of Tenant, as applicable, under this Lease; provided, however, that any Permitted Leasehold Mortgagee (or its designee or nominee) who has acquired all or any part of the Leasehold Estate and/or Improvements by such transfer shall have no liability for the payment of any sums or the performance of any obligations to be paid or performed after any subsequent assignment or transfer of all or any part the Leasehold Estate and/or Improvements to any other party.

Section 7.05 No Subordination. Tenant acknowledges and agrees that Landlord is under no obligation to subordinate this Lease or any rights thereto and that any request for subordination to any Leasehold Mortgage will have to be approved in writing by the Landlord in its sole discretion. Each and every Leasehold Mortgage which may now or hereafter affect the Premises or Improvements, or any portion thereof, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder, shall be subject to Landlord's fee interest in the Property and to the terms and conditions of this Lease. At Landlord's written request to Tenant from time to time, any Leasehold Mortgagee shall, within fifteen (15) days of Landlord's request, sign and deliver a certificate confirming its subordinate position consistent with the terms of this Section 7.05. Upon any foreclosure or other exercise of remedies by a Leasehold Mortgagee, all rights of Landlord under this Lease shall remain in full force and effect. Tenant

further acknowledges and agrees that no Leasehold Mortgagee shall be entitled to any protections of this Article VII unless and until a true copy of the original of the instrument creating and effecting such Leasehold Mortgagee's Leasehold Mortgage, certified by the Leasehold Mortgagee to be a true copy of such instrument, and written Notice containing the name and post office address of the Leasehold Mortgagee, shall have been delivered to Landlord.

ARTICLE VIII IMPROVEMENTS TO PREMISES

Section 8.01 Improvements by Tenant.

(a) **Development of Project.** Tenant has submitted and Landlord has approved the general plans for the development of the Project. Tenant shall proceed with due diligence, at Tenant's sole cost and expense except as otherwise may be agreed to in writing by the parties, to develop, or cause to be developed, architectural designs, plans and specifications for the design, construction and managing the Project (the "Development Documents"). The plans for the development of the Project and related matters, including, but not limited to any interior or exterior improvements shall at all times be subject to the approval of Landlord, which approval shall not unreasonably be withheld, conditioned or delayed. Without limiting the foregoing, the Project shall include, under all circumstances, at least 122 Residential Dwelling Units, of which 121 such Units shall be Affordable Dwelling Units. Tenant shall submit the proposed final Development Documents to Landlord for approval, and Landlord shall have thirty (30) business days to approve or disapprove and specify all objections to the proposed final Development Documents. Landlord's failure to give Tenant notice within such thirty (30)-business day period shall be deemed to be Landlord's approval of the Development Documents. In no event may Landlord disapprove any Development Documents that are fully consistent with features and elements of the Project specifically identified or addressed by the Use Permit Amendment. If Landlord disapproves, then Tenant shall have thirty (30) business days to revise the proposed final Development Documents and resubmit the same for Landlord's review, which shall follow the same approval process as set forth above. Landlord's approval of the Development Documents shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with applicable laws, ordinances, rules and regulations of government authorities. Following Construction Completion, Tenant shall have the right, from time to time, to make alterations to the Property and to construct new improvements to the Property fully consistent with the definition of Project herein, upon the prior written consent of the Landlord (which consent shall not be unreasonably withheld, conditioned or delayed), provided such repairs, alterations and new improvements comply with all Applicable Laws. The Landlord's approval shall not be required for alterations to the Property required or mandated by Federal or state law.

(b) **Commencement of Construction.** Provided all approvals, easements and appurtenances required to construct the Project have occurred and/or been obtained and a building permit has been obtained, Tenant shall commence the construction of the Project, and shall complete the same with all due diligence subject to force majeure events in Section 14.04 below or any other delays that are not the fault of Tenant. Tenant agrees that no construction shall be commenced until all insurance required under Section 6.01 above has been obtained in accordance with the provisions thereof. The terms of this Section shall not be deemed or construed to alter or limit Landlord's or Tenant's rights under Sections 2.04 and 2.05 of this Lease.

(c) **Inspection Rights.** After the Commencement Date, in accordance with Article X herein, Landlord shall, in addition to Landlord's rights as a Governmental Authority pursuant to Applicable Laws, have the right to enter the Property from time to time to inspect it at reasonable times and intervals and upon reasonable prior notice (not less than 24 hours) during the course of the construction work. Any entry shall be subject to the supervision of Tenant and the construction contractors, and any entry shall be at Landlord's own risk. Any entrant shall be duly empowered to sign, and shall sign, a reasonable standard waiver form and shall comply with all safety policies and procedures of the Project and construction thereof. Any entry shall be conducted with due regard for the business activities conducted at the Property and Tenant's construction work, and no entry shall unreasonably interfere with the business activities conducted on the Land, the progress of the construction work, or violate the safety plan for the construction site.

Section 8.02 Mechanics or Other Liens.

(a) Tenant shall: (i) within ninety (90) days after it is filed, have released (by bonding or otherwise) any mechanics', materialman's or other lien filed or claimed against the Property by reason of labor or materials provided by or for Tenant during the Term, or otherwise arising out of Tenant's use or occupancy of any or all of the Property, and (ii) defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or expense (including but not limited to that of reasonable attorneys' fees) incurred by Landlord on account of any such lien or claim. In the event that Tenant fails to timely remove or have released any such lien, Landlord shall have the right and option to remove same at Tenant's expense, in which case, Tenant shall fully reimburse Landlord for all costs so expended by Landlord within fifteen (15) days of demand as additional rent hereunder.

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

Section 8.03 Fixtures. Any and all improvements, repairs, alterations and all other property attached to or otherwise installed as a fixture within the Improvements by Tenant shall, immediately on the completion of their installation, become part of the Improvements and remain with the Property at the expiration or earlier termination of this Lease, except that any machinery, equipment or fixtures installed by Tenant at no expense to Landlord and used in the conduct of Tenant's trade or business (rather than to service the Premises or the Improvements generally) shall not be deemed part of the Improvements, and such machinery, equipment or fixtures shall remain Tenant's property, and shall be removed from the Property by Tenant at the end of the Term (and any damage to the Property caused by such removal shall be repaired at Tenant's expense) and except for improvements whose useful life does not extend to the expiration or earlier termination of this Lease or are otherwise demolished or removed as allowed under this Lease.

Section 8.04 Signs. Tenant shall have the right to erect from time to time about the Improvements and the Premises, in accordance with Applicable Law, such signs as it desires for the use and operation of the Project.

Section 8.05 Tenant Control. Landlord, in its role as a property owner and not in its role as a Governing Authority, shall have no control over the means and methods of the construction of the improvements and Landlord shall have no right to accept the improvements on behalf of Tenant, Tenant being solely responsible for such construction activities.

ARTICLE IX REPAIRS AND MAINTENANCE

Tenant shall (1) maintain the Property in good repair and in clean, safe and sanitary condition, ordinary wear and tear excepted, (2) not commit or permit waste of the Property, (3) not create, permit or allow to exist on or with respect to the Property any condition whereby the Property shall become less valuable or marketable because of such condition allowed by Tenant, (4) use commercially reasonable efforts to ensure that any additional buildings or improvements to the Property shall be built in good and workmanlike manner using materials of the same quality as the Project, and in accordance with all applicable building codes and other laws, and (5) comply with all State and Local Laws and Ordinances applicable to the Property and not suffer or permit any violations thereof. The Tenant shall promptly correct any deficiencies in the maintenance of the Property. Without limiting the foregoing, Landlord, as Landlord under this Lease, shall not have any responsibility for the repair or maintenance of the Property.

ARTICLE X LANDLORD'S RIGHT OF ENTRY

Subject to the rights of any Resident or other tenant under a Tenancy Agreement, Landlord and its authorized representatives shall, in addition to Landlord's rights as a Governing Authority, be entitled to enter the Property at any time during normal business hours upon five (5) business days' written notice to inspect the Property or for other reasonable purposes.

ARTICLE XI FIRE AND OTHER CASUALTIES

Section 11.01 Restoration.

(a) Subject to provisions of Sections 6.06 and 11.02 hereof, if any or all of the Property is damaged or destroyed, Tenant shall, if any insurance proceeds are available to Tenant and adequate for such purposes, commence and complete restoration with reasonable diligence as nearly as possible to the Property's value, condition and character immediately before such damage or destruction, to the extent such insurance proceeds are available to Tenant therefore, provided that such construction can reasonably be completed within the Term. In the event that damage or destruction occurs to the Property within the last five (5) years of the Term, Tenant shall have no obligation to restore the Property.

(b) Subject to the provisions of Sections 6.06 and 11.02 hereof, insurance proceeds (other than any proceeds which are separately paid on account of any damage to or destruction of Tenant's personal property, inventory or work-in-process, all of which shall be paid to Tenant) payable as a result of such casualty under policies of insurance held by or for the

account of Tenant with respect to the Property pursuant to Article VI against such casualty and received by Tenant and/or Landlord, as the case may be (less such reasonable attorneys' fees or other expenses as are incurred by the Landlord and/or Tenant in the collection thereof, which shall be paid out of such proceeds), shall be used, if available proceeds are sufficient therefor, to restore the Improvements in accordance with Subsection (a) of this Section. Any remaining proceeds shall be disbursed as follows: (i) to the Permitted Leasehold Mortgagees in order of priority of their liens to the extent governed and required by their loan documents and (ii) to the Tenant, to the extent of any remaining proceeds after disbursement pursuant to (i) above.

(c) Anything in this Lease to the contrary notwithstanding other than Section 6.06 and Section 11.02 hereof, upon the expiration or earlier termination of this Lease before such restoration is completed free and clear of any liens, any insurance proceeds not theretofore applied to the cost of such restoration or to Permitted Leasehold Mortgages (in order of priority of their liens, to the extent governed and required by the Mortgage loan documents) shall be paid to the Tenant and Landlord to the extent permitted by the Permitted Leasehold Mortgage documents.

