**DEVELOPMENT AGREEMENT**

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# NORTHGATE TRANSIT CENTER/AFFORDABLE HOUSING PROJECT

This Development Agreement (the “**Agreement**”) is made as of \_\_\_\_\_\_\_\_\_\_\_, 2021 (the “**Execution Date**”) by and between **BRIDGE HOUSING CORPORATION**, a California nonprofit public benefit corporation (“**BRIDGE**”) and **COMMUNITY ROOTS HOUSING**, a Washington public corporation (“**CRH**”) (BRIDGE and CRH together constitute the “**Affordable Housing Developer**” herein), and **KING COUNTY**, a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle (“**KCM**”) in the following factual context:

* 1. This Agreement is for a portion of that certain real property located in the City of Seattle, King County, State of Washington, with a street address of 10104 – 3rd Avenue NE, Seattle, WA, and more particularly described in Attachment 1 hereto (the “**Property**”). The Property is a part of KCM’s Northgate Transit Center, which is a critical facility in KCM’s public transportation system and daily used by the public for public transportation purposes, including but not limited to park-and-ride purposes, vanpooling, layover, and boarding and deboarding numerous buses.
	2. KCM is authorized and empowered to lease the Property or portions thereof to others, and to otherwise own, operate and control the Property, pursuant to RCW sections 35.58.240 and 36.34.135 and King County Code sections 2.16.038, 4.56.060 and 4.56.150.
	3. In 2018, KCM issued that certain Request for Qualifications and Concepts No. 1207-18-VLN (“**RFQ/C**”). Through the RFQ/C, KCM sought proposals for the development of its Northgate Park & Pool lot, of which the Property is a part. Among other things, the RFQ/C required proposals to include a minimum of 200 units of subsidized affordable housing for a minimum of 50 years to serve households earning up to 60 percent of Area Median Income (**AMI**), with a mix of unit sizes and configurations, and with a minimum of 10% of the units to be “system connected,” as defined in the RFQ/C, serving very-low to extremely low income households below 50% AMI. KCM received three responses to the RFQ/C, including a response from a team including Affordable Housing Developer, which team submitted a response ( “**RFQ/C Response**”) dated October 29, 2018, copies of which are on file with the Parties. The RFQ/C Response included a proposal to construct 232 affordable housing units as well as a 10,000 square-foot childcare center or use by residents and possibly others. The RFQ/C Response and the other two responses were evaluated by a five-member evaluation committee as part of the RFQ/C’s competitive selection process. Based upon the commitments described in the RFQ/C Response, on November 19, 2018, KCM selected the team including Affordable Housing Developer to negotiate a definitive agreement. After more than a year of negotiations, and as allowed under the terms of the RFQ/C, KCM subsequently elected to terminate discussions regarding the market-rate element of the proposed development, and to focus instead on the affordable housing project element. KCM and Affordable Housing Developer thereafter negotiated the affordable housing transaction contemplated in this Agreement.
	4. KCM and Affordable Housing Developer have previously entered into that certain Entry, Due Diligence and Pre-Development Agreement made as of February 7, 2020 as extended from time to time according to its terms (the “**Due Diligence Agreement**”). The Due Diligence Agreement authorizes Affordable Housing Developer to undertake certain due diligence and pre-development activities, at its discretion and subject at all times to the terms and conditions of the Due Diligence Agreement, on a 45,000 square foot (approximately) portion of the Property as described and depicted on Attachment 2 hereto (the “**AH Parcel**”) in connection with Affordable Housing Developer’s potential development of a subsidized, affordable housing project including up to 232 units with a mix of at least 52 two or three-bedroom units and at least 24 system-connected units, all to serve households with incomes of 60% or less of the area median income, together with certain accessory spaces including a childcare center on the AH Parcel (collectively, the “**Project**”).
	5. Contemporaneous with Affordable Housing Developer’s due diligence activities, Affordable Housing Developer wishes to initiate and undertake certain preconstruction development, permitting and other activities relating to the development of the Project (collectively, the “**Development Activities**”) and the closing of a ground lease transaction with KCM for the AH Parcel upon the satisfaction of certain conditions precedent (the “**Transaction**”). Subject to the terms and conditions of this Agreement, KCM is willing to allow Affordable Housing Developer to undertake such Development Activities relating to the Project, and if Affordable Housing Developer completes such Development Activities in a timely manner, to lease the AH Parcel to Affordable Housing Developer for the construction, operation and management of the Project. Notwithstanding anything to the contrary set forth herein or in the Due Diligence Agreement, Affordable Housing Developer’s rights and obligations as set forth in the Due Diligence Agreement shall continue in full force and effect during the term of this Agreement except as may be expressly agreed to otherwise by the Parties herein.
	6. The economic provisions contained in this Agreement have been negotiated and approved based upon, among other things: (1) Affordable Housing Developer’s undertaking to assume the specific Development Activities and other obligations set forth in this Agreement in connection with the proposed development of the Project (which development shall in compliance with Evergreen Sustainable Development Standard Version 3.0.1 or later and otherwise in accordance with the “**Conceptual Site Plan Detail**” attached as Attachment 3), and in the manner set forth in this Agreement, including but not limited to Affordable Housing Developer’s construction of a transit operator comfort station on the ground floor of the Project, but with an independent exterior access, and meeting KCM’s engineering requirements and design specifications as agreed upon by the Parties (the “**Comfort Station**”); (2) Affordable Housing Developer’s acknowledgment and agreement to conduct any and all Development Activities consistent with all terms, conditions and requirements of the Due Diligence Agreement, including but not limited to all entry, indemnity and insurance provisions contained therein; and (3) KCM’s undertaking at the end of the development period to ground lease the AH Parcel to Affordable Housing Developer as and to the extent set forth in this Agreement, including, without limitation, the satisfaction of certain conditions precedent. With respect to the foregoing Comfort Station, the Parties agree that KCM shall be responsible for the construction cost of the Comfort Station and shall further be responsible for all taxes, insurance, utilities, cleaning and maintenance of the Comfort Station as set forth in the Ground Lease (as defined in Section 1.1) and its attached sublease agreement between the Parties related to the Comfort Station.
	7. KCM understands and acknowledges that not later than Closing (as that term is defined in Section 7 of this Agreement): (1) Affordable Housing Developer has established or will establish a special-purpose entity, **NORTHGATE AFFORDABLE LLC**, a Washington limited liability company ( the “**Company**”) in which BRIDGE and CRH are the sole members, to implement the Project;(2) that the Company will serve as the general partner of a limited liability limited partnership (the “**Partnership**”) and a low income housing tax credit investor will serve as the limited partner and (3) Affordable Housing Developer will assign at Closing all of its rights, obligations and interest in this Agreement to that Partnership, consistent with the terms and conditions of this Agreement.

**H.** KCM and Affordable Housing Developer are individually referred to as a “**Party**” and collectively as “**Parties**” from time to time herein.

NOW THEREFORE, in consideration of the mutual undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. GROUND LEASE
	1. **Ground Lease**. Subject to the terms and conditions of this Agreement, at the Closing, KCM shall ground lease the AH Parcel to the Partnership and the Partnership pursuant to a ground lease in substantially the form of the attached Attachment 5 (the “**Ground Lease**”).

**1.2 SEPA on Ground Lease.** KCM will commence any required SEPA review of the Ground Lease (which will include review of potential transit-related commuter parking displacement impacts) upon the Effective Date of this Agreement as defined in **Section 3.3** (or such earlier time as KCM determines SEPA may be reasonably initiated under current SEPA law). The SEPA review shall be completed prior to Metropolitan King County Council action to authorize this Agreement. If the County’s SEPA review (i) results in a determination, or (ii) imposes mitigation or conditions which, as determined by either Party, in its reasonable discretion, renders the Project infeasible, or, with respect to KCM, would constitute an “Adverse Condition” as defined in Section 5.8.2, then either Party may terminate this Agreement. Similarly, if following the County’s SEPA review, a SEPA appeal or other external party or decisionmaker imposes conditions or renders a decision which, as determined by either Party, renders the Project infeasible or, with respect to KCM, would constitute an “Adverse Condition” as defined in Section 5.8.2, then either Party may terminate this Agreement consistent with Section 9.2.

1. ESCROW; CONSIDERATION IN ABSENCE OF CLOSING; LIQUIDATED DAMAGES

**2.1 Escrow.** Affordable Housing Developer shall open escrow (“**Escrow**”) with First American Title Insurance Company, 920 Fifth Avenue, Suite 1200, Seattle, Washington 98104, Attention: Laura Lau (“**Escrow Holder**”) by depositing a fully-executed copy of this Agreement within three (3) days following the Execution Date. KCM and Affordable Housing Developer shall thereafter deposit with Escrow Holder such additional documents and funds as required in connection with Closing consistent with Section 7 of this Agreement.

**2.2 Consideration.** As consideration to KCM in the event Closing does not occur for a reason other than a Material Breach by KCM and at no cost or expense to KCM, Affordable Housing Developer shall assign and deliver to KCM (excluding items subject to attorney-client privilege or attorney-client confidentiality rules), all Project documents and/or the entitlement or development thereof, including, without limitation, environmental assessment test results and other documents relating to the AH Parcel and the Project that were prepared by or on behalf of Affordable Housing Developer in connection with Affordable Housing Developer’s Due Diligence Investigation, site plans, studies (including traffic), surveys, reports (including wetlands and geotechnical), all Design Documents (as defined in Section 5.6 of this Agreement and including all engineering and architectural materials) prepared in connection with the Project and permits and applications therefor, if any (collectively referred to as “**Affordable Housing Developer Materials**”**)**; provided, however, the same will be assigned and delivered in their then-current form, AS-IS, WITH ALL FAULTS and without warranties and subject to the rights of the consultants who produced the items assigned and delivered. The Affordable Housing Developer Materials shall be delivered within a reasonable time after written request from KCM.

Without limiting the foregoing, Affordable Housing Developer further agrees that, in the event this Agreement terminates, expires or is canceled for any reason other than a default by KCM due to a Material Breach by KCM, KCM may thereafter proceed with development of the Project in a manner and with a site plan which is the same or substantially similar to that contemplated by Affordable Housing Developer.

