

## Affordable Housing Development and Ground Lease Option Agreement

This Affordable Housing Development and Ground Lease Option Agreement (“Agreement”) is made and entered into as of the Effective Date (as defined in Article 17), by and between **EAST EDINA HOUSING FOUNDATION**, a Minnesota nonprofit corporation (the “Foundation”), and **LUPE DEVELOPMENT PARTNERS, LLC**, a Minnesota limited liability company (“Lupe”), and **ECUMEN**, a Minnesota nonprofit corporation (“Ecumen”, and together with Lupe, or their successor or assign permitted under Article 13 of this Agreement, jointly, severally, and collectively, “Developer”).

### Recitals

A. The Foundation is the owner of that certain land legally described on the attached **Exhibit A** (the “Land”), together with all buildings, parking facilities, fixtures and other improvements constructed or located on the Land and all easements, hereditaments, air rights, rights of way, licenses, and other rights benefiting or appurtenant to the Land (together with the Land, collectively, the “Property”), all located at 4040 70th Street West, in the city of Edina, Minnesota (the “City”).

B. The Foundation is a nonprofit corporation whose purpose and mission is to promote the development of affordable housing development in the City and to provide assistance to families and individuals looking for affordable housing options in the City.

C. The Foundation acquired the Property with the intent that it be redeveloped with affordable housing, consistent with the Foundation’s purpose and mission.

D. Developer has submitted to the Foundation a project proposal for the development of a 118-unit, 100% affordable, senior housing community on the Property (the “Project”), as such Project is more particularly described in this Agreement and as finally approved pursuant to the Project Approvals (as defined below).

E. Developer has represented to the Foundation that it is a qualified Developer of affordable housing, it is willing to undertake the Project, and it is capable of carrying out the Project.

F. Based on such representations, the Foundation is willing to grant Developer (i) the exclusive right to pursue and develop the Project on the Property and (ii) the exclusive right to enter into a long-term ground lease for the Property, with the Foundation, as lessor, and Developer, lessee (the “Ground Lease”), pursuant to which Developer will own the Project, operate the Project through a Management Agreement with a Qualified Operator (as such terms are defined herein), and use of the Property exclusively for the Project and other affordable housing purposes permitted under the Ground Lease, all upon the terms and conditions set forth in this Agreement and the Ground Lease.

NOW, THEREFORE, in consideration of the foregoing and of the following terms and conditions, the parties agree as follows:

### **Article 1** Project Development

The Foundation hereby grants to Developer the exclusive right to seek to obtain the Project Approvals (as defined below) and Project Financing (as defined below), upon the terms and conditions of this Article 1.

1.1 Deposit.

(a) Deposit with Title Company. In consideration for the rights granted by the Foundation to Developer under this Agreement, Developer shall deposit with **Guaranty Commercial Title, Inc.** (the “Title Company”) the amount of **\$100,000.00** (the “Deposit”) within two business days after Effective Date. If Developer fails to deposit the Deposit in accordance with the preceding sentence, then this Agreement will be terminable by the Foundation at the Foundation’s option by notice of termination delivered to Developer at any time before Developer deposits the Deposit with the Title Company. The Title Company will act as escrow agent with respect to the Deposit and disburse the Deposit to the party entitled thereto under the terms of this Agreement. All costs of the Title Company, if any, with respect to the escrow of the Deposit will be borne by Developer.

(b) Release of Deposit to Foundation. The Title Company shall release the Deposit to the Foundation as follows:

(i) **50%** of the Deposit (i.e., \$50,000.00) shall be released and disbursed to the Foundation within two business days after the City Council grants final site plan approval for the Project and the Foundation delivers written notice of the same to Developer and the Title Company, provided that this Agreement has yet not been terminated pursuant to the provisions hereof prior to such occurrence; and

(ii) **50%** of the Deposit (i.e., \$50,000.00) shall be released and disbursed to the Foundation within two business days after Developer delivers the Project Financing Certificate to the Foundation, with copy to the Title Company, provided that this Agreement has yet not been terminated pursuant to the provisions hereof prior to such occurrence.

(c) Application/Refund of Deposit. Any portion of the Deposit (including any Extension Deposit(s) (defined below)) released to the Foundation in accordance with this Agreement will (i) if Closing occurs, be refunded by the Foundation to Developer at Closing, or (ii) if Closing does not occur and this Agreement is terminated subsequent to any release and disbursement of any portion of the Deposit the Foundation, such released portion of the Deposit will be nonrefundable to Developer and be deemed earned by the Foundation.

1.2 Project Development Periods.

(a) Initial Project Development Periods. Developer shall have (i) a period commencing on the Effective Date and expiring on the date that is **12 months** after of the Effective Date to obtain all Project Approvals (“Project Approvals Period”) and (ii) subject to the extensions provided in Section 1.2(b), an initial period commencing on the Effective Date and expiring on the date that is **18 months** after of the Effective Date to obtain all commitments for the Project Financing (“Project Financing Period”), each on the terms and conditions set forth in this Article 1.

(b) Extensions of Project Financing Period. In recognition of the complexity, uncertainty, and time-consuming nature of obtaining financing for an affordable housing project such as the Project, if, as of the expiration of the initial Project Financing Period, Developer has not obtained the Project Financing, but Developer has otherwise proceeded, and is then continuing to proceed, with all reasonable diligence and using commercially reasonable efforts to obtain such Project Financing in accordance with this Agreement, then, Developer has the right to extend the

Project Financing Period by up to an additional period of **270 days** from and after the expiration of the initial Project Financing Period as set forth below:

(i) First Extension. Upon (A) written notice to the Foundation and (B) depositing **\$25,000.00** as an additional Deposit (the "First Extension Deposit") directly to the Foundation or with the Title Company, in either case, on or before the date which is five business days prior to the expiration of the initial Project Financing Period, Developer shall have the right to extend the Project Financing Period for a period of up to an additional **180 days** (the "First Extension").

(ii) Second Extension. If Developer has exercised the First Extension, then upon (A) written notice to the Foundation and (B) depositing **\$25,000.00** as an additional Deposit (the "Second Extension Deposit") directly to the Foundation or with the Title Company, in either case, on or before the date which is five business days prior to the expiration of the First Extension, Developer shall have the right to further extend the Project Financing Period for an additional period of up to an additional **90 days** (the "Second Extension").

(iii) Release of Extension Deposits. The First Extension Deposit and the Second Extension Deposit (collectively, the "Extension Deposits") will be deemed part of and constitute the "Deposit" for all purposes hereunder, except if either Extension Deposit is deposited with the Title Company, the Title Company shall release and disburse such Extension Deposit to the Foundation immediately following its deposit by Developer. For purposes of clarity, and not limitation, Developer and the Foundation acknowledge that the Extension Deposits will be applied and treated as provided in Section 1.1(c).