Section 11.02 Rights of the Parties Under the Loan Documents. Notwithstanding the foregoing, for so long as any Permitted Leasehold Mortgage is in effect, the most senior Permitted Leasehold Mortgage governing any casualty proceeds shall control (a) the disbursement, use and application of such casualty proceeds, including, without limitation, any application of insurance proceeds to the payment of indebtednesses secured by Permitted Leasehold Mortgages prior to application (if any) to restore the Property, and (b) this Lease termination provisions hereunder. If any Permitted Leasehold Mortgagee (or its designee or nominee) shall acquire all or any part of the Leasehold Estate and/or Improvements by foreclosure or assignment or deed in lieu of foreclosure, such Permitted Leasehold Mortgagee (or its designee or nominee) and its successors and assigns shall not be obligated to demolish, repair or restore the Property (regardless of whether such damage or destruction occurred before or after foreclosure), and the Permitted Leasehold Mortgagee (or its designee or nominee) may apply all or a portion of the insurance proceeds to payment of the unpaid indebtedness then or previously secured by its Permitted Leasehold Mortgage.

In the event that the Property so damaged by casualty is not fully restored, the insurance proceeds distributable to Tenant and Landlord (after any application to pay indebtednesses secured by Permitted Leasehold Mortgages) shall be allocated among them based upon the relative values of their respective interests in the Property or portions thereof damaged or destroyed by casualty and not restored, which distribution shall be determined without regard to any termination of this Lease. If the Tenant and the Landlord cannot agree upon such values within sixty (60) days after such proceeds are available for distribution, then the matter may be submitted by the Tenant, the Landlord, or any Leasehold Mortgagee to the Arlington County Circuit Court for a decision.

Section 11.03 Termination.

(a) Except as otherwise provided herein, no total or partial damage to or destruction of any or all of the Property shall entitle Tenant or Landlord to surrender or terminate this Lease, or shall relieve Tenant from its liability hereunder to pay in full any Rent and all other sums and charges which are otherwise payable to Landlord by Tenant hereunder, or from any of its other obligations hereunder, and Tenant hereby waives any right now or hereafter conferred

upon it by statute or otherwise, on account of any such damage or destruction, to surrender this Lease, to quit or surrender any or all of the Property, or to have any suspension, diminution, abatement or reduction of any sum payable by Tenant hereunder. Notwithstanding the foregoing, in the event that (i) all (or substantially all) of the Residential Dwelling Units in the Property are substantially damaged or the damage would prevent the use and operation of the Improvements as a multi-family rental housing development, and (ii) insurance proceeds available to Tenant are insufficient to restore the damaged Property in accordance with Section 11.01(a) above, or (iii) five (5) years or less remain in the Term, the Tenant shall have the right, subject to the prior written approval of each Permitted Leasehold Mortgagee, to terminate this Lease after payment of any Rent due prior to the casualty.

(b) Notwithstanding any other term or provision hereof to the contrary, in the event of a casualty that causes substantial damage or destruction to the Improvements and Tenant's failure to fully repair and restore the Improvements within three (3) years after the occurrence of such casualty, then Landlord shall have the right to terminate this Lease upon thirty (30) days prior written notice to Tenant, regardless of whether or not Tenant has received sufficient insurance proceeds unless Tenant has started and is diligently attempting to restore the Improvements in which event the Landlord's right to terminate this Lease shall be delayed for one (1) year to allow Tenant to complete restoration of the Improvements provided Tenant is diligently pursuing the same. Additionally, in the event that the full amount of Rent payable to Landlord pursuant to Section 3.01 above has not been paid as of the date of any casualty to the Improvements, such amount of unpaid Rent shall first be paid to Landlord from any insurance proceeds before such insurance proceeds are used to reconstruct the Improvements or pay any Leasehold Mortgagee or for any other purpose.

ARTICLE XII CONDEMNATION

Section 12.01 General. If, at any time during the Term, all or any part of the Property is involved in a Taking, then the provisions of this Article XII shall apply to the condemnation proceedings and the distribution of any Condemnation Awards pertaining to such Taking.

Section 12.02 Total Taking. If a Total Taking occurs, then any unpaid Rent shall be fully payable as of the Date of Taking, including without limitation, any amount of the Annual Base Rent Installments previously deferred pursuant to the provisions of Section 3.01 above, and this Lease shall be terminated as of the Date of Taking. All sums, including damages and interest, constituting the Condemnation Award shall be deposited promptly with a Depository, and shall be distributed and disbursed in the following amounts and in the following order of priority:

(a) To Landlord, a sum equal to the value of Landlord's fee simple title to the Land, taking into account the effect on such value of this Lease (had the Taking not occurred) and all other matters affecting such interest; and

(b) To Tenant or Leasehold Mortgagee, the balance of the Condemnation Award.

Notwithstanding any other provision herein, if the Total Taking is undertaken by Arlington County or any political subdivision or entity of Arlington County, then in that event, said funds shall be distributed and disbursed in the following order of priority:

(i) To Tenant or Leasehold Mortgagee, a sum equal to the value of Tenant's Value in the Improvements taking into account the effect on said value of the Lease and all other matters effecting said interest; and

(ii) To Landlord, the balance of the Condemnation Award.

Section 12.03 Partial Taking. If a Partial Taking occurs, then the Term shall not be reduced or affected in any way, this Lease shall remain in full force and effect for the portion of the Property remaining after such Taking and the Tenant's obligation to pay Rent shall continue without abatement or diminution. All sums, including damages and interest constituting the Condemnation Award shall be deposited promptly with a Depositary, and shall be distributed and disbursed in the following amounts and in the following order of priority:

(a) First, to be used for restoration of the Land and Improvements to an economically feasible state, in the good faith judgment of Tenant; and

(b) The balance, *pro rata* between Landlord and Tenant (or Leasehold Mortgagee) in accordance with (i) as to Landlord, the value of Landlord's fee simple title in the portion of the Property so taken, taking into account the effect on such value of this Lease and all other matters affecting such interest (had the Taking not occurred), and (ii) as to Tenant (or Leasehold Mortgagee), the value of the Leasehold and Improvements to Tenant considering the number of years left in the Term.

Tenant, at its sole cost and expense, shall commence and thereafter proceed to repair, alter, raze or restore the remaining part of the Land, or otherwise to secure the Improvements and render the Improvements safe (the "Work"), all in Tenant's reasonable discretion and in accordance with Article IX above. If the Condemnation Award received by Tenant is insufficient to pay the entire cost of the work, then Tenant shall pay the full amount of any such deficiency. If the Condemnation Award received by Tenant shall exceed the entire cost of the Work, then Tenant shall assign its interest and any such excess portion of the Condemnation Award to the Depositary if any and, if none, may use such excess for such purposes as Tenant, in its sole discretion, deems appropriate. Under no circumstances shall Landlord be obligated to make any payment, disbursement or contribution towards or on account of the cost of the Work.

Section 12.04 Temporary Taking. If a Temporary Taking occurs, then the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rent, without reduction or abatement, in the manner and at the times specified in this Lease. Except only to the extent that Tenant is prevented (either legally or as a practical matter) from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such Taking had not occurred. Upon any such Temporary Taking, Tenant shall be entitled to receive the entire amount of any Condemnation Award made for such Temporary Taking whether such award is paid by way of damages, Rent or otherwise; provided, however, if the period of temporary use or occupancy shall extend beyond the date of the expiration or termination of the Term, then such Condemnation Award shall be prorated by Landlord and Tenant as of such date of expiration.

Section 12.05 Condemnation Proceedings. Tenant, Landlord and any Mortgagee shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all negotiations, hearings, trials and appeals in such proceeding.

Section 12.06 Notice of Condemnation. If Landlord or Tenant receives notification of any proposed or pending condemnation proceeding affecting the Land, then the party receiving such notification shall promptly give Notice to the other party.

Section 12.07 New End of Term. If a Partial or Temporary Taking occurs during the last five (5) years of the Term, then Tenant may, at Tenant's option, terminate this Lease on the same terms and conditions as are set forth in Section 11.03 above except that any Condemnation Award shall be treated as set forth in Section 12.02 above.

Section 12.08 Other Governmental Action. In case of any governmental action, not resulting in the Taking or condemnation of any portion of the Property but creating a right to compensation therefor, such as the curving of the grade of any street upon which the Land abuts, then this Lease shall continue in full force and effect without reduction or abatement of Rent and the award shall be paid to Tenant.

Section 12.09 Mortgagees. If there is more than one Leasehold Mortgage, Landlord shall recognize the Leasehold Mortgagee whose Leasehold Mortgage is senior in lien as the Leasehold Mortgagee having priority as to the rights of a Leasehold Mortgagee under this Article XII. Notwithstanding the foregoing provisions of this Article XII, for so long as any Permitted Leasehold Mortgage is in effect, the most senior Permitted Leasehold Mortgage governing any condemnation proceeds shall control (a) the disbursement, use and application of such condemnation proceeds, including, without limitation, any application of condemnation proceeds to the payment of indebtednesses secured by Permitted Leasehold Mortgages prior to application (if any) to restore the Property, and (b) this Lease termination provisions hereunder. If any Permitted Leasehold Mortgagee (or its designee or nominee) shall acquire all or any part of the Leasehold Estate and/or Improvements by foreclosure or assignment or deed in lieu of foreclosure, such Permitted Leasehold Mortgagee (or its designee or nominee) and its successors and assigns shall not be obligated to demolish, repair or restore the Property (regardless of whether such condemnation occurred before or after foreclosure), and the Permitted Leasehold Mortgagee (or its designee or nominee) may apply all or a portion of the condemnation proceeds to payment of the unpaid indebtedness then or previously secured by its Permitted Leasehold Mortgage.

ARTICLE XIII TRANSFERS

Section 13.01 Prohibited. Except as permitted in Section 13.02 below, Tenant hereby acknowledges that this Lease is one which is personal to Tenant and agrees for itself and its successors and assigns in interest hereunder that it will not (a) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises or the Improvements, or (b) make or permit any voluntary or involuntary total or partial sale, lease, sublease, assignment, conveyance, Mortgage, pledge, encumbrance or other transfer of any or all of the Premises or the Improvements, or the occupancy thereof (each of which is hereinafter referred to as a "Transfer"), without first obtaining Landlord's express written consent thereto, which consent Landlord may withhold or deny at its sole and absolute discretion. With respect to utility easements or other easements necessary for the construction or operation of the Project, Landlord's consent thereto shall not be unreasonably withheld, conditioned or delayed subject to normal County standards.

