

**EVERETT SCHOOL DISTRICT NO. 2  
RESOLUTION NO. 1199**

**Surplus Property**

A **RESOLUTION** of the Board of Directors of Everett School District No. 2 declaring certain real property as surplus real property for purposes of leasing of the same to Housing Hope Properties.

**WHEREAS**, the Board is authorized under RCW 28A.335.040 to rent, lease, or permit the occasional use of surplus District real property; and

**WHEREAS**, the District previously adopted Policy No. 6112 regarding the rental, lease, or occasional use of surplus real property; and

**WHEREAS**, the District owns that certain real property more particularly described on Exhibit A attached hereto and made a part hereof by the reference (the "Surplus Property"); and

**WHEREAS**, the Board has determined that the Surplus Property is not currently needed for school purposes, but may so be needed in the future; and

**WHEREAS**, the District published a notice in a newspaper of general circulation in the school district of its intent to lease the Property on March 28, 2019 and April 6, 2019, in anticipation of a Board Resolution declaring that the Premises to be leased on the Property are not needed for school purposes; and

**WHEREAS**, the Board has further determined that leasing of the Surplus Property is in the current best interest of the District and does not interfere with the District's current educational program and related activities; and

**WHEREAS**, representative of the District and Housing Hope Properties have negotiated a form of lease, attached hereto is Exhibit B, for consideration by the board setting forth proposed terms and conditions under which the District would lease the premises to Housing Hope Properties;

**THEREFORE, BE IT RESOLVED** that

(a) the Board declare, and hereby declares, the Surplus Property to be surplus to the District's current needs, as it is currently not needed by the District for school purposes, such declaration being made for the sole purpose of renting, leasing or permitting the occasional use of the Surplus Property, in whole or in part, pursuant to the above-noted statutory authorization and District Policy;


(b) the Board authorize, and hereby authorizes, the Superintendent of the District (or his designee) to: (i) rent, lease, or permit the occasional use of the Surplus Property, and (ii) execute, acknowledge and deliver all necessary documents, and do any and all other things necessary and advisable to be done to accomplish the foregoing rental, lease or occasional use of the Surplus Property, all in accordance with Policy No. 6112 and applicable law.

ADOPTED this 21 day of May, 2019, and authenticated by the signatures affixed below.

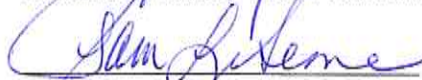
EVERETT SCHOOL DISTRICT NO. 2  
Snohomish County, Washington



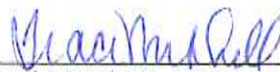
Carol Andrews, President



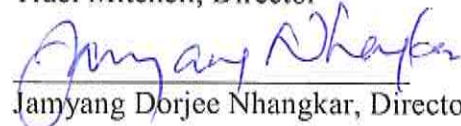
Caroline Mason, Vice President



Pam LeSesne, Director

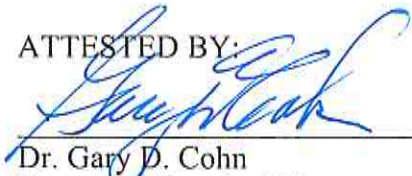


Traci Mitchell, Director



Jamyang Dorjee Nhangkar, Director

ATTESTED BY:



Dr. Gary D. Cohn  
Secretary, Board of Directors

EXHIBIT A

“Surplus Property”

Legal Description

LOTS 3, 4, 7, 8, 9, 10, 11 AND 12, BLOCK 3, FRIDAY'S SECOND ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 56, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

TOGETHER WITH THE SOUTH 62 1/2 FEET OF LOT 2, BLOCK 3, OF SAID FRIDAY'S SECOND ADDITION TO EVERETT AND TOGETHER WITH THAT PORTION OF SAID LOT 2 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 2, 62 1/2 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE NORTH ALONG SAID WEST LINE TO A POINT WHICH IS 12 1/2 FEET NORTH OF THE SOUTHEAST CORNER OF LOT 13 OF SAID BLOCK 3;

THENCE EAST 15 FEET; THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID LOT 2 TO A POINT WHICH IS DISTANT NORTH 62 1/2 FEET FROM THE SOUTH LINE OF SAID LOT 2;

THENCE WEST 15 FEET TO THE POINT OF BEGINNING; AND TOGETHER WITH THE SOUTH 12 1/2 FEET OF LOT 13, BLOCK 3 OF SAID FRIDAY'S SECOND ADDITION TO EVERETT; AND TOGETHER WITH VACATED PORTION OF GRAND AVENUE ADJACENT TO LOT 4, BLOCK 3 OF SAID PLAT.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

**EXHIBIT B**

**GROUND LEASE AGREEMENT**

**BETWEEN**

**EVERETT SCHOOL DISTRICT #2,  
AS LANDLORD**

**AND**

**HOUSING HOPE PROPERTIES,  
AS TENANT**

**PROPERTY LOCATED AT:  
NORTON PLAYFIELD  
EVERETT, SNOHOMISH COUNTY, WASHINGTON**

## TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definitions.....	1
Section 2. Premises; Improvements; Tenants Development Plan .....	2
Section 3. Commencement Date; Term .....	3
Section 4. Rent .....	4
Section 5. Termination Contingencies .....	5
Section 6. Landlord's Due Diligence Materials .....	6
Section 7. Entry; Construction of Tenant's Improvements; Alterations .....	7
Section 8. Rights and Obligations Prior to Construction .....	7
Section 9. Maintenance and Repair Obligations.....	8
Section 10. Taxes .....	8
Section 11. Insurance .....	10
Section 12. Indemnification .....	11
Section 13. Utilities.....	12
Section 14. Use .....	12
Section 15. Signage.....	12
Section 16. Mortgage Interests .....	13
Section 17. Assignment and Subletting .....	13
Section 18. Representations, Warranties and Covenants.....	13
Section 19. Broker .....	15
Section 20. Compliance With Laws.....	15
Section 21. Surrender.....	15
Section 22. Eminent Domain .....	15
Section 23. Damage or Destruction of Premises .....	17
Section 24. Default by Tenant; Landlord's Remedies .....	17
Section 25. Default by Landlord; Tenant's Remedies .....	19
Section 26. Estoppel Certificates .....	20
Section 27. Holdover .....	20
Section 28. Quiet Enjoyment .....	20
Section 29. Notices .....	20
Section 30. Security Deposit.....	21
Section 31. Miscellaneous .....	21

**TABLE OF CONTENTS**  
**(Continued)**

	<b><u>Page</u></b>
Exhibits:	
Exhibit A	Legal Description of Leased Property

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "**Lease**") is made and entered as of the \_\_\_\_ day of \_\_\_\_\_, 201\_ (the "**Effective Date**") by and between EVERETT SCHOOL DISTRICT #2, a Washington public school district, as landlord ("**Landlord**"), and HOUSING HOPE PROPERTIES, a Washington non-profit corporation, as tenant ("**Tenant**").

### RECITALS

- A. Landlord owns that certain land described on Exhibit A attached hereto (the "**Land**");
- B. Landlord is a school district formed and existing under the laws of the State of Washington, providing educational services to certain residents of the State of Washington within its district (the "**District**");
- C. Within the District, there are families with students who are homeless or are at risk of losing places of residence ("**District Households**");
- D. Landlord desires that District Households be provided with opportunities for affordable rental housing;
- E. The Land is located adjacent to an existing school operated by Landlord and constitutes surplus property;
- F. Tenant is a developer, operator and provider of affordable housing;
- G. Tenant proposes to construct an affordable housing apartment development (the "**Project**") on the Land, as more particularly described herein; and
- H. Tenant desires to lease the Land for purposes of developing the Project and to provide housing to District Households pursuant to residential leases to be entered into by and between Tenant and certain District Households.

NOW, THEREFORE, in consideration of mutual covenants and other benefits described herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

#### **SECTION 1.** **Definitions.**

Various terms are defined within the text of this Lease. Wherever such terms are used in this Lease, they shall have the meanings given at their respective places of definition. In addition, as used in this Lease the following terms shall have the meanings indicated:

- 1.01 "**Building**" shall have the meaning set forth in Section 7.02.



1.02 **“Business Day”** shall mean any day other than a Saturday, Sunday, or legal holiday on which national banks are authorized by federal law to close.

1.03 **“Code”** shall mean the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

1.04 **“Effective Date”** shall mean the date that both Tenant and Landlord have executed this Lease and a fully executed copy of this Lease has been delivered to Tenant, with such specific date being set forth in the first paragraph of this Lease.

1.05 **“Environmental Law”** shall mean any federal, state, or local law, statute, ordinance, code, rule, regulation, order or decree pertaining to or relating to or imposing liability or standards of conduct concerning health, industrial hygiene, or the environmental conditions on or under the Land, or releases, discharges, emissions, or disposals to air, water, soil, or groundwater, or relating to the withdrawal or use of groundwater, or relating to the use, handling, or disposal of polychlorinated biphenyls, asbestos, or urea formaldehyde, or relating to the treatment, disposal, storage, or management of Hazardous Materials or relating to the transportation, storage, disposal, or management, including, without limitation, the Comprehensive Environmental Response Compensation, and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Clear Air Act, the Clean Water Act, the Community Right-to-Know Act, and the Occupational Safety and Health Act, each as amended, and all rules, and regulations, published pursuant thereto or promulgated thereunder.

1.06 **“Force Majeure”** shall mean any delays as the result of (i) strikes, lockouts or labor disputes, (ii) acts of God, hurricanes, blizzards or other adverse weather conditions, governmental action, condemnation, civil commotion, fire or other casualty, or (iii) inability to obtain governmental approvals or Permits as required by Laws despite the use of all commercially reasonable and prudent efforts, or (iv) inability to obtain materials or reasonable substitutes therefor despite the use of all commercially reasonable and prudent efforts. Force Majeure shall not apply to any monetary obligations of any party or any delays caused by a failure or inability to make any payment of money.

1.07 **“Hazardous Material”** shall mean and include, without limitation: (i) “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “pollutants,” or “contaminants” or other terms of similar import and any other substances defined, listed or regulated now or in the future under, any Environmental Law; or (ii) any material, waste, or substance which is or contains asbestos, polychlorinated biphenyls, chlorinated solvents, petroleum or its derivative by-products, or any explosive or radioactive materials.

1.08 **“Laws”** shall mean and include the following (including, without limitation, any Environmental Law), as the same may be applicable and in effect from time to time: (i) federal, state and municipal statutes, laws, ordinances, rules, codes, orders, decrees and regulations; (ii) all judicial decisions, rulings, regulations, permits, or ordinances of any governmental or quasi-governmental authority; and (iii) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument



of any nature in effect as of the Effective Date or in the future that relate in any way or are applicable to the Premises or the use, ownership or occupancy thereof.

1.09 **“Permits”** shall mean all permits, licenses, and governmental and other approvals necessary to acquire, develop, construct, operate, and use the Premises in accordance with Laws, including without limitation, regulatory approvals, land-use permits and approvals, zoning approvals and variances, subdivision plats, site plan and architectural approvals, building, curb cut, sewer and other construction-related permits, and any other discretionary governmental approvals or permits necessary for the foregoing or for Tenant’s use, but not including any of the foregoing that (i) are purely ministerial in nature or (ii) by their nature, would be obtained at a later stage in the development of the Project.

