

[TOWER ROAD APARTMENTS]

GROUND LEASE

between

MANOR HOUSING PUBLIC FACILITY CORPORATION  
as Landlord

and

MANOR HOUSING ASSOCIATES I, LIMITED PARTNERSHIP  
as Tenant

Dated: As of October [1], 2024

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## **GROUND LEASE**

THIS GROUND LEASE (as amended, modified or supplemented from time to time, this “Lease”) is made as of October [1], 2024, by and between Manor Housing Public Facility Corporation, a Texas public facility corporation (together with its permitted successors and assigns, the “Landlord”), and Manor Housing Associates I, Limited Partnership, a Texas limited partnership (together with its permitted successors and assigns, the “Tenant”).

### **RECITALS**

WHEREAS, the Landlord is the owner of certain Land (as defined below) which the Landlord has agreed to lease under the terms and conditions hereof to the Tenant for the Tenant’s design, acquisition, construction, and equipping, and operation upon the Land of a rental project (the “Project”), comprised of 324 residential rental units (each, a “Unit” and collectively, the “Units”); and

WHEREAS, the Tenant and the Landlord intend that all of the Units shall be rented to Residents (as defined below) so as to qualify the Units for Low Income Housing Tax Credits as defined in Section 42 of the Code (as defined below); and

WHEREAS, the Landlord and the Tenant desire to enter into this Lease on the terms and conditions set forth herein.

NOW THEREFORE, IN CONSIDERATION of the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord all of that tract of land (the “Land”) in Travis County, Texas, which is described in Exhibit A attached hereto,

TOGETHER WITH any and all rights, alleys, ways, privileges, easements, appurtenances and advantages, to the same belonging or in any way appertaining (all of which, together with the Land, are hereinafter referred to collectively as the “Premises”), excluding any and all Improvements and Equipment (as such terms are hereinafter defined) now or hereafter thereon (which shall be owned by the Tenant, but without limiting the Landlord’s rights thereto under this Lease),

SUBJECT TO THE OPERATIONS AND EFFECT of the Permitted Encumbrances,

TO HAVE AND TO HOLD the Premises unto the Tenant, its successors and permitted assigns, for the purposes and term of years set forth herein,

ON THE TERMS AND SUBJECT TO THE CONDITIONS which are hereinafter set forth:

## Article 1 Definitions

### Section 1.1. Specific.

*As used herein, the following terms have the following meanings:*

“*Act*” shall mean the United States Housing Act of 1937, as amended from time to time, any successor legislation, and all regulations issued thereunder or in furtherance thereof.

“*Annual Rent Payment*” shall have the meaning given to it in subsection 4.1.2 hereof.

“*Bankruptcy*” shall be deemed, for any Person, to have occurred either:

- (a) if and when such Person (i) applies for or consents to the appointment of a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy court or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of its creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with its creditors or seeks to take advantage of any insolvency law, (v) performs any other act of bankruptcy or (vi) files an answer admitting the material allegations of a petition filed against such Person in any bankruptcy, reorganization or insolvency proceeding; or
- (b) if (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating such Person a bankrupt or an insolvent, approving a petition seeking such an adjudication, or reorganization, or appointing a receiver, trustee or liquidator of such person or of all or a substantial part of its assets or (ii) there otherwise commences with respect to such Person or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for any period of ninety (90) consecutive days after the expiration of any stay thereof.

“*Bond Loan Documents*” means all documents and instruments executed and delivered in connection with the issuance and sale of the Senior Bonds and the Subordinate Bonds.

“*Bond Loans*” means the loans made to the Tenant pursuant to the terms of the Bond Loan Documents.

“*Bonds*” means the Senior Bonds and the Subordinate Bonds, together.

“*Cash Flow*” means Net Cash Flow as defined in the Partnership Agreement.

“*Class B Limited Partner*” means Manor Leased Housing Associates LP I, LLC a Minnesota limited liability company, and its successors and assigns.

“*Closing*” means the date of closing of the Bond Loan.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Commencement Date*” has the meaning given it in subsection 3.1.1 hereof.