As further consideration, and to assure KCM’s ability to proceed with the development, Affordable Housing Developer shall, at no cost or expense to KCM, obtain from members of its Design Team and any hired design/build contractor their consent to the assignment or transfer of rights of use in Affordable Housing Developer Materials produced by such entities. Affordable Housing Developer shall also assign or otherwise transfer all rights in Project permits and applications thereof to KCM

At all times, the Affordable Housing Developer shall keep the Affordable Housing Developer Materials free of all liens, charges, attachments or judgments.

**2.3 Liquidated Damages.** IF THE GROUND LEASE OF THE AH PARCEL TO AFFORDABLE HOUSING DEVELOPER IS NOT CONSUMMATED AS A RESULT OF AFFORDABLE HOUSING DEVELOPER’S FAILURE TO PERFORM ITS OBLIGATIONS IN BREACH OF THIS AGREEMENT, THEN KCM, BY WRITTEN NOTICE TO AFFORDABLE HOUSING DEVELOPER (AFTER EXPIRATION OF THE NOTICE AND CURE PERIOD SET FORTH IN SECTION **9.3**(a) BELOW), MAY TERMINATE THIS AGREEMENT. AFFORDABLE HOUSING DEVELOPER AND KCM ACKNOWLEDGE AND AGREE THAT DETERMINING KCM’S ACTUAL DAMAGES IN THE EVENT OF SUCH BREACH WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, IN THE EVENT OF AFFORDABLE HOUSING DEVELOPER’S BREACH (OTHER THAN A BREACH OF AFFORDABLE HOUSING DEVELOPER’S INDEMNITY OBLIGATIONS, FOR WHICH KCM RESERVES ALL AVAILABLE REMEDIES), THE PARTIES HAVE AGREED, AFTER NEGOTIATION, THAT THE CONSIDERATION DESCRIBED IN SECTION 2.2 ABOVE SHALL CONSTITUTE KCM’S SOLE AND EXCLUSIVE RIGHT TO DAMAGES PRIOR TO CLOSING, AND THAT THIS REMEDY REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES KCM WOULD INCUR IN THE EVENT OF AFFORDABLE HOUSING DEVELOPER’S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT PRIOR TO CLOSING. EXCEPT TO THE EXTENT AFFORDABLE HOUSING DEVELOPER BREACHES ANY INDEMNITY OBLIGATION HEREUNDER OR UNDER THE DUE DILIGENCE AGREEMENT (FOR EACH OF WHICH KCM RESERVES ALL AVAILABLE REMEDIES), KCM WAIVES ANY RIGHT TO SPECIFIC PERFORMANCE OR DAMAGES PRIOR TO CLOSING OTHER THAN AS SET FORTH IN THIS SECTION. BY INITIALING IN THE SPACES WHICH FOLLOW, KCM AND AFFORDABLE HOUSING DEVELOPER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SECTION GOVERNING LIQUIDATED DAMAGES. ANY DAMAGES RESULTING FROM BREACH OF THIS AGREMENT BY AFFORDABLE HOUSING DEVELOPER AFTER CLOSING SHALL BE ADDRESSED UNDER THE GROUND LEASE.

**KCM initials: \_\_\_\_;**

**BRIDGE initials: \_\_\_\_;**

**CRH initials: \_\_\_\_\_**

1. DUE DILIGENCE; EFFECTIVE DATE
	1. **Affordable Housing Developer’s Due Diligence.** Affordable Housing Developer acknowledges that: (i) Affordable Housing Developer is a sophisticated real estate developer with sufficient experience and expertise in the development and operation of affordable housing projects, and will hire or have the opportunity to hire consultants with sufficient experience and expertise, to evaluate the AH Parcel and the risks associated with acquiring a leasehold interest in the AH Parcel; (ii) Affordable Housing Developer will have received sufficient information and had adequate time to make such an evaluation; (iii) Affordable Housing Developer will enter into this Agreement and the Ground Lease with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, archeological, economic and legal condition of the AH Parcel; and (iv) in connection with its investigations and inspections of the AH Parcel, Affordable Housing Developer will have the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, and archeologists to conduct such environmental, land use, permitting, geological, soil, hydrology, seismic, archeological, physical, structural, mechanical and other inspections of the AH Parcel as Affordable Housing Developer deems to be necessary, and Affordable Housing Developer will review thoroughly the reports of such advisors and consultants, as well as all materials and other information given or made available to Affordable Housing Developer by KCM or any Governmental Authority (as defined herein). Affordable Housing Developer further acknowledges that it has not and will not receive from or on behalf of KCM any accounting, tax, legal, architectural, engineering, archeological, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, archeological, property management and other advisors. Affordable Housing Developer will satisfy itself as to such suitability and other pertinent matters by Affordable Housing Developer’s own inquiries and tests into all matters relevant in determining whether to enter into this Agreement and the Ground Lease.

**3.2** Prior to the Effective Date, Affordable Housing Developer shall have completed its investigation of the AH Parcel (the “**Due Diligence Investigation**”) and approved all matters related to the AH Parcel pursuant to the Due Diligence Agreement.

* 1. For the purpose of clarity, the Development Activities to be undertaken by Affordable Housing Developer under Section 5 of this Agreement are not required to be commenced by Affordable Housing Developer until Affordable Housing Developer has completed its due diligence investigation and issued an “**Approval Notice**” as described in Section 8 of the Due Diligence Agreement and substantially in the form attached as Attachment 4. While this Agreement shall be binding upon KCM and Affordable Housing Developer from the Execution Date (as defined above), the effective date of this Agreement (the “**Effective Date**”) shall be the date Affordable Housing Developer issues such Approval Notice. Affordable Housing Developer shall affirmatively acknowledge the Effective Date in the Approval Notice. Further, if the Due Diligence Agreement terminates due to a decision or election by Affordable Housing Developer not to issue such Approval Notice, then this Agreement shall also terminate without further obligations or actions by Affordable Housing Developer or KCM (other than indemnity obligations of this Agreement or the Due Diligence Agreement that expressly survive any such termination).
	2. **Survival.** Affordable Housing Developer’s obligations under the Due Diligence Agreement shall survive the Closing or the termination of this Agreement prior to Closing.
1. AS-IS; RELEASE AND INDEMNITIES
	1. **“As Is” and “Where Is” Condition.** Prior to Closing, Affordable Housing Developer shall have made a thorough, independent examination of the AH Parcel and all matters relevant to Affordable Housing Developer’s decision to enter into this Agreement and the Ground Lease and develop the Project. This Agreement and KCM’s agreement to enter into the Ground Lease are made “AS IS” with all faults, and Affordable Housing Developer expressly acknowledges and agrees that, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY KCM UNDER SECTION 7.3 (“KCM’S CLOSING DOCUMENTS”), KCM MAKES NO REPRESENTATIONS OR WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE AH PARCEL, THE PROPERTY OR ANY PORTION THEREOF, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE PROJECT OR THE CONDUCT OF AFFORDABLE HOUSING DEVELOPER’S BUSINESS. Affordable Housing Developer acknowledges that as of Closing, and except as set forth in this Agreement or the Ground Lease, Affordable Housing Developer will have carefully inspected the AH Parcel and by executing this Agreement and the Ground Lease will accept the AH Parcel on an “AS IS” and “WHERE IS” basis, and except as set otherwise expressly set forth in this Agreement or in KCM’s Closing Documents, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of KCM, or any person on behalf of KCM, regarding the AH Parcel, the Property or matters affecting the AH Parcel or Property, including, without limitation:
		1. **Physical Condition.** The physical condition of the AH Parcel and any adjacent portions of the Property, including the quality, nature, adequacy, and physical condition of (i) any systems, facilities, access, adjacent uses, and/or landscaping; (ii) the air, soils, geology, and groundwater, (iii) the suitability of the AH Parcel for construction of any improvements or any activities or uses that Affordable Housing Developer may elect to conduct on the AH Parcel, including but not limited to the Project, or (iv) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the AH Parcel for building or any other purpose;
		2. **Improvements.** The quality, nature, adequacy, and physical condition of the existing improvements on the AH Parcel, if any, including but not limited to, the structural elements, engineering characteristics, appurtenances, access, landscaping, paving, and/or parking facilities;
		3. **Title.** Title to the AH Parcel and/or the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, or other title condition affecting the AH Parcel, including without limitation the existence of any easements, covenants, rights of ways or other rights across, to or in other properties that might burden or benefit the AH Parcel, whether recorded or unrecorded;
		4. **Compliance/Zoning.** The development potential and/or availability of any necessary permits or approvals (or conditions thereon) for development of the AH Parcel and/or the zoning, comprehensive plan, land use, or other legal status of the AH Parcel, or compliance with any public or private restrictions on the use of the AH Parcel, as the same are in effect as of the Effective Date or may be hereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance with the AH Parcel with any applicable laws;
		5. **Hazardous Materials.** The presence or removal of hazardous materials (as defined in Section 4.3.5) on, in, under or about the AH Parcel, the Property, or on any other property;
		6. **Economic Feasibility.** Economic conditions or projections, market data, or other aspects of the economic feasibility of the Project and/or any business Affordable Housing Developer intends to conduct on the AH Parcel;
		7. **Utilities.** The availability, existence, quality, nature, adequacy and physical condition of utilities serving the AH Parcel;
		8. **Suitability.** The use, habitability, merchantability, fitness, suitability, value or adequacy of the AH Parcel for any particular purpose (including, without limitation, the Project);
		9. **Boundaries.** The boundaries of the AH Parcel, the location of any improvements on the AH Parcel and/or the existence of any encroachments onto or from any adjacent lands, including the Property;
		10. **Access.** Vehicular and/or pedestrian access to the AH Parcel, including from or through any particular route; and
		11. **Other Matters.** Any other matter not referenced above that pertains to the AH Parcel.
	2. **Release of KCM.** Affordable Housing Developer, on behalf of itself, its directors, officers, representatives, employees and agents (the “**Affordable Housing Developer Parties**”), hereby waives, releases, acquits, and forever discharges KCM and all of its affiliated organizations, and its employees, representatives, agents, consultants, contractors and subcontractors (the “**KCM Parties**”), of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Affordable Housing Developer or any Affordable Housing Developer Parties now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the AH Parcel, provided however, that such release shall not apply or extend to (i) the representations, warranties, covenants and obligations of KCM under this Agreement, (ii) the affirmative obligations of KCM under the Ground Lease, and (iii) matters covered by KCM’s indemnities in Section 4.3. The release provisions herein on the part of Affordable Housing Developer are in addition to any release provisions set forth in the Due Diligence Agreement.
	3. **Indemnities.**

4.3.1 Except as otherwise provided in this Section 4.3, Affordable Housing Developer hereby agrees to indemnify, defend and hold KCM and the KCM Parties harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys’ fees, reasonable costs of defense, and reasonable costs and expenses of all experts and consultants), arising directly or indirectly, in whole or in part, out of Affordable Housing Developer’s Development Activities, the Project, or any other development activities or pre-development activities conducted by or on behalf of Affordable Housing Developer or its employees, agents or contractors on the AH Parcel or Property (collectively, “Claims”) , including but not limited to:

* + 1. any Claims for personal injury or property damage made by KCM or any third party;
		2. any investigative activity, storage of equipment or materials, or any other act or omission in connection with the AH Parcel by or on behalf of Affordable Housing Developer or its employees, agents or contractors;
		3. any contract, agreement or commitment entered into or made by Affordable Housing Developer in connection with the AH Parcel; and
		4. the introduction of hazardous materials or hazardous substances onto the AH Parcel or Property, the exacerbation of any pre-existing environmental condition, any claims of third parties regarding the presence of hazardous materials or substances, and any remediation costs incurred by KCM as to such matters.

