

GILMORE & BELL, P.C.  
MAY 24, 2022

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**SITE LEASE**

**BY AND BETWEEN**

**HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC**  
**As Lessor**

**AND**

**CITY OF BEL AIRE, KANSAS**  
**As Issuer**

**DATED AS OF JUNE 1, 2022**

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## SITE LEASE

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## **SITE LEASE**

**THIS SITE LEASE** entered into as of June 1, 2022 between Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the "Lessor"), and the City of Bel Aire, Kansas a municipal corporation incorporated as a city of the second class under the laws of the State of Kansas (the "Issuer");

### **WITNESSETH:**

**WHEREAS**, Lessor has requested that the Issuer issue its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) (the "Bonds") under and pursuant to K.S.A. 12-1740 *et seq.*, as amended (the "Act"), for the purpose of financing the acquisition, construction and equipping of a senior residence facility (the "Improvements"), which Bonds shall be issued and secured under the provisions of a certain Ordinance duly enacted by the Issuer and a certain Trust Indenture dated as of June 1, 2022 (the "Indenture") entered into between the Issuer and Security Bank of Kansas City, as Trustee (the "Trustee"); and

**WHEREAS**, the Improvements are to be constructed and installed on a tract of land (the "Real Property") more specifically described in *Schedule I* attached hereto, which property is owned by the Lessor; and

**WHEREAS**, the Project, consisting of the leasehold under this Site Lease and the Improvements to be located on the Real Property shall be leased by the Issuer to the Lessor, as Tenant, under and pursuant to a certain Lease dated as of June 1, 2022 (the "Project Lease"); and

**WHEREAS**, in consideration of the issuance of the Bonds by the Issuer and the execution and delivery by the Issuer of the Project Lease, the Lessor is willing to lease the Real Property to provide the Issuer a leasehold interest in the Real Property; and

**WHEREAS**, the Lessor will not take any action to disturb, alter, avoid or set aside the leasehold interest of the Issuer created under this Site Lease as long as the Bonds are outstanding;

**THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which consideration is hereby acknowledged, the Lessor and the Issuer agree as follows:

## **ARTICLE I**

**Section 1.1. Representation and Covenants of Lessor.** The Lessor makes the following representations and covenants:

(a) It is a Kansas limited liability company duly authorized and qualified to do business in the state of Kansas (the "State"), with lawful power and authority to enter into this Site Lease, acting by and through a designated signatory.

(b) It (1) shall maintain its authority to do business in the State, and (2) shall not initiate any proceedings to liquidate without providing written notice to the Issuer and Trustee.

(c) To the knowledge of the Lessor, neither the execution nor delivery of this Site Lease, the consummation of the transactions contemplated hereby or by the Indenture, nor the fulfillment of or compliance with the terms and conditions of this Site Lease contravenes any provisions of its articles of

organization and operating agreement, or conflicts with or results in a material breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which it is a party or by which it is bound, or to which it or any of its properties is subject, or would constitute a default (without regard to any required notice or the passage of any period of time) under any of the foregoing or would result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its property or assets under the terms of any mortgage, debt, agreement, indenture or instrument, or violates any existing law, administrative regulation or court order or consent decree to which it is subject.

(d) This Site Lease constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms.

**Section 1.2. Representations and Covenants by the Issuer.** The Issuer represents, covenants and warrants, to the best of its knowledge and belief, as follows:

(a) It is a municipal corporation duly incorporated and existing as a city of the second class under the constitution and laws of the State. Under the provisions of the Act, the Issuer has the power to enter into and perform the transactions contemplated by this Site Lease and the Project Lease and to carry out its obligations hereunder and thereunder.

(b) It has not, in whole or in part, assigned, leased, hypothecated or otherwise created any other interest in, or disposed of, or caused or permitted any lien, claim or encumbrance to be placed against its interest in, the Real Property, except for the pledge of its leasehold interest in the Real Property under this Site Lease to the payment of the Bonds.