1.10 **“Permitted Encumbrances”** shall mean: (i) any Leasehold Mortgage, (ii) any Laws and any encumbrance required to comply with any Laws, (iii) any restrictive covenant, declaration, covenants, conditions or restrictions of record affecting the Premises, and (iv) any other lien, easement or encumbrance entered into by Landlord that is either subordinate to this Lease or that does not impair or interfere with the use or operation of the Project.

1.11 **“Premises”** shall have the meaning set forth in Section 2.01.

1.12 **“Prohibited Person”** shall mean any person with whom Landlord is restricted from doing business under regulations of the Office of Foreign Asset Control (**“OFAC”**) of the Department of the Treasury of the United States of America (including, those Persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons.

1.13 **“Project”** shall mean a multi-family apartment complex, not less than two (2) stories, comprised of residential units available for rent to families of low to moderate income to be constructed at the Land and which contain, at a minimum, thirty-four (34) units (comprised of seven (7) three (3) bedroom units, twenty (20) two (2) bedroom units and seven (7) one (1) bedroom units), such parking as is required by law, or that amount required in accordance with the permitting of the Project, and in Tenant’s sole discretion up to 10,000 square foot of space to be used as an early childhood center (**“ELC”**), which is developed in accordance with the terms and conditions set forth in this Lease.

1.14 **“Substantial Completion”** (or derivations thereof) shall mean that the Improvements (hereinafter defined) have been completed in accordance with the Plans and Specifications (hereinafter defined), the terms and conditions of this Lease and all Laws, subject to no liens other than Permitted Encumbrances, and one or more certificates of occupancy have been issued by the City of Everett permitting occupancy of the entire residential portion of the Project.

1.15 **“Tenant’s Financing Closing”** means the date on which the Leasehold Financing sources have recorded their lien instruments against the Leasehold Estate and the construction financing has been made available for use by Tenant.

1.16 “**Term**” shall have the meaning set forth in Section 3.02.

1.17 “**Title Insurer**” shall mean Chicago Title Insurance Company, 3002 Colby Avenue, Suite 200, Everett, Washington 98201.

## **SECTION 2.**

### **Premises; Improvements**

2.01 Premises. Upon the terms and conditions hereinafter set forth, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Land and any improvements currently or hereafter located thereon (the “**Premises**”).

2.02 Appurtenant Rights. In addition to the Land, Landlord hereby grants to Tenant, during the Term, on a non-exclusive basis, the license for use of each and all of the following, to the extent of any interest the Landlord may have in any such item and to the extent assignable, and subject to all terms and conditions of this Lease:

(A) real property lying within any street, highway, road, roadway, avenue or other thoroughfare, whether open or proposed, adjoining, abutting or contiguous to all or any portion of the Land, to the centerline thereof; and

(B) rights-of-way, easements, licenses, and other rights and privileges, hereditaments, and appurtenances now or hereafter belonging to or benefiting the Land or any portion thereof (including, without limitation, an easement for the right to use, operate, maintain and repair any utility lines serving the Land or any improvements located thereon).

2.03 AS-IS. LANDLORD HAS MADE NO REPRESENTATION OR WARRANTY WHATSOEVER AS TO ADEQUACY, OPERABILITY, SAFETY, OR FITNESS OF THE PREMISES OR OF THE UTILITIES SERVICING THE SAME, FOR ANY PARTICULAR PURPOSE, OR THAT THE PREMISES IS FREE OF HAZARDOUS MATERIALS, COMPLIES WITH ENVIRONMENTAL LAWS OR COMPLIES WITH OTHER LEGAL REQUIREMENTS, INCLUDING THOSE REGULATING LAND USE, ZONING, SAFETY, OR FIRE PROTECTION, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 18.01 BELOW. WITHOUT LIMITING THE FOREGOING, LANDLORD HAS MADE NO REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR THE DEVELOPMENT, CONSTRUCTION OR OPERATION OF THE PROJECT. LANDLORD ASSUMES NO LIABILITY FOR ANY DAMAGE TO PERSON OR PROPERTY CAUSED BY ANY CONDITION OR INADEQUACY NOW OR HEREAFTER EXISTING ON THE PREMISES. TENANT ACCEPTS THE PHYSICAL CONDITION OF THE PREMISES (INCLUDING, WITHOUT LIMITATION THE ENVIRONMENTAL CONDITION THEREOF) IN ITS PRESENT CONDITION “AS IS,” “WHERE IS” AND “WITH ALL FAULTS” AND WILL TAKE POSSESSION OF THE PROPERTY IN ITS THEN “AS IS,” “WHERE IS” AND “WITH ALL FAULTS” CONDITION ON THE COMMENCEMENT DATE, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 18.01 BELOW.

**SECTION 3.**  
**Commencement Date; Term**

3.01 Commencement Date. This Lease shall commence on the date of Tenant's Financing Closing (the "**Commencement Date**").

3.02 Term. Provided that Tenant does not terminate this Lease during the Termination Contingency Period pursuant to and in accordance with Section 5, the term of this Lease shall be seventy-five (75) years (the "**Term**"), commencing on the Commencement Date and expiring on the day preceding the 75th anniversary of the Commencement Date, except that if the Commencement Date is not the first (1<sup>st</sup>) day of a calendar month, the Term shall expire on the last day of the month in which the 75<sup>th</sup> anniversary of the Commencement Date occurs (such date shall be referred to as the "**Expiration Date**"). The Term may be extended by mutual agreement of the parties.

**SECTION 4.**  
**Rent**

4.01 Rent. In consideration of the covenants set forth herein, following the Commencement Date and annually thereafter, Tenant shall pay Landlord rental of One Dollar (\$1.00) per year on the first day of each year. All amounts due or payable to Landlord under this Lease shall constitute rent.

**SECTION 5.**  
**Termination Contingencies**

5.01 Feasibility Contingency. Following the Effective Date and until June 30, 2023 (the "**Termination Contingency Period**"), Tenant shall have the right to terminate this Lease if it has not received or waived the receipt of the following:

(a) All Permits that are required by Laws to enable Tenant legally (i) to construct the Improvements necessary for Tenant's intended use of the Premises; and (ii) to operate the Project, subject to any conditions or restrictions imposed by any Permits reasonably acceptable to Tenant; and

(b) Sufficient funds and/or binding financing commitment(s) to pay for completion of the Improvements to the Premises for Tenant's intended use thereof; and

(c) A final confirmation from Tenant's Board of Directors, in its sole and absolute discretion, that the Premises remain feasible for construction and operation of a satisfactory residential project serving certain District Households and other households in accordance with the terms and conditions set forth herein.

Tenant agrees to exercise commercially reasonable, diligent efforts to satisfy and eliminate the foregoing termination contingencies. In the event Tenant elects to terminate this Lease pursuant to the foregoing, Tenant shall deliver written notice to Landlord on or before the expiration of the Termination Contingency Period. If Tenant fails to timely deliver such notice to Landlord, Tenant shall be deemed to have waived its termination right under this Section

5.01. If Tenant terminates this Lease as a result of failure to receive the determination of Tenant's Board of Directors pursuant to subparagraph (c) of this Section 5.01, Tenant shall pay Landlord a termination fee in the amount of One Thousand Dollars (\$1,000.00).

5.02 Title Commitment and Survey Contingency. Tenant shall have the right to obtain, at Tenant's sole cost and expense, (a) a commitment for an ALTA leasehold policy of Title Insurance, Standard Form B, issued by Title Insurer, covering the Premises, together with a legible copy of each Schedule B Exception cited therein (such commitment and documents, collectively, the "**Commitment**") and (b) a current ALTA survey of the Premises, prepared in accordance with the current ALTA "Minimum Standard Detail Requirements for Land Title Surveys" (the "**Survey**").

(A) Tenant shall have until the date that is one hundred twenty (120) days following the Commencement Date ("**Feasibility Period**") to review all exceptions to title and other matters shown on the Commitment and Survey. In the event that the Commitment or Survey shall show any exceptions to title or any other matters which are unacceptable to Tenant, Tenant may disapprove of any such exceptions (the "**Unpermitted Exceptions**"), by written notice to Landlord given within the Feasibility Period. If Tenant fails to send written notice of its objections to Unpermitted Exceptions to Landlord on or prior to last day of the Feasibility Period, such exceptions and other matters shown on the Commitment and the Survey shall be deemed Permitted Exceptions (hereinafter defined). If Tenant notifies Landlord of any Unpermitted Exceptions on or prior to the expiration of the Feasibility Period, Landlord shall notify Tenant whether it will elect to cure any of the Unpermitted Exceptions within thirty (30) days after Landlord's receipt of Tenant's notice. If Landlord fails to deliver such notice within such thirty (30) day period, Landlord shall be deemed to have elected to not cure any Unpermitted Exceptions. Upon Tenant's receipt of Landlord's notice that Landlord is unwilling or unable to cure any of the Unpermitted Exceptions (or if Landlord is deemed to have so elected to not cure same), Tenant may, upon delivery of written notice to Landlord within twenty (20) days following Tenant's receipt of Landlord's notice, at its sole option, either (i) terminate this Lease by written notice to Landlord, in which event neither party shall have any further rights, obligations or liabilities hereunder (except those that are expressly set forth herein to survive termination of this Lease), or (ii) waive such objections (in which event any Unpermitted Exceptions Landlord is unwilling or unable to cure shall be Permitted Exceptions) and continue with this Lease. If Tenant fails to send written notice of its election to Landlord within such twenty (20) day period, Tenant shall be deemed to have elected to waive such objections to continue with this Lease. To the extent that any new matters are disclosed by an updated title search obtained by Tenant following the expiration of the Feasibility Period but on or prior to the date of Substantial Completion of the Project, which are not shown on the Commitment or the Survey, or are not otherwise approved or deemed approved by Tenant, the foregoing provisions of this Section 5.02(A) (including, without limitation, Tenant's right to terminate this Lease) shall apply to such new matters to the same extent and with the same effect as if such new matters had been disclosed at the time of issuance of the initial Commitment. For purposes hereof, "**Permitted Exceptions**" shall mean, collectively: (i) any Permitted Encumbrance, (ii) any title or survey exception or matter approved or deemed approved by Tenant under this Section 5.02(A), and (iii) any lien or encumbrance created by Tenant.



(B) Cooperation by Landlord. Upon request, Landlord agrees to provide to the Title Insurer a commercially reasonable form of owner's affidavit, and documents relating to Landlord's existence and authority, that the Title Insurer may require from Landlord as a condition to issuance of a title policy to Tenant without such standard exceptions.

(C) Land Use Permit. Tenant will apply for and pursue those Permits comprising such approvals and permits as may be required to develop the Project and to utilize the Premises for the Permitted Use (collectively, "**Discretionary Permits**"), at Tenant's expense. Landlord agrees to reasonably cooperate with Tenant with respect to obtaining such Discretionary Permits so long Landlord does not incur any additional obligation or liability with respect to the same. In furtherance thereof, Tenant shall prepare and submit one or more applications for the Discretionary Permits in a timely manner and diligently pursue same until they are issued to and obtained by Tenant, in no event later than the last day of the Termination Contingency Period. All postings, notifications, community meetings and other actions and activities required shall be conducted by Tenant, with Landlord's participation and cooperation as may be required. All permit applications, filings, notices and other documents required for such process shall be provided to Landlord for review and comment at least ten (10) days prior to being filed or submitted. Landlord will be notified and allowed to participate in any public meetings or meetings with government officials.

