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HRI

HOMEOWNER'S
REHAB, INC.

September 12, 2003

Dean A. Charter
Town of Acton Municipal Properties Department
472 Main Street
Acton, MA 01720

Via FAX: 978-264-9630

RE: HRI Response to Towne Building Selection Committee Questions

Dear Dean,

I am hoping you've recently received HRI's response, via e-mail, to the questions posed by the Selection Committee on September 3.

Now, via fax, I'm forwarding:

- * Pages from the Proposed Lease with our handwritten comments (The first page lists all the pages with comments; I omitted pages where we had no comments.)
- * Sections 3, 4, 5, and Output Section from a One-Stop Application (pages 10-19 and A1-A8).
- * Two Sketches from Mostue & Associates

If any of the material doesn't arrive, please call me at 617-868-5848 x210. I phoned Nancy Tavernier to tell her I was going to fax this material to you.

Thank you for your assistance.

Sincerely,


 Shelly Dein
 Project Manager

Enc.



LEASE

This lease (this "Lease") is entered into as of this ____ day of _____, 200__, by and between the Town of Acton, a body politic and corporate of the Commonwealth of Massachusetts organized pursuant to Massachusetts General Laws Chapter 121B (the "Town of Acton") and _____, a _____ ("Tenant").

BACKGROUND

Pursuant to that certain Request for Proposals dated _____ (the "RFP"), The Town of Acton has accepted Tenant's proposal (the "RFP Response") for a lease of the Premises (as defined in Section 1.1 below) to renovate the existing improvements thereon and construct certain additional improvements for use as an affordable housing rental facility, subject to the terms and conditions set forth herein.

The Town of Acton and Tenant now agree as follows:

ARTICLE 1

PREMISES

1.1 Lease of Premises. The Town of Acton, for and in consideration of the covenants and agreements hereinafter contained on the part of Tenant to be paid, kept and performed, hereby leases to Tenant, and Tenant hereby leases from the Town of Acton, for the Term (as defined in Section 2.1 below) upon the terms and conditions set forth herein, the following described premises (hereinafter called the "Premises"):

A certain parcel of land (the "Land") located at the corner of Massachusetts Avenue and Charter Road in the Town of Acton, as more particularly described in Exhibit A attached hereto and made a part hereof and more particularly shown on the plan attached hereto as Exhibit B and made a part hereof; the existing two-story Towne School building (the "Building") and all other improvements, buildings, structures, utility lines not owned by the respective utility company, parking areas and fixtures that are now or hereafter located on, installed in, or attached to, the Land (collectively, the "Improvements"); and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Land or the Improvements or the use or occupancy of the Land or the Improvements, whether or not of record.

1.2 Reserved Rights. The Town of Acton reserves the following rights and imposes upon Tenant the following obligations in connection with the Premises:

(a) Upon reasonable prior notice to Tenant, the Town of Acton shall have the right to access and enter upon the Premises for the purposes of inspection, complying with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions and orders and requirements of all public authorities and exercising any right reserved to the Town of Acton by this Lease. The Town of Acton shall use commercially reasonable efforts to minimize interference with or disruption of Tenant, Tenant's business, its occupants, its operators and its lessees.

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HR1
Comments on pages
2, 3, 4, 7, 8, 10, 12, 13, 15, 16, 18, 19, 20, 24, 26, 27, 29, +31
Pages without comments omitted.

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2 1.3 Condition of the Premises. Tenant acknowledges that it has leased the Premises
 3 and agreed to perform the Initial Improvements (as defined in Section 3.1 below) after a full and
 4 complete examination of the Premises, including, without limitation, any encumbrances,
 5 subsurface conditions, existing structures thereon, if any, the presence of any asbestos or other
 6 Hazardous Materials (as defined in Section 12.4 below) located on, in or under the Premises or
 7 within such structures, legal title, their present uses and non-uses, and laws, ordinances, and
 8 regulations affecting the same and the ability of Tenant to use the Premises for their intended
 9 purposes, and accepts the same in the same condition in which they or any part thereof now are,
 10 and except as otherwise expressly provided in this Lease, waives all rights to object to the
 11 condition thereof and assumes all risks in connection therewith, without any representation or
 12 warranty, express or implied, in fact or by law, on the part of the Town of Acton, and without
 13 recourse to the Town of Acton.

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ARTICLE 2

16

TERM

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18 2.1 Term. The Premises are hereby leased unto Tenant and its successors and assigns
 19 for a term (the "Term"), commencing on _____ (the "Commencement Date") and
 20 unless [extended or] earlier terminated in accordance with the provisions hereof, ending on
 21 _____, (the "Termination Date").

*assume
50 year term*

22 2.2 Early Termination. Tenant agrees that if construction of the Initial Improvements
 23 has not commenced (as defined in Section 3.1 below) by the Outside Construction Start Date (as
 24 defined in Section 3.1 below), the Town of Acton may elect to terminate this Lease upon thirty
 25 (30) days' written notice to Tenant; provided, however, that if the Initial Improvements are
 26 completed within such 30-day period, such termination notice shall be null and void and this
 27 Lease shall continue in full force and effect.

*assume
Commencement
Date is
construction
loan closing*

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ARTICLE 3

TENANT WORK

3.1 Initial Improvements. (a) Tenant shall commence work on the improvements (the "Initial Improvements") described in Exhibit C attached hereto and incorporated herein (the "Schematic Design Plans") as soon as reasonably possible following the Commencement Date but not later than one (1) year after the date hereof (the "Outside Construction Start Date"), which construction Tenant shall thereafter diligently and continuously prosecute to Final Completion (as defined below) in accordance with the Final Plans (as defined in Section 3.3 below) and as modified to meet Building Permit and other permit requirements (as set forth in Section 3.4(a) For purposes of this Lease, construction of the Initial Improvements shall be deemed to have "commenced" upon the commencement of actual physical work (including, without limitation, site work) on the Premises pursuant to a full, unconditional building permit for the construction of the Initial Improvements, and "Final Completion" of the Initial Improvements will be deemed to have occurred upon the issuance of a permanent certificate of occupancy for the Initial Improvements. The date upon which Final Completion of the Initial Improvements occurs shall be referred to herein as the "Final Completion Date."

(b) Notwithstanding the foregoing, if the commencement of the Initial Improvements is prevented or delayed beyond the Outside Construction Start Date because of strikes, lockouts, labor troubles, inability to procure materials, power failures, riots, insurrection, war, appeals or litigation relating to any comprehensive permit applications or other required permits or licenses necessary to construct and use the Initial Improvements for the Permitted Uses (as defined in Section 8.1, below), or other causes beyond Tenant's reasonable control (provided, however, that lack of money shall not be deemed such a cause) (collectively, "Force Majeure"), then the commencement of the Initial Improvements shall be excused for the period of delay and the Outside Construction Start Date shall be extended for an equivalent period.