“*Compliance Period*” has the meaning given it in the Partnership Agreement

“*Depository*” means a federally insured bank or trust company designated by the Landlord having a capital of not less than \$50,000,000 and having its main office in Texas, or if no such bank or trust company is willing to act as such, the Landlord. For purposes of this Lease, (a) a bank or trust company qualified as aforesaid shall be deemed willing to act as Depository hereunder if in connection therewith it employs its customary form of escrow agreement which does not contain provisions inconsistent with those of this Lease, and agrees to undertake the duties provided for herein, and (b) no such bank or trust company shall be deemed willing to act as Depository if the Landlord gives written notice to the Tenant and the Investor Limited Partner that no bank or trust company with qualifications as aforesaid to which it has applied is willing to act as Depository, and neither the Tenant nor the Investor Limited Partner, within thirty (30) days after being given such notice, designates as Depository a bank or trust company having such qualifications and willing to act as such.

“*Environmental Laws*” shall mean any and all federal, state or local statutes, laws, rules, regulations, ordinances, orders, codes, determinations, decrees, or rules of common law pertaining to health, safety, or the environment now or at any time hereafter in effect and any judicial or administrative interpretation thereof (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment or Hazardous Substances, or exposure to Hazardous Substances) including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, as amended, and any other environmental or health conservation or protection laws.

“*Equipment*” means all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property owned by the Tenant now or hereafter located on or within the Premises or the Improvements and necessary or desirable for the proper operation and maintenance of the Premises or the Improvements (other than moveable equipment belonging to any management company or third party servicing the Improvements), including but not limited to any and all awnings, shades, screens and blinds; asphalt, vinyl, composition and other floor, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators and hoists; heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts and tanks; oil burners, furnaces, heaters, incinerators and boilers; air-cooling and air-conditioning equipment; washroom, toilet and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring and equipment; tools, building supplies, lobby decorations and window washing hoists and equipment; garage equipment, security systems, and gardening and landscaping equipment; swimming pool, recreational furniture and equipment; refrigerators, dishwashers, disposals, ranges, washers, dryers, and other kitchen appliances and all additions thereto and replacements thereof.

“*Event of Default*” has the meaning given it in Section 15.1 hereof.

“*Fee Estate*” means the fee simple estate in the Premises, subject to the operation and effect of this Lease and the Permitted Encumbrances, to the extent that the Permitted Encumbrances affect the Fee Estate.

“*Force Majeure*” means any (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, (c) failure or shortage of electrical power, gas, water, fuel oil, or other utility or service, (d) riot, war, insurrection, act of terror, disease, pandemic or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather conditions resulting in cessation of work on the Project for in excess of one (1) week, (g) other act of God, (h) inability to obtain a building permit or a certificate of occupancy, or (i) other cause similar or dissimilar to any of the foregoing and beyond the reasonable control of the Person in question.

“*General Partner*” means MHPFC TR GP 1 LLC, a Texas limited liability company, and its successors and permitted assigns.

“*Guarantor*” has the meaning given it in the Partnership Agreement.

“*Guaranty Date*” means the date on which the Guarantor has no further liability, obligation or exposure under any guaranty or indemnification relating to the Partnership or the Property.

“*Hazardous Substance*” means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, medical waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws. Hazardous Substances shall not include items which are products commonly used by consumers.

“*Holdover Rent*” has the meaning given it in subsection 3.3.2 hereof.

“*Improvements*” has the meaning given it in subsection 5.1(b)(i) hereof.

“*Initial Rent Payment*” shall have the meaning given to it in subsection 4.1.1 hereof.

“*Insurance Requirements*” has the meaning given it in subsection 5.2.1 hereof.

“*Investor Limited Partner*” means RBC Community Investments, LLC, an Illinois limited liability company, and its respective successors and/or assigns or such other equity investor approved by the Tenant.



“*Land Records*” means the Official Public Records of Real Property of Travis County.

“*Landlord Event of Default*” shall have the meaning given it in Section 15.4 hereof.

