

## **AFFORDABLE HOUSING AGREEMENT**

This **AFFORDABLE HOUSING AGREEMENT** (“Agreement”) is made and entered into as of the 2<sup>nd</sup> day of April, 2025 (the “Effective Date”) by and between the **TOWNSHIP OF MORRIS**, in Morris County, a municipal corporation of the State of New Jersey (the “Township”), with a mailing address of 50 Woodland Avenue, P.O. Box 7603, Convent Station, New Jersey 07961, and Morris Ketch Road, LLC, a New Jersey limited liability company (the “Developer”), with an address at c/o Lillian A. Plata, Esq., Member, TUS Advisory Group LLC, 6 Atlantic St, First Floor, Newark, New Jersey 07102.

### RECITALS:

**WHEREAS**, the Developer and the Township identified a certain parcel of land within the Township of Morris identified as a portion of Block 1901, Lots 1 and 1.01 on the official tax map of the Township (the “Property”), more particularly described on **Exhibit A** attached hereto, which Property is currently owned by the County of Morris, as suitable for a 100% affordable housing project; and

**WHEREAS**, following discussions with the Developer about the suitability of the Property for a 100% affordable tax credit housing project, the Township is acquiring control of the Property from the County of Morris to further implement its affordable housing plan; and

**WHEREAS**, the Township agrees to subsequently convey control of the Property to the Developer, or a Permitted Transferee (as hereinafter defined), for a nominal price so long as the Developer develops the Property with affordable housing; and

**WHEREAS**, the Developer intends to develop approximately 50 units of family low and moderate income housing on the Property, including supportive housing units, of which at least twenty five percent (25%) will be set aside for three (3) bedroom units, together with such other improvements as may be necessary such as leasing offices, community meeting space, landscaping, curbing, and paving (the “Project”); and

**WHEREAS**, in connection with its ongoing efforts to satisfy the obligations of New Jersey’s Fair Housing Act and the judicial requirements of the Mount Laurel Doctrine, which are currently under the jurisdiction of Superior Court of Morris County in furtherance of the decision of the New Jersey Supreme Court known as In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, the Township has deemed it appropriate to take certain actions in support of the Project as further described herein;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. Certain terms used in this Agreement are defined in this Section or other portions of this Agreement by reference to other documents. Each term defined shall have the meaning given it unless the context clearly indicates otherwise. The following terms are defined in this Section:

- (a) "Agreement" shall mean this Affordable Housing Agreement;
- (b) "Event of Default" shall have the meaning set forth in Section 7.1 of this Agreement;
- (c) "Forced Delay" shall mean delay or delays due to: war; insurrection; strikes; riots; floods; earthquakes; acts of God; fires; casualties; governmental restrictions; pandemics or epidemics; litigation; acts or failures to act of any public or governmental agency or entity not attributable solely to the Developer or affiliates of the Developer; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform;
- (d) "Hazardous Substances" shall mean any pollutants, contaminants, or industrial, toxic, hazardous, or extremely hazardous chemicals, wastes, materials or substances which are defined, determined, classified or identified as such in any Hazardous Substances Law, including, without limitation, oil, petroleum, petroleum by-products, friable asbestos, polychlorinated biphenyls, and urea formaldehyde;
- (e) "Hazardous Substances Law" shall mean all applicable statutes, laws, acts, ordinances, rules, regulations, orders, decrees, and rulings of any federal, New Jersey and/or local governmental or quasi-governmental body, agency, board, commission and/or court relating to the protection of health and/or the environment or otherwise regulating and/or restricting the use, storage, disposal, treatment, handling, release and/or transportation of Hazardous Substances including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended, The Resource Conservation and Recovery Act of 1976, as now or hereafter amended, and the Environmental Control Laws of the State of New Jersey as now or hereafter amended, and all regulations respectively promulgated thereunder;
- (f) "NJDEP" shall mean the New Jersey Department of Environmental Protection;
- (g) "NJHMFA" shall mean the New Jersey Housing and Mortgage Finance Agency;
- (h) "Plans and Specifications" shall mean those plans and specifications that will be developed for the construction of the Project as they may be amended from time to time and as approved by the Township construction official;

(i) "Project" shall mean the Developer's interest in the Property and the construction of approximately 50 low and moderate income housing units, including supportive housing units, of which at least 25% will be set aside for three (3) bedroom units, to be used and maintained in accordance with Section 42 of the Internal Revenue Code;

(j) "Tax Credits" shall have the meaning set forth in Section 4.3 of this Agreement; and

(k) "Tax Credit Closing" shall have the meaning set forth in Section 4.1 of this Agreement.

