

**GROUND LEASE AGREEMENT**

**between**

**KING COUNTY,  
a political subdivision of the State of Washington**

**as Lessor**

**and**

**ALLIANCE WASATCH1, LLC,  
a California limited liability company,**

**as Lessee**

\_\_\_\_\_, 2009

**Burien TOD Garage Project  
Burien, Washington**

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**EXHIBIT A    Legal Description of the Property**

**EXHIBIT B    Affordable Housing Elements**

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT ("Ground Lease") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between **KING COUNTY**, a political subdivision of the State of Washington ("Lessor"), and **ALLIANCE WASATCH 1, LLC**, a California limited liability company ("Lessee").

### RECITALS

**A.** Lessor is a political subdivision of the State of Washington and is authorized by RCW Chapter 35.56 to provide metropolitan public transportation services in the Seattle-King County metropolitan area. Lessee is a private developer of affordable housing and mixed use projects duly organized as a limited liability company under the laws of the State of California.

**B.** In January of 1998 Lessor adopted a Transit Oriented Development Program (TOD) to encourage public or private development which creates new mixed income housing development, including related commercial activity, in close proximity to transit facilities and services to increase ridership of Lessor's metropolitan public transportation system, decrease automobile trips and traffic congestion and provide additional fare revenue to support metropolitan public transportation services throughout King County. In 2007, Lessor issued Request for Proposal No. 1180-07-RLD as amended ("RFP") requesting proposals for a mixed use affordable housing project with a public parking component to support its transit services in the City of Burien. The affordable housing is the critical aspect of Lessor's plans for the real property that is the subject of this Ground Lease ("Land"). Economic circumstances arising after the issuance of the RFP impacting the housing and credit markets in King County have necessitated a phased approach to the development of the Garage and the affordable housing project.

**C.** In 2009, Lessor completed a transit facility in the City of Burien ("City") immediately adjacent to the Land. Lessor has agreed to enter into this Ground Lease with Lessee on the terms and conditions hereinafter set forth on the express condition that Lessee agree to construct the Burien T.O.D. Project, as defined in the "Lease Agreement (With Option to Purchase)" ("Project Lease"), which will promote the public welfare by providing additional public parking for single-trip transit commuters and safe and affordable housing for residents of King County. The parking garage and mixed use, affordable housing shall be developed in two discrete phases with the first phase consisting of the Garage. The second phase shall consist of affordable housing and subject to the requirements herein, which shall be subject to additional negotiation between Lessor and Lessee.

**D.** In order to accommodate the development of both phases of the development Lessor intends to short plat the Land into two legal lots consisting of the Garage Land and the Housing Land, each as defined below. Concurrently herewith, Lessor shall enter into the Project Lease as Tenant on the express condition that Lessee execute this Ground Lease and abide by the terms herein.

E. All capitalized terms used in this Ground Lease but not otherwise defined herein (including these Recitals hereto) shall have the meanings given to such terms in the Project Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. The Demise.

1.1 **Demise.** In consideration of the rents, covenants and agreements contained in this Ground Lease, Lessor hereby leases the Land legally described and depicted in EXHIBIT A, attached hereto and made a part of this Ground Lease, to Lessee, and Lessee hereby leases the Real Property from Lessor upon and subject to the conditions set forth in this Ground Lease and the Project Lease, and subject to all encumbrances and matters of record as of the date of this Ground Lease.

1.2 **Title to and Condition of Real Property.** Lessee has had an opportunity to and has conducted a thorough investigation of the Land and is in all material respects knowledgeable and familiar with the present condition and state of repair of the Land. The Land is leased to Lessee in its present condition and state of repair on an "AS IS" basis without representation or warranty of any kind by Lessor, express or implied and subject to (a) the existing condition of title, and (b) all applicable Requirements of Law now or hereafter in effect including all Requirements of Law applicable to use of the Land for design, development and construction of the Project thereon pursuant to the requirements of the Project Lease. Lessee hereby accepts the Land subject to all of the foregoing and without any representation or warranty by Lessor, express or implied, and expressly without recourse to Lessor as to the physical condition or suitability of the Land for Lessee's intended purposes.

1.3 **Access and Utilities.** Lessor and Lessee agree to mutually cooperate regarding the provision of reciprocal temporary and permanent pedestrian and vehicular access and utilities to, from, and over the Land in connection with the development of the Project and the Housing Project, including to, from, and over adjacent lands of Lessor, if required.

1.4 **Short Plat of Property and Reconfiguration of Ground Lease.** Lessee acknowledges that the Real Property currently consists of a single legal lot and that initially the Ground Lease shall apply to the entirety of the Land, but that Lessor shall cause the Land to be short platted into a minimum of two legal lots, one lot which shall then constitute Garage Land and the remainder of which shall then constitute the Housing Land. Lessor shall cause the Land to be short platted into a minimum of two lots prior to or concurrently, at Lessor's sole discretion, with the exercise of the Option to purchase. Upon completion of the short plat, EXHIBIT A shall be amended and replaced and renamed as "EXHIBIT A-1" and "EXHIBIT A-2," which shall contain the legal descriptions and approximate depictions of the Garage Land and Housing Land, respectively. Likewise, EXHIBIT C-2 of the Lease shall be amended and replaced with the legal descriptions of the Garage Land and Housing Land, which renamed exhibits shall become "EXHIBIT D" and "EXHIBIT E," respectively, to the Lease. Upon Closing (as hereinafter defined), if Lessor has exercised its Option to purchase the Premises and Lessor and Lessee have entered into the Housing Agreement and agreed upon the Housing Commencement Date as

defined in Section 2.2.2 below, this Ground Lease shall terminate as to the Garage Land, Lessor and Lessee shall execute an Amended Ground Lease and thereafter the Ground Lease shall continue with respect to the Housing Land only on the terms and conditions set forth in the Amended Ground Lease. If Lessee has not exercised its Option to purchase the Premises, but has agreed to cause the issuance of the Certificates pursuant to Section 4.4 of the Lease, and Lessor and Lessee have entered into the Housing Agreement and agreed upon the Housing Commencement Date as defined in Section 2.2.2 below, Lessor and Lessee shall thereafter bifurcate the Ground Lease and enter into two separate ground leases, first, a ground lease of the Garage Land only on such terms and conditions as Trustee may reasonably request in order to issue the Certificates, and secondly, a ground lease of the Housing Land only on terms and conditions as may be reasonably required in order for Lessee to ground lease and develop the Housing Project thereon. The Construction Loan and the Deed of Trust shall expressly provide for the partial release of the Garage Land from the lien of the Deed of Trust upon Closing.

**.2. Term.** This Ground Lease shall be for a term of twenty-five (25) years commencing on the date that this Ground Lease has been fully executed, acknowledged and delivered by Lessor and Lessee ("Effective Date") unless sooner terminated pursuant to this Ground Lease or the Project Lease or unless terminated in whole or in part pursuant to the provisions of Section 2.2 below.