Section 13.02 Permitted Transfers. Notwithstanding anything to the contrary herein, any Transfer (a) to a Resident pursuant to a Tenancy Agreement consistent with the terms and conditions of this Lease; (b) made pursuant to Sections 7.02 or 7.04 hereof; (c) in accordance with the Tax Credits or other applicable requirements; (d) to any Affiliates of Tenant or Arlington Partnership for Affordable Housing, Inc. (“APAH”) pursuant to a corporate restructuring of Tenant’s or APAH’s business or a restructuring undertaken for tax reasons based upon the advice of Tenant’s or APAH’s legal counsel and/or accountants; or (e) in connection with a right of refusal provided to an Affiliate of Tenant under Section 42(i)(7) of the Code, shall not require Landlord’s consent, and, together with any other Transfer to which Landlord consents, shall be deemed a “Permitted Transfer.” Notwithstanding anything to the contrary, a Transfer under this Lease shall not include transfers of partnership interests in Tenant (whether limited or general) to an Affiliate of APAH.

Section 13.03 Effect on Obligations. Except as otherwise set forth in this Article XIII, no Transfer by a Tenant shall alter or impair Tenant’s obligations hereunder arising during the Term, and Tenant shall not be released from any such obligations as a result of any Transfer without Landlord’s express written consent thereto, which consent may be withheld at Landlord’s sole and absolute discretion.

Section 13.04 Benefit and Burden. Except as otherwise provided in this Lease, this Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns in interest hereunder.

ARTICLE XIV DEFAULT

Section 14.01 Definition. As used in this Lease, each of the following events shall constitute an “Event of Default” to the extent not cured after any applicable notice and cure periods: if Tenant fails (a) to pay any Rent or other sum which it is obligated to pay to Landlord under this Lease, when and as it is due and payable hereunder, and/or (b) to perform any other of its obligations under this Lease or the MOU if Landlord reasonably determines that such failure would have a material adverse effect on the Property or on Landlord’s rights, benefits or interests under this Lease or the MOU.

Section 14.02 Notice; Grace Period. No Event of Default shall be deemed to have occurred and Landlord shall not exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until:

(a) **Notice and Opportunity To Cure.** (i) Landlord shall so notify in writing Tenant, all Investor Limited Partners as designated by Tenant and all Permitted Leasehold Mortgagees as designated by Tenant, each of whom shall have the right to cure such Event of Default, and (ii) Landlord shall not terminate this Lease for Tenant’s default unless and until Landlord has given the Investor Limited Partner and such Permitted Leasehold Mortgagee notice of such Event of Default and sixty (60) days in addition to any applicable cure period given Tenant in which to cure it. Notwithstanding the foregoing, Landlord shall have no obligation to provide any notice to the Investor Limited Partner or to such Permitted Leasehold Mortgagee unless and until Tenant provides Landlord with written notice identifying such Investor Limited Partner and/or such Permitted Leasehold Mortgagee and providing the notice addresses for such parties. If an Event of Default, by its nature, cannot be reasonably cured within thirty (30) days, the Investor Limited Partner and Permitted Leasehold Mortgagee shall have such additional time

as it shall reasonably require to effect such cure, so long as the Investor Limited Partner and such Permitted Leasehold Mortgagee is proceeding with all due diligence to effect such cure. In addition to the foregoing time periods with respect to such Permitted Leasehold Mortgagee, for any Event of Default that cannot be cured without possession of the Property, Landlord shall allow such additional time as such Permitted Leasehold Mortgagee shall reasonably require to prosecute and complete a foreclosure, assignment or deed in lieu thereof or other proceeding in order to obtain such possession, including time to obtain relief from a bankruptcy stay in the Tenant's bankruptcy, of up to a maximum of an additional one hundred twenty (120) days.

(b) (i) Tenant fails to cure such Event of Default (A) if such Event of Default consists of a failure to pay money, within thirty (30) days after Landlord gives such written notice to Tenant, or (B) if such Event of Default consists of something other than a failure to pay money, within sixty (60) days after Landlord gives such written notice to Tenant (or, if such Event of Default cannot, by its nature, be reasonably cured within sixty (60) days, such additional time, but in no event more than an additional ninety (90) days, as shall be reasonably required to effect such cure provided that Tenant is proceeding with all due diligence; provided, however, if prior to the expiration of the cure period, Tenant establishes to Landlord's satisfaction that more than ninety (90) additional days are necessary to accomplish the cure, and Landlord provides Tenant with a written notice that grants Tenant additional time to accomplish such cure, then Tenant shall have the additional time to cure set forth in Landlord's notice), and (ii) neither the Investor Limited Partner nor the Permitted Leasehold Mortgagee has cured such Event of Default within the cure period (minimum of thirty (30) days) given Tenant in which to cure as set forth in Section 14.01(a) above.

(c) It is understood that Tenant and the Investor Limited Partner and the first priority Permitted Leasehold Mortgagee shall have the right, subject to the terms of Section 14.02(a) above, to cure any Event of Default, regardless of whether such Event of Default relates to the Improvements owned by Tenant or secured by the Permitted Leasehold Mortgagee of such Permitted Leasehold Mortgagee.

(d) Notwithstanding the foregoing, in the event that (i) Landlord's audits of Tenant's books and records pursuant to Section 3.01(b) above reveal Material Understatements for more than two (2) Tenant's Fiscal Years during any consecutive five (5) Tenant's Fiscal Year period, and (ii) Landlord shall have provided written notice of such Material Understatements to any Investor Limited Partner and Permitted Leasehold Mortgagee (of whom Landlord had written notice) within sixty (60) days after the completion of each such audit, then Landlord shall have the right to treat such occurrence as an Event of Default for which neither Tenant nor any other Person or party shall have the right to cure.

Section 14.03 Landlord's Rights on Event of Default.

(a) If an Event of Default occurs and is continuing (unless waived by Landlord in writing after receipt of notice pursuant to the provisions hereof), Landlord may (subject to the provisions of Section 14.02 above) take any or all of the following actions:

(i) reenter and repossess any or all of the Property pursuant to legal process; and/or

(ii) terminate this Lease by giving written notice of such termination to Tenant, all Investor Limited Partners as designated by Tenant and all Permitted Leasehold

Mortgagees as designated by Tenant, which termination shall be effective as of the date of such notice or any later date therefor specified by Landlord therein (provided that, without limiting the generality of the foregoing provisions of this Section 14.03(a)(ii), Landlord shall not be deemed to have accepted any abandonment or surrender by Tenant of all or any part of the Leasehold Estate and/or Property unless Landlord has so advised Tenant and the Investor Limited Partner and such Permitted Leasehold Mortgagee expressly and in writing, regardless of whether Landlord has reentered or relet all or any part of the Property or exercised any or all of Landlord's other rights under this Section or applicable law); and, on the date specified in such notice, Tenant's right to possession of the Property will cease and the Leasehold Estate shall revert in Landlord; provided, however, such termination of this Lease and cessation of Tenant's right to possession and such revesting of the Leasehold Estate and reentry by Landlord shall be subject to and limited by and shall not defeat, render invalid or limit in any way any residential Tenancy Agreements, any provision of LIHTC Housing Requirements and the Affordability Covenants;

(iii) in Landlord's own name (but either (A) as agent for Tenant, if this Lease has not then been terminated, or (B) for the benefit of Tenant, if this Lease has then been terminated), relet any or all of the Property, with or without any additional premises, for any or all of the remainder of the Term (or, if this Lease has then been terminated, for any or all of the period which would, but for such termination, have constituted the remainder of the Term) or for a period exceeding such remainder, on such terms and subject to such conditions as are acceptable to Landlord in its sole discretion (including but not limited to the alteration of any or all of the Property in any manner which, in Landlord's judgment, is necessary or desirable as a condition to or otherwise in connection with such reletting, and the allowance of one or more concessions or "free-rent" or reduced-rent periods), and collect and receive the rents therefor. Anything in this Lease or Applicable Law to the contrary notwithstanding, (1) Tenant shall have no right in or to any surplus which may be derived by Landlord from any such reletting, if the proceeds of such reletting exceed any Rent, installment thereof or other sum owed by Tenant to Landlord hereunder; and (2) Tenant's liability hereunder shall not be diminished or affected by any such failure to relet or the giving of any such initial or other concessions or "free-rent" or reduced rent periods in the event of any such reletting. Tenant shall be obligated to the Landlord for all unpaid expenses and costs during Tenant's ownership and possession of the Property. Tenant shall not have any liability for the expenses, costs, acts or omissions of any tenant or occupant subsequent to such reletting of the Property. Landlord shall abide by any restrictions, obligations and duties imposed by the LIHTC Housing Requirements and the Affordability Covenants;

(iv) without waiving or limiting any other remedies available to Landlord, upon such default by Tenant (and subject to the notice and cure rights of Tenant), Landlord shall be entitled (but not obligated) to perform or cause such obligations to be so performed on behalf of Tenant, and Tenant shall reimburse Landlord, as additional rent hereunder, for its reasonable third party out-of-pocket costs and expenses incurred by Landlord in doing so, which amount shall be due within thirty (30) days of Tenant's receipt of a written statement of the costs and expenses so incurred by Landlord; and/or

(v) pursue any combination of such remedies and/or any other right or remedy available to Landlord on account of such Event of Default under this Lease and/or at law or in equity, including without limitation, an action for specific performance or other injunctive

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

(b) Any such termination of this Lease, or summary dispossession proceedings, abandonment, reletting, bankruptcy, re-entry by Landlord or vacancy, shall not relieve Tenant of any of its liabilities and obligations under this Lease (whether or not any or all of the Property is relet), and Tenant shall remain liable to Landlord for all damages resulting from any Event of Default prior to such termination, abandonment, reletting, bankruptcy, re-entry or vacancy, including but not limited to any damage resulting from the breach by Tenant of any of its obligations under this Lease to pay Rent that is then unpaid and any other sums which Tenant is then obligated to pay hereunder, provided that Tenant shall not be liable for Rent and other sums (except as provided in Section 14.03(d) below) that shall thereafter be due and payable under this Lease.

