



# TOWN OF JACKSON PLANNING & BUILDING DEPARTMENT

## TRANSMITTAL MEMO

**Town of Jackson**

- Public Works/Engineering
- Building
- Title Company
- Town Attorney
- Police

**Joint Town/County**

- Parks and Recreation
- Pathways
- Housing Department

**Teton County**

- Planning Division

- Engineer
- Surveyor- *Nelson*
- Assessor
- Clerk and Recorder
- Road and Levee

**State of Wyoming**

- Teton Conservation
- WYDOT
- TC School District #1
- Game and Fish
- DEQ

**Federal Agencies**

- Army Corp of Engineers
- Utility Providers**
- Qwest
- Lower Valley Energy
- Bresnan Communications

**Special Districts**

- START
- Jackson Hole Fire/EMS
- Irrigation Company

Date: February 3, 2023

Item #: P23-025

Planner: Katelyn Page

Phone: 733-0440 ext. 1302

Email: [kpage@jacksonwy.gov](mailto:kpage@jacksonwy.gov)

**Owner:**

Town of Jackson  
PO Box 1687  
Jackson, WY 83001

**Applicant:**

Figure 9 LLC  
PO Box 190576  
Anchorage, AK 99519

**REQUESTS:**

The applicant is submitting a request for a Grading Pre-Application for the properties located at 910 Smith Ln & 915 Simon Ln, legally known as LOT 25, JACKSON HOLE MEADOWS and LOT 36, JACKSON HOLE MEADOWS PIDNs: 22-41-16-32-4-05-001 and 22-41-16-32-4-05-011

For questions, please call Brian Lenz at 307-733-0440 x1410, or email to the address shown to the left. Thank you.

**Please respond by: February 17, 2023 (with Comments)**

**RESPONSE:** For Departments not using Trak-it, please send responses via email to:  
[blenz@jacksonwy.gov](mailto:blenz@jacksonwy.gov)



## PRE-APPLICATION CONFERENCE REQUEST (PAP)

### Planning & Building Department

150 E Pearl Ave. ph: (307) 733-0440 fax:  
P.O. Box 1687 [www.townofjackson.com](http://www.townofjackson.com)  
Jackson, WY 83001

#### *For Office Use Only*

Fees Paid \_\_\_\_\_

Time & Date Received \_\_\_\_\_

Application # \_\_\_\_\_

**Please note:** Applications received after 3 PM will be processed the next business day.

**APPLICABILITY.** This application should be used when applying for a **Pre-application Conference**. The purpose of the pre-application conference is to identify the standards and procedures of these LDRs that would apply to a potential application prior to preparation of the final proposal and to identify the submittal requirements for the application.

For additional information go to [www.townofjackson.com/204/Pre-Application](http://www.townofjackson.com/204/Pre-Application)

#### **PROJECT.**

Name/Description: Town of Jackson's Workforce Housing at Scott Lane / Workforce Housing Development

Physical Address: 910 Smith Lane and 915 Simon Lane, Jackson, Wyoming

Lot, Subdivision: Lot 25 and Lot 36, Jackson Hole Meadows PIDN: 22-41-16-32-4-05-001 and 22-41-16-32-4-05-011

#### **PROPERTY OWNER.**

Name: Town of Jackson Phone: 307-733-3932  
Mailing Address: P.O. Box 1687, Jackson, Wyoming ZIP: 83001  
E-mail: tsinclair@jacksonwy.gov (Tyler Sinclair, Town Manager)

#### **APPLICANT/AGENT.**

Name, Agency: Joseph Saunders, Figure 9 LLC Phone: 907-227-2238  
Mailing Address: PO Box 190576, Anchorage, AK ZIP: 99519  
E-mail: joe@figure9er.com

#### **DESIGNATED PRIMARY CONTACT.**

   Property Owner   X   Applicant/Agent

**ENVIRONMENTAL PROFESSIONAL.** For EA pre-application conferences, a qualified environmental consultant is required to attend the pre-application conference. Please see Subsection 8.2.2.C, Professional Preparation, of the Land Development Regulations, for more information on this requirement. Please provide contact information for the Environmental Consultant if different from Agent.

Name, Agency: \_\_\_\_\_ Phone: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ ZIP: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**TYPES OF PRE-APPLICATION NEEDED.** Check all that apply; see Section 8.1.2 of the LDRs for a description of review process types.

Physical Development Permit  
 Use Permit  
 Development Option or Subdivision Permit  
 Interpretations of the LDRs  
 Amendments to the LDRs  
 Relief from the LDRs  
 Environmental Analysis

**This pre-application conference is:**  
 Required  
 Optional  
 For an Environmental Analysis  
 For grading

**SUBMITTAL REQUIREMENTS.** Please ensure all submittal requirements are included. The Planning Department will not hold or process incomplete applications. Provide **one electronic copy** (via email to [planning@jacksonwy.gov](mailto:planning@jacksonwy.gov)) of the submittal packet.

Have you attached the following?

**Application Fee.** Go to [www.townofjackson.com/204/Pre-Application.com](http://www.townofjackson.com/204/Pre-Application.com) for the fees.

**Notarized Letter of Authorization.** A notarized letter of consent from the landowner is required if the applicant is not the owner, or if an agent is applying on behalf of the landowner. Please see the Letter of Authorization template at <http://www.townofjackson.com/DocumentCenter/View/845/LetterOfAuthorization-PDF>.

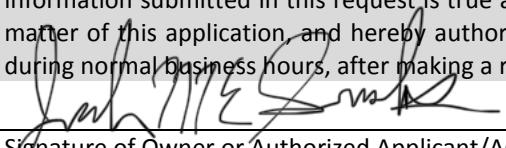
**Narrative Project Description.** Please attach a short narrative description of the project that addresses:  
 Existing property conditions (buildings, uses, natural resources, etc)  
 Character and magnitude of proposed physical development or use  
 Intended development options or subdivision proposal (if applicable)  
 Proposed amendments to the LDRs (if applicable)

**Conceptual Site Plan.** For pre-application conferences for physical development, use or development option permits, a conceptual site plan is required. For pre-application conferences for interpretations of the LDRs, amendments to the LDRs, or relief from the LDRs, a site plan may or may not be necessary. Contact the Planning Department for assistance. If required, please attach a conceptual site plan that depicts:  
 Property boundaries  
 Existing and proposed physical development and the location of any uses not requiring physical development  
 Proposed parcel or lot lines (if applicable)  
 Locations of any natural resources, access, utilities, etc that may be discussed during the pre-application conference

**Grading Information (REQUIRED ONLY FOR GRADING PRE-APPS).** Please include a site survey with topography at 2-foot contour intervals and indicate any areas with slopes greater than 25% (or 30% if in the NC Zoning District), as well as proposed finished grade. If any areas of steep slopes are man-made, please identify these areas on the site plan.

**Other Pertinent Information.** Attach any additional information that may help Staff in preparing for the pre-app or identifying possible key issues.

Under penalty of perjury, I hereby certify that I have read this application and state that, to the best of my knowledge, all information submitted in this request is true and correct. I agree to comply with all county and state laws relating to the subject matter of this application, and hereby authorize representatives of Teton County to enter upon the above-mentioned property during normal business hours, after making a reasonable effort to contact the owner/applicant prior to entering.

  
Signature of Owner or Authorized Applicant/Agent  
Joseph Saunders, Figure 9 LLC

Name Printed

2/3/2023

Date  
Manager

Title



Town of Jackson  
150 E Pearl Avenue  
PO Box 1687, Jackson, WY 83001  
P: (307)733-3932 F: (307)739-0919  
www.jacksonwy.gov

Date: May 9, 2022

**LETTER OF AUTHORIZATION**  
**NAMING APPLICANT AS OWNER'S AGENT**

**PRINT** full name of property owner as listed on the deed when it is an individual OR print full name and title of President or Principal Officer when the owner listed on the deed is a corporation or an entity other than an individual : Tobin Dennis, CEO of RD RENTALS LLC

Being duly sworn, deposes and says that Town of Jackson is the owner in fee of the premises located at:  
Name of property owner as listed on deed  
Address of Premises: 910 Smith Lane and 915 Simon Lane

Legal Description: LOT 25 and LOT 36, JACKSON HOLE MEADOW

Please attach additional sheet for additional addresses and legal descriptions

And, that the person named as follows: Name of Applicant/agent Joe Saunders, Figure 9 LLC

Mailing address of Applicant/agent: PO Box 190576 Anchorage, AK 99519

Email address of Applicant/agent: joe@figure9er.com

Phone Number of Applicant/agent: 907-227-2238

Is authorized to act as property owner's agent and be the applicant for the application(s) checked below for a permit to perform the work specified in this(these) application(s) at the premises listed above:

Development/Subdivision Plat Permit Application       Building Permit Application

Public Right of Way Permit     Grading and Erosion Control Permit     Business License Application

Demolition Permit       Other (describe) Pre-application meetings, Admin Adjustments, Zoning Compliance Verification

Under penalty of perjury, the undersigned swears that the foregoing is true and, if signing on behalf of a corporation, partnership, limited liability company or other entity, the undersigned swears that this authorization is given with the appropriate approval of such entity, if required.