1.3 Project Approvals. Commencing no later than promptly following the Effective Date and throughout the Project Approvals Period, Developer shall, at its sole cost and expense and proceeding with all reasonable diligence, use commercially reasonable efforts to obtain all governmental approvals and entitlements necessary to construct the Project (the "Project Approvals"). The Project Approvals shall include all land use approvals, entitlements, zoning designations, platting, building permits, and other construction permits required to construct the development. The Foundation shall, at no cost or liability to the Foundation, reasonably cooperate and affirmatively assist Developer with Developer's efforts to obtain the Project Approvals. Developer shall be solely responsible for all costs associated with obtaining the Project Approvals and such Project Approvals must be effective prior to the expiration of the Project Approvals Period unless otherwise approved by the Foundation.

1.4 Project Plan Development. Developer shall keep the Foundation reasonably informed about Developer's progress regarding design development for the Project and obtaining Project Approvals, including providing the Foundation and the Foundation's board of directors copies of all submittals for Project Approvals and periodic email updates and presentations at intervals reasonably requested by the Foundation, but not less frequently than quarterly, and more frequently as circumstances merit during the term of this Agreement. The Foundation's approval or consent shall not be required for any Project plans or submittals for Project Approvals so long as the Project consists of an 118-unit, 100% affordable, age-restricted, senior housing community which meets Minimum Affordability Requirements (defined below); provided, however, the Foundation's prior consent shall be required to reduce the proposed unit count of the Project below 118 units, which consent shall not to be unreasonably conditioned, delayed, or withheld.

1.5 Affordable Housing Requirements. Subject to the terms and conditions of the Ground Lease, the Project must meet the following affordability requirements ("Minimum Affordability Requirements").

(a) Affordable Units. **100%** of the residential units within the Project (the “Affordable Units”) must be leased at certain rates specified below (inclusive of utilities and mandatory fees) which are considered affordable to certain low- and moderate-income households. The Affordable Units will consist of the following mix of affordability levels:

(i) at least **12** of the Affordable Units will be reserved for households who have a combined gross annual income which does not exceed **30%** of the Area Median Income for the Minneapolis-Saint Paul-Bloomington Metropolitan Statistical Area (including adjustments for household size), as determined by the U.S. Department of Housing and Urban Development (“AMI”);

(ii) approximately **24** of the Affordable Units will be reserved for households who have a combined gross annual income which does not exceed **50%** of AMI;

(iii) approximately **58** of the Affordable Units will be reserved for households who have a combined gross annual income which does not exceed **60%** of AMI; and

(iv) no more than **24** of the Affordable Units will be reserved for households who have a combined gross annual income which does not exceed **80%** of AMI.

Any changes in the affordability levels of the Affordable Units set forth herein shall require the prior written consent of the Foundation, provided however that as long as the overall average of the income of tenants in the Project does not exceed 60% of AMI, then such consent will not be unreasonably conditioned, delayed, or withheld.

(b) Affordable Unit Mix. The Affordable Units shall be distributed among one-bedroom units and two-bedroom units. There will be approximately **98** one-bedroom units and approximately **20** two-bedroom units. Any changes in the quantity and distribution of Affordable Units set forth herein shall require the prior written consent of the Foundation, which such consent will not be unreasonably conditioned, delayed, or withheld.

(c) Duration. The Minimum Affordability Requirements must remain in effect for the entire term of the Ground Lease.

(d) Changes to Affordability Tax Code. Notwithstanding any provisions of this Section 1.5 to the contrary, changes to the federal or state tax code in the future which effect how unit mix and affordability levels are funded or how affordability is mapped in a project shall not be a barrier to receiving the consent of the Foundation to update, remodel or refurbish the development in the future. The interpretation as to how any such changes to applicable state or federal law impact the Project is subject to the Foundation’s reasonable judgment.

## 1.6 Project Financing.

(a) General. Commencing no later than promptly following the Effective Date and throughout the Project Financing Period, as the same may be extended, Developer shall, proceeding with all reasonable diligence, use commercially reasonable efforts to evaluate, pursue, apply for, and secure all financing necessary for the construction of the Project, including, without limitation, tax-exempt conduit bonds, Federal low-income housing tax credits, loan commitments for a construction loan and the primary loan permanent financing, grant funds, tax increment financing, and other sources of affordable housing funding (“Project Financing”). The Foundation shall, at no

cost or liability to the Foundation, reasonably cooperate and affirmatively assist Developer with Developer's efforts to obtain Project Financing.

(b) Financing Structure. Developer has submitted to the Foundation a proposal summarizing the Project Financing sources Developer initially intends to pursue with respect to the Project ("Financing Proposal"), including a detailed pro forma for the construction and operation of the Project. The Financing Proposal is attached as **Exhibit B** to this Agreement. Developer may revise its Financing Proposal from time-to-time so long as the Financing Proposal consists of reasonably attainable Project Financing sources which, if obtained, would enable the Project to at least meet the Minimum Affordability Requirements, and the Foundation's consent to any changes in the Financing Proposal shall only be required if such changes require a modification to the Minimum Affordability Requirements or a change to the Project plans, in either case, which require the Foundation's consent in accordance with this Agreement, such consent not to be unreasonably defined, conditioned, or delayed. In all cases, Developer will keep the Foundation reasonably informed about Developer's progress in obtaining Project Financing, including providing the Foundation and the Foundation's board of directors' periodic email updates and presentations, at intervals reasonably requested by the Foundation.

(c) Financing Commitment. No later than the expiration of the Project Financing Period, as the same may be extended, Developer shall certify to the Foundation, that all Project Financing sources identified in the final Financing Proposal have been committed to (or otherwise remain available to) Developer by delivering a Project Financing certificate to the Foundation (and the Title Company) in substantially the form attached as **Exhibit C** ("Project Funding Certificate") Promptly following the Foundation's request, Developer agrees to submit to the Foundation evidence of commitment(s) for financing which is sufficient, in the Foundation's reasonable discretion, for Developer to undertake and construct the Project and operate the same at the Minimum Affordability Requirements during the term of the Ground Lease ("Financing Commitments"). If the Foundation reasonably finds that the financing complies with the terms of this Agreement and is sufficiently committed and adequate in amount, to provide for the construction of the Project in accordance with this Agreement, the Foundation shall notify Developer in writing of its approval, such approval shall not be unreasonably defined, conditioned, or delayed. If the Foundation rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection and Developer shall have 60 days thereafter to submit evidence of commitment(s) for additional or alternate financing acceptable to the Foundation.

## **Article 2**

### Inspections and Examinations

2.1 Documents and Materials. Within 10 days after the Effective Date, the Foundation shall deliver to Developer copies of all documents, reports, studies, tests, drawings, surveys, agreements, contracts and other documentation relating to the Property in the Foundation's possession, custody or control or to which the Foundation has knowledge or access (collectively, the "Property Documents"); provided, however, that notwithstanding the foregoing, the Foundation's internally prepared notes, memoranda or other documents and any other documents or materials which are confidential or proprietary to the Foundation will be excluded from the Property Documents.