## **SECTION 6.**

### **Landlord's Due Diligence Materials.**

6.01 Landlord's Due Diligence Materials. Within five (5) days after the Effective Date, Landlord shall deliver to Tenant the following materials (to the extent in Landlord's possession or control), which shall be referred to collectively herein as "**Landlord's Due Diligence Materials**": (i) a copy of any and all existing environmental reports, plans, drawings, service contracts related to the Premises, (ii) a copy of the most recent real estate tax bills for the Premises, (iii) copies of all soil compaction reports, topographical and other surveys for the Premises, (iv) copies of all permits governing use or occupancy of the Premises, and (v) other material documents and reports relating to the use or occupancy of the Premises. Upon any termination of this Lease, Tenant promptly shall destroy all copies of Landlord's Due Diligence Materials and cause all persons to whom Tenant has provided such materials (or shared with) to destroy their copies of Landlord's Due Diligence Materials and deliver to Landlord written certification that Tenant has so destroyed and caused other parties to so destroy Landlord's Due Diligence Materials. All of Landlord's Due Diligence Materials are delivered to Tenant "AS-IS," "WHERE-IS," and "WITH ALL FAULTS." Tenant acknowledges and agrees that none of the Landlord or any of its employees, board members, managers, directors, agents or representatives ("**Landlord Parties**") has made any representation or warranty, express or implied, written or oral, with respect to any of Landlord's Due Diligence Materials, including, without limitation, the accuracy or completeness of any of Landlord's Due Diligence Materials (and any representation, warranty, promise, covenant, agreement or guaranty of any kind or character, express or implied, oral or written, past, present or future, relating to any of Landlord's Due Diligence Materials are hereby disclaimed).

## SECTION 7.

### Entry; Improvements; Alterations.

7.01 Entry. Following the Effective Date, Tenant (including, without limit, Tenant's trustees, members, principals, officers, employees, agents, representatives, consultants, contractors, architects, engineers and surveyors ("**Tenant Parties**")), shall have the right to enter upon the Premises to make measurements, conduct examination and tests of soil and subsoil conditions and mark the Premises and undertake planning and design activities for the contemplated Tenant Improvements, except that no testing or inspection that is materially invasive in nature shall be undertaken without Landlord's prior written consent, which will not be unreasonably withheld, conditioned or delayed. No meeting with any governmental agency or official with respect to the Premises or the Land or the Project shall take place without Landlord being present during such meetings, unless waived in writing by Landlord. Unless waived in writing by Landlord, no materially invasive inspection shall be performed without Landlord being present for the inspection. Notwithstanding the foregoing, if Landlord fails deliver a notice of its election to be present at any meeting or any inspection within five (5) business days from its receipt of Tenant's notice of such meeting or inspection or if Landlord fails to be present on the date and time of such previously scheduled meeting or inspection, Landlord shall be deemed to have waived its right to be present at such meeting or inspection.

7.02 Building and Improvements. All buildings, structures, improvements, betterments, enhancements, installations and facilities, and all alterations, modifications, additions, restorations and replacements thereof or thereto, including without limitation all roadways, parking lots and parking areas, signage, landscaping and all utilities services facilities and installations, which are, during the Term of this Lease, constructed, erected, installed or otherwise placed on, over or under the Land or any portion thereof shall be collectively referred to herein as the "**Improvements.**" Any such construction of the Improvements shall be completed in accordance with applicable Laws and this Lease. Tenant shall not permit or cause any lien to be filed against the Premises, except the Permitted Encumbrances, and will promptly take such action as required for removal of any liens filed against the Premises and discharge same within thirty (30) days from its receipt of Landlord's notice thereof.

7.03 Intentionally deleted.

7.04 Alterations. Subject to the terms and conditions set forth herein, Tenant may make any additions, alterations or changes in or to, or demolition of any portion of, the Improvements (collectively, "**Alterations**"). If Tenant desires to make any Alteration that changes the unit count or unit mix at the Improvement such that they would no longer comply with the minimum Project requirements in Section 1.13, or (ii) would result in a material change in the Record Drawings (hereinafter defined) or (iii) would cause Tenant to be in breach of any term or condition of this Lease (in any such case, a "**Major Alteration**"), Tenant shall notify Landlord and provide Landlord for Landlord's review and approval (not to be unreasonably withheld) with plans and specifications for such Major Alteration at least ninety (90) days prior to the commencement of construction thereof, and such Major Alteration and the plans and specifications therefor shall be subject to the prior approval of

Landlord, not to be unreasonably withheld, conditioned or delayed. Tenant shall make such changes to a proposed Major Alteration as necessary to incorporate any Landlord's comments.

## **SECTION 8.**

### **Maintenance and Repair Obligations**

8.01 Landlord's Obligation. Prior to the date of commencement of construction of the Project ("**Construction Commencement Date**"), Landlord shall remain responsible for maintenance of existing site conditions on the Premises in a safe condition (provided, however, that Landlord shall not have any obligation to make any major repair or improvement at the Premises).

8.02 Tenant's Obligation. From and after the Construction Commencement Date, at Tenant's sole cost and expense, Tenant shall keep and maintain the Premises and the improvements, landscaping and any public areas of the Premises, and all appurtenances thereunto belonging, in good and safe order, condition and repair, consistent with the Operating Standards (hereinafter defined). Tenant shall be responsible for any repairs and replacements, whether structural or non-structural, ordinary or extraordinary, necessary to maintain the Premises and the Improvements thereon. At Tenant's own expense, Tenant shall keep and maintain the Improvements in compliance with all Laws and Permitted Encumbrances. Additionally, Tenant shall protect against and refrain from creating or allowing the creation of a nuisance. Tenant will carry out capital repairs and improvements on a schedule consistent with its other projects. Upon request, Tenant will provide Landlord with a copy of its then-current capital repair and improvement schedule.

8.03 Operating Standards. Tenant shall at all times during the Term, following Substantial Completion of the Improvements, operate the Project in a competent and professional manner, consistent with all Laws and terms of any Permitted Encumbrances, for the Permitted Use and to a standard at least comparable to similarly situated market-rate apartments in the Puget Sound market area (collectively, the "**Operating Standards**"). Tenant shall carry out criminal background checks of its managers and other personnel assigned to the Project before they are assigned there, as well as other background review of such persons consistent with its procedures and standards with regard to its other projects, and at least consistent with then-current standards of reputable residential property management companies at the applicable time.

## **SECTION 9.**

### **Design and Construction**

9.01 Development Schedule. Tenant shall be responsible for: (a) creating a plan to prioritize serving homeless households with students in the Everett Public Schools by May 31, 2019; and (b) otherwise using its best efforts to comply with the development schedule for the Project approved by Landlord, subject to Force Majeure.

9.02 Demolition of Existing Improvements. Subject to the terms of this Lease, from and after the Termination Contingency Period (if Tenant has not terminated this Lease on or prior to the expiration of such period), upon delivery of reasonable prior written notice to Landlord, Tenant shall have the right to demolish any existing improvements located at the



Premises as may be reasonably necessary to construct the Improvements and implement the Project.

9.03 Construction Commencement. After the Construction Commencement Date, Tenant shall forthwith diligently and continuously prosecute the construction of the Improvements to Substantial Completion. Tenant shall give Landlord written notice specifying Tenant's anticipated Construction Commencement Date at least thirty (30) days in advance of commencing construction. For the purposes of this Lease, construction of the Improvements shall be deemed to have "commenced" upon the date of commencement of actual physical work (including, without limitation, site and demolition work, if any, and/or the placement of supports or other building materials or equipment) on the Premises. The Construction Commencement Date shall occur on or prior to December 31, 2023 (the "**Outside Commencement Date**").

9.04 Tenant's Design Drawings. Landlord shall have the right to approve the preliminary, conceptual design and plans, including conceptual site plans and conceptual building plans for the Improvements ("**Tenant's Design Plans**"), which approval shall not be unreasonably withheld, conditioned or delayed so long as the Tenant's Design Plans are consistent with design requirements under applicable Laws, are acceptable to the City of Everett and are otherwise consistent with and suitable for the neighborhood in which the Project is located. Tenant shall submit the proposed Tenant's Design Plans to Landlord at least ninety (90) days prior to commencement of construction. Landlord shall indicate its approval of such Tenant's Design Plans, or its specific objections thereto, in writing within thirty (30) days after receipt thereof, failing which Tenant's Design Plans shall be deemed approved as so submitted. If Landlord provides specific objections to the proposed Tenant's Design Plans, Tenant shall resubmit Tenant's Design Plans within ten (10) days after Landlord's response, and Landlord shall respond within ten (10) business days thereafter, failing which Tenant's Design Plans shall be deemed approved as so submitted. This process shall continue until Tenant's Design Plans are finally approved or deemed approved. Thereafter, any proposed Material Plan Changes will likewise be submitted to Landlord for approval at least thirty (30) days in advance of agreeing to them, which approval will not be unreasonably withheld and will be deemed given unless Landlord objects to them in writing within twenty (20) days of Landlord's receipt. Material Plan Changes mean conceptual design changes that would result in a Material Alteration from the approved Tenant's Design Plans.

9.05 Tenant's Project Submission. Subject to Landlord's approval of the Tenant's Design Plans pursuant to Section 9.04 hereof, at least sixty (60) days prior to the Construction Commencement Date, Tenant shall furnish to Landlord the following that complies with the Tenant's Design Plans approved by Landlord (collectively the "**Project Submissions**"):

(A) A final site plan of the proposed Improvements indicating the location of the proposed Improvements, the location of utilities serving the Improvements and all significant landscaping elements.

(B) Comprehensive construction drawings, plans and specifications depicting the proposed Improvements and including, without limitation, a description of the exterior building materials intended to be used therein. The foregoing shall be collectively referred to as the "**Plans and Specifications**."

(C) All Permits, except for those which, by their nature, do not need to be obtained until commencement of construction of the Improvements or a later stage in the construction of the Improvements.

(D) A construction schedule for the proposed Improvements (a “**Construction Schedule**”) setting forth all projected milestone dates of the Improvements.

(E) Tenant shall inform the District of a general work schedule (i.e., work hours and type of work being performed) during each phase of construction on the Property in order to mitigate any potential disruption to the educational operations at Sequoia High School.

9.06 Construction of Improvements. Tenant shall construct the Improvements diligently, in a good and workmanlike manner, in accordance with the Plans and Specifications, as they may be amended from time to time in accordance with the terms and conditions of this Lease, and all Laws. The Improvements shall be Substantially Completed on or prior to June 30, 2025 (the “**Outside Completion Date**”).

9.07 Permits and Licenses. All building permits and other permits, licenses, permissions, consents, and approvals required to be obtained from governmental authority or third parties in connection with construction of the Improvements and any subsequent Improvements, repairs, replacements, or renewals to the Improvements shall be acquired as and when required by applicable laws, ordinances, or regulations by and at the sole cost and expense of Tenant.

9.08 Status of Project. Tenant shall keep Landlord advised of the status of all aspects of Tenant’s progress in meeting the terms and provisions of this Lease and the Construction Schedule during the construction of the Improvements, and deliver to Landlord an update of the Construction Schedule as and when requested by Landlord.

9.09 Notice of Completion of Construction and Record Drawings. Tenant shall promptly provide written notice to Landlord upon Substantial Completion of the Improvements. Tenant shall also provide the Landlord, no later than two months after Substantial Completion, with one reproducible “As-Built” copy of all Plans and Specifications recording the final conditions of the Project (the “**Record Drawings**”).