Property Owner Signature

*Town Manager*

Title if signed by officer, partner or member of corporation, LLC (secretary or corporate owner) partnership or other non-individual Owner

STATE OF Wyoming )

)

COUNTY OF Teton ) SS.

)

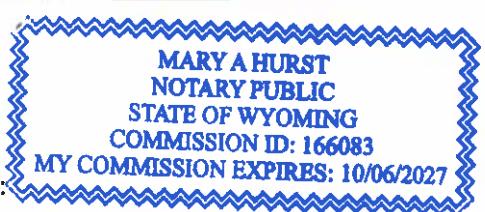
The foregoing instrument was acknowledged before me by Tyler Sinclair this 19<sup>th</sup> day of October 2022, WITNESS my hand and official seal.

*Mary A Hurst*

Notary Public

My commission expires:

*10/06/2027*





February 2, 2023

Town of Jackson Planning & Building Department  
PO Box 1687  
150 E Pearl Avenue  
Jackson, Wyoming 83001

-Email at [planning@jacksonwy.gov](mailto:planning@jacksonwy.gov)-

**RE: 910 Smith Lane and 915 Simon Lane, Pre-Application Conference Request (PAP)**  
**Jorgensen Associates, Inc., Project No. 22132**

Dear Staff,

Presently, two residential single-family dwelling exists at 910 Smith Lane and 915 Simon Lane. These two properties are described as Lot 25 and Lot 36 of the Jackson Hole Meadows, respectively, within Plat 191. As per the agreement between the Town of Jackson and S4 Flats LLC, the applicant is seeking to demolish the existing structures within these lots and construct a 3-story commercial condominium with 12 units designated for affordable housing and workforce housing.

To accomplish the desired development, Lot 25 and Lot 36 will be combined through a replat of the Jackson Hole Meadows Subdivision. An existing utility easement running across the northern portion of Lot 36 will also need to be partially vacated. To vacate the utility easement a new one will be established.

To accommodate the future realignment of Simon Lane a twenty-foot easement running across the southern portion of Lot 36 will be granted to the Town of Jackson as detailed within the Ground Lease recorded as document 1046842 within the Teton County's Office of the Clerk.

For processing, please find enclosed the following items:

- Application for a Pre-Application Conference Request (PAP)
- Letter of Authorization
- Ground Lease

Should you have any questions or require additional information, please do not hesitate to contact me at our office. Thank you for your assistance.

Sincerely,  
**JORGENSEN ASSOCIATES, INC.**

Uriel Cisneros  
Design Engineer Technician







GROUND LEASE  
(S4 FLATS)

THIS GROUND LEASE (the "Lease") is entered into and made to be effective as of the 6 day of JULY, 2022 (the "Effective Date"), by and among the **Town of Jackson**, a Wyoming municipal corporation (the "Lessor" or "Town") and the **S4 FLATS LLC**, a Wyoming limited liability company (the "Lessee" or "TBD").

RECITALS

**WHEREAS**, Lessee is a Wyoming LLC constituted pursuant to Wyo. Stat. §17-29-101 et. seq.;

**WHEREAS**, Lessee is not exempt from the Town of Jackson Land Development Regulations ("LDR") requirements associated with the commercial condominium units and shall comply with all relevant and applicable LDR standards therefore;

**WHEREAS**, Lessor has determined the shortage of affordable housing opportunities is a growing burden of the Town and part of its governmental function, and that there is a strong need for the assistance of the Lessee in meeting such need;

**WHEREAS**, Lessor owns certain real property located within the Town of Jackson legally described on Exhibit A attached hereto with a physical address of 915 Simon Lane and 910 Smith Lane, together with all rights, privileges and appurtenances thereto (the "Property");

**WHEREAS**, Lessor has determined that the Property is suited for affordable housing opportunities for the benefit of the community and desires that Lessee develop a minimum of eight (8) affordable residential condominium units and a minimum of four (4) workforce residential condominium units on the Property (the "S4 FLATS");

**WHEREAS**, in exchange for the Town leasing the Property to S4 FLATS LLC, which shall occur contemporaneously with execution of this Agreement, and a financial contribution of \$300,632 to S4 FLATS LLC, which shall be available upon execution of this Agreement for up-front project soft costs and held in escrow, for the development of the S4 FLATS, all in accordance with the terms and conditions set forth in this Lease: (i) S4 FLATS will be solely responsible for the permitting, entitlement, demolition of existing structures, development, construction and financing of the S4 FLATS; (ii) S4 FLATS LLC will be solely responsible for the marketing, selection of buyers, and sale of the S4 FLATS; and (iii) S4 FLATS LLC will grant Lessor for the benefit of its employees eight (8) revolving first options to purchase residential units within S4 FLATS.

**WHEREAS**, Lessor and Lessee now desire to enter into this Lease pursuant to the terms and conditions set forth herein so that Lessee can accomplish the permitting, entitlement, financing, construction, marketing, and sale of the S4 FLATS thereby lessening the burden of government.

**NOW THEREFORE**, in consideration of the foregoing Recitals and the mutual promises and covenants herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lessor hereby leases the Property to the Lessee, and the Lessee hereby leases the Property from Lessor subject to the terms and conditions set forth hereafter.

## ARTICLE 1. DEFINITIONS

1.1 Definitions. The following terms shall have the following meanings in this Lease.

(a) "Affordable Housing Restriction" means the standard form deed restriction for affordable housing used by the Jackson/Teton County Housing Department, or a substantially similar successor document.

(b) "Award" means any compensation or payment made or paid for the Total, Partial or Temporary Taking of all of any part of or interest in the Property and/or the Improvements, whether pursuant to judgment, agreement or otherwise.

(c) "Homebuyer Special Restriction" or "Fannie Mae Approved Special Restriction" shall mean the Special Restriction that will be recorded against each Residential Unit by the Lessee.

(d) "Improvements" shall mean the buildings, structures and other improvements, including the building fixtures therein, hereafter located on the Property, including but not limited to the Residential Units; provided, however, that the buildings and structures on the Property as of the Effective Date will be demolished by Lessee and shall not constitute "Improvements" for purposes of this Lease.

(e) "Lease" shall mean this ground lease between the Lessee and the Lessor for the Property and shall include any and all duly approved amendments made to this Lease in writing.

(f) "Lease Term" shall have the meaning set forth in Section 2.2.

(g) "Leasehold Mortgage" shall mean any mortgage, deed of trust, security agreement or collateral assignment securing a Loan and encumbering Lessee's leasehold interest in the Property.

(h) "Lender(s)" shall mean only those lenders identified by Lessee to the Lessor in writing, and any assignee of such Lenders who are also identified to the Lessor in writing during the term of the identified loans.

(i) "Loans" shall mean collectively any loans or funding sources originated by Lessee secured by the Property.

(j) "Loan Documents" shall mean all loan agreements, notes, deeds of trust, security documents, including regulatory agreements, use agreements, security agreements, fixture filings, and financing statements required in connection with any Loans.

(k) "S4 FLATS" has the meaning set forth in the Recitals.

(l) "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely, and which said person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, without limitation, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map of the taking which reasonably defines the extent of the taking.

(m) "Partial Taking" means any taking of the fee title of the Property and/or the

Improvements that is not either a Total, Substantial or Temporary Taking.