“*Landlord*” means Manor Housing Public Facility Corporation, a Texas public facility corporation.

“*Leasehold Estate*” means the leasehold estate in the Premises held by the Tenant under this Lease. This Lease is intended to convey to the Tenant ownership of the Improvements and Equipment, leaving only to Landlord a leasehold interest in the Land.

“*Leasehold Mortgagee*” means any Permitted Leasehold Mortgagee holding a Mortgage against the Leasehold Estate.

“*Legal Requirements*” has the meaning given it in subsection 5.2.1 hereof.

“*LIHTC Housing Requirements*” means applicable Low Income Housing Tax Credits requirements as found in Section 42 of the Code, and as required by the Texas Department of Housing and Community Affairs for the appropriate Compliance Period and/or extended-use period (as may be applicable).

“*Limited Partners*” means, collectively, the Class B Limited Partner, the Investor Limited Partner, the Special Limited Partner and any other limited partner of the Tenant.

“*Mortgage*” means any mortgage or deed of trust at any time encumbering any or all of the Property, and any other security interest therein existing at any time under any other form of security instrument or arrangement used from time to time in the locality of the Property (including but not limited to any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein.

“*Mortgagee*” means the Person secured by a Mortgage.

“*Option*” has the meaning given to it in Section 20.1.

“*Partnership Agreement*” means that certain Amended and Restated Agreement of Limited Partnership of Manor Leased Housing Associates I, Limited Partnership dated as of [October 1, 2024], as amended, modified or supplemented from time to time.

“*Permitted Encumbrances*” means those matters listed in a schedule attached hereto as Exhibit B and incorporated herein by reference, together with each Permitted Leasehold Mortgage, and matters permitted under Section 9.1.2 herein, and including any liens or encumbrances securing

any construction and/or permanent loans made to the Tenant, at Tenant's request, in connection with the Project and matters permitted by lenders of such loans or contemplated by the Loan Documents, and any refinancings thereof.

*"Permitted Leasehold Mortgage"* has the meaning given in subsection 9.1.4(a) hereof.

*"Permitted Leasehold Mortgagee"* means, collectively, mortgagees extending Permitted Leasehold Mortgages, as defined in subsection 9.1.4(a). Upon inception of this Lease, BOKF, NA, as trustee, and any of its successors and assigns shall be a Permitted Leasehold Mortgagee. Upon execution and delivery of the Taxable Loan Documents and for so long as the Taxable Loan remains outstanding, Taxable Lender shall be a Permitted Leasehold Mortgagee. [NTD Need to confirm when construction loan documents are available]

*"Person"* means a natural person, a trustee, a corporation, a partnership, a limited liability company and any other form of legal entity.

*"Premises"* has the meaning given it hereinabove; provided, that if at any time hereafter any portion of the Premises becomes no longer subject to this Lease, "Premises" shall thereafter mean so much thereof as remains subject to this Lease.

*"Prime Rate"* means, for any day, the rate of interest announced or otherwise established from time to time, by a commercial banking institution chosen by the Landlord, as its prime commercial rate, as in effect on such day.

*"Property"* means the Premises, the Improvements and the Equipment.

*"Rent"* means the Initial Rent Payment and each Annual Rent Payment.

*"Resident"* shall mean a person occupying a Unit in the Project pursuant to a Tenancy Agreement.

*"Restoration"* means the repair, restoration or rebuilding of any or all of the Property after any damage thereto or destruction thereof, with such alterations or additions thereto as are made by the Tenant in accordance with this Lease, together with any temporary repairs or improvements made to protect the Property pending the completion of such work.

*"Right of First Refusal"* means the right of first refusal granted to the Landlord pursuant to Section 20.5 hereof.

*"Senior Bonds"* means the \$[60,815,000] Manor Housing Public Facility Corporation Multifamily Housing Revenue Bonds (Tower Road Apartments), Series 2024.

