GROUND LEASE

THIS GROUND LEASE ("Lease"), dated _____, 202__ (the "Effective Date"), is between BREVARD-DAVIDSON RIVER PRESBYTERIAN CHURCH, having an address of 300 East Main Street, Brevard, NC 28712 ("Landlord") and City of Brevard, having an address of 95 W Main Street, Brevard, NC 28712 ("Tenant")**.**

1. **PREMISES:** Landlord, for and in consideration of the covenants contained in this Lease and made on the part of Tenant, demises and leases unto Tenant, and Tenant leases from Landlord, the parcel of land shown as the cross-hatched area on Exhibit A attached hereto and incorporated herein by reference (the "Premises"), which Premises consist of a portion of 8586-60-5685-000 & that lot known as PIN 8586-70-1817-000.

2. LEASE TERM: Tenant shall have and hold the Premises for a term commencing on the Effective Date and ending _____, 2027.

3. RENT AND TAXES:

A. **Rent:** Tenant's liability for rent shall commence on the Effective Date (the "Rent Commencement Date"). Tenant, in consideration of the covenants made by Landlord, promises to pay rent to Landlord at the address provided in the Notice section of this Lease (or such other address as Landlord may designate in writing from time to time) One Dollar Per Year.

B. **Taxes:** Except as provided below, Tenant shall pay promptly and before they become delinquent all general real estate taxes imposed at any time during the term or any extension of this Lease, on the Premises. If the tax bill does not separate out the Premises from the remainder of Landlord's tax parcel of which the Premises is a part, , then Landlord shall pay the bill and Tenant shall reimburse Landlord for any taxes attributable to the Premises prorated based on acreage of the land and the portion of the tax bill relating to the land.

4. **TENANT'S COVENANTS:** Tenant covenants and agrees, during the Term:

A. No Construction: Tenant shall not build or improve the Premises in any way without Landlord's consent, except for feasibility studies as allowed by the Permitted Use defined below.

B. Liens and Encumbrances: Not to cause the estate of Landlord in the Premises to become subject to any lien, charge or encumbrance whatsoever, and to indemnify and keep indemnified Landlord against all such liens, charges and encumbrances.

C. Insurance and Indemnity: Tenant shall maintain and keep in force Comprehensive General Liability insurance, on an occurrence basis, insuring against claims for personal injury, death or property damage occurring in, on or about the Premises with a combined single limit of $5,000,000.00 for Bodily Injury, Death and Property Damage Liability, and Tenant's indemnification obligations under this Lease, and shall name Landlord as an additional insured on said policy. Tenant shall deliver to Landlord, upon request, a certificate of insurance and of any renewals from time to time during the term of this Lease.

Tenant further agrees to indemnify, defend and save Landlord harmless from any liability, loss, cost, expense or claim of any nature resulting from this lease, and any damage to person or property arising out of Tenant's use of the Premises, including for losses, costs, expenses, damages, liabilities or attorney's fees that arise as result thereof up to a cap of $5,000,000.00.

D. Repairs: To keep the Premises in a safe and good condition and repair, subject to ordinary wear and tear and to Landlord's obligations under this Lease, if any.

E. Compliance with Law: To comply with all governmental laws, rules and regulations applicable to the use, development or operation of the Premises for the Permitted Use.

G. Permitted Use. To only use the Premises for the purpose of conducting feasibility studies to pursue a possible Affordable Rental Housing development project, as defined below, ("Permitted Use") and for no other purpose without the express prior written consent of Landlord; provided, however, that Tenant shall not conduct any invasive testing of any nature without the prior express written approval of Landlord as to each specific invasive test intended to be conducted by Tenant. Affordable Rental Housing is defined as housing wherein the use thereof is restricted solely to rental housing for households which have a maximum income less than 80% of the Area Median Income for Transylvania County, North Carolina as defined by the United States Department of Housing and Urban Development (hereinafter "HUD"). Landlord makes no representation or warranty regarding the suitability of the Premises for or the legality (under zoning or other applicable ordinances) of the Permitted Use for the Premises. Tenant shall not cause or permit any waste to occur in the Premises. Tenant shall keep the Premises, and every part thereof, in a clean and wholesome condition, free from any objectionable noises, loud music, objectionable odors or nuisances. Tenant shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Tenant's expense, shall repair any damage to the Premises caused by Tenant's on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Landlord's use and enjoyment of its adjacent property. In that respect, Tenant shall not undertake on-site inspections during the hours that Landlord is open to the public for worship, including but not limited to Sundays from 8am to 1pm. Tenant shall not disclose any information regarding the Premises unless required by law, and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Tenant shall obtain their agreement to maintain such confidentiality. Tenant assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section and agrees to indemnify and hold Landlord harmless from any damages resulting therefrom. This indemnification obligation of Tenant shall survive the expiration of this Lease or its earlier termination.

