**TERM SHEET FOR THE DEVELOPMENT OF**

**LILY SPRINGS APARTMENTS**

**IN SEGUIN, TEXAS**

**September 6, 2022**

This Term Sheet addresses the terms for the development and financing of the Property (hereafter defined). This Term Sheet is not meant to be an exhaustive document and will be replaced and superseded by definitive documentation. No legally binding obligations on either party will be created, implied or inferred until documents in final form are executed and delivered by all parties in a form acceptable to each party, in each party's sole and absolute discretion, provided that the parties agree that to the extent a business term is expressed herein, the parties agree that the definitive documents will reflect these terms. This Term Sheet replaces all previous understandings and agreements, written or oral, with respect to the Property.

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SEGUIN PUBLIC FACILITY CORPORATION, a Texas public facility corporation ("PFC"). The Land has been or will be purchased by an affiliate of VAQUERO MULTIFAMILY, LLC ("Vaquero"), and will be conveyed by the Vaquero affiliate to PFC. PFC will at Closing pay the Vaquero affiliate for the Land and simultaneously enter into a long-term lease with the Tenant covering the Land and the Improvements (if any), who will be deemed to make a Prepaid Rent Prepayment to PFC of an equal amount. Tenant will be responsible for the costs of the Improvements. PFC and a Vaquero affiliate will be limited partners of Tenant.

**DEFINITIONS:** The following terms shall have the following meanings:

"**Annual Tax Savings**" means the Appraised Value of the project multiplied by the effect tax rate for the year of the calculation for the City of Seguin; provided, that, for the first three (3) years, the Annual Tax Savings shall be $0.

"**Appraised Value**" means the value of the Project set by the Guadalupe County Appraisal District ("GCAD") and may be contested according to the procedures of GCAD; provided, however, that commencing on the first day of the fourth (4th) year of the Term and during each three (3) year period thereafter, either party may request an appraisal from an independent third-party licensed real property appraisal company to appraise the Property taking into account the tax-exempt nature of the project and the income restrictions necessary to obtain such tax exemption ("Appraiser"). The requesting party shall send written notice of the request for appraisal and the selected Appraiser to the other party, which shall be subject to the approval of the other party, such approval not to be unreasonably withheld, conditioned or delayed. If the parties fail to agree on an Appraiser, then the appraisal will be determined based upon a baseball appraisal process as set forth in the Lease so that a new appraisal value (the "New Appraisal Value") is determined. The Appraised Value shall be adjusted, whether up or down, to the New Appraised Value and shall be used to determine the payment to PFC. In addition, the Appraised Value will be adjusted to the actual sales price upon each Capital Event. The foregoing appraisal process may not occur more than one (1) time in any three (3) year calendar period. The Lease will contain detailed provisions on the qualifications and selection of the Appraiser and the timing for triggering this provision.

"**Assumed Debt Service"** means the greater of actual debt service or the hypothetical equal monthly payments of principal and interest that would be owed by the Tenant to a lender, assuming (irrespective of whether the Tenant has actually incurred any indebtedness and the actual terms of any such indebtedness) that Tenant borrowed sixty percent (60%) of the most recent purchase price for the direct or indirect transfer of the entire Lease to a party that is not an Affiliate of the Tenant (including any indirect transfer of the Lease effected by means of the direct or indirect sale of all of the equity interest in the Tenant), at a rate of interest equal to the prime rate plus 300 basis points determined on the date of transfer and with a thirty (30) year level debt service amortization. Notwithstanding, the foregoing, prior to the first sale of the Project, when using the defined term Available Cash for Partnership Distributions, actual debt service shall be deducted from cash proceeds in lieu of the Assumed Debt Service.

"**Available Cash"** means for the applicable period, all cash proceeds realized and received by Tenant from operations (other than (i) receipts of capital contributions to Tenant, (ii) proceeds from loans to or refinancing by Tenant, or (iii) proceeds from any direct or indirect sale or assignment of the Lease to an unaffiliated third party of Tenant occurring after the initial Capital Event, as hereafter defined) and all funds released from reserves which will otherwise be distributed to Tenant's investors, less (a) all operating costs and expenses of Tenant (and its affiliates to the extent relating to the Project), other than any expense not involving a cash expenditure (such as any amount charged for amortization or depreciation) or expenses paid to a related party, except for expenses paid to related parties for management services provided to Tenant by such related party (i.e., property management services) to the extent the expenses are generally consistent with market rates; (b) the Assumed Debt Service; (c) all sums expended by Tenant (and its affiliates to the extent relating to the Project) for capital expenditures for the Project; (d) repayment of any outstanding loans by the Equity Partners to Tenant; and (e) commercially reasonable cash reserves for working capital, capital expenditures, expenses, liabilities and other purposes as determined by Tenant after consideration of Tenant's financial position. Any of the costs, expenses and reserves contemplated in the foregoing clauses (a) through (d) may at the election of Tenant (and in such manner as Tenant shall reasonably approve) be carried forward and applied against future periods to the extent in excess of the aggregate amount of Available Cash for any current period. Available Cash must be calculated and accounted for consistently with the calculations of and accounting for distributions to Tenant's partners or owners.