- (n) "Party" shall mean the Lessor or the Lessee individually.
- (o) "Parties" shall mean the Lessor and the Lessee collectively.
- (p) "Property" has the meaning set forth in the Recitals.
- (q) "Qualified Buyer" shall mean an individual or household who is qualified to purchase a restricted Workforce Ownership Unit or an Affordable Ownership Unit pursuant to Section 3 of the Rules and Regulations, or a substantially similar successor section.
- (r) "Qualified Household" shall mean an individual or household who is qualified to rent a restricted Workforce Ownership Unit or an Affordable Ownership Unit pursuant to Section 3 of the Rules and Regulations, or a substantially similar successor section.
- (s) "Residential Units" has the meaning set forth in Section 2.4(a).
- (t) "Rules and Regulations" shall mean any valid and legal duly adopted rule of the Jackson /Teton County Housing Department (JTCHD). Where this Lease looks to the Housing Department Rules and Regulations, the applicable Rule or Regulation is the one in force at the time the definition is relied upon, unless otherwise specified. For example, if the Housing Department was using one definition of "qualified buyer" in October 2023 when one unit was sold, and a different definition of "qualified buyer" in November 2023 when another unit was sold, the October purchaser would have to be a Qualified Buyer under the applicable provision at that time, and the November buyer would have to be a Qualified Buyer under the different applicable provision at that time. Furthermore, where there is conflict between the Housing Department Rules and Regulations and this Lease, this Lease shall control.
- (u) "Taking" means institution of any proceedings for the taking or condemnation of all or a portion of the Property by the government of the United States, State of Wyoming, County of Teton, or any other governmental authority, or any other entity under the right of eminent domain. Unless otherwise provided, the taking shall be deemed to occur as of the earlier of (a) the date actual physical possession is taken by the condemnor, or (b) the date on which the right to compensation and damages accrues under the law applicable to the Property and/or the Improvements.
- (v) "Substantial Taking" means the taking of so much of the Property and/or the Improvements that the portion of the Property and/or the Improvements not taken cannot be repaired or reconstructed, taking into consideration the amount of the Award available for repair or reconstruction, rendering the Property and/or Improvements economically unfeasible for the Lessee's intended purpose. Eminent domain actions filed by Lessor against owners of portions of the Property and pending as of the date of this Lease shall not be deemed, construed or interpreted as a Substantial Taking under this Lease.
- (w) "Temporary Taking" means a taking of all or any part of the Property and/or the Improvements for a term certain which term is specified at the time of taking. Temporary Taking does not include a taking which is to last for an indefinite period or a taking which will terminate only upon the happening of a specified event unless it can be determined at the time of the taking substantially when such event will occur. If a taking for an indefinite term should take place, it shall be treated as a Total, Substantial or Partial Taking in accordance with the definitions set forth herein.

(x) "Total Taking" means the taking of the fee title to all of the Property.

(y) "Workforce Housing Restriction" means the standard form deed restriction for workforce housing used by the Jackson/Teton County Housing Department, or a substantially similar successor document.

(z) "Weighted Drawing" shall mean the process of selecting buyers for deed restricted units, pursuant to Section 4 of the Rules and Regulations, or a substantially similar successor section.

(aa) "Initial Sale" shall mean the initial sale by the Lessee of a deed restricted Residential Unit to a Qualified Household.

## ARTICLE 2. LEASE OF THE PROPERTY; TERM; LEASE PAYMENTS; CONSTRUCTION OF UNITS TAXES AND ASSESSMENTS

2.1 Lease of the Property. The Lessor, for and in consideration of the covenants and agreements to be kept and performed by the Lessee, leases the Property to the Lessee, and in consideration thereof, the Lessee does take, hire and lease the Property from the Lessor pursuant to the terms of this Lease. Concurrently with the execution of this Lease, Lessor and Lessee shall record this Lease in the Office of the Teton County Clerk.

2.2 Retained Lessor Interest. Lessee acknowledges and affirms that there is an existing Residential Lease Agreement between Lessor and Kyle Foster and that said Residential Lease Agreement does not terminate until November 30, 2023. Lessee agrees that, unless voluntarily terminated sooner by Lessor and/or Kyle Foster, said Residential Lease Agreement will remain in place, burden the Property, and that Lessor shall retain the interest in the Residential Lease Agreement.

2.3 Easements. Lessee hereby agrees, upon request of Lessor and at no cost to the Lessor, will grant easements in favor of the Lessor as may be necessary for the construction, maintenance, repair, improvements, and replacement of sewer and water infrastructure, roadways, cycle tracks, sidewalks, storm drainage, landscaping, and appurtenant items pertaining to work required to improve and realign the Snow King Avenue, Scott Lane, and Simon Lane intersection, including the southerly 20 feet of Lot 36 of Jackson Meadows Addition to the Town of Jackson, Plat 191. The parties hereby agree that the easements granted pursuant to this Section 2.3 shall not be the basis for reducing the maximum development potential of the site.

2.4 Term. The term of this Lease shall commence upon the Effective Date and end fifty (50) years from that date, unless sooner terminated as provided for herein (the "Lease Term").

2.5 Lease Payments. The Lessee shall make all lease payments to the Lessor, at Post Office Box 1687, Jackson, Wyoming 83001, or such other place as Lessor may designate in writing. Rent for the Property will be \$10.00 per year. If at any time the Property is not used in accordance with the intent of this Ground Lease to provide for decent, affordable housing, the rent shall be increased to an amount calculated by the Town to equal the market rental value of the Leased Land for unrestricted use.

2.6 Construction of S4 FLATS; Sale of Residential Units and Administration of Special Restriction.

(a) Obligation to Entitle, Develop and Construct. The Lessee shall be obligated to entitle, develop and construct a minimum of twelve (12) residential condominium units, of which a minimum of eight (8) shall be affordable residential condominium units and a minimum of four (4) shall be workforce residential condominium units, consisting of at least twenty (20) bedrooms (the "Residential Units") and a minimum of eighteen (18) parking spaces, all of which shall be on the Property, and all as

generally depicted on Exhibit B attached hereto. Lessee shall be obligated to install, at its sole cost and expense, all site improvements required by the laws and regulations of the Town of Jackson, Lessor or desired by Lessee, for the S4 FLATS, including, but not limited to, the burying or relocation of power lines, utilities, sewer and storm sewer lines, water lines, and storm drains; the connection to sewer, water, storm drain and electrical systems; and the modification of or additions to landscaping and roads on the site or in the adjacent right-of-way. Lessee shall be obligated, as required by the Jackson Municipal Code, to screen and undertake mitigation measures in order to minimize construction disturbance to adjacent and nearby properties, business operations, and the general public.

(b) Building Permit; Verification of Sufficient Funds. Prior to the issuance of the building permit for the S4 FLATS, Lessee will provide to Lessor written verification from Lender that Lessee holds sufficient private funding and has secured sufficient third-party financing funds for the completion of the construction of the S4 FLATS. The building permit will not be issued until the foregoing requirement has been deemed satisfied by Lessor in its reasonable discretion. The Lessee, at its expense, will obtain a payment and performance bond pursuant to LDR Sec. 8.2.11, as amended, to ensure the completion of the S4 FLATS.

(c) Reporting Requirements. Upon commencement of construction, Lessee will review, on a quarterly basis, the progress of the construction with Lessor for the S4 FLATS. This review would include budget and schedule tracking, as well as a discussion of any key project issues, to ensure the construction is on time and on budget. Upon project completion, Lessee will provide the Lessor will a full cost accounting of the construction project. Lessor, at its sole discretion, may demand and Lessee shall provide, any additional documentation related to the project.

(d) Final Plat. The Lessee shall be obligated to pursue and accomplish the Final Plat approval of the S4 FLATS by Lessor, in compliance with the Town of Jackson LDRs. The Final Plat application to the Town of Jackson shall include the following: (i) the Homebuyer Special Restriction; (ii) S4 FLATS Employee Right of Purchase Agreement, in substantially the form attached hereto as Exhibit C (the "Employee Right of Purchase Agreement"); and (iii) the Condominium Declaration for the S4 FLATS (the "Condo Dec"). The Lessor has discretion, which shall not be unreasonably withheld and provided such discretion is not exercised arbitrarily, to approve or deny the proposed Condo Dec. Criteria for evaluating the Condo Dec includes, but is not limited to: (1) provisions for automatically transferring the declarant's interest in the Property to the condominium owners' association; and (2) provisions designed to capitalize the condominium owners' association for necessary future repairs.

(e) Escrow. Upon the Lessor's Final Plat approval, the Plat, the Homebuyer Special Restriction, the Employee Right of Purchase Agreement and the Condo Dec shall be held for recordation by an escrow agent mutually acceptable to Lessor and Lessee until such time that Lessee obtains Certificates of Occupancy for the Residential Units.

(f) Financial Verification. Upon receipt of a Certificate of Occupancy, Lessee shall deliver to Lessor written confirmation from Lessee's Lender that Lessee is in good standing with the Loans and Lender is confident in Lessee's ability to satisfy all obligations of the Loan ("Financial Verification").