#### 2.2 Right of Inspection.

(a) Inspection. Developer shall have a limited license to examine the Property Documents and make a physical inspection of the Property from the Effective Date until the date that is **120 days** after the Effective Date (the "Inspection Period"), so long as this Agreement has

not been terminated. In this regard, Developer and its authorized employees, agents, contractors and representatives (collectively, "Developer Representatives") shall be entitled to enter upon the Property at all reasonable times during the Inspection Period for the purpose of inspecting, investigating, surveying and the conducting of testing of the Property (collectively, "Inspections"), upon reasonable prior notice delivered via email to the Foundation. All Inspections shall occur at reasonable times agreed upon by the Foundation and Developer. Developer shall pay all costs and expenses of all Inspections. Notwithstanding anything herein to the contrary, Developer shall not perform soil tests, asbestos or lead tests, or perform tests of a similarly intrusive nature without the prior written consent of the Foundation, not to be unreasonably withheld or delayed.

(b) Cure. The Foundation shall have the opportunity to elect, in its sole and absolute discretion, to attempt to cure any defects discovered by Developer during the Inspection Period within 90 days of written notice by Developer of said defects; provided, however, the Foundation will have no obligation to undertake any such curative actions or otherwise expend funds. If the Foundation cures said defect, the Developer shall close pursuant to this Agreement, or if the Foundation declines to cure, the Developer may either choose to close notwithstanding the defect or terminate the Agreement and the Deposits shall be returned to the Developer.

2.3 Indemnification; Manner of Inspections. Developer shall indemnify, defend and hold the Foundation and the Property harmless from all loss, damages, costs, claims, liabilities and expenses, including without limitation attorneys' fees, relating to the Inspections or the activities of Developer and the Developer Representatives. Developer and the Developer Representatives shall perform the Inspections upon the Property (i) in a manner so as not to cause damage to the Property or the death or personal injury to any persons and (ii) in a manner which keeps the Property free of any liens or third-party claims resulting therefrom. Developer shall repair and restore any damage to the Property caused by any of the Developer Representatives or occurring during the Inspections and shall return the Property to substantially the same condition as existed prior to such entry. At the Foundation option, a representative of the Foundation may accompany Developer and the Developer Representatives during the Inspections. If the Closing contemplated by this Agreement does not occur for any reason, Developer shall promptly deliver to the Foundation, at no cost to the Foundation, copies of any written reports or other written information generated as a result of the Inspections.

2.4 Insurance. Before and during any Inspections, Developer and each Developer Representative shall maintain workers' compensation insurance in accordance with applicable law, and Developer or the applicable Developer Representative, shall secure, maintain and provide evidence to the Foundation of (i) a commercial general liability insurance with limits of at least \$2,000,000 for bodily or personal injury or death, which policy shall name the Foundation and its agents as additional insureds, (ii) property damage insurance in the amount of at least \$1,000,000 and (iii) contractual liability insurance. Developer shall deliver to the Foundation evidence of such workers' compensation insurance and a certificate evidencing the commercial general liability, property damage and contractual liability insurance before conducting any Inspections on the Property.

2.5 Confidentiality.

(a) All financial information provided by Developer shall be governed by Minnesota Statutes: 13.591 Subd. 1, and 13.591 Subd. 3(b) and is NOT PUBLIC DATA for the purposes of the Agreement, until such time as permitted by Statute.

(b) The parties agrees that prior to Closing, the information provided herein and in the Property Documents shall be strictly confidential, except to the extent (i) such information is or later becomes public or otherwise available to third-parties (except to the extent that such disclosure

is the result of a violation of this section by Developer or one of the parties listed below that received such information from the Developer), or (ii) disclosure is required by law. Further, Developer shall have the right to disclose all or any of such information to Developer and its affiliates and agent's legal counsel, lender (or proposed lender), equity investors (or proposed equity investors), prospective partners, and prospective tenants, and to any professional counselors or consultants used to assist Developer in this transaction, provided such disclosures are made confidentially and the recipient of such information is instructed to keep such information strictly confidential. Notwithstanding the foregoing, Developer and the Foundation agree that disclosure may be made to such persons and entities including governmental entities as necessary to fulfil the agreements made herein.

2.6 Survival. The parties' obligations under this Article 2 shall survive Closing or the termination of this Agreement.

### **Article 3** Mutual Closing Conditions

The Closing obligations of both the Foundation and Developer under this Agreement are expressly subject to the following conditions (collectively, the "Closing Conditions"):

3.1 Project Approvals. On or before the expiration of the Project Approvals Period, Developer shall have obtained all Project Approvals, upon terms and conditions acceptable to Developer, subject, however, to the Foundation's approval rights, as set forth herein.

3.2 TIF District. On or before the earlier of (a) **December 31, 2021** and (b) the expiration of the Project Approvals Period, the Housing and Redevelopment Authority of Edina, Minnesota (the "HRA") and the City shall have taken all necessary actions to create and establish a "housing" tax increment financing ("TIF") district of which the Property is a part, such that tax increment generated from the existing Southdale 2 TIF District may lawfully be used for acquisition costs of the Property in accordance with Minnesota Statutes, Sections 469.001 to 469.047 and Sections 469.174 to 469.1794, inclusive, as amended (the "TIF Act") and Minnesota Session Laws 2014, Chapter 308, Article 6, Section 8, as amended by Minnesota Session Laws 2017, First Special Session Chapter 1, Article 6, Sections 11 and 16 and Minnesota Session Laws 2019, First Special Session Chapter 6, Article 7, Section 3 (the "Special TIF Housing Legislation"), and such TIF district may be used for additional support of the Project from tax increment generated from the Project (e.g., a pay-go TIF note), subject to the discretion of the HRA and City.

3.3 Project Financing. On or before the expiration of the Project Financing Period, Developer shall have (i) delivered the Project Funding Certificate to the Foundation and (ii) obtained the Financing Commitments upon terms and conditions acceptable to Developer, subject, however, to the Foundation's approval rights, as set forth herein.

3.4 Management Agreement. On or before the expiration of the Project Financing Period, Developer shall have entered into a management agreement for the Project (the "Management Agreement") with Ecumen or an affiliate of Ecumen and upon terms and conditions consistent with the Financing Proposal and otherwise approved by the Foundation, which approval shall not be unreasonably denied, conditioned or delayed.

3.5 Ground Lease. On or before the expiration of the Project Financing Period, the Foundation and Developer shall agree, in writing, to the final form of Ground Lease, which Ground Lease shall contain the key terms and conditions set forth in **Exhibit D**.

3.6 Prior Leaseholds. On or before the Closing Date, the Foundation shall deliver the Premises free and clear of prior leasehold obligation, or of any prior tenant in possession of the premises.