9.10 Ownership of Project. Landlord acknowledges and agrees that the Improvements, including all additions and alterations thereto or replacements thereof and all appurtenances thereto, fixtures, machinery and equipment installed on the Premises shall be owned solely by Tenant. During the Term, Tenant shall be entitled to any and all tax attributes of ownership of the Improvements, including, without limitation, the right to claim depreciation or cost recovery deductions, the right to claim the low-income housing tax credit described in the Code, and the right to amortize all capital costs and to claim any and all other federal or state tax benefits attributable to the Improvements. Upon the expiration of the Term or earlier termination of this Lease, ownership of the Improvements shall transfer to and be vested in Landlord, except that, on or prior to the expiration or earlier termination of this Lease, Tenant shall demolish and/or remove any Improvements, the demolition and/or removal of which was, at the time of approval of same, a condition to approval of the same (which will

not include the Improvements that are part of the initial development of the Premises by Tenant).

9.11 Landlord's Right to Use Plans and Specifications. Tenant shall obtain from all architects and engineers who prepare the Plans and Specifications and Record Drawings an agreement or agreements permitting Landlord, its successors and assigns, or any other party designated by Landlord or its successors or assigns, without additional payment, the non-exclusive right to use such Plans and Specifications and Record Drawings to complete, repair, maintain, restore or reconstruct the Improvements. Upon expiration or termination of the Lease, Tenant shall deliver and transfer to Landlord ownership of all Plans and Specifications and Record Drawings.

## **SECTION 10.**

### **Taxes.**

10.01 Tax-Exempt Status. Both Landlord and Tenant are tax-exempt organizations. Tenant contemplates the development and use of the Land and Premises in furtherance of its tax-exempt purposes and will apply for and obtain property tax exemptions applicable to the Land, Premises, and Improvements. To the extent any portions of the Land and/or Premises are not exempt from Taxes (hereinafter defined), this Section 10 shall apply.

10.02 Taxes Defined. Tenant shall be responsible for the payment of Taxes (as herein defined) during the Term. "Taxes" shall mean real estate taxes and assessments, general and special, levied upon the Land, the Building and other Improvements thereon in whole or in part. Notwithstanding the foregoing and in either case, Tenant shall not be liable for, and Taxes shall not include, (i) any inheritance, estate, succession, transfer, gift, franchise, net profits, income or so called "carried interest" taxes imposed on or payable by Landlord, (ii) any recoupage for or on account of any tax exemptions or reduced valuations, such as agricultural exemptions or valuations, all of which shall be paid by Landlord on or before the date such is due, or (iii) any taxes or assessments attributable to any period of time other than the Term.

### **10.03 Payment of Taxes.**

(A) Tenant's Payment of Taxes. Tenant covenants and agrees that it shall pay (or cause to be paid) directly to the taxing authority in a timely manner, on or before the last day on which they must be paid without penalty or interest all taxes related to, attributable to or constituting a lien against the Land, Premises or the Improvements, which accrue during the Term, subject to Tenant's right to contest any such Taxes. Upon the written request of Landlord, Tenant shall in each instance submit to Landlord, within thirty (30) days after such request, a receipt or other reasonable evidence showing the timely payment of such taxes.

(B) Taxes Attributable to the Tenant. For purposes of clarification, Tenant's obligation to pay any Taxes shall apply only to Taxes, or installments thereof, which relate to the Term or any portion of the Term. Landlord is responsible for payment of any Taxes which accrue prior to the Commencement Date. Tenant shall not be responsible for payment of any Taxes relating to a fiscal period of the taxing authority where a portion of same is included in the Term and a portion of same included in a period of time prior to or after the Term. Such

Taxes shall be prorated based on the applicable portion of the fiscal period coinciding with the Term. Should an interest charge be added by any governmental authority to any Tax by reason of Tenant's election to pay the Tax in installments instead of in a lump sum, Tenant may nevertheless take the benefit of the provisions of any statute or ordinance permitting any such Taxes to be paid in installments over a period of time, and Tenant shall be obligated to pay only such installments of such assessments and interest as shall become due and payable concurrently with Taxes for any portion of the Term.

10.04 Tenant's Right to Contest. Tenant shall be entitled to contest, in good faith, by appropriate proceedings diligently conducted, the validity or applicability, as the case may be, of any Tax or other governmental charges to the extent payable by Tenant hereunder. Landlord shall reasonably cooperate with Tenant in any such contest which Tenant shall elect to undertake, and to that end shall make available to Tenant, at no out of pocket cost or expense to Landlord, all books and records of Landlord and all employees and agents of Landlord with personal knowledge of facts relating to any such contest. Tenant agrees to indemnify and save harmless Landlord from any and all loss, cost, damage, expense, penalty or any liability whatsoever (including, without limitation, reasonable attorneys' fees) resulting from or in any manner arising out of the delay or failure of Tenant to pay when due, discharge or comply with any such Tax or other governmental charge as aforesaid which Tenant shall so contest. Any such contest which Tenant shall elect to undertake shall be at Tenant's expense. Any refund or the applicable portion thereof resulting from such contest shall be the property of Tenant. Any refunds of Taxes received by Landlord (whether during or after the Term) as a result of any contest of the amount, validity or application or any Taxes which applied to the Term shall be refunded to Tenant promptly upon receipt.

10.05 Personal Property Taxes. Tenant shall pay directly to the taxing authority, on or before the last day on which they must be paid without penalty or interest, all ad valorem personal property taxes and assessments, general and special, levied upon Tenant's personal property at or used in connection with the Premises to the extent the same are attributable to the Term of this Lease.

## **SECTION 11.**

### **Insurance.**

#### 11.01 Landlord's Insurance Requirements.

Landlord shall maintain general liability and other insurance under the Washington Schools Risk Management Pool and shall have the right to continue to maintain such insurance under the same or a successor or replacement program.

#### 11.02 Tenant's Insurance Requirements.

(A) Coverage. Tenant shall purchase and maintain the following insurance during the entire Term, at Tenant's sole cost and expense:



(1) Commercial General Liability Insurance. Tenant shall maintain commercial general liability insurance covering claims arising out of Tenant's operations, use and occupancy of the Premises. Coverage shall be maintained on an occurrence basis on Insurance Service Office (ISO) form CG 00 01 or its equivalent, covering premises and operations, products and completed operations, contractual liability, personal injury liability, bodily injury liability and property damage liability, at a single limit of not less than \$5 million per occurrence and \$10 million in the aggregate. Said insurance shall extend coverage to Landlord as an additional insured.

(2) Property Insurance. Tenant shall maintain property insurance insuring the Building, any other Improvements, and Tenant's personal property against loss due to causes typically insured against under "all risk" or "special causes of loss" policy forms, at a limit equal to the full insurable value thereof, with coinsurance waived and permitting the insured to waive subrogation rights prior to loss. Tenant's insurance shall be extended to include the interests of Landlord and Landlord's mortgagee, if any, in the Improvements.

(3) Builder's Risk. During the construction of the Improvements and any subsequent Alteration, Tenant shall maintain Builder's Risk insurance upon any work at the Premises, including but not limited to any Improvements, to the full insurable value until final completion. The interests of any loss payees shall be automatically included for coverage. Said insurance will insure against the "all-risk" perils including earthquake and flood (if any portion of the Premises is located within any flood plain or special flood hazard area) for physical loss and damage. The insurance shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property, including, but not limited to, fees of designers and other professionals. Tenant shall furnish to Landlord a certificate of such insurance prior to the commencement of work by or on behalf of Tenant

(4) Other Insurance. Any other policies of insurance reasonably requested by Landlord.

(B) General Insurance Requirements. Each of the policies required hereunder shall:

(1) name Landlord and any other parties specified by Landlord as additional insureds (as to liability policies);

(2) be obtained from an insurance carrier reasonably acceptable to Landlord, licensed to do business in the State of Washington and having a minimum A-VIII rating as determined by the then current edition of Best's Insurance Reports published by A.M. Best Co. (or, if A.M. Best Co. ceases to publish such ratings, a comparable rating issued by an agency or service selected by Landlord);

(3) provide that it is not subject to cancellation or material change without at least ten (10) days advance written notice to Landlord. If such notice is

not commercially available, Tenant shall deliver to Landlord a copy of any notice of cancellation or material change within three business days of Tenant's receipt thereof; and

(4) provide for deductibles that are commercially reasonable, in light of Tenant's credit.

(C) Certificates. Within three (3) business days from the Effective Date, and upon request thereafter, Tenant shall make available to Landlord evidence of insurance coverage.

11.03 Waiver of Subrogation. Tenant hereby expressly waives any right of recovery against Landlord for any loss, damage or destruction of Tenant's property which is insured under the policies Tenant maintains or is required to maintain, notwithstanding that the damage may be due to the negligent acts or omissions of Landlord, Landlord's agents or employees. Tenant shall place Tenant's insurance with companies that will agree to acknowledge, by endorsement to the policies of the insured if necessary, that the insurance will not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the property described therein.

11.04 Waiver of Claims. Tenant hereby waives all rights of recovery and causes of action against the other, the other's agents and employees, and all persons claiming through or under the other, relating to loss of business, business interruption or loss of rentals resulting from any damage or destruction to the Premises or any of Tenant's property contained therein, notwithstanding that any such damage or destruction may be due to the negligence of Landlord, its agents or employees.

## **SECTION 12.**

### **Indemnification.**

12.01 Tenant Indemnification of Landlord. Tenant covenants at all times to indemnify, defend and save Landlord Parties harmless from and against all loss, cost, injury, damages, liability, suits, claims, judgments and liens of every kind and nature that may occur or be claimed by, to or with respect to any persons, corporations, property or chattels on or about the Premises resulting from any negligence or willful misconduct by any of the Tenant Parties or caused by or resulting from Tenant's use, possession of the Premises or the condition of the Premises, or the conduct by Tenant of its business therein, thereon and therefrom, or Tenant's breach of any term or condition of this Lease. In addition, Tenant shall indemnify, defend and hold harmless Landlord Parties from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Term as it may be extended, from or in connection with the use, storage, transport, handling, actual or alleged, of Hazardous Materials in, on, under or about the Land by any of the Tenant Parties. With respect to any contractual matters that Tenant establishes are within the scope of RCW 4.24.115, the scope of this indemnity shall be limited with regard to damages for bodily injury to persons or damage to property resulting from the concurrent negligence of Tenant Parties and of Landlord, as to which Tenant is to indemnify Landlord Parties to the extent of the negligence of the Tenant Parties. **LANDLORD AND TENANT**

**SPECIFICALLY AGREE THAT THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT ALSO APPLY TO ANY CLAIM OF INJURY OR DAMAGE TO THE PERSONS OR PROPERTY OF TENANT'S EMPLOYEES, AND TENANT ACKNOWLEDGES AND AGREES THAT AS TO SUCH CLAIMS, TENANT, WITH RESPECT TO LANDLORD, DOES HEREBY WAIVE ANY RIGHT OF IMMUNITY WHICH TENANT MAY HAVE UNDER INDUSTRIAL INSURANCE (TITLE 51 RCW AS AMENDED AND UNDER ANY SUBSTITUTE OR REPLACEMENT STATUTE). THIS WAIVER AND AGREEMENT WAS SPECIFICALLY NEGOTIATED BY LANDLORD AND TENANT AND IS SOLELY FOR THE BENEFIT OF LANDLORD AND ITS SUCCESSORS AND ASSIGNS AND IS NOT INTENDED AS A WAIVER OF TENANT'S RIGHTS OF IMMUNITY UNDER SAID INDUSTRIAL INSURANCE FOR ANY OTHER PURPOSE.**

12.02 Landlord Indemnification of Tenant. Landlord covenants at all times to indemnify, defend and save Tenant Parties harmless from and against all loss, cost, injury, damages, liability, suits, claims, judgments and liens of every kind and nature that may occur or be claimed by, to or with respect to any persons, corporations, property or chattels on or about the Premises resulting from any negligence or willful misconduct by Landlord Parties or Landlord's default hereunder.