(c) Except as otherwise provided herein or in the Indenture, it will not during the Site Lease Term, in whole or in part, assign, lease, hypothecate or otherwise create any other interest in, or dispose of, or cause or permit any lien, claim or encumbrance to be placed against its interest in the Real Property, except for the pledge of the Project pursuant to the Indenture.

(d) It has duly authorized the execution and delivery of this Site Lease in connection with the execution and delivery of the Project Lease.

## ARTICLE II

**Section 2.1. Grant of Leasehold.** Lessor, in consideration of the issuance of the Bonds and the contemporaneous execution and delivery of the Project Lease, hereby rents, leases and lets unto the Issuer, and the Issuer hereby rents, leases and hires from Lessor, upon and subject to the terms and conditions hereinafter set forth, the Real Property for a term commencing as of the date of this Site Lease and ending on December 31, 2032 (or such earlier date as the principal of, redemption premium, if any, and interest on all Outstanding Bonds is paid in full) (the "Site Lease Term").

**Section 2.2. Consideration.** The issuance of the Bonds and the contemporaneous execution and delivery of the Project Lease by the Issuer are the sole consideration to be received by the Lessor for the grant of this Site Lease. No cash rentals shall be payable hereunder.

**Section 2.3. Impositions.** Lessor, as Tenant under the Project Lease, shall bear, pay and discharge, before the delinquency thereof, any and all taxes and assessments, general and special, which may be lawfully levied or assessed against or in respect of the Real Property, or any part thereof, or any improvements at any time erected thereon, and all water and sewer charges, assessments (including special assessments) and other similar governmental charges whatsoever, foreseen or unforeseen, which if not paid

when due would encumber the fee simple title to the Real Property ("Impositions"). In the event any Impositions may be lawfully paid in installments, Lessor shall be required to pay only such installments thereof as become due and payable during the term of this Site Lease, as and when the same become due and payable.

**Section 2.4. Contest of Impositions.** Lessor, as Tenant under the Project Lease, shall have the right to contest the validity or amount of any Imposition by appropriate legal proceeding instituted at least ten days before the Imposition complained of becomes delinquent, on the condition that Lessor or its sublessee shall give Issuer written notice of its intention to do so and shall diligently prosecute any such contest, effectively stay or prevent official or judicial sale therefor, under execution or otherwise, and shall promptly pay any final judgment enforcing the Imposition so contested and thereafter secure record release or satisfaction thereof.

**Section 2.5. Assignment and Sublease.** Issuer covenants that it will not, without Lessor's written consent, unless required by law, ordinance or the terms of the Project Lease or the Indenture, sell, assign, sublease or otherwise part with or encumber its interest in the Real Property at any time during the Site Lease Term, except that Issuer may sublease the Real Property to the Lessor as a part of property leased by the Issuer pursuant to the Project Lease.

**Section 2.6. Use of Real Property.** Except as may be stated to the contrary in this Site Lease, Issuer shall have no right or authority with respect to the Real Property except to lease the Real Property pursuant to the Project Lease for use as provided therein. The parties will comply with all federal, state and local laws, regulations and requirements as to the manner of use or the condition of the Real Property, or of adjoining public ways, now or hereafter applicable to the Real Property, and Issuer shall comply with the mandatory requirements of all insurers under policies required to be carried under the provisions of the Project Lease.

**Section 2.7. Covenant Against Other Assignments.** Neither party to this Site Lease shall assign or in any manner transfer its interest under this Site Lease, nor will it suffer or permit any assignment thereof by operation of law, except in accordance with the limitations, conditions and requirements set forth herein, and, to the extent applicable, the Indenture and the Project Lease.

### ARTICLE III

**Section 3.1. Improvements.** Issuer shall have the right, from the proceeds of the Bonds, to construct on the Real Property, or in the air space above the Real Property, such building improvements as the Issuer from time to time may deem necessary or advisable in accordance with and subject to the provisions of the Project Lease.