*"Special Limited Partner"* means RBC Community Investments Manager II, Inc., a Delaware corporation, and its successors and assigns

*"Subordinate Bonds"* means the \$[4,000,000] Manor Housing Public Facility Corporation Subordinate Multifamily Housing Revenue Bonds (Tower Road Apartments), Series 2024.

“*Taxable Lender*” means Associated Bank, National Association, a national banking association, as lender of the Taxable Loan, and its successors and assigns.

“*Taxable Loan*” means the loan made to the Tenant pursuant to the Taxable Loan Documents and evidenced by the Taxable Note.

“*Taxable Loan Documents*” means all documents and instruments executed and delivered in connection with the issuance of the Taxable Note.

“*Taxable Note*” means the \$[60,815,000] Promissory Note from the Tenant and payable to Taxable Lender.

“*Taxes*” has the meaning given it in Section 6.1 hereof.

“*Tenancy Agreement*” shall mean the form of lease agreement between the Tenant and a Resident under the terms of which a Resident is entitled to enjoy possession of a Unit in the Project.

“*Tenant*” means Manor Leased Housing Associates I, Limited Partnership, a Texas limited partnership, as Tenant and its successors and permitted assigns as holder of the Leasehold Estate.

“*Term*” has the meaning given it in subsection 3.1.1 hereof. “*Termination Date*” has the meaning given it in subsection 3.1.1 hereof. “*Transfer*” has the meaning given it in Section 14.1 hereof.

#### Section 1.2. General.

Any other term to which meaning is expressly given in this Lease shall have such meaning.

#### Section 1.3. Construction.

Any Rent or any other amount paid hereunder shall be construed as made by the Tenant solely for the benefit of the Premises, as the Tenant shall be deemed to own the Improvements and the Equipment for all purposes. Any covenants contained herein made by the Tenant regarding the Improvements and the Equipment shall be construed solely to protect the Landlord from liability in connection with the Improvements and Equipment.

### **Article 2 Title**

#### Section 2.1. Title.

The Tenant and the Landlord hereby acknowledge that fee title to the Land upon which the Improvements are to be constructed is held exclusively by the Landlord.

## Article 3 Term

### Section 3.1. Length.

#### 3.1.1 Original Term.

This Lease shall be for a term (“Term”) commencing on the date of execution and delivery of this Lease (“Commencement Date”) and terminating at 11:59 o’clock P.M. on the day immediately before the ninety-ninth (99th) anniversary of the first (1st) day of the first (1st) full calendar month following the Commencement Date (the “Termination Date,” except that if the date of such termination is hereafter advanced to an earlier date or postponed pursuant to any provision of this Lease, or by express, written agreement of the parties hereto (and with the written consent of each Permitted Leasehold Mortgagee and the Class B Limited Partner), or by operation of law, the date to which it is advanced or postponed shall thereafter be the “Termination Date” for all purposes of this Lease). Nothing in this Lease shall be deemed in any way to extend or permit the extension of the Term beyond the ninety-ninth (99th) anniversary, anything in this Lease to the contrary notwithstanding.

#### 3.1.2 Confirmation of Commencement and Termination.

The Landlord and the Tenant shall upon either’s request therefor, within fifteen (15) days after, respectively, (a) the commencement of the Term and (b) the expiration of the Term or any earlier termination of this Lease by action of law or in any other manner, confirm in writing by instrument in recordable form that, respectively, such commencement or such termination has occurred, setting forth therein the Commencement Date and the Termination Date.

### Section 3.2. Surrender.

The Tenant shall, at its expense and subject to Section 3.4 hereof, at the expiration of the Term or any earlier termination of this Lease, (a) promptly yield up to the Landlord the Premises, and, at the Tenant’s sole option, the Units and the rest of the Improvements, and the Equipment, in good order and repair, ordinary wear and tear, and damage by casualty, subject to Article 12 hereof, excepted, and broom clean before returning possession of the Land, (b) remove therefrom the Tenant’s signs, goods and effects and any machinery, trade fixtures and equipment used in conducting the Tenant’s trade or business and not part of the Units or the Equipment or otherwise owned by the Landlord or a Resident, and (c) repair any damage to the Property caused by such removal. Upon such expiration or termination (whether by reason of an Event of Default or otherwise), (a) neither the Tenant nor its creditors and representatives shall thereafter have any right at law or in equity in or to any or all of the Property (including the Units and the rest of the Improvements) or to repossess any of same, or in, to, or under this Lease, and the Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of any creditor of the Tenant or any other Person whatsoever (but subject to the rights of any Person then holding any lien, right, title or interest in or to the Fee Estate, the Leasehold Estate, or the Property) and (b) the Tenant hereby waives any and all rights of redemption which it may otherwise hold under any applicable law.

