

WHEN RECORDED MAIL TO:

Glacier Bank
Attn: Jennifer Wheeler
202 S. Main Street
P.O. Box 27
Kalispell, MT 59903-0027

ASSIGNMENT OF LEASE AND LANDLORD CONSENT #22802

THIS ASSIGNMENT OF LEASE AND LANDLORD CONSENT (this “Assignment”), dated this ____ day of _____, 2022 is made among **9% Bluebird Housing Partners LLC**, an Idaho limited liability company, whose address is 520 Pike Street, Suite 1010, Seattle WA 98101 (“Borrower”), **The City of Ketchum**, an Idaho municipal corporation, whose address is P.O. Box 2315, Ketchum, ID 83340 (“Landlord”), and **Glacier Bank**, whose address is 202 S. Main Street, P.O. Box 27, Kalispell, MT 59903 (“Lender”).

RECITALS

A. **Ketchum Community Development Corporation**, an Idaho nonprofit corporation (“KCDC”), is the tenant under that certain Amended and Restated Ground Lease dated this ____ day of _____, 2022 between KCDC, as lessee, and Landlord, as lessor (as it may be assigned, renewed, extended, amended, or restated from time to time, subject to the terms of this Assignment, the “Lease”), with respect to the following real property located in Blaine County, Idaho (the “Land”):

See Attached Exhibit A

B. Borrower owns certain improvements (“Improvements”) on the Land (the Land and the Improvements are collectively referred to herein as the “Property”), including a 27-unit rental apartment complex commonly known as Bluebird Village Apartments.

C. KCDC is subletting the Land to Borrower pursuant to that certain [Sublease Agreement] dated [DATE OF SUBLEASE], between Borrower, as lessee, and KCDC, as lessor (as it may be assigned, renewed, extended, amended, or restated from time to time, subject to the terms of this Assignment, the “Sublease”), and such Sublease is being assigned to Lender pursuant to that certain Assignment of Sublease and Landlord Consent executed concurrently herewith (as it may be assigned, renewed, extended, amended, or restated from time to time, the “Assignment of Sublease”).

D. Borrower and Lender have entered into that certain Promissory Note, dated of even date herewith (as it may be amended, modified, supplemented, extended, renewed or replaced from time to time, the “Note”), that certain Deed of Trust, dated of even date herewith (as it may be amended, modified, supplemented, extended, renewed or replaced from time to time, the “Deed of

Trust”), and other Related Documents (as defined in the Deed of Trust), pursuant to which Lender has agreed to make a loan to Borrower in the principal amount of up to \$9,000,000.00 (the “Loan”) to finance the acquisition of the Improvements and the acquisition of additional real property, as further set forth in the Note. Borrower’s obligations under the Note are secured by, among other things, the Deed of Trust, an assignment of rents, a fixture filing, and a security agreement, each dated as of the date hereof (such documents securing the Loan, as they may be amended, modified, extended, restated, renewed, or supplemented from time to time, collectively referred to herein as the “Loan Security Documents”).

E. To provide Lender additional security for the Loan, Borrower and Landlord have agreed to the terms of this Assignment. Both Borrower and Landlord acknowledge that they each will benefit from the Loan and the terms of this Assignment were specifically negotiated by the parties and were a material inducement of Lender providing the Loan.

F. Any capitalized terms used herein and not otherwise defined shall have the meaning(s) set forth in the Deed of Trust unless the context clearly indicates otherwise.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements in this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows

1. **Assignment of Lease.** Borrower hereby absolutely and unconditionally assigns, transfers, and conveys to Lender, and grants to Lender a security interest in, all of Borrower’s present and future right, title, and interest in, to and under the Lease, and all of Borrower’s rights to enforce the obligations of Landlord under the Lease, and all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other property, in any form whatsoever including, without limitation, general intangibles, chattel paper, accounts, instruments, documents, money, goods (whether equipment or inventory), and consumer goods, to secure the full payment and performance by Borrower of all of the Borrower’s obligations, duties, expenses, and liabilities under or in connection with the Loan, the Note, and the other Related Documents, as such may be now or hereafter amended, modified or restated; *subject to* Borrower’s rights to enjoy the benefits of the Lease while not in default under the Loan or the Lease. This Assignment will remain in full force and effect until the Loan is paid in full, including all amendments, modifications, extensions, restatements, renewals, or supplementations. This Assignment includes all future amendments, modifications, extensions, restatements, renewals, or supplementations to the Lease.