**Section 3.2. Mechanic's Liens.** Neither party to the Site Lease shall permit or suffer anything to be done whereby the Real Property, or any part thereof, may be encumbered by any mechanic's or other similar lien. If any mechanic's or other similar lien is filed against the Real Property, or any part thereof, the same shall be dealt with as provided in the Project Lease. Notice is hereby given that except to the extent payable from the proceeds of the Bonds issued concurrently with the execution and delivery of the Project Lease, the Issuer does not authorize or consent to the furnishing of any labor or materials to the Real Property and it shall not be liable for them.

**Section 3.3. Contest of Liens.** In the event any mechanic's or other similar lien is filed against the Real Property, or any part thereof, the Issuer or the Lessor may contest such lien in the manner and as provided in the Project Lease.

## ARTICLE IV

**Section 4.1. Indemnity.** The Lessor shall indemnify the Issuer from any and all claims, demands, liabilities and costs, including attorney's fees, arising from damage or injury, actual or claimed, to property or persons occurring or allegedly occurring in, on or about the Project during the Site Lease Term; provided, however, that the indemnity described in this section shall be subject in all respects to the provisions of the Project Lease.

**Section 4.2. Access to Real Property.** The Issuer, for itself and its duly authorized representatives and agents, including the Tenant under the Project Lease and the Trustee under the Indenture, shall have the right to enter the Real Property at any reasonable time throughout the Site Lease Term for the purposes of performing any work made necessary by reason of any Event of Default under the Project Lease, and, while an Event of Default (as defined therein) is continuing under the Project Lease, for the purpose of exhibiting the Real Property and the improvements constructed thereon to prospective purchasers, lessees or mortgagees.

## ARTICLE V

**Section 5.1. Non-Disturbance of Leasehold Interest.** Lessor and the Issuer each covenant and agree with one another, that as long as the Issuer, its sublessee, their successors or assigns, shall continue to perform all obligations provided for in this Site Lease, including the discharge of all obligations and covenants hereunder, the Issuer, its assignee or sublessee shall have a leasehold interest in the Real Property, notwithstanding the occurrence of any Event of Default under the Project Lease until this Site Lease is terminated according to its terms.

**Section 5.2. Release of Leasehold Interest.** Upon cancellation or termination of this Site Lease, the Issuer shall release its leasehold interest in the Real Property to Lessor as provided in the Project Lease.

**Section 5.3. Notices.** All notices required to be given hereunder shall be given to the notice representative designated for each of the parties in the Project Lease. To be effective, notices required or desired to be given hereunder shall be given in the manner provided in the Project Lease. Copies of all notices sent to the Lessor shall also be sent to Lessor's investor member at WNC Housing, L.P., 17782 Sky Park Circle, Irvine, California 92614-6404, Attn: Melanie Wenk, and any cure tendered on behalf of Lessor by a member of Lessor shall be accepted or rejected as if same had been tendered by Lessor.

**Section 5.4. Rights and Remedies.** The rights and remedies reserved by the parties hereto, their successors and assigns and those provided by law shall be construed as cumulative and continuing rights and remedies.

**Section 5.5. Waiver.** No waiver of any breach of any covenant or agreement contained in this Site Lease shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in the event of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any

performance without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any other default.

## ARTICLE VI

**Section 6.1. Purpose of Site Lease.** The parties acknowledge and agree that this Site Lease is executed and delivered concurrently with the execution and delivery of the Project Lease and the other documents and agreements executed in connection therewith and as a condition precedent thereto, and that the Trustee and the owners of the Bonds shall be deemed to be third party beneficiaries.

**Section 6.2. Limitation of Liability.** The liability of Issuer under this Site Lease for any payments to be made to or for the account of Lessor is specifically limited, such that the Issuer shall have no liability beyond the value of the Real Property, the Project, or the rentals and receipts to be received by the Issuer under the Project Lease.

**Section 6.3. Amendments.** This Site Lease may be amended or modified in the manner prescribed in the Project Lease with respect to amendments thereto.