12.03 Indemnification Terms. The indemnification obligations described in Sections 12.01 and 12.02 shall include any and all costs incurred due to any investigation of the Premises, the Building or other Improvements or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. This Section 12 shall survive the termination or expiration of this Lease.

### **SECTION 13.**

#### **Utilities.**

Tenant shall be responsible for all tap-in or hook-up fees for utility services to the Premises. Tenant shall pay for all utility services provided to the Premises, including the utilities of water, gas, electricity, telephone and sewage services, directly to the utility service provider, on or prior to the date that same are due. Landlord shall have no responsibility for the payment of these utility costs. Tenant shall defend and indemnify Landlord from any and all such charges incurred during the term of this Lease, including any interest, fees, penalties and other charges associated therewith. Landlord shall, if requested by Tenant, grant any additional easements reasonably required by the applicable utility providers in order to provide utilities to the Premises and necessary for the Project.

### **SECTION 14.**

#### **Use.**

14.01 Permitted Use. The Premises shall be used for the construction and operation of a residential project serving households with children in Everett Public Schools that are experiencing homelessness, as its first priority, in accordance with Section 17.02 below, which Project shall include, at a minimum, the uses, standards and features contained in Paragraph 1.13 above, and for no other use ("**Permitted Use**").



#### 14.02 Intentionally deleted

14.03 Use Restrictions. Notwithstanding anything else to the contrary contained in this Lease, no portion of the Land or Premises shall be used or occupied for any purpose or in any manner which is illegal; consists of a sale of paraphernalia related to the use of marijuana or illegal drugs, adult entertainment, or a majority of sales consist of adult books, magazines, videos or other adult products; dumping; disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters); gas station; central laundry or dry cleaning plant or laundromat; any casino, card house or other gambling facility, including any sale of lottery tickets, pull tabs or similar items; any establishment selling alcohol for offsite consumption; any establishment selling tobacco or related products, including e-cigarettes; any establishment selling or exhibiting drug or pornographic materials; or any noxious use, as reasonably determined by Landlord.

### SECTION 15.

#### Signage.

Tenant shall have the right to install, place, maintain and replace the maximum amount of signage permitted under the Laws identifying the Project on or about the Premises, provided such signs, displays and materials are in compliance with all Laws. Notwithstanding the foregoing, Landlord shall have the right to approve the name of the Project. No advertising of any kind shall be permitted at the Premises. Tenant shall be responsible for maintenance, repair and replacement of its signage located on the Premises. Tenant shall remove any signs installed by Tenant upon the termination or expiration of the Term. Any damage caused by the removal of such signs shall be repaired at the cost and expense of Tenant. Landlord shall not allow any signage other than Tenant's to be erected on the exterior walls of the Premises or on the face of the Building or on the roof above the Premises, excepting those that relate to Landlord's purpose.

### SECTION 16.

#### Mortgage Interests.

16.01 Leasehold Mortgages and Transfers Authorized. Landlord acknowledges that Tenant's anticipated financing for the Project will require Tenant to finance its leasehold interest under this Lease (the "**Leasehold Estate**" and such financing, the "**Leasehold Financing**") by granting one or more mortgages, deeds of trust or other security instruments encumbering the Leasehold Estate ("**Leasehold Mortgages**"). No Leasehold Mortgage shall encumber Landlord's fee interest in the Premises, and Landlord shall not incur any obligations or liability to the holder of any Leasehold Mortgage (except that Landlord shall cooperate with Leasehold Financing providers as may reasonably be required regarding minor administrative obligations (i.e., agreeing to provide them with copies of any default notices and cure opportunities, etc.). Landlord shall not be required to execute any Leasehold Mortgage, or any note secured thereby or any other obligation securing any such note, or to subordinate its interest in the Premises or any portion thereof to the lien of any such Leasehold Mortgage. No Leasehold Financing shall be for a term extending beyond the Term. As soon as reasonably feasible, Tenant agrees to provide Landlord with a list of its intended Leasehold Financing sources, including their names, addresses, and a brief summary regarding the anticipated financing each would be providing; Tenant agrees to update the list from time to

time, and upon request by Landlord, such that it remains accurate after changes in such financing.

16.02 Notice to Leasehold Mortgagee Right to Cure, Assignment. Landlord agrees to execute and deliver such commercially reasonable agreements as may be required by any Leasehold Mortgagee or other holder of a Permitted Encumbrance (“**Leasehold Mortgagee**”), which (i) requires that they receive a duplicate notice of any Default notice served on Tenant, (ii) allows for cure of any Default by the Leasehold Mortgagee for at least thirty (30) days after the notice is given (or such longer period as may be provided for herein for the Tenant to cure), (iii) allows for access to the Premises by the Leasehold Mortgagee upon reasonable written notice and subject to tenants’ rights, and (iv) allows for assignment of the Lease to the Leasehold Mortgagee upon foreclosure and further assignment to any assignee of the Leaseholder Mortgagee, without liability for Defaults occurring prior to any such assignment, and (v) such other commercially reasonable terms and conditions as may be required by the Leasehold Mortgagee which are normal under the circumstances.

16.03 Actions Not Effective Without Leasehold Mortgagee Consent. No cancellation, surrender, or modification or amendment of the Lease, and no waiver of any of Tenant’s rights thereunder, shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee. Except for Permitted Encumbrances, no subordination of the Tenant’s interest in the leasehold or the Premises, or the rents or income therefrom, to any encumbrance or assignment granted by Landlord, and no joinder by Tenant in any such encumbrance or assignment, shall be valid without the express written consent of each Leasehold Mortgagee.

16.04 No Merger. Any acquisition of the fee interest in the Premises by Tenant (or of the Leasehold Estate or any fee interest in the Improvements by Landlord), or other event by which the Leasehold Estate or any part thereof and the fee interest in the Premises shall come into common ownership, shall not cause a merger of the Leasehold Estate or the fee interest in the Improvements with the fee interest in Premises, in each case, without the express written consent of each Leasehold Mortgagee. Any merger of fee and leasehold estates that may occur, whether voluntary or involuntary, in whole or in part, shall not result in termination of this Lease or extinguishment of any Leasehold Mortgage, in whole or in part, without the express written consent of each Leasehold Mortgagee.

16.05 Bankruptcy of Landlord. If the Lease is rejected by Landlord or Landlord’s trustee in bankruptcy following the bankruptcy of Landlord under the United States Bankruptcy Code (Title 11 U.S.C.), as now or hereafter in effect, Tenant shall not have the right to treat the Lease as terminated except with the prior written consent of all Leasehold Mortgagees, and the right to treat the Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and each Leasehold Mortgagee shall be required as a condition to treating the Lease as terminated in connection with any such bankruptcy proceeding.

16.06 Encumbrances by Landlord. Except for Permitted Encumbrances, Landlord shall not, without the prior written consent of Tenant, which shall not be unreasonably withheld, encumber the fee interest in the Premises, nor encumber Landlord’s interest in the

Lease, unless the encumbrance is subordinate to this Lease and the rights and interests of the Tenant and Leasehold Mortgagees hereunder.

16.07 Registration of Leasehold Mortgagees. Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Lease, as well as any change in the identity or address of any Leasehold Mortgagee and any release or reconveyance of any Leasehold Mortgage.

## **SECTION 17.**

### **Assignment and Subletting.**

17.01 Prohibition. Tenant may not assign any of its right, title or interest in this Lease or sublease all or any part of the Premises, without Landlord's prior written consent, which may be withheld in Landlord's sole discretion. Notwithstanding the foregoing, subject to the terms and conditions set forth herein, Tenant may (i) lease the individual residential units, (ii) sublease the ELC space to a subtenant other than a Tenant Affiliate, approved by Landlord, which approval will not be unreasonably withheld, (iii) assign this Lease to a Tenant Affiliate, and (iv) sublease the ELC space to a Tenant Affiliate. Tenant Affiliates include other nonprofit entities controlled by or under common control with Tenant, and any partnerships or other entities formed by Tenant for low income housing tax credit purposes. In the event of an assignment of this Lease subject to approval and approved by Landlord, (i) such assignment shall be in writing, executed by Tenant and the assignee, (ii) the assignee shall, in consideration of such assignment, agree to assume, perform and be bound by all of the terms, obligations and conditions on the part of Tenant to be performed under this Lease on and after the date of such assignment, (iii) that a duplicate executed counterpart of such instrument of assignment and assumption shall be delivered to Landlord, (iv) such assignee's net worth is at least equal to that of Tenant, and its Debt/Equity ratio is no higher than that of Tenant, either as of the date of this Lease or at the time of such assignment, and (v) there is no other substantial reason to doubt the ability of the assignee to carry out its obligations under the Lease, in Landlord's reasonable determination. Tenant shall remain responsible for its obligations hereunder.

17.02 Residential Subleases. Landlord expressly acknowledges that Tenant intends to enter into one or more residential subleases with a District Household with respect to the Project. At least 30 days prior to the commencement of leasing for the Project, Tenant shall provide to Landlord a copy of the form residential sublease to be used by Tenant for the Project. All residential subleases shall comply with all Legal Requirements and all Restrictive Covenants. Priority for residency at the Project shall be given as follows: first, to households with student(s) meeting federal McKinney Vento eligibility (as identified by Landlord) enrolled at Sequoia High School in Everett, WA; second, to households with student(s) meeting federal McKinney Vento eligibility (as identified by Landlord) enrolled in other Everett School District schools; third, to households within the Everett School District boundaries with student(s) meeting federal McKinney Vento eligibility (as identified by Landlord) attending public schools in other school districts; and fourth, to households with student(s) meeting low income and other requirements to which the Project is subject, provided that such potential residents also meet Tenant's eligibility requirements and those of its Leasehold Financing providers or other funding sources for the Project. If no household meeting the above priorities is identified by Landlord within thirty (30) days after Tenant

notifies Landlord of an available unit, or if the household identified by Landlord does not agree to sublease the unit or is determined by Tenant to not be a qualified subtenant and Landlord fails to identify another qualifying household within ten (10) days after Tenant give it notice of such failure, then Tenant may sublease the unit to any household otherwise meeting the low income criteria applicable to the Project. For those households with student(s) currently enrolled in the Everett School District and meeting the above requirements, preference shall be given to households with students that have a history of attendance in the District of at least two years. Notwithstanding the above, in no event will Tenant be required to rent units to persons who are not otherwise eligible to reside in the Project based on the requirements to which the Project is subject.

17.03 Early Childhood Center. The sublease for the ELC space at the Project shall be subject to use restrictions and the other terms and conditions hereof, comply with all Laws and all restrictive covenants. Tenant shall submit to Landlord a copy of any proposed sublease for the ELC space, together with any additional information reasonably requested by Landlord in connection therewith. Except as expressly set forth in Section 17.01 above, no portion of the ELC Space or any interest therein shall be subleased, licensed, assigned or otherwise transferred to any party.