3.2 Schedule of Performance. Subject to Force Majeure, the Initial Improvements shall be developed by Tenant in accordance with a time schedule approved by the Town of Acton (the "Schedule of Performance"), which approval shall not be unreasonably withheld, conditioned or delayed. Upon written request, Tenant shall submit to the Town of Acton on or before each deadline set forth in the Schedule of Performance satisfactory evidence that each deadline has been met. The satisfaction of the matters set forth in the Schedule of Performance by the dates set forth therefore is an essential part of this Lease. In the event that the Town of Acton grants an extension of any such date, which the Town of Acton may grant or withhold in its reasonable discretion, the Town of Acton shall not be deemed thereby to be waiving any other rights hereunder or implying the extension of any other dates.

3.3 Approval and Delivery of Final Plans. On or before the date specified in the Schedule of Performance, Tenant shall submit to the Town of Acton for approval proposed construction drawings for the Initial Improvements. The criteria used by the Town of Acton in approving or disapproving such construction drawings shall be consistent with the plans submitted as part of the RFP Response (the construction drawings approved by the Town of

*schedules
need to be
flexible
since
performance
affected by
others - ie
zoning, funds*

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reasonably

*RFP Response
was conceptual*

1 Acton are hereinafter referred to as the "Final Plans"). Any disapprovals shall be accompanied
 2 by a written explanation setting forth in reasonable detail the reasons for disapproval. In the
 3 event the Town of Acton disapproves of any item, Tenant shall cause such item to be
 4 appropriately revised as soon as possible after receipt of a notice of disapproval and resubmit the
 5 same to the Town of Acton for approval pursuant to this Section 3.3. The Town of Acton and
 6 Tenant agree to cooperate reasonably and in good faith with each other to resolve any objections
 7 of the other to such item and/or requested modifications by the other.

8 3.4 Required Permits.

9 (a) Tenant shall obtain all permits, approvals and licenses from governmental
 10 authorities ("Required Permits") required for construction and use of the Initial Improvements,
 11 and for any other alterations, removals, installations, additions, changes, replacements or
 12 improvements to the Premises (collectively with the Initial Improvements, "Tenant Work"), and
 13 shall, upon written request, provide the Town of Acton with a copy of each. Upon full or partial
 14 completion of the Initial Improvements and prior to occupying any part of the Premises for any
 15 purpose other than performing the Initial Improvements, and upon completion of any other
 16 Tenant Work, Tenant shall obtain from each authority granting the Required Permits such
 17 evidence of approval ("Required Approval") as may be necessary to permit such part of the
 18 Premises to be used and occupied for the Permitted Uses (as defined in Section 8.1 below).
 19 Tenant may occupy all or part of the Premises under temporary or conditional certificates of
 20 occupancy, but shall not be relieved from the obligation of obtaining permanent certificates of
 21 occupancy for the Improvements or other similar licenses or permits required to permit the
 22 Premises to be used and occupied for the Permitted Uses.

23 (b) The Town of Acton, without cost to it, promptly shall execute and deliver
 24 any reasonable documents which may be necessary to obtain or maintain any Required Permit or
 25 Required Approval and shall further cooperate with Tenant in obtaining or maintaining any
 26 Required Permit or Required Approval, as Tenant may from time to time reasonably request;
 27 provided, however, that with the exception of zoning or other matters, where the Town of
 28 Acton's execution of petitions, application, appeals or other documents or joinder in proceedings
 29 may be required as a condition to Tenant's proposed action, the Town of Acton shall in no event
 30 be required to join in or become a party to any document or proceeding in which it will oppose
 31 the Commonwealth of Massachusetts or any agency, authority, branch, division, office or
 32 subdivision of or for the Commonwealth of Massachusetts, nor shall the Town of Acton be
 33 required in connection with any such document or proceeding or otherwise to oppose in any way
 34 any policy previously established by the Town of Acton nor to take a position inconsistent with a
 35 position previously taken and made public by the Town of Acton. As stated in the RFP, the
 36 Town of Acton will consider, reasonably and in good faith, any request by the Tenant to support
 37 the Tenant's filing of a Comprehensive Permit under M.G.L. Chapter 40B if required for the
 38 completion of the Initial Improvements and operation of the Premises for the Permitted Use.

*Projects needs
 a 40B.
 Can we get
 stronger
 commitment
 from Town
 than
 considerate*

39 (c) Tenant may contest, in good faith and on the same terms and conditions as
 40 provided in Section 8.4, the validity or applicability of any Legal Requirement (as defined in
 41 Section 8.3 below) which is the basis for any Required Permit or Required Approval.

42 3.5 General Contractor: Development Team. To the extent that the RFP Response

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RENT

4.1 Rent.

(a) Commencing on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to the Town of Acton annual base rent ("Base Rent") in the amount of _____ Dollars (\$___), [which amount shall be paid in payments of _____ Dollars (\$___) on the first day of _____ in each calendar year thereafter during the Term OR in equal monthly installments of _____ Dollars (\$_____), partial months to be prorated]. [Base Rent shall be adjusted annually throughout the Term, as of the anniversary of the first day of the first full calendar month following the Commencement Date to the extent of any percentage change which occurred in the Consumer Price Index during the preceding twelve (12) months. The Town of Acton shall promptly notify Tenant of each Base Rent adjustment. For the purposes hereof, the Consumer Price Index shall mean the United States Bureau of Labor Statistics (the "Bureau") Consumer Price Index for All Urban Consumers, Boston Metropolitan Area, All Items (1982-1984=100). If the Consumer Price Index shall be converted to a different standard reference base or otherwise be revised, a determination of a Consumer Price Index increase shall be made with the use of such conversion factor, formula or table as may be published by the Bureau or, if the Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by any nationally recognized publisher... of statistical information, reasonably selected by the Town of Acton. If the Consumer Price Index shall cease to be published, then there shall be substituted for Consumer Price Index any substitute or successor index published by the Bureau or other governmental agency, or if no such index is published, then such other index published by any nationally recognized publisher of statistical information as the Town of Acton shall reasonably select. The Consumer Price Index as of the Commencement Date or any anniversary thereof means the Consumer Price Index most recently published prior to the date in question.]

Propose \$1

(b) In addition, Tenant shall pay any fee, charge or other amount required to be paid by Tenant to the Town of Acton under this Lease as additional rent ("Additional Rent"). Base Rent and Additional Rent (collectively, "Rent") shall be paid without counterclaim, notice, demand, abatement or offset at the Town of Acton's address set out in Section 18.2. It is the intention of the parties that the Rent payable hereunder shall be net to Landlord.

Need estimate from Town.

4.2 Late Payments. Any payment of Rent due hereunder not paid when due shall bear interest for each month or fraction thereof from the due date until paid in full at the Default Rate.

4.3 Payments by Tenant. All costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the construction, ownership, leasing, operation, maintenance, repair, replacement, rebuilding, use or occupation of the Premises or with respect to any interest of the Town of Acton in the Premises or this Lease shall be the responsibility of Tenant.