**"Calculator"** means the Novogradac Rent and Income Limit Calculator for the applicable year, under the "Other Federal, State, or Local Program" category for Guadalupe County, TX HUD FMR Area with rent calculations based on ~~either: (i)~~ "80%" and Imputed Persons Per Bedroom for Rent Limited Calculations set to "1.5 Person/1 Bedroom" and the applicable family size selected for the respective Low Income Household leasing a particular Affordable Unit ~~or (ii) "60%" and Imputed Persons Per Bedroom for Rent Limited Calculations set to "1.5 Person/1 Bedroom" and the applicable family size selected for the respective Household leasing a particular Affordable Unit, as applicable~~. In the event such tool is not available, applicable rent and income limits shall be calculated using a reasonable substitute tool as mutually agreed to by the parties hereto.

**"Capital Event"** means (i) any refinancing of the entire Project or (ii) the proposed sale of the entire Project (including any proposed assignment of the entire Lease) for consideration or (iii) the sale or assignment of the Developer's affiliate's interest in the Tenant Partnership or (iv) the sale or assignment of greater than 50% of the interests in the Tenant Partnership for consideration. Capital Events will not include reorganizations of Developer's affiliates or transfers to wholly controlled developer entities which do not result in the Developer affiliates withdrawing any equity or profits ( other than operating profits) from the Tenant Partnership or the Project.

**"City"** means City of Seguin, Texas.

**"Closing Date"** means the date of closing for all financing for the Project.

"**Consumer Price Index**" means the U.S. all items Consumer Price Index for All Urban Consumers (CPI-U) published by the U.S. Bureau of Labor Statistics.

"**Developer"** means Vaquero, or an affiliate of Vaquero.

**"Equity Partner"** means the entity or entities which are selected by Vaquero to contribute common equity (cash or property) to Tenant and to be admitted as limited partners or members to Tenant, one of which will be Vaquero Partner and the other which will be an unaffiliated third-party investor. Such interest shall receive a preferred return for all or a portion of its equity contribution.

**"Governing Law"** means the State of Texas.

**"PFC"** means Seguin Public Facility Corporation, a Texas public facility corporation.

**"Tenant"** means [Vaquero Seguin Multifamily, LLC], the Tenant under the Lease for the Project, which will be a single purpose Texas limited partnership, the sole General Partner of which will be an affiliate of Developer, and the Limited Partners of which will be an affiliate of Vaquero Realty and the Equity Partner.

"**Vaquero"** means Vaquero Multifamily, LLC, a Texas limited liability company, or its affiliates.

**"Vaquero Partner"** means an affiliate of Vaquero, which will be a limited partner of the Tenant.

**Ad Valorem Tax Exemption:** PFC shall be responsible for obtaining a 100% property tax exemption for the Project and Lease. PFC shall apply for, and use good faith efforts to obtain prior to closing, a predetermination letter from the appraisal district indicating that the Project will be exempt. Shortly after the Closing Date, PFC will apply for the formal tax exemption. Pursuant to the Lease, if the ad valorem tax exemption with respect to the Project is lost ("Loss of Tax Status Event") for any reason, other than the failure to meet the requirements to set aside Affordable

Units, at any time through the 50th anniversary of the commencement of the Lease, then at the option of Tenant the PFC, as Landlord, will convey the Project to Tenant (fee ownership of the Project, free and clear) and the Lease without any payment to the PFC (other than payment of rent through the date of termination) and any accompanying regulatory agreement will terminate, and no additional rent shall be paid to the PFC. Upon a Loss of Tax Status Event occurring after the 50th anniversary of the commencement of the lease, then at the option of Tenant, Landlord will convey the Project to Tenant in fee and the Lease and accompanying regulatory agreement will terminate, upon payment by Tenant to Landlord of an amount equal to the fair market value of the Landlord's reversionary interest in the Project, assuming it is operated as a market rate apartment complex paying taxes. In the event of a Loss of Tax Status Event, prior to the transfers discussed in the prior sentence, PFC and the Tenant shall use reasonable efforts to modify the structure to allow the ad valorem tax exemption to continue. Notwithstanding the foregoing, PFC shall effectuate the aforementioned transfers within one hundred twenty (120) days following a Loss of Tax Status Event if the efforts of PFC and Tenant have not resulted in the reinstatement of a 100% ad valorem tax exemption.