4.3.2 Notwithstanding Section 4.3.1, Affordable Housing Developer’s indemnification of KCM shall not extend or apply to (i) the mere discovery by Affordable Housing Developer of pre-existing hazardous materials or hazardous substances at, on or under the AH Parcel or Property or the mere discovery by Affordable Housing Developer of any other adverse condition of the AH Parcel or the Property, or (ii) the negligent acts or omissions of KCM or any KCM Parties. The of Affordable Housing Developer’s indemnification obligations set forth herein are in addition to the Affordable Housing Developer’s indemnification obligations under the Due Diligence Agreement.

4.3.3 KCM hereby agrees to indemnify, defend and hold Affordable Housing Developer, its partners, members, officers, directors, employees and agents (“**Developer Parties**”) harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred by Affordable Housing Developer in connection with the sole negligence of KCM or any KCM Parties to the extent arising out of its activity, if any, in any investigations, tests or inspection of the AH Parcel or Property by Affordable Housing Developer. Provided, that if both Parties are found to be negligent, then KCM’s indemnity obligations under this Section 4.3.3 shall be enforceable only to the extent of KCM’s negligence.

4.3.4 KCM further agrees to indemnify, defend and hold the Developer Parties harmless from and against all fines, penalties, administrative and judicial proceedings and orders, and all other direct costs and expenses incurred by KCM or Affordable Housing Developer solely with respect to clean up or remediate any hazardous materials or substances that may be found to exist on the Property from past events or releases prior to the Effective Date of this Agreement (collectively, “Cleanup Costs”), save and except to the extent that such Cleanup Costs result from Affordable Housing Developer’s exacerbation of such pre-existing condition, nature and/or extent of such hazardous materials or releases of hazardous substances. KCM’s limited indemnity under this Section 4.3.4 does not and shall not be construed to alter, reduce, or expand Affordable Housing Developer’s separate indemnity obligations under this Agreement, the Due Diligence Agreement, or the Ground Lease, all of which are ratified and reaffirmed.

4.3.5 For purposes of this Agreement, “hazardous materials” or “hazardous substances” shall mean:

* + - * 1. Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or
				2. Any dangerous waste or hazardous waste as defined in:
1. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or
2. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or
3. Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or
	* + - 1. Any hazardous substance as defined in:
4. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105.D); or

iv. Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

1. DESIGN DEVELOPMENT PERIOD; REVIEW PROCEDURES; ENTITLEMENTS
	1. **Duration of Design Development Period.** The design development period (“**Development Period**”) shall commence on the Effective Date and shall continue until Closing, or such earlier date as this Agreement is terminated in accordance with its terms.
	2. **Purpose of Development Period.** During the Development Period, Affordable Housing Developer shall use its commercially reasonable efforts and all due diligence to timely complete the requirements of Section 5.6 below, and other items required under this Agreement in connection with the design, entitlement, financing and preconstruction of the Project as set forth in this Agreement, all of which Affordable Housing Developer shall cause to occur so that the Closing shall occur no later than the Final Date for Closing, as that term is defined in Section 7.1 of this Agreement (but subject to the extension rights expressly provided in this Agreement). Development Activities to be undertaken by Affordable Housing Developer with respect to the Project shall be done in accordance with this Agreement. As between the Parties all costs of designing and permitting the Project shall be borne by Affordable Housing Developer.
	3. **No Construction.** Except as otherwise permitted in the Due Diligence Agreement, Affordable Housing Developer shall not conduct any excavation, construction, demolition or similar work with respect to the Project (collectively, any “**Construction Activity**”) during the term of this Agreement, it being the understanding of the Parties that Construction Activity shall occur only after the Closing, and then only in accordance with the terms and conditions of the Ground Lease.
	4. **Design Team.** KCM has approved and Affordable Housing Developer has previously retained the architects, engineers and related consultants identified in Schedule 5.4‑1 attached hereto in connection with the preparation of the Conceptual Site Plan Detail (the “**Design Team**”). Affordable Housing Developer shall give KCM reasonable advance notice of any changes to the Design Team. Notwithstanding anything to the contrary contained herein, the general contractor (or any substitute general contractor) shall be capable of being bonded, licensed in the State of Washington, and shall have experience in completing construction comparable to the Project. No approval by KCM of the Design Team and/or Design Documents (as that term is further defined in Section 5.6) shall be deemed a warranty or other representation on KCM’s part that any such Design Document is accurate or correct, or that the Design Team is qualified or appropriate.
	5. **Communications with KCM; KCM Role**. Affordable Housing Developer shall direct all material correspondence from Affordable Housing Developer or the City of Seattle (the “**City**”), with respect to the Project and the Approval Process, to KCM’s Authorized Representative and to KCM’s Project Manager, and communication by Affordable Housing Developer to either KCM’s Authorized Representative or KCM’s Project Manager shall constitute communication by Affordable Housing Developer to KCM. KCM’s Authorized Representative and KCM’s Project Manager shall have the right to attend meetings with Governmental Authorities, as observers only; provided that KCM’s Authorized Representative and KCM’s Project Manager shall not be prevented from speaking at non-public meetings, and shall have the right to participate (consistent with the right of public participation generally) in any public hearings in KCM’s sole discretion, subject to the provisions of Section 5.6.2 below. Neither KCM’s Authorized Representative nor KCM’s Project Manager shall have the right to direct the activities of any member of the Design Team.
	6. **Design Development and Milestone Schedule and Review Process.**

For purposes of this Section 5.6, the following definitions apply:

1. “EDG Package” means all materials required to satisfy the City’s early design guidance requirements consistent with Seattle Municipal Code (S.M.C.) Chapter 23.41 and related S.M.C. chapters and City regulations as applied to the Project. The City has requested, and the Parties have agreed, that the required documents for the proposed boundary line adjustment of the Property and the draft access easement providing access to the Project be submitted as part of the EDG Package. Affordable Housing Developer has agreed to undertake the necessary application and submittal process for the proposed boundary line adjustment subject to KCM reimbursement of all third party design and application costs of Affordable Housing Developer in connection with the boundary line adjustment application and submittal. The Parties shall execute a separate letter agreement for the purpose of authorizing Affordable Housing Developer to undertake the boundary line adjustment on behalf of KCM as described herein. All contents and details of the boundary line adjustment application and submittal are subject to prior review and approval by KCM.
2. “MUP Package” means all materials required to satisfy the City’s Master Use Permit application requirements consistent with S.M.C. Chapter 23.76, and related S.M.C. chapters and City regulations as applied to the Project, including but not limited to required schematic design elements.
3. “Building Permit Package” means all materials required to satisfy the City’s building code, grading code, housing code, plumbing code, fire code, stormwater code, and all other construction permit-related requirements consistent with S.M.C. Chapter 22 and related S.M.C. chapters and City regulations as applied to the Project.

Collectively, these packages constitute the “**Design Documents**.”

* + 1. **Design Development and Milestone Schedule.**
			1. Prior to the Execution Date, Affordable Housing Developer has delivered to KCM and KCM has approved: (i) the Conceptual Site Plan Detail for the Project to be constructed by Affordable Housing Developer on the AH Parcel, which Conceptual Site Plan Detail is attached as Attachment 3 hereto; (ii) additional descriptive materials provided to assist KCM to evaluate such drawings; and (iii) a preliminary estimated budget for Affordable Housing Developer’s cost to construct the Project.
			2. No later than sixty (60) days after the Effective Date, Affordable Housing Developer shall deliver to KCM for KCM’s review and approval the EDG Package that Affordable Housing Developer intends to submit to the City of Seattle (unless Affordable Housing Developer submitted and obtained KCM approval of the EDG Package prior to the Effective Date). KCM shall approve or disapprove the EDG Package as described in Section 5.6.2.
			3. At the times indicated on the then-current Development and Milestone Schedule (as defined in Section 5.6.3.1) and in accordance with Section 5.6.3, Affordable Housing Developer shall submit to KCM for review and approval all the documents listed below:
1. EDG Package
2. MUP Package
3. Building Permit Package -- KCM review limited to conformance with the MUP plans approved by the City, such that KCM shall not object to any conditions imposed by the City of Seattle other than such changes constituting an Adverse Condition as defined in Section 5.8.2. If the City has not approved the MUP at the time Affordable Housing Developer desires to submit the Building Permit Package, then KCM’s review shall be limited to conformance with the MUP Package plus any changes to the MUP Package previously approved under this Agreement.
	* 1. **KCM Design Review Criteria**
			1. KCM will evaluate the Design Documents against the following criteria:
	1. Conformance with the RFQ/C Response and the Conceptual Site Plan Detail set forth above, except as otherwise approved in writing by KCM;
	2. Conformance with this Agreement;
	3. Conformance with any encumbrances or other legal or equitable restrictions on the Property;
	4. KCM’s determination that, other than as contemplated in any prior approval of the Design Documents or by this Agreement, (1) any revisions to or (2) conditions imposed on the proposed Project will not constitute a material change (as that term is defined in Section 5.6.3.7(i)) or an Adverse Condition as defined in Section 5.8.2.
	5. KCM’s determination that (1) any revisions to or (2) conditions imposed on the proposed Project will not detrimentally affect the operation of KCM’s adjacent Northgate Transit Center or interim use of the southern portion of the Property as a park and pool lot;
	6. KCM’s determination that (1) any revisions to or (2) conditions imposed on the design, program and location of the Comfort Station for the exclusive use of KCM employees as described and depicted in the Conceptual Site Plan Detail for the Project meet KCM’s engineering and design specifications provided to Affordable Housing Developer prior to EDG Package.
	7. KCM’s determination that (1) any revisions to or (2) conditions imposed on the Project will not detrimentally affect King County’s ability to develop the southern portion of the Property at a future date; and
	8. KCM’s determination that, other than as contemplated in any prior approval of the Design Documents or by this Agreement, (1) any revisions to or (2) conditions imposed on the Project will not impose one or more restrictions, limitations, or costs on KCM’s fee interest in the Property or on any other property owned by KCM, including but not limited to any requirement that KCM pay for or build on the Property, in advance of any redevelopment of the remainder of the Property outside the AH Parcel, any kind of pedestrian corridor including but not limited to a “mid-block corridor” as referenced in City Ordinance #125792.
		* 1. The EDG Package, and the MUP Package shall each be subject to KCM’s approval, in its reasonable discretion, whether each of those packages satisfies the criteria in Section 5.6.2.1.
			2. Following KCM’s review and approval of the EDG Package, and the MUP Package, respectively, KCM shall not unreasonably withhold, condition or delay its consent to Affordable Housing Developer’s subsequent permit packages or other entitlement submissions to the City or to any other Governmental Authority (in instances where such consent is required) so long as KCM reasonably determines that such packages or submissions satisfy the criteria set forth in Section 5.6.2.1; provided, however, that nothing in this Section 5.6.2.3 shall limit KCM’s authority to enforce this Agreement against Affordable Housing Developer in any other regard.