17.04 Leasehold Mortgage. Notwithstanding anything to the contrary in this Section 17, to the extent all applicable conditions and procedures set forth in Section 16 have been satisfied, the restrictions set forth in this Section 17 shall not apply to any assignment of the Lease to a Leasehold Mortgagee or other Transferee, or to any transfer of control of Tenant to the Tax Credit Investor, in each case, as a result of foreclosure or other exercise of rights and remedies by the Leasehold Mortgagee or Tax Credit Investor, as applicable. The restrictions set forth in this Article 16 shall nonetheless apply to any subsequent assignment or subleasing by any such Leasehold Mortgagee, other Transferee or Tax Credit Investor, as applicable.

## **SECTION 18.**

### **Representations, Warranties and Covenants.**

18.01 Landlord's Representations, Warranties and Covenants. Landlord makes the following representations, warranties and covenants as of the Effective Date:

(A) Intentionally deleted.

(B) Landlord has full power and authority, and has obtained any necessary consents, to enter into and perform its obligations under this Lease, and has taken all necessary action to authorize the execution and delivery of this Lease by the persons executing and delivering this Lease on behalf of Landlord. No consent by any other person is required in order for Landlord to enter into this Lease or for Tenant to construct Tenant's Improvements on the Land.

(C) The execution, delivery and performance of this Lease will not result in a breach of the terms or provisions of, or constitute a default (or a condition which, upon notice or lapse of time, or both, would constitute a default) under its organizational



documents or any other agreement, instrument or obligation by which Landlord is bound, and will not constitute a violation of any Laws.

(D) Intentionally deleted.

(E) Intentionally deleted.

(F) There are no unrecorded leases or similar occupancy agreements with respect to the Land, other than this Lease. From and after the Effective Date, Landlord shall not enter into any leases or other similar occupancy agreements affecting the Premises without Tenant's prior written consent, not to be unreasonably withheld, conditioned or delayed.

(G) As of the Effective Date, Landlord has not received any written notice of violation of any Laws with respect to zoning, use or occupancy of the Land.

(H) This Lease is a legal, valid and binding obligation of Landlord enforceable against Landlord in accordance with its terms.

18.02 Tenant's Representations, Warranties and Covenants. Tenant makes the following representations, warranties and covenants.

(A) Tenant is a duly formed and validly existing not for profit entity and has full power and authority, and has obtained any necessary consents, to enter into and perform its obligations under this Lease, and has taken all necessary action to authorize the execution and delivery of this Lease by the persons executing and delivering this Lease on behalf of Tenant.

(B) The execution, delivery and performance of this Lease will not result in a breach of the terms or provisions of, or constitute a default (or a condition which, upon notice or lapse of time, or both, would constitute a default) under its organizational documents or any other agreement, instrument or obligation by which Tenant is bound, and will not constitute a violation of any Laws.

(C) This Lease is a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

(D) There is no action in the nature of litigation, claim, investigation or other proceeding pending, or to Tenant's knowledge, threatened against Tenant which could interfere with its ability to execute and/or perform under this Lease.

(E) Tenant has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or dissolution, or any similar action under any federal, state or local law for the bankruptcy, reorganization, arrangement, composition, liquidation, relief, aid, or dissolution of debtors, or suffered the filing of any such petition by its creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, or (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets.

(F) Tenant is not a Prohibited Person.

#### **SECTION 19.**

##### **Broker.**

Landlord represents and warrants to Tenant that there is no broker, finder or other intermediary of any kind with whom Landlord has dealt in connection with the transaction contemplated hereby. Tenant represents and warrants to Landlord that there is no broker, finder, or other intermediary of any kind with whom Tenant has dealt in connection with the transaction contemplated hereby. Each party agrees to indemnify, defend, and hold harmless the other from any claim made by any other broker or agent alleging entitlement to any such fee or commission as a result of having dealt with the indemnifying party.

#### **SECTION 20.**

##### **Compliance With Laws.**

Tenant shall, subject to Tenant's right to contest the validity thereof, promptly comply with the requirements of all Laws related to the Premises or the Improvements and with every applicable Law with respect to the condition and maintenance of the Premises or the Improvements. Tenant shall have the right to contest the validity of Laws that Tenant is required to comply with under this Lease. Landlord shall reasonably cooperate with Tenant in connection with any such contest, at no cost to Landlord.

#### **SECTION 21.**

##### **Surrender.**

Tenant agrees to deliver up and surrender to Landlord possession of the Premises, including the Improvements, upon the Expiration Date or earlier termination of this Lease in good condition and repair subject to reasonable wear and tear, the effects of aging, eminent domain and damage and destruction of the Premises by fire or other casualty (but subject to Sections 22 and 23 of this Lease), with demolition and/or removal of any Improvement if required per the terms of Section 9.10 hereof. Tenant will peaceably and quietly yield and surrender possession of the Premises and Improvements to Landlord. An action of forcible detainer shall lie if Tenant holds over after a demand for possession is made by Landlord. Concurrently with such surrender, title to any Improvements shall automatically pass to and vest in Landlord "as-is" and without representations and warranties. Such transfer and vesting of title shall be self-effective, without the need for any additional action or documentation by Landlord or Tenant. Notwithstanding the foregoing, Tenant shall execute and deliver to Landlord a confirmatory deed and bill of sale of all Improvements and fixtures then existing on the Premises (subject to the rights of a permitted Leasehold Mortgagee in accordance with and subject to the terms and provisions of Article 8 hereof in the event of an early termination of this Lease), in proper form for recording and otherwise in form and substance reasonably acceptable to Landlord. Tenant's obligations under this Section 21 shall survive the expiration of the Term and the termination of this Lease. Notwithstanding the foregoing, Tenant shall have the right, but not the obligation, to remove Tenant's trade fixtures, furnishings and other personal property, provided that such removal shall occur on or before the Expiration Date, failing which, title in such improvements shall be vested in Landlord.

Tenant shall repair any damage done from removal of its property and restore the Premises to substantially its condition before such removal.

## **SECTION 22.**

### **Eminent Domain.**

22.01 Taking. If the whole of the Premises, or such part thereof which results in (i) a limitation of access to or parking for the Premises that prevents or materially adversely affects the operation of Tenant's business at the Premises, or (ii) the remaining portion of the Premises being not viable for Tenant in the operation of its business, shall be taken for any public or quasi-public purpose by any power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking (collectively, a "**Taking**"), then Tenant may, at Tenant's option, terminate this Lease. If Tenant so elects to terminate this Lease, Tenant shall provide Landlord written notice within thirty (30) days after Tenant's receipt of notice of the Taking. The termination shall be effective (a) as of the effective date of the Taking (with respect to the portion of the Premises taken), and (b) thirty (30) days after the effective date of the Taking (with respect to the portion of the Premises not taken). Upon such termination, Tenant shall demolish the remaining portion of the Improvements, unless otherwise requested by Landlord in writing, and pave or landscape the Land and surrender the Premises as required under Section 21 hereof.

22.02 Restoration. If the Taking is not of the type described in Section 22.01 or if Tenant does not terminate this Lease pursuant to Section 22.01, this Lease shall continue in full force and effect and Tenant, at Tenant's expense, shall promptly proceed to restore the Improvements to the extent practicable to (i) substantially the same condition of the Improvements prior to such partial Taking or (ii) such other configuration as Tenant reasonably determines is appropriate taking into account changes in Tenant's typical prototype or the configuration of the Premises as a result of the Taking (in either case provided that Tenant shall not be required to incur more costs than any Award (as hereinafter defined) received by Tenant) and otherwise approved by Landlord, not to be unreasonably withheld, conditioned or delayed. In any event, if the Improvements are to be restored, they shall be restored to a complete functional unit of property of substantially the same usefulness, design and construction, as immediately prior to such Taking.

### 22.03 Award; Taking Proceedings.

(A) Definition of Award. "**Award**" shall mean the amount by which an award for, or proceeds of, a Taking exceeds all reasonable expenses (including, without limitation, reasonable attorney's fees and fees for expert witnesses) incurred in connection with, and in anticipation of, a Taking.

(B) Taking Proceedings. Tenant shall have the right to fully participate in any Taking proceedings, including, without limitation, the negotiation of the Award allocable to the Improvements and Tenant's Leasehold Estate. The share of any Award to which Tenant is entitled pursuant to this Lease shall be remitted to Tenant promptly upon the date Tenant's share is determined in accordance with this Section.



(C) Allocation of Award. Any Award arising from a total or partial Taking of the Premises or any Improvements and the Leasehold Estate shall be allocated between Landlord and Tenant in accordance with the following:

(1) If the Premises will be restored, Tenant is entitled to such portion of the Award as is necessary to restore the Premises, not to exceed the portion of the Award allocable to the Improvements, and the value of its Leasehold Estate with respect to the portion of the Premises taken.

(2) If the Premises, will not be restored, each party shall be entitled to the portion of the Award allocable to their respective interests in the Lease (i.e., for Tenant, the Improvements and the fair market value of its Leasehold Estate, and for Landlord, all other interest). If the Award itself is not specifically allocated between the parties respective interests, and the parties are unable to agree pursuant to good faith negotiations, then the allocation shall be determined by an independent certified public accountant mutually agreed on, whose fees shall be shared equally by the parties.

(D) Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Premises or the Improvements, then the Term shall not be reduced and Tenant shall continue to pay in full all rents, and other charges required herein, provided, however, that Tenant shall not be required to perform such obligations that Tenant is prevented from performing by reason of such temporary Taking. All Awards from a temporary taking shall belong to Landlord.

## **SECTION 23.**

### **Damage or Destruction of Premises.**

23.01 Damage or Destruction of Premises. If the Premises, the Improvements, or any part thereof shall be destroyed or damaged at any time during the Term, and such destruction or damage may be reasonably repaired within three hundred and sixty-five (365) days (or if during the last one (1) year of the Term, ninety (90) days) from the happening of such destruction or damage, Tenant shall, at Tenant's expense, take one of the actions described in subsection (A) below with all reasonable speed. Provided, however, that these deadlines will be reasonably extended if Tenant cannot comply with these timelines due to reasons beyond its control, and the Lease will not be terminated if Tenant is in the process of repairing the Premises and proceeding with diligence to do so. Tenant shall deliver to Landlord within thirty (30) days after the date of such damage or destruction Tenant's estimate with respect to the length of time reasonably required to repair such damage or destruction (the "**Repair Estimate**"). In the event that the Repair Estimate states that the destruction or damage cannot reasonably be repaired within eighteen (18) months (or, if during the last one (1) year of the Term, ninety (90) days) from the happening of such destruction or damage, Landlord and Tenant shall each have the right to terminate this Lease by giving written notice to the other within thirty (30) days from Tenant's preparation of the Repair Estimate and delivery thereof to Landlord. For clarity, Tenant may elect to maintain the Lease and repair, replace or rebuild Improvements, regardless of the length of time required to do so, instead of termination this Lease.

(A) If Tenant does not elect or does not have the right to terminate this Lease as provided in this Section 23, then Tenant shall, at its sole option, either (a) repair, alter, restore, replace or rebuild such Improvements to such extent and in such manner as Tenant may deem appropriate to a functional unit of substantially the same usefulness, design, construction and quality of the Improvements prior to such to such damage, or (b) demolish the balance of the Improvements and pave or landscape the Land. If the cost to so rebuild or reconstruct or to so demolish shall exceed the proceeds of any insurance, Tenant shall be liable for any such deficit. If, however, the proceeds of any insurance covering such damage or destruction exceed the cost of repair, reconstruction or demolition, such excess shall belong absolutely to Tenant.