(c) If any or all of the Property is relet by Landlord to a third party unrelated to Landlord for any or all of the unexpired Term of this Lease, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Property so relet during the term of the reletting.

(d) If an Event of Default occurs that is not cured within the applicable notice and cure period, Tenant shall, immediately on its receipt of a written demand therefor from Landlord, reimburse Landlord for (i) all reasonable, out-of-pocket expenses (including but not limited to any and all reasonable repossession costs, management expenses, operating expenses, legal expenses and attorneys' fees) incurred by Landlord (A) in curing or seeking to cure any Event of Default, and/or (B) in exercising or seeking to exercise any of Landlord's rights and remedies under this Lease and/or at law or in equity on account of any Event of Default, and/or (C) otherwise arising out of any Event of Default, plus (ii) interest on all such expenses, at the lesser of 6% or the highest rate then permitted on account thereof by applicable law, all of which expenses and interest shall be Rent and shall be payable by Tenant immediately on demand therefor by Landlord.

(e) Notwithstanding anything contained in this Lease to the contrary, Landlord agrees that at any time during the period between the Commencement Date and the date that is the expiration of the applicable fifteen (15)-year tax credit compliance period and any extended use period provided under an Extended Use Agreement, Landlord shall not exercise any of its remedies for Tenant's default under this Lease that would cause a violation of the LIHTC Housing Requirements or other tax credit requirements or would interfere with the rights of any Investor Limited Partner to receive its Tax Credits or any other tax benefits due to the Investor Limited Partner, and this Lease shall not be terminated, without the prior written consent of the Investor Limited Partner. Any termination without such consent shall, except as provided in the immediately foregoing sentence, be void *ab initio*.

Section 14.04 Force Majeure.

(a) Subject to Section 14.04(b) below, any prevention, delay, nonperformance (other than nonperformance of an obligation to pay money to Landlord) or stoppage by Tenant due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any

department or agency thereof that was not in effect as of the date of this Lease, or civil or military authority; acts of God; acts or omissions of Landlord or its agents or employees; fire, explosion or floods; strikes, walkouts or inability to obtain materials; war, riots, sabotage or civil insurrection; or any other causes beyond the reasonable control of Tenant (but excluding delays of Tenant's contractors or subcontractors unless such delays arise from the bankruptcy or insolvency of Tenant's contractors or subcontractors).

(b) No prevention, delay, or stoppage of performance shall be excused unless:

(i) Tenant notifies Landlord within thirty (30) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Section 14.04; and

(ii) Tenant diligently proceeds within thirty (30) days of the conclusion of such prevention, delay or stoppage to commence to cure the condition causing the prevention, delay or stoppage; and

(iii) Tenant affects such cure within a reasonable time.

Section 14.05 Landlord Event of Default. Landlord shall be deemed in default of its obligations under this Lease if Landlord shall fail to perform, in a timely manner in accordance with the terms of this Lease, any obligation under this Lease required to be performed by Landlord, and such failure shall continue for thirty (30) days after Landlord's receipt of written notice of such failure from Tenant (a "Landlord Event of Default"). Notwithstanding the foregoing, Landlord shall have such additional period as may be reasonably required to cure such failure, if the same, by its nature, may not be reasonably cured within thirty (30) days, so long as Landlord commences such cure within thirty (30) days after Landlord's receipt of notice thereof and thereafter diligently prosecutes the same to completion. If Landlord fails to complete such cure as provided above, then subject to the provisions of any Permitted Leasehold Mortgage, Tenant shall thereupon be entitled to exercise any and all remedies available to Tenant for such default under this Lease or at law or in equity; provided, however, Tenant shall have no right to exercise any "self help" right or remedy, to set off against Rents payable hereunder or to obtain any consequential damages against Landlord. In the event Landlord or a creditor thereof files a petition for relief naming Landlord as a debtor under Title 11 of the United States Code, Landlord hereby acknowledges and agrees that Tenant's possessory interest under this Lease and ownership of the Improvements are unique interests and cannot be converted into a cash claim under Section 363 of Title 11 of the United States Code unless Tenant expressly consents to the same. Notwithstanding anything in this Lease to the contrary, the Lease will not be terminated by Tenant without the prior written consent of the Permitted Leasehold Mortgagees and, during the applicable fifteen (15)-year tax credit compliance period under the LIHTC Housing Requirements, as well as any other applicable time period under other applicable requirements, the Investor Limited Partner. Any termination without such consent shall be void *ab initio*.

ARTICLE XV ESTOPPEL CERTIFICATE; RECORDATION

Section 15.01 Estoppel Certificate. Each party hereto shall, at any time and from time to time within twenty (20) days after being requested to do so by the other party and/or any Investor Limited Partner or any Permitted Leasehold Mortgagee in writing, execute, acknowledge, and address and deliver to the requesting party (or, at the latter's request, to any

existing or prospective Mortgagee, transferee or other assignee of the requesting party's interest in the Property or under this Lease which acquires such interest in accordance with this Lease) a certificate in recordable form.

(a) certifying (i) that this Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (ii) that Tenant has accepted possession of the Property, and the date on which the Term commenced; (iii) as to the dates to which any Rent and other charges arising hereunder have been paid; (iv) as to the amount of any prepaid Rent or any credit due to Tenant hereunder; and (v) as to whether, to the best of such party's knowledge, information and belief, the requesting party has been sent a notice that it is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default); and

(b) acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

Section 15.02 Recordation. Concurrently with the execution of this Lease, a short form Memorandum of Deed of Ground Lease shall be recorded by Landlord, at its sole cost and expense in the Land Records for Arlington County, Virginia in the form attached hereto and made a part hereof as Exhibit D. Without limiting the foregoing, such Memorandum shall include a statement that the Property is subject to the terms and conditions of the Affordable Housing Program. As a condition to Landlord's execution of such Memorandum, Landlord shall require that Tenant sign and deliver a certificate terminating and releasing such Memorandum, which certificate Landlord shall retain and shall be entitled to record upon the expiration or earlier termination of this Lease.

ARTICLE XVI CONDITION OF TITLE, PROPERTY AND TENANCY AGREEMENTS

Section 16.01 Limited Warranties. Tenant hereby acknowledges that it has examined the Property, the title thereto, zoning which may be applicable thereto, if any, the applicable parking ordinance, the streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and subsurface conditions thereof, and the present uses and nonuses thereof, if any, and that it accepts each of them in its present condition or state, without restriction, representation, covenant or (except as is set forth in Section 16.03 below) warranty, express or implied, in fact or at law, by Landlord or any other person, and without recourse to Landlord, as to any appurtenances thereto, the nature, condition or usability thereof, or the uses to which any or all of the Property may be put. Subject to the Residential Garage Completion by Landlord and to Landlord's substantial completion of the Site Work pursuant to the terms of the MOU and the Use Permit Amendment (Tenant hereby acknowledging that certain elements of the Site Work are to be performed after Tenant completes the construction of the Project), Tenant hereby accepts the Property in its "AS IS," "WHERE IS" condition and acknowledges that Landlord has made no representations or warranties as to the Property, its physical or environmental condition, its ability to be developed or improved, its value, the status or condition of title to the Property, the Applicable Laws pertaining to the Property, the ability to obtain any permit or approval necessary for the development of the Project, or any other matter relating in any way to the Property or its surroundings, except as specifically set forth in the MOU. Tenant hereby acknowledges that it (a) has received and reviewed existing Phase I and Phase II environmental

reports with respect to the Property, (b) accepts the current environmental condition of the Property as of the execution of this Lease, and (c) shall hold Landlord harmless from any and all claims, costs, damages or liabilities, including without limitation, attorneys' fees, arising in connection with or as a result of any environmental condition of the Property, which condition first arises after the Commencement Date of this Lease. Tenant shall be fully responsible, at its sole cost and expense, for all matters relating to the development and construction of the Project (which does not include the Residential Garage) and Landlord shall have no obligations related thereto.

Section 16.02 Tenancy Agreements. Tenant shall be solely responsible to comply with all obligations as landlord under the Tenancy Agreements, to comply with all Applicable Laws with respect thereto and to hold Landlord harmless from any and all claims, suits, costs or liabilities with respect thereto. Landlord shall be solely responsible for compliance with all obligations in connection with the construction of the Parking Garage (subject to the terms of the MOU), and with all obligations in connection with the New Community Center and to comply with all Applicable Laws with respect thereto.

Section 16.03 Quiet Enjoyment. Landlord hereby:

(a) represents, warrants and covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (i) is the owner of the Land and that it has no written notice of any claim or demand contesting or impairing its interests in the Land; and (ii) has the full right, power and authority to enter into this Lease and thereby to lease the Land; and

(b) warrants that Tenant will have quiet and peaceful possession of the Land during the Term so long as all of Tenant's obligations hereunder are timely performed, except if and to the extent that such possession is terminated pursuant to any provision of this Lease.

Section 16.04 Limitation on Liability. Nothing in this Lease shall be deemed to impose on Landlord any liability on account of any act or failure to act by any person other than Landlord, Landlord's agents, representatives, board members, contractors, or employees. Further, Landlord's liability under this Lease and for any claim arising in any manner with respect to this Lease shall be limited in all events solely to Landlord's interest in the Property.