**5.6.3 KCM Design Document Review and Approval Process**

5.6.3.1 Attachment 6 hereto is a development schedule that outlines the work to be performed during the Development Period, including where applicable the milestones and outside dates on which Design Documents will be submitted to KCM for KCM’s review and approval (the “**Development and Milestone Schedule**”). KCM may rely on such dates to plan KCM’s review of submittals. If circumstances require revisions to the Development and Milestone Schedule, Affordable Housing Developer shall promptly notify KCM in writing, which notice shall include a reasonably detailed explanation for the revision.

5.6.3.2 Affordable Housing Developer shall exercise its commercially reasonable best efforts to give King County at least (10) business days’ prior notice of the date that Affordable Housing Developer expects to submit any Design Documents to KCM for review.

5.6.3.3 Affordable Housing Developer shall prepare and submit to KCM for KCM’s approval or disapproval all Design Documents required by this Agreement in accordance with the approval process (the “**Approval Process**”) described in this subsection 5.6.3.

5.6.3.4 Affordable Housing Developer shall submit the Design Documents to KCM in such electronic format or formats as the Parties may negotiate. All Design Documents submitted to KCM for review and approval by Affordable Housing Developer and its contractors or subcontractors shall be prepared to meet applicable requirements imposed by the City. At King County’s request, Affordable Housing Developer shall also provide King County with up to three (3) hard copies of any Design Documents.

5.6.3.5 Any Design Documents that do not meet the standard in paragraph 5.6.3.4 shall be deemed incomplete and KCM shall have the right to reject such Design Documents without approving or disapproving them; provided, that if KCM rejects any Design Documents for failure to meet such standard, KCM shall advise Affordable Housing Developer with reasonable particularity as to why KCM believes such Design Documents fail to meet such standard, and at Affordable Housing Developer’s option, KCM’s determination shall be subject to the dispute resolution process in Section 9.1.

5.6.3.6 Upon receipt of properly submitted Design Documents that meet the standard set forth in Section 5.6.3.4, KCM shall review the Design Documents against the criteria set forth in Section 5.6.2 and shall give Affordable Housing Developer written notice of approval or disapproval within (10) business days following its receipt of such Design Documents. If KCM disapproves of any Design Documents then KCM’s notice of disapproval shall advise Affordable Housing Developer with reasonable particularity as to the reason or reasons for such disapproval, and Affordable Housing Developer shall revise the noncompliant Design Documents and shall resubmit them to KCM for review consistent with this Section 5.6.3.6. If KCM fails to provide any notice of approval or disapproval within ten (10) business days of receiving Design Documents, then Affordable Housing may submit a written request to KCM for KCM’s response, and if KCM fails to respond within (5) business days after receipt of such request, such Design Documents shall be deemed to have been approved by KCM.

5.6.3.7 Design Document Changes After KCM Approval

* + 1. If, after KCM has approved a given set of Design Documents, Affordable Housing Developer makes a material change to that set of Design Documents, then Affordable Housing Developer shall submit such revised Design Documents to KCM for approval with such changes indicated, and KCM shall review the revised Design Documents consistent with the time periods and deemed approval processes set forth in this Section 5.6.3. For purposes of this Section 5.6.3.7, a “material” change is any change that would reasonably be understood to potentially render the Project noncompliant with one or more of the criteria in Section 5.6.2.1, including but not limited to an Adverse Condition as defined in Section 5.8.2.
		2. If KCM disapproves any aspect of Affordable Housing Developer’s revised Design Documents, then KCM shall notify Affordable Housing Developer and Affordable Housing Developer shall make whatever changes are reasonably necessary to ensure the disapproved item conforms to the criteria in Section 5.6.2.1 and shall resubmit it for KCM’s written approval, all consistent with the time periods and deemed approval processes set forth in this Section 5.6.3.
		3. Affordable Housing Developer shall not proceed with any disapproved item, or any other item affected by the disapproved item, until KCM has approved Affordable Housing Developer’s revised Design Documents consistent with the process set forth in this Section 5.6.3.

5.6.3.8 Additional Procedure for KCM Review of the MUP Package

The following additional procedure applies to KCM’s review of Affordable Housing Developer’s MUP Package.

* + 1. Affordable Housing Developer shall cause one of its principals and the key members of its Design Team to present the MUP Package to KCM. KCM shall cause KCM’s Authorized Representative, KCM’s Project Manager and such other representatives of KCM who participate directly in the Approval Process to attend Affordable Housing Developer’s presentations of each package. Affordable Housing Developer shall provide the MUP Package to KCM in advance of each such presentation and consistent with the process set forth in this Section 5.6.3.
		2. If, following each such presentation and KCM’s review of MUP Package materials, KCM disapproves the MUP Package for noncompliance with the criteria in Section 5.6.2.1, then KCM and Affordable Housing Developer shall meet and confer regarding the basis for KCM’s disapproval and shall attempt in good faith to negotiate any necessary revisions to the MUP Package. Such negotiations shall be subject to the Dispute Process Resolution process in Section 9. If the Parties are unable to resolve a dispute regarding the MUP Package or both within thirty (30) days after KCM’s written disapproval of the same, then either Party may terminate this Agreement by written notice to the other and consistent with Section 9.2.

5.6.3.9 **Prior Approval.** Once KCM has approved any Design Document submittal under this Agreement, then KCM may only subsequently disapprove of changes to such submittal or any subsequent Design Document submittal that (i) fail to comply with legal requirements, or (ii) contain a material change (as that term is defined in Section 5.6.3.7(i)), or an Adverse Condition as defined in Section 5.8.2, from any previously approved submittal , or both.

**Section 5.7 Entitlements and Vesting**

5.7.1 In General

1. Affordable Housing Developer will exercise commercially reasonable efforts to obtain all development permits and approvals from the City or other regulatory authorities with jurisdiction in a timely manner.
2. Affordable Housing Developer shall coordinate closely with KCM in pursuing entitlements. Subject to KCM’s Design Document review and its approval and disapproval rights under this Agreement, KCM will support Developer in obtaining entitlements for the Project.
3. Affordable Housing Developer shall submit for KCM’s approval, and KCM will timely review, comment, approve or disapprove Affordable Housing Developer’s entitlement submissions consistent with Section 5.6. The permit packages include: EDG, MUP, and Building Permit Packages, as outlined in the Development and Milestone Schedule, Attachment 6.

5.7.2 Entitlement Progress Meetings; Communication and Cooperation.

During the preparation of all Design Documents and the processing of all permits and other entitlements, Affordable Housing Developer shall meet with governmental or quasi-governmental authorities with land-use or related permitting jurisdiction over the AH Parcel or the Project (collectively, the “**Governmental Authorities**”) to coordinate the preparation of, submission to, and review of all Design Documents and permit applications by the applicable Governmental Authorities. Affordable Housing Developer shall provide KCM with reasonable advance notice of all such meetings so that KCM may elect to attend. Such notice shall not be required for routine or spontaneous email and telephonic communications with Governmental Authorities but shall be required for any scheduled meeting or communication that occurs remotely (e.g. a permit preapplication conference that takes place via an online meeting platform or telephone conference call, etc.). KCM and Affordable Housing Developer shall communicate and consult informally as reasonably necessary to ensure that the formal submittal of any Design Documents for approval by the applicable Governmental Authorities can receive prompt consideration. Subject to KCM’s Design Document review, approval, and disapproval rights under this Agreement, KCM shall reasonably cooperate with Affordable Housing Developer’s efforts to obtain approvals from the applicable Governmental Authorities.

5.7.3 Updates Regarding Entitlement Process. Affordable Housing Developer shall promptly notify KCM of any disapprovals by any applicable Governmental Authorities and shall keep KCM reasonably informed with respect to Affordable Housing Developer’s application for and acquisition of entitlements and permits.

**5.8 MUP Issuance; Tolling of Development and Milestone Schedule.**

5.8.1 Affordable Housing Developer shall be responsible for the timely payment of all fees associated with the City’s review of the MUP application and shall pay all accrued fees necessary for notice of the MUP approval to be published by the City. For purposes of this Section 5.8, a MUP for the Project shall be deemed to have been issued by the City when all of the following have occurred:

(i) the MUP is approved for issuance in accordance with the provisions of Chapter 23.76 of the Seattle Municipal Code materially consistent with a MUP application previously approved by KCM, and without Adverse Conditions as defined in paragraph 5.8.2;

(ii) all appeal periods have expired and all pending appeals have been resolved in a manner pursuant to which the Project remains consistent in all material respects with the MUP application; and

(iii) all outstanding review and processing fees have been paid by Affordable Housing Developer to the City (collectively, “**MUP Issuance**”).