## ARTICLE VII

**Section 7.1. Construction and Enforcement.** This Site Lease shall be construed and enforced in accordance with the laws of the State of Kansas. The provisions of this Site Lease shall be applied and interpreted in accordance with the rules of interpretation set forth in the Project Lease. Words and terms used herein shall have the meanings set forth in the Project Lease if not expressly defined in this Site Lease.

**Section 7.2. Partial Invalidity.** If for any reason any provision hereof shall be termed to be invalid or unenforceable, such partial invalidity shall not affect the remainder of the provisions hereof.

**Section 7.3. Binding Effect.** The covenants, agreements and conditions herein shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

**Section 7.4. Section Headings.** The section headings hereof are for the convenience of reference only and shall not be treated as a part of this Site Lease or as affecting the true meanings of the provisions hereof.

**Section 7.5. Execution of Counterparts; Electronic Transactions.** This Site Lease may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

## ARTICLE VIII

**Section 8.1. Mortgage Insurance Protections.** In the event of a casualty loss, the first lien ground lease mortgagee shall have participation rights in the adjustment and losses related to hazard



insurance proceeds. Any payment of hazard insurance proceeds shall be paid to such mortgagee or independent trustee acceptable to mortgagee. Lessor and Issuer will not be entitled to receive any hazard insurance proceeds until either the Real Property has been restored or the first lien ground lease mortgagee has been paid in full. Any obligation to rebuild is limited to the amount of available insurance proceeds and insurance proceeds will be applied in accordance with the requirements of the first lien ground lease mortgagee. Thereafter, any insurance proceeds will belong to Lessor.

**Section 8.2. Mortgagee Condemnation Protections.** In the event of a condemnation casualty loss, the first lien ground lease mortgagee shall have participation rights in the adjustment and losses. Any payment of condemnation proceeds shall be paid to such mortgagee or independent trustee acceptable to mortgagee. Lessor and Issuer will not be entitled to receive any condemnation proceeds until the first lien ground lease mortgagee has been paid in full. Any condemnation award will be applied in accordance with the requirements of the first lien ground lease mortgagee. Thereafter, any condemnation award will belong to Lessor. In the event of a partial taking, Issuer may rebuild and restore unless the first lien mortgagee consents to a distribution of proceeds, in which case proceeds will be applied first toward the first lien ground lease mortgagee.

**Section 8.3. Recording.** Either this Site Lease or a memorandum thereof will be recorded in the land records.

**Section 8.4. Cancellation.** Any cancellation of this Site Lease will require the written consent of any ground lease mortgagee.

**Section 8.5. Notices.** Lessor will give any ground lease mortgagee written notice prior to exercising any remedies after default and will forward to such ground lease mortgagee all other notices sent to Issuer or Trustee excluding rent and periodic billing notices.

**Section 8.6. Estoppels.** Lessor will give any ground lease mortgagee a mutually acceptable estoppel certificate covering the Site Lease on request.

**Section 8.7. Amendments.** The Site Lease will not be materially modified or restated without the prior written consent of any ground lease mortgagee.

**Section 8.8. Cure Rights.** Lessor and Issuer grant any ground lease mortgagee the right to receive notice of and a reasonable opportunity to cure any event of default under the Site Lease. Such cure period shall be at least equal to any cure period to which Issuer has a right. Lessor waives any default that cannot be cured by such mortgagee, including specifically non-monetary defaults and bankruptcy-related issues personal to Issuer.

**Section 8.9. Foreclosure.** Any ground lease mortgagee is hereby granted an unrestricted right to foreclose and assign its rights under the Site Lease.

**Section 8.10. New Site Lease.** If the Site Lease terminates for any reason, Lessor will enter into a new site lease with the first lien mortgagee or its nominee on the same terms and conditions as the existing Lease and with the same title priority.

**Section 8.11. Ground Lease Mortgagee Liability.** The personal liability of any ground lease mortgagee is hereby limited to such mortgagee's interest in the Site Lease. After an assignment of ground lease mortgagee's interest, the ground lease mortgagee and its assigns are automatically released from liability under the Site Lease.