### Section 3.3. Holding Over.

Nothing in this Lease shall be deemed in any way to permit the Tenant to use or occupy the Premises after the expiration of the Term or any earlier termination of this Lease. If and only if the Tenant continues to occupy the Premises after such expiration or termination after obtaining the Landlord's express, written consent thereto, such occupancy shall (unless the parties hereto otherwise agree in writing) be deemed to be under a month-to-month tenancy, which shall continue until either party hereto notifies the other in writing, by at least thirty (30) days before the end of any calendar month, that the party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate; provided, however, the Rent payable with respect to each such monthly period shall equal one twelfth (1/12) of the Annual Rent Payment in effect at such time; and such month-to-month tenancy shall be on the same terms and subject to the same conditions as those set forth in this Lease, except that if the Landlord gives the Tenant, by at least thirty (30) days before the end of any calendar month during such month-to-month tenancy, written notice that such terms and conditions (including any thereof relating to the amount and payment of Rent) shall, after such month, be modified in any manner specified in such notice, then such tenancy shall, after such month, be on the said terms and subject to the said conditions, as so modified.

If the Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease (subject to Sections 19.17 and 19.16 of this Lease) without having obtained the Landlord's express, written consent thereto, then without altering or impairing any of the Landlord's rights under this Lease or applicable law, (a) the Tenant hereby agrees to pay to the Landlord immediately on demand by the Landlord as holdover rental ("Holdover Rent") for the Premises, for each calendar month or portion thereof after such expiration of the Term or such earlier termination of this Lease, as aforesaid, until the Tenant surrenders possession of the Premises to the Landlord, a sum equaling 1/12th of the Annual Rent Payment in effect at such time plus One Hundred and 00/100 Dollars (\$100.00) per each day of such holdover occupancy, and (b) the Tenant shall surrender possession of the Premises to the Landlord immediately on the Landlord's having demanded the same. Nothing in this Lease shall be deemed in any way to give the Tenant any right to remain in possession of the Premises after such expiration or termination, regardless of whether the Tenant has paid any such Holdover Rent to the Landlord.

### Section 3.4. Title to and Alterations of Improvements.

At all times during the Term of this Lease, including without limitation for tax purposes, legal and beneficial title to the Improvements and the Equipment shall be owned by the Tenant and during the Term, the Tenant alone shall be entitled to all of the tax attributes of ownership of the Improvements and the Equipment, including, without limitation, the right to claim expenses, depreciation or cost recovery deductions, amortization and the right to claim the low-income housing tax credit described in Section 42 of the Code. Tenant has the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Property. At the expiration or earlier termination of the Term of this Lease, or any portion thereof, the Tenant shall peaceably leave, quit and surrender the Premises in the manner required under Section 3.2 hereof, subject to the rights of Residents in possession of Units under Tenancy Agreements with the Tenant; provided, however, that such Residents are not then in default thereunder, and attorn to

the Landlord as their lessor. Upon such expiration or termination, the Premises, Improvements and Equipment, or any portion thereof so terminated, shall become the sole property of the Landlord at no cost to the Landlord, and shall be free of all liens and encumbrances other than the Permitted Encumbrances and in good condition, subject to the provisions of Section 3.2 hereof, and in the event of a casualty, to the provisions of Article 12 hereof. Title to the Improvements constructed or installed on the Land shall at all times during the Term of this Lease remain real property with title vested in the Tenant. For state real property tax purposes or to the extent otherwise required under applicable Legal Requirements to maintain the Exemption for the Property, Landlord shall be treated as the owner of the Land. It is the parties' intent that Landlord hold title to the Land at all relevant times and to the extent it does not, Landlord can compel legal title to the Land to be conveyed to Landlord during the Term, if necessary, and by automatic operation of law pursuant to this Lease at the termination of this Lease.