5.8.2 Adverse Conditions

5.8.2.1 An “**Adverse Condition**” is a condition attached to the MUP or the City’s SEPA determination that:

i. Results in a material change (as defined in Section 5.6.3.7(i)) to the Project; or

ii. purports to apply to the AH Parcel or other KCM-owned property, or bind KCM, or both, regardless of whether Affordable Housing Developer elects to actually construct the Project as described in the MUP; or

iii. A condition that imposes one or more restrictions, limitations or costs on KCM’s fee interest in the Property or other property owned by KCM, including without limitation, any condition that binds KCM to pay for or build on the Property, in advance of any redevelopment of the remainder of the Property outside the AH Parcel, any kind of pedestrian corridor including but not limited to a “mid-block corridor” as referenced in City Ordinance #125792.

5.8.2.2 An Adverse Condition that materially changes aspects of the Project as previously approved by KCM (as described in clause 5.8.2.1(i) above) shall be subject to KCM’s reasonable approval or disapproval, and any disapproval of such Adverse Condition shall be subject to the Dispute Process described in Section 9. An Adverse Condition that imposes restrictions, limitations or costs on the Property or other property owned by KCM, or that purports to bind the AH Parcel or KCM or both regardless of whether the Project is constructed (as described in clause5.8.2.1(ii) above), or that binds KCM to pay for or build any kind of pedestrian corridor on the Property (as described in clause 5.8.2.1(iii) above), shall be subject to KCM’s approval in its sole and absolute discretion. KCM’s disapproval of any Adverse Conditions described in clauses 5.8.2.1 (ii) or -(iii) above shall not be subject to the dispute resolution process in Section 9.

5.8.2.3 The MUP approval or MUP Issuance periods in the Development and Milestone Schedule shall be tolled for a ten (10) business day or a thirty (30) day period, respectively, for Affordable Housing Developer to respond to a KCM disapproval due to an Adverse Condition.

5.8.3 Tolling Development and Milestone Schedule to Resolve Disputes Over MUP-related Adverse Conditions.

5.8.3.1 The Parties acknowledge that a situation could arise in which they dispute whether MUP approval or MUP Issuance is subject to an Adverse Condition and the Parties are proceeding under the dispute resolution process outlined in Section 9. In addition to the tolling periods set forth in Section 5.8.2.3, the MUP Approval or MUP Issuance periods set forth in the Development and Milestone Schedule shall be further tolled if, as of the end of such period, MUP Approval has been obtained and/or MUP Issuance has been achieved, but the Parties are disputing whether such MUP approval or MUP Issuance is subject to one or more Adverse Conditions as described in the first sentence of this subsection 5.8.3.1. The Parties agree and acknowledge that not all Adverse Conditions are subject to dispute resolution, as more particularly described in Section 5.8.2.2.

5.8.3.2 If upon resolution of such dispute, it is determined that MUP approval or MUP Issuance was obtained without Adverse Conditions (i.e., Affordable Housing Developer prevails in the dispute resolution), then Affordable Housing Developer will be deemed to have obtained MUP approval or MUP Issuance, as applicable, effective as of the end of the MUP approval or MUP Issuance periods set forth in the Development and Milestone Schedule. If upon resolution of such dispute, it is determined that MUP approval or MUP Issuance was obtained with Adverse Conditions (i.e., KCM prevails in the dispute resolution), then Affordable Housing Developer shall have a period of one hundred eighty (180) days following conclusion of the dispute resolution process to seek a revised MUP approval or MUP Issuance without the Adverse Conditions, and if Affordable Housing Developer is successful in doing so, Affordable Housing Developer will be deemed to have obtained MUP approval or MUP Issuance, as applicable, effective as of the end of the MUP approval or MUP Issuance periods set forth in the Development and Milestone Schedule. If Affordable Housing Development fails to obtain MUP approval or MUP Issuance without Adverse Conditions, then at the conclusion of such one hundred eighty (180) day period KCM may terminate this Agreement as provided under Section 9.2.

1. CONDITIONS PRECEDENT; COUNCIL APPROVAL CONTINGENCY
	1. **Affordable Housing Developer’s Conditions Precedent.** Affordable Housing Developer’s obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.1. Each condition is solely for the benefit of Affordable Housing Developer and may be waived in whole or in part by Affordable Housing Developer by written notice to KCM.
		1. **Title Policy.** First American Title Insurance Company (the “**Title Company**”) shall be prepared to deliver to Affordable Housing Developer at Closing a leasehold title standard coverage policy, issued by the Title Company as of the date and time of the recording of the Memorandum of Ground Lease (as defined in Section 7.3(b) below), and subject only to the Permitted Exceptions and such endorsements as may be required by the Project lenders and tax credit investor (the “**Title Policy**”); provided, however, that Affordable Housing Developer may in its discretion request that Title Company issue the Title Policy in an extended coverage form in which case Affordable Housing Developer shall be responsible for satisfying any and all costs and requirements in connection therewith. “**Permitted Exceptions**” means exceptions approved or deemed approved or accepted by Affordable Housing Developer pursuant to the Due Diligence Agreement; real estate taxes not yet due and payable, and the standard printed exceptions set forth in the Title Policy. In connection with the issuance of such Title Policy, KCM agrees to provide to the Title Company such evidence of authority and authorization of KCM as Title Company may reasonably require for issuance of the Title Policy, as well as such affidavits, indemnities or other documentation as may be reasonably necessary to issue the Title Policy in standard coverage form and remove from the Title Policy the standard pre-printed exception for mechanics liens.
		2. **Representations and Warranties.** KCM’s representations and warranties contained in this Agreement shall be true and correct in all material respects as of the Closing Date.
		3. **KCM’s Performance.** KCM shall have performed all of its obligations under this Agreement.
		4. **No Litigation.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against the Property other than those that may be disclosed in writing by KCM in writing prior to the Effective Date.
		5. **License or other Agreements**. KCM has entered into no licenses or agreements that would limit Affordable Housing Developers intended development or use of the AH Parcel or that would materially and adversely affect KCM’s ability to perform its obligations under this Agreement,
		6. **Permits.** Affordable Housing Developer shall have obtained all permits or obtained a permit ready letter, required for completion of the Project in material conformance with all Design Documents requiring KCM approval and the Building Permit Package.

**(g) Boundary Line Adjustment**. The Parties shall have completed, and the City of Seattle shall have approved, a boundary line adjustment to create the AH Parcel as a separate legal lot and substantially in conformance with Attachment 2 hereto, and the boundary line adjustment shall have been duly executed and recorded in the real property records of King County, Washington.

**(h) County SEPA Review of Ground Lease.** The County’s SEPA review of the Ground Lease shall have been completed and all appeals exhausted, to the satisfaction of Affordable Housing Developer consistent with the terms of Section 1.2.