Section 1.2. Headings. The headings of this Agreement are for convenience only and shall not define or limit the provisions of this Agreement.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of the Developer. The Developer represents and covenants that: (a) it is a duly organized and validly existing limited liability company under the laws of the State of New Jersey; (b) to the best of the Developer's knowledge, it is not in violation of or in conflict with any applicable provisions of the laws of the State of New Jersey or any other agreement related to the Project which would impair its ability to carry out its obligations under this Agreement; (c) it is empowered to enter into the transactions contemplated by this Agreement; (d) it has duly authorized the execution, delivery, and performance of this Agreement; (e) there is no litigation or proceeding pending, or to the knowledge of the Developer, threatened, against the Developer or to the knowledge of the Developer, any other person affecting in any material manner whatsoever the right of the Developer to execute this Agreement or to otherwise comply with its obligations contained in this Agreement; (f) when executed by duly authorized officers of its managing member, this Agreement will be binding upon the Developer and enforceable in accordance with its terms; and (g) other than the Municipal Contribution, the construction and development of the Project shall be at the sole cost and expense of the Developer through its own equity, loan proceeds, proceeds from the sale of low income housing tax credits, and such other sources as may be deemed necessary by the Developer. The Developer covenants and agrees that the Municipal Contribution shall be used only for the purposes permitted in this Agreement.

Section 2.2. Representations and Covenants of the Township. The Township represents and covenants that: (a) it is empowered to enter into the transactions contemplated by this Agreement; (b) it has duly authorized the execution, delivery and performance of this Agreement; (c) there is no litigation or proceeding pending, or to the knowledge of the Township threatened, against the Township or any other person affecting in any material manner whatsoever the right of the Township to execute this Agreement or to otherwise comply with its obligations contained in this Agreement; and (d) it will cooperate in responding to reasonable requests for action in a prompt and timely manner in order to assist the Developer in meeting its completion deadlines with respect to application for, and compliance with, the federal low-income housing tax credits

for the Project, including, without limitation, scheduling such special meetings as may be necessary.

### ARTICLE III

#### AFFORDABLE HOUSING

##### Section 3.1 Adoption of Housing Element and Fair Share Plan; Submission to Court.

In connection with the judicial rules established for the determination of New Jersey municipalities' "Round 3" affordable housing obligations under the Fair Housing Act, the "Mount Laurel" line of cases and In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, the Township agrees to include the Project and the Municipal Contribution in its Housing Element, Fair Share Plan, and Spending Plan (collectively, the "Plan") as described in this Agreement. If deemed necessary and mutually agreed to by the Township and the Developer in connection with the applications for Tax Credits and/or other project funding, the Township shall make its best efforts to have the Township Planning Board amend the Plan to include the Project and obtain approval of the Project's inclusion in the Plan from any necessary court having jurisdiction over the Township's affordable housing obligations. Further, the Township's Settlement Agreement ("Settlement Agreement") shall be amended, to the extent necessary, to include the 50 unit project on the Property and to extend the "accompanying protection" period for one year from July 1, 2025 to July 1, 2026. The Township shall enter into a Consent Order, to be approved by Fair Share Housing Center and the Developer to effectuate the amendment of the Settlement Agreement. While the Township is seeking approval of its amended Plan to include the Project, and amended Settlement Agreement and related consent order, Developer and the Township shall cooperate to advance the Project via preparation of plans and applications for Affordable Housing Production Fund financing and the approvals and financing required by Article IV herein.

Section 3.2 Affordable Housing Requirements. Developer shall satisfy the 100% affordable housing obligation required in connection with the Project, and shall set aside at least twenty five percent (25%) of all residential units developed for three (3) bedroom units, as described herein (the "Affordable Units"). At least five (5) of the Affordable Units shall be supportive housing for those individuals with Intellectual and Developmental Disabilities ("Supportive Housing"). Other than those Supportive Housing Units, all other Affordable Units shall be non-age-restricted family rental units and shall fully comply with Section 42 of the Internal Revenue Code relative to Federal Low-Income Housing Tax Credits ("Section 42"), including but not limited to the required bedroom and income distribution.

