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Memorandum

From: Janis K. Cheezem 

To: Mr. Kirk Blouin
Town Manager
Town of Palm Beach, Florida

Date: September 9, 2019

Subject: Proposed Ground Lease Agreement ("Lease") between the Town of Palm Beach, Florida ("Town") and CRE Fund at Okeechobee Boulevard, LLC ("Tenant"), subject to certain guaranties by AHS Residential, LLC ("Guarantor") for property consisting of approximately 28.38 acres located outside of the Town's boundaries at 5976 Okeechobee Boulevard, West Palm Beach, Florida ("Property"). Dates in the summary below are measured from the date of the Lease unless otherwise stated.

Dear Mr. Blouin:

It has been our pleasure to represent the Town in extensive negotiations of the Lease, based on the business terms of Guarantor's unsolicited offer to the Town. As is typical in like transactions, Guarantor has elected to form a special purpose entity as Tenant and Guarantor has offered certain guaranties, outlined below. This memo is intended to outline certain key terms of the Lease and AHS guaranties that Tenant and Guarantor have submitted for your consideration and the consideration of the Town Council; this is only a summary, and the Lease and Guaranties, also provided for reference, should be consulted for the complete terms of the Lease. Tenant has executed the Lease and Guarantor has executed the guaranties, and each has agreed to leave their offers open, not subject to recession, until 5 business days following the Town Council's October, 2019 meeting to give the Council the opportunity to consider this offer and, if acceptable, to execute and return the Lease.

1. Term: 50 years from the Date of Beneficial Occupancy, with one 10 year renewal term at the discretion of the Town and Tenant. The outside date for the Date of Beneficial Occupancy is 24 months following submittal of the Land Use Amendment (see 2.b. below), i.e., not later than May, 2022.

2. Timeline:

- a. Inspection Period. §3.07(A). 60 day inspection period during which Tenant can, at its option; terminate the Lease.
 - i. §3.08. Governmental Approvals. 18 months to obtain final governmental approvals and a Land Use Amendment from the submittal date: Permitted submittal dates are in May and November of each calendar year. Tenant agrees, if it has not terminated the Lease during the Inspection Period, to submit its application for a Land Use Amendment not later than the May, 2020 application window. The Town is required to cooperate with Tenant's pursuit of Governmental Approvals without cost to the Town. Tenant may terminate the Lease if has not obtained final approval within 18 months of filing (subject to any delays caused by the Town and up to 90 days in the aggregate of force majeure). The Town may terminate if AHS has not obtained governmental approvals within 5 years after the the Approval Deadline – i.e., 18 months following filing of the Land Use Amendment.
 - ii. Title, Survey and Environmental. §3.03; §3.04; §3.05; §3.07(C): Tenant has 45 days to object to the status of title and survey, and the Town has 60 days following the objection to agree whether to cure title/survey defects; Tenant can accept title as is or terminate. The Town is obligated to cure liens and other monetary encumbrances. Tenant's election not to terminate during the Inspection Period is also its acceptance of the Property's physical condition, including environmental issues.
3. §4 – Use of Property. §4.01 describes Tenant's Intended Project as (a) a multi-family rental community consisting of six hundred (600) market rate residential units with County workforce housing mandated component ("Residential Units"), or (b) four hundred twenty (420) Residential Units and approximately 60,000 square feet of commercial uses and/or a two hundred forty (240) bed assisted living facility or any combination thereof, and in each case related parking facilities and amenities and uses ancillary to the primary permitted use. Tenant is, however, permitted to use the property for legal uses, subject to a list of Prohibited Uses attached to the Lease.
4. §5 – Rent and Security. Exhibit C setting forth Base Rent is duplicated in its entirety below;

"

PERIOD	ANNUAL BASE RENT	MONTHLY RENT
1 – 5	\$867,618.00	\$72,301.50
6 - 10	\$954,380.00	\$79,531.66
11 – 15	\$1,049,818.00	\$87,484.83
16 – 20	\$1,154,800.00	\$96,233.33
21 - 25	\$1,270,280.00	\$105,856.66

II. Reset of annual Base Rent as of the Commencement of Lease Year 26 and annual Base Rent for Lease Years 26 -30.

Effective of the first day of Lease Year 26, the annual Base Rent shall be adjusted to the amount equal to six percent (6%) of the Prevailing Market Value of the Property, as determined by Rider No. 1 of this Exhibit "C"; provided, however,

in no event shall the annual Base Rent for Lease Year 26 be more than 122.5% (or \$1,571,971.00) of the annual Base Rent for Lease Year 25 or less than 97.5% (or \$1,222,644,000.00) of the annual Base Rent for Lease Year 25. The annual Base Rent, as adjusted by this paragraph, shall remain in effect until the last day of Lease Year 30.

III. Annual Base Rent for Lease Years 31 – 50

Effective as of the first day of Lease Year 31, 36, 41 and 46, the annual Base Rent shall increase to the amount which is 110% of the annual Base Rent for the immediately preceding Lease Year."