2. **Borrower Lease Defaults.** Landlord and Borrower shall promptly give Lender written notice of any default relating to the Lease or any document relating thereto, and Landlord and Borrower shall keep Lender reasonably notified of the ongoing status of any default. In addition to the foregoing notice requirements and any other notice requirements set forth herein, Landlord agrees not to terminate the Lease, or any part thereof or right thereunder, for any reason, including default, without giving Lender at least sixty (60) days’ prior written notice for each and every contemplated termination (the “60-Day Period”), and thereafter, during the 60-Day Period,

Lender may exercise any of Lender's rights under this Assignment. For purposes of clarity, this Assignment does not preclude or delay Lender from exercising any other remedy available to Lender under the Related Documents in the event of a default thereunder. If Borrower defaults under the Loan or the Lease, or any document relating to the Loan or the Lease, past any applicable notice and cure periods, Lender may do any of the following: (a) by giving notice during any 60-Day Period, step into Borrower's position as lessee under the Lease and take possession of the Land under the terms of the Lease, temporarily or permanently assuming Borrower's obligations under the Lease; (b) including after taking possession of the Land and assuming Borrower's obligations under the Lease as permitted in Section 2(a), by giving notice, to thereafter reassign the Lease (including as relating to any foreclosure action or other transaction relating to the disposition of the Land), after which Lender will have no further obligation to Landlord as relating to the Lease from that point forward; and (c) exercise any other remedy granted to Lender by the Related Documents or under the Lease. Such notices shall be effective upon receipt as set forth in Section 6 below. Lender will have no liability related to the Lease, except only to cause the performance of Borrower's obligations due under the Lease attributable solely to that period of time following when Lender assumes Borrower's obligations under the Lease until such time as Lender transfers or assigns such obligations. Landlord agrees to attorn to Lender, and to Lender's successors and assigns, as lessee, and to recognize Lender, and Lender's successors and assigns, as lessee under the terms of the Lease. Lender's exercise of its rights under this Assignment itself shall not allow Landlord to terminate or modify the Lease in any way. Even if Lender exercises its rights under this Assignment, Borrower's obligations as lessee under the Lease and as Borrower under the Loan and all Related Documents shall survive Lender's exercise of its rights under this Assignment. The rights of Lender created or granted under this Assignment are in addition to any other rights of Lender relating to the Loan. Any amounts paid or incurred by Lender under this Assignment shall be added to the principal amount due by Borrower under the Loan and secured by the collateral of the Loan. Notwithstanding the foregoing or any other provision herein, Lender shall have no duty or obligation to cure or remedy any breach or default. It is specifically agreed that Borrower and Landlord shall not, as to Lender, anticipate or require cure of any such default by Lender. The parties agree nothing in this Assignment is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Borrower in the payment of rent and/or any other sums due under the Lease or in the performance of any of the terms, covenants, or conditions of the Lease on Borrower's part to be performed; *provided, however*, that Landlord shall comply with the terms of this Assignment prior to the exercise of any such rights or remedies.

3. **Acknowledgements and Agreements by Borrower and Landlord.** Borrower and Landlord hereby represent, warrant, acknowledge and agree as follows:

a. Other than Lender's obligation to cause the performance of Borrower's obligations due under the Lease attributable solely to that period of time following when Lender assumes Borrower's obligations under the Lease until such time as Lender transfers or assigns such obligations, as set forth in Section 2(c), Lender shall not be deemed to have assumed, or become liable for, the payment or performance of any of the obligations or liabilities of Landlord or Borrower arising from or in connection with the Lease whether arising before or after the occurrence of an event of default.

b. Borrower and Landlord will not amend, modify, extend, restate, renew, supplement, terminate, cancel, or waive any provision of, or consent to the amendment, modification, extension, restatement, renewal, supplementation, termination, cancellation, or waiver of any provision of the Lease without the prior written consent of Lender. No amendment, modification, extension, restatement, renewal, supplementation, termination, or cancellation of the Lease, and no consent or waiver given with respect to the Lease on or after the date hereof, whether pursuant to the terms of the Lease or otherwise, will be effective without the written consent of Lender, except as specifically provided in Sections 6.6 or 19.5 of the Lease. Borrower shall not prepay any rents or other sums due under the Lease for more than one (1) month in advance of the due date therefor. Borrower shall not collect any rents or other sums due from residents of the Property for more than one (1) month in advance of the due date therefor.