4.4 Rent to be Absolutely Net. It is the express understanding and agreement of the Town of Acton and Tenant that the Base Rent due and payable hereunder shall be absolutely net to the Town of Acton, so that this Lease shall yield to the Town of Acton the Base Rent specified

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1 above during the Lease Term, and that all expenses of every kind and nature whatsoever,
 2 whether ordinary or capital in nature, relating to the construction, ownership, leasing, operation,
 3 maintenance, repair, replacement, rebuilding, use and occupation of the Premises, during the
 4 Term of the Lease shall be paid by Tenant (including, but not limited to, Impositions, as defined
 5 in Section 5.1 below), without cost or obligation of any type to the Town of Acton whatsoever.

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 7 **ARTICLE 5**
 8 **TAXES AND UTILITIES**
 9

*Need estimate/
 agreement from
 Town of taxes
 + other charge*

10 5.1 Impositions. Tenant shall pay or cause to be paid as Additional Rent before any
 11 fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes,
 12 assessments, special use or assessment district taxes, water and sewer charges, excises, levies,
 13 license and permit fees and all other governmental charges of any kind and nature which during
 14 the Term may be assessed, levied, imposed upon or become due with respect to, or become a lien
 15 on the Premises or the leasehold, or any part thereof, or any appurtenance thereto, and payments
 16 in lieu of such taxes, assessments, charges or fees, whether such charges are made directly to
 17 Tenant or through or in the name of the Town of Acton. All such charges shall be referred to
 18 herein as "Impositions." Tenant shall have the right to contest or object to the amount or
 19 validity of any Imposition but shall not withhold payment of any Imposition while any such
 20 contest or objection is pending. Tenant, upon request of the Town of Acton, shall furnish to the
 21 Town of Acton within thirty (30) days of the date when any Imposition would become
 22 delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably
 23 satisfactory to the Town of Acton, evidencing payment thereof.

24 5.2 Personal Property Taxes. Tenant shall pay promptly when due all taxes which
 25 may be imposed upon personal property (including fixtures taxed as personal property) in, on or
 26 within the Premises directly to the assessing party.

27 5.3 Utilities.

28 (a) Tenant shall pay, or shall cause to be paid, directly to the utility provider,
 29 all charges by any public authority or public utility for water, electricity, telephone, gas, sewer
 30 and other services supplied or rendered to the Premises, and service inspections made therefore,
 31 whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such
 32 charges are made directly to Tenant or through or in the name of the Town of Acton ("Utility
 33 Charges").

34 (b) The Town of Acton agrees to provide reasonable access easements over
 35 the Premises to utility companies for the purposes of bringing and connecting utility service to
 36 the Premises.

37 5.4 No Liability of the Town of Acton. The Town of Acton shall not be required to
 38 furnish to Tenant any facilities or services of any kind whatsoever during the Term, such as, but
 39 not limited to, water, steam, heat, gas, hot water, electricity, light and power. The Town of
 40 Acton makes no representation or warranty that existing sources of supply, distribution points or

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- (b) (i) any alteration to the roof, the structural weight-bearing walls or columns or to any weight-bearing floor slab of the Building, or any addition to the Building, (ii) any material alteration to the base-building plumbing, electrical, mechanical or HVAC systems serving the Premises, and (iii) any other alteration or addition costing more than [\$100,000.00] in 2002 dollars in the aggregate, (x) shall not be performed without Tenant first having received the Town of Acton's written consent thereto, (y) shall be conducted under the supervision of a licensed architect or licensed professional engineer and (z) shall be conducted in accordance with plans and specifications submitted to and approved by the Town of Acton. The Town of Acton shall not unreasonably withhold its consent to any alterations or additions proposed by Tenant or to any plans and specifications submitted to the Town of Acton in connection therewith. The Town of Acton's failure to respond to Tenant's request for consent to alterations or additions or for approval of plans and specifications for any alterations or additions consented to by the Town of Acton, or as to which the Town of Acton's consent is simultaneously being requested, within forty-five (45) days of the Town of Acton's receipt of such request(s) shall constitute the Town of Acton's approval of same, provided Tenant's request for such consent or approval states in bold capital letters that the Town of Acton's failure to respond within forty-five (45) days shall constitute its consent or approval, as the case may be. Tenant hereby agrees to reimburse the Town of Acton, upon demand therefore, as **Additional Rent**, for all costs incurred by the Town of Acton in reviewing the plans and specifications for, and supervising the carrying out of construction of any such alterations or additions. (Any reference in this Lease to 2002 dollars shall mean 2002 dollars as reflected in the Consumer Price Index for "All Cities" closest in date before December 31, 2002, published by the federal government, and reference shall be made to the Consumer Price Index for All Cities then in effect when adjustments to 2002 figures are made.);
- (c) Any alteration or addition shall, when completed, be of such a character as not to reduce the value or usefulness of the Premises for the Permitted Use below its value and usefulness immediately before such change or alteration;
- (d) Any change, construction, alteration or addition shall be made promptly in a good and workmanlike manner and in accordance with all Required Permits, Required Approvals and Legal Requirements, any national or local board of fire underwriters, or any other body hereafter exercising functions similar to those of any of the foregoing;
- (e) During the period of construction of any change, construction, alteration or addition, in, to or of the Improvements, Tenant shall maintain or cause to be maintained the following insurance:

Repair of fire damage could be a problem since lenders/investors will want these rights and overrule in a conflict

need estimate of cost by Town

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1 of the enforcement of building laws and ordinances governing repair and reconstruction and shall
2 include an agreed amount endorsement satisfactory to the Town of Acton.

3 7.2 Builder's Risk. During the period of any construction or structural alteration of
4 the Premises or the Improvements, Tenant shall also keep in full force and effect, at its sole cost
5 and expense, "Builder's All Risk" insurance against loss or damage on a completed value non-
6 reporting basis from such hazards and in such amounts as the Town of Acton (or any Permitted
7 Institutional Mortgagee (as defined in Section 13.3 below) subsequently holding a first mortgage
8 lien on the property) may reasonably require.

9 7.3 Liability Insurance. Throughout the Term, Tenant shall maintain, for the benefit
10 of the Town of Acton and Tenant, and identifying the Town of Acton and Tenant as additional
11 insureds, commercial general liability insurance against claims for personal injury, death, and
12 property damage occurring upon, in or about the Premises or the Improvements, and on, in or
13 about the adjoining sidewalks and passageways (including, without limitation, personal injury,
14 death, and property damage resulting directly or indirectly from any change, alteration,
15 improvement or repair thereof) for at least Three Million Dollars (\$3,000,000.00) combined
16 single limit, including bodily injury and death, contractual liability, and for property damage. If
17 Tenant has other locations that it owns or leases, the policy shall include an aggregate limit per
18 location endorsement. Such liability insurance shall be primary and not contributing to any
19 insurance available to the Town of Acton, and the Town of Acton's insurance shall be in excess
20 of the Town of Acton's insurance.

Our other
properties
have \$2M
with an
umbrella. Is
this OK?

21 7.4 Boiler Insurance. Throughout the Term, the Tenant shall maintain boiler
22 insurance, including pressure vessels and pipes, if there be any such vessel or pipes on the
23 Premises, in an amount not less than One Million Dollars (\$1,000,000.00).