The Mutual Closing Conditions may be waived in whole or in part only by written agreement of such waiver executed by both the Foundation and Developer. Notwithstanding anything to the contrary contained this Agreement, if all the Mutual Closing Conditions have not been satisfied (or mutually waived in writing) by the expiration of the date set forth above with respect to the applicable Closing Condition, then this Agreement shall automatically terminate at 11:59 p.m. Minneapolis time, on the date set forth above with respect to the applicable Closing Condition, Developer and the Foundation shall direct the Title Company to promptly return to Developer any remaining balance of the Deposit not yet released and disbursed to the Foundation in accordance with this Agreement, and thereafter neither the Foundation nor Developer shall have any further rights or obligations under this Agreement (except for any obligations that expressly survive the termination of this Agreement).

#### **Article 4** Developer's Closing Conditions

The Closing obligations of Developer under this Agreement are expressly subject to the following conditions:

4.1 Document Review. On or before the expiration of the Inspection Period, Developer shall have determined that it is satisfied with its examination and analysis of the Property Documents.

4.2 Inspections and Testing. On or before the expiration of the Inspection Period, Developer determining that it is satisfied with the condition of the Property, including, without limitation, the results of and matters disclosed by soil tests, engineering inspections, feasibility tests and studies, hazardous waste and environmental reviews, code and other legal compliance analyses and other tests and inspections, evaluations, assessments, surveys and reviews of the Property, any or all of which shall be obtained at Developer's sole cost and expense, unless otherwise provided herein.

4.3 Title. The Title Commitment shall have been found acceptable, or been made acceptable, in accordance with the requirements of Article 7.

If a condition contained in Article 4 has not been satisfied on or before the date specifically set forth for the satisfaction or waiver of such condition, Developer shall have the right to terminate this Agreement by written notice to the Foundation on or before the date specifically set forth for the condition, as applicable. Upon proper termination within the time periods set forth above, Developer and the Foundation shall direct the Title Company to promptly return to Developer any remaining balance of the Deposit not yet released and disbursed to the Foundation in accordance with this Agreement, and thereafter neither the Foundation nor Developer shall have any further rights or obligations under this Agreement (except for any obligations that expressly survive the termination of this Agreement). If Developer acknowledges the satisfaction or waiver of a condition by written notice to the Foundation, or if Developer does not provide a written notice of termination by the date required, Developer shall no longer have a right to terminate this Agreement under this section because of such condition.

#### **Article 5** Ground Lease; Closing

5.1 Ground Lease. Subject to satisfaction of the Mutual Closing Conditions, and provided this Agreement is not earlier terminated pursuant to the terms and conditions hereof, the Foundation, as lessor, and Developer, as lessee, will enter into and mutually execute the Ground Lease (the "Closing") on a date



mutually agreed upon by the parties, but not later than **60 days** after the expiration of the Project Financing Period (the “Closing Date”). Closing will take place at a mutually agreeable location or via escrow facilitated by the Title Company (as defined below). The Foundation shall deliver possession of the Property to Developer on the Closing Date pursuant to the terms and conditions of the Ground Lease.

5.2 Foundation’s Closing Documents. On the Closing Date, the Foundation shall execute and/or deliver to Developer the following:

- (a) Deposit. Refund of the Deposit in accordance with Section 1.1(c).
- (b) Ground Lease. The Foundation’s original counterpart to the Ground Lease.
- (c) Memorandum of Ground Lease. The Foundation’s original counterpart to a recordable memorandum of Ground Lease, in a form mutually agreeable to the parties (the “Memo of Ground Lease”).
- (d) Authority Documents. A written resolution or other authorization from the Foundation, authorizing and approving the Foundation to complete the transactions contemplated by this Agreement.
- (e) IRS Reporting Form. The appropriate federal income tax reporting form, if any is required.
- (f) Settlement Statement. A Closing settlement statement reflecting the financial provisions of the Closing, consistent with the provisions of this Agreement (“Settlement Statement”).
- (g) Keys. Keys and all locks to the Property in the Foundation’s possession or control, if any.
- (h) Other Documents. Such other documents as may be reasonably required to consummate the transactions contemplated hereby, which are not inconsistent with this Agreement.

5.3 Developer’s Closing Documents. On the Closing Date, Developer will execute and/or deliver to the Foundation the following (collectively, “Developer’s Closing Documents”):

- (a) Ground Lease. Developer’s original counterpart to the Ground Lease.
- (b) Memorandum of Ground Lease. Developer’s original counterpart to the Memo of Ground Lease.
- (c) Settlement Statement. Developer’s counterpart to the Settlement Statement.
- (d) Other Documents. Such other documents as may be reasonably required to consummate the transactions contemplated hereby, which are not inconsistent with this Agreement.

## **Article 6** Prorations; Expenses

The Foundation and Developer shall make the following prorations and allocations of taxes, assessments, rents, costs, and other expenses at Closing:

6.1 Title Insurance and Closing Fee. Developer will pay all escrow and closing fees or charges imposed by the Title Company. Developer shall pay all costs of the Title Commitment (as defined below) and pay the premium costs for any Owner's or Lender's Title Policies it desires, except that the Foundation shall pay for any Title Policy endorsements required to cure any Objections(s) (as defined below).

6.2 Transfer Tax. Developer shall pay all transfer taxes due on the Ground Lease. Developer shall pay all mortgage registration, recordation costs, or similar taxes payable in connection with Developer's financing.

6.3 Recording Costs. Developer will pay the cost of recording the Memo of Ground Lease. The Foundation will pay the cost of recording any necessary documents to place record title in the Foundation in the condition required by this Agreement, including without limitation, the cost of recording the satisfaction of any existing mortgage and any other document necessary to make title marketable or cure any Objection, unless otherwise waived by Developer as herein described.

6.4 Real Estate Taxes and Special Assessments.

(a) All real estate taxes and special assessments with respect to the Property shall be prorated as of the Closing Date, with the Foundation being obligated to pay all such real estate taxes and assessments due and payable to the Closing Date and any period prior to the Closing Date, and Developer being obligated to pay any such real estate taxes and assessments due and payable after the Closing Date and through all subsequent periods.

(b) The assumptions of the development transaction are that on or before January 2, 2021, the Foundation will be in possession of fee title to the real property, and the assessment basis on the Closing date shall be that of a non-profit entity owning obsolete and surplus office improvements intended for demolition, with said fee title land held by a non-profit entity. The intent of this provision is that the "base" property tax assessment value shall be as low as possible to afford the most tax increment possible to the affordable housing project; provided, however, this provision shall in no way (i) impose any obligation on the Foundation to take any action or (ii) create a separate condition to Developer's obligations hereunder and Developer acknowledges that it must determine whether it is satisfied with the tax valuation of the Property during the Inspection Period.

6.5 Income and Expenses. All income and expenses relating to or deriving from the Property, if any, shall be prorated on a daily basis as of the Closing Date, including rental income, operating expenses, and utility charges, if any.