- a. §5.05 Tenant is obligated to provide a letter of credit in the amount of \$867,618.00 (i.e., first year's rental amount) within 10 days following the Date of Beneficial Occupancy, with a termination right to the Town if not duly provided. Provided no Tenant default exists, the Letter of Credit is required to be in effect until the later of 1 year following the Date of Beneficial Occupancy or 1 year following the Stabilization Date (i.e., the date on which the income from the Project provides sufficient revenue to fund the Lease and other costs of operation – a definition is in the Lease.
 - b. Net Lease. §5.06 confirms that the Lease is a triple net Lease; §5.07 has specific provisions for the payment of Taxes.
 - c. Exhibit G includes a Payment Guaranty and Guaranty of Continuing Obligations by Guarantor. The payment guaranty expires on the later of two years following the Date or Beneficial Occupancy or the Stabilization Date, with the Town first pursuing payment under the Letter of Credit. The Guaranty is also for third party claims for injury, damage or violation of legal requirements. These aspects of the guaranty include separate expiration provisions.
5. §6. Quality and Character of Operations.
- a. §6.01 – Tenant is not required to continuously operate.
 - b. §6.02 – the Lease includes a nondiscriminatory service requirement.
6. §7 Construction of the Improvements.
- a. §7.10 – all to be at Tenant's sole cost and expense and in compliance with governmental requirements, subject to bonding requirements, meeting the requirements in §7.04, including diligent and uninterrupted pursuit, with the general contractor meeting the requirements in §7.11.
 - b. §7.10 and Exhibit F - If the Lease has not been terminated as outlined above, Guarantor guaranties the completion of the "Initial Leasehold Improvements" –a minimum of two hundred fifty (250) residential units (but the foregoing shall not be construed to establish a maximum number of units) and related improvements and structures hereafter constructed or erected on the Property and all fixtures affixed or attached thereto, all in connection with the Permitted Uses.
 - c. §7.03 – The Site Plan and Plans and Specs for the Initial Leasehold Improvements are subject to the consent of the Town Manager, although residential units are acceptable if consistent with Prototype Units at the Village of Mangonia or Lake Work Village constructed by affiliates of Guarantor.

- d. §7.12 – Tenant can make "Minor Improvements" following completion of the Initial Improvements without approval of the City Manager – i.e., changes to the interior of buildings or exterior improvements that do not substantially change the approved Tenant Improvements.
- 7. §8 Obligations of Tenant - §9 Maintenance and Repair - detail obligations of Tenant including, for example, security, not causing a nuisance, etc. and with respect to the maintenance and repair of the Premises.
 - a. §9.04 requires a Triennial Inspection to identify any "Deficiencies" – i.e., notices of violation or noncompliance with applicable legal requirements. Landlord has defined self-help rights in §9.05 if Tenant does not timely cure.
- 8. §10 Utilities – these are at Tenant's cost and risk, the Lease acknowledging they are not controlled by the Town.
- 9. §11 – Right to Contest – Confirms Tenant's right to contest real estate taxes and other governmental charges.
- 10. §12 – Insurance Requirements – Details applicable insurance requirements. Please refer to the Lease for detailed provisions.
- 11. §13 – Damage to or Destruction of Premises - Tenant is required to make the Premises safe after a casualty, and the Town has self-help rights (and rights to reimbursement) if not timely accomplished. Tenant has defined termination rights in §13.02.
- 12. §14 – Condemnation – Please refer to the Lease.
- 13. §15 – Encumbrances – Tenant has the right to mortgage the Premises, but any lien will attach only to the Tenant's leasehold interest.
- 14. §16 – Title to Improvements – Tenant owns the Tenant Improvements, which revert to the Town on expiration or earlier termination of the Lease. Tenant retains rights to FF&E.
- 15. §17 – Expiration, Defaults, Remedies and Termination – Please refer to Article 18 of the Lease.
- 16. §18 – Assignment, Transfer and Subletting –
 - a. A transfer of a controlling interest in Tenant or Guarantor is required if the transferee is publicly traded or, with respect to Guarantor, if a substitute guaranty has been obtained by a new guarantor. §18.08 releases the Guarantor only if the Lease is assumed (or the assumption subject to a replacement guaranty) by a Permitted Assignee or Permitted Transferee.
 - b. The Town will not unreasonably withhold its consent, prior to the Stabilization Date, to a transferee (and, as applicable, a substitute guarantor) that meets criteria set forth in §18.03. After the Stabilization Date the Town will not unreasonably withhold its consent (§18.05).
 - c. §18.07 – Tenant is released for obligations accruing after a transfer.
- 17. §19 – Rights of Leasehold Mortgagees - Please refer to Article 19 of the Lease.

18. §20 – Indemnification - Article 20 includes an indemnity from the Tenant for third party claims that would include any negligence of the Town, but not its gross negligence or willful misconduct.
19. §22 – Laws, Regulations and Permits; §23 – Americans with Disabilities Act – Please refer to Article 22 for Tenant's requirements to comply with applicable law and obtain all required permits and licenses. Please refer to Article 23 for Tenant's requirements to comply with the ADA.
20. §24 – Disclaimer of Liability; §25 – Town Not Liable– Consistent with §20, §24 releases the Town of liability for loss, damage or injury except to the extent of its gross negligence or willful misconduct. The provision includes a mutual waiver of indirect, special, consequential and exemplary damages. §25 also releases the Town from damages caused by natural physical conditions, utilities or acts of God, but damages caused by the Town's gross negligence or willful misconduct are not released.
21. Miscellaneous. Please refer to §27 for miscellaneous clauses. In particular, §27.17 requires the Town to compensate Tenant's broker in the amount of 4% of the aggregate base rent payable during the first 10 years of the Term. Such commission shall be due and payable by the Town as follows (a) fifty percent (50%) within thirty (30) days following the date of approval of the Landlord Use Amendment, and (b) fifty percent (50%) within thirty (30) days following the Date of Beneficial Occupancy.
22. Memorandum of Lease. The Lease includes a form of Memorandum of Lease to be recorded by the Tenant.
23. Appraisal Procedures. Rider No. 1 to the Lease includes appraisal procedures to determine Prevailing Market Rate for any renewal term.