## **2.2 Duration.**

**2.2.1 Garage Land.** Upon Closing (as defined in the Project Lease), if Lessor in its capacity as the tenant under the Project Lease, has exercised its Option to purchase the Premises (as defined in the Project Lease), this Ground Lease shall terminate as to the Garage Land, and thereafter, this Ground Lease shall continue with respect to the Housing Land only until [*the earliest happening of (a) Closing following exercise of Lessor's (in its capacity as Tenant under the Project Lease) Option, or (b) Lessor and Lessee have executed the Amended Ground Lease and Housing Agreement with the Housing Commencement Date (as defined in Section 2.2.2 below), or (c) ]* December 31, 2012. If Lessor, in its capacity as Tenant under the Project Lease, has not exercised its Option to purchase the Premises, but has agreed to cause the issuance of the Certificates pursuant to Section 4.4 thereof, and Lessor and Lessee have entered into the Housing Agreement and agreed upon the Housing Commencement Date as defined in Section 2.2.2 below, Lessor and Lessee shall bifurcate this Ground Lease and enter into two separate ground leases, first, a ground lease of the Garage Land only on such terms and conditions as Trustee may reasonably request in order to issue the Certificates, and secondly, a ground lease of the Housing Land only pursuant to the terms of the Amended Ground Lease which shall set forth the terms and conditions under which Lessee shall ground lease the Housing Land and develop and operate the Housing Project thereon. The Construction Loan and the Deed of Trust shall expressly provide for the release of the lien of the Deed of Trust and other Security Documents from the Land upon Closing. In the event that Lessor and Lessee have not entered into the Housing Agreement, agreed upon the Housing Commencement Date as defined in Section 2.2.2 below and executed the Amended Ground Lease on or before December 31, 2012, this Ground Lease shall automatically terminate as to the Housing Land and except as otherwise expressly provided herein, Lessor and Lessee shall have no further rights, duties and obligations under this Ground Lease with respect to the Housing Land or the development of the Housing Project thereon.

**2.2.2 Housing Land.** The Ground Lease shall terminate as to the Housing Land [as provided in Section 2.2.1 above but no later than] on December 31, 2012, unless prior to that date, Lessor and Lessee shall have entered into a Housing Agreement and therein established a Housing Commencement Date, defined as the date by which construction of the Housing Project, as defined in Section 6.3 below, shall commence, and Lessor and Lessee shall have executed the Amended Ground Lease which shall set forth the terms and conditions under which Lessee shall construct and thereafter operate the Housing Project on the Housing Land.

### **3. Rent.**

**3.1 Rent.** Lessee shall pay to Lessor, as consideration for the right to occupy and develop the Real Property the sum of \$5,000.00 per month, which shall constitute fair market rent ("Rent") for the period from the Effective Date until December 31, 2012 [or as provided in the Amended Ground Lease]. Rent shall be payable to Lessor at Lessor's address set forth in Section 15.1 below on or before the first day of each calendar month without deduction, offset, prior notice or demand. Should the Effective Date occur on a day other than the first day of a calendar month, the partial month shall be pro rated and the first month's rent shall be due upon the first day of the following month.

**3.2 Additional Rent.** From and After the Effective Date, Lessee shall also pay, without notice and without set-off, deduction or abatement, Additional Rent when the same shall be due and payable and in any event prior to delinquency. Additional Rent shall mean all costs, expenses, insurance premiums, Impositions and other payments, excluding Rent, which Lessee is required to pay under the terms of this Ground Lease. In the event of any non-payment of Additional Rent, Lessor shall have, in addition to any other rights and remedies, all rights and remedies provided for herein or by law for the non-payment of Rent.

**3.3 Net Lease.** This Ground Lease shall be deemed and construed to be a "net lease" and from and after the Effective Date, Lessee shall pay Lessor Rent, Additional Rent and any other payments required hereunder, free of any charges, assessments, Impositions or deductions of any kind and without abatement, deduction or setoff, whether now or hereafter arising or beyond the present contemplation of the parties.

### **4. Use of the Land.**

**4.1 Use of Land.** The Land shall be used and occupied solely for the purpose of the design, development, construction, operation, use, repair and maintenance of the Project and, subject to the provisions of Section 2.2 above, design, development, construction operation, and use of affordable housing and related uses pursuant to the terms of the Housing Agreement and the Amended Ground Lease. Notwithstanding any provision of this Ground Lease to the contrary, Lessor shall have the right to use the Land for public parking until Lessee has obtained the Replacement Park and Ride Facility (as defined in the Project Lease) and is ready to Commence Construction of the Project. Lessee shall not use or permit the Land to be used for any other purpose without the prior written approval of Lessor, which consent may be withheld by Lessor in its sole and absolute discretion. Lessor would not have entered into this Ground Lease but for the agreement by Lessee to enter into and perform all of its obligations under to the Project Lease and this Ground Lease including its obligation to construct and complete the

Project on or before the Required Completion Date set forth in the Project Lease and its obligation to construct, complete and thereafter operate the Housing Project as required under the Housing Agreement and the Amended Ground Lease.

**4.2 Lessor's Right to Inspect.** Lessor shall have the right to inspect the Real Property at any time.

**4.3 Quiet Enjoyment of the Real Property.** If and so long as Lessee shall pay all Rent, Additional Rent and all other amounts payable by Lessee hereunder whenever the same shall become due and shall keep all of the covenants and conditions required to be kept by it under this Ground Lease and shall perform all of its other obligations hereunder, and additionally all of its obligations under to the Project Lease, Lessor covenants and agrees that, except as may otherwise be provided in the Project Lease, Lessor will not interfere with the peaceful and quiet occupation and enjoyment of the Real Property by Lessee, which occupation and enjoyment shall be without hindrance, ejection or molestation by Lessor.

**5. Impositions and Utilities.**

**5.1 Impositions.** Prior to the Commencement Date of the Project Lease, Lessee will, at Lessee's sole cost and expense, pay and discharge, on or before the fifteenth (15th) day prior to the last day upon which the same may be paid without interest or penalty, all Impositions. "Impositions" means all real and personal property taxes and assessments (including assessments for special improvements), license and permit fees, charges for public utilities, leasehold excise taxes, other excise taxes, levies, sales use and occupancy taxes any tax or charge assessed against Rent, Additional Rent or the fair market value of the Land and any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes, assessments or other charges and all other governmental impositions and charges of any kind and nature, general and special, ordinary and extraordinary, foreseen and unforeseen of every character (including interest and penalties thereon) which at any time from and after the Effective Date of this Ground Lease may be imposed, levied upon or assessed against or which arise with respect to or constitutes a lien upon the Land, the Project, the Housing Project (or any part thereof) the leasehold estate created by this Ground Lease or any part thereof, or any estate, right or interest therein or any occupancy, use or possession of or activities conducted by Lessee on the Land or any part thereof. Impositions shall not include any tax computed on the basis of Lessor's net income. Lessee shall pay all interest and penalties imposed upon the late payment of any Impositions that Lessee is obligated to pay hereunder.