ARTICLE XVII NOTICES

Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord, Tenant, Investor Limited Partner or Permitted Leasehold Mortgagee (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i) (A) 48 hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (B) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service; or (ii) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party. Addresses for notice:

To Landlord:	The County Board of Arlington County, Virginia 2100 Clarendon Boulevard - Suite 302 Arlington, VA 22201 Attention: County Manager
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With copies to: Arlington County Office of the County Attorney
2100 Clarendon Boulevard, Suite 403
Arlington, VA 22201
Attention: County Attorney

And: Arlington County Real Estate Bureau
2100 Clarendon Boulevard, Suite 800
Arlington, VA 22201
Attention: Real Estate Bureau Chief

And: Arlington County Housing Division
2100 Clarendon Boulevard, Suite 700
Arlington, VA 22201
Attention: Housing Division Director

And: Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
8405 Greensboro Drive, Suite 100
McLean, VA 22102
Attention: Colin J. Smith

To Tenant: Arlington Mill Limited Partnership
c/o Arlington Partnership for Affordable Housing, Inc.
2704 N. Pershing Drive
Arlington, VA 22201
Attn: President

With copies to: Bocarsly, Emden, Cowan, Esmail & Arndt, LLP
7200 Wisconsin Avenue, Suite 900
Bethesda, MD 20814
Attn: Craig Emden

And: Bean, Kinney & Korman, P.C.
2300 Wilson Blvd, 7th floor
Arlington, VA 22201
Attn: Real Estate and Zoning Section

Landlord shall forward to all Investor Limited Partners as designated by Tenant and all Permitted Leasehold Mortgagees as designated by Tenant copies of any notices, demands, consents, approvals, requests and other communication and documents (other than Rent and other periodic billing notices) sent to Tenant, so long as Tenant has previously provided Landlord with the name and notice address of such Permitted Leasehold Mortgagees and Investor Limited Partners.

Any notice required or permitted to be given under this Lease shall be deemed given if provided in accordance with the foregoing paragraph of this Article XVII; provided, however, that any party may change its address for notice purposes by timely notice to the other party.

No notice given by Landlord shall be effective against the Permitted Leasehold Mortgagees or the Investor Limited Partners to whom Landlord is required to provide notice hereunder unless Landlord has given a copy of the notice to such Permitted Leasehold Mortgagees and Investor Limited Partners, so long as Tenant has previously provided Landlord

with the name and notice address of such Permitted Leasehold Mortgagees and Investor Limited Partners.

**ARTICLE XVIII
LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.**

Except to the extent (1) expressly prohibited by Applicable Law, (2) arising from actions by Landlord not related to its status as owner of the Land, or (3) directly caused by the negligence or willful misconduct of Landlord or Landlord's agents, representatives, board members, contractors, or employees, Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Property and its appurtenances nor for any injury or damage to the Property or to any property belonging to Tenant or any other Person which may be caused by any fire or breakage, or by the use, misuse and abuse of the Improvements (including but not limited to, any of the common areas within the Improvements, equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets and sidewalk area within the Land or which may arise from any other cause whatsoever. Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Land, or leakage of gasoline or oil from pipes, storage tanks, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work. Nothing herein shall be construed to limit or waive in any way the sovereign immunity of Landlord, its officers, agents or employees.

**ARTICLE XIX
INDEMNIFICATION OF LANDLORD**

Section 19.01 Tenant's Obligations. Tenant shall protect, indemnify, defend and save Landlord (in Landlord's capacity as landlord under this Lease and not as a Governmental Authority) and any of Landlord's agents, representatives, board members, contractors, or employees (each an "Indemnified Party") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable engineers', architects' and attorneys' fees and disbursements, which may be imposed, upon or incurred by or asserted against any Indemnified Party by reason of any of the following occurring during or after (but attributable to a period of time falling within) the Term, unless the sum is the direct result of an Indemnified Party's negligence or willful misconduct (which exclusion does not waive or otherwise restrict Landlord's right to sovereign immunity):

(a) except for work to be performed by Landlord under the MOU, any demolition or razing or construction of the Improvements or any other work or thing done in, on or about the Land or any part thereof;

(b) except for work to be performed by Landlord under the MOU, any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance, or management of the Property or any part thereof, or of any sidewalk, curb, or vault adjacent thereto that the owner of the Property is required to maintain pursuant to Applicable Law;

(c) any act on the part of the Tenant or any of its respective officers, agents, employees or licensees;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on or about the Land or any part thereof, or in, on or about any sidewalk, curb or vault adjacent thereto that the owner of the Property is required to maintain pursuant to Applicable Law, but excluding any such injury or damage caused by Landlord's construction activities under the MOU or otherwise;

(e) any failure on the part of Tenant to pay Rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be performed or complied with;

(f) any lien or claim which may be alleged to have arisen against or on the Land, or any lien or claim which may be alleged to have arisen out of this Lease and created or permitted to be created by Tenant against any assets of Landlord under the laws of the Commonwealth of Virginia or of any other Governmental Authority or any liability which may be asserted against Landlord with respect thereto;

(g) any claim by any Resident or other occupant of any portion of the Property for any cause; and

(h) any failure by Tenant to comply with Applicable Laws.

Section 19.02 Effect of Insurance. The obligations of Tenant under this Article XIX shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Property or any part thereof.

Section 19.03 Tenant to Defend. If any claim, action or proceeding is made or brought against Landlord against which it is indemnified pursuant to Section 19.01 above, then, upon demand by Landlord, Tenant shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Tenant shall reasonably select. The foregoing notwithstanding, Landlord may engage its own attorneys at Landlord's cost to defend it or to assist in its defense.

Section 19.04 Survival. The provisions of this Article XIX shall survive the Expiration Date with respect to any liability, suit, obligation, fine, damage, penalty, claim, cost, charge or expense arising out of or in connection with any wrongful action or failure to take action or any other matter occurring prior to the Expiration Date.

ARTICLE XX SURRENDER OF LAND AND IMPROVEMENTS

Section 20.01 Surrender. Upon the expiration or earlier termination of the Term, Landlord shall become the sole and absolute owner of the Improvements, free of any interest of Tenant or any Leasehold Mortgagee, without the execution of any further instrument or the payment of any further consideration. Tenant shall, on the last day of the Term, or upon the sooner termination of the Term, quit and surrender to Landlord the Land and Improvements vacant, free of all equipment, furniture and other personal property, and in good order and condition, reasonable wear and tear excepted, and free and clear of all Tenancy Agreements,

lettings, occupancies, liens and encumbrances other than those, if any, existing on the Commencement Date, or permitted in writing by Landlord, without any payment or allowance whatever by Landlord. Tenant hereby waives any Notice now or hereafter required by law with respect to vacating the Property on any such Expiration Date or earlier termination date. Tenant's obligation to observe and perform this covenant shall survive the expiration or earlier termination of the Term.

Section 20.02 Holding Over. Tenant acknowledges that possession of the Land and Improvements must be surrendered to Landlord at the expiration or sooner termination of the Term. Tenant agrees to indemnify Landlord against and save Landlord harmless from all costs, claims, loss or liability resulting from the failure or delay by Tenant in so surrendering the Land and Improvements, including, without limitation, any claims made by any succeeding tenant founded on such failure or delay. The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant to surrender possession of the Land and Improvements as required by Section 20.01 above timely as aforesaid may exceed the amount of any Rent theretofore payable hereunder, and will be impossible to measure accurately. Unless Landlord and Tenant agree otherwise in writing, if possession of the Land and/or Improvements is not surrendered to Landlord upon the expiration or sooner termination of the Term, then Tenant shall pay to Landlord, as liquidated damages for each month and for each portion of any month during which Tenant holds over in the Land and/or Improvements after the expiration or sooner termination of the Term, in addition to any sums payable pursuant to the foregoing indemnity, a sum equal to 1.5 times the Annual Base Rent payable under Section 3.01 of this Lease, as prorated for the period of the hold over, as reasonably determined by Landlord. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Land and/or Improvements after the expiration or sooner termination of the Term. If Tenant holds over in possession after the expiration or termination of the Term, such holding over shall not be deemed to extend the Term or renew this Lease, but the tenancy shall be from month to month upon the terms and conditions of this Lease at the Rent as herein increased. This provision shall survive the expiration or earlier termination of this Lease.

Section 20.03 End of Term. On the last day of the Term or upon any earlier termination of the Lease, or upon re-entry by Landlord upon the Land, Tenant shall deliver to Landlord Tenant's executed counterparts of all Tenancy Agreements, any service and maintenance contracts that are in Tenant's possession and are then affecting the Land or Improvements, true and complete maintenance records for the Land and Improvements, all original licenses and permits then pertaining to the Land and Improvements which are in the possession of Tenant or its management agent, permanent certificates of occupancy then in effect for the Improvements, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or equipment installed in the Improvements, together with a duly executed assignment thereof to Landlord, and all financial reports, books and records required by this Lease and whatsoever relating to the Land.

Section 20.04 Removal of Personal Property. On the last day of the Term or upon any earlier termination of this Lease or upon a re-entry by Landlord upon the Land, Tenant, at its sole cost and expense, shall remove from the Property on or prior to such expiration, termination or re-entry, any personal property situated thereon which is not owned by Landlord, and shall repair any damage caused by such removal. Any property not so removed shall become the property of Landlord, and Landlord may cause such property to be removed from the

Property and disposed of, but the cost of any such removal and disposition and of repairing any damage caused by such removal shall be borne by Tenant.

ARTICLE XXI GENERAL

Section 21.01 Effectiveness. This Lease shall become effective on and only on its execution and delivery by each party hereto and the approval required by Section 21.20 below.

Section 21.02 Complete Understanding. This Lease, including all exhibits attached hereto, represents the complete understanding between the parties hereto as to the subject matter hereof, the Project, the Premises, the Improvements, the equipment, or the rest of the Property, and the rights and obligations of the parties hereto as to the same, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in this Lease. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein. Without limiting the generality of the foregoing, the RFP and letter of intent between Landlord and Tenant shall be superseded in its entirety by the terms and conditions of this Lease.