24 7.5 Personal Property Insurance. Throughout the Term, Tenant shall maintain
25 personal property insurance insuring all equipment, trade fixtures, inventory, fixtures and
26 personal property located on or in the Premises for perils covered by the cause of loss ("special
27 form"). Such insurance shall be written on a replacement cost basis in an amount equal to no
28 less than eighty percent (80%) of the full insurable replacement value of the aggregate of the
29 foregoing.

30 7.6 Insurance Carried by Contractors. During the construction of the Initial
31 Improvements, Tenant shall also require the construction manager and/or general contractor for
32 the Initial Improvements to maintain (i) for the benefit of Tenant and the Town of Acton, as
33 additional insureds, commercial general liability insurance, including products and completed
34 operations coverage, against any claims for personal injury, death and property damage
35 occurring upon, in or about the Premises and on, in and about the adjoining sidewalks and
36 passageways during the construction of the Initial Improvements for at least One Million Dollars
37 (\$1,000,000.00) combined single limit; (ii) worker's compensation in amounts required by state
38 statute; (iii) employer's liability insurance with limits of not less than Five Hundred Thousand
39 Dollars (\$500,000.00); and (iv) automobile liability insurance, including the ownership,
40 maintenance and operation of any automotive equipment, owned, hired or non-owned, in an
41 amount not less than One Million Dollars (\$1,000,000.00) combined single limit.

42 7.7 Insurance Coverage Increases. The minimum coverage stated in this Article 7
43 shall be reviewed every five (5) years by the Town of Acton and Tenant, and shall be increased
44 at such intervals if such increases are reasonably necessary to reflect inflation or changes in the

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1 nature or degree of risks insured or to protect against judgments from time to time being awarded
2 in Massachusetts for injury, death and property damage.

3 7.8 Insurance Carriers, Policies. All insurance provided for in this Article 7 shall be
4 effected under valid and enforceable policies, issued by insurers of recognized responsibility
5 licensed and doing business in Massachusetts and having a so-called Best's Rating of "A:X" or
6 better, or, if such rating is no longer issued, an equal or better rating by a successor insurance
7 carrier rating service reasonably acceptable to the Town of Acton. Any deductible amounts
8 under any insurance policies required hereunder shall not exceed _____ Dollars
9 (\$_____.00). Upon the execution of this Lease, and thereafter not less than fifteen (15) days
10 prior to the expiration dates from time to time of the policies required pursuant to this Article 7,
11 binders of such insurance or, upon written request of the Town of Acton, duplicate originals of
12 the policies, shall be delivered by Tenant to the Town of Acton.

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13 In addition, evidence of the payment of all premiums of such policies will be
14 delivered to the Town of Acton. All commercial general liability, property damage liability, and
15 casualty policies maintained by Tenant will be written as primary policies, not contributing with
16 and not in excess of coverage that the Town of Acton may carry. If Tenant fails to maintain
17 such insurance, which failure continues for ten (10) days after the Town of Acton gives notice to
18 Tenant of such failure, then the Town of Acton, at its election, may procure such insurance as
19 may be necessary to comply with the above requirements (but shall not be obligated to procure
20 same), and Tenant shall repay to the Town of Acton as Additional Rent the cost of such
21 insurance.

22 7.9 Blanket Policy. Nothing in this Article 7 shall prevent Tenant from taking out
23 insurance of the kind and in the amounts provided for under this Article 7 under a blanket
24 insurance policy or policies covering other properties as well as the Premises, provided,
25 however, that any such policy or policies of blanket insurance (i) shall specify therein, or in a
26 written statement from the insurers under such policy or policies specifying, the amount of the
27 total insurance allocated to the Premises, which amounts shall not be less than the amounts
28 required by this Article 7, and (ii) such amounts so specified shall be sufficient to prevent any of
29 the insureds from becoming a co-insurer within the terms of the applicable policy or policies, and
30 provided further, however, that any such policy or policies of blanket insurance shall, as to the
31 Premises, otherwise comply as to endorsements and coverage with the provisions of this Article
32 7.

33 7.10 No Separate Insurance. Tenant shall not take out separate insurance concurrent in
34 form or contributing in the event of loss with that required in this Article 7 to be furnished by, or
35 which may reasonably be required to be furnished by, Tenant unless the Town of Acton and
36 Tenant are included therein as insureds, with loss payable as in this Lease provided. Tenant shall
37 immediately notify the Town of Acton of the placing of any such separate insurance and shall
38 cause the same to be delivered as in Section 7.8 hereof required.

39 7.11 Adjustment. All policies of insurance provided for in Article 7 hereof shall name
40 the Town of Acton and Tenant as the insureds as their respective interests may appear. The loss,
41 if any, under such policies shall be adjusted with the insurance companies by Tenant, and shall
42 be payable to Tenant. All such policies shall provide that the loss, if any, thereunder shall be

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1 to negate or abridge any other obligation of indemnification running to the Town of Acton which
 2 would exist at common law or under any other provision of this Lease, and the extent of the
 3 obligation of indemnification shall not be limited by any provision of insurance undertaken in
 4 accordance with this Article 7. This Lease is made on the express condition that the Town of
 5 Acton shall not be liable for, or suffer loss by reason of, any damage or injury to any property,
 6 fixtures, buildings or other improvements, or to any person or persons, at any time on the Premises,
 7 specifically including any damage or injury to the person or property of Tenant or any of the
 8 Tenant Parties, from whatever cause, in any way connected with the condition, use, occupational
 9 safety or occupancy of the Premises, unless caused by the gross negligence or willful misconduct
 10 of the Town of Acton.

11 (d) The provisions of this Section 7.13 shall survive termination or expiration
 12 of this Lease.

13 **ARTICLE 8**

14 **USE OF PREMISES**

15
 16 8.1 Permitted Uses. The Premises and Improvements shall be used exclusively for
 17 purposes of affordable rental housing and uses which are ancillary thereto (collectively, the
 18 "Permitted Uses").

19 8.2 Abandonment of Use. Subject to Force Majeure, except during the construction
 20 of the Initial Improvements, and thereafter during reasonable periods of repair, remodeling
 21 and/or restoration, Tenant covenants and agrees to continuously and uninterruptedly use the
 22 Premises for the Permitted Uses. If the Premises shall be abandoned, deserted, or vacated by the
 23 Tenant (such decision to abandon, desert or vacate or discontinue construction or operation of
 24 the facilities located on the Premises shall be referred to as a decision to "Discontinue
 25 Operations") or if less than ___ percent (___%) of the residential rental units located on the
 26 Premises are leased and occupied in accordance with Section 8.1 for a period of one hundred
 27 eighty (180) consecutive days or for more than one hundred eighty (180) days in any calendar
 28 year for any reason, the Town of Acton shall have the right to terminate the Lease and recover
 29 exclusive possession of the Premises by written notice to Tenant. In the event the Town of
 30 Acton exercises its right to terminate the Lease under this Section 8.2, the Lease shall terminate
 31 as of the date that is sixty (60) days after the date of the Town of Acton's notice to Tenant
 32 thereof, and Tenant's liability with respect to the Lease shall terminate as of such date, unless
 33 within such sixty (60) day period, more than ___ percent (___%) of the residential rental units
 34 located on the Premises are leased and occupied in accordance with Section 8.1 (in which event
 35 such termination notice shall have no effect).