With respect to any Impositions which may be levied against the Land or any improvements Lessee constructs on the Land (collectively the "Improvements"), any Rent, Additional Rent or other sum payable under this Ground Lease, the leasehold estate created by this Ground Lease or otherwise, or which under the Laws then in force may be evidenced by improvement or other bonds or may be paid either in full or in periodic installments, Lessee may elect to pay such Impositions in only the amount of the periodic installments then due (including interest) so long as such payment does not cause the Impositions to become delinquent or allows the Land or the Improvements thereon to be sold for the non-payment of any such Imposition or subject Lessor to penalties, fines or criminal prosecution.



If Lessee fails to pay any Imposition on or before the fifteenth (15th) day prior to the last day upon which the same may be paid without interest or penalties for the late payment thereof, then the Lessor may pay the same with all interest and penalties lawfully imposed upon the late payment thereof. The amounts so paid by Lessor shall be immediately due and payable by Lessee to Lessor hereunder as Additional Rent.

Lessee, at Lessee's own cost and expense may, in good faith, contest the validity or amount of any Imposition, in which event Lessee may defer the payment thereof while such contest shall be actively and diligently prosecuted and shall be pending undetermined, provided that:

(a) fifteen (15) days before the contested Imposition becomes delinquent by non-payment, Lessee shall deposit and thereafter maintain with Lessor an amount of money or other security reasonably satisfactory to Lessor sufficient to pay the contested items together with the interest and penalties thereon accruing during such contest. The money shall be held by Lessor, and shall be applied to the payment of such contested item together with interest and penalties thereon, if any, when the amount or amounts thereof have been finally determined;

(b) no provisions of this Ground Lease shall be construed to require Lessor to allow any such contested items to remain unpaid for such length of time as shall permit the Land or the Improvements, or any part thereof or interest therein, to be sold for the nonpayment thereof or the lien thereon created by such contested item to be foreclosed;

(c) deferral of payment and contest of the Impositions will not subject Lessor to criminal prosecution or fine; and

(d) Lessee shall indemnify, protect, defend and hold Lessor and the Land harmless from and against any loss, cost, damage, liability, interest, attorneys' fees and other expenses arising out of such deferral of payment and contest of the Impositions.

At any time prior to or during the pendency of any such contest, Lessor, after written notice to Lessee, may pay out and apply so much of the money deposited by Lessee as may be required to the payment of any Impositions, together with interest and penalties, which, in Lessor's judgment should be paid to prevent the sale of the Land, or the Improvements or any part thereof. To the extent that the amount of money so deposited with Lessor shall be insufficient to fully satisfy and discharge any such Imposition, together with interest and penalties thereon, Lessor may pay the same and the deficiency so paid by Lessor shall be immediately due and payable by Lessee to Lessor as Additional Rent.

**5.2 Utilities.** Prior to the Commencement Date of the Project Lease, Lessee shall be solely responsible for and shall pay separately for all charges for Utilities used or consumed at the Land during the term of this Ground Lease. Except as otherwise provided in the Project Lease, Lessee shall make any necessary arrangements to have all such services or Utilities billed directly to and paid for directly by Lessee. "Utilities" means all utilities and services furnished to the Land, including without limitation, gas, electricity, water, sewer, storm water, garbage collection and telephone service.

Lessor shall not be liable under this Ground Lease for any loss or damage caused by or resulting from any variation, interruption or failure of Utilities or other services due to any cause whatsoever (other than the Lessor's intentional termination or interruption of such Utilities without legal justification), and no temporary interruption or failure of such Utilities or other services incident to the making of repairs, alterations or improvements or due to accident or strike conditions shall be deemed an eviction of Lessee or relieve Lessee from any of Lessee's obligations hereunder.

## **2. Development of Project and Housing Project.**

**6.1 Construction of Project.** Lessor agrees that Lessee shall cause the Project to be developed, constructed and completed pursuant to the Project Lease. Lessee shall not permit any development or construction on the Land except as contemplated by the Project Lease or as otherwise specifically approved in writing by Lessor.

**6.2 Ownership of Improvements.** During the Term, the Project and all other improvements on the Land paid for by Lessee shall be owned by Lessee. Upon the expiration or earlier termination of this Ground Lease, the Project and all other improvements on the Garage Land or the Housing Land and shall become the property of Lessor.

**6.3 Housing Phase.** Lessor and Lessee shall bargain in good faith to reach agreement for the development, financing, construction and operation of the Housing Project on the Housing Land, which Housing Agreement and the Amended Ground Lease shall be fully executed by the parties [*as provided in Section 2*] no later than December 31, 2012. The design, development, permitting, financing, construction and operation of the Housing Project on the Housing Land shall be known as the Housing Phase and shall be the sole responsibility of Lessee, subject to Lessor's concurrent agreement. For purposes of the Housing Agreement, "the Housing Project" shall mean an affordable housing development with at minimum the elements contained in **EXHIBIT B** attached hereto and by this reference made a part of this Ground Lease. If Lessor and Lessee, despite good faith efforts, are unable to mutually agree upon all of terms of the Housing Agreement and the Amended Ground Lease by [*the earliest of the alternative dates set forth in Section 2.2.1*] December 31, 2012, this Ground Lease shall terminate as to the Housing Land only and except as otherwise expressly provided herein, Lessor and Lessee shall have no further rights, duties and obligations to one another except for those arising from the Project Lease with respect to the Garage Land and Lessee shall receive no refund for Rent paid to Lessor, unless and to the extent provided in the Amended Ground Lease.

**6.4 Federal Transit Administration Approval.** Lessor has obtained Federal Transit Administration approval for this Ground Lease, the Project and the Housing Project.

**7. Liens.** Lessee covenants and agrees that it shall not during the Term of this Ground Lease suffer or permit any Liens to be attached to, upon or against Lessor's fee interest in the Land for any reason, including without limitation Liens related to financing of the Project, Liens arising out of the possession, use, occupancy, acquisition, construction, repair, or rebuilding of the Project or by reason of the furnishing of labor, services, materials, or equipment to the Land. Lessee shall protect, defend, indemnify and hold Lessor harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorneys' fees and costs) incurred in

connection with any such Lien, which such obligations shall survive the expiration or earlier termination of this Ground Lease.

## **8. Lessee Financing of Project Improvements.**

**8.1 Construction Loan for Project Improvements.** Lessee shall not have the right to mortgage, pledge, encumber or assign its leasehold interest under this Ground Lease or the Project Lease in whole or in part except to the Construction Lender to secure the Construction Loan as defined in and pursuant to the requirements of Section 10 of the Project Lease. The Deed of Trust and any Security Documents executed to secure the Construction Loan shall be and all times remain subject and subordinate to this Ground Lease.