Further, the Affordable Units shall be subject to affordability controls of 30 years, via a deed of easement and restrictive covenant acceptable to NJHMFA and the Township. The deed restriction may be extended beyond 30 years by mutual agreement of the Parties, provided that the Developer is able to obtain financing to redevelop the Project and the Township provides a PILOT for the duration of the extension.

### ARTICLE IV

#### OTHER TOWNSHIP RESPONSIBILITIES

Section 4.1. Redevelopment; PILOT; Development Approvals; Cost Generative Features.

(a) The parties acknowledge that the Property is not currently zoned to permit development of the Project. As such, the Township shall designate the Property as in need of redevelopment and adopt a redevelopment plan (the "Redevelopment Plan") pursuant to the Local Redevelopment & Housing Law, N.J.S.A. 40A:12A-1, et seq. (the "LRHL"), that allows for the development of the Property for an affordable development and the construction of the Project. The Township shall adopt the Redevelopment Plan as soon as reasonably practicable, but no later than June 19, 2025.

(b) No later than thirty (30) days from the Effective Date, the Township shall adopt a Resolution of Need for the Project, and no later than ninety (90) days from the Effective Date, the Township shall adopt a resolution authorizing a payment in lieu of tax agreement under N.J.S.A. 55:14K-37 or N.J.S.A. 40A:20-1, et seq., with an annual service charge of 1% of annual project revenues (the "PILOT"). In the event that the payment in lieu of tax agreement establishes an annual service charge higher than 1% of annual project revenues, the Parties agree that the Municipal Contribution shall also increase.

(c) So long as the Developer submits an application for preliminary site plan for the Project (the "Site Plan Application") at least forty-five (45) days in advance of the scheduled hearing date, the Planning Board shall schedule a public hearing on the Site Plan Application. The Planning Board shall schedule special meetings, if necessary, to meet the September 2025 NJHMFA funding round.

(d) The Township shall comply with Section 14(b) of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., which incorporates the need to eliminate unnecessary cost-generating features of the municipal ordinances impacting development. Accordingly, the Project shall not be subject to such standards that are determined to be unnecessary or that are determined not to be essential to protect the public welfare, and to expedite or fast track municipal approvals/denials for the Project, as defined by relevant law, including but not limited to working with the Planning Board to schedule such special meetings as may be necessary to insure the Project receives such approvals as shall be required to timely apply for the Tax Credits.

Section 4.2. Municipal Contribution; Right of First Refusal. The Township and Developer shall agree to one of the following financial structures to finance the Project, which may include a contribution from the Township of the Property, and/or a loan as set forth below in Sections 4.2(a). The Township may also contribute the reimbursement or forgiveness of any fees payable to the Township pursuant to Township ordinances, including but not limited to, application, escrow and permit fees. Collectively, the cash contribution, land donation, and/or reimbursement or fee forgiveness shall be collectively referred to as the "Municipal Contribution". Said Municipal Contribution shall be made to the Developer at the closing of the tax credit financing (the "Tax Credit Closing") for the Developer, provided the conditions to disbursement set forth in Section 4.3, below, have been met.

(a) Subject to the Developer's satisfaction of the conditions of this Agreement, the Township agrees to make a Municipal Contribution to support the Project, which Municipal Contribution shall be capped at land donation and an amount not to exceed Four Hundred Thousand Dollars (\$400,000.00) in the event that the Project is awarded 9% tax credits.