36 8.3 Legal Requirements. Throughout the Term of this Lease, Tenant, at its expense,
 37 shall promptly comply with and shall cause all Tenant Parties to promptly comply with, all
 38 present and future laws, ordinances, orders, rules, regulations and requirements of all federal,
 39 state and municipal governments, departments, housing authorities, boards and officers, foreseen
 40 or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and
 41 the sidewalks and curbs adjoining the same, or to the use or manner of use of the same or to any
 42 of the Tenant Parties, whether or not such law, ordinance, rule, regulation or requirement is

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what happens
in event of
fire?

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1 specifically applicable or related to the conduct of the Permitted Uses, or shall affect the interior
 2 or exterior of the Improvements or any Tenant Work, or shall necessitate structural changes or
 3 improvements, or shall interfere with the use and enjoyment of the Premises (collectively,
 4 "Legal Requirements"). Tenant shall, in the event of any violation or any attempted violation
 5 of this Section by any Tenant Party, take steps, immediately upon knowledge of such violation,
 6 as Tenant determines to be reasonably necessary to remedy or prevent the same as the case may
 7 be.

8 8.4 Contests. Tenant shall have the right to contest by appropriate legal proceedings
 9 diligently conducted in good faith, in the name of Tenant, without cost or expense to the Town of
 10 Acton, the validity or application of any Legal Requirement, subject to Tenant providing the
 11 Town of Acton with written notice thereof on or before the date of contesting same, and further
 12 subject to the following:

13 (a) If, by the terms of any such Legal Requirement, compliance therewith pending the
 14 prosecution of any such proceeding may legally be delayed without the incurrance of any lien,
 15 charge or liability of any kind against the Premises or any part thereof and without subjecting
 16 Tenant or the Town of Acton to any liability, civil or criminal, for failure so to comply therewith,
 17 Tenant may delay compliance therewith until the final determination of such proceeding; and

18 (b) If any lien, charge or civil liability would be incurred by reason of any such delay,
 19 Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay
 20 would not subject the Town of Acton to criminal liability or fine, and provided that Tenant (i)
 21 bonds over such lien or furnishes to the Town of Acton security, reasonably satisfactory to the
 22 Town of Acton, against any loss or injury by reason of such contest or delay, and (ii) prosecutes
 23 the contest with due diligence; and

24 (c) The Town of Acton shall not be required to join in or become a party, nominal or
 25 otherwise, to any proceeding in which it will oppose the Commonwealth of Massachusetts or any
 26 agency, authority, branch, division, office or subdivision of the Commonwealth of
 27 Massachusetts, nor shall the Town of Acton be required in connection with any such proceeding
 28 or otherwise to oppose in any way any policy previously established by the Town of Acton nor
 29 to take a position inconsistent with a position previously taken and made public by the Town of
 30 Acton.

31 8.5 Compliance with Insurance Requirements. Throughout the Term of this Lease,
 32 Tenant, at its expense, shall observe and comply with the requirements of all policies of public
 33 liability, casualty and all other policies of insurance required to be supplied by Tenant at any
 34 time in force with respect to the Premises, and Tenant shall, without limiting any other
 35 requirements of this Lease, in the event of any violation or any attempted violation of the
 36 provisions of this Section by any Tenant Party, take all reasonable steps, immediately upon
 37 knowledge of such violation or attempted violation, to remedy or prevent the same as the case
 38 may be.

39 8.6 Property Management. Tenant will either manage the Premises personally or
 40 hire a reputable and experienced property management company to manage the Premises in
 41 accordance with the Town of Acton's guidelines in effect from time to time with respect to the

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 can change

1 9.2 Definitions. For purposes of this Article 9, "the Section 8 Program" means
 2 Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development
 3 Act of 1974 (and the federal regulations thereunder at 24 C.F.R. Part 800 et seq.); "the Section 8
 4 Regulations" means regulations promulgated by HUD under Section 8 of the Housing Act of
 5 1937; "Household" means one or more individuals occupying a Rental Unit and satisfying the
 6 standards adopted by HUD or any successor federal agency under the Section 8 Regulations;
 7 "BMSA" means the Boston Metropolitan Statistical Area established from time to time by the
 8 U.S. Bureau of the Census; "Fair Market" means the value of any Rental Unit in an arms-length
 9 transaction with a disinterested tenant; "Adjusted Income" shall be as defined in the federal
 10 regulations at 24 C.F.R. §813.102 using assumptions provided by HUD; "Aggregate Annual
 11 Household Income" means the anticipated total income from all sources received by all current
 12 members of the Household aged eighteen (18) years or older, including all net income derived
 13 from assets for the twelve (12) month period following the effective date of certification of
 14 income, and including and excluding those certain types of income as set forth in, and as
 15 determined in accordance with federal regulations at 24 C.F.R. Part 813; "Median Income"
 16 means the median Household income for the BMSA set forth in or calculated pursuant to the
 17 Section 8 Regulations. If HUD discontinues publication of Median Income statistics, then the
 18 Town of Acton shall designate another method of determining Median Income.

19 9.3 Affordability Commitments. From and after the Final Completion Date until the
 20 expiration or earlier termination of the Term of this Lease, Tenant covenants to operate
 21 multifamily housing on the Premises in accordance with the affordability commitments (the
 22 "Affordability Commitments"), set forth below:

23 (a) No less than 25% of the residential rental units will be leased to
 24 Households with Aggregate Annual Income less than or equal to sixty percent (60%) of Median
 25 Income (a Very Low Income Household). The monthly rent charged to any Very Low Income
 26 Household occupying a Rental Unit shall not exceed the lesser of:

27 (i) The Fair Market rent for existing housing for a unit comparable to
 28 the rental unit in the BMSA, as established by HUD under regulations promulgated at 24 C.F.R.
 29 §888.11, less the monthly allowance for those utilities and services (excluding telephone), if any,
 30 to be paid directly by the Household occupying a unit;

31 (ii) An amount equal to thirty percent (30%) of the monthly Adjusted
 32 Income of a Household whose gross income equals sixty percent (60%) (or such higher or lower
 33 percentage as may be established by HUD pursuant to applicable regulations under the HOME
 34 Program) of Median Income, adjusted for number of bedrooms in the rental unit. In determining
 35 the maximum monthly rent that may be charged for the rental unit under this clause (ii), the
 36 Tenant shall subtract from the above amount an allowance for any utilities and services
 37 (excluding telephone), if any, to be paid directly by the Household occupying the rental unit; or

38 (iii) If the Resident or rental unit benefits from the Section 8 Program,
 39 an amount equal to the maximum rent chargeable to an eligible tenant under the Section 8
 40 Program.

41 (b) No less than 50% of the residential rental units will be leased to

Need to confirm completely consistent with tax credits. other funding programs. We usually add "subject to Rules of Section 42 of IRS"

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what happens if family composition changes and famu becomes over-housed?