(g) Warranty Deed and Termination of Ground Lease. Upon Lessor's satisfaction with the Financial Verification, which satisfaction shall not be unreasonably withheld, Lessor shall execute, and deliver the following documents to the escrow agent: (i) a Warranty Deed from Lessor to Lessee for the Property in form and substance mutually acceptable to Lessor, Lessee and Lender (the "Conveyance Deed"); and (ii) a Termination of Ground Lease that terminates this Lease in form and substance mutually acceptable to Lessor, Lessee and Lender (the "Ground Lease Termination").

(h) Escrow Instructions and Recordation of Documents. Upon satisfaction of Sections 2.4(b) through (e) above, the Lessor and Lessee agree to direct the escrow agent, in writing, to immediately record, in the following order, the Conveyance Deed, the Ground Lease Termination, the Final Plat, Homebuyer Special Restriction, the Condo Dec, and the Employee Right of Purchase Agreement, in that order.

(i) Sale of Units. Lessee shall offer the Residential Units for sale as condominiums to Qualified Buyers. Lessee shall maintain the right to rent the Residential Units to Qualified Households pending Initial Sale.

(j) Date of Completion. Lessee must submit for a certificate of occupancy from the Town of Jackson for the entire project within 24 months of receiving building permit approval from the Town of Jackson, unless S4 FLATS LLC applies for, and the Town of Jackson approves, an extension pursuant to the LDRs. Failure to comply with this provision will result in liquidated damages of \$100 per day for the first 15 days after the deadline, \$250 per day for days 16-30 after the deadline and, thereafter, \$500 a day, which damages shall be in addition to any other remedies the Town of Jackson may have under this Lease or any other applicable law.

(k) Date of Initial Sale. Unless otherwise agreed to, Lessee must sell all Residential Units within twelve (12) months of issuance of the certificate of occupancy. Notwithstanding the foregoing, the parties acknowledge that market and economic forces beyond the control of any parties to this Lease may impact initial sales of the S4 FLATS units. Therefore, in the event the Wyoming Cost of Living Index Northwest Region as published by the Wyoming Department of Administration & Information, Economic Analysis Division is negative for 3 quarters or more, the Lessee's deadline to sell all the S4 FLATS units shall be extended by eighteen (18) months.

(l) Amendment for Alternative Development Structure. Notwithstanding anything herein to the contrary, if prior to May 1, 2023, Lessor, Lessee and Lender mutually agree upon an alternative development structure that results in Lessor retaining an ownership interest in the Property, then this Lease shall be amended as necessary to accommodate the alternative development structure. If an alternative development structure is not agreed upon by Lessor, Lessee and Lender in writing by May 1, 2023, the Property shall be conveyed in accordance with Section 2.4(g).

## 2.7 Taxes and Assessments.

(a) Payment by Lessee. Lessee covenants and agrees during the entire Lease Term, at its own cost and expense, to pay, subject to any applicable exemptions, prior to delinquency and before any fine, penalty, interest, or other charge may be added to them for nonpayment, all real estate taxes, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature, made, assessed, levied or imposed upon, or due and payable in connection with, or which become a lien upon, the Property, the Improvements located thereon, or any part of the Property or Improvements located thereon, or upon this Lease, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits which shall, during the Lease Term, be made, assessed, levied, or imposed upon or become due and payable in connection with, or a lien upon the Property, the Improvements, or any part of the Property or Improvements, or upon this Lease. Nothing herein shall impair Lessee's right to request and receive exemption from the payment of real estate taxes. Notwithstanding anything in this Lease to the contrary, Lessee shall not be required to pay any franchise tax or transfer tax imposed on any document to which Lessor is a party (other than this Lease) creating or transferring an estate or interest in the Property, any municipal, state or federal income taxes levied against

Lessor, any income, profits or revenues tax, assessment or charge imposed upon the Rent received by Lessor under this Lease, any estate, gift, succession, inheritance or transfer taxes of Lessor, or any business and occupational tax attributed and imposed upon Lessor for work, business or income not related or attributable to the Property.

(b) Lessee's Right to Contest. If Lessee disputes any amount or validity of any liens, taxes, assessments, or charges upon the Property or the Improvements located thereon, Lessee may contest and defend against the same at its cost, and in good faith diligently conduct any necessary proceedings in connection therewith to prevent and avoid the same; provided, however, that such contest shall be prosecuted to a final conclusion as speedily as possible. Lessor agrees to render to Lessee all reasonable assistance, at no expense to Lessor, in contesting the validity or amount of any such liens, taxes, assessments or charges, but specifically excluding joining in the signing of any protests or pleadings to the tax assessor. During any such contest, Lessee shall (by the payment or bonding of such liens, disputed taxes, assessments or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting thereby of Lessor's title, reversion or other interest in or to the Property.

### **ARTICLE 3. MAINTENANCE; USE OF PREMISES**

#### **3.1 Title to Improvements.**

(a) During the Lease Term title to all Improvements, now existing or later made, on the Property are and shall be vested in Lessee, provided, however, that Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease or as approved in writing by Lessor. Lessor acknowledges and agrees that any and all depreciation, amortization and tax credits for federal or state tax purposes relating to the Improvements located on the Property and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively to Lessee during the Lease Term and for the tax years during which the Term begins and ends.

3.2 Permits, Licenses and Easements; Utilities. The Lessor, by virtue of its fee title to the Property, may hold certain rights, entitlements or credit with respect to utility capacity and connections, and in that capacity, Lessor agrees that, within a reasonable period after receipt of written request from the Lessee, it shall (at no expense to the Lessor) join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work the Lessee may do pursuant to this Lease, and shall also join in any grants of easements for public utilities useful or necessary to the development of the Property.

3.3 Use of Property. The Lessee shall at all times during the Lease Term use the Property and the Improvements for the purposes set forth in this Lease, consistent with all applicable zoning and environmental laws of any governmental authority having jurisdiction over the Property and the Improvements. The Lessee agrees to comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the United States, the State of Wyoming, the County of Teton, the Town of Jackson and of any other governmental authority having jurisdiction over the Property or the Improvements.

3.4 Utilities. The Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal, sewers, and other utilities or services supplied to the Property, and the Lessee shall pay or cause same to be paid currently and as due.

#### **3.5 Damage to Person or Property; Hazardous Materials; Indemnification.**

3.6.1 Damage to Person or Property - General Indemnification. During the Lease Term Lessor shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Property, for any injury or damage to the Improvements, or to any property of Lessee, or to any property of any other person, entity or association on or about the Property. Lessee shall defend, hold harmless and indemnify the Lessor, and its respective officers, agents, and employees (each an "Indemnified Party" and together, the "Indemnified Parties"), of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising from and during its tenancy, its use of the Property and the Units, and any of its operations activities thereon or connected thereto; provided, however, that this Section 3.6 shall not be deemed or construed to and shall not impose an obligation to indemnify and save harmless the Lessor, the Town or any of their officers, agents or employees from any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence by the person or entity seeking such indemnity. This Section 3.6.1 shall survive termination of this Ground Lease.

3.6.2 Hazardous Materials – Indemnification.

(a) Lessee shall indemnify, defend, and hold the Lessor, and its officials, officers, agents and employees (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) (the "Liabilities") incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release, threatened Release and any existing or future condition of pollution, contamination or Hazardous Substance-related nuisance on, or under or from the Property. The foregoing indemnity shall apply to any Liabilities arising from and during Lessee's tenancy. This Section 3.6.2 shall survive termination of this Ground Lease.

(b) For purposes of this Section 3.6.2, the following definitions shall apply:

(i) "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. '9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, all hazardous substances identified in the Wyoming Health & Safety Code 25316 and 25281(d), all chemicals listed pursuant to the Wyoming Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law.

(ii) "Environmental Law" shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Agreement.

(iii) "Release" shall mean any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substances.

ARTICLE 4. MORTGAGE LOANS

**4.1 Liens and Encumbrances Against Lessee's Interest in the Leasehold Estate.** The Lessee shall have the right to mortgage, pledge, deed in trust, assign rents, issues and profits and/or collaterally (or absolutely for purposes of security if required by any Lender) assign its interest in this Lease or otherwise encumber the leasehold estate, and/or the interest of Lessee hereunder, in whole or in part, and any interests or rights appurtenant to this Lease, and to assign or pledge the same as security for any debt (the holder of such mortgage, pledge or other encumbrance, and the beneficiary of any such deed of trust being hereinafter referred to as "Mortgagee" and the mortgage, pledge, deed of trust or other instrument hereinafter referred to as "Leasehold Mortgage").