**Construction**: Tenant will, if an FHA loan is used, contract with a joint venture made up of PFC and the construction contractor selected by Tenant for the Project (the "Contractor"), to construct the Improvements, and if no FHA loan is in place, PFC will serve as prime contractor and Contractor will serve as a general subcontractor. Contractor will receive a Contractor Fee of up to five percent (5%). If an FHA loan applies, the construction contract will also include a contractor's contingency of three percent (3%) solely for the use of the joint venture, and if no FHA loan applies, then the Contractor shall be provided with a Contractor's contingency of three percent (3%). Vaquero will provide construction completion guarantees necessary to satisfy any lenders and Equity Partners for the Project on terms acceptable to Vaquero in its sole discretion. The Project will be constructed pursuant to a guaranteed maximum price contract.

**Development Agreement:** Developer, PFC and Tenant will enter into a development agreement ("Development Agreement") in a form acceptable to the parties, in accordance with the terms set forth herein. The Development Agreement will require the Tenant to finance and construct the Project pursuant to an approved set of plans and specifications and pursuant to an approved budget and agreed to schedule. Developer shall be provided with a contingency line item in the Project budget in the amount not to exceed five percent (5%) of total Project costs. Developer and Tenant will provide PFC with full indemnifications, except to the extent of PFC's gross negligence or willful misconduct as the Landlord. PFC will have a right to attend meetings and inspect the property and will receive monthly progress reports. All draws will require construction consultants for debt and equity approval and architect certifications.

**Developer Fee**: Developer is to receive a Developer Fee in connection with the development of the Project in an amount not to exceed five percent (5.0%) of the total development costs of the Project. It is anticipated twenty-five percent (25%) of the Developer Fee will be earned and paid at the construction loan closing. Seventy-five percent (75%) of the Developer Fee will be earned and paid monthly out of the loan proceeds as part of the monthly construction loan process and the final payment will be earned and paid upon issuance of the final certificate of occupancy for the Project. Payment of development fee will correspond to any requirements of construction lender.

**Entitlements:** Entitlements will include, without limitation, obtaining a zoning designation for the Property allowing for the intended development, construction, and operation of the Project.

**Guarantees:** Certain financial obligations will be guaranteed by Vaquero on terms to be negotiated by Vaquero and lenders and the Equity Partners. PFC will not be required to provide any financial guarantees with respect to financing or construction of the Project.

**Improvements:** Approximately 288 units residential rental housing, together with all to be constructed onsite infrastructure improvements for the Project, pursuant to Plans and Specifications developed by Developer.

**Lease**: Lease between PFC, as landlord, and Tenant, pursuant to which PFC leases the Property to the Tenant for a term (the "**Term**") of 75 years (the "**Lease**"). So long as Tenant is not in default under the Lease beyond applicable notice and cure periods, Tenant will be permitted under the Lease to assign its interest in the Lease without the requirement of any consent from Landlord. Landlord will not be permitted to assign its interests under the Lease in any manner without the prior written consent of Tenant and its lender, provided that Landlord may assign its interest in the Lease and the Project to an entity wholly owned and controlled by Tenant or the City, provided that such assignment shall not jeopardize the availability of exemption of the Project from ad valorem taxation or to the extent as may be prohibited in any loan documents with the lenders or any agreement between the Tenant and any Equity Partner. The rent will be (1) deemed prepaid rent at closing equivalent to the cost of Land conveyed to the PFC, (2) $25,000 per year Administrative Fee, adjusted by the Consumer Price Index beginning in the second year (the "Administrative Rent"), the Net Cash Flow Rent and the Capital Event Rent. Notwithstanding the foregoing, the parties agree that Vaquero's transfer of the Land and existing improvements to PFC shall satisfy any prepaid rental requirement provided for in the Lease.

The Lease will provide that for any year the Tenant wishes to obtain a property tax exemption, it will set aside or rent 50% of the units to tenants earning less than 80% of the area median income (AMI) ~~which shall include 10% of the units to tenants earning less than 60% of AMI~~ (the "Affordable Units"). The income and rent limits will be adjusted for family size and calculated by using the Calculator.