1 Households with Aggregate Annual Household Income less than or equal to eighty percent
2 (80%) of Median Income (a "Low Income Household"). The monthly rent charged to the Low
3 Income Household occupying the rental unit in the Premises shall not exceed the lesser of:

4 (i) The Fair Market rent for existing housing for a unit comparable to
5 the Rental Unit in the BMSA, as established by HUD under regulations promulgated at 24
6 C.F.R. §888.11, less the monthly allowance for those utilities and services (excluding telephone),
7 if any, to be paid directly by the Household occupying a rental unit;

8 (ii) An amount equal to thirty percent (30%) of the monthly Adjusted
9 Income of a Household whose gross income equals eighty percent (80%) (or such higher or
10 lower percentage as may be established by HUD pursuant to applicable regulations under the
11 HOME Program) of Median Income, adjusted for number of bedrooms in the rental unit. In
12 determining the maximum monthly rent that may be charged for the rental unit under this clause
13 (ii), the Tenant shall subtract from the above amount an allowance for any utilities and services
14 (excluding telephone), if any, to be paid directly by the Household occupying the rental unit; or

15 (iii) If the Resident or the rental unit benefits from the Section 8 Program, an amount
16 equal to the maximum rent chargeable to an eligible tenant under the Section 8 Program. If, after
17 initial occupancy, the income of a Resident of an affordable housing unit increases, and, as a
18 result of such increase, exceeds the maximum income permitted hereunder for such a Resident,
19 Tenant shall not be in default hereunder so long as either (a) the Resident income does not
20 exceed one hundred forty percent (140%) of the maximum income permitted or (b) Tenant rents
21 the next available unit at the Premises as an affordable housing unit in conformance with the
22 Affordability Commitments, or otherwise demonstrates compliance with the Affordability
23 Commitments.

24 As a condition to occupancy of an affordable unit, each potential Resident shall be
25 required to sign and deliver to Tenant an income certification using a form adopted for such use
26 by Tenant and reasonably approved by the Town of Acton.

27 Tenant shall ensure that all affordable housing units shall be of comparable quality to the
28 other units in the Premises, and, to the greatest extent practicable, shall be dispersed evenly
29 throughout the Premises. If the Improvements are comprised of more than one (1) building, each
30 building shall have a proportionate share of affordable housing units.

31 9.4 Lease Form. Tenant shall not include in any lease for a rental unit any provisions
32 which conflict with or violate Massachusetts or Federal law. Each lease for a rental unit shall be
33 for a term of not less than one (1) year, unless otherwise mutually agreed to by and between
34 Tenant and the Resident, and shall require the Resident to provide information required for the
35 Tenant to meet its reporting requirements under this Lease. Tenant may not terminate the
36 tenancy or refuse to renew the lease of Residents except (i) for serious or repeated violation of
37 the terms and conditions of the lease for the rental unit, (ii) for violations of applicable federal,
38 state or local law, or (iii) for other good cause. Any termination or refusal to renew, excepting
39 any notice to quit for nonpayment of rent, must be preceded by not less than thirty (30) days
40 written notice by the Tenant served on the Resident, which notice shall specify the grounds for
41 termination or refusal to renew. A notice to quit for nonpayment of rent must be preceded by not

*see
comments
previous
page
re:
Section 42
IRS*

*in whose
determination*

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1 less than fourteen (14) days written notice by the Tenant served on the Resident.

2 9.5 Records and Annual Report. Tenant covenants and agrees to secure and maintain
3 on file for inspection and copying by the Town of Acton such information, reports and
4 certifications as the Town of Acton may reasonably require in writing in order to ensure that the
5 Affordability Commitments are being complied with. Tenant further covenants and agrees to
6 notify the Town of Acton in writing if Tenant discovers non-compliance with any restrictions
7 hereunder. The Tenant represents, warrants and covenants that the determination of whether a
8 Household meets the income requirements set forth herein shall be made by Tenant at the time of
9 leasing or renting a rental unit and thereafter at least annually on the basis of the then current
10 income of such Household. The Tenant shall maintain as part of its records copies of leases of
11 the rental unit and all initial and annual income certifications by the Household occupying the
12 rental unit. Within ninety (90) days after the end of each calendar year, the Tenant shall provide
13 to the Town of Acton an annual report, in a form previously approved by the Town of Acton,
14 consisting of certifications regarding the size, the aggregate annual and monthly gross and
15 Adjusted Income, head of Household characteristics, rent and rental assistance of the Households
16 occupying the rental units (the "Tenant's Annual Report"). With respect to any Household that
17 moved into a rental unit in the prior year, the Annual Report shall also include the foregoing
18 certifications for such Household at the time of its initial occupancy of any rental unit. The
19 Annual Report shall contain such supporting documentation as the Town of Acton shall
20 reasonably require. In addition to the foregoing, the Tenant shall keep such additional records
21 and prepare and submit to the Town of Acton such additional reports as the Town of Acton may
22 deem necessary to ensure compliance with the requirements of this Lease and the HOME
23 Program (if applicable).

24 9.6 Rental Unit Standards. The Tenant covenants, agrees and warrants that the
25 residential rental units at all times shall be suitable for occupancy and in compliance with all
26 local health, safety and building codes. The Town of Acton shall have the right to enter the
27 Premises upon reasonable notice and at reasonable times to inspect the same and to verify
28 compliance with the aforesaid codes.

29
30 **ARTICLE 10**

31 **DAMAGE OR DESTRUCTION**

32
33 Tenant shall give prompt written notice to the Town of Acton after the occurrence of any fire,
34 earthquake, act of God or other casualty to or in connection with the Premises. If the whole or
35 any part of the Premises be damaged or destroyed by any cause whatsoever, whether insured or
36 uninsured, at any time during the Term of this Lease, Tenant will irrespective of insurance
37 proceeds, promptly commence to replace or repair the portion of the Premises that is damaged or
38 destroyed, and complete such repair and/or restoration with due diligence and at its sole cost and
39 expense, with such changes, alterations or modifications as are reasonably determined by Tenant
40 so long as such changes, alterations or modifications (a) do not diminish the overall utility for the
41 Permitted Uses, and (b) comply with the aesthetic requirements contained in the RFP. The
42 parties recognize that such damage or destruction may require emergency replacement or repair.

We would need insurance proceeds to start repair

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1 (a) Except for Existing Contamination (hereinafter defined), neither the Town
 2 of Acton nor, to the Town of Acton's knowledge, the Premises (i) has received notice of any
 3 private or governmental lien or judicial or administrative notice, order or action relating to
 4 Hazardous Materials or environmental liabilities or violations with respect to the Premises, or (ii)
 5 is in, or with any applicable notice or lapse of time, or failure to take certain curative or remedial
 6 actions, will be in, either direct or indirect violation of any Environmental Laws. For purposes
 7 hereof, "Existing Contamination" shall mean any and all pollution or contamination caused by
 8 any Hazardous Material that previously existed or exists in, or was released onto the Premises as
 9 of the Commencement Date, the types and quantities of which have been disclosed in the
 10 environmental assessment reports described in Exhibit D.