(b) In accordance with the requirements of N.J.S.A. 40A:12-21, any Municipal Contribution can only be used for the purpose of constructing housing for low or moderate income persons or families or persons with disabilities. In the event the Property ceases to be used for these purposes, and the Township as Grantor does not agree to waive or release this limitation pursuant to N.J.S.A. 40:60-51.2, subject to the County simultaneously agreeing not to waive or release this limitation, the Township shall have a right to purchase the Property, including the Project for an amount equal to the fair market value of the Project improvements, as set forth herein, which shall not be less than the outstanding debt on the Property and taxes owed as a result by Developer, the owner of the Project or its direct or indirect members, unless the Developer (a) continues to use the Project as housing for low and moderate income persons or families or families with disabilities (after a sufficient notice and cure period); or (b) agrees to pay the Township for the fair market value of the land at that time. Contemporaneously, in the event that the Property reverts back to the Township pursuant to this Section 4.2(b), ownership of the Property shall automatically revert back to the County of Morris if the Township, or a subsequent owner/operator, fails to use the Project as housing for low and moderate income persons or families or families with disabilities. In the event the Property ceases to be used for affordable housing and the NJHMFA or investor do not take control of the Project to return it to affordable housing within six (6) months of the Developer's failure to use the Property for affordable housing, the Property shall revert to the Township upon the Township identifying a new affordable housing operator and/or owner within six (6) months of the NJHMFA and/or investor's failure to undertake the Project. Upon the Township's transfer to the new affordable housing operator and/or owner, the Township shall reimburse the Developer for the fair market value of the improvements, with a credit being given to the Township for any monetary Municipal Contribution made in connection with the Project. For the avoidance of doubt, a credit shall not be given for the value of the land.

Section 4.3. Conditions to Disbursement. The obligation of the Township to make a Municipal Contribution to the Developer (or a Permitted Transferee) shall be expressly conditioned upon the satisfaction of each and every one of the following:

(a) The County of Morris shall have terminated its lease of the Property to the Morris County Affordable Housing Corporation;

(b) The County of Morris shall have amended its lease with ARC/Morris, such that the Property is no longer subject to this lease;

(c) The County of Morris shall have conveyed title to the Property free and clear (except for the reverter clause set forth in Section 4.2(b) above) to the Township;

(d) The Project shall have received all final, unappealable major and minor site plan approvals and zoning approvals required by the Township of Morris, in its sole discretion and that of the Township's Planning Board in accordance with its applicable ordinances, in connection with the development of the Project;

(e) The Project shall have received all approvals required by the County of Morris (if any) in connection with the development of the Project, including, but not limited to, the Morris County Planning Board and the Morris County Soil Conservation District;

(f) The Project shall have received all approvals required by the State of New Jersey or any department, agency or authority thereof, including, but not limited to the NJDEP, the New Jersey Department of Transportation, and the NJHMFA;

(g) The Project shall have received an allocation of federal low-income housing tax credits (“Tax Credits”) from the NJHMFA in accordance with Section 4.2 above and sufficient in amount, together with other financing, to finance the Project within the limits of the Municipal Contribution caps set forth herein; and

(h) The Project shall have received a first mortgage loan commitment from the NJHMFA or other first mortgage lender or such other financing, as necessary to finance the Project within the limits of the Municipal Contribution caps set forth herein.

For the avoidance of doubt, in the event that any one of the conditions of disbursement set forth in Sections 4.3(a)-(h) above are not met, this Agreement shall terminate, subject to the Section 8.1(b).

Section 4.4. Sale or Transfer. The Project shall not be sold or transferred without the prior written consent of the Township, which consent shall not be unreasonably withheld, subject to all statutory and regulatory requirements and conditions applicable to transfer of the Project. The Developer agrees that the Township shall not be deemed unreasonable in refusing to consent to the sale or transfer of the Project if (a) the Developer is in material default under this Agreement or the Federal and State Regulations, and such default has continued beyond any applicable cure period; (b) the Township reasonably believes that the risk of a breach of any covenant or agreement contained in this Agreement or the Financing, Deed Restriction and Regulatory Agreement would be increased as a result of such sale or transfer; (c) the Township reasonably believes that the prospective transferee has insufficient experience or net worth to operate the Project in a manner satisfactory to the Township, or has willfully violated affordability or management covenants with the Township or other public agencies; or (d) the Township reasonably believes that such sale or transfer will result in the loss of the Project’s exemption from real estate taxes, without satisfactory payment or arrangement therefor. No such sale or transfer shall be effective until the transferee signs an assumption agreement that is acceptable to the Township and that obligates the transferee to keep all the covenants and agreements contained in this Agreement and/or the Financing, Deed Restriction and Regulatory Agreement that will be recorded in connection with the NJHMFA first mortgage.