**8.2 Protection of Construction Lenders.** If Lessee shall mortgage its leasehold interest under this Ground Lease and the Project Lease in a financing transaction which meets the requirements of Section 10 of the Project Lease, then so long as such Construction Loan and Deed of Trust remain in full force and effect the following provisions shall apply:

(a) **Notice of Default.** Lessor upon serving Lessee any notice of default pursuant to the provisions of this Ground Lease shall also serve a copy of such notice upon Construction Lender at the address provided to Lessor. No notice to Lessee under this Ground Lease shall be deemed to have been duly given unless and until a copy thereof has been served on such Construction Lender. If Lessor then or thereafter intends to terminate this Ground Lease and/or the Project Lease as a result of such default, the notice to the Construction Lender shall explicitly so state. From and after the date such notice has been given to Construction Lender, such Construction Lender shall have the same period, after the giving of such notice upon it, for remedying any default or acts or omissions which are the subject matter of such notice, or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee, plus in each instance the additional periods of time specified in subsections (b) and (c) of the Section 8.2 to remedy, commence remedying or cause to be remedied, the defaults or acts or omissions which are specified in such notice.

(b) **Right To Cure.** Construction Lender shall have the right to remedy such default or cause the same to be remedied for a period of thirty (30) days after the expiration of the cure period, if any, provided for under this Ground Lease for Lessee to remedy same and Lessor shall accept such performance by or at the instance of Construction Lender as if the same had been made by Lessee; provided that Construction Lender shall not have any obligation to cure any non-monetary default which by its nature is not susceptible of being cured by Construction Lender.

(c) **Extended Cure Period.** If the default is reasonably susceptible of cure by Construction Lender, but cannot reasonably be remedied within thirty (30) days, Lessor shall not terminate this Ground Lease so long as (i) the Construction Lender cures all defaults in the payment of money under this Ground Lease within thirty (30) days and thereafter pays all Rent, Additional Rent and all other items required to be paid by Lessee under this Ground Lease as and when the same becomes due and payable, and (ii) the Construction Lender has commenced to cure any non-monetary default under this Ground Lease within thirty (30) days and thereafter diligently and in good faith continuously prosecutes such cure to completion.

Such cure period shall include any time required to obtain possession of the Real Property by foreclosure of the Deed of Trust or by other appropriate means by reasonable diligence, or until such earlier time as all defaults of Lessee are cured. Nothing in this clause (c), however, shall be construed to extend this Ground Lease beyond the Term, nor to require Construction Lender to continue such foreclosure proceedings after all defaults are cured. Once all defaults are cured, this Ground Lease shall continue in full force and effect as if Lessee had not defaulted.

(d) **New Lease.** In the event of the termination of this Ground Lease or Project Lease prior to the expiration of the Term, Lessor shall serve upon the Construction Lender written notice that the Ground Lease and/or Project Lease has been terminated together with a statement of any and all sums which would at the time be due under this Ground Lease and Project Lease but for such termination and of all other defaults, if any, under this Ground Lease and Project Lease then known to Lessor. Construction Lender shall thereupon have the option to obtain new leases in accordance with and upon compliance with each of the following terms and conditions:

(i) Construction Lender shall within sixty (60) days following service of notice of termination of this Ground Lease and/or Project Lease provide written notice to Lessor that it desires to enter into a new lease of the Land and new Project Lease with Lessor; and

(ii) Lessor shall enter into new leases which shall be effective as of the date of the termination of this Ground Lease and/or the Project Lease and shall be for the remainder of the Term of this Ground Lease and/or the Project Lease and at the Rent and upon all other terms, covenants and conditions as this Ground Lease and the Project Lease (excluding requirements which are inapplicable or have already been fulfilled); and Construction Lender shall also assume all obligations of Lessee under the Project Lease;

(iii) Upon execution of such new leases and assumption of the Project Lease, the Construction Lender shall pay any and all sums which would at the time of the execution thereof be due under this Ground Lease and the Project Lease but for such termination less any amounts previously received by Lessor with respect to such default and perform all other then unfulfilled obligations of Lessee, which are reasonably susceptible of being performed by Construction Lender or its assignee. In any event, such obligations shall include construction of the Project under the Project Lease if this Ground Lease terminated prior to Final Completion of the Project. The amount paid by Construction Lender hereunder shall be net of amounts already received by Lessor in connection with such default, or received by Lessor in connection with the Real Property between the date of termination and the date the new Ground Lease and Project Lease is executed. For purposes of this Ground Lease and Project Lease, the terms "adequately secured," "adequate security" or terms of similar import shall mean that the amount of the obligation referenced is either (i) guaranteed by an entity reasonably acceptable to Lessor or (ii) secured by a letter of credit, cash collateral or other security reasonably acceptable to the Lessor.

(e) **Notices.** Any notice or other communication which Lessor shall desire or is required to give or serve upon Construction Lender shall be in writing and shall be served by registered mail addressed to Construction Lender at the address set forth in such Deed

of Trust, a copy of which has been provided to Lessor at the address set forth in Section 15.1 of this Ground Lease, or such other address as shall be designated by Construction Lender by notice in writing given to Lessor by registered mail. Any notice or other communication which Construction Lender shall desire or is required to give or serve upon Lessor shall be in writing and shall be served by registered mail addressed to Lessor at the address set forth in Section 15.1 of this Ground Lease or such other address as shall be designated by Lessor by notice in writing given to Construction Lender by registered mail.

(f) **Amendments.** No agreement between Lessor and Lessee modifying, canceling or surrendering this Ground Lease prior to Closing (as defined in the Project Lease) shall be effective without the prior written consent of the Construction Lender.

(g) **Insurance Clauses.** A standard mortgagee clause naming Construction Lender may be added to any and all insurance policies required to be carried by Lessee hereunder and the Deed of Trust shall so provide.

(h) **Deed of Trust Not a Transfer.** For the purposes of this Section 8.2, the making of the Deed of Trust to secure the Construction Loan shall not be deemed to constitute an assignment or transfer of this Ground Lease or the leasehold estate hereby created, nor shall Construction Lender, as such, be deemed to be an assignee or transferee of the Lessee's interest under this Ground Lease or of the leasehold estate created hereby so as to require Construction Lender as such to assume the performance of any of the terms, covenants or conditions on the part of the Lessee to be performed prior to foreclosure of the Deed of Trust; provided, however, that upon foreclosure of the Deed of Trust, the Construction Lender or any purchaser at any sale of the Lessee's rights under this Ground Lease in any proceedings for the foreclosure of any Deed of Trust, or the assignee or transferee of the Lessee's rights under this Ground Lease created under any instrument of assignment or transfer in lieu of foreclosure of the Deed of Trust, shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Lessee to be performed hereunder from and after the date of such purchase and assignment including any obligation to complete construction of the Project, and the Deed of Trust shall so provide.