c. From and after the date of this Assignment, in the event of any act or omission by Landlord which would give Borrower the right, either immediately or after the giving of notice, lapse of time or both, to terminate the Lease or to claim a partial or total eviction from the Property, Borrower will not exercise any such right: (i) until it has given written notice of such act or omission to Lender, which notice will be sent simultaneously with the notice sent to Landlord; and (ii) until sixty (60) days after receipt of such notice or such longer period of time as may be necessary to cure or remedy such default, act, or omission including such period of time necessary to obtain possession of the Property and thereafter cure such default, act, or omission, during which period of time Lender shall be permitted to cure or remedy such default, act or omission. Notwithstanding the foregoing, Lender shall have no duty or obligation to cure or remedy any breach or default. It is specifically agreed that Borrower and Landlord shall not, as to Lender, anticipate or require cure of any such default by Lender.

d. Borrower shall send a copy of any notice, statement, report, or other document required to be delivered to Landlord under the Lease to Lender at the same time the same is sent to Landlord. Landlord shall send a copy of any notice, demand, consent, approval, or other communication or document required to be delivered to Borrower under the Lease to Lender at the same time the same is sent to Borrower.

e. Borrower has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Land, or any portion of or any interest in the Land, and to the extent that Borrower has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the lien and security interest in favor of Lender under the Related Documents and is hereby waived and released as against Lender.

f. Lender shall have no obligation nor incur any liability with respect to the erection or completion of any improvements on the Land or for completion of any improvements for Borrower's use and occupancy. Lender shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, title, habitability, fitness for purpose or possession.

g. This Assignment satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement, and Borrower waives any requirement to the contrary in the Lease.

h. Borrower and Landlord agree that Lender and its representatives shall have the right to inspect the Property and Borrower's and Landlord's books and records pertaining thereto, upon reasonable prior notice to Borrower and Landlord and during normal business hours.

i. This Assignment does not constitute a waiver by Lender of any of its rights under the Related Documents, or in any way release Borrower from, or reduce Borrower's obligations to comply with the terms, provisions, conditions, covenants, agreements, and clauses of the Related Documents, and the provisions of the Related Documents remain in full force and effect and must be complied with by Borrower.

4. **Consent of Landlord.** Landlord hereby expressly consents to the assignment of the Lease to Lender on the terms set forth in this Assignment. Whether or not Lender enters into possession of the Property for any purpose, Borrower will remain fully liable for all obligations of Borrower as lessee under the Lease. Furthermore, Landlord hereby expressly consents to the terms and conditions of the Sublease and the Assignment of Sublease.

5. **Lease Status.** The Lease is and shall remain subordinate to Lender's security interest in the Land, the Improvements, and any other collateral pursuant to the Loan Security Documents. Notwithstanding the foregoing, and without limiting any other provision of this Assignment, Lender may, at its option and without joinder or further consent of Borrower, Landlord, or anyone else, at any time after the date of this Assignment, subordinate the lien of any or all of the Loan Security Documents (or any other lien or security interest held by Lender which covers or affects the Property) to the Lease by executing an instrument that is intended for that purpose and that specifies such subordination. If Lender elects to subordinate the lien of the Loan Security Documents, Borrower will execute any documents required to evidence such subordination; *provided, however*, notwithstanding that the Lease may by unilateral subordination by Lender hereafter be made superior to the lien of the Loan Security Documents, the provisions of the Loan Security Documents relative to the rights of Lender with respect to proceeds arising from an eminent domain taking (including a voluntary conveyance by Landlord in lieu thereof) and/or insurance payable by reason of damage to or destruction of all or any portion of the Property shall at all times be prior and superior to and shall control over any contrary provisions in the Lease. If Lender subordinates the Loan Security Documents to the Lease, Lender shall have no duty or obligation to cure or remedy any breach or default. Borrower and Landlord agree to execute and deliver from time to time, upon the request of Lender, a certificate regarding the status of the Lease, consisting of statements, if true (or if not, specifying why not): (a) that all of the agreements and provisions contained in the Lease are in full force and effect; (b) the Lease is bona fide and contains all of the agreements of the parties to the Lease with respect to the letting of the Property; (c) the date through which rentals have been paid; (d) the date of the commencement of the term of the Lease; (e) without limiting the terms of this Assignment, the nature of any amendments, modifications, extensions, restatements, renewals, or supplementations of the Lease; (f) that no