* 1. **KCM’s Condition Precedent.** KCM’s obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.2. Each condition is solely for the benefit of KCM and may be waived in whole or in part by KCM by written notice to Affordable Housing Developer.
		1. **Representations and Warranties.** Affordable Housing Developer’s representations and warranties contained herein shall be true and correct in all material respects as of the Closing Date.
		2. **Affordable Housing Developer’s Performance.** Affordable Housing Developer shall have performed all of its obligations under this Agreement, including without limitation, obtaining KCM’s approval of the Design Documents in accordance with Section 5.6 above by the Final Date for Closing (as defined in Section 7.1 below).
		3. **Project Development Team.** Affordable Housing Developer shall have engaged the Project Development Team.
		4. **Permits.** Affordable Housing Developer shall have obtained all permits or obtained a permit ready letter, required for completion of the Project and in material conformance with all Design Documents requiring KCM approval and the Building Permit Package.
		5. **Financing.** Affordable Housing Developer shall have provided KCM with reasonably satisfactory evidence that Affordable Housing Developer has the financial ability (either as equity or through financing available to Affordable Housing Developer for the Project) to complete the construction of the Project.
		6. **No Litigation.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against Affordable Housing Developer or the Property or Project that would materially and adversely affect Affordable Housing Developer’s ability to perform its obligations under this Agreement.
		7. **Boundary Line Adjustment**. The City shall have approved a boundary line adjustment to create the AH Parcel as a separate lot substantially in conformance with Attachment 2 hereto, and without any required mitigation or conditions that would constitute an “Adverse Condition” as defined in Section 5.8.2 hereof. The boundary line adjustment shall have been duly executed and recorded in the real property records of King County, Washington.
		8. **County SEPA Review of Ground Lease**. The County’s SEPA review of the Ground Lease shall have been completed and all appeals exhausted to the satisfaction of KCM consistent with the terms of Section 1.2 hereof.
	2. **Failure of Conditions Precedent.** So long as a Party is not in default hereunder, if any condition to such Party’s obligation to proceed with the Closing hereunder has not been satisfied as of the Final Date for Closing, or any other applicable date specified in this Agreement, such Party may, in its sole discretion, either (i) terminate this Agreement by delivering written notice to the other Party, (ii) extend the time available for the satisfaction of such condition by up to a total of ten (10) business days, or (iii) elect to close, notwithstanding the non-satisfaction of such condition, in which event such Party shall be deemed to have waived any such condition. If such Party elects to proceed pursuant to clause (ii) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such Party may elect to proceed pursuant to either clause (i) or (ii) above. The Parties agree that if the failure of any condition precedent is also a breach of this Agreement by either Party, then such breach shall be governed pursuant to the terms of Section 9 below.
	3. **Council Approval Contingency.** In addition to the conditions precedent for KCM’s performance as set forth in Section 6.2, and notwithstanding anything to the contrary in this Agreement, KCM’s performance under this Agreement is contingent on approval by ordinance of the Ground Lease by the Metropolitan King County Council (“**Council Approval**”). Council Approval will be satisfied if an ordinance passed by the Metropolitan King County Council approving the Ground Lease becomes effective within the period provided in the Development and Milestone Schedule (“**Council Approval Period**”). KCM may extend the Council Approval Period consistent with the Development and Milestone Schedule. If Council Approval is not satisfied within the Council Approval Period, as may be extended, then this Agreement shall terminate, and this Agreement shall be null and void and of no further force or effect, and the Parties shall have no further rights, obligations or liabilities hereunder. The foregoing shall not limit, any rights Affordable Housing Developer has under the Letter Agreement between the Affordable Housing Developer and KCM regarding expense reimbursement, or any indemnity given by either Party to the other under this Agreement, and each Party shall have all remedies available at law or equity to enforce such indemnity in the event the other Party fails to perform any indemnity obligation set forth in this Agreement.
1. CLOSING
	1. **Time.** Provided that all requirements set forth in Section 5 above and all conditions and contingencies set forth in Section 6 of this Agreement have been either satisfied or waived by the appropriate Party, the Parties shall close the transaction contemplated by this Agreement (the “**Closing**”), on a date mutually approved by KCM and Affordable Housing Developer, but in no event later than as set forth in the Development and Milestone Schedule, unless extended as expressly provided in this Section 7.1 or otherwise agreed in writing by the Parties (as and if extended, the “**Final Date for Closing**”). In the event Affordable Housing Developer desires that the Closing occur prior to the Final Date for Closing, Affordable Housing Developer shall deliver to KCM written notice of its desired date for Closing, which shall be no sooner than thirty (30) days after the date of such notice. Notwithstanding the foregoing, Affordable Housing Developer shall have the right to extend the Final Date of Closing for up to two (2) periods of twelve (12) months each (each, an “**Extension Option**”) by delivery to KCM no later than thirty (30) days prior to the then-effective Final Date of Closing of written notice of Affordable Housing Developer’s election to extend; provided, however, that in order for Affordable Housing Developer to exercise the second 12-month Extension Option, Affordable Housing Developer must have prepared and submitted the Design Documents described in Section 5.6.1.3(iv) above to KCM. For purposes of clarity, and after taking into account all extensions provided under this Agreement and the Development and Milestone Schedule, in no event shall the Final Date of Closing occur more than four (4) years following the Effective Date.
	2. **Escrow Instructions.** Closing shall occur through the Escrow with the Title Company. The terms of this Agreement, together with such additional instructions as the Title Company shall reasonably request and the Parties shall agree to, shall constitute the escrow instructions to the Title Company. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Title Company, this Agreement shall control unless the intent to amend this Agreement is clearly and expressly stated in said additional escrow instructions.
	3. **KCM’s Deposit of Documents into Escrow.** KCM shall deposit into escrow not later than three (3) business days before Closing the following documents:
		1. Two duly executed and acknowledged counterparts of the Ground Lease;
		2. A duly executed and acknowledged counterpart of a Memorandum of Ground Lease in the form of Attachment 7 hereto (the “**Memorandum of Ground Lease**”);
		3. Such additional documents, including written escrow instructions consistent with this Agreement, as may be reasonably necessary to consummate the ground leasing of the AH Parcel in accordance with the terms of this Agreement.
	4. **Affordable Housing Developer’s Deposit of Documents and Funds.** Affordable Housing Developer shall deposit into escrow not later than three (3) business days before Closing:
		1. Two duly executed counterparts of the Ground Lease;
		2. A duly executed and acknowledged counterpart of the Memorandum of Ground Lease;
		3. Such additional documents, including written escrow instructions consistent with this Agreement, as may be reasonably necessary to consummate the ground leasing of the AH Parcel in accordance with this Agreement;
		4. Sufficient funds to pay for Affordable Housing Developer’s share of prorations and Closing costs pursuant to Section 7.6.
	5. **Closing.**

7.5.1 When the Title Company has received all documents identified in Sections 7.3 and 7.4 of this Agreement and has received written notification from Affordable Housing Developer and KCM that all conditions to Closing have been satisfied or waived; and is irrevocably committed to issue the Title Policy as described in Section 6.1(a) above, then, and only then, the Title Company shall:

* + 1. Record the Memorandum of Ground Lease;
		2. Issue the Title Policy to Affordable Housing Developer;
		3. Deliver to Affordable Housing Developer: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Ground Lease; and (ii) a fully executed original of the Ground Lease; and
		4. Deliver to KCM: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Ground Lease, and (ii) a fully executed original of the Ground Lease.

7.5.2 The Title Company shall prepare and the Parties shall sign closing statements showing all receipts and disbursements and deliver copies to Affordable Housing Developer and KCM and, if applicable, shall file with the Internal Revenue Service (with copies to Affordable Housing Developer and KCM) the reporting statement required under Section 6045(e) of the Internal Revenue Code.

* 1. **Prorations and Closing Costs.** Subject to the other provisions of this Section 7.6, all applicable taxes, charges and other costs associated with the AH Parcel will be prorated as of 11:59 p.m. Pacific Time on the day immediately preceding the actual date of Closing (the “**Closing Date**”). Not less than three (3) business days prior to the Closing Date, the Title Company shall submit to Affordable Housing Developer and KCM for their approval a tentative prorations schedule showing the categories and amounts of all prorations proposed. The Parties shall agree on a final prorations schedule prior to the Closing. As of the Closing Date and during the term of the Ground Lease, Affordable Housing Developer shall be responsible for all costs, charges and expenses related to the ownership and operation of the AH Parcel. If based on the final prorations schedule, any amount is due to KCM, Affordable Housing Developer shall pay the amount due to KCM in readily available funds at Closing. If based on the final prorations schedule, any amount is due to Affordable Housing Developer, the amount due shall be credited against the first or next payment of rent due under the Ground Lease.
		1. **Property and Leasehold Excise Taxes.** All real and personal property ad valorem taxes, special assessments, and leasehold excise taxes, if any, applicable to the Project, whether payable in installments or not, including, without limitation, all supplemental taxes attributable to the period prior to the Closing Date (regardless of when payable), shall be prorated to the Closing Date, based on the latest available tax rate and assessed valuation. If the amount of any installment of real property taxes is not known as of the Closing Date, then a proration shall be made by the Parties based on a reasonable estimate of the real property taxes applicable to the AH Parcel and the Parties shall adjust the proration when the actual amount becomes known upon the written request of either Party made to the other.
		2. **Closing Costs.** Affordable Housing Developer shall pay all escrow and recording costs, the cost of the Title Policy, and all other costs incurred in connection with the Closing (provided that each Party shall pay its own legal, consulting and related professional fees and expenses).
		3. **Survival.** The obligations of this Section 7.6 shall survive the Closing.
	2. **Possession.** Possession of the AH Parcel pursuant to this Agreement and the terms of the Ground Lease shall transfer to Affordable Housing Developer at the Closing.
1. REPRESENTATIONS AND WARRANTIES
	1. **KCM’s Representations and Warranties.** As a material inducement to Affordable Housing Developer to execute this Agreement and consummate this transaction, and subject to the express limitations in Section 8.1(e), KCM represents and warrants to Affordable Housing Developer that:
		1. **Authority.** Subject to the Council Approval Contingency in Section 6.4, KCM has or shall as of the Closing Date have the full right and authority and has or shall have obtained any and all consents required to enter into this Agreement and the Ground Lease and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by KCM at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of KCM, enforceable in accordance with their terms.
		2. **No Conflict.** To KCM’s knowledge, there is no agreement to which KCM is a party, or to KCM’s actual knowledge binding on KCM, that is in conflict with this Agreement. There is no action or proceeding pending or, to KCM’s actual knowledge, threatened against KCM, that challenges or impairs KCM’s ability to execute or perform its obligations under this Agreement, except as may be disclosed by KCM in writing prior to the Effective Date.
		3. **No Litigation.** There is not now pending or, to KCM’s actual knowledge threatened, any action, suit or proceeding before any court or Governmental Authority against against the Property except as may be disclosed in writing by KCM prior to the Effective Date.
		4. **Litigation and Compliance.** To KCM’s actual knowledge there are no suits, other proceedings or investigations pending against or affecting the AH Parcel that could materially impair KCM’s ability to perform its obligations under this Agreement, nor is KCM in violation of any laws or ordinances that could materially impair KCM’s ability to perform its obligations under this Agreement, except as may be disclosed in writing by KCM prior to the Effective Date.

**(e)** Any and all representations or warranties or other provisions in this Agreement that are conditions on terms such as “actual knowledge” or “to KCM’s knowledge” or “about which KCM has knowledge” are made to and limited by the present, actual knowledge of the Northgate Transit Center project manager, an employee of the Metro Transit Department, who as of the Execution Date is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has made no independent inquiries or investigations with respect to KCM’s representations or warranties or other provisions prior to the making thereof and has no duty to undertake the same.

* 1. **Affordable Housing Developer’s Representations and Warranties.** As a material inducement to KCM to execute this Agreement and consummate this transaction, Affordable Housing Developer makes the following representations and warranties, individually and collectively, to KCM that:
		1. **Authority.** Affordable Housing Developer is validly existing in the State of Washington with the full right and authority, including any and all required consents, to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered at the Closing by or on behalf of Affordable Housing Developer will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Affordable Housing Developer, enforceable in accordance with their terms.
		2. **No Conflict.** There is no agreement to which Affordable Housing Developer is a party, or to its knowledge binding on Affordable Housing Developer that is in conflict with this Agreement. There is no action or proceeding pending or to its knowledge, threatened against it that challenges or impairs the ability of Affordable Housing Developer to execute or perform its obligations under this Agreement.
		3. **No Litigation.** There is not now pending or threatened, any action, suit or proceeding before any court or Governmental Authority against Affordable Housing Developer that would prevent it from performing its obligations hereunder.
		4. **Financial Condition.** Affordable Housing Developer has or will have as of Closing all funds necessary to consummate the transactions contemplated by this Agreement (including financing arrangements in place for such funds). Affordable Housing Developer has or will furnish KCM with a true and correct copy of its current financial statement in the form or forms provided to any Project lenders (the “**Financial Statement**”). The Financial Statement has or will fairly present its financial condition as of the date indicated and there shall have been no changes in the assets, liabilities, financial condition or affairs set forth or reflected in the Financial Statement since it was delivered to KCM that in any one case or in the aggregate, constitutes a material adverse change.
		5. **Litigation and Compliance.** There are no suits, other proceedings or investigations pending or threatened against or affecting the business or the properties of Affordable Housing Developer that could materially impair its ability to perform its obligations under this Agreement, nor is it in violation of any laws or ordinances that could materially impair its ability to perform its obligations under this Agreement.
		6. **Adverse Conditions, Etc.** There is no adverse condition or circumstance, pending or threatened litigation, governmental action, or other condition that could prevent or materially impair the ability of Affordable Housing Developer to enter into the Ground Lease and develop the Project as contemplated by the terms of this Agreement.
	2. **Notice of Changed Circumstances.** If either Party becomes aware of any fact or circumstance that would render false or misleading a representation or warranty made by such Party, then it shall immediately give written notice of such fact or circumstance to the other Party, but such notice shall not relieve either Party of any liabilities or obligations with respect to any representation or warranty.
1. DISPUTE RESOLUTION; DEFAULT AND TERMINATION
	1. **Dispute Resolution Prior to Closing.**
		* 1. Prior to Closing, KCM and Affordable Housing Developer agree to communicate regularly to discuss matters arising under this Agreement and to endeavor toprevent disputes from arising. Except as otherwise provided, prior to Closing the Parties agree further to use their best efforts to resolve any disputes arising under this Agreement using good-faith negotiations through the following Dispute Process:

Step One. KCM and Affordable Housing Developer or their designees shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either Party.