(i) **Construction Lender's Right to Assign.** Notwithstanding any provision of this Ground Lease to the contrary, the Construction Lender may upon acquiring the Lessee's interest under this Ground Lease pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring the Lessee's interest under this Ground Lease, or a new lease as provided above, and without further consent of Lessor sell and assign such leasehold interest on such terms and to such persons and organizations as are acceptable to Construction Lender and thereafter be relieved of all obligations under this Ground Lease which accrue after the date of such sale or assignment so long as each of the following conditions are met:

(i) There is no default on the part of Construction Lender under this Ground Lease or the Project Lease and no event that with the giving of notice, the passage of time, or both, would constitute an Event of Default under this Ground Lease or the Project Lease and all such defaults having been cured to the reasonable satisfaction of Lessor prior to the effective date of such assignment;

(ii) The proposed assignee is either purchasing in an all cash transaction without financing, or has obtained financing which complies with the requirements for a Construction Loan under Section 8.2 hereof and Section 10 of the Project Lease. In any case where Final Completion of the Project has not occurred, Lessor may also require evidence of financial capacity and/or resources to complete construction of the Project in accordance with the requirements of this Ground Lease and the Project Lease;

(iii) As part of such assignment the assignee shall assume the obligations of Lessee under this Ground Lease and Project Lease by executing, acknowledging and recording an assumption agreement in form and substance reasonably satisfactory to Lessor. The assignee shall thereafter have all the rights and shall perform all the duties and obligations of Lessee under this Ground Lease and the Project Lease; and

(iv) Any such sale or assignment shall not release Construction Lender from any claims or obligations under this Ground Lease or the Project Lease, which arose while Construction Lender or any of its affiliates held the Lessee's interest under this Ground Lease or the Project Lease or was in possession of the Land .

(v) **No Merger.** So long as the Deed of Trust is in existence, unless the Construction Lender otherwise consents in writing, the fee title to the Land and the leasehold estate of Lessee therein created by this Ground Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Lessee or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Ground Lease after default by Lessee, provided that Construction Lender shall not have requested and been granted a New Lease as provided above.

**8.3 No Subordination of Ground Lease.** There shall be no subordination of this Ground Lease to the lien of the Deed of Trust. Upon any foreclosure of Lessee's leasehold interest under this Ground Lease pursuant to a Deed of Trust or a sale of the Lessee's leasehold interest under this Ground Lease pursuant to the trustee's power of sale contained in a Deed of Trust, the Construction Lender shall assume the obligations of Lessee under this Ground Lease and the Project Lease by executing, acknowledging and recording an assumption agreement in form and substance reasonably satisfactory to Lessor. Subject to the provisions of Section 6.2, the Construction Lender shall thereafter have all the rights and shall perform all the duties and obligations of Lessee under this Ground Lease and the Project Lease.

**8.4 No Fee Subordination.** Lessee shall not be required to subordinate its interest in the fee estate of the Land to any Deed of Trust.

## **9. Indemnity and Insurance.**

**9.1 Indemnity.** To the extent permitted by law, Lessee shall absolutely and unconditionally protect, defend, indemnify and hold Lessor harmless from and against any and all claims, debts, causes of action, demands, obligations, losses, Liens, damages, judgments, including reasonable attorneys' fees and expenses or liabilities now or hereafter arising from Lessee's actions, errors or omissions in the use of the Land, the design, development, construction, operation, maintenance, repair or management of the Project and the Premises or

the conduct of its business or from any activity, work, or thing done, permitted or suffered by the Lessee or any other person in or about the Land and shall further protect, defend, indemnify and hold Lessor harmless from and against any and all claims arising from any breach or default in the performance of any obligation on the part of Lessee to be performed under the terms of this Ground Lease, or arising from any act, error or omission of Lessee, or any of its agents, contractors, subcontractors, employees, residents or invitees or any other person and from and against any and all costs, attorneys' fees, expenses and liabilities incurred in connection with such claim or any action or proceeding brought against Lessor by reason of any such claim. Lessee hereby assumes all risk of damage to property or injury to persons, in or about the Land or arising from this Ground Lease from any cause. This indemnification is intended to extend to any claim, demand and/or cause of action brought by or on behalf of any of the employees or agents of Lessee. For purposes of this Ground Lease, Lessee agrees that by mutual negotiation it waives as respects Lessor only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of RCW Chapter 51. Lessee upon notice from Lessor shall defend all such claims at Lessee's expense by counsel reasonably satisfactory to Lessor. It is intended that the foregoing indemnity shall be broad and comprehensive. This indemnity shall survive the expiration or other termination of this Ground Lease. This indemnity is for the sole benefit of Lessor and shall not inure to the benefit of any third party.

**9.2 Lessee's Insurance.** Lessee shall, at all times during the Term of this Ground Lease, and in addition to Section 13 of the Project Lease, be subject to the following provisions:

(j) **Property Insurance.** In the event that Lessor is not maintaining property insurance with respect to all Project improvements constructed on the Land pursuant to the Project Lease, Lessee shall maintain Property insurance fully insuring all Project improvements constructed on the Land as well as all of Lessor's personal property and trade fixtures located on the Land against loss or damage by fire and lightning, and insurance against risks customarily covered by extended coverage endorsement, including but not limited to loss by windstorm, hail, explosion, riot, vehicles, smoke damage, vandalism and malicious mischief in amounts sufficient to prevent Lessor from becoming a co-insurer of any loss under the applicable policies, but in any event in amounts not less than the full replacement cost of all buildings, equipment, and other improvements to the Land arising from the Project, including the cost of debris removal. The property insurance policy shall meet the requirements set forth in this Section and in applicable sections of the Project Lease.

(k) **General Liability.** Lessee shall maintain commercial general liability insurance, covering the legal liability of Lessee against claims for bodily injury, death or property damage, occurring on, in or about the Land and the Project. The commercial general liability insurance policy shall name Lessor as an additional insured and shall meet the requirements set forth in this Section and in applicable sections of the Project Lease.

(l) **Financially Responsible Insurers.** All of the insurance obtained under this Section 9.2 shall be written by companies which are legally qualified to issue such insurance and which have a Best's rating of no less than A:VIII, or, if not rated by Best's, which have a rating in one of the two highest categories maintained by S&P and Moody's, and shall name Lessor as an additional named insured. Lessor shall be given forty-five (45) days advance notice of any termination or intent to terminate or cancel any policy referred to in this Section 9.

**9.3 Waiver of Subrogation.** Every insurance policy maintained pursuant to Section 9.2 shall provide that the insurer waives all rights of subrogation against a named insured, and any successor to a named insured's interest in the Land or the Project.

**9.4 Evidence of Insurance.** Lessee shall deliver to Lessor prior to the Effective Date of this Ground Lease certificates of insurance evidencing all the insurance which is then required to be maintained by Lessee, and Lessee shall, within forty-five (45) days prior to the expiration of any such insurance, deliver other certificates of insurance evidencing the renewal of such insurance.