**Section 8.12. Fee Mortgage.** Lessor will not mortgage the fee estate without expressly subordinating the mortgage to the ground lease mortgagee.

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**IN WITNESS WHEREOF**, the parties have executed this instrument as of the day and year first above written.

**HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC,**  
a Kansas limited liability company

By: Homestead Senior Housing Bel Aire LLC  
Its: Managing Member

By: Homestead Affordable Housing, Inc.  
Its: Manager and Sole Member

By: \_\_\_\_\_  
Name: Thomas A. Bishop  
Title: President

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF JACKSON        )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, by Thomas A. Bishop, as President of Homestead Affordable Housing, Inc.. which is the Manager and Sole Member of Homestead Senior Housing Bel Aire LLC, which is the Managing Member of Homestead Senior Residences Bel Aire, LLC.

\_\_\_\_\_  
Notary Public

(SEAL)

My Appointment Expires:

\_\_\_\_\_

**"LESSOR"**

**CITY OF BEL AIRE, KANSAS**

By: \_\_\_\_\_  
Jim Benage, Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Melissa Krehbiel, City Clerk

**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
  ) SS:  
COUNTY OF SEDGWICK            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by  
Jim Benage, Mayor of the City of Bel Aire, Kansas.

\_\_\_\_\_  
Notary Public

(SEAL)

My Appointment Expires:

\_\_\_\_\_

**"ISSUER"**

## ***SCHEDULE I***

SCHEDULE I TO THE SITE LEASE DATED AS OF JUNE 1, 2022, BETWEEN  
HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC AND THE CITY OF BEL  
AIRE, KANSAS

### **PROPERTY SUBJECT TO LEASE**

(A) The following described real estate located in Sedgwick County, Kansas, to wit:

A portion of Lot 1, Block A, Homestead Senior Landing, Bel Aire, Sedgwick County, Kansas described as beginning at the northeast corner of said Lot 1; thence S00°00'00"E coincident with the east line of said Lot 1, 366.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 110.40 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 146.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 28.20 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 35.85 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 172.39 feet to a point in a non-tangent curve to right; thence southwesterly, westerly and northwesterly an arc length of 92.58 feet, a radius of 62.50 feet, a chord length of 84.34 feet and a chord bearing of S90°00'00"W to a point on a non-tangent line; thence S90°00'00"W perpendicular to the east line of said Lot 1, 19.15 feet to the Point of Curvature (PC) of a curve to the left; thence southwesterly an arc length of 56.51 feet, a radius of 51.50 feet, a chord length of 53.72 feet and a chord bearing of S58°33'54"W to the Point of Reverse Curvature (PRC) of a curve to the right; thence southwesterly, westerly and northwesterly an arc length of 81.27 feet, a radius of 49.50 feet, a chord length of 72.44 feet and a chord bearing of S74°09'43"W to the PRC of a curve to the left; thence northwesterly an arc length of 19.33 feet, a radius of 35.50 feet, a chord length of 19.09 feet and a chord bearing of N74°24'11"W to the PC of said curve; thence S90°00'00"W perpendicular to the west line of said Lot 1, 51.60 feet; thence N00°00'00"W coincident with the west line of said Lot 1, 222.28 feet to a deflection point in the west line of said Lot 1; thence N08°31'50"E coincident with the west line of said Lot 1, 101.12 feet to a deflection point in the west line of said Lot 1; thence N00°00'00"E coincident with the west line of said Lot 1, 123.66 feet; thence N90°00'00"E, 326.00 feet; thence N68°20'10"E, 26.74 feet; thence N00°24'51"W, 134.00 feet to a deflection point in the north line of said Lot 1; thence N89°35'09"E coincident with the north line of said Lot 1, 235.13 feet to the point of beginning.

Subject property contains 260,059.3 square feet, or 5.97± Acres.

the real property constituting the "Real Property" as referred to in the Site Lease, subject to Permitted Encumbrances.