#### Section 3.5. Conveyance Upon Sale of Improvements.

Notwithstanding anything in this Lease to the contrary, if the Tenant should at any time sell the Project to a third party (except as provided in Section 20.7, or with respect to transfers or sales to a Permitted Leasehold Mortgagee pursuant to Section 8.3 hereof), this Lease shall terminate without further obligation of the Landlord in regard to premises or payment. The Landlord shall convey title to Premises to the Tenant or to such third party (as directed by the Tenant) upon payment to the Landlord by the Tenant of the amount of one hundred and 00/100 dollars (\$100.00). Notwithstanding the foregoing, the sale of the Improvements to a third party pursuant to this Section 3.5 shall be subject to the Right of First Refusal.

Notwithstanding anything to the contrary set forth in this Lease, this Lease shall be terminated at the option of Tenant and Landlord's fee simple title to the Premises shall be conveyed to Tenant at no or nominal cost if (i) the General Partner withdraws as general partner of Tenant or is removed as general partner of Tenant pursuant to the terms of the Partnership Agreement or (ii) the Exemption is lost for any reason and not restored within ninety (90) days; provided, however, that with respect to a loss of the Exemption not caused by the Landlord or a Landlord Related Party that occurs after the expiration of the Compliance Period, the Landlord shall be entitled to the amortized portion of the upfront Ground Lease payment set forth in Section 4.1 hereof from the effective date of this Lease through the date of such conveyance in consideration for the transfer of the fee simple title to the Premises.

### **Article 4 Rent**

#### Section 4.1. Amount.

As Rent for the Premises, the Tenant shall pay to the Landlord:

- (a) *Initial Rent Payment.* The Landlord hereby acknowledges as of the date hereof the receipt of payment of Rent in the amount of \$(4,500,000) (the "Initial Rent Payment"). As of the date hereof, Landlord shall be deemed to have paid Seller Four Million Five Hundred Thousand Dollars (\$4,500,000) for the Land.

(b) *Annual Rent Payment.* Commencing on the January 1 following Closing, the Tenant shall make a Rent payment in the amount of \$90,000, increasing by 3.0% annually (the “Annual Rent Payment”) and shall be subject to Cash Flow pursuant to the Partnership Agreement.

(c) *Ground Lease Administration Fee.* Commencing on the January 1 following Closing, the Tenant shall make a Rent payment in the amount of \$10,000, increasing by 3.0% annually (the “Annual Administration Fee”) and shall be subject to Cash Flow pursuant to the Partnership Agreement.

[NTD: we’re working with equity investor on this]

#### Section 4.2. Tax on Lease.

If federal, state or local law now or hereafter imposes any tax, assessment, levy or other charge (other than any income tax) directly or indirectly upon (a) the Landlord with respect to this Lease or the value thereof, (b) the Tenant’s use or occupancy of the Premises, (c) the Rent or any other sum payable under this Lease or (d) this transaction, the Tenant shall pay the amount thereof from available Cash Flow, unless Tenant is prohibited by law from doing so.

#### Section 4.3. Security Deposit.

NONE.

#### Section 4.4. Net Lease.

Other than as is expressly set forth in this Lease (and except for the Landlord's legal fees, third-party consultants retained by the Landlord and the Landlord's own costs), all costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of the Tenant's Leasehold Estate in this Lease shall be the sole responsibility of and payable by the Tenant, all of which costs, expenses, liabilities and charges shall be deemed additional rent hereunder.