**4.2 Cost of Loans to be Paid by Lessee.** The Lessee affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Loans, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with the Loans.

**4.3 Proceeds of Loans.** It is expressly understood and agreed that all Loan proceeds shall be paid to and become the property of Lessee, and that the Lessor shall have no right to receive any such Loan proceeds.

**4.4 Notice and Right to Cure Defaults Under Loans.** Any Loan which encumbers the leasehold must provide the Town of Jackson with adequate rights to cure any defaults by Lessee, including (a) providing the Lessor or its successor with copies of any notices of default at the same time and in the same manner as provided to Lessee, and (b) providing the Lessor with a cure period of at least sixty (60) days to cure any default.

**4.5 Notice to Lessor of Leasehold Mortgages.** Lessee shall provide written notice to Lessor of the name and address of each Lender under this Lease, and shall provide Lessor with updates based on any changes in name or address or assignments that occur.

**4.6 Pledge of Property.** In addition to the Leasehold Mortgage, the Lender requires, and Lessor hereby agrees, that prior to the closing of the Loan, Lessor shall pledge the Property to Lender in form and substance approved by Lessor, Lessee and the Lender, such approval not to be unreasonably withheld. If Lessor fails to pledge Property required by this provision, Lessee shall have the right to terminate this Lease. The pledge contemplated by this Section is made in accordance with Wyoming Statutes §§15-10-103 et seq., as amended.

## ARTICLE 5. INSURANCE

**5.1 Required Insurance Coverage.**

(a) **Property Insurance.** The Lessee shall during the Lease Term keep the Improvements insured against loss or damage by a property insurance policy providing coverage of the perils of direct damage as insured under the Insurance Services Office (ISO) "Causes of Loss-Special Form" or equivalent with limits in sufficient amounts such that the proceeds of such insurance shall not be less than the replacement value of the Improvements.

(b) **Commercial General Liability (CGL) Insurance.** During the Lease Term, the Lessee shall keep in full force and effect a policy or policies of Commercial General Liability insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Property. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage.

(c) Builders' Risk Insurance. During the course of any alteration, construction or reconstruction, the cost of which exceeds One Hundred Thousand Dollars (\$100,000), either Lessee or its contractor shall provide builders' risk insurance for not less than the amount of work to be performed, insuring against the perils of direct damage as insured under the Insurance Services Office ISO "Causes of Loss - Special Form" or equivalent.

(d) Adjustment of Coverage Limits. Whenever the insurance coverages required by this Section 5.1 are renewed or extended, the Lessee shall increase the coverage limits required to an amount that incorporates the insurance coverage limits customarily required by lenders in Teton County, Wyoming at the time the insurance is renewed or extended which shall be confirmed at such time by Lessee by obtaining documentation of the insurance coverage limits required by at least one Teton County, Wyoming lender for financing of similar types of property.

#### 5.2 Insurance Policies and Premiums.

- (a) All policies required by this Lease shall name the Lessor as an additional insured.
- (b) Any policy of insurance shall provide that any change or cancellation of said policy shall be made in writing and sent to the Lessee and the Lessor at their respective principal offices at least thirty (30) days before the effective date of change or cancellation.
- (c) Any insurance provided for in this Article 5 may be placed by a policy or policies of blanket and/or excess liability (or umbrella) insurance.

#### 5.3 Proceeds of Insurance.

(a) For so long as any Loan on the Improvements is outstanding, all fire and standard risk or extended coverage (casualty) insurance proceeds shall be applied to the payment of the costs of repairing or rebuilding that part of the Improvements damaged or destroyed if to the extent required, each Lender with an outstanding Loan permits such repair or rebuilding. If the Improvements are not repaired or rebuilt, all such proceeds shall be applied in a manner consistent with the terms of the Loans.

(b) In the event that no Loan is outstanding, all insurance proceeds received under the policies set forth in this Article shall be paid to the Lessee, provided that the Lessee shall apply such proceeds to the repair or rebuilding of the Improvements, and if repair or rebuilding is not economically feasible in Lessee's reasonable discretion, then all insurance proceeds shall be paid to Lessor and Lessee shall have no further obligation to repair or rebuild the Improvements. Lessor, at its sole discretion, may demand and Lessee shall provide, relevant and appropriate documentation related to the infeasibility of the repair or rebuilding of the Improvements.

### ARTICLE 6. CONDEMNATION

6.1 Taking of Land or Improvements. If, during the term of this Lease, there is any taking of all or any part of the Improvements, or the Property, the rights and obligations of the parties shall be determined as follows:

6.2 Total Taking. If the Improvements, or the Property are totally taken by condemnation, this Lease shall terminate on the date of the taking. If this Lease is terminated pursuant

to this Section 6.2, the Award for such taking shall be apportioned and distributed as follows:

(a) First, to the Mortgagees, if any, to the extent of the Leasehold Mortgage;

(b) Second, to Lessee, a sum equal to the fair market value of the Improvements on the date immediately preceding the Taking as determined by the appraisal method set forth in Section 6.7 and determined as if there were no Taking, nor threat of condemnation; plus the residual value of the Term, subject to the rent reserved; and

(c) Third, to Lessor, the remainder, if any.

6.3 Reserved.

6.4 Substantial Taking.

(a) In the event of a Taking which is substantial, Lessee may, subject to the rights of the Mortgagee, if any, terminate this Lease. For purposes hereof, a Taking shall be deemed to be "substantial" if it renders the Property and/or Improvements economically infeasible for Lessee's intended purpose. If Lessee elects to terminate this Lease under this provision, Lessee shall give written notice of its election to do so to Lessor within forty-five (45) days after receipt of a copy of a Notice of Intended Taking.

(b) In the event Lessee terminates this Lease in accordance with this Section 6.4, such termination shall be as of the time when the Taking entity takes possession of the portion of the Property and the Improvements taken. In such event, the Award for such Substantial Taking (including any award for severance, consequential or other damages which will accrue to the portion of the Property and/or the Improvements not taken) shall be apportioned and distributed as follows:

(i) First, to the Mortgagee, if any, to the extent of the Leasehold Mortgage;

(ii) Second, to Lessee a sum equal to the fair market value of the Improvements taken preceding the date of the Taking as determined by the appraisal process provided for in Section 6.7, commenced as provided in Section 6.2, and as modified by Section 6.5(c); plus the residual value of the Term, subject to the rent reserved; and

(iii) Third, to Lessor, the remainder, if any.

(c) Notwithstanding anything to the contrary contained in Section 6.7, if Lessee has elected to terminate this Lease, and the taking authority abandons or revises the Taking, Lessee shall have forty-five (45) days from receipt of written notice of such abandonment or revision to revoke its notice of termination of this Lease.

6.5 Partial Taking.

(a) In the event of a Partial Taking, this Lease shall continue in full force and effect and there shall be no abatement in or reduction of any of Lessee's obligations hereunder.

(b) The Award for such Partial Taking shall be apportioned and distributed first to the Mortgagee, if any, to the extent of the Leasehold Mortgage, then to Lessor and Lessee in proportion to the fair market value of their respective interests in the Property and Improvements, as such interests existed immediately prior to such Partial Taking.

(c) The fair market value of the parties' respective interests in the Property and the Improvements shall be determined by the appraisal process provided in Section 6.7, except the assumptions listed in such Section shall not apply. Rather, the appraisal shall be based on the value of the Property as improved and encumbered by this Lease and on the value of the Improvements as they stand, but without regard to any Taking or threat of condemnation.

(d) Any Award for severance, consequential or other damages which accrues by reason of the Partial Taking to the portion of the Property or the Improvements not taken shall be distributed first to the Mortgagee, if any, to the extent of the Leasehold Mortgage, then shall be apportioned between Lessor and Lessee in accordance with the diminution in value of their respective interests.

#### 6.6 Temporary Taking.

(a) In the event of a Temporary Taking of the whole or any part of the Property and/or Improvements, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full any sum or sums of money and charges herein reserved and provided to be paid by Lessee, and, Lessee shall be entitled to any Award or payment for the temporary use of the Property and/or Improvements prior to the termination of this Lease, and Lessor shall be entitled to any Award or payment for such use after the termination of this Lease.

(b) Any Award or payment for damages or cost of restoration made on or after the termination of this Lease shall be paid first to the Mortgagee, if any, to the extent of the Leasehold Mortgage, then to Lessor absolutely, together with the remaining balance of any other funds paid to Lessee for such damages or cost of restoration.