(B) If Tenant elects to terminate this Lease as provided herein, Tenant shall (a) demolish the remaining portion of the Improvements, unless otherwise requested by Landlord in writing, and pave or landscape the Land and surrender the Premises as required under Section 21 hereof, and (b) retain all proceeds of the insurance covering such damage or destruction with respect to the Improvements.

(C) All such repair, restoration, rebuilding or demolition required hereunder shall be performed with due diligence in a good and workmanlike manner and in accordance with all applicable Laws.

#### **SECTION 24.**

##### **Default by Tenant; Landlord's Remedies.**

24.01 Tenant Default. The occurrence of any of the following shall constitute a default (a "**Default**") by Tenant under this Lease:

(A) Tenant fails to pay Rent or any additional charge or amount of money to be paid by Tenant as provided in this Lease, and such failure shall continue uncorrected for a period of twenty (20) days after written notice to Tenant thereof;

(B) Failure of Tenant to pay any Taxes or any other payment that if not paid may result in a lien on the Premises, as and when the same becomes due and payable, subject to the right of Tenant to contest Taxes in good faith, and if such failure shall continue uncorrected for a period of twenty days after written notice to Tenant of such Default;

(C) The failure of Tenant to (i) commence construction of the Improvements on or prior to the Outside Commencement Date, except as a result of Force Majeure, or (ii) Substantially Complete construction of the Improvements on or prior to the Outside Completion Date, except as a result of Force Majeure, and if Tenant fails to commence construction, or Substantially Complete construction, as applicable, within forty-five (45) days after written notice of such Default;

(D) The abandonment of the construction of the Improvements prior to the completion thereof for a period in excess of 15 consecutive business days, except as a result of Force Majeure;

(E) The assignment by Tenant of its interest in this Lease by Tenant of all or any portion of the Premises or Improvements other than as expressly permitted hereunder or with Landlord's prior written consent;

(F) Tenant becomes a Prohibited Person;

(G) (i) Tenant makes an assignment for the benefit of creditors, files a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver or any trustee for it or a substantial part of its assets, or commences any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; (ii) if there shall have been filed any such petition or application, or any such proceeding shall have been commenced against Tenant, in which an order for relief is entered or that remains undismissed for a period of thirty (30) days or more; (iii) Tenant by any act or omission indicates its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties; or (iv) Tenant suffers any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more;

(H) Tenant fails to perform any other obligation of this Lease to be performed or observed by Tenant and any such failure shall continue uncorrected for a period of thirty (30) days or more after written notice to Tenant thereof, unless such failure cannot reasonably be corrected within such thirty (30)-day period, then if Tenant shall not within such thirty (30)-day period have commenced in good faith to correct such failure and thereafter diligently pursue such cure to completion within a reasonable period of time determined by Landlord, not to exceed sixty (60) days in the aggregate (including the initial thirty (30) day period).

24.02 Landlord's Remedies Upon Tenant Default. In the event of a Default by Tenant under this Lease, Landlord may pursue any one or more of the following remedies, or any other remedy available at law or in equity for such default:

(A) Damages or Equitable Relief. Landlord may pursue an action for money damages, specific performance or any other remedies available to Landlord at law or in equity.

(B) Self-Help. Landlord may exercise the self-help right to cure such Default (provided that such remedy is not prohibited by applicable Law) and charge Tenant the reasonable costs of curing such Default, which costs shall be paid by Tenant within thirty (30) days after receipt of an invoice therefor. Notwithstanding the notice and cure period set forth in Section 26.01, in the event of an emergency situation, Landlord may provide Tenant with only such notice as is practicable under the circumstances and then proceed to exercise the self-help remedy set forth in this subsection (B).

(C) Terminate Lease and/or Tenant's Right to Possession. Landlord may terminate this Lease and Tenant's right to possession of the Premises, or Landlord may, without terminating this Lease, terminate Tenant's right to possession of the Premises but

in either case only by process of law in a court of competent jurisdiction. Upon the termination of this Lease, or upon the termination of Tenant's right to possession without termination of this Lease, Tenant shall surrender possession and vacate the Premises, and Landlord may enter into and repossess the Premises, but only with process of law, and remove all persons and property therefrom in the same manner and with the same right as if this Lease had not been made. In the event Landlord terminates this Lease, Landlord, in addition to any and all rights and remedies allowed by law and equity, shall upon such termination be entitled to recover damages for loss of subsequent rentals due, subject to its duty to attempt to mitigate such losses, plus its reasonable costs incurred, including reasonable legal expenses, to terminate this Lease and Tenant's possession of the Premises.

24.03 Attorneys' Fees. Tenant will reimburse reasonable attorneys fees, costs and expenses incurred by Landlord on account of any Tenant Default, upon demand by Landlord.

## **SECTION 25.**

### **Default by Landlord; Tenant's Remedies.**

25.01 Landlord Default. The occurrence of the following events shall constitute a default and breach of this Lease by Landlord: Landlord's failure to do, observe, keep and perform any of the terms, covenants, conditions, agreements or provisions of this Lease required to be done, observed, kept or performed by Landlord, within thirty (30) days after written notice by Tenant to Landlord of said failure (except when the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion).

25.02 Tenant's Remedies Upon Landlord Default. In the event of a default by Landlord, Tenant, at its option, without further notice or demand, shall have the right to pursue the remedy of specific performance. Nothing herein contained shall relieve Landlord from its obligations hereunder.

## **SECTION 26.**

### **Estoppel Certificates.**

Upon the request of Landlord or Tenant (as applicable, the "**Requesting Party**"), the other party (the "**Certifying Party**") shall acknowledge and deliver to the Requesting Party, within thirty (30) days after written request by the Requesting Party, a certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) that no notice has been received by the Certifying Party of any default by the Requesting Party which has not been cured, except as to defaults specified in said certificate, and (d) such other information as the Requesting Party may reasonably request and as reasonably agreed to by the Certifying Party, which in any event may contain knowledge qualifiers and other caveats as the Certifying Party may deem appropriate. Landlord and Tenant acknowledge and intend that any such estoppel certificate requested or provided hereunder may be relied upon by any prospective purchaser or mortgagee of the Requesting Party.



## **SECTION 27.**

### **Holdover.**

Should Tenant withhold from Landlord possession of the Premises after the expiration or termination of this Lease, whether by lapse of time or otherwise, such withholding shall constitute only a month-to-month tenancy upon the same terms and conditions set forth in this Lease, except that Tenant shall pay Base Rent during such holding over at one hundred fifty percent (150%) of the rate in effect immediately preceding such holding over computed on a monthly basis for each month or partial month that Tenant remains in possession. If Tenant fails to surrender the Premises upon the expiration or termination of this Lease, Tenant shall indemnify, defend and hold harmless Landlord from all losses, damages, liabilities and expenses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure and other consequential damages.

## **SECTION 28.**

### **Quiet Enjoyment.**

Provided that there is no default on the part of Tenant hereunder, Tenant shall at all times during the Term have the peaceable and quiet enjoyment of the Premises.

## **SECTION 29.**

### **Notices.**

Whenever a provision is made under this Lease for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and either served personally or sent by United States mail, certified, postage prepaid, or by pre-paid nationally recognized overnight courier service, or by electronic mail (provided that notice using one of the foregoing methods shall be sent on the next business day) addressed to the addresses set forth below or to such address as either party may advise the other from time to time. Notices given hereunder shall be deemed to have been given on the date received (or refused).

If to Tenant:

Housing Hope Properties  
ATTN: President/CEO  
5830 Evergreen Way  
Everett, WA 98203  
E-mail:

If to Landlord:

Everett Public School District #2  
ATTN: Superintendent  
3900 Broadway  
Everett, WA 98201  
E-mail: [superintendent]@everettsd.org

**SECTION 30.**  
**Environmental Matters**

30.01 No Environmental Representations. Tenant agrees and acknowledges that Landlord has made no representations concerning the presence or absence of any Hazardous Materials on, in, under or about the Premises or any property adjacent to the Premises and that the Landlord has made no representation or warranty concerning the existence or non-existence of any past or present violation of, or obligation arising in connection with any Environmental Laws affecting the Premises, except as provided in Section 18.01. Tenant had an opportunity prior to the execution of this Lease and will have had during the Termination Contingency Period to perform any and all inspections of the Premises that Tenant deemed necessary to satisfy itself with the environmental condition of the Premises. Tenant hereby waives any and all claims, actions, causes of actions, suits or demands of any nature against the Landlord which the Tenant may have now or in the future for damages, payments, costs or expenses (including, without limitation, claims of contribution or indemnity and any expenses of investigation or the condition of the Premises, regardless of the results of such investigation, and claims arising under, or pursuant to, any Environmental Laws) suffered by the Tenant as a result of the presence or alleged presences of any Hazardous Materials on, in, under or near the Premises, the violation, at any time in the past, present or future, of any Environmental Laws affecting the Premises or the existence of any undischarged obligation under any Environmental Law relating to the Premises, except in the event of any claim based on Landlord's representation under Section 18.01.

30.02 Environmental Covenants.

(A) Tenant shall not cause or permit any Hazardous Materials to be stored, treated, generated, discharged, released or transported to, at, upon, in or under the Premises, except any such materials utilized in the ordinary course of business and in compliance with Environmental Laws.

(B) Tenant shall not cause or permit any Hazardous Materials to be disposed of at, upon, in or under the Premises. In the event of the release, spill, discharge, leakage or disposal of any Hazardous Materials at, upon, in or under the Premises during the Term, Tenant shall (a) notify Landlord of such release, spill, discharge, leakage, or disposal; and (b) promptly undertake, at its sole cost and expense, and in compliance with all Environmental Laws and Laws, all actions necessary to return the Premises to the condition existing prior to such release, spill, discharge, leakage, or disposal; provided, that Tenant shall first obtain Landlord approval of any such remedial actions.

(C) Tenant shall obtain and comply with, at its sole cost and expense, any and all licenses, permits, registrations, governmental approvals and consents, and financial assurances (including, without limitation, insurance) required under Environmental Laws in connection with the Premises. Tenant shall provide a copy of any such licenses, permits, registration, governmental approval and consents and forms of financial assurance to the Landlord.

(D) Tenant shall promptly send Landlord a copy of any notice of violation, complaint, citation demand, claim, injury or correspondence issued or brought by any

governmental authority or any person regarding the Premises relating to environmental matters or the environmental condition of the Premises, including without limitation any violation or obligation arising under any Environmental Laws.