#### Section 4.5. Condition of the Premises.

- (a) Except as may be otherwise provided herein, the Tenant acknowledges and agrees that the Premises shall be leased to the Tenant and the Tenant shall accept the premises, "as is, where is, and with all faults." The Landlord hereby expressly disclaims any and all representations and warranties of any kind or character, express or implied, with respect to the premises. Without limiting the generality of the preceding sentence or any other disclaimer set forth herein, the Landlord and the Tenant hereby agree that the Landlord has not made and is not making any representations or warranties, express or implied, written or oral, as to (a) the nature or condition, physical or otherwise, of the Premises or any aspect thereof, including, without limitation, any warranties of habitability, suitability, merchantability, or fitness for a particular use or purpose;
- (b) the soil conditions, drainage conditions, topographical features, access to public rights-of-way, availability of utilities or other conditions or circumstances which affect or may affect the Premises or any use to which the Tenant may put the premises; (c) any conditions at or which affect or may affect the Premises with respect to any particular purpose, use, development potential or otherwise;
- (c) any environmental, geological, meteorological, structural or other condition or hazard or the absence thereof, heretofore, now, or hereafter affecting in any manner the Premises, including, but not limited to, the absence of asbestos, lead paint, or any other environmentally hazardous substance on, in, under or adjacent to the Premises, and (e) the compliance of the Premises or the operation or use of the Premises with any applicable restrictive covenants, or any laws, ordinances, or regulations of any governmental body (including specifically, without limitation, any zoning laws or regulations, any building codes, any environmental laws, and the Americans with Disabilities Act of 1990, all as amended from time to time).

### **Article 5 Use of Property**

#### Section 5.1. Nature of Use.

The Tenant shall throughout the Term continuously use and operate the Property only for the following uses and such other uses as are reasonably and customarily attendant to such uses: construction, rehabilitation, development, operation, maintenance, financing, refinancing,



marketing for lease and leasing of the Units in a manner which satisfies the requirements of this Lease in all material respects and as follows:

- (a) the Project shall be operated in accordance with the provisions of subsection 9.1.1-9.1.3 hereof, and have, at a minimum, the following characteristics: 324 residential rental Units subject to LIHTC Housing Requirements (collectively, the “Tax Credit Units”), and for so long as such requirements are applicable, designed for use (and shall in fact be used) for and only for the purposes expressly set forth and contemplated by this Lease, and
- (b) in conjunction with the foregoing,
  - i. the following improvements to the Premises (all of which, together with the Project and the Units, are herein referred to collectively as “Improvements”):
    - (1) such number of off-street parking spaces as is required for the Property from time to time by the applicable provisions of the municipal parking ordinance, as amended by any valid variance therefrom issued to the Landlord, or other applicable law;
    - (2) the driveways and sidewalks set forth on the final site plan covering the Premises which is approved in all respects by the Landlord (the “Site Plan”);
    - (3) such utility lines and facilities, open space areas, landscaping or other improvements or features as are shown on the Site Plan;
    - (4) such interior Unit amenities as are on the plans and specifications approved in connection with the closing of the financing, or as required by the Texas Department of Housing and Community Affairs in connection with the Low Income Housing Tax Credits or by the terms of the Bond Loan Documents, or as reasonably approved by the Landlord; and
    - (5) any replacement of or addition to the Units or any of such parking facilities, driveways, sidewalks, utility lines and facilities, landscaping or other Improvements provided that such replacement or addition is substantially consistent with the original design unless consented to in writing by the Landlord and the most senior Permitted Leasehold Mortgagee, and
  - ii. the Equipment, and any replacements, alterations, additions or repairs thereto.

#### Section 5.2. Compliance with Law and Covenants.

The Tenant, throughout the Term and at its sole expense, in its construction, rehabilitation, possession and use of the Premises, the Units or the rest of the Improvements and the Equipment:

- (a) shall materially comply promptly and fully with (a) all applicable material laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and

municipal governments and all departments, commissions, boards and officers thereof, including all applicable provisions of the Act, all LIHTC Housing Requirements and restrictions imposed by Section 142(d) of the Code in connection with the financing of the Project with the proceeds of the Bonds (all of which are hereinafter referred to collectively as “Legal Requirements”); and (b) all requirements (i) of the National Board of Fire Underwriters (or any other body now or hereafter constituted exercising similar functions) which are applicable to any or all of the Property, or (ii) imposed by any policy of insurance covering any or all of the Property and required by Article 7 hereof to be maintained by the Tenant (all of which are hereinafter referred to collectively as “Insurance Requirements”); and (c) the provisions of the other Permitted Encumbrances, all if and to the extent that any of the Legal Requirements, the Insurance Requirements or the said provisions relate to any or all of the Premises, the Improvements, the Equipment, the fixtures and equipment upon the Premises, or the use or manner of use thereof, whether any of the foregoing are foreseen or unforeseen, or are ordinary or extraordinary;

- (b) (without limiting the generality of the foregoing provisions of this subsection) shall keep in force throughout the Term all licenses, consents and permits required from time to time by applicable law to permit the Property to be used in accordance with this Lease;
- (c) shall pay or cause to be timely paid when due all personal property taxes, income taxes, license fees and other taxes or special assessments assessed, levied or imposed upon the Tenant or any other person (other than the Landlord) in connection with the operation of the Project or its use thereof, unless Tenant is contesting the same in good faith;
- (d) shall not take or fail to take any action, as the result of which action or failure to act the Landlord’s estate, right, title or interest in and to any or all of the Premises or the rest of the Property might be materially impaired; and
- (e) shall not (either with or without negligence) (a) knowingly cause or permit the escape, disposal or release of any Hazardous Substances, or (b) knowingly allow the storage or use of Hazardous Substances in any manner not sanctioned by law or by commercially reasonable standards prevailing in the industry for the storage and use of Hazardous Substances, or (c) knowingly allow any such materials or substances to be brought onto the Property except to use in the ordinary course of the Tenant’s business or by lessees of the Units. If any lender, Permitted Leasehold Mortgagee or governmental agency reasonably requires testing to ascertain whether or not there has been any release of Hazardous Substances on the Premises while this Lease is in effect, then the actual costs thereof paid by Landlord shall be reimbursed by the Tenant to the Landlord upon demand as additional Rent if such requirement applies to the Premises. The Tenant shall execute affidavits, representations and the like from time to time at the Landlord’s reasonable request concerning the Tenant’s actual knowledge regarding the presence of Hazardous Substances on the Premises.

### Section 5.3. Restrictions Applicable to Tax Credit Units.

The Tax Credit Units are subject to and benefited by the terms and conditions of the LIHTC

Housing Requirements. All LIHTC Housing Requirements and this Article 5 with respect to applicable Tax Credit Units shall be binding upon the Landlord and the Tenant and each of their respective successors and assigns, including, without limitation, any Person which succeeds to Tenant's interest in the Premises by foreclosure or an instrument in lieu of foreclosure. The Landlord, in its capacity as Landlord, shall have no direct or indirect control or participation in the control or operation of the Property and shall not be entitled to any benefits from or uses thereof except for the Rent required hereunder.

#### Section 5.4. Foreclosure.

Following foreclosure by any Permitted Leasehold Mortgagee or assignment of the leasehold interest in lieu of such foreclosure, the use restrictions contained in this Article 5 shall be terminated and of no further force and effect.

### **Article 6 Taxes and Operating Expenses**

#### Section 6.1. Property Tax Exemption; Tenant to Pay Taxes.

The Property is anticipated to qualify for exemption from all state and local government real estate taxes. The Landlord agrees not to take any action within its control that would jeopardize the property tax exemption and further agrees to cooperate in a commercially reasonable manner as the Tenant or Class B Limited Partner may request (at the Tenant's expense) to preserve such property tax exemption. The Landlord hereby represents, warrants, and covenants that it shall, as owner of the Premises, use its best efforts to maintain any new or existing ad valorem tax exemption under the Texas Tax Code for the Premises. The Tenant (a) shall bear the full expense of any and all real property or other taxes, including any and all payments in lieu of taxes, if applicable, metropolitan district charges or other assessments or charges levied against any or all of the Premises, the Units, the other Improvements and the Equipment, whether against the