Section 21.03 Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not taken by Landlord under this Section or any other provision of this Lease (including but not limited to Landlord's acceptance of the payment of Rent after an Event of Default occurs) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which Landlord would otherwise have against Tenant on account of such Event of Default under this Lease or applicable law (Tenant hereby acknowledging that, in the interest of maintenance of good relations between Landlord and Tenant, there may be instances in which Landlord chooses not immediately to exercise some or all of its rights if an Event of Default occurs). No waiver by Tenant of (a) any provision of this Lease, (b) the performance by Landlord of any of its duties or obligations hereunder, or (c) any right, option, election, privilege or benefit of Tenant herein shall be effective without prior written consent of the Investor Limited Partner, and the first priority Permitted Leasehold Mortgagee, and any waiver without such consent shall be void *ab initio*.

Section 21.04 Applicable Law. This Lease shall be given effect and construed by application of the law of the Commonwealth of Virginia without regard to its conflicts of laws or principles, and Landlord and Tenant each irrevocably (a) agrees that any suit, action or other legal proceeding arising out of this Lease or any of the transactions contemplated hereby shall be brought in the Arlington County Circuit; (b) consents to the jurisdiction of such court in any suit, action, or proceeding; and (c) waives any objection he or it may have to the laying of venue of any such suit, action or proceeding in such court.

Section 21.05 Time of Essence. Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation except for the force majeure provisions in Section 14.04 above.

Section 21.06 Headings. The headings of the Sections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

Section 21.07 Construction. As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, paragraph or subparagraph of this Lease. Landlord agrees that, when interpreting this Lease, there shall be no presumption against Landlord on account of the fact that Landlord is the party that caused the drafting of this Lease.

Section 21.08 Exhibits. Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

Section 21.09 Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

Section 21.10 Disclaimer of Partnership Status. Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

Section 21.11 Commissions. Each party hereto hereby represents and warrants to the other that, in connection with the leasing of the Property hereunder, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof. Tenant shall defend, indemnify and hold harmless Landlord against and from any liability, claim of liability or expense arising out of any inaccuracy in Tenant's representation.

Section 21.12 Limited Third-party Rights. Notwithstanding anything to the contrary set forth elsewhere in this Lease, the Investor Limited Partner shall be deemed a third-party beneficiary of the following provisions of the Lease: Section 7.05 (No Subordination), Section 13.02 (Permitted Transfers), Section 14.02 (Notice; Grace Period), Section 14.03 (Landlord's Rights on Event of Default), Section 14.05 (Landlord Event of Default), Section 15.01 (Estoppel Certificate), and Article XVII (Notices), and the Investor Limited Partner shall have rights to enforce such terms. The foregoing rights of the Investor Limited Partner to be a third-party beneficiary under this Lease shall be the only right of Investor Limited Partner (express or implied) to be a third-party beneficiary under this Lease. Such rights of the

Investor Limited Partner shall expire upon the expiration of the applicable 15-year tax credit compliance period as set forth in Section 42 of the Code.

Section 21.13 New Lease. In the event of termination of this Lease for any reason (other than pursuant to Sections 2.01, 2.04 or 2.05 above) prior to its stated Expiration Date or in the event of any acquisition by Landlord of the Leasehold Estate, Landlord shall give each Permitted Leasehold Mortgagee (of which Landlord has previously received written notice) notice of such termination or acquisition within ten (10) business days after such termination or acquisition. If any Permitted Leasehold Mortgagee gives notice of its request upon Landlord for the new lease within a period of thirty (30) calendar days from the date such notice of termination or acquisition is delivered to the Permitted Leasehold Mortgagee, Landlord shall, within twenty (20) business days after Landlord's receipt of such Permitted Leasehold Mortgagee's notice of a request for a new lease, (a) enter into a new lease of the Property with the Permitted Leasehold Mortgagee or its designee or nominee (or, in the event that more than one Permitted Leasehold Mortgagee so requests a new lease, the Landlord shall enter into a new lease with either (i) the Permitted Leasehold Mortgagee, or its designee or nominee, who has the most senior Permitted Leasehold Mortgage on all of the Premises and Improvements and has requested a new lease, or (ii) if no such Permitted Leasehold Mortgagee requests a new lease, each Permitted Leasehold Mortgagee, or its designee or nominee, who has the most senior Permitted Leasehold Mortgage on any portion of the Premises or Improvements and has requested a new lease, all of whom shall collectively be the Tenant under such new lease) for the remainder of the Term of this Lease upon all of the covenants, conditions, limitations and agreements herein contained, effective immediately upon such termination of such prior Lease, at the rental and upon the covenants, agreements, terms, conditions and limitations (except as may have been previously fulfilled or as may be inapplicable to the Permitted Leasehold Mortgagee or its designee or nominee) otherwise herein contained; and (b) execute such deeds or other instruments as the Permitted Leasehold Mortgagee may require and as are acceptable to Landlord in order to convey the Improvements to the Permitted Leasehold Mortgagee; provided that the Permitted Leasehold Mortgagee (A) fully cures, simultaneously with entering into such new lease, any and all then existing defaults of Tenant other than defaults not reasonable susceptible of being cured by the Permitted Leasehold Mortgagee (including, without limitation, any default by reason of any bankruptcy, insolvency, actions by or for the benefit of creditors, or indebtedness of Tenant), and (B) pays Landlord for all expenses including, without limitation, reasonable attorneys' fees and disbursements and court costs incurred by Landlord in connection with the default by Tenant, the termination of this Lease and the preparation of the new lease. For the purpose of this Lease, the execution of a new Lease and conveyance of the Improvements shall be deemed to be an assignment or deed in lieu of foreclosure under its Permitted Leasehold Mortgage and shall have the same effect under the terms and provisions of this Lease as such an assignment or deed.

Section 21.14 Preservation of Lease. This Lease may be amended, modified, supplemented, changed, cancelled, or terminated only by instrument executed by the parties hereto (or their successors or permitted assigns) and only with the prior written consents of all Permitted Leasehold Mortgagees and the Investor Limited Partner. Landlord shall not accept a surrender of the Lease without consents of all Permitted Leasehold Mortgagees and Investor Limited Partner. Any such amendment, modification, supplement, change, cancellation, termination or surrender shall not bind Permitted Leasehold Mortgagees and the Investor Limited

Partner or their successors and assigns and shall be void *ab initio* unless made with such Permitted Leasehold Mortgagees' and Investor Limited Partner's consent.

Each Permitted Leasehold Mortgagee, at its election at any time prior to termination of this Lease, may revoke any notice of Tenant's termination of the Lease or any notice of Tenant's intention to do so. If Tenant gives notice to Landlord of its termination of the Lease, or its intention to do any of the foregoing, Landlord shall notify, within seven (7) calendar days, each Leasehold Mortgagee (of whom Landlord has been notified in writing or has actual knowledge) in order that each Leasehold Mortgagee, at its election, may revoke any such notice to Landlord, on behalf of Tenant, prior to termination of this Lease.

Section 21.15 Tenant's Rights, Generally. Upon and during the continuation of an event of default under any Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee, who is the Mortgagee under such Permitted Leasehold Mortgage, may, subject to the terms hereof, exercise any or all of the rights under this Lease of the Tenant but only so long as Landlord shall have received prior written notice of such Permitted Leasehold Mortgagee.

Section 21.16 No Personal Liability. Except as otherwise provided by Section 21.13 above, no Permitted Leasehold Mortgagee or its designee or affiliate shall have any liability under this Lease for acts or omissions taking place prior to the date it acquires any Tenant's interest and becomes a Tenant under this Lease. If a Permitted Leasehold Mortgagee or its designee or affiliate shall succeed to the interest of Tenant under the Lease, whether as a purchaser at a foreclosure sale or by the acceptance of an assignment or deed in lieu of foreclosure, such Permitted Leasehold Mortgagee and its designee or nominee shall, except as otherwise provided by Section 21.13 above, (a) not be liable for any act or omission of Tenant, and (b) be released from all liability prior to the date such Permitted Leasehold Mortgagee or its designee or nominee succeeds to the interest of Tenant. The foregoing shall not diminish Landlord's rights under Section 14.03 above with respect to any Event of Default that has not been cured or under the obligation of the Permitted Leasehold Mortgagee or its designee or nominee to cure defaults under Section 21.13 above.

Section 21.17 Role of Landlord/Landlord Decisions; No Waiver. Tenant hereby acknowledges that Landlord has entered into this Lease in its role as landlord under this Lease and not as a Governing Authority. Accordingly, Landlord's execution of this Lease shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, including, without limitation, for the construction of the Improvements, or for any other governmental approval or consent required to be obtained by Tenant, including without limitation, any easement or permit pursuant to Section 4.03 above. Whenever in this Lease Landlord is required to join in, consent, give its approval, or otherwise act under this Lease, it is understood that such obligations are meant to apply to Landlord acting in its capacity as a landlord and not in its capacity as a Governing Authority. Further, Tenant hereby acknowledges that any and all decisions, determinations, consents, notifications or any other actions taken or to be taken by Landlord pursuant to this Lease, whether or not specifically contemplated hereunder, may be taken by the County Manager or by another Arlington County official or body pursuant to any means, mechanism or process as determined by Arlington County in its sole discretion, and Tenant shall have no right to question or challenge the propriety, authority or legality of any such Arlington County official or body, or means, mechanism or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by Landlord; provided such decision, determination, consent, notification, or other action by

Landlord is taken in accordance with all applicable laws, rules, regulations, ordinances, codes, procedures, processes and orders. Notwithstanding the foregoing, nothing in this Lease shall be construed to waive any of Landlord's powers, rights or obligations as a Governing Authority or local governing body, whether or not affecting the Land or Improvements, including, but not limited to, its police power, right to grant or deny permits, right to collect taxes or other fees, or any other power, right or obligation whatsoever.

Section 21.18 No Rights in Third Parties. Except as specifically provided in Section 21.12 and otherwise within this document, the parties hereto mutually agree that no provision of this Lease shall create in the public, or in any person or entity other than those signing this Lease as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party or authorized assignee hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Lease or otherwise.

Section 21.19 No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Lease to the contrary, Landlord shall have no obligation to explicitly or implicitly indemnify or hold harmless Tenant or any third party or parties from any liability whatsoever.