H. Environmental Matters.

(A) Tenant shall not bring any Hazardous Materials onto the Premises.

(B) Tenant hereby indemnifies and holds harmless Landlord, its successors and assigns from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorney's fees and costs) paid, incurred or suffered by, or asserted against Landlord as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises or the Property of any Hazardous Materials caused by Tenant or Tenant's employees, agents, invitees or contractors up to a cap of $5,000,000.00. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the Premises if such Hazardous Materials were stored on the Premises or the Property by Tenant, its agents, employees, invitees or successors in interest.

(C) For purposes of this Lease, "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (i) is defined as a hazardous substance, hazardous material or waste, or toxic substance pursuant to any Hazardous Materials Requirements, (ii) is regulated, controlled or governed by any Hazardous Materials Requirements, (iii) is petroleum or a petroleum product, or (iv) is asbestos, formaldehyde, a radioactive material, drug, bacteria, virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

(D) The warranties and indemnities contained in this Section shall survive the termination of this Lease.

5. **ASSIGNMENT AND SUBLETTING:** Tenant may not, without the consent of Landlord, sublease the Premises or assign this Lease or its rights under this Lease. In any such event, Tenant shall remain liable for the payment of all rent required to be paid under this Lease and for the performance of all terms, covenants, and conditions undertaken by Tenant.

6. **EXTERIOR SIGNS:** Tenant shall place no signs upon the Premises, except with the express written consent of the Landlord in Landlord's sole discretion. Any consent given by Landlord shall expressly not be a representation of or warranty of any legal entitlement to signage at the Premises or on the Property. Any and all signs placed on the Premises or the Property by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs and Tenant shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

7. **HOLDING OVER:** If Tenant remains in possession of the Premises after expiration of the term hereof, Tenant shall be a tenant at sufferance and there shall be no renewal of this Lease by operation of law.

8. **NOTICES:** All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered or sent to the address shown at the beginning of this Lease. Notices to Landlord shall be delivered or sent to the address shown at the beginning of this Lease. All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

9. **EVENTS OF DEFAULT:** The happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (a) Tenant fails to pay when due the rental as provided for herein; (b) Tenant abandons or vacates the Premises; (c) Tenant fails to comply with or abide by and perform any non-monetary obligation imposed upon Tenant under this Lease within thirty (30) days after written notice of such breach; (d) Tenant is adjudicated bankrupt; (e) A permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (f) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred and such proceeding is not dismissed within sixty (60) days of the filing thereof; (g) Tenant makes an assignment for benefit of creditors; or (h) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

10. **REMEDIES UPON DEFAULT:** Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law: (a) Landlord may terminate this Lease by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) Landlord, as Tenant's agent, without terminating this Lease, may enter upon and rent the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on reletting, provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default and expressly shall have no duty to mitigate Tenant's damages. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

11. **CONDEMNATION:** If the whole or any part of the Premises is taken or condemned by any competent authority for any public use or purpose during the Term, this Lease shall terminate, Tenant shall promptly remove its property from the Premises, and all condemnation awards shall belong to the Landlord, with Tenant having no claim thereto in any manner that would reduce Landlord's award.

12. **OPTION TO PURCHASE :** If and only if the following conditions are met prior to the expiration of the Lease Term, Tenant may have the option to purchase the Premises for $1.00 prior to expiration of the Lease Term by providing notice and evidence that the conditions have been met to the reasonable satisfaction of Landlord:

i) Tenant is satisfied with its feasibility studies and has found a development partner reasonably acceptable to Landlord that will develop the Premises only for Affordable Rental Housing units for single family residential use. If Tenant has found no such development partner reasonably acceptable to the Landlord, then Tenant shall not have a right to purchase the Premises, and this Lease shall expire at the expiration date.

ii) The developer partner will be deemed to be reasonably acceptable to Landlord if either of the following are met:

a) The development partner is an entity with demonstrated previous experience developing Affordable Rental Housing, identified in the City of Brevard's competitive solicitation process, and will develop the property in compliance with the Permitted Use described below , and/or

b) The development partner has entered into a Development Agreement with the City of Brevard to develop Affordable Rental Housing in compliance with the Permitted Use described below.

iii) The Landlord will convey the Premises by Special Warranty Deed with the following restriction and the Tenant shall sign the deed in acceptance of the following restriction and obligations:

"The Property herein conveyed shall only be used for the development and after initial development, continuous use of multi-family apartments for at least 24 units, in which 100% of the units available for rent are for single family residential use Affordable Rental Housing, as defined below ("Permitted Use") and for no other purpose without the express prior written consent of Brevard-Davidson River Presbyterian Church, or its successors in interest ("Church"). For the avoidance of doubt, the above restriction is not intended to prohibit a multi-family apartment complex so long as the individual units are for single family residential use. Affordable Rental Housing is defined as housing wherein the use thereof is restricted solely to rental housing for households which have a maximum income less than 80% of the Area Median Income for Transylvania County, North Carolina as defined by the United States Department of Housing and Urban Development (hereinafter "HUD"). It is the intention of Church and Grantee that the foregoing restriction shall constitute a covenant running with the land enforceable by Church and benefitting Church's remaining adjacent property against Grantee or any successor owner of the Property herein conveyed. Church at any time in the future may unilaterally record an extension of this restriction in the public record or other such notification under the North Carolina Real Estate Marketable Title Act.

Further, it is the intention of the Church and Grantee that if no Affordable Rental Housing apartment complex for single family residential units of at least 24 units is completed and operating on the Property consistent with the use restriction in the paragraph above within five (5) years of ***[INSERT DATE DEED FROM CHURCH IS RECORDED]***, then Church shall give the owner of the Property conveyed herein notice and opportunity to cure the failure within twelve (12) months. If the failure has not been cured within said time period, then the Property and all improvements shall, at Church's election, revert to Church. The owner of the Property herein conveyed shall execute, deliver, and record any confirmatory instrument upon Church's request conveying title to the Property back to Church. In the event Grantee fails to execute or deliver such a confirmatory deed so requested by Church, then Grantee does hereby appoint Church as its true and lawful attorney in fact, with full power of substitution, to execute, delivery and record such a confirmatory deed.

Further, Church shall be entitled to pursue any remedy at law or in equity, available to it by North Carolina law, for any violation of the restrictive covenant described above, and/or the failure of the Property to be completed and operating as an Affordable Rental Housing apartment complex for single family residential use of at least 24 units within the time period specified above. The Grantee waives any immunity defenses that may be applicable under North Carolina law and otherwise waives any defenses challenging the validity of the above covenant or land use restriction. To the extent allowed by law, the Grantee shall not exercise any condemnation authority to remove the above covenant or land use restriction. The Grantee shall reimburse the Church for any reasonable attorney's fees that Church may incur as result of the Grantee's violation of this Agreement,

including fees that may be allowed under G.S. 6-21.7. The above covenants and terms are being agreed to and relied upon by the Church in return for the lower than market value sales or acquisition price.

Grantee, and its successors and assigns, covenant and agree to repeat the three paragraphs above and this paragraph in any subsequent deeds of conveyance, it being the intent that these restrictions and covenants run with the land."

iv) Tenant shall have prepared and had approved a subdivision plat survey acceptable to Landlord of the Premises in order to transfer the Premises by deed.

v) Access and utilities to the Property shall NOT be over Grantor's remaining Property.

vi) This option may not be assigned without the consent of the Landlord.

13. **MISCELLANEOUS PROVISIONS:**

A. Invalidity: If any term or provision of this Lease or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances other than those as to which it is held invalid or unenforceable, shall not be affected.

B. Successors, etc.: The terms, conditions and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the parties, their heirs, personal representatives, successors or assigns, and shall run with the land; and where more than one party shall be lessors under this Lease, the word "Landlord" whenever used in this Lease shall be deemed to include all lessors jointly and severally.

C. Writing: No waivers, alterations or modifications of this Lease or any agreements in connection with this Lease shall be valid unless in writing duly executed by both Landlord and Tenant.

D. Construction: The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this Lease or in any way affect this Lease. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

E. Whole Agreement: All negotiations, considerations, representations and understandings between the parties are incorporated in this document and may be modified or altered only by agreement in writing between the parties, and no act or omission of any employee or agent of the parties or any broker, if any, shall alter, change or modify any of the provisions of this Lease.

F. No Waiver: No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

G. Time: Time is of the essence in this Lease.

LANDLORD AND TENANT, by their execution below, indicate their consent to the terms of this lease.

LANDLORD:

BREVARD-DAVIDSON RIVER PRESBYTERIAN CHURCH

By:_____

Print Name:

Print Title:

TENANT:

CITY OF BREVARD

By:_____

Print Name:

Print Title:

Exhibit A: Approximate Lease Premises