Notwithstanding the foregoing, the Developer has the right to form one or more affiliated entities under common control with the Developer, including an urban renewal entity (each, a “Permitted Transferee”), to hold title or interest to the Project and/or the Property and develop, construct, maintain and/or operate the Project as contemplated hereunder and the Developer shall have the right to assign this Agreement in whole or in part to such Permitted Transferee, without the approval of the Township but upon written notice to the Township (a “Permitted Transfer”). In the event of a Permitted Transfer, the respective rights, duties and obligations of the Township shall

not be diminished or modified as a result of the Developer's determination to make use of such Permitted Transferees and the Permitted Transferee shall become responsible for satisfaction of the Developer's duties and obligations hereunder and the Township shall look to such Permitted Transferee for performance of such duties and obligations.

Notwithstanding anything to the contrary contained herein, the withdrawal, removal and/or replacement of the Developer's or a Permitted Transferee's managing member(s) for cause in accordance with operating agreement of the Developer or the Permitted Transferee (the "Operating Agreement") shall not require the consent of Township and shall not constitute a default under this Agreement. If the investor member of the Developer exercises its right to remove a member thereof under the Operating Agreement, the Township shall not unreasonably withhold its consent to any substitute managing member proposed by the investor member. In no event shall the Township's consent be required if the investor member or its affiliate decides to serve as the substitute managing member. Notwithstanding the foregoing, the substitute managing member shall assume all of the rights and obligations of the removed managing member under this Agreement, the Financing, Deed Restriction and Regulatory Agreement, and the Federal and State Regulations.

Notwithstanding anything to the contrary contained herein, the replacement of the Developer as a result of the foreclosure of the NJHMFA first mortgage or any other first mortgage lender (including the construction lender) shall not require the consent of the Township and shall not constitute a default under this Agreement, *provided that*, the replacement entity signs an assumption agreement that obligates it keep all the covenants and agreements contained in this Agreement and/or the Financing, Deed Restriction and Regulatory Agreement that will be recorded in connection with the NJHMFA first mortgage.

Section 4.5. Closing Costs. The Developer shall pay all title-related closing costs in connection with the closing of the Municipal Contribution, including but not limited to, title and title insurance costs, filing and recording costs, and escrow costs. The Township shall not be liable for any closing costs (whether in-house or third party) which are incurred by the Developer in connection with the closing of (i) the Tax Credits and/or (ii) the mortgage loans to be made by the NJHMFA or another first mortgage lender in connection with the Project. Notwithstanding the foregoing, each party shall be responsible for its own legal and professional costs incurred in connection with the closing of the Municipal Contribution.

Section 4.6 Costs for Advance Work. To meet the deadlines established by this Agreement, the Developer shall diligently pursue the necessary approvals for the Project. To that end, Township shall contribute an amount not to exceed Fifty Thousand Dollars (\$50,000.00) from its Affordable Housing Trust Fund towards the Developer's reasonable and demonstrated costs paid or payable in connection with Developer's pursuit of a New Jersey Department of Environmental Protection Letter of Interpretation for the Property, surveying, a Phase I environmental report for the Property, and geotechnical and/or other engineering and architectural charges related to the Property and/or the Project ("Advance Funds"). Developer shall submit invoices to the Township for amounts paid within five (5) days of receipt thereof. The Township shall reimburse developer for such an invoice within thirty (30) days of receipt of said invoice. At the time of Closing, the Developer shall reimburse the Township for the amount of the Advance

Funds paid to Developer. For the avoidance of doubt, if the Closing does not occur, the Advance Funds will not be reimbursed by Developer.

## ARTICLE V

### TIMING OF CONSTRUCTION

Section 5.1. Timing of Construction. The Developer shall use commercially reasonable efforts to commence construction of the Project within twelve months after the Project receives approval of the Tax Credits, as may be extended by mutual agreement of the Developer and the Township, provided Developer is diligently pursuing the Project.

## ARTICLE VI

### REGULATORY TERMS AND CONDITIONS

Section 6.1. Limitation on the Township's Obligation. The Township shall not be liable under this Agreement to the Developer or any other party for the completion of, or failure to complete, any activities which are part of the Project except the making of the Municipal Contribution and the administration of its responsibilities pursuant to this Agreement.