Step Two. In the event KCM and Affordable Housing Developer or their designees are unable to resolve the dispute within ten (10) business days as provided in Step One, either Party may refer the dispute to KCM’s Project Manager and Affordable Housing Developer’s Authorized Representative or their respective designees. They shall confer and attempt to resolve the dispute within five (5) business days of receiving the referral.

Step Three. In the event KCM’s Project Manager and Affordable Housing Developer’s Authorized Representative or their respective designees are unable to resolve the dispute within five (5) business days as provided in Step Two, either Party may refer the dispute to KCM’s General Manager and such representative as designated for this purpose by Affordable Housing Developer. They shall confer and attempt to resolve the dispute within five (5) business days after receiving the referral.

* + - 1. If the Parties are unable to resolve the dispute using the process set forth in Steps One through Three above, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator. Except as otherwise provided in this Agreement, neither Party shall have the right to seek relief in a court of law until and unless Steps One through Three above are exhausted.
			2. The dispute resolution process outlined herein shall toll any deadlines set forth in the then-current Development and Milestone Schedule and shall toll the expiration of periods described in Section 5 to the extent set forth in Section 5.8, but shall not extend the Final Date for Closing defined in Section 7.1.
			3. KCM’s review and approval or disapproval of the EDG Package and the MUP Package shall not be subject to this dispute resolution process, and instead the provisions of Section 5.6.2.2 above shall govern such review and approval or disapproval.
			4. After Closing, dispute resolution shall be governed by the Ground Lease.
	1. **Termination In General**

In addition to the other provisions of this Agreement that provide for termination under particular circumstances, either Party may terminate this Agreement and give written notice to Escrow Holder that this Agreement and the Escrow is terminated under any of the following circumstances:

(i) Affordable Housing Developer disapproves of the results of its due diligence investigation of the AH Parcel pursuant to the terms of the Due Diligence Agreement (or fails to issue the Approval Notice within the deadline to issue an Approval Notice under the Due Diligence Agreement) or determines that the Project is infeasible for any reason;

(ii) Failure to obtain the BLA from the City (including appeals) by the outside date set forth in the Development and Milestone Schedule;

(iii) KCM fails to complete its SEPA review (including appeals) of the ground lease by the outside date set forth in the Development and Milestone Schedule;

(iv) KCM disapproves the EDG Package, or the MUP Package and the Parties fail to negotiate agreed revisions to same during the time period described in Section 5.6;

(vi) Affordable Housing Developer fails to obtain MUP approval without one or more Adverse Conditions (as defined in Section 5.8.2) consistent with the Development and Milestone Schedule;

(vii) Affordable Housing Developer fails to obtain MUP Issuance without one or more Adverse Conditions (as defined in Section 5.8.2) consistent with the Development and Milestone Schedule;

(viii) Affordable Housing Developer is in default hereunder after notice and opportunity to cure as provided under Section 9.3(a); or

(ix) Council Approval as set forth in Section 6.4 fails to occur for any reason.

* 1. **Default In General.**
		1. **Failure to Perform.** Either Party shall be in default under this Agreement if such Party fails to observe or perform any provision, covenant or condition of this Agreement to be observed or performed by such Party, where (a) a monetary failure continues for ten (10) business days after written notice thereof from the other Party, or (b) any non-monetary failure continues for twenty (20) business days after written notice thereof from the other Party. Notwithstanding the foregoing, KCM shall have no obligation to provide Affordable Housing Developer with an opportunity to cure any failure by Affordable Housing Developer to comply with the prohibition set out in Section 5.3 above by the Final Date for Closing, which shall be deemed an incurable default under this Agreement.
		2. **Waiver of Default.** Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies in connection therewith or of any other rights and remedies provided by this Agreement or by law, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
	2. **Remedies.**
		1. **Affordable Housing Developer’s Remedies.** Prior to Closing, and provided Affordable Housing Developer is not then in breach of this Agreement, Affordable Housing Developer shall have the option to terminate this Agreement if KCM is in Material Breach of its obligations under this Agreement after the expiration of the cure period provided in Section 9.3(a) above. For purposes hereof, a “**Material Breach**” shall mean a failure or refusal of KCM, following satisfaction of all conditions precedent and contingencies to KCM’s obligations under this Agreement, to enter into the Ground Lease with Affordable Housing Developer as of the Final Date of Closing without legal excuse. If KCM is in Material Breach of this Agreement, Affordable Housing Developer shall have the right, as its sole and exclusive remedies, to either terminate this Agreement, or pursue an action for specific performance in accordance with applicable law. The Parties agree that the limitation on Affordable Housing Developer’s remedies set forth herein as a result of a Material Breach is a reasonable provision given the circumstances existing at the time this Agreement was entered into, provided however, the foregoing shall not limit any indemnity given by KCM to Affordable Housing Developer under this Agreement, and Affordable Housing Developer shall have all remedies available at law or equity to enforce such indemnity in the event KCM fails to perform any indemnity obligation set forth in this Agreement. Affordable Housing Developer specifically acknowledges that KCM would not enter into this Agreement without this limitation upon KCM’s damages. With respect to any breach of this Agreement by KCM after the expiration of the cure period provided in Section 9.3(a) above that does not constitute a Material Breach, Affordable Housing Developer may pursue an action for specific performance or declaratory relief as its sole and exclusive remedies.
		2. **KCM’s Remedies.** Prior to Closing, and provided KCM is not then in breach of this Agreement, KCM shall have the option to terminate this Agreement if Affordable Housing Developer is in breach of its obligations under this Agreement after the expiration of the cure period provided in Section 9.3(a) above. In the event of such termination, the KCM’s sole and exclusive remedy shall be the delivery by the Affordable Housing Developer of the Affordable Housing Developer Materials, in accordance with Section 2.2, together with a bill of sale for Affordable Housing Developer’s interest in such Affordable Housing Developer Materials, with neither warranty nor recourse to Affordable Housing Developer for losses and liabilities resulting from defective Affordable Housing Developer Materials, which Affordable Housing Developer Materials shall thereupon be the sole property of KCM free from all claims or interests of Affordable Housing Developer or any other person, and which KCM may use, grant, license or otherwise dispose of to any person for development of the AH Parcel or the Property or the Project or any other purpose in KCM’s sole discretion. .

The foregoing shall not limit any indemnity given by Affordable Housing Developer to KCM under this Agreement, and KCM shall have all remedies available at law or equity to enforce such indemnity in the event Affordable Housing Developer fails to perform any indemnity obligation set forth in this Agreement.

**9**.**5 Remedies After Closing**. After Closing, the Parties remedies for breach of this Development Agreement shall be governed by the Ground Lease.

1. CASUALTY AND CONDEMNATION
	1. **Casualty Prior to Closing.** This Section 10.1 intentionally deleted.
	2. **Condemnation.** In the event of a taking or threatened taking by condemnation or similar proceedings or actions of all or a substantial portion of the AH Parcel, such that the Project is no longer economically feasible for development of the Project in Affordable Housing Developer’s or KCM’s reasonable determination, this Agreement shall terminate upon written notice of such determination delivered to the other Party, whereupon this Agreement shall have no further force or effect, except with respect to obligations that by their terms survive such termination.
2. GENERAL
	1. **Notices.** Except for design review communications governed under Section 5, all notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (a) upon receipt when personally delivered to the recipient at the recipient’s address set forth below; (b) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, or when such receipt is rejected; (c) one (1) business day after deposit with a recognized overnight courier or delivery service; or (d) when electronically transmitted (including email) with confirmation send by regular U.S. mail; provided, however, that any notice transmitted pursuant to preceding subparagraphs (a), (b) or (c) shall be accompanied by a contemporaneous electronic transmission (including email) to the recipient. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or federal or state legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday. Any references to “days” that are not expressly designated to be business days shall mean calendar days. If a Party disputes the delivery or receipt of notice by email then that Party shall bear the evidentiary burden to prove, by a preponderance of the evidence, that such notice was not delivered or received or both.

The addresses for notice are:

If to KCM:

King County Metro Transit Department

Attn: Director of Capital Division, Metro Transit Department

201 South Jackson Street

KSC-TR-0415

Seattle, WA 98104-3856

Email:

With a copy to:

Metro Transit Department

Attn: General Manager’s Office

201 South Jackson Street

KSC-TR-0431

Seattle, WA 98104-3856

Email:

With a copy to:

King County Prosecuting Attorney Office

Attn: Chief Civil Deputy Prosecuting Attorney

W400 King County Courthouse

516 Third Avenue

Seattle, WA 98104

Email:

If to Affordable Housing Developer:

Northgate Affordable LLC

C/o Bridge Housing Corporation

600 California Street, Suite 900

San Francisco, CA 94108

Attention: Rebecca Hlebasko, General Counsel

Email:

And:

Community Roots Housing

1620 – 12th Ave., Suite 205

Seattle, WA 98122

Attn: Jeremy Wilkening, Vice President, Real Estate Development

Email:

With a copy to:

Kantor Taylor PC

Attn: Mark Kantor

1200 5th Avenue, Suite 1910

Seattle, WA 98101

Email: mkantor@kantortaylor.com

Either Party may change its address by written notice to the other given in the manner set forth above.