6.6 Proration Method. Unless otherwise stated herein, Developer's and the Foundation's respective proration obligations shall be determined as follows: (i) the Foundation pays that part of expenses that have accrued on or before the Closing Date, (ii) Developer pays that part of expenses that accrue after the Closing Date, (iii) the Foundation is entitled to that part of rental and other income that has accrued on or before the Closing Date, and (iv) Developer is entitled to that part of rental and other income that accrues after the Closing Date.

6.7 Attorneys' Fees. Each of the Foundation and Developer shall pay its own attorneys' fees in connection with the preparation and negotiation of this Agreement and the Closing, except that a party defaulting under this Agreement or any of its respective Closing Documents shall pay the reasonable attorneys' fees and court costs incurred by the non-defaulting party to enforce its rights regarding such default.

6.8 Survival. The provisions of this Article 6, shall survive the Closing and shall not merge with the execution of the Ground Lease.

## **Article 7** Title Matters

Title examination shall be conducted as follows:

7.1 Title Evidence. Promptly following the Effective Date, the Foundation will request that the Title Company prepare and furnish Developer with a commitment ("Title Commitment") for a 2016 ALTA Owner's Policy of Title Insurance ("Title Policy") committing to insure marketable ground lessee's interest in the Property in Developer, subject only to the Permitted Encumbrances. The Title Commitment shall include complete and accurate copies of all matters described in Schedule B thereof. As part of the Property Documents, the Foundation will deliver to Developer a copy of the Foundation's most recent land survey of the Property. At Developer's election, and at Developer's sole cost, Developer may obtain an updated land survey of the Property (the "Survey") and the Foundation will reasonably cooperate with the same.

7.2 Developer's Objections. Within 30 days after receiving the Title Commitment, Developer shall notify the Foundation in writing of any matters which render title in the Foundation as being unmarketable ("Objections"). Developer's failure to make Objections within the applicable time period will constitute a waiver of Developer's right to make Objections. Any items disclosed by the Title Commitment and not objected to by Developer shall be a "Permitted Encumbrance" hereunder. Notwithstanding anything herein to the contrary, the Ground Lease shall be a Permitted Encumbrance.

7.3 Cure Period. The Foundation shall advise Developer in writing ("Cure Notice") within 15 days after Developer delivers written notice of any Objections, which (if any) of the Objections the Foundation is willing to cure (the "Cure Items"). The Foundation will have 30 days after delivery of the Cure Notice (the "Cure Period") to use commercially reasonable efforts to attempt to cure the Cure Items in the Foundation's sole discretion, during which the Closing will be postponed as necessary; provided, however, that the Foundation may pay monetary liens out of proceeds from Closing on the Closing Date if they are not satisfied prior thereto or assumed by Developer in accordance with this Agreement, and the Foundation shall otherwise have no obligation to cure any Objections. If the Cure Period expires prior to the Closing Date, Developer shall have the right to extend the Cure Period to the Closing Date. If the Cure Items are not cured within the Cure Period, Developer may elect any of the following options by providing written notice thereof to the Foundation:

(a) Terminate this Agreement within five days after the expiration of the Cure Period and thereafter Developer and the Foundation shall direct the Title Company to promptly return to Developer any remaining balance of the Deposit not yet released and disbursed to the Foundation in accordance with this Agreement and neither the Foundation nor Developer shall have any further rights or obligations under this Agreement (except for any obligations that expressly survive the termination of this Agreement); or

(b) Waive the Objections and close the transaction contemplated by this Agreement as if such Objections had not been made, and the title matters related to such Objections will be deemed Permitted Encumbrances.

7.4 New Title Matters. If any matters which render a ground lessee's title to the Property as being unmarketable are discovered by or reported to Developer on or prior to the Closing Date which are not shown on the Title Commitment or the Survey, or which were created or came into existence on or after the date of delivery of the Title Commitment or the Survey, Developer shall notify the Foundation in writing

of any additional Objections to such title defects as soon as reasonably possible. The Foundation may then either (i) cure such Objections prior to Closing; or (ii) decline to cure such Objection. If the Foundation declines to cure such Objection, it shall so notify Developer within five business days of notice from Developer. Thereafter, Developer may (A) waive such Objection and proceed to Closing or (B) terminate this Agreement, in each case, in accordance with Section 7.3(a) and (b).

## **Article 8** **Representations and Warranties**

### **8.1 The Foundation's Representations and Warranties.**

(a) Organization. The Foundation is a non-profit corporation, duly organized, validly existing and in good standing under the laws of the state of Minnesota.

(b) Authority. The Foundation has the full power and authority to execute and deliver and fully perform its obligations under this Agreement, and this Agreement constitutes a valid and legally binding obligation of the Foundation, enforceable in accordance with its terms.

(c) Insolvency. The Foundation has not either filed or been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors.

(d) Anti-Terrorism Laws. The Foundation is not (A) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury, or (B) a person or entity with whom Developer is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, or (C) a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined or used in the Anti-Terrorism Laws. The "Anti-Terrorism Laws" are Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) and the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001, as amended.

(e) FIRPTA. The Foundation is not a "foreign person" as that term is defined in the Federal Foreign Investment in Real Property Tax Act of 1980 or the 1984 Tax Reform Act, as amended.

(f) Wells and Septic. The Foundation does not know of any "wells" on the Property within the meaning of Minn. Stat. §103I. To the Foundation's knowledge, there is no "subsurface sewage treatment system" within the meaning of Minn. Stat. Section 115.55 on or serving the Property. To the Foundation's knowledge, the sewage generated at the Property goes to a facility permitted by the Minnesota Pollution Control Agency.

(g) Storage Tanks. To the actual knowledge of the Foundation, no "aboveground storage tanks" or "underground tanks" (within the meaning of Minn. Stat. §116.46) are located in, on or under the Property.

(h) Methamphetamine. To the actual knowledge of the Foundation without inquiry, methamphetamine production has not occurred on the Property.

The representations and warranties of the Foundation contained within this Section 8.1 shall be true and correct as of the Effective Date, and shall be true and correct as of the Closing, as if made at that time. The

representations of the Foundation contained in this Section 8.1 shall survive the Closing for a period of six months.

8.2 Developer's Representations and Warranties.

(a) Organization. Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of the state of Minnesota.

(b) Authority. Developer has the power and authority to execute this Agreement; that the execution, delivery, and performance by Developer hereunder do not conflict with or violate Developer's organizational documents or any judgment, order or decree of any court or arbiter or any agreement by which Developer is bound.

(c) Insolvency. Developer has not either filed or been the subject to any filing of a petition under the Federal Bankruptcy Law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors.

(d) Anti-Terrorism Laws. Neither Developer nor any of its affiliated entities is in violation of any Anti-Terrorism Laws, including the Executive Order, and the PATRIOT Act. Neither Developer, nor, to the knowledge of Developer, any of its brokers or other agents acting in any capacity in connection with this Agreement: (i) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

The representations and warranties of Developer contained within this Section 8.2 shall be true and correct as of the Effective Date, and shall be true and correct as of the Closing, as if made at that time. The representations of Developer contained within this Section 8.2 shall survive the Closing for a period of six months.