6.7 Appraisal. Whenever an appraisal of the Property or the Improvements is called for under the terms of this Lease, the parties shall use the following procedure:

(a) Appointment of Appraiser. Within ten (10) days after notice from Lessor to Lessee, Lessor and Lessee shall each appoint an MAI appraiser to participate in the appraisal process provided for in this Section 6.7 and shall give written notice thereof to the other party. Upon the failure of either party to appoint, the non-defaulting party shall have the right to apply to the District Court of Teton County, Wyoming, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Lessor and Lessee, or if within ten (10) days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to said District Court to appoint such third appraiser.

#### (b) Determination of Fair Market Value.

(i) Within thirty (30) days after the appointment of the third appraiser, the appraisers shall determine the fair market value of the Property and/or the Improvements in accordance with the provisions hereof, and shall execute and acknowledge their determination of fair market value

in writing and cause a copy thereof to be delivered to each of the parties hereto.

(ii) The appraisers shall determine the fair market value of the Property and the Improvements based on sales of comparable property in the area in which the Property are located; provided, however, the appraisal should reasonably reflect the deed restrictions imposed on the Property and/or the Improvements pursuant to Article 2 of this Lease.

(iii) If a majority of the appraisers are unable to agree on fair market value within thirty (30) days of the appointment of the third appraiser, the three (3) appraisals shall be added together and their total divided by three (3). The resulting quotient shall be the fair market value of the Property and the Improvements. If, however, either the low appraisal and/or high appraisal is ten percent (10%) lower or higher than the middle appraisal, such appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two (2). The resulting quotient shall be the fair market value of the Property and the Improvements. If both the low and high appraisals are disregarded, the middle appraisal shall be the fair market value of the Property.

(c) Payment of Fees. Each of the parties hereto shall (a) pay for the services of its appointee, (b) pay one-half (1/2) of the fee charged by the appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisal.

6.8 Lessor's Waiver of Rights to Eminent Domain. Lessor hereby waives any and all rights to condemnation or eminent domain of the Property for the duration of the Lease Term.

## ARTICLE 7. ASSURANCES OF LESSOR

7.1 Lessor to Give Peaceful Possession. The Lessor covenants that it owns in fee simple, and that it has good and marketable title to the Property, that as of the date of execution of this Lease, the Property is free of all easements, covenants, conditions and restrictions except as disclosed in writing to Lessee. The Lessor has the full right and authority to make this Lease. The Lessor covenants and warrants that the Lessee shall have, hold and enjoy, during the Lease Term, peaceful, quiet and undisputed possession of the Property leased without hindrance or molestation by or from Lessor so long as no Event of Default exists and is continuing under this Lease.

7.2 Lessor to Lease the Property with Marketable Title. The Lessor covenants and warrants that as of the date of execution of this Lease, there are no outstanding liens and encumbrances on the Property.

7.3 Release of Lessor. The Lessor may sell, assign, transfer or convey (but not encumber), with the prior written consent of the Lenders which shall not be unreasonably withheld, conditioned or delayed, all or any part of Lessor's interest in the Property or this Lease without obtaining Lessee's consent, provided that the purchaser, assignee, or transferee expressly assumes all of the obligations of the Lessor under this Lease by a written instrument in a form reasonably satisfactory to the Lessee and recordable in the Office of the Teton County Clerk (an "Assumption Agreement"). In the event of a sale, assignment, transfer or conveyance by Lessor of the Property or its rights under this Lease, provided an assumption agreement is executed as required above, the same shall operate to release the Lessor from any future liability upon any of the covenants or conditions of this Lease, expressed or implied, in favor of Lessee, and in such event the Lessee shall look solely to the successor in interest of Lessor in and to the Property or this Lease. This Lease shall not be affected by any such sale, and the Lessee agrees to attorn to any such purchaser or assignee provided Lessee has received an Assumption

Agreement.

## ARTICLE 8. DEFAULTS AND REMEDIES

### 8.1 Events of Default; Notices.

(a) Any one or more of the following events shall constitute an "Event of Default".

(1) Failure to make Lease payments, as required pursuant to Section 2.3 of this Lease, or any other payment required under this Lease, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nonpayment;

(2) Failure of the Lessee to observe and perform any material covenant, condition or agreement hereunder on its part to be performed, and (i) continuance of such failure for a period of forty five (45) days after receipt by the Lessee of written notice specifying the nature of such default, or (ii) if by reason of the nature of such default the same cannot be remedied within said forty five (45) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same; or

(3) A general assignment by the Lessee for the benefit of creditors; or

(4) The filing of a voluntary petition by the Lessee, or the filing of an involuntary petition by any of the Lessee's creditors seeking the rehabilitation, liquidation or reorganization of the Lessee under any law relating to bankruptcy, insolvency or other relief of debtors, provided that in the case of an involuntary petition Lessee shall have ninety (90) days to cause such petition to be withdrawn or dismissed; or

(5) The appointment of a receiver or other custodian to take possession of substantially all of Lessee's assets or of this leasehold which appointment is not withdrawn or dismissed within ninety (90) days; or

(6) The Lessee becomes insolvent or declares it is unwilling to pay its debts as they become due; or any court enters a decree or order directing the winding up or liquidation of Lessee or of substantially all of its assets; or the Lessee takes any action toward the dissolution or winding up of its affairs or the cessation or suspension of its use of the Residential Units; or

(7) Attachment, execution or other judicial seizure of substantially all of the Lessee's assets or this leasehold, which is not dismissed, bonded, or stayed within ninety (90) days.

8.2 Remedy of Material Breach by Lessee. At any time after the occurrence of an Event of Default hereunder, Lessor may terminate this Lease by giving Lessee written notice thereof, setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and Lessee's estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Lease Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Property (including all buildings and other Improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of

any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants. Upon the exercise of Lessor's remedies pursuant to this Section 9.2, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request in order to accurately set forth of record the then current status of Lessee's estate and Lessee's rights hereunder.

8.3 Deficiency Judgments. Lessor, for itself and for each and every succeeding owner of Lessor's estate in the Property, agrees that it shall not be entitled to seek a personal judgment against Lessee and that upon any Event of Default hereunder, the rights of Lessor to enforce the obligations of Lessee, its successors or assigns, or to collect any judgment, shall be limited to the termination of this Lease and of Lessee's estate and the enforcement of any other rights and remedies specifically granted to Lessor hereunder.

## ARTICLE 9. ASSIGNMENTS AND TRANSFERS

9.1 Consent Required. Except as expressly provided herein, Lessee shall not, without the prior written consent of Lessor which shall not be unreasonably withheld, conditioned or delayed, assign this Lease or any interest therein ("Transfer"). A Transfer shall be deemed to include any attempt by Lessee to make or permit any voluntary or involuntary, total or partial, sale, assignment, conveyance, mortgage, pledge, encumbrance, or other transfer of any or all of the Improvements. Any attempt to Transfer Lessee's interest in this Lease without Lessor's prior written consent shall be null and void, and any assignee, sublessee, secured party or transferee shall acquire no right or interest by reason of such attempted Transfer.

9.2 Permitted Transfers. Notwithstanding the foregoing, Lessor's prior written consent of an assignment or transfer of this Lease or conveyance of Lessee's leasehold interest in the Property, or any part thereof, shall not be required to effectuate any of the following ("Permitted Transfers"):

(a) A transfer to a Wyoming entity owned entirely by Lessee or co-owned by Lessee.

(b) In the event of a Permitted Transfer by Lessee pursuant to this Section, Lessee nevertheless agrees that within thirty (30) days following such Permitted Transfer it shall give written notice to Lessor of such assignment or transfer along with a true and complete copy of the executed assignment or transfer document.

## ARTICLE 10. MISCELLANEOUS

10.1 Instrument Is Entire Agreement. This Lease including the Recitals above and the attached Exhibits constitute the entire agreement between the Parties with respect to the matters set forth in this Lease. This Lease shall completely and fully supersede all other prior understandings or agreements, both written and oral, previously entered into between the Lessor and the Lessee relating to the lease of the Property by the Lessor to the Lessee.

