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Confidential Memorandum

From: Janis K. Cheezem

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

Date: August 3, 2021

Subject: Proposed Amended and Restated Ground Lease Agreement ("Restated 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").

Dear Mr. Blouin:

It has been our pleasure to represent the Town in extensive negotiations to modify the original Ground Lease dated as of October 13, 2019 ("Original Lease"). The Town Council had approved the Original Lease based on the business terms of Guarantor's unsolicited offer to the Town and, as is typical in such transactions, Guarantor formed a special purpose entity as Tenant and Guarantor has offered certain guaranties, outlined below.

Tenant has performed extensive due diligence on the Property since the date of the Original Lease, and has approved the Property subject to certain modifications to the Original Lease. This memo is intended to highlight modifications to the Original Lease and, for the sake of convenience in approving the Restated Lease, also includes key terms that have not changed in the restatement. We have provided copies of the Restated Lease and Guaranties should be consulted for the complete terms of the Restated Lease, as this is intended only as a summary. The Original Lease included milestone dates; the Amended Lease, to the extent possible, substitutes firm dates that are included in this Memorandum. The majority of changes in the Restated Lease are to address required environmental remediation required to repurpose the former landfill for the Tenant's intended development and associated brownfield designation.

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 August meeting to give the Council the opportunity to consider this offer and, if acceptable, to authorize execution and delivery of the Restated Lease.

1. Term: 50 years from the Date of Beneficial Occupancy (i.e., when rent commences), 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 February 1, 2024 plus up to 90 days for Force Majeure (modified from the Original Lease date of May, 2022.)
2. Termination Rights: The 60 day inspection period during which Tenant could have terminated the Original Lease has expired. The Restated Lease includes the termination options outlined below:
 - a. §3.07(C): March 2, 2022 for failure to obtain, unless waived by Tenant, a brownfield area designation pursuant to Florida Statute 376.80 for the portions of the Property previously used as a landfill and training area.
 - b. §3.07(D): Tenant may terminate on the earlier of June 8, 2022 or the date of Tenant's submittal of an Initial Action Plan and Initial Remediation Cost Estimate, subject to extension for up to 30 days (plus a 2 business day notice period to resolve any Town comments)
 - c. §3.07(D): The Town may terminate if Tenant does not submit the Remedial Action Plan and Initial Cost estimate by June 8, 2022 and/or does not submit the Remedial Action Plan to the Florida Department of Environmental Protection within 15 business days following the Town's approval of the Plan.
 - d. The Town's termination right is subject to the Tenant's right, so long as certain conditions have been met and Tenant's payment to the Town of \$350,000, to extend the deadline for final approval of the Remedial Action Plan to December 31, 2023. The fee would be applicable to rent if the Lease is not terminated but would otherwise be retained by the Town.
 - e. Tenant is required to provide an updated cost estimate for the work performed under the Remedial Action Plan prior to its outside approval date, and is permitted to terminate if the updated estimate is more than 120% of its initial remediation cost estimate.
 - f. Tenant is required to diligently pursue land use approvals for its intended use and may terminate within 10 days after June 30, 2022 if it has not then received final approvals. As with the Original Lease, the Town may terminate if Tenant has not received final approvals by June 30, 2024.
3. §4 – Use of Property. §2.23 modifies Tenant's Intended Project by decreasing the minimum number of multi-family rental units from 600 market rate rental units to four hundred twenty (420) units, with permitted ancillary uses including an assisted living facility, office or any combination thereof, and in each case related parking facilities and amenities and uses ancillary to the primary permitted use. A gas station was eliminated as a prohibited use, but any gas station use would be subject to designated environmental controls. Tenant is 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 and has not been changed:

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

These terms have not been revised in the Restated Lease, and are restated for convenient reference. 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

These terms have not been revised in the Restated Lease, and are restated for convenient reference. 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 These terms have not been revised in the Restated Lease, and are restated for convenient reference. 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. These terms have not been revised in the Restated Lease, and are restated for convenient reference.
 - 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. These terms have not been revised in the Restated Lease, and are restated for convenient reference.
5. §6. Quality and Character of Operations (no change in Restated Lease).
 - 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(no change in Restated Lease)
 - 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,

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- 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. (no change in Restated Lease)
 - 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. (no change in Restated Lease)
 - 9. §11 – Right to Contest – Confirms Tenant's right to contest real estate taxes and other governmental charges. (no change in Restated Lease)
 - 10. §12 – Insurance Requirements – Details applicable insurance requirements. Please refer to the Lease for detailed provisions. . (no change in Restated Lease)
 - 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. (no change in Restated Lease)
 - 12. §14 – Condemnation – Please refer to the Lease. (no change in Restated Lease)
 - 13. §15 – Encumbrances – Tenant has the right to mortgage the Premises, but any lien will attach only to the Tenant's leasehold interest. (no change in Restated Lease)
 - 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. (no change in Restated Lease)
 - 15. §17 – Expiration , Defaults, Remedies and Termination – Please refer to Article 18 of the Lease. (no change in Restated Lease)

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16. §18 – Assignment, Transfer and Subletting – (no change in Restated Lease)
- 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. (no change in Restated 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. (no change in Restated Lease)
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. (no change in Restated Lease)
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. (no change in Restated Lease)
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. (no change in Restated Lease)
22. Memorandum of Lease. The Lease includes a form of Memorandum of Lease to be recorded by the Tenant. (no change in Restated Lease)
23. Appraisal Procedures. Rider No. 1 to the Lease includes appraisal procedures to determine Prevailing Market Rate for any renewal term. (no change in Restated Lease)