Section 6.2. Equal Opportunity. During the construction of the Project, the Developer shall not discriminate on the basis of race, color, creed, religion, sex, sexual orientation, age, disability, marital status, condition of Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related complex, national origin or ancestry in the hiring, firing, promoting, or demoting, of any person engaged in the construction work.

Section 6.3 Maintenance of the Project. The Developer shall maintain the Project in good condition and in compliance with all applicable health, safety, building, fire, zoning, subdivision, and environmental laws, regulations, codes and ordinances.

## ARTICLE VII

### DEFAULT AND REMEDIES

Section 7.1. Events of Default. Each of the following shall constitute an "Event of Default" hereunder:

(a) Failure of the Developer or the Township to materially comply with terms, provisions, or conditions of this Agreement and failure to cure the same within thirty (30) days of receipt of written notice by the non-defaulting party specifying such failure (or if such failure to perform cannot be cured within thirty (30) days, failure to commence cure within thirty (30) days after receipt of such notice and thereafter diligently pursue such cure within 90 days after receipt of such notice or such other period of time as reasonably practical to cure such default);

(b) Failure of the Developer or the Township to pay any amounts due hereunder if such default continues after thirty (30) days following the defaulting party's receipt of written notice by the non-defaulting party specifying such failure;

(c) Abandonment or cessation of construction (other than for Forced Delay) for more than ninety consecutive (90) days;

(d) Except as may be expressly contemplated herein, an attachment of the interest of the Developer in the Property, the Project or of the funds disbursed or to be disbursed to it under this Agreement or the filing of any legal, equitable, or administrative action, not adequately insured, bonded over, dismissed, or adjudicated within 120 days to the reasonable satisfaction of the Township, the effect of any of which would have a material adverse impact on: (1) the Developer's title to, or use of, the Project; (2) the Developer's right to construct the Project; or (3) the right of the Developer to use and occupy the entire Project for its intended purposes;

(e) The filing of any voluntary petition in bankruptcy court or otherwise seeking relief from creditors by or against the Developer or the Developer's managing member or the filing of any involuntary petition in bankruptcy not dismissed within ninety (90) days of the date of filing, unless with respect to the managing member of the Developer, the managing member is replaced without the necessity of obtaining consent from the Township, with the investor member or any affiliate thereof;

(f) The Developer shall make an assignment for the benefit of creditors, or shall submit in writing its inability to pay its debts generally as they become due;

(g) The Developer consents to, or acquiesces in, the appointment of a receiver, liquidator, or trustee of itself or of the whole or any substantial part of its properties or assets or a court of competent jurisdiction enters an order, judgment or decree appointing a receiver, liquidator or trustee of the Developer, or of the whole or any substantial part of the property or assets of the Developer, and such order, judgment or decree shall remain unvacated or not set aside or unstayed for one hundred twenty (120) days;

(h) Misrepresentation or misstatement of fact when made in any written document and/or written agreement by the Developer or any of its managing members to the Township with respect to the Project that has a material adverse effect on the Township;

(i) Sale or transfer of the Project by the Developer in violation of Section 4.4 hereof.

Section 7.2. Remedies. Upon the occurrence and during the continuance of an Event of Default under this Agreement,

(a) If the defaulting party is the Developer, then the Township shall have the right to institute appropriate proceedings to specifically enforce performance hereof and pursue all other rights remedies available at law or in equity;

(b) If the defaulting party is the Township, then the Developer shall have the right to institute appropriate proceedings to specifically enforce the performance hereof and pursue all other rights remedies available at law or in equity.

Section 7.3. Attorney's Fees and Costs. In the event of a dispute hereunder, the prevailing party shall be entitled to reasonable attorney's fees and all other reasonable costs and expenses incurred in connection with the adjudication of such dispute.

Section 7.4. Right to Cure Defaults. In the event of a default under this Agreement where no timeline for cure is given, the defaulting party shall have ninety (90) days from the date of the receipt of written notice of default to cure such default (unless it is not reasonably practical to cure such default in ninety (90) days, in which case the cure period shall expire on such date as it is reasonably practicable to cure such default).