30.03 Environmental Indemnification. Tenant covenants and agrees, at Tenant's sole cost and expense, to protect, defend, indemnify, save, release and hold the Landlord Parties harmless from and against any and all losses imposed upon, incurred by or asserted against any Landlord Party and directly or indirectly arising out of or in any way connected with or relating to any one or more of the following:

(A) The presence of any Hazardous Materials in, on, above, under, at, about, surrounding or emanating from the Premises from and after the date of this Lease arising from any action or omission of any of the Tenant Parties;

(B) Any release or threatened release of any Hazardous Materials in, on, above, under, at, about, surrounding or emanating from the Premises from and after the date of this Lease, arising from any act or omission of any of the Tenant Parties;

(C) Any actual or proposed repair, cleanup, remediation, abatement, removal or detoxification, or preparation and implementation of any investigation, removal, remedial response, closure or other plan, concerning any Hazardous Materials in, on, under, above, at, about, surrounding or emanating from the Premises arising from any act or omission of any of the Tenant Parties, regardless of whether undertaken due to any action by a governmental authority or other third party or whether undertaken voluntarily by a Landlord Party;

(D) Any actions or omissions by Tenant, any person affiliated with or retained by Tenant (including, without limitation, employees, representatives, agents, contractors, subcontractors or property managers), or any subtenant or other invitee on the Premises (other than Landlord) relating to the manufacture, generation, production, processing, handling, holding, use, storage, placement, burial, presence, treatment, refining, control, management, abatement, removal or release of any Hazardous Material in, on under, above, at, about, surrounding or emanating from the Premises, or the transportation or transfer of any Hazardous Material to or from the Premises from and after the date of this Lease;

(E) Any actual or threatened non-compliance with or violations of any Environmental Law (or consent decrees, permits, licenses, variances or other approvals issued pursuant to any Environmental Law) in connection with the Premises or operations thereon, caused by any failure by Tenant, any person affiliated with or retained by Tenant (including, without limitation, employees, representatives, agents, contractors, subcontractors or property managers), or any subtenant or other invitee on the Premises (other than Landlord) to comply with any notice or order of any governmental authority in connection with any Environmental Law;

(F) Any actions of Tenant, any person affiliated with or retained by Tenant (including, without limitation, employees, representatives, agents, contractors, subcontractors or property managers), or any subtenant or invitee on the Premises (other than Landlord or) in (i) arranging for disposal or treatment, or arranging with a transporter



for transport for disposal or treatment, of any Hazardous Materials from the Premises to any facility or incineration vessel or (ii) accepting any Hazardous Materials for transport from the Premises to disposal or treatment facilities, incineration vessels or sites, from which there is a release, or a threatened release of any Hazardous Materials which results in the incurrence of costs for remediation or other losses; and

(G) Any material breach or failure to perform any covenants or other obligations pursuant to this Lease relating to environmental matters.

Notwithstanding anything to the contrary in the foregoing, Landlord shall not be entitled to indemnification hereunder to the extent of any losses caused solely by the negligence or willful misconduct of Landlord.

30.04 Duty To Defend and Attorneys' and Other Fees and Expenses. If any claim is covered by the indemnification pursuant to Section 30, upon written request by any Landlord Party, Tenant shall defend same (if requested by the Landlord Party, in the name of the Landlord Party) at the sole cost and expense of Tenant, with counsel and other professionals reasonably acceptable to such Landlord Party. Notwithstanding the foregoing, any Landlord Party may, in its discretion, if it does not believe its interests are being properly protected, engage its own attorneys and other professionals to defend or assist it, and, at the option of Landlord Party, its attorneys shall control the resolution of any claim or proceeding, but shall keep Indemnitor advised on a periodic basis of the progress toward such resolution. Upon demand, Tenant shall pay or, in the sole discretion of the Landlord Party, reimburse such Landlord Party for any fees incurred in the enforcement of this provision.

30.05 Survival. The representations, warranties, covenants, terms, conditions, releases, waivers and indemnities set forth in this Section 30 shall survive the expiration of the Term and the termination of this Lease.

### **SECTION 31.** **Miscellaneous.**

31.01 Terminology; Captions. Where the context so requires or such interpretation is appropriate, any word used herein denoting gender shall include all genders, natural or artificial, and the singular and plural shall be interchangeable. The term "**Section**" shall refer to all paragraphs under the caption in question, where appropriate. The captions of the various provisions of this Lease are for convenience only and in no way define, limit or describe the scope or intent of this Lease or the provisions which they precede or in any other manner affect this Lease.

31.02 Memorandum of Lease. This Lease shall not be recorded, but upon request by either party, the parties agree to execute a Memorandum of Lease in a form prepared by Tenant, reasonably agreed to by Landlord, and acceptable for recording in the county where the Premises is located. The Memorandum of Lease shall include a legal description of the Premises and Land, the identity of the parties, and the Lease Term, and shall incorporate the terms of this Lease by reference. The same shall be duly executed in form suitable for recording, and any costs incurred in connection therewith shall be at the expense of the party requesting the same.

31.03 Effect of Waiver. No waiver of any condition or covenant of this Lease or of the breach of any condition or covenant shall be taken to constitute a waiver of any subsequent breach of such condition or covenant, or to justify or authorize the nonobservance on any other occasion of the same or any other condition or covenant thereof. The acceptance of rent by Landlord at any time when Tenant is in Default of any covenant or condition shall not be construed as a waiver of such Default or of Landlord's rights under this Lease (except if the Default alleged is failure by Tenant to pay the rent so accepted).

31.04 Successors and Assigns. This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, Landlord's heirs, legal representatives, successors and assigns, and shall be binding upon and inure to the benefit of Tenant, Tenant's successors and assigns.

31.05 Severability. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

31.06 Entire Agreement. This Lease contains the entire agreement between the parties hereto. All understanding and agreements previously made between the parties are superseded by this Lease, and neither party is relying upon any warranty, statement or representation not contained in this Lease. Any agreement hereafter made shall not operate to change, modify, terminate or discharge this Lease, in whole or in part, unless such agreement is in writing and signed by each of the parties hereto.

31.07 Limitation of Liability. Except as otherwise expressly provided herein, neither Landlord nor Tenant shall be liable under this Lease for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits. Tenant acknowledges and agrees that the liability of Landlord under this Lease or any matter relating to or arising out of the occupancy or use of the Premises shall be recoverable only from Landlord's interest in the Premises and any judgments rendered against Landlord shall be satisfied solely out of the proceeds of sale of its interest in the Premises.

31.08 Inspection. Landlord and Landlord's employees, agents, contractors and representatives shall be entitled, from time to time, upon reasonable notice to Tenant and subject to the rights of subtenants under subleases, to go upon and into the Premises and Improvements for the purpose of:

- (A) Inspecting the same;
- (B) Inspecting the performance by Tenant of its obligations under this Lease; or
- (C) Following an Tenant's Default hereunder, to perform the obligations of Tenant under this Lease.

31.09 Time of Essence. Time is of the essence of this Lease and each and all of its provisions.

31.10 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Washington without regard to that state's conflict of laws provisions.

31.11 Attorneys Fees. If either party to this Lease institutes litigation or other legal action to enforce its rights or remedies under this Lease, the prevailing party in such litigation or other legal action shall be entitled to reimbursement from the non-prevailing party in such litigation or other legal action of all reasonable fees, costs and expenses (including court costs and reasonable attorneys' fees) incurred by such prevailing party in connection with such litigation or other legal action.

31.12 Waiver of Trial by Jury. Landlord and Tenant waive trial by jury in the event of any action, proceeding or counterclaim brought by either Landlord or Tenant against the other in connection with this Lease.

31.13 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

31.14 Survival. All provisions of this Lease which by their express terms survive termination of this Lease or which by the operation of their terms are intended to be performed, in whole or in part, after termination of this Lease, shall survive any termination of this Lease. Unless this Lease specifically provides otherwise, all obligations of indemnification contained in this Lease shall survive the termination or expiration of this Lease.

31.15 Force Majeure. Neither Landlord nor Tenant shall be in default hereunder if Landlord or Tenant are prevented from performing any of their obligations hereunder (except for Tenant's obligation to pay Rent, Landlord's obligation to pay any sums due to Tenant hereunder, and as otherwise expressly provided herein), due to a Force Majeure delay.

31.16 Easements. Landlord, from and after the Effective Date, shall not enter into, modify, amend or terminate any easements that benefit or burden the Premises without the written approval of Tenant (not to be unreasonably withheld, conditioned or delayed, taking into account whether such easement would materially and adversely affect Tenant's development, use or operation of the Project).

31.17 Authority. Any person executing this Lease on behalf of a corporation, limited liability company, trust, or partnership represents and warrants that such person is authorized to execute and deliver this Lease on behalf of the entity.

31.18 Time Periods. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next business day.

31.19 No Authority to Encumber Landlord's Fee Interest. Tenant shall not have any right, authority or power to encumber Landlord's estate in the Premises, or to bind Landlord, Landlord's estate or other assets or any interest of Landlord in the Premises, for any claim for labor or material or for any other charge or expense, Lien or security interest incurred in connection with the development, construction, repair, maintenance, restoration, replacement or operation of the Improvements or any change, alteration or addition thereto.

[Remainder of the page intentionally left blank. Signature page follows.]



**IN WITNESS WHEREOF**, the parties hereto have signed this Lease Agreement as of the Effective Date.

**LANDLORD:**

EVERETT PUBLIC SCHOOL DISTRICT #2,  
a Washington public school district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

HOUSING HOPE PROPERTIES, a  
Washington non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD'S NOTARY**

STATE OF WASHINGTON §  
§  
COUNTY OF SNOHOMISH §

BEFORE ME, a Notary Public in and for said County and State aforesaid, on this date personally appeared \_\_\_\_\_, the \_\_\_\_\_ of EVERETT PUBLIC SCHOOL DISTRICT #2, a Washington public school district, known to me to be the same person whose name is subscribed to the foregoing instrument, and he/she acknowledged that he/she signed and delivered said instrument in the capacity indicated above, as his/her own free and voluntary act and as the free and voluntary act of the landlord therein for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public for the indicated State

My Commission Expires: \_\_\_\_\_

**TENANT'S NOTARY**

STATE OF WASHINGTON §  
§  
COUNTY OF SNOHOMISH §

BEFORE ME, a Notary Public in and for said County and State aforesaid, on this date personally appeared \_\_\_\_\_, the \_\_\_\_\_ of HOUSING HOPE PROPERTIES, a Washington non-profit corporation, known to me to be the same person whose name is subscribed to the foregoing instrument, and he/she acknowledged that he/she signed and delivered said instrument in the capacity indicated above, as his/her own free and voluntary act and as the free and voluntary act of the tenant therein for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public for the indicated State

My Commission Expires: \_\_\_\_\_

## **EXHIBIT A**

### **Description of the Land**

LOTS 3, 4, 7, 8, 9, 10, 11 AND 12, BLOCK 3, FRIDAY'S SECOND ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 56, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

TOGETHER WITH THE SOUTH 62 1/2 FEET OF LOT 2, BLOCK 3, OF SAID FRIDAY'S SECOND ADDITION TO EVERETT AND TOGETHER WITH THAT PORTION OF SAID LOT 2 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 2, 62 1/2 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE NORTH ALONG SAID WEST LINE TO A POINT WHICH IS 12 1/2 FEET NORTH OF THE SOUTHEAST CORNER OF LOT 13 OF SAID BLOCK 3;

THENCE EAST 15 FEET; THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID LOT 2 TO A POINT WHICH IS DISTANT NORTH 62 1/2 FEET FROM THE SOUTH LINE OF SAID LOT 2;

THENCE WEST 15 FEET TO THE POINT OF BEGINNING; AND TOGETHER WITH THE SOUTH 12 1/2 FEET OF LOT 13, BLOCK 3 OF SAID FRIDAY'S SECOND ADDITION TO EVERETT; AND TOGETHER WITH VACATED PORTION OF GRAND AVENUE ADJACENT TO LOT 4, BLOCK 3 OF SAID PLAT.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.