## **10. Eminent Domain.**

**10.1 Total Condemnation.** If during the Term but prior to the Final Completion of the Project under the Project Lease there is a taking or damaging of all or any portion of the Land by the exercise of any governmental power, whether by legal proceedings or otherwise by a governmental agency with jurisdiction over the Land or a transfer by Lessor either under threat of condemnation or while legal proceedings for condemnation are pending (a "Condemnation") such that the Project may no longer be constructed in accordance with the Contract Documents as defined in the Project Lease, this Ground Lease and the Project Lease shall terminate, Lessee shall be paid for all Project Costs, if any incurred under the Project Lease to the date of such Condemnation (including costs that Lessee is obligated to pay third parties as of that date) and the parties shall have no further obligations hereunder. After Lessee has been paid in accordance with the foregoing sentence all remaining condemnation proceeds shall be paid to Lessor. If there is a Condemnation after the Commencement Date of the Project Lease, such that there can be no reasonable use of the Premises by Lessor, in its capacity as the tenant under the Project Lease as reasonably determined by Lessor, this Ground Lease and the Project Lease shall terminate as of the date the condemnor has the right to possession of the property being condemned, and the condemnation proceeds shall be divided between Lessor and Lessee as provided in Section 19.1 of the Project Lease.

**10.2 Partial Condemnation.** If during the Term but prior to the Final Completion of the Project under the Project Lease, there is a partial Condemnation of the Land or the Premises, the condemnation proceeds shall be divided between Lessor and Lessee as provided in Section 17.2 of the Project Lease.

## **11. Events of Default by Lessee and Lessor's Remedies.**

**11.1 Events of Default.** A default by Lessee under the Project Lease shall be treated as a default under this Ground Lease and a default under this Ground Lease shall be treated as a default under the Project Lease. To the extent a default by Lessee is not addressed by the Project Lease, or in the event the Project Lease no longer applies, according to its terms, to the Ground Lease, the following occurrences or acts shall constitute an event of default under this Ground Lease:

**(a) Failure to Perform.** If Lessee shall (i) default in making payment when due of any Rent, Additional Rent or any other amount payable by Lessee hereunder which is not cured within seven (7) days after written notice has been given by Lessor to Lessee; or



(ii) default in the observance or performance of any other substantial provision of this Ground Lease to be observed or performed by Lessee hereunder, if such default shall continue for thirty (30) days after Lessor shall have given to Lessee written notice specifying such default and demanding that the same be cured, or, with respect to a default under subsection (ii), if by reason of the nature thereof such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) days, if Lessee shall fail to commence to cure such default within such thirty (30) day period or fails to thereafter diligently and continuously prosecute such cure to completion; or

**(b) Lessee's Financial Condition.** Lessee shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or Lessee's leasehold interest under this Ground Lease or the Project Lease, or within 60 days after the commencement of any proceeding against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed or if, within 60 days after the appointment, without the consent or acquiescence of Lessee, of any trustee, receiver or liquidator of Lessee or of Lessee's leasehold interest under this Ground Lease or the Project Lease, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within 60 days after the expiration of any such stay, such appointment shall not have been vacated.

**(c) Events of Landlord Default under Project Lease.** An uncured default by Lessee pursuant to Section 24 of the Project Lease shall constitute a default under this Ground Lease.

**11.2 Remedies Upon Lessee's Default.** In the event of any default by Lessee as defined hereinabove which default remains uncured after the expiration of the respective period set forth above, unless specifically subject to the notice and cure provisions of Section 24 of the Project Lease, Lessor may exercise any right or remedy which may be available to Lessor under the Project Lease, or at law or equity, including but not limited to actions for damages, and/or injunctive relief, and termination of Lessee's right to possession by any lawful means in which event this Ground Lease and the Project Lease shall terminate and Lessee shall immediately surrender possession of the Land to Lessor.

**11.3 Cumulative Rights and Remedies.** The rights and remedies reserved to Lessor herein, including those not specifically described, shall be cumulative, and except as provided by Washington statutory law in effect at the time, Lessor may pursue any and all such rights and remedies at the same time or independently.

**11.4 No Waiver.** No delay or omission of Lessor to exercise any right or remedy shall, except as expressly provided herein, be construed as a waiver of any such right or remedy or of any default by Lessee hereunder. The acceptance by Lessor of Rent or any Additional Rent hereunder shall not be a waiver of any preceding breach or default by Lessee of any provision

hereof, other than the failure of Lessee to pay the particular Rent or Additional Rent accepted, regardless of Lessor's knowledge of such preceding breach or default at the time of acceptance of such Rent or Additional Rent, or, except as expressly set forth herein, a waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default.

**11.5 Attorneys' Fees.** If either party incurs any expenses, including but not limited to reasonable attorneys' fees, consultant and expert witness fees, in connection with any action or proceeding instituted by any party by reason of any default or alleged default of a party hereunder, the party prevailing in such action or proceeding shall be entitled to recover its reasonable expenses from the other party hereof. For purposes of this provision, in any action or proceeding instituted pertaining to this Ground Lease, a party shall be deemed the prevailing party if (i) judgment is entered substantially in favor of said party or (ii) before trial or judgment the other party shall pay all or any portion of the charges claimed by said party, or the other party shall eliminate the condition(s), cease the act(s) or otherwise cure the omissions(s) claimed by said party to constitute a default by the other party hereunder.

**12. Bankruptcy.** To the extent applicable and in effect, the Project Lease shall control in the event Lessee becomes a Debtor as described in this Section 12. To the extent not applicable or in effect, the following shall control:

**12.1 Assumption of Lease and Project Lease.** If Lessee becomes a Debtor under Chapter 7 of the Bankruptcy Code or a petition for reorganization or adjustment of debts is filed concerning Lessee under Chapters 11 or 13 of the Bankruptcy Code, or a proceeding is filed under Chapter 7 of the Bankruptcy Code and is transferred to Chapters 11 or 13 of the Bankruptcy Code, the Bankruptcy Trustee or Lessee, as applicable, as Debtor and as Debtor-In-Possession, may not elect to assume this Ground Lease unless, at the time of such assumption, the Bankruptcy Trustee or Lessee has also assumed the Project Lease and the Bankruptcy Trustee or Lessee, as applicable has:

12.1.1 Cured all defaults under the Ground Lease and/or Project Lease (as applicable) and paid all sums due and owing under same, as applicable, or provided Lessor with "Adequate Assurance" (as defined below) that: (i) within ten (10) days from the date of such assumption, the Bankruptcy Trustee or Lessee (as applicable) will completely pay all sums then due and owing under this Ground Lease and/or Project Lease (as applicable) and compensate Lessor for any actual pecuniary loss resulting from any existing default or breach of same (as applicable), including without limitation, Lessor's reasonable costs, expenses, accrued interest, and attorneys' fees incurred as a result of the default or breach; and (ii) within twenty (20) days from the date of such assumption, the Bankruptcy Trustee or Lessee (as applicable) will cure all non-monetary defaults and breaches under this Ground Lease and/or Project Lease (as applicable) or, if the nature of such non-monetary defaults is such that more than twenty (20) days are reasonably required for such cure, that the Bankruptcy Trustee or Lessee (as applicable) will commence to cure such non-monetary defaults within twenty (20) days and thereafter diligently prosecute such cure to completion; and (iii) the assumption will be subject to all of the provisions of this Ground Lease and Project Lease.