default, or state of facts which with the passage of time or notice (or both) would constitute a default, exists under the Lease; (g) no setoffs, recoupments, estoppels, claims or counterclaims exist against the parties to the Lease; (h) other than as permitted under the Related Documents, Borrower has not subleased any portion of the Property, and no party has assigned any of its rights under the Lease; and (i) such other matters as may be reasonably required by Lender.

6. **Continuation of this Assignment.** It is contemplated by Borrower and Lender that, subject to certain terms and conditions, the Note and certain other documents related to the Loan will be amended and restated or reaffirmed prior to or on the Maturity Date (as defined in the Note), and the financing provided pursuant to the Note and Related Documents converted into a permanent loan. It is intended and agreed by the parties that such permanent financing shall be considered in all respects a continuation of the loan evidenced by the Note, and this Assignment and the terms and provisions hereof shall continue to remain in full force and effect with respect to such permanent financing until all obligations under the documents related thereto have been fully paid and performed.

7. **Notices.** Any notice required to be given under this Assignment shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the address shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. It will be Borrower's responsibility to tell the others of the notice from Lender. A copy of all notices shall also be sent to:

Ketchum Community Development Corporation
P.O. Box 6452
Ketchum, ID 83340-6452
Attn: Executive Director

GMD Development LLC
520 Pike Street, Suite 1010
Seattle, WA 98101
Attn: Gregory M. Dunfield

8. **Miscellaneous.** The following miscellaneous provisions are a part of this Assignment:

a. The rights granted to Lender hereunder are in addition to any rights granted to Lender in the Lease, the Loan Security Documents, or in the Related Documents. This Assignment supersedes any inconsistent provision of the Lease or any other agreement, express or implied, between Borrower and Landlord and shall survive any termination of the Lease by operation of law, including following any foreclosure of the lien of the Loan Security Documents. Any conflict between the Note and the Lease shall be read in favor

of the Note.

b. Nothing contained in this Assignment shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Note, the Loan Security Documents, or the other Related Documents.

c. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

d. This Assignment shall inure to the benefit of Lender, its successors and assigns; *provided, however*, that if Lender assigns or transfers its interest, all obligations and liabilities of Lender under this Assignment from the date of such assignment or transfer thereof forward shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom such interest is assigned or transferred; and *provided, further*, that the interest of Landlord or Borrower under the Lease or this Assignment may not be assigned or transferred without the prior written consent of Lender.

e. Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Assignment shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, shall constitute a waiver of any of Lender's rights or of any of Borrower's obligations as to any future transactions. Whenever the consent of Lender is required under this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

f. This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

g. The laws of the State of Idaho and of the United States of America shall govern the rights and duties of the parties hereto and the validity, construction, enforcement, and interpretation of this Assignment. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Blaine County, State of Idaho.

h. If any provision of this Assignment or the application thereof to any person or entity or circumstance shall, to any extent, be illegal, invalid, and/or unenforceable, the remainder of this Assignment or the application of such provision to persons or entities or circumstances other than those as to which it is illegal, invalid, and/or unenforceable, as

the case may be, shall not be affected, and each provision of this Assignment shall be legal, valid, and enforceable to the extent permitted by law. The illegality, invalidity, and/or unenforceability of any provision of this Assignment in any jurisdiction shall not affect the legality, validity, and/or enforceability thereof in any other jurisdiction.

i. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed effective as of the date first above written.

{Signatures page(s) to follow}

LANDLORD:

THE CITY OF KETCHUM, IDAHO

an Idaho municipal corporation

By: _____

Name: _____

Its: _____

STATE OF IDAHO)

:ss

County of _____)

On this ___ day of _____ 2022, before me, a notary public for the State of Idaho, personally appeared _____, the _____ of the City of Ketchum, Idaho, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Printed Name: _____

Notary Public for the State of _____

EXHIBIT A

Legal Property Description

[Follows This Page]