The distribution of Affordable Units will be as shown on Exhibit B.

Tenant will maintain the Project as a Class A residential project subject to condemnation, casualty and ordinary wear and tear. Tenant will insure the Project and will set aside an amount per door per year as determined by lenders as a reserve for replacements. Tenant will provide full indemnities to PFC, except to the extent of PFC's gross negligence or willful misconduct. Provisions will be negotiated to insure the Project remains a Class A project including conducting needs assessments meeting ASTM E 2018-15 Standard Guide for Property Conditions Assessments or its replacement every seven years and upon a Capital Event. For avoidance of doubt, the parties agree that maintaining the Project as a Class A apartment project means keeping the Project as originally designed and constructed in appropriate condition to compete with other Class A residential projects of the same age as the Project, but does not mean adding amenities, making structural or other changes to the exterior or interior of the Project to make it consistent with newly constructed Class A apartment projects at a future date.

**Management:** Vaquero will designate the property manager for the Project subject to PFC's approval of the manager, which approval shall not be unreasonably withheld, delayed or conditioned. The manager will receive a base Management Fee as follows:

Commencing with substantial completion of the first residential building, 3.0% multiplied by the effective gross income of the Project as outlined in the Management Agreement; but in no event less than $8,500.00 per month.

**Miscellaneous Expenses:** Tenant Partnership will be responsible for and will include in the Project Budget all legal fees of PFC and Vaquero actually incurred in connection with the preparation, negotiation and execution of the Organization Documents, all reasonable out-of-pocket expenses, including, without limitation, all business, financial, collateral due diligence expenses, and, to the extent provided herein, all appraisal fees and all examination fees.

**Net Cash Flow Rent:** Beginning in the fourth year, the greater of the twenty-five percent (25%) of (i) Annual Tax Savings, or (ii) Available Cash as shown under Partner Distributions, Cash Flow Rent below.

**Capital Event Rent:** Upon the occurrence of the initial Capital Event, and following the repayment of any outstanding loans of Tenant and the return of all preferred return and capital contributions of the Equity Partners in Tenant, including cost overrun contributions paid by Vaquero Partner (if any), the amount of fifteen percent (15%) of the remaining balance of the Capital Event proceeds will be paid to Landlord. The Capital Event Rent shall be paid for all Capital Events. For each Capital Event after the initial Capital Event, the Capital Event Rent shall be 2% of the gross sales price.

**Other Terms:** Tenant's Partnership Agreement will contain such usual and customary terms for limited partnership formed for the acquisition, financing, ownership, development, management, leasing and sale of the Project, including, without limitation, provisions for limitation on transfer of partnership interests, delivery of periodic financial and other reports necessary for securities laws disclaimers, accredited investor representations and compliance under the Development Agreement.

**Accumulated Tax Payment**: In the event there is insufficient cash flow to pay the Annual Tax Savings to PFC in any given year, it shall accrue and shall be added to the Annual Tax Savings for subsequent years ("Accumulated Tax Payment") until paid. However, Tenant shall not be required to pay, in any given year, more than 25% of that year's Annual Tax Saving to PFC unless Tenant so chooses in its sole and absolute discretion. Any outstanding Accumulated Tax Payment shall be paid in full at any Capital Event.

**PFC Structuring Fee:** PFC, or one of its affiliates, will receive a structuring fee equal to $500,000 at the closing of the Project.

**Plans and Specifications:** Each of PFC, Tenant, lenders, and Partners will have the right to review and approve the Plans and Specifications for Project in the design development stage and once they are materially completed, such approval not to be unreasonable withheld or delayed. Once any one of PFC, Tenant, lenders, and Equity Partners have approved the conceptual and/or schematic design for the Project, it may not object to such design Plans and Specifications, unless the subsequent Plans and Specifications materially and adversely affects the design character or value of the Project.

**Preferred Return:** Eight percent (8.0%) per annum on the then unreturned balance of capital contributions of the Equity Partners (including Vaquero Partner).

**Prerequisites to Closing:** The Parties must be in receipt of a predetermination letter from the Kerr County Appraisal District confirming that the Project and Land, as proposed, shall be 100% exempt from ad valorem taxes.