12.1.2 For purposes of this Section 12, Lessor and Lessee (as applicable) acknowledge that, in the context of a bankruptcy proceeding involving Lessee (as applicable) at a minimum, "Adequate Assurance" shall mean: (i) the Bankruptcy Trustee or Lessee (as applicable) has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Lessor that the Bankruptcy Trustee or Lessee (as applicable) will have sufficient funds and/or income to fulfill the obligations of Lessee (as applicable) under this Ground Lease and Project Lease (including Lessee's obligations to construct the Project) and (ii) the Bankruptcy Court shall have entered an order segregating sufficient cash payable to Lessor and/or the Bankruptcy Trustee or Lessee (as applicable) shall have granted a valid and perfected first lien and security interest and/or mortgage in or on property of Bankruptcy Trustee or Lessee (as applicable) acceptable as to value and kind to Lessor, to secure to Lessor the obligation of the Bankruptcy Trustee or Lessee (as applicable) to cure the monetary and/or non-monetary defaults and breaches under this Ground Lease and the Project Lease within the time periods set forth above.

**12.2 Assignment of Ground Lease and Project Lease.** If the Bankruptcy Trustee or Lessee (as applicable) has assumed this Ground Lease and the Project Lease pursuant to the provisions of this Section 12 for the purpose of assigning Lessee's interest hereunder to any other person or entity, such interest may be assigned only after the Bankruptcy Trustee or Lessee (as applicable) or the proposed assignee has complied with all of the terms, covenants and conditions of this Ground Lease and Project Lease (as applicable) including, without limitation, those with respect to (a) the Permitted Use of the Premises; (b) the construction of the Project for the Fixed Price; (c) granting Lessor the option to purchase the Premises at the Option Price set forth in the Project Lease; and (d) Lessor's right to terminate the Ground Lease if the Housing Agreement and Amended Lease Agreement have not been executed by December 31, 2012. Lessor and Lessee acknowledge that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Lessee. Any person or entity to which this Ground Lease and the Project Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Ground Lease and the Project Lease on and after the date of such assignment. Any such assignee shall upon request execute and deliver to Lessor an instrument confirming such assignment.

**12.3 Adequate Protection.** Upon the filing of a petition by or against Lessee under the Bankruptcy Code, Lessee as Debtor and as Debtor-In-Possession, and any Bankruptcy Trustee who may be appointed agree to adequately protect Lessor as follows: (i) to perform each and every obligation of Lessee under this Ground Lease and the Project Lease until such time as same are either rejected or assumed by Order of the Bankruptcy Court; (ii) to pay all monetary obligations required under this Ground Lease and the Project Lease, including without limitation, the payment of Rent, Additional Rent, Impositions and Utilities and any other sum payable by Lessee, as applicable, under this Ground Lease and the Project Lease which is considered reasonable compensation for the use and occupancy of the Land; (iii) provide Lessor a minimum of thirty (30) days prior written notice, unless a shorter period is agreed to in writing by the parties, of any proceeding relating to any assumption of this Ground Lease or the Project Lease or any intent to abandon the Land, the Premises or Project, which abandonment shall be deemed

a rejection of this Ground Lease and the Project Lease; and (iv) to perform for the benefit of Lessor as otherwise required under the Bankruptcy Code. The failure of Lessee to comply with the above shall result in an automatic rejection of this Ground Lease and the Project Lease.

### **13. Lessee to Comply with Applicable Laws and Agreements.**

**13.1 Compliance with Laws.** Lessee shall not use the Land or permit anything to be done in or about the Land or Project which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and obtain all permits, licenses or other approvals required by governmental agencies or bodies. Lessee shall further comply with the requirements of any board or fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Land.

**13.2 Compliance with Agreements.** Lessee shall comply with all insurance policies and applicable agreements to which Lessee is a party or by which it is bound, now or hereafter in effect, and all agreements of which Lessee has notice and which are now in effect and applicable to the Land, including Federal Transit Authority requirements.

### **14. Hazardous Substances.**

**14.1 Use.** Lessee, its officers, directors, agents, employees or contractors shall not use the Land in a manner that violates any applicable federal, state or local law, regulation or ordinance, including, but not limited to, any such law, regulation or ordinance pertaining to air and water quality, the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances, air emissions, other environmental matters, and all zoning and other land use matters. Lessee shall not cause or permit the release or disposal of any Hazardous Substances on or from the Land.

**14.2 Indemnity.** Lessee agrees to protect, indemnify, defend (with counsel satisfactory to Lessor) and hold Lessor in its capacity as ground lessor under this Ground Lease and its officials, officers, employees and agents, harmless from any claims, judgments, damages, penalties, fines, expenses, liabilities or losses arising after the Effective Date of this Ground Lease and arising out of or relating to the presence, release or disposal of Hazardous Substances placed or released on the Land during the term of this Ground Lease. Notwithstanding the foregoing, in no event shall Lessee be obligated to indemnify Lessor under this Ground Lease, from any such claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the presence, release or disposal of Hazardous Substances that were present in the soil, groundwater or soil vapor on or under the Land as of the Effective Date of this Ground Lease ("Pre-Existing Hazardous Substances").

The indemnification provided by this Section 14.2 shall also specifically cover, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party because of the presence or suspected presence

of Hazardous Substances in the soil, groundwater, or soil vapor on or under the Land. Such costs may include, but not be limited to, diminution in the value of the Land, damages for the loss or restriction on use of parking stalls or rentable or useable space in any improvements now or hereafter located on the Land, sums paid in settlements of claims, attorney's fees, consultant's fees and expert fees.

**14.3 Obligations of Lessor.** Lessor shall be solely responsible for all claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the presence, release or disposal of Pre-Existing Hazardous Substances, including without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence or suspected presence of Pre-Existing Hazardous Substances. Such costs may include, but not be limited to, sums paid in settlements of claims, attorney's fees, consultant's fees and expert fees.

**14.4 Remediation of Pre-Existing Hazardous Substances.** If Lessee discovers during construction of the Project that Pre-Existing Hazardous Substances exist in the soil or in the ground water at or originating from the Land, Lessee shall promptly notify Lessor of its discovery of Pre-Existing Hazardous Substances. Lessor shall cause such Pre-Existing Hazardous Substances to be remediated to the applicable cleanup standards under applicable Environmental Laws in light of Lessee's intended lease of the Premises to Lessor under the Project Lease for use as a public parking garage.