Section 21.20 Approval of Lease by Landlord. This Lease shall not become effective unless and until the County Board approves this Lease. Such approval by the County Board shall be evidenced by the execution of this Lease by the Chairman of the County Board or other person designated by the County Board. Upon the execution and delivery by Tenant of a Lease that is acceptable to the County Manager, he shall use reasonable efforts to promptly obtain the approval of the County Board to this Lease consistent with the County process for the review and submission of documents to the County Board for consideration. If this Lease is not approved by the County Board as evidenced by the execution hereof by the County Manager or his designee, then no liability whatsoever shall accrue to Landlord or Tenant and Landlord and Tenant shall have no obligations whatsoever to each other hereunder.

Section 21.21 Appropriation of Funds. All of Landlord's obligations under this Lease that, to be performed, require an appropriation of funds, shall be fully subject to the appropriation of funds by The County Board of Arlington County, Virginia for the specific purpose of satisfying the obligations of Landlord hereunder.

Section 21.22 No Waiver of Sovereign Immunity by Landlord. Notwithstanding any other provision of this Lease to the contrary, nothing in this Lease nor any action taken by Landlord pursuant to this Lease nor any document which arises out of this Lease shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of Landlord, or of its elected and appointed officials, officers and employees in its capacity as a Governing Authority.

[Signatures contained on following page]

IN WITNESS WHEREOF, each party hereto has executed and ensealed this Lease or caused it to be executed and ensealed on its behalf by its duly authorized representatives, the day and year first above written.

Approved as to form:

LANDLORD:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic

County Attorney

By: _____(seal)

Name: _____

Title: _____

TENANT:

ARLINGTON MILL LIMITED PARTNERSHIP,
a Virginia limited partnership

By: Arlington Partnership for Affordable Housing,
Inc., a Virginia corporation, its General Partner

By: _____(seal)

Nina Janopaul, President/CEO

EXHIBITS ATTACHED:

- Exhibit A – Description of Land
- Exhibit B – Insurance Requirements
- Exhibit C – Affordable Housing Program
- Exhibit D– Form of Memorandum of Lease
- Exhibit E – Memoranda of Understanding

EXHIBIT A
DESCRIPTION OF LAND
[NEED TO COMPLETE]

EXHIBIT B

INSURANCE REQUIREMENTS

During the Term of the Lease, Tenant shall obtain and keep in force, at Tenant's expense, the following insurance; provided however, that to the extent a partnership agreement or operating agreement of any Affiliate, or any Permitted Leasehold Mortgagee's insurance requirements require other insurance coverage, or a higher standard or amount of insurance coverage, to be maintained with respect to Tenant, Affiliate or the Property, such other coverage requirements and such higher standards or amounts shall apply.

During all phases of this Project and until the receipt of final certificates of occupancy, Tenant shall maintain, or cause Tenant's contractor (the "Builder") to maintain, an all-risk builder's risk insurance policy in non-reporting completed form. Limits of policy will be at least the estimated replacement value of the completed Project, plus the value of other property insured. The policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation; loss payment shall be to Tenant. Tenant, Landlord, Builder, General Contractor and subcontractors and suppliers of any tier as their interest may appear shall be the named insureds on the policy.

Commencing from the earliest (a) of receipt of final certificates of occupancy for the Project, or (b) the lapse in builder's risk coverage, and continuing throughout the term of the Construction Mortgage, Tenant shall maintain the following insurance coverages applicable to the Property:

(i) Property Insurance - insurance covering risks of direct physical loss or damage. Limits of policy will be at least the estimated replacement value of the Improvements comprising the Property, plus the value of the other property insured. The policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation, loss payment shall be made to Tenant. Tenant and Landlord shall be the named insureds on the policy.

(ii) Liability - Commercial general liability insurance against claims for bodily injury, property damage, personal injury or advertising injury occurring on, in or about the Property or the elevators or escalators therein, in amounts initially not less than \$1,000,000 per occurrence with a \$2,000,000 annual aggregate, and in such greater amounts as Landlord shall reasonably require from time to time during the Term upon at least forty-five (45) days prior written Notice to Tenant before the annual renewal date of the insurance policy. Tenant shall be the named insured on the policy and Landlord shall be the additional insured on the policy.

(iii) Umbrella/Excess Liability - Such insurance shall have the commercial general liability and automobile liability policies schedules as underlying policies. Limits on the policy shall initially be at least \$5,000,000 per occurrence and in the annual aggregate, and in such greater amounts as Landlord shall reasonably require, consistent with other comparable multi-family residential projects in Arlington County, from time to time during the Term upon at least ninety (90) days prior written Notice to Tenant before the annual renewal date of the insurance policy. Landlord shall be named as an additional insured on the policy.

EXHIBIT C

AFFORDABLE HOUSING PROGRAM

Affordable Housing Program: The affordable housing program for Arlington Mill Residences reflects the commitment of Arlington County to preserve and provide affordable housing in the Columbia Pike Revitalization District. The apartments will be constructed in compliance with the Form-based code and 99% (121 of 122 units) will be affordable to households earning 60% of the Area Median Income (AMI) and such lower amounts as the Tenant and County may mutually agree. The 60% AMI standard currently covers households earning approximately \$43,000/year to \$80,000/year depending on household size. Rents for the 121 units will remain affordable for the life of the Ground Lease (at least 75 years). Ten percent of the affordable units (13 units) will be made available for tenants who are also clients of Arlington County's Supportive Housing program.

The table below shows the proposed unit mix and current rent limits under the LIHTC program:

PROPOSED RENTAL UNIT MIX AND RENTS

Unit Size	Affordability	Rent Level	Number of Units
Studio 8 units	40%	\$725	6
1-bedroom 16 units	40%	\$776	2
	50%	\$970	2
	60%	\$1,164	13
	market	na	1
2-bedroom 38 units	40%	\$932	2
	50%	\$1,165	7
	60%	\$1,398	64
3-bedroom 25 units	40%	\$1,076	2
	50%	\$1,345	3
	60%	\$1,614	20
Total			122

The rents shown above are not adjusted for utilities.

The rental units will initially be developed under the Low Income Housing Tax Credit (LIHTC) program and shall remain affordable for the life of the Ground Lease (at least 75 years). For so long as the units are subject to the LIHTC program the tenant household income limits shall be determined in accordance with the program's procedures and requirements. At the end of the 15-year LIHTC compliance period the Tenant will, upon the request of the Arlington Partnership for Affordable Housing, Inc. (APAH), transfer its rights and interests under the Ground Lease to APAH in accordance with a right of first refusal or other transfer provision under the terms of Tenant's partnership agreement. This non-profit corporation (and its successors) will continue to operate the units in accordance with the requirements of the Ground Lease.

Notwithstanding the description of affordability noted above, contract rents shall not exceed the maximum affordable rents as established and published annually by the U.S. Department of Housing and Urban Development (HUD) for the Washington Statistical Metropolitan Area. To the extent that residents pay their own utility charges, the maximum monthly rent will be reduced by a utility allowance equal to either the then-current Arlington County Section 8 Program

Allowances for Tenant Furnished Utilities and Other Services, as renewed periodically, or such other amount determined by an independent mechanical engineer or an independent Residential Energy Services Network Certified Professional in accordance with HUD guidelines. Furthermore, Arlington County Housing Grants and HUD Section 8 Housing Choice Vouchers will be accepted as part of the rental payment from qualified households; however, the Property Manager shall not be required to give preference to such recipients over other qualified households.

The Tenant agrees to maintain such financial records and other records as may be required by the County and by applicable laws, rules and regulations. These records shall be made available for examination, transcription, and audit by the County, its designees and other authorized bodies at all reasonable times.

EXHIBIT D

FORM OF MEMORANDUM OF LEASE

**PREPARED BY AND
WHEN RECORDED RETURN TO:**

Watt Tieder Hoffar & Fitzgerald, L.L.P.
8405 Greensboro Drive, Suite 100
McLean, Virginia 22102
Attention: Colin J Smith

RPC № [_____]

Exempt from Recordation Tax
Per Virginia Code § 58.1-811.A.3

(Space Above for Recorder’s Use)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into effective as of the _____ day of _____ 2011, by and between **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic (“Landlord”) and **ARLINGTON MILL LIMITED PARTNERSHIP**, a Virginia limited partnership (“Tenant”).

1. TERM AND PREMISES. For the term and upon the provisions set forth in that certain written Deed of Ground Lease (Arlington Mill Residences) dated as of _____, 2011 between Landlord and Tenant (the “Lease”), all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein, Landlord leases to Tenant and Tenant leases from Landlord that certain real property consisting of land (“Premises”) located in the County of Arlington, Commonwealth of Virginia, and more particularly described on **Exhibit A**, which exhibit is attached hereto and made a part hereof, for a term commencing on [_____] and expiring on [_____] . Tenant has the option to extend the term of the Lease for twenty-five (25) years pursuant to **Section 2.01** of the Lease.

2. USE. Reference is particularly made to **Section 4.01** of the Lease wherein Tenant is granted the right to use the Premises for the development, construction, ownership, use, maintenance, repair and replacement of the Project (as such term is defined in the Lease) and for no other purpose.

3. AFFORDABLE HOUSING. The use and operation of the Premises is subject to the terms of the Affordable Housing Program described in the Lease.

4. PURPOSE OF MEMORANDUM OF LEASE. This Memorandum of Lease is prepared for the purposes of recording a notification as to the existence of the Lease but in no way modifies the provisions of the Lease. In the event of any inconsistency between the terms of the Lease and the terms of this Memorandum of Lease, the terms of the Lease shall govern for all purposes.

IN WITNESS WHEREOF, this Memorandum of Lease has been executed under seal as of the day and year first above written.

LANDLORD:

Approved as to form:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, a body politic

County Attorney

By: _____
Name: _____
Title: _____

**COMMONWEALTH OF VIRGINIA,
COUNTY OF ARLINGTON, to wit:**

I, _____, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____ as _____ of The County Board of Arlington County, Virginia, a body politic, as Landlord, whose name as such is signed to the foregoing Memorandum of Lease, appeared before me and personally acknowledged the same in my jurisdiction aforesaid as his act and deed and the act and deed of said body politic.