**Project:** The Project will be the Land and Improvements to be developed by Developer.

**Project Budget:** An initial Project Budget is attached hereto as Exhibit C. The Project Budget will be finalized and approved by all parties to the transaction prior to Closing and will include the proposed sources of funds that will be needed to develop, construct and operate the Project, and the uses on which the funds will be spent. Sources of revenue include, without limitation, rental income, capital contributions and other revenues. Project uses include all reasonable and necessary direct and hard costs incurred in connection with the Project.

**Project Financing:** PFC will provide the leasehold estate for the Project to the Tenant Partnership pursuant to the Lease. The Lease will be prepared once the lenders are identified and will include commercially reasonable provisions required by the lenders, which may include a requirement PFC subordinate its interests in the Project, including the leasehold and fee interests in the Project.

<u>Loans</u>

For the Project, Developer will obtain a senior loan from a senior lender to the Tenant for approximately the amount shown in the Project Budget for development of the Project to be secured by a first-lien deed of trust on the Tenant's leasehold interest in the Project, and a lien on PFC's fee interest in the Project. Developer may also obtain subordinate loans (which may be structured as mezzanine financing) from a subordinate lender for approximately the amount shown in the Project Budget which may be secured by a second-lien deed of trust on the Tenant's leasehold interest, a lien on PFC's fee interest in the Project or partnership interest in the Tenant or Equity Partner.

All financings and guarantees must be acceptable to PFC, Developer and the Tenant in their sole and absolute discretion. PFC, Equity Partners, and Developer will be provided with a right of notice and the right to cure Tenant's defaults for all financings.

<u>Equity</u>

Developer will obtain one or more Equity Partners who will invest approximately the amount shown in the Project Budget. One of the Equity Partners will be Vaquero Partner which will make a contribution of the Land at the Agreed Value, if they have acquired the Land, and a contribution of cash as provided for in the Project Budget. Contributions from the Equity Partners will be contributed to the Tenant, for approximately the amounts shown in the Project Budget. The Partners will be paid from Cash Flow and will at all times be subordinate to the Loans. The Equity Partners will receive a Preferred Return of 8.0% on their contributions and will be repaid their investment from a Capital

Event before any "Promote" and any payment of the Capital Event Rent. Accordingly, Cash Flow splits will adjust after the payment of the Preferred Returns.

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| **Project Term:** | The "**Project Term**" is from commencement of Project for a period of 75 years after closing. Two years prior to the end of the Project Term, Tenant shall assist the PFC with evaluating its options upon the end of the Project Term and the reversion of the Project to the PFC. Should the City choose to sell the Project at the end of the Project Term, the Tenant shall assist the City in the sale of the Project. |
| **Property:** | Approximately 15.56 acres for the Project to be built and operated as proposed by this Term Sheet, and shown on the parcel map attached as Exhibit A hereto. The Property will be purchased by PFC in return for pre-paid lease for the Agreed Value. |
| **Representations and Warranties**: | Those customarily found in credit agreements for asset-based lending transaction of this type and others appropriate to this transaction in the reasonable credit judgment of PFC and Vaquero, subject to limitations and exceptions to be agreed upon. |
| **Sales Tax:** | PFC will, as General Contractor (which will subcontract with Vaquero Contractors), be responsible to for the purchase of materials for the construction of the Project so that the purchases will be exempt from all sales and use taxes pursuant to Applicable Law. Tenant will pay PFC 25% of the Sales Tax Savings on all construction materials, half of which shall be paid at Closing and the remaining half paid at final certificate of occupancy. |
| **Sales Tax Savings:** | Means the purchase price of the construction materials purchased by the Contractor, multiplied by the effective tax rate at the time of purchase. |

This instrument may be executed in several counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument, and will become effective when counterparts have been signed by each of the parties and delivered to the other party; it being understood that all parties need not sign the same counterpart. The exchange of copies hereof and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, will constitute effective execution and delivery hereof as to the parties and may be used in lieu of the original document for all purposes. Signatures of the parties transmitted by any of the foregoing methods will be deemed to be their original signatures for all purposes.

***Signature Pages Follow***

**VAQUERO:** **Vaquero Multifamily, LLC**

By: ______________________________________
Name: ____________________________________
Title: _____________________________________

**PFC:** **Seguin Public Facility Corporation**

By: ______________________________________
Rick Cortes
Executive Director

**EXHIBIT A**

Property

**EXHIBIT B**

Distribution of Affordable Units

**EXHIBIT C**

Initial Project Budget

| **Summary report:**<br>**Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 9/6/2022 9:36:32 AM** | |
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| **Intelligent Table Comparison:** Active | |
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| Format changes | 0 |
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