**14.5 Notification Requirements.** Lessee shall promptly notify Lessor, in writing of all spills or releases of any Hazardous Substances, all failures to comply, with any federal, state, or local law, regulation or ordinance, all inspections of the Land by any regulatory entity concerning the same, all notices, orders, fines or communications of any kind from any governmental entity or third party that relate to the existence of or potential for environmental pollution of any kind existing on or resulting from the use of the Land or any activity conducted thereon, and all responses or interim cleanup action taken by or proposed to be taken by any government entity or private party on the Land.

Upon request by Lessor, Lessee shall provide Lessor with a written report (a) listing the Hazardous Substances that were used or stored on the Land; (b) discussing all releases of Hazardous Substances that occurred or were discovered on the Land and all compliance activities related to Hazardous Substances, including all contacts with and all requests from third parties for cleanup or compliance; (c) providing copies of all permits, manifests, business plans, consent agreements or other contracts relating to Hazardous Substances executed or requested during that time period; and (d) including such other information requested by Lessor. The report shall include copies of all documents and correspondence related to such activities and written reports of verbal contacts.

**14.6 Inspection Rights.** Lessor, its officers, employees and agents, shall have the right, but not the duty, to inspect the Land and Lessee's relevant environmental and land use documents at any time and to perform such tests on the Land as are reasonably necessary to determine whether Lessee is complying with the terms of this Ground Lease. If Lessee is not in compliance with this Ground Lease, Lessor, without waiving or releasing any right or remedy it

may have with respect to such noncompliance, shall have the right to immediately enter upon the Land to remedy any contamination caused by Lessee's failure to comply notwithstanding any other provision of this Ground Lease. Lessor shall use reasonable efforts to minimize interference with Lessee's business but shall not be liable for any interference caused thereby.

**15. Notices.**

**15.1 Addresses.** All notices, requests, demands, instructions or other documents to be given hereunder to any party shall be in writing and shall either be personally delivered to the party at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) or delivered by mail, sent by registered or certified mail, return receipt requested, as follows:

If to Lessor:                    King County  
    Property Services Division  
    500 King County Administration Building  
    500 Fourth Avenue  
    Seattle, WA 98104  
    Facsimile:    (206) 205-5070

If to Lessee:                    Alliance Wasatch 1, LLC  
    \_\_\_\_\_

For the purpose of this Section 15, addresses for notice may be changed by giving written notice of such change in the manner herein provided for giving notice.

**16. Assignment and Subleasing.** [Note: conform language to Project Lease.]

**16.1 Subleasing.** Lessor and Lessee intend that Lessee shall enter into the Project Lease with Lessor. Any other proposed subleases of the Land shall be subject to the review and approval of Lessor.

**16.2 Assignment.** Except as specifically agreed to by Lessor and Lessee in the Project Lease, Lessee shall not assign, mortgage, or encumber this Ground Lease or delegate the duties of the Lessee under this Ground Lease without the prior written consent of Lessor. A consent to one assignment shall not be deemed to be a consent by Lessor to any subsequent assignment by another person. This Ground Lease shall not, nor shall any interest of Lessee herein, be assignable by operation of law, without prior written consent of Lessor.

**17. Miscellaneous.**

**17.1 Time of Essence.** Time is of the essence in regard to performance of the covenants and agreements stated herein.

**17.2 No Joint Venture or Agency.** Nothing contained in this Ground Lease nor any of the acts of the parties hereto shall be construed nor is it the intent of the parties, to create a joint venture or partnership between Lessor and Lessee, nor is either party the agent or representative of the other, and nothing in this Ground Lease shall be construed to create any such agency

relationship or to hold either party liable to anyone for goods delivered or services performed at the request of the other party.

**17.3 Amendments.** No change in or addition to or waiver or termination of this Ground Lease any part hereof, shall be valid unless made in writing and signed by or on behalf of the party charged therewith. Lessor and Lessee agree to negotiate in good faith any amendments to this Ground Lease that may be requested or required by Construction Lender in connection with the financing of the Project.

**17.4 Waiver Limitations.** The waiver by either party of any term, covenant or condition herein contained on the part of the other party to be performed shall not be deemed a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained.

**17.5 Governing Law.** This Ground Lease shall be construed in accordance with and governed by the laws of the State of Washington.

**17.6 Headings.** The article, section and paragraph headings herein contained are for the purposes of identification and reference convenience only and shall not be considered in construing this Ground Lease.

**17.7 Successors and Assigns.** Subject to the provisions hereof restricting the sublease or assignment by Lessee, all the terms and provisions of this Ground Lease shall be binding upon and to the benefit of and be enforceable by the parties and the successors and assigns of the parties.

**17.8 No Merger.** In no event shall the leasehold interest of Lessee hereunder merge with any estate of Lessor in or to the Land or the leasehold interest of the Lessor as tenant under the Project Lease. In the event that Lessor acquires the leasehold interest of Lessee, such leasehold interest shall not merge with the Lessor's fee interest in the Land or the leasehold interest of Lessor under the Project Lease, and this Ground Lease and the Project Lease shall remain in full force and effect until otherwise terminated pursuant to provisions thereof.

**17.9 Counterparts; Recording of Memorandum.** This Ground Lease may be executed in several counterparts, each of which shall be deemed an original for all purposes. Either Lessor or Lessee shall have the right to record a memorandum of this Ground Lease in a form comparable to that provided in the Project Lease and the parties shall cooperate in execution of such memorandum.

**17.10 Schedule of Exhibits.** This Ground Lease includes the following exhibits attached hereto and incorporated herein by this reference.

EXHIBIT A Land Legal Description and Diagram

EXHIBIT B Affordable Housing Required Elements

IN WITNESS WHEREOF, Lessor and Lessee have executed this Ground Lease as of the date set forth in the first paragraph of this Ground Lease to evidence their agreement to the terms of this Ground Lease.

DATED the date first above written.

LESSOR:

**KING COUNTY,**  
a political subdivision of the  
State of Washington

APPROVED AS TO FORM:

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

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

LESSEE:

**ALLIANCE WASATCH 1, LLC,**  
a California limited liability company

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



STATE OF WASHINGTON }  
COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **KING COUNTY**, a political subdivision of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **ALLIANCE WASATCH 1**, a California limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**EXHIBIT A**  
**LAND LEGAL DESCRIPTION AND DIAGRAM**

## EXHIBIT B

### AFFORDABLE HOUSING REQUIRED ELEMENTS

The Affordable Housing design elements shall include:

- Development of mixed use housing, either rental units or condominiums, wherein a minimum of 30 percent of all rental housing units are affordable to households earning less than 80 percent of the annual median income for King County, or for ownership residential units, at least 60 percent of the units be affordable to households earning less than 120 percent of the King County median income.
- The development must encourage and facilitate the use of alternatives to single-trip commuting by incorporating pedestrian-oriented design features and incentives and information to residents for using transit, ride-sharing or other non-motorized forms of travel.
- The development must promote the City of Burien downtown development plan and its vision as set forth in the City's design guidelines, which may include retail and other commercial features.

[Minimum number of units?]