GIVEN under my hand and seal this _____ day of _____, 2011.

[Notary Seal]

Notary Public

My commission expires: _____

My Registration # _____

[Tenant's signature contained on following page]

TENANT:

ARLINGTON MILL LIMITED PARTNERSHIP, a Virginia limited partnership

By: Arlington Partnership for Affordable Housing, Inc., a Virginia corporation, its General Partner

By: _____(seal)
Nina Janopaul, President/CEO

STATE OF _____,

COUNTY/CITY OF _____, **to wit:**

I, _____, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Nina Janopaul, President/CEO of Arlington Partnership for Affordable Housing, Inc., a Virginia corporation, the General Partner of **ARLINGTON MILL LIMITED PARTNERSHIP**, a Virginia limited partnership, as Tenant, whose name as such is signed to the foregoing Memorandum of Lease, appeared before me and personally acknowledged the same in my jurisdiction aforesaid as her act and deed and the act and deed of said limited liability company.

GIVEN under my hand and seal this ____ day of _____, 2011.

[Notary Seal]

My commission expires: _____

My Registration # _____

Notary Public

EXHIBIT A
DESCRIPTION OF PREMISES
[NEED TO COMPLETE]

EXHIBIT E
MEMORANDA OF UNDERSTANDING
[to be attached]

**DEED OF GROUND LEASE
(Arlington Mill Residences)**

Between

The County Board of Arlington County, Virginia, a body politic,
as Landlord,

and

Arlington Mill Limited Partnership, a Virginia limited partnership,
as Tenant,

Dated: As of _____, 2011

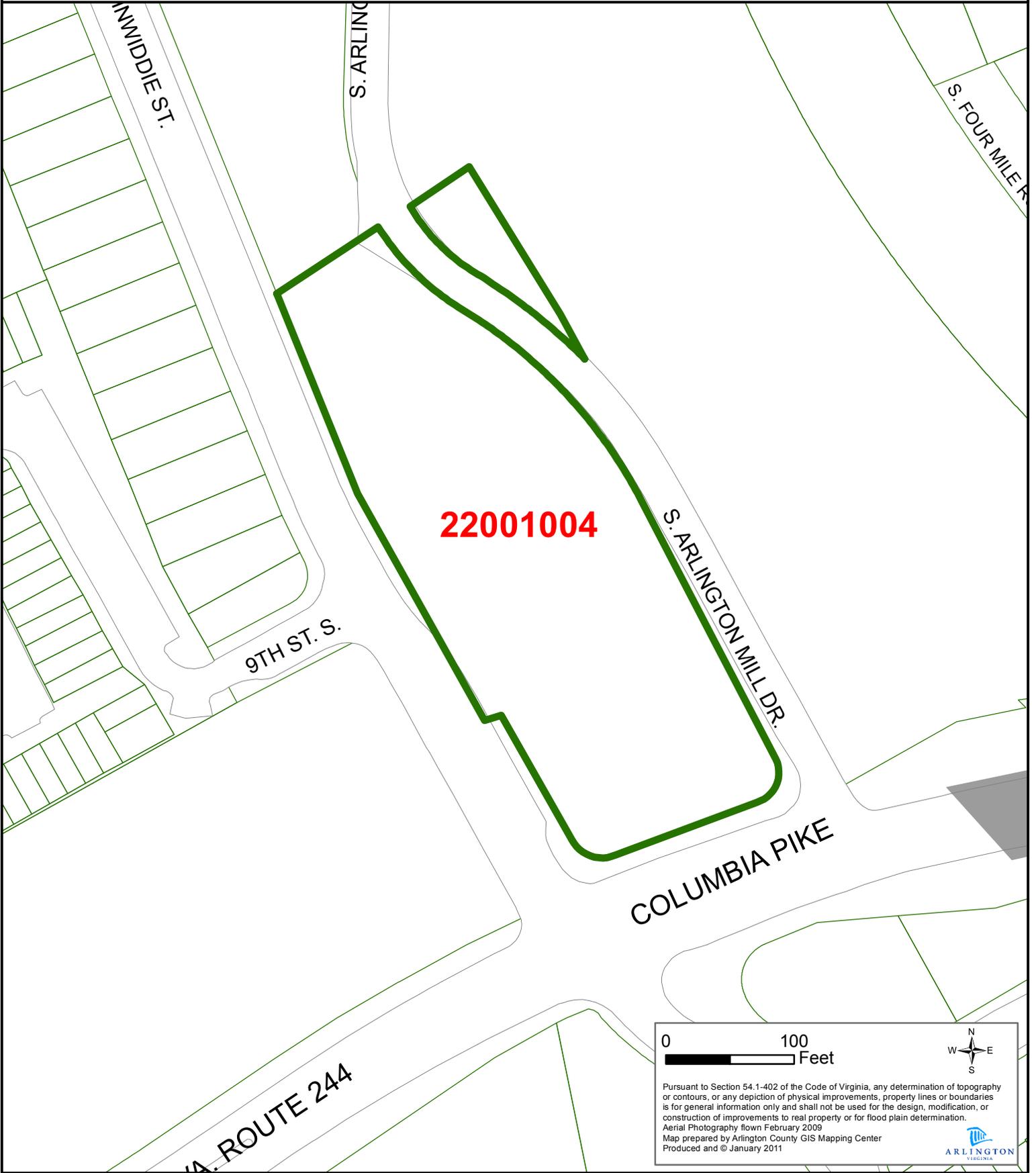
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EXHIBITS:

- Exhibit A – Description of Land
- Exhibit B – Insurance Requirements
- Exhibit C – Affordable Housing Program
- Exhibit D– Form of Memorandum of Lease
- Exhibit E – Memoranda of Understanding

Vicinity Map
Resubdivision of Arlington Mill Property &
Sublease of Resubdivided Parcel A - 4975 Columbia Pike
RPC # 22001004

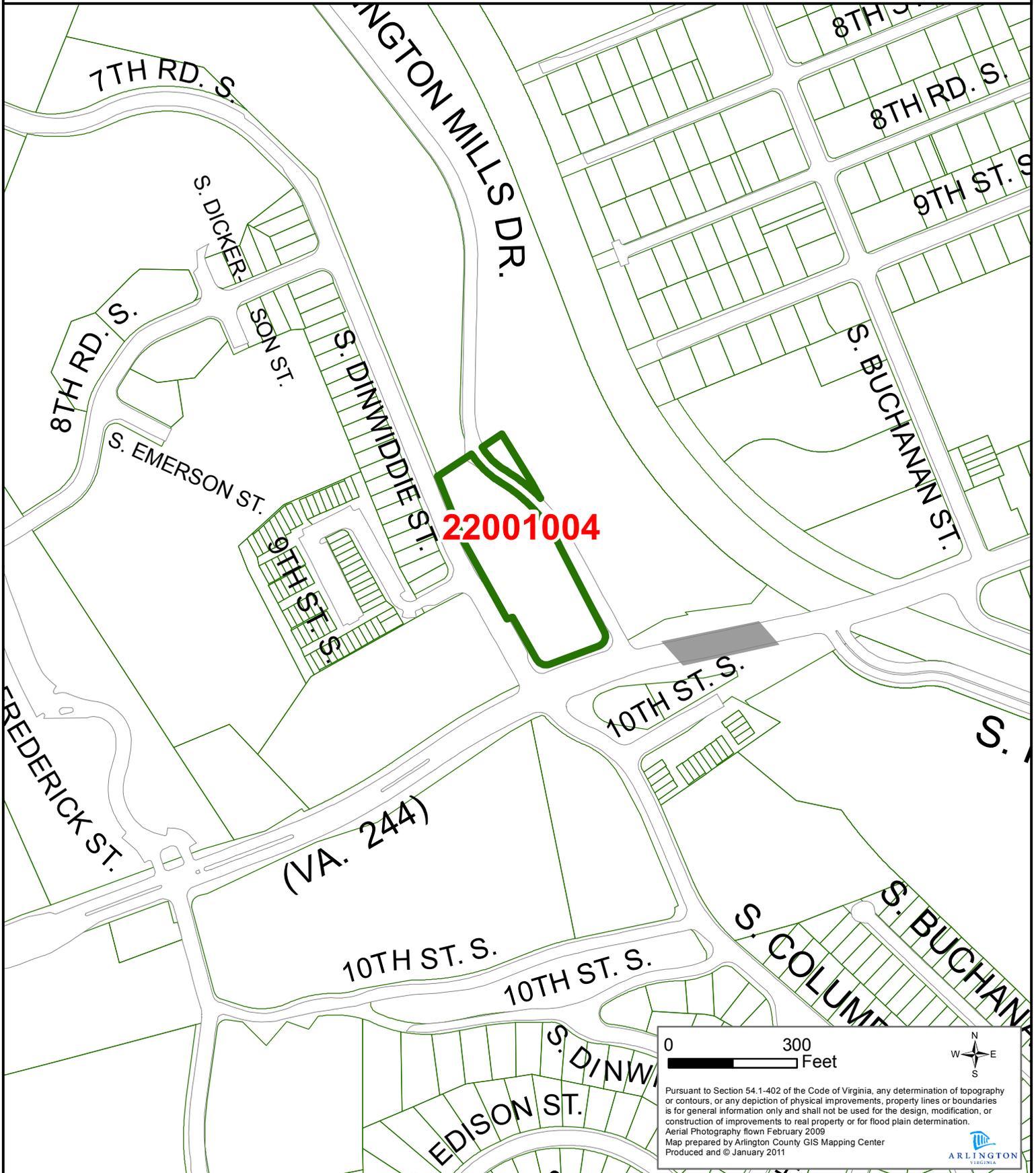


0 100 Feet

Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.
Aerial Photography flown February 2009
Map prepared by Arlington County GIS Mapping Center
Produced and © January 2011



Vicinity Map
Resubdivision of Arlington Mill Property &
Sublease of Resubdivided Parcel A - 4975 Columbia Pike
RPC # 22001004



0 300 Feet

Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination. Aerial Photography flown February 2009. Map prepared by Arlington County GIS Mapping Center. Produced and © January 2011.