10.2 Notices. All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express, or by hand delivery by a recognized, reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other

communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Party any notices, requests, demands or other communications required or permitted to be given hereunder by such Party:

If to the Lessee:

S4 FLATS LLC  
C/O Figure 9 LLC  
PO Box 190576  
Anchorage, AK 99519  
Joe@figure9er.com  
Dave@figure9er.com

With a copy to:

Western Agents, Inc.  
10 E Pearl Avenue Suite 200  
PO Box 1172  
Jackson, WY 83001 USA

To Lessor at:

Town Attorney  
Town of Jackson  
P.O. Box 1687  
Jackson, Wyoming 83001  
Facsimile: 307.734.7068  
lcolasuonno@jacksonwy.gov

With a copy to:

Town Clerk  
Town of Jackson  
P.O. Box 1687  
Jackson, Wyoming 83001  
Facsimile: 307-739-0919  
clerk@jacksonwy.gov

With a copy to:

Jackson/Teton County Housing Department  
P.O. Box 714  
Jackson, Wyoming 83001  
ahnorton@tetoncountywy.gov

10.3 Non-Waiver of Breach. Neither the failure of the Lessor or the Lessee to insist upon strict performance of any of the covenants and agreements of this Lease nor the failure by the Lessor or the Lessee to exercise any rights or remedies granted to such Party under the terms of this Lease shall be deemed a waiver or relinquishment (i) of any covenant contained in this Lease or of any of the rights or remedies of the Lessee or the Lessor under this Lease, or (ii) or the right in the future of the Lessor or the Lessee to insist upon and to enforce by any appropriate legal remedy a strict compliance with all of the covenants and conditions of this Lease.

10.4 Effective Date; Counterparts. This Lease shall be effective during the Lease Term. This Lease may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

10.5 Lease Binding on Successors. This Lease and all of its provisions and attached Exhibits shall inure to the benefit of, and shall be binding upon, the Lessor, the Lessee, and their

respective permitted successors and permitted assigns and, as provided in this Lease, Lenders of the Lessee.

**10.6 Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal or agent or of partnership, joint venture or association or of buyer and seller between the Lessor and the Lessee, it being expressly understood and agreed that neither the computation of any payments and other charges under the terms of this Lease nor any other provisions contained in this Lease, nor any act or acts of the Parties, shall be deemed to create any relationship between the Lessor and the Lessee other than the relationship of landlord and tenant.

**10.7 No Merger.** There shall be no merger of this Lease or any interest in this Lease nor of the leasehold estate created by this Lease, with the fee estate in the Property, by reason of the fact that this Lease or such interest in the Lease, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created by this Lease may be conveyed or mortgaged in a leasehold mortgage to a leasehold mortgagee who shall hold the fee estate in the Property or any interest of the Lessor under this lease.

**10.8 Gender and Number.** Words of any gender used in this Lease shall be held to include any other gender, and any words in the singular number shall be held to include the plural (and vice versa), when the sense requires.

**10.9 Titles.** The titles and article or paragraph headings are inserted only for convenience, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provisions to which they refer.

**10.10 Severability.** If any provision of this Lease or the application of any provision to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**10.11 Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Wyoming.

**10.12 Amendments.** This Lease may not be amended or modified without the prior written consent of Lessor and Lessee. The Town Manager of the Town of Jackson, or his or her designee, shall have the authority on behalf of the Lessor to approve amendments to this Agreement.

**10.13 No Mortgage Encumbrance by Lessor.** Except as contemplated by Section 4.6, Lessor shall not mortgage its fee estate unless there exists an express subordination of any fee mortgage to Lessee's interest in the Lease. Lessee shall not be obligated to subordinate its leasehold interest and any interests in subleases and subrents to a subsequent mortgage of the fee estate granted by Lessor.

**10.14 GOVERNMENTAL IMMUNITY.** Lessor does not waive its governmental immunity by entering into this Ground Lease and specifically retains immunity and defenses available to it as a governmental entity pursuant to Wyo. Stat. Ann. §1-39-101, *et seq.*, and all other state law.

## ARTICLE 11. LENDER PROTECTIONS AND OBLIGATIONS

11.1 Rights and Obligations of Lenders. If Lessee obtains a Leasehold Mortgage in accordance with the provisions of Article 4, as long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) No Cancellation. Lessor will not cancel, accept a surrender of, terminate or modify this Lease in the absence of a default by Lessee without the prior consent in writing of the Lender and until Lessor has complied with the provisions of this Article as to the Lender's rights to cure and obtain a new lease.

(b) Notice of Defaults to Lender. Lessor agrees to give to each Lender a written copy of all notices of default that Lessor gives to Lessee; provided, however, that the failure to give notice to Lender will not invalidate or otherwise affect the notice given to Lessee. Such copy shall be mailed or delivered to any Lender at, or as near as possible to, the same time such notices are given to Lessee. Upon the execution of any Leasehold Mortgage, Lessor shall be informed in writing of the vesting of the security interest evidenced by the Leasehold Mortgage and of the address to which all notices to the Lender are to be sent. Any notices of default given by Lessor under the Lease shall describe the default(s) with reasonable detail. Each Lender shall have the right to cure any breach or default within the time periods given below.

(c) Lender's Cure Rights.

(i) Notice and Cure. After receipt by Lessee of a notice of default under the Lease and the expiration of any applicable period of cure given to Lessee under the Lease, Lessor shall not terminate the Lease or exercise its other remedies under the Lease if:

1. Within sixty (60) days after Lender's receipt of the notice of default, any Lender (i) cures the default, or (ii) if the default reasonably requires more than sixty (60) days to cure, commences to cure said default within such sixty (60) day period and thereafter diligently prosecutes the same to completion; or

2. Where the default cannot be cured by payment or expenditure of money or without possession of the Property or otherwise, Lender initiates foreclosure or other appropriate proceedings (after Lender complies with its obligations set forth in Section 11.2 below) within sixty (60) days after receipt of the notice of default, thereafter cures all other defaults reasonably capable of cure by the payment of money to Lessor, and thereafter continues to pay all rents, real property taxes and assessments, and insurance premiums to be paid by Lessee under the Lease. Lender shall then have sixty (60) days following the later to occur of (i) the date of execution and delivery of a New Lease of the Property pursuant to Section 11.1(d) of the Lease, or (ii) the date on which Lender or its nominee is able to occupy the Property following the foreclosure under such Leasehold Mortgage and the eviction of or vacating by Lessee of the leased premises, to cure such default; provided, however, that if any such default, by its nature, is such that it cannot practicably be cured within sixty (60) days, then Lender shall have such additional time as shall be reasonably necessary to cure the default provided that Lender commences such cure within such sixty (60)-day period and thereafter diligently prosecutes the cure to completion.

(ii) Lessor agrees to accept performance by Lender of all cures, conditions and covenants as though performed by Lessee, and agrees to permit Lender access to the Property to take all such actions as may be necessary or useful to perform any condition or covenants of

the Lease or to cure any default of Lessee. Lender shall not be required to perform any act or cure any default which is not reasonably susceptible to performance or cure by Lender.

(iii) If Lender elects any of the above-mentioned options after complying with the obligations of Lender set forth in Section 11.2 below, then upon Lender's acquisition of the Lease by foreclosure, whether by power of sale or otherwise or by deed or assignment in lieu of foreclosure, or if a receiver be appointed, the Lease shall continue in full force and effect subject to Section 11.5. If Lender proceeds as provided in Section 11.1(c)(i)(2) above, then upon Lender's acquisition of the Lease, Lender shall cure all prior defaults of Lessee under the Lease that are reasonably capable of being cured by Lender within the time set forth in said Section, Lessor shall treat Lender as Lessee under the Lease. If Lender commences an action as set forth in Section 11.1(c)(i)(2) above, and thereafter Lessee cures such defaults (which cure Lessor shall be obligated to accept) and Lender then terminates all proceedings under the option in said Section, then the Lease shall remain in full force and effect between Lessor and Lessee and all of the covenants, agreements, conditions, provisions, restrictions and limitations contained in Section 2.4 of this Lease shall survive.

(d) New Lease. In the event the Lease is terminated for any reason, excepting pursuant to Section 2.4(g), prior to the end of the Lease Term, Lessor shall promptly give Lender written notice of such termination and shall enter into a new lease ("New Lease") with Lender or Lender's nominee covering the Property, provided that Lender (a) requests such New Lease by written notice to Lessor within sixty (60) days after Lender's receipt of written notice by Lessor of termination of the Lease, and (b) cures all prior defaults of Lessee that are reasonably capable of being cured by Lender. The New Lease shall be for the remainder of the Lease Term, effective at the date of such termination, subject to Section 11.5. In connection with a New Lease, Lessor shall assign to Lender or its nominee all of Lessor's interest in all existing subleases of all or any part of the Property and all attornments given by the sublessees. Lessor shall not terminate or agree to terminate any sublease or enter into any new lease or sublease for all or any portion of the Property without Lender's prior written consent, unless Lender fails to deliver its request for a New Lease under this Section. In connection with any such New Lease, Lessor shall, by grant deed, convey to Lender or its nominee title to the Improvements, if any, which become vested in Lessor as a result of termination of the Lease.