Not Included

11 (b) No activity shall be undertaken on the Premises by the Town of Acton
 12 which would cause (i) the Premises to be considered a hazardous waste treatment, storage or
 13 disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of
 14 Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or the
 15 discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under
 16 any Environmental Laws and for which no such permit has been issued.

17 12.4 Hazardous Materials Defined. For purposes of this Lease, "Hazardous
 18 Materials" shall mean, but shall not be limited to, any oil, petroleum product and any hazardous
 19 or toxic waste or substance any substance which because of its quantitative concentration,
 20 chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or
 21 may reasonably be expected to constitute or contribute to a danger or hazard to public health,
 22 safety or welfare or to the environment, including without limitation any asbestos (whether or
 23 not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and
 24 chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and
 25 compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical,
 26 biological and radioactive wastes, or any other similar materials which are included under or
 27 regulated by any Environmental Law.

28 12.5 Notices.

29 (a) Tenant shall provide the Town of Acton with copies of any notices of
 30 releases of Hazardous Materials which are given by or on behalf of Tenant to any federal, state
 31 or local agencies or authorities with respect to the Premises. Such copies shall be sent to the
 32 Town of Acton concurrently with mailing or delivery to the governmental agencies or
 33 authorities. Tenant also shall provide the Town of Acton with copies of any notices of
 34 responsibility or any other notices received by or on behalf of Tenant from any such agencies or
 35 authorities concerning any non-compliance with Environmental Laws on or about the Premises,
 36 including but not limited to notices regarding Hazardous Materials or substances located on or
 37 about the Premises. In addition, in connection with any litigation or threat of litigation affecting
 38 the Premises, Tenant shall deliver to the Town of Acton any documentation or records as the
 39 Town of Acton may reasonably request and which are in Tenant's possession and may be
 40 lawfully delivered to the Town of Acton, and the Town of Acton shall deliver to Tenant any
 41 documentation or records as Tenant may reasonably request and which are in the Town of
 42 Acton's possession and may be lawfully delivered to Tenant.

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1 Sublessees as defined in Section 13.2 below) to occupy or use the Premises or any portion
 2 thereof without the prior written consent of the Town of Acton, which consent shall not be
 3 unreasonably withheld, delayed or conditioned, provided such assignee or transferee shall (i)
 4 have a good reputation in the community, (ii) use and operate the Premises for the Permitted
 5 Uses, (iii) have substantial and successful experience in operating affordable rental housing
 6 facilities that are similar in size and nature to the Premises, and (iv) have a financial condition
 7 and creditworthiness reasonably adequate to enable such assignee or transferee to meet the
 8 obligation of the Tenant under this Lease for the remainder of the Term. The foregoing
 9 prohibition on transfers shall include any reorganization, dissolution or merger of Tenant or its
 10 general partner (if Tenant is a partnership) or managing member (if Tenant is a limited liability
 11 company), whether by operation of law or otherwise, the admission of any new general partner
 12 (if Tenant is a partnership) or managing member (if Tenant is a limited liability company), or the
 13 withdrawal of its current general partner (if Tenant is a partnership) or managing member (if
 14 Tenant is a limited liability company), a transfer of ten percent (10%) or more of the ownership
 15 interests in Tenant or its general partner (if Tenant is a partnership) or managing member (if
 16 Tenant is a limited liability company) or any similar transaction. The Town of Acton's consent
 17 to an assignment, transfer, disposition or subletting in any one instance will not waive the
 18 requirement of its consent to any subsequent assignment, transfer, disposition, or subletting.

This needs to exempt any transfer to a related party of sponsor

19 13.2 Permitted Subletting. Tenant may enter into any sublease, license agreement or
 20 other agreement creating rights of occupancy for third parties in the residential rental units, in
 21 whole or in part ("Permitted Sublessees" and each tenant thereunder, a "Permitted Sublessee"),
 22 provided that (a) the Permitted Subleases do not violate the Affordability Commitments, (b) the
 23 term of any Permitted Sublease shall end prior to the expiration of the Term, and (c) upon
 24 expiration of the Term or the earlier termination of this Lease as provided herein, all of Tenant's
 25 right, title and interest as lessor under any Permitted Subleases in effect on the date of such
 26 expiration or earlier termination shall automatically be assigned to the Town of Acton and the
 27 Town of Acton shall automatically be deemed, without the need for any instrument of transfer or
 28 assignment, to have assumed all of Tenant's obligations under such Permitted Subleases.

29 13.3 Leasehold Mortgages.

30 (a) Notwithstanding anything to the contrary contained in this Lease, Tenant
 31 may, upon prior written notice to the Town of Acton, from time to time, encumber, hypothecate
 32 or mortgage its interest in the Premises with one or more mortgages, assignments of leasehold
 33 interest or any other security instruments in favor of an institutional lender or lenders as partial
 34 security for a loan or loans (a "Permitted Institutional Mortgage" and the holder of such
 35 Permitted Institutional Mortgage, a "Permitted Institutional Mortgagee"). Each such
 36 Permitted Institutional Mortgage shall be expressly subject to the terms and conditions of this
 37 Lease. Tenant shall promptly deliver to the Town of Acton a true copy of the Permitted
 38 Institutional Mortgage and any assignment thereof. Tenant shall notify the Town of Acton of the
 39 address of the Permitted Institutional Mortgagee to which notices may be sent. The Town of
 40 Acton and Tenant hereby agree that there shall be no cancellation, surrender or any modification
 41 of this Lease that would adversely affect such Permitted Institutional Mortgagee's rights
 42 hereunder without the prior consent in writing of the Permitted Institutional Mortgagee.

Does this include state mortgage or Developer's Fee mortgage?

43 (b) Permitted Institutional Mortgages not Assignment. For the purpose of this

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1 Article 13, the making of a Permitted Institutional Mortgage shall not be deemed to constitute an
 2 assignment or transfer of this Lease, nor shall any Permitted Institutional Mortgagee, as such, be
 3 deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to
 4 require such Permitted Institutional Mortgagee, as such, to assume the performance of any of the
 5 terms, covenants or conditions on the part of Tenant to be performed hereunder; but the
 6 purchaser at any sale of the leasehold interest created by this Lease in any proceedings for the
 7 foreclosure of any Permitted Institutional Mortgage, or the assignee or transferee of such
 8 leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any
 9 Permitted Institutional Mortgage, shall be deemed to be an assignee or transferee (without
 10 requiring the consent of the Town of Acton pursuant to Section 13.1 above) and shall be deemed
 11 to have assumed the performance of all of the terms, covenants and conditions on the part of
 12 Tenant to be performed hereunder from and after the date of such purchase and assignment, and
 13 shall execute a written instrument assuming Tenant's obligations hereunder promptly upon
 14 request by the Town of Acton.