* 1. **Entire Agreement.** This Agreement (and the attachments hereto) and the Due Diligence Agreement contain the entire agreement and understanding between Affordable Housing Developer and KCM concerning the subject matter of this Agreement, and supersede all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Affordable Housing Developer or KCM concerning the AH Parcel or the other matters which are the subject of this Agreement. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting Party shall not be employed nor applied in the interpretation of this Agreement.
	2. **Amendments and Waivers; Further Agreements.** No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the Party against whom the addition or modification is sought to be enforced. The Party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving Party. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. Any waiver granted shall apply solely to the specific instance expressly stated. The Parties intend to cooperate, take further action, and execute and deliver further documents as may be reasonably required in order to carry out the purposes of this Agreement and the Project, such as (by way of example only) a temporary construction license, a crane swing license, and such agreements as may be required by the City of Seattle as a condition of one or more permits for the Project.  All such agreements shall be the subject of future negotiation between the Parties and are not the subject of this Agreement.
	3. **Severability.** The provisions of this Agreement are intended to be severable and enforced to the maximum extent permitted by law. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of the invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of the Agreement in any other jurisdiction. The unaffected portion and provisions of the Agreement will be enforced to the maximum extent permitted by law.
	4. **References.** Unless otherwise indicated, (a) all section and exhibit references are to the sections and exhibits of this Agreement, and (b) all references to days are to calendar days. The attachments hereto are incorporated herein by this reference. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or State of Washington holiday, such time for performance shall be extended to the next business day. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires.
	5. **Governing Law.** The interpretation, construction and enforcement of this Agreement, and all matters relating hereto, shall be governed by the law of the State of Washington, without giving effect to its conflicts of law rules or choice of law provisions. Any judicial proceeding brought by either of the Parties against the other Party or any dispute arising out of this Agreement, the Closing, the Project or the AH Parcel or Property, or any matter relating thereto, shall be brought in the Superior Court of the State of Washington (in King County), or in the United States District Court for the Western District of Washington. In that regard, each Party hereby waives any defense of inconvenient forum and any bond or other security that might otherwise be required of the other Party with respect to such choice of judicial forum.
	6. **Time; Force Majeure.** Time is of the essence in the performance of the Parties’ respective obligations under this Agreement, and no notice of a Party’s intent to require strict compliance with the deadlines set forth in this Agreement is required. The Parties hereby acknowledge and agree that the times set forth in this Agreement shall not be subject to delay, except to the extent a Force Majeure Event has occurred, and then only as provided in this Section. For purposes of this Agreement, a “**Force Majeure Event**” shall mean any delay due to war, insurrection, riots, civil disturbances, floods, fires, casualties, earthquakes, tsunamis, acts of God, acts of the public enemy, epidemics, quarantine restrictions, any actions by any Governmental Authorities beyond Affordable Housing Developer’s reasonable control (other than issuance or an appeal of the MUP or other entitlements); provided, however, any financial inability, or an economic downturn as the result of any of the foregoing or any other cause, shall not be deemed a Force Majeure Event. A Force Majeure Event shall not toll or extend the Final Day for Closing.
	7. **Attorneys’ Fees.** If either Party commences any legal action or other proceeding to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party shall pay the prevailing party’s actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post judgment motion, and any action to enforce or collect the judgment including contempt, garnishment, levy, discovery and bankruptcy. For this purpose “expenses” include, without limitation, court or other proceeding costs and experts’ and attorneys’ fees and their expenses. The phrase “prevailing party” shall mean the Party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.
	8. **Acceptance of Service of Process.** In the event that any legal action is commenced by KCM against Affordable Housing Developer, service of process on Affordable Housing Developer shall be made by personal service upon Affordable Housing Developer, or upon Affordable Housing Developer’s agent or agents in such manner as may be provided by law, and shall be valid whether made within or without the State of Washington.
	9. **Assignment.**
		1. **General Terms.** Affordable Housing Developer recognizes the following: (i) KCM’s reliance on the real estate and development expertise of Affordable Housing Developer to assure the quality of the development of the Project; (ii) that the design, use, operation and maintenance of the Project and its components are deemed critical by KCM; (iii) that a change in ownership or control of Affordable Housing Developer, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership, could have a material adverse impact on the development of the Project; and (iv) that the qualifications and identity of the Affordable Housing Developer are of particular concern to KCM. Affordable Housing Developer further recognizes that it is because of such qualifications and identity that KCM is entering into this Agreement with Affordable Housing Developer.
		2. **No Transfers.** Except as provided in Section 11.10(c) below, no voluntary or involuntary successor-in-interest of Affordable Housing Developer shall acquire any rights or powers under this Agreement. Affordable Housing Developer acknowledges and agrees that, except as provided in Section 11.10(c) below, or except with the prior written consent of KCM (which KCM may withhold in its sole discretion), Affordable Housing Developer may not transfer, assign, mortgage, or otherwise convey (collectively, “**Transfer**”) all or any portion of Affordable Housing Developer’s interest in this Agreement to any person or entity, nor may Affordable Housing Developer permit any change in “control” of Affordable Housing Developer. “Control,” as used in this Section 11.10, shall mean (i) the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, any person or entity; or (ii) the power to determine and control the performance of Affordable Housing Developer’s obligations under this Agreement or the Ground Lease. In the event KCM consents to a Transfer of any interest of the Affordable Housing Developer in this Agreement as may be allowed under this Section 11.10(b), the successor, assignee or transferee shall assume all obligations of the Affordable Housing Developer, including but not limited to Sections 4.2 and 4.3.
		3. **Permitted Assignment.** Notwithstanding Sections 11.10(a) and (b), and consistent with Recital G, KCM acknowledges that at or after Closing the Affordable Housing Developer may Transfer this Agreement and its rights and obligations hereunder, including but not limited to Sections 4.2 and 4.3, to a limited liability company or to a limited liability limited partnership in which the Affordable Housing Developer or an affiliate, is the general partner and a tax credit investor(s) will have a 99.99% interest.
		4. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.
	10. **Commissions, Indemnity.** Neither KCM nor Affordable Housing Developer is represented by a broker in this transaction. Each Party represents to the other Party that the representing party has incurred no liability for any brokerage commission or finder’s fee arising from or relating to the negotiation or execution of this Agreement. Each Party hereby indemnifies and agrees to protect, defend and hold harmless the other Party from and against all liability, cost, damage or expense (including, without limitation, attorneys’ fees and costs incurred in connection therewith) on account of any brokerage commission or finder’s fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 11.11 is intended to be solely for the benefit of the Parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.
	11. **Non-publicity.** Except for those matters that must be disclosed to perform the commitments of Affordable Housing Developer under this Agreement, and except as otherwise provided by applicable law, Affordable Housing Developer agrees that no press releases concerning the transactions provided for in this Agreement shall be made by Affordable Housing Developer before Closing without the prior written consent of KCM. The provisions of this Section 11.12 shall survive any termination of this Agreement. Notwithstanding the foregoing, KCM acknowledges that the existence of this Agreement and certain of its terms will become public at such time as Affordable Housing Developer submits the EDG Package to the City. Further, the provisions of this Section 11.12 shall not be applicable to Affordable Housing Developer with respect to information that becomes public through parties other than Affordable Housing Developer, including information that may become public through information requests directed at KCM and information that may become public as part of KCM’s internal approval processes. Finally, KCM acknowledges that Affordable Housing Developer may disclose the terms of this Agreement and the Ground Lease for the purposes of financing the Project.
	12. **Survival.** Affordable Housing Developer’s obligations under this Agreement shall survive the Closing or the termination of this Agreement prior to the Closing.
	13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

**11.15 Nondiscrimination.** Affordable Housing Developer, on behalf of itself and its successors and assigns, as a part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state and local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Affordable Housing Developer shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Chapter 12.16, as now codified and as hereafter amended. Affordable Housing Developer shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, King County Charter Section 840, Chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Agreement and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Agreement and may result in ineligibility for further agreements between the Parties.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

The Parties have executed this Agreement as of the Execution Date.

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| --- | --- |
| **AFFORDABLE HOUSING DEVELOPER:****BY:****BRIDGE HOUSING CORPORATION,** a California corporationIts ManagerBy: Name: Title: **and****COMMUNITY ROOTS HOUSING**, a Washington public corporationIts ManagerBy: Name: Title: NOTICE: COMMUNITY ROOTS IS ORGANIZED PURSUANT TO SEATTLE MUNICIPAL CODE (SMC) CHAPTER 3.110 AND RCW 35.21.660, 35.21.670 AND 35.21.730-.755. RCW 35.21.750 PROVIDES AS FOLLOWS:“ALL LIABILITIES INCURRED BY SUCH PUBLIC CORPORATION, COMMISSION OR AUTHORITY SHALL BE SATISFIED EXCLUSIVELY FROM THE ASSETS AND PROPERTIES OF SUCH PUBLIC CORPORATION, COMMISSION OR AUTHORITY AND NO CREDITOR OR OTHER PERSON SHALL HAVE ANY RIGHT OF ACTION AGAINST THE CITY, TOWN OR COUNTY CREATING SUCH PUBLIC CORPORATION, COMMISSION OR AUTHORITY ON ACCOUNT OF ANY DEBTS, OBLIGATIONS OR LIABILITIES OF SUCH PUBLIC CORPORATION, COMMISSION OR AUTHORITY.” | **KCM:****KING COUNTY**, a home rule charter and Washington political subdivision**:**By: /s/ Name: Title: Approved as to form:By: Name: Title:  |

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# Northgate Transit Center/Affordable Housing Project Transaction

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| Attachment 1 | Legal Description of the Property |
| Attachment 2 | Description/Depiction of AH Parcel |
| Attachment 3 | Conceptual Site Plan Detail |
| Attachment 4 | Form of Approval Notice  |
| Attachment 5  | Form of Ground Lease  |
| Attachment 6 | Development and Milestone Schedule  |
| Attachment 7  | Form of Memorandum of Ground Lease |
|  |  |
|  |  |
|  |  |
| Schedule 5.4‑1 | List of Design Team |
|  |  |