

AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into as of the 30th day of October, 2017, by and among BESSEY COMMONS CORPORATION, a Maine corporation with a mailing address of c/o Housing Initiatives of New England Corporation, 36 Union Wharf, Suite 4, Portland, Maine 04101 (the "Sublessor"), BESSEY SCHOOL, LP, a Maine limited partnership with a mailing address of c/o Housing Initiatives of New England Corporation, 36 Union Wharf, Suite 4, Portland, Maine 04101 (the "Phase I Sublessee"), and BESSEY COMMONS II, LP, a Maine limited partnership with a mailing address of c/o Housing Initiatives of New England Corporation, 36 Union Wharf, Suite 4, Portland, Maine 04101 (the "Phase II Sublessee").

RECITALS

WHEREAS, the Town of Scarborough (the "Town") and Bessey School Senior Housing Corporation entered into a certain Lease dated July 20, 2006 (the "Lease"), with respect to certain improved property of the Town situated on U.S. Route One in Scarborough, Maine (the "Leased Premises"), the Leased Premises being a portion of Town's property commonly referred to as the "Bessey School" property, a Memorandum of which Lease dated as of July 20, 2006, having been recorded in the Cumberland County Registry of Deeds in Book 24264, Page 330; and

WHEREAS, the Leased Premises are now part of a three (3) lot subdivision (the "Subdivision") shown on a plan entitled "Final Subdivision Plan of Bessey Commons Senior Housing Subdivision" made for Bessey School Senior Housing Corporation by Owen Haskell, Inc., dated October 12, 2006, approved by the Town of Scarborough Planning Board on November 20, 2006, and recorded in said Registry of Deeds in Plan Book 206, Page 812 (the "Subdivision Plan"); and

WHEREAS, Bessey School Senior Housing Corporation assigned the Lease to the Sublessor and the Sublessor assumed the Lease by a certain Assignment and Assumption of Lease dated August 21, 2007, and recorded in said Registry of Deeds in Book 25420, Page 206; and

WHEREAS, the Sublessor and the Phase I Sublessee entered into a certain Sublease Agreement dated as of August 23, 2007, and recorded in said Registry of Deeds in Book 25420, Page 210, as amended by First Amendment to Lease and to Sublease Agreement dated as of February 4, 2009, and recorded in said Registry of Deeds in Book 26676, Page 264, and by Second Amendment to Sublease Agreement dated as of February 17, 2009, and recorded in said Registry of Deeds in Book 26677, Page 154 (collectively, the "Phase I Sublease"), relating to Lot 1 and certain other portions of the Subdivision as shown on the Subdivision Plan; and

WHEREAS, the Phase I Sublessee subsequently constructed the buildings and improvements comprising Phase I of the Bessey Commons Senior Housing facility (the "Project") within Lot 1 of the Subdivision; and

WHEREAS, the Phase II Sublessee intends to proceed with the construction of Phase II of the Project within Lot 2 of the Subdivision; and

WHEREAS, some of the improvements, primarily certain parking areas and access ways (collectively, the "Phase II Improvements"), to be constructed as part of Phase II of the Project will be located partly on Lot 1 and partly on Lot 2 of the Subdivision, some of which will be used in common by the Phase I Sublessee and the Phase II Sublessee and some of which will be used exclusively by the Phase I Sublessee and/or the Phase II Sublessee, as the case may be, thereby requiring a Third Amendment to the Phase I Sublease to address such common and exclusive use rights; and

WHEREAS, the Sublessor and the Phase II Sublessee will need to enter into a Sublease Agreement with respect to Lot 2 of the Subdivision (the "Phase II Sublease") prior to the Phase II Sublessee commencing construction of Phase II of the project; and

WHEREAS, the Sublessor, the Phase I Sublessee, and the Phase II Sublessee desire to enter into this Agreement to evidence their agreement to enter into the Third Amendment to the Phase I Sublease and the Phase II Sublease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Sublessor, the Phase I Sublessee and the Phase II Sublessee agree as follows.

Promptly following the receipt by the Phase II Sublessee of all permits and approvals necessary in order to permit construction of Phase II:

(a) The Sublessor and the Phase I Sublessee shall enter into the Third Amendment to the Phase I Sublease to provide for the common and/or exclusive use of Phase II Improvements by the Phase I Sublessee and the Phase II Sublessee, as the case may be, following the Sublessor and the Phase II Sublessee entering into the Phase II Sublease, upon such terms and conditions as shall be reasonably acceptable to the Sublessor and the Phase I Sublessee, which Third Amendment to the Phase I Sublease shall be subject to the prior review and approval of the Phase II Sublessee; and

(b) Following the Sublessor and the Phase I Sublessee entering into the Third Amendment to the Phase I Sublease, the Sublessor and the Phase II Sublessee shall enter into the Phase II Sublease with respect to Lot 2 of the Subdivision upon such terms and conditions as shall be reasonably acceptable to the Sublessor and the Phase II Sublessee.

Counsel for the Phase II Sublessee shall be responsible for preparing the initial drafts of the Third Amendment to the Phase I Sublease and the Phase II Sublease.

The parties agree to cooperate in good faith in negotiating the terms and conditions of the Third Amendment to the Phase I Sublease and the Phase II Sublease.

Should any party fail to fulfill its obligations hereunder, the remaining parties may pursue all available legal and equitable remedies, including specific performance and reasonable attorney's fees.

The obligations of the parties shall be subject to and contingent upon the receipt of the consent and approval, as required, of the Town of Scarborough, other governmental authorities, the Limited Partners of the Phase I Sublessee and the Phase II Sublessee, the financing entities holding security interests and other recorded rights regarding Phase I of the Project, and the financing entities providing financing for Phase II of the Project.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

Any notices required under this Agreement shall be sufficient if in writing and if sent: (a) by first class mail, postage prepaid, registered or certified, return receipt requested; (b) by hand delivery; (c) by FedEx, or similar overnight express mail service, prepaid, to the addresses set forth above; or (d) by electronic (email) transmission. All such communication shall be deemed made upon the earlier of (3) business days following deposit with the U.S. Mail or the date of receipt as disclosed on the return receipt (if sent by registered or certified mail), or upon delivery (if hand delivered), or upon delivery as indicated on the proof of delivery (if sent via overnight express mail service), or upon time of confirmed receipt (if sent via email). With respect to any of the above-referenced methods of delivery, rejection or other refusal to accept or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice sent. The parties may change their address for purposes of hereof by giving the other party notice of the new address in the manner described herein.

This Agreement may not be modified, waived or amended except in a writing signed by the parties. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely expresses their entire agreement.

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the

fullest extent permitted by law provided that the invalid provision does not have a material adverse effect upon the overall purpose of this Agreement.

It is expressly understood and agreed that time is of the essence in respect of this Agreement.

This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.


IN WITNESS WHEREOF, the Sublessor, the Phase I Sublessee and the Phase II Sublessee have executed this Agreement as of the day and year first above written.

WITNESS:



BESSEY COMMONS CORPORATION

By: 
Cynthia J. Milliken Taylor
Its President



BESSEY SCHOOL, LP

By Bessey School Senior Housing Corporation, its General Partner

By: 
Cynthia J. Milliken Taylor
Its President



BESSEY COMMONS II, LP

By Bessey School Senior Housing Corporation, its General Partner

By: 
Cynthia J. Milliken Taylor
Its President