(e) Permitted Delays. So long as Lender is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee or any other person, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, provided that Lender uses reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction, the time periods specified in Sections 11.1(c)(i)(1) and (2) above shall be extended for the period of such prohibition; provided that Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

(f) Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of the Leasehold Mortgage. If the holders of more than one such Leasehold Mortgage shall make written requests upon Lessor in accordance with this Lease, the New Lease (as provided for in Section 13.1(d) above) shall be entered into pursuant to the request of the holder whose Leasehold Mortgage shall be prior in lien thereto and thereupon the written requests for a New Lease of each holder of a Leasehold Mortgage junior in lien shall be and be deemed to be void and of no force or effect.

11.2 Lender Obligation to Provide Notice of Default and Right to Cure Default of Leasehold Mortgage; Lessor's Forbearance.

(a) Notice of Default; Right to Cure. If a Lender sends notice of default of a Leasehold Mortgage to the Lessee because the Lessee has failed to comply with the terms of the Leasehold Mortgage, the Lender shall, at the same time, send a copy of that notice to the Lessor. Upon receiving a copy of the notice of default and within that period of time in which the Lessee has a right to cure such default, the Lessor shall have the right to cure the default on the Lessee's behalf, provided that all current payments due the Lender since the notice of default was given are made to the Lender. If after the cure period has expired, the Lender intends to accelerate the note secured by the Leasehold Mortgage or begin foreclosure proceedings under the Leasehold Mortgage, the Lender shall first notify the Lessor of its intention to do so, and Lessor shall then have the right, upon notifying the Lender within thirty (30) days of receipt of such notice, to acquire the Leasehold Mortgage by paying off the debt secured by the Leasehold Mortgage. If the Lender acquires the leasehold interest and Improvements through foreclosure or acceptance of a deed in lieu of foreclosure (in which event the Lease shall continue in full force and effect and Lessor shall treat the Lender as Lessee subject to Section 11.5), the Lender shall give Lessor written notice of such acquisition and Lessor shall then have an option to purchase the leasehold interest and Improvements from the Lender for the full amount owing to the Lender under the Leasehold Mortgage. Lender shall not be required to complete any or all Improvements prior to exercising its right to accelerate indebtedness or foreclose pursuant to this Article 11. To exercise this option to purchase, Lessor must give written notice to the Lender of its intent to purchase the foregoing within thirty (30) days following Lessor's receipt of the Lender's notice. Lessor must then complete the purchase within sixty (60) days of having given written notice of its intent to purchase. If Lessor does not complete the purchase within this sixty (60) day period, the Lender shall be free to sell the leasehold interest and Residential Units to any person or entity.

(b) Lender's Transferees. Etc. In the event the leasehold estate hereunder shall be acquired by foreclosure, trustee's sale or deed or assignment in lieu of foreclosure of a Leasehold Mortgage, the purchaser at such sale or the transferee by such assignment and its successors as holders of the leasehold estate hereunder shall not be liable for any Rent, if any, or other obligations accruing after its or their subsequent sale or transfer of such leasehold estate and such purchaser or transferee and its successors shall be entitled to transfer such estate or interest without consent or approval of Lessor; provided that, the purchaser or transferee or successor as holder of the leasehold estate hereunder shall be liable for the payment of all Rent, if any, becoming due with respect to the period during which such purchaser, transferee or other successor is the holder of the leasehold estate hereunder. This Section shall also apply to the rights of a Lender in connection with the entry into a New Lease under Section 11.1(d) and to the appointment of a receiver on behalf of a Lender.

(c) Insurance and Condemnation. In the event of any casualty to, or condemnation of, all or any part of the leased premises or any improvements now or hereafter located thereon, the provisions of the Leasehold Mortgages, relating thereto shall prevail over any provisions of this Lease relating thereto.

11.3 No Liability of Lender for Prior Indemnified Acts. A Lender shall not be obligated to assume the liability of Lessee for any indemnities arising for a period prior to Lender's acquiring the right to possession of the Property under this Lease.

11.4 Further Amendments: Estoppels. Lessor and Lessee shall cooperate in including in the Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Lender for the purpose of implementing the mortgagee protection provisions contained

in this Lease. Lessor and Lessee each agree to execute and deliver (and to acknowledge for recording purposes, if necessary) any agreement required to affect any such amendment. At the request of Lessee or any proposed or existing Lender, Lessor shall promptly execute and deliver (i) any documents or instruments reasonably requested to evidence, acknowledge and/or perfect the rights of Lenders as herein provided; and (ii) an estoppel certificate certifying the status of this Lease and Lessee's interest herein and such matters as are reasonably requested by Lessee or such Lenders. Any such estoppel certificate may be conclusively relied upon by any proposed or existing leasehold Lender or assignee of Lessee's interest in this Lease.

**11.5 Survival of Provisions in Section 2.4.** In the event of Lender's acquisition of the Lease by foreclosure, or if a receiver be appointed, pursuant to Section 11.1(c)(iii) or Section 11.2(a), or a New Lease is entered into pursuant to Section 11.1(d), the Lease shall continue in full force and effect except that covenants, conditions and restrictions in Sections 2.4(b), 2.4(c), 2.4(e), 2.4(i) and 2.4(j) shall be deleted and the obligations to provide and record the Homebuyer Special Restriction and the Right of First Purchase Agreement shall be deleted from Sections 2.4(d) and 2.4(h).

## **ARTICLE 12. - FORCE MAJEURE**

**12.1** Any prevention, delay, nonperformance or stoppage by Lessee due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof, or civil or military authority; acts of God; acts or omissions of Lessor or its agents or employees; fire, explosion or floods; strikes, walkouts or inability to obtain materials; war, riots, sabotage or civil insurrection; or any other causes beyond the reasonable control of Lessee.

**12.2** No prevention, delay, or stoppage of performance shall be excused unless Lessee notifies Lessor within ninety (90) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Article 12.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first written above.

LESSEE:

S4 FLATS LLC, a Wyoming limited liability company

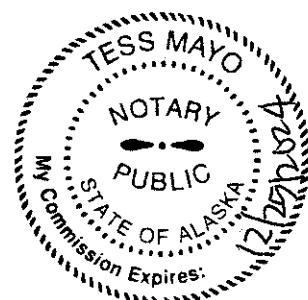
By:

Joseph Saunders, Manager

By:

David Velasquez, Manager

Alaska  
STATE OF WYOMING <sup>TM</sup> )  
Anchorage <sup>TM</sup> ) ss.  
COUNTY OF TETON )



The foregoing instrument was acknowledged before me by  
Joseph Saunders and David Velasquez, as Officers of the S4  
FLATS LLC, a Wyoming limited liability corporation, this 29<sup>th</sup> day of August,  
2022.

WITNESS my hand and official seal.

My commission expires: 12/25/2024

Notary Public

LESSOR:

TOWN OF JACKSON, a Wyoming municipal corporation

BY: Hailey Morton  
its Mayor

ATTEST:

BY: Riley Taylor  
its Town Clerk



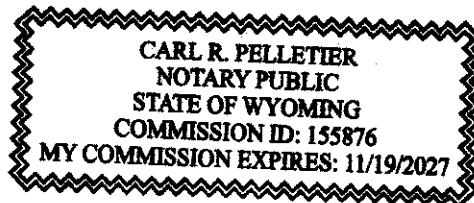
State of Wyoming )  
 ) ss.  
County of Teton )

The foregoing instrument was acknowledged before me by Hailey Morton Levinson and Riley Taylor, Mayor and Town Clerk, respectively, of the Town of Jackson this 6 day of July, 2022.

Witness my hand and official seal.

Carl Pelletier  
Notary Public

My Commission Expires: 11/19/2027



**EXHIBIT A**

910 Smith Lane:

Lot 25 of the Jackson Hole Meadows Addition to the Town of Jackson, Teton County, Wyoming according to that plat recorded in the Office of the Teton County Clerk on July 16, 1970 as Plat No. 191.

PIDN: 22-41-16-32-4-05-001

AND

915 Simon Lane:

Lot 36 of the Jackson Hole Meadows Addition to the Town of Jackson, Teton County, Wyoming according to that plat recorded in the Office of the Teton County Clerk on July 16, 1970 as Plat No. 191.

PIDN: 22-41-16-32-4-05-011