**Article 9**  
"As Is"

9.1 No Representations or Warranties. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE IN THIS AGREEMENT, THE RIGHTS IN AND TO THE PROPERTY FROM THE FOUNDATION TO DEVELOPER AS DESCRIBED IN THIS AGREEMENT AND THE GROUND LEASE ARE IN THEIR "AS IS", "WHERE IS" AND "WITH ALL FAULTS" CONDITION, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED OR OTHERWISE, WRITTEN OR ORAL, BY THE FOUNDATION, ANY AGENT OR BROKER OF THE FOUNDATION, OR THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS, INCLUDING WITHOUT LIMITATION ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, WITHOUT LIMITATION, THE FOUNDATION MAKES NO AND DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO (A) ITS MERCHANTABILITY, (B) ITS FITNESS FOR A PARTICULAR PURPOSE, (C) INTENTIONALLY DELETED (D) ITS COMPLIANCE WITH THE AMERICAN WITH DISABILITIES ACT, ZONING OR USE LAWS, OR OTHER LAWS OR ORDINANCES; (E) ITS PAST, CURRENT, OR FUTURE VALUE OR FINANCIAL PERFORMANCE; (F) ITS PHYSICAL CONDITION OR STATE OF REPAIR; (G) ITS SOIL OR WHETHER ANYTHING CAN BE BUILT ON IT; (H) AVAILABILITY OF PERMITS, APPROVALS, OR RESOURCES TO DEVELOP, REDEVELOP; REHABILITATE, OR REPAIR IMPROVEMENTS, OR PERFORM OTHER WORK; (I) ITS TITLE, LEGAL, GOVERNMENTAL, OR HISTORIC STATUS; (J) WHETHER IT CAN

BE OCCUPIED BY ANY USERS, AND ITS OCCUPANCY STATUS; (K) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED BY THE FOUNDATION OR ITS AGENTS ABOUT IT; OR (L) ANY OTHER MATTER REGARDING THE PROPERTY.

9.2 Assumption of Risk. Developer has had an opportunity to inspect and investigate the Property, and Developer knowingly assumes all risks of and responsibilities from any defects to and conditions of the Property, including any defects and conditions that cannot be observed by casual inspection.

**Article 10**  
Operation Prior to Closing

During the period from the date of the Foundation's acceptance of this Agreement through the Closing Date (the "Executory Period"), the Foundation shall operate and maintain the Property in the ordinary course of business in accordance with prudent, reasonable business standards, including but without limitation, the maintenance of adequate liability insurance. The Foundation shall bear the risk of loss or damage caused by any perils through the Executory Period. During the Executory Period, the Foundation shall not execute any contracts, or other agreements regarding the Property or any part thereof, nor shall the Foundation cause or permit title to the Property to be encumbered or impaired, in each case, which are not terminable by the Foundation prior to Closing. Developer shall assume responsibility, at Closing, with respect to all agreements regarding the Property or any part thereof entered into during the Executory Period and to which Developer has given its consent.

**Article 11**  
Damage

If, prior to the Closing Date, all or any part of the Property is damaged by fire, other casualty, the elements or any other cause, the Foundation shall give Developer notice to Developer of such fact, and the Foundation shall, at the Foundation option, either: (a) cause such improvements to be repaired, reconstructed, and restored to the extent elected by the Foundation; or (ii) raze the remainder of such building and improvements, remove all debris from the Property, and leave the Property with a reasonably level surface in the area of such removal, in either case, in accordance with applicable law. Neither party shall the right to terminate this Agreement nor delay Closing in the event of such damage or destruction. Developer shall be responsible for any reasonable demolition and removal costs which are in excess of available insurance proceeds (an accounting of which is to be provided to Developer), and such excess demolition and removal costs shall be added to the payable as rent under the Ground Lease due and payable to the Foundation, as lessor, on the Closing Date.

**Article 12**  
Condemnation

If, prior to the Closing Date, any governmental entity commences any eminent domain proceedings ("Proceedings") against all or any part of the Property, the Foundation shall immediately give notice to Developer of such fact, and, at Developer's option (to be exercised by notice to the Foundation within 30 days after the Foundation's notice), this Agreement shall terminate, Developer and the Foundation shall direct the Title Company to promptly return to Developer any remaining balance of the Deposit not yet release and disbursed to the Foundation in accordance with this Agreement, and neither the Foundation nor Developer shall have any further rights or obligations under this Agreement (except for any obligations that expressly survive the termination of this Agreement). If Developer does not give such notice, then the Foundation's right, title, and interest in and to any award made or to be made in the Proceedings shall be distributed pursuant to the terms and conditions of the Ground Lease.

**Article 13**  
Assignment

Developer shall not assign this Agreement without the prior written consent of the Foundation, which consent may be granted or denied in the Foundation's sole and absolute discretion. Notwithstanding the forgoing, the Foundation and Developer acknowledge and agree this Agreement may be assigned without the Foundation's prior written consent, and shall be so assigned by Lupe and Ecumen, to a special purpose entity jointly owned and controlled by Lupe and Ecumen, and such entity shall assume Developer's obligations hereunder and Lupe and Ecumen shall not be released from their obligations under this Agreement, and (d) the Foundation is provided with a copy of the fully-executed assignment and assumption agreement.

**Article 14**  
Notices

Any notice required or permitted to be given hereunder will be properly given in accordance with this Agreement, if in writing and (a) delivered by hand, (b) sent by recognized overnight courier (such as Federal Express), (c) sent via email, or (d) mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the Foundation:	Edina Housing Foundation 4801 50th Street Edina, MN 55424 Attn: Jeff Huggett Email: Jhuggett@Dominiuminc.com
With copy to:	City of Edina 4801 West 50th Street Edina, MN 55424 Attn: Stephanie Hawkinson Email: SHawkinson@EdinaMN.gov
With copy to:	Dorsey & Whitney LLP 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402 Attn: Jay R. Lindgren Email: lindgren.jay@dorsey.com
If to Developer:	Lupe Development Partners, LLC 1701 Madison Street NE, Suite 111 Minneapolis, MN 55413 Attn: Steven M. Minn Email: steve.minn@lupedevelopment.com
With copy to:	Flakne Law Offices, PA 1701 Madison Street NE, Suite 111 Minneapolis, MN 55413 Attn: Brian J. Flakne Email: bflakne@flaknelaw.com

And

Ecumen

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Title Company: Guaranty Commercial Title, Inc.  
465 Nicollet Mall, Suite 230  
Minneapolis, MN 55401  
Attn: Wendy Ethen  
wethen@guarantytitle.net

Notice shall be effective, and the time for response to any notice by the other party shall commence to run, one business day after any such deposit if by overnight carrier, or three days if by U.S. mail, or upon receipt by the recipient if delivered by hand or by email. Either the Foundation or Developer may change its address for the service of notice by giving notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.

### **Article 15**

#### **Default; Remedies; Attorneys' Fees**

15.1 **Developer Default.** If Developer defaults in performance of its obligations under this Agreement, the Foundation may give notice to Developer, and if Developer has not cured such default within 30 days of receipt of such notice, the Foundation may elect (a) by notice to Developer to terminate the Agreement and to obtain the Deposit as liquidated damages or (b) to seek specific performance of this Agreement on or before six months after Developer's default during which time the Closing will be postponed until such time as Developer has cured its default. Notwithstanding the foregoing, if Developer defaults on any of its indemnification obligations under this Agreement, then the Foundation's remedies shall not be as so limited above with respect to any such default(s) and the Foundation shall have the right to pursue any and all remedies available to the Foundation at law or in equity with respect to any such default(s), subject to the conditions and limitations set forth elsewhere in this Agreement.

15.2 **Foundation Default.** If the Foundation fails to perform any of the covenants and agreements contained herein to be performed by the Foundation within the time for performance as specified herein and such failure continues for a period of 30 days after written notice from Developer, or if such failure reasonably requires more than 30 days to cure, such additional period of time the Foundation reasonably requires to cure such failure, provided the Foundation promptly commences its cure upon receipt of notice and with due diligence is thereafter continuously prosecuting such cure to completion, then Developer may elect either to: (a) terminate this Agreement by giving 10 days written notice to the Foundation with a copy to the Title Company, and if the Foundation has not cured such default within such 10 day period, the Deposit, plus all interest accrued thereon, shall be returned immediately to Developer by the Foundation and the Title Company, as applicable pursuant to this Agreement; or (b) to seek specific performance of this Agreement on or before six months after the Foundation's default during which time the Closing will be postponed until such time as the Foundation has cured its default. The remedies herein for a breach prior to Closing shall be the only remedies available to Developer. Notwithstanding the foregoing, if the Foundation defaults on any of its indemnification obligations under this Agreement, then Developer's remedies shall not be as so limited above with respect to any such default(s) and Developer shall have the right to pursue any and all remedies available to Buyer at law or in equity with respect to any such default(s), subject to the conditions and limitations set forth elsewhere in this Agreement.



15.3 Prevailing Party. In the event any litigation arises out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred in connection therewith including, without limitation, reasonable attorneys' fees and all costs of appeal including, without limitation, reasonable attorneys' fees incurred on appeal. This provision shall survive Closing or termination hereof.

**Article 16**  
Broker's Commission

The Foundation and Developer represent and warrant to each other that they have not employed, used the services of or otherwise dealt with any brokers, finders or the like in connection with this transaction. Each party shall indemnify and hold the other party harmless against all claims, damages, costs, or expenses of or for any other such fees or commissions resulting from their actions or agreements regarding the execution or performance of this Agreement, and shall pay all costs of defending any legal action brought against the other party to recover any other such fees or commissions, including reasonable attorneys' fees. The provisions of this section shall survive the Closing or termination of this Agreement.

**Article 17**  
Effective Date

The "Effective Date" of this Agreement shall be the date that the last party executed this Agreement as evidenced by the dates in the signature blocks of this Agreement. If either party fails to date this Agreement by its signature, the date by the signature of the other party shall constitute the Effective Date.

**Article 18**  
Title Company as Escrow Agent

Title Company shall hold, invest and disburse the Deposit as provided in this Agreement. Upon receipt of any written certification from the Foundation or Developer claiming the Deposit, Title Company shall promptly forward a copy thereof to the other party hereto and, unless such party within five business days thereafter objects by written notice to Title Company to such disbursement, Title Company shall disburse the Deposit to the party demanding the same and shall thereupon be released and discharged from any duty or obligation hereunder. Title Company is acting as escrow agent only with respect to the Deposit, to the extent deposited by Developer, and if there is any dispute as to whether Title Company is obligated to deliver the Deposit, or as to whom the Deposit is to be delivered, Title Company may refuse to make delivery and may continue to hold the Deposit until receipt by Title Company of an authorization, in writing, signed by the Foundation and Developer, directing the disposition of the Deposit; in the absence of such written authorization, Title Company may hold the Deposit until a final determination of the rights of the parties by appropriate proceeding or may bring an appropriate action or proceeding for leave to deposit the Deposit in a court of competent jurisdiction pending such determination. The Foundation and Developer recognize that Title Company's duties hereunder are only as specifically provided herein and are purely ministerial in nature; and the Foundation and Developer therefore agree that Title Company shall, so long as it acts in good faith and in accordance with this Agreement, have no liability to either Developer or the Foundation, except for its willful misconduct or gross negligence. The Foundation and Developer do hereby further indemnify Title Company against, and agree to hold, save and defend Title Company harmless from, any costs, liabilities and expenses incurred by Title Company in discharging its duties hereunder, except for willful misconduct or gross negligence.

**Article 19**  
General

The section and paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement. This written Agreement constitutes the complete agreement between the Foundation and Developer and supersedes any prior oral or written agreements between them regarding the Property. There are no verbal agreements that change this Agreement, and no amendment of any of its terms will be effective unless in writing and executed by both the Foundation and Developer. Subject to Article 13, this Agreement binds and benefits the Foundation and Developer and their respective successors and assigns. This Agreement has been made under, and will be interpreted and controlled by, the laws of the state of Minnesota. In the event the date on which Developer or the Foundation is required to take any action under the terms of this Agreement is not a business day, the action shall be deemed to be required to be taken on the next succeeding business day. As used in this Agreement, “business days” shall mean Monday through Friday exclusive of legal holidays when U.S. Bank National Association is closed to the public. Time is of the essence of this Agreement. All exhibits referred to in and attached to this Agreement are incorporated in and made a part of this Agreement. Developer and the Foundation acknowledge that they have each been represented by counsel and that their respective counsel have reviewed and approved this Agreement, and the parties hereby agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same Agreement. The parties hereby acknowledge and agree that electronic signatures, including execution using DocuSign, or signatures transmitted by electronic mail in so-called “pdf” format shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered.

**Article 20**  
HRA Loan Forgiveness Contingency


Notwithstanding anything herein to the contrary, this Agreement and the Foundation’s obligations hereunder are contingent on the Foundation obtaining a modification to the existing \$3,650,000.00 loan from the HRA to the Foundation for the Foundation’s acquisition of the Property (the “HRA Loan”), which modification must provide for forgiveness of the HRA Loan if the Project is approved and financed and the Ground Lease entered into, each as described in this Agreement. The Foundation will request, and expects approval of, such modification to the HRA Loan at the November 12, 2020 HRA board meeting.

[Remainder of Page Intentionally Left Blank. Signature Pages Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.


**FOUNDATION:**

EAST EDINA HOUSING FOUNDATION,  
a Minnesota nonprofit corporation


By:   
Name: Jeff Huggett  
Its: President  
Date: November 4, 2020

**DEVELOPER:**

LUPE DEVELOPMENT PARTNERS, LLC,  
a Minnesota limited liability company

By:   
Name: STEVEN M. MINN  
Its: VPI CFO  
Date: 10-28, 2020

**ECUMEN,**  
a Minnesota nonprofit corporation

By:   
Name: MORSHEED AZAM  
Its: CFO  
Date: 10-28, 2020

**TITLE COMPANY:**

(For the purpose of acknowledging its agreement with the provisions hereof relating to its duties and obligations as escrow agent hereunder, including without limitation Article 18)

**Guaranty Commercial Title, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

Legal Description of Land

Tract C, Registered Land Survey No. 1365, Hennepin County, Minnesota

Torrens Property

**EXHIBIT B**

**Project Financing Proposal**

**SUMMARY**

Development Name	<b>4040 70th Affordable Senior "J-Shape"</b>
Primary Address	4040 70th Street
City	Minneapolis
Zip Code	55405
County	Hennepin

ACTIVITY TYPE
Acquisition
Demolition
New Construction

Version Date	
Property Number (D#)	
Project Number (M#)	
HTC #	

DEVELOPMENT TEAM	
Sponsor/Parent Company	Ecumen/Lupe Joint Venture
Developer	Ecumen/Lupe Development Entity
Owner	Ecumen/Lupe Edina LP
Management Co	Ecumen
Service Provider	
Architect	Pope Architects
General Contractor	Frana Companies
Processing Agent	Ripley Richard Real Estate Development Services, LLC

DEMOGRAPHICS	
# Units	Description
118	Senior
	People with Disabilities
	Permanent Supportive Housing

First Mortgage/Deferred Loan Request	
TYPE	AMOUNT
<input type="checkbox"/> Minnesota Housing First Mortgage	
<input type="checkbox"/> Deferred Loan(s)	

Tax Exempt Bond Request		
TYPE	ISSUER	AMOUNT
<input checked="" type="checkbox"/> Tax Exempt Bonds - Long Term		
<input type="checkbox"/> Tax Exempt Bonds - Short Term	Hennepin County	

Subsidy Funding Request	Name of Source	# Units	Amount

UNIT SUMMARIES			
Unit Type	# Units	Program Type	# Units
SRO no Kitchen		HTC	118
SRO with Kitchen		HOME	
OBR/Eff		NHTF	
1BR	98	HPH	
2BR	20	PWD	
3BR		Market Rate	
4BR		Common Space	
5BR		HIB Sr Program	
6BR		Rent Assistance	12
TOTAL UNITS	118	Operating Subsidy	

Housing Tax Credit Request	
<b>Type of Tax Credits requested from Minnesota Housing:</b>	
<input checked="" type="checkbox"/> Housing Tax Credits - 4%	
<input type="checkbox"/> Housing Tax Credits - 9%	
<input type="checkbox"/> Dual Application	
<b>HTC Request Amount:</b>	<input type="text" value="916,034"/>
<b>Request Status</b>	
<input type="checkbox"/> Basis Boost	<input checked="" type="checkbox"/> Reservation
	<input type="checkbox"/> Carryover
<b>Tax Credit Pool</b>	<input type="checkbox"/> 8609
<input checked="" type="checkbox"/> Metro	<input type="checkbox"/> Qualified Contact
<input type="checkbox"/> Greater MN	<input type="checkbox"/> 42 M1 Letter
<b>Tax Credit Request Type</b>	
<input checked="" type="checkbox"/> First Request	<input type="checkbox"/> Non Profit
<input type="checkbox"/> Supplemental	<input type="checkbox"/> Rural Development
<input type="checkbox"/> Repeat Request - not selected	
Application to suballocator	<input type="text"/>
<b>Previously Awarded Tax Credits:</b>	
Allocator <input type="text"/>	Amount <input type="text"/>
Allocator <input type="text"/>	Amount <input type="text"/>
Allocator <input type="text"/>	Amount <input type="text"/>





**SUMMARY**

<b>TOTAL OF CONSTRUCTION FINANCING</b>	32,022,422	<b>271,376</b>	
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**EXHIBIT C**

Form of Project Funding Certificate

**Project Funding Certificate**

\_\_\_\_\_ (“Developer”) has entered into that certain Affordable Housing Development and Ground Lease Option Agreement with the **East Edina Housing Foundation**, a Minnesota nonprofit corporation (the “Foundation”), dated effective as of \_\_\_\_\_, 2020 (the “Agreement”).

Developer hereby certifies to the Foundation, pursuant to Section 1.6(c) of the Agreement, that the funding sources identified in **Exhibit 1**, attached hereto, have been fully committed and available to Developer for the construction of the Project.

Dated: \_\_\_\_\_

**DEVELOPER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit 1**  
**to**  
**Project Funding Certificate**

_____ (Construction Loan)	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

## EXHIBIT D

### Ground Lease Key Terms

- (1) 99-year Ground Lease term, and the Project shall inure to the possession of the ground lessor at the end of the Ground lease term;
- (2) Use of the property under the Ground Lease will be restricted to an 100% affordable, senior housing community, with rental rates limited to the Minimum Affordability Requirements approved by the Foundation in accordance with this Agreement;
- (3) Ground Lease rental payment to ground lessor to consist of:
  - a. 30% of all surplus cash (as defined under Generally Accepted Accounting Principles, (GAAP)) generated from the Project, provided such surplus cash shall not be reduced by any fees paid or payable to Developer or any of its, agents, partners, members, or affiliates, except a property management fee under the Management Agreement in an amount equal to the then-current reasonable market-rate fee for such management services, charged as a percent of gross receipts from the Project (provided that such fee shall not include reasonable and direct third-party costs for services such as financial system, technology or human resources system etc, which may be charged, in addition to the management fee). The management fee shall periodically be adjusted throughout the term of the Ground Lease to reflect then-current reasonable market-rate fees for such management services, such adjustments to be subject to the ground lessor's approval, which shall not be unreasonably withheld;
  - b. 30% of the cash portion of any refinancing proceeds from which cash is taken from the property, but not for recapitalization or re-investment in the property; and
  - c. 30% of all sale proceeds from any sale of the Project and ground lessee's interest;
- (4) Ground lessor to have consent rights over the following matters, in each case, such consent not to be unreasonably withheld:
  - a. Project refinancing in which cash is taken from the property and not otherwise recapitalized or re-invested in the property, and
  - b. Project sales;
- (5) Ground lessor to have a right of first refusal on any sale of the Project and ground lessee's interest, with customary re-offer rights in favor of ground lessor;
- (6) Ground lessor will have audit rights with respect to the books and records of the Project and Developer, including, without limitation, audits to determine compliance with the Minimum Affordability Requirements and other affordability covenants;
- (7) Ground lessee to reimburse Ground lessor for any third-party monitoring and compliance costs;

- (8) Requirement for a so-called “bargain sale” of the Limited Partner/Investor interest to Developer or its affiliate at the expiration of any LIHTC compliance period; the approval of which shall not be unreasonably withheld by Foundation.