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

#### Section 8.1. Agreement Term.

(a) The term of this Agreement shall commence upon the date hereof and, subject to the terms of this Section 8.1, terminate (i) as to the Township's obligations, upon the closing date of the Municipal Contribution, or on such earlier date as mutually agreed upon by the parties hereto and (ii) as to the Developer's obligations, upon the closing date of the Municipal Contribution, provided that an affordable deed restriction is recorded upon the Property and the Developer has entered into a Development Agreement with the Township memorializing the timing for construction set forth in Section 5.1 herein, or on such earlier date as mutually agreed upon by the parties hereto.

(b) Subject to the Township's Municipal Contribution, the Developer agrees to exert commercially reasonable efforts to diligently pursue an award of 9% tax credits for the Project for two (2) annual rounds in addition to other soft funding, as necessary. Developer shall make its first submission after the Project has received preliminary site plan approval, the Developer and the Township enter into a Financial Agreement providing for a payment in lieu of taxes, and the Township has adopted a Resolution of Need. If Developer does not obtain an award of 9% tax credits after two (2) annual rounds or should the regulations applicable to the tax credits change such that the Project would become non-competitive as a result, then the parties agree, at such time, that the Developer shall notify the Township of same, and the parties shall discuss alternative financing options for the Project prior to agreeing to terminate this Agreement.

(c) In the event this Agreement is terminated as a result of the Township's failure to comply with its obligation pursuant to either Section 7.1(a) or (b) of this Agreement, the Township shall reimburse the Developer for fifty-percent (50%) of Developer's reasonable and demonstrated costs in pursuing approvals and financing for the Project, including but not limited to, architect, engineer and attorney fees, paid or payable

in connection with the planning, construction, and financing of the Project, surveying and testing charges in connection therewith, costs of obtaining financing, including but not limited to the Tax Credits and any other public or private source of funding or financing for the Project, with such municipal reimbursement not to exceed \$250,000.00.

Section 8.2. Hold the Township Harmless from Claims. The Developer hereby agrees to defend and hold the Township harmless from and against any and all claims, actions, damages, liability and expense, including attorney's fees, in connection with any loss of life, personal injury, damage to property, breach of contract or any other claims, actions, or damages arising from or out of the construction or operation of the Project by the Developer other than and to the extent of those caused by the willful actions of the Township. The Developer's obligations under this Section 8.2 shall terminate upon the issuance of final Certificates of Occupancy for the Project by the Township. This provision shall survive the termination of this Agreement.

During the term of this Agreement, the Developer shall maintain general liability insurance of not less than \$1 million per occurrence combined single limit with excess umbrella liability coverage of not less than \$5 million. This provision shall survive the termination of this Agreement.

Section 8.3. Notices. All notices given in connection herewith shall be deemed effective upon receipt (as evidenced by the U.S. Mail return receipt or commercial delivery service receipt) or refusal to accept delivery, and shall be given by personal delivery, express overnight delivery service, or placed in the U.S. Mail, registered, with return receipt requested, and postage prepaid. Any of the following parties may effect a change of address for notice purposes by written notice thereof to all of the other following parties:

If to the Developer:

Morris Ketch Road, LLC  
c/o Lillian A. Plata, Esq.  
Member  
TUS Advisory Group LLC  
6 Atlantic St, First Floor  
Newark, NJ 07102  
Attention: Lara Schwager

or to such other address as the Developer may hereafter designate in writing,

with copies to:

Day Pitney LLP  
One Jefferson Road  
Parsippany, New Jersey 07054  
Attention: Nicole M. Magdziak, Esq.  
Township of Morris  
50 Woodland Avenue,  
P.O. Box 7603, Convent Station,  
New Jersey 07961

If to the Township:

Attn: Township Clerk

With a copy to:

Jarrid Kantor Esq.  
Antonelli Kantor Rivera, PC  
354 Eisenhower Pkwy, Suite 1000,  
Livingston, New Jersey 07039

and

Steven K. Warner, Esq.  
Savo, Schalk, Corsini, Warner  
Gillespie, O'Grodnick & Fisher, P.A.  
56 East Main Street, Suite 301  
Somerville, NJ 08876

If to NJHMFA:

New Jersey Housing and Mortgage Finance Agency  
PO Box 18550  
Trenton, New Jersey 08650-2085  
Attn: Director of Regulatory Affairs

The Township shall also provide copies of all notices given in connection herewith to the investor member of the Developer and its counsel to the extent that they provide written notice to the Township of their contact information.