15 (c) Permitted Institutional Mortgagee Cure Rights. In the event of any default
 16 in the payment of money, Permitted Institutional Mortgagee, without being under any obligation
 17 to do so, shall have the right to cure such monetary default within ninety (90) days after the
 18 giving of notice to it by the Town of Acton. In the case of any default by the Tenant other than
 19 in the payment of money hereunder, the Town of Acton will take no action pursuant to Article 14
 20 hereunder by reason of any such default without first giving to the Permitted Institutional
 21 Mortgagee notice thereof simultaneously with notice given to Tenant, and the right, but not the
 22 obligation, for a period of one hundred twenty (120) days after notice of such Tenant default, to
 23 cure such default, or, if such default cannot reasonably be cured within such one hundred and
 24 twenty (120) days, such longer period as is required to cure such default, including such period
 25 of time as may reasonably be required for Permitted Institutional Mortgagee to obtain possession
 26 of the Premises or title to the Tenant's leasehold estate created hereby, provided, that the
 27 Permitted Institutional Mortgagee shall have commenced cure or appropriate measures to obtain
 28 possession of the Premises or title to the Tenant's leasehold estate created hereby, within such
 29 one hundred and twenty (120) day period and thereafter continues diligently to effect such cure,
 30 or obtain such possession or title. The Permitted Institutional Mortgagee shall not be required to
 31 continue such foreclosure proceedings if the default shall be cured by Tenant; provided, further,
 32 that nothing herein shall preclude the Town of Acton from exercising any rights or remedies
 33 under this Lease with respect to any other default by Tenant during any period of such
 34 forbearance, provided the exercise of such rights or remedies are subject to the same cure rights
 35 of the Permitted Institutional Mortgagee as set forth herein. Upon the expiration of any
 36 applicable cure period, the Town of Acton shall notify the Permitted Institutional Mortgagee
 37 whether or not Tenant has effectuated a cure within said cure period. The provisions of this
 38 Section 13.3(c) are conditioned on the following provisions:

*These will
 be subject
 to approval
 of
 mortgagees*

39 (i) Acquisition of Possession. The Permitted Institutional Mortgagee
 40 shall, within sixty (60) days after notice of such Tenant non-monetary default, notify the Town
 41 of Acton of its election to proceed with due diligence promptly to acquire possession of the
 42 Premises or to foreclose the Permitted Institutional Mortgage or otherwise to obtain ownership of
 43 Tenant's interest in this Lease. Such notice from the Permitted Institutional Mortgagee shall be
 44 accompanied by an instrument in writing wherein such Permitted Institutional Mortgagee agrees
 45 that:

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ARTICLE 14

TERMINATION AND DEFAULT

14.1 Events of Default. Each of the following events shall be deemed an "Event of Default" hereunder:

Subject to
lenders
approval
They may
have
concerns

(a) If Tenant shall fail to pay, as and when due, any payment of Rent or other sums payable under this Lease, and such failure shall continue for a period of sixty (60) days after notice from the Town of Acton to Tenant;

(b) If Tenant shall fail to comply with the provisions of Section 8.2 hereof with respect to Permitted Uses of the Premises or Section 9.2 hereof with respect to Resident Selection and Affordability Commitments;

(c) If Tenant shall fail to maintain any insurance required to be maintained by Tenant hereunder;

(d) If Tenant shall fail to perform or comply with any other of the agreements, terms, covenants or conditions in this Lease, other than those referred to in Subsections (a) - (c) of this Section 14.1, for a period of ninety (90) days after notice from the Town of Acton to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such ninety (90) day period, within such additional time reasonably necessary provided Tenant commences to cure the same within such 90-day period and thereafter prosecutes the curing of such default with diligence;

(e) If Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant's leasehold estate for whatever reason, or Tenant shall make an assignment for the benefit of creditors, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Tenant any such proceedings which are not dismissed or stayed on appeal or otherwise within ninety (90) days, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated or stayed on appeal;

(f) If Tenant vacates or abandons the Premises for a period of more than forty-five (45) consecutive days; *provided, however,* that Tenant shall not be deemed to have vacated or abandoned the Premises with respect to any period during with all or portions of the Premises may be vacant as a result of or in connection with work being done to repair or restore the Premises in accordance with Article 11 hereof following a casualty or partial Taking or to renovate and improve the Premises, provided that in any such case Tenant shall prosecute such work to completion as diligently and promptly as practicable;

(g) If this Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not discharged within one hundred twenty (120) days after its levy; and

(h) Tenant makes any assignment in violation of this Lease.

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If contested, what if legal process takes more than 120 days?

1 agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be
 2 performed or complied with by either the Town of Acton or Tenant, and no breach thereof, shall
 3 be waived, altered or modified except by a written instrument executed by the other party. No
 4 waiver by the Town of Acton or Tenant of any breach shall affect or alter this Lease, but each
 5 and every agreement, term, covenant and condition hereof shall continue in full force and effect
 6 with respect to any other then existing or subsequent breach thereof.

7 14.5 Injunctive Relief. In the event of any breach or threatened breach by Tenant of
 8 any of the agreements, terms, covenants or conditions contained in this Lease, the Town of
 9 Acton shall be entitled to enjoin such breach or threatened breach and shall have the right to
 10 invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-
 11 entry, summary proceedings, and other remedies were not provided for in this Lease.

12 14.6 Remedies Cumulative. Each right and remedy provided for in this Lease shall be
 13 cumulative and shall be in addition to every other right or remedy provided for in this Lease or
 14 now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or
 15 beginning of the exercise by the Town of Acton or Tenant of any one or more of the rights or
 16 remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute
 17 or otherwise shall not preclude the simultaneous or later exercise by the party in question of any
 18 or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in
 19 equity or by statute or otherwise.

20
 21 **ARTICLE 15**

22 **SURRENDER; HOLD-OVER**

23
 24 15.1 Surrender.

25 (a) Tenant shall on the last day of the Term, or upon any earlier termination of
 26 this Lease, quit and peacefully surrender and deliver up the Premises, including the
 27 Improvements, subject to the rights of a Permitted Institutional Mortgagee hereunder, to the
 28 possession and use of the Town of Acton without delay and in good order, condition and repair
 29 (excepting only reasonable wear and tear and damage from a Taking or from a fire or other
 30 casualty after the last repair, replacement, restoration or renewal required to be made by Tenant
 31 all as provided under this Lease). The Premises shall be surrendered free and clear of all liens
 32 and encumbrances other than those existing at the commencement of the Term, those permitted
 33 under this Lease or created or suffered by the Town of Acton and shall be surrendered without
 34 any payment by the Town of Acton on account of the Improvements. Upon or at any time after
 35 the expiration or earlier termination of this Lease, the Town of Acton shall have, hold and enjoy
 36 the Premises and the right to receive all income from the same.

37 (b) Tenant shall remove from the Premises all personal property within thirty
 38 (30) days after the termination of this Lease and shall repair at Tenant's sole cost any damage to
 39 the Premises caused by such removal, unless the Town of Acton permits such property to
 40 remain.

*debt-free — what
 will D&D require
 re: repayment of
 their loans?
 What if we need to
 finance capital
 improvements
 in future?*

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*-31-
 assume we won't
 need to terminate
 residents' leases.*