Section 8.4. Entire Agreement. This Agreement, including the Exhibits incorporated herein, expresses the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings, agreements, representations, or arrangements, oral or written, between the parties hereto relating to the subject matter of this Agreement, all of which are merged into this Agreement.

Section 8.5. Severability. Each provision of this Agreement is intended to be severable to the extent that such severability does not materially affect the basic understanding of the parties as reflected in this Agreement. In the event that any one or more provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect by a final, non-appealable decision of a court of competent jurisdiction, the same shall not invalidate or otherwise affect any other provision of this Agreement, and this Agreement shall be construed as if such an invalid, illegal, or unenforceable provision had never been contained herein, provided such Severability does not materially affect the basic understanding of the parties as reflected in this Agreement.

Section 8.6. Counterparts. This Agreement and any amendments hereto may be executed by the parties hereto in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

Section 8.7. Conflicts. To the extent that there may be any inconsistency or conflict between the terms of this Agreement and the NJHMFA Financing, Deed Restriction and Regulatory Agreement, the terms of the NJHMFA Financing, Deed Restriction and Regulatory Agreement shall control.

Section 8.8. Further Assurances. The parties hereto shall cooperate and take such action, give assurances and execute and deliver such documents as may be reasonably required by the other party in order to effectuate the purposes and provisions of this Agreement and to confirm to third parties the existence and good standing of this Agreement.

Section 8.9. Not Assignable. This Agreement is not assignable by the Developer, except pursuant to a Permitted Transfer or as otherwise contemplated herein.

Section 8.10. Successors. This Agreement shall be binding upon and inure to the benefit of the Developer and the Township and their respective successors and assigns.

Section 8.11. The Township Not a Joint Venturer. The Township, by making this Agreement or by any action pursuant hereto, will not be deemed a partner or joint venturer with the Developer, and the Developer and the Township each agree to hold the other harmless for any damages and expenses resulting from such a construction of the relationship of the parties or any assertion thereto.

Section 8.12. Applicable Law. This Agreement shall be governed by and construed under the laws of the State of New Jersey. The parties hereto consent to be sued in New Jersey Superior Court - Morris County in any action to enforce the provisions of this Agreement.

Section 8.13. Modification and Assignment. The terms of this Agreement may not be waived, modified, or changed in any way by implication, correspondence, or otherwise unless such waiver, modification, or change is made in the form of a written amendment to this Agreement signed by both parties. The Developer shall not assign or transfer this Agreement without the prior written consent of the Township, except pursuant to a Permitted Transfer or as otherwise provided in this Agreement. Any attempted assignment or transfer shall be void unless it is pursuant to the terms of this Agreement.

Section 8.14. Captions and Headings. The captions and headings contained in this Agreement are included herein for convenience of reference only and shall not be considered a part hereof and are not in any way intended to limit or enlarge the terms hereof.

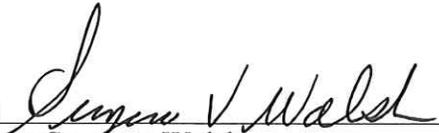
Section 8.16. Waiver. A waiver by the Township of any of the terms and conditions herein shall be in writing and shall not constitute a continuing waiver of said terms and conditions.

\*\*\*signature page follows\*\*\*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal as of the date first set forth above by their duly authorized signatories.

Witness/Attest:

THE TOWNSHIP OF MORRIS  
a public body corporate and politic

By:   
Name: Suzanne Walsh  
Title: Morris Township Clerk

By:   
Name: Donna Guariglia  
Title: Mayor

Witness/Attest:

MORRIS KETCH ROAD, LLC  
a New Jersey limited liability company

  
Nicole Magdziak

By:   
Name: LARA SCHUMAKER  
Title: Managing Member

**EXHIBIT A**

**LEGAL DESCRIPTION**

Block 1901, Lots 1 and 1.01 on the Official Tax Map of Morris Township, Morris County, New Jersey, as approximately depicted on the attached drawing.

**EXHIBIT B**

**RESOLUTION OF NEED**

**EXHIBIT C**

**RESOLUTION AUTHORIZING PAYMENT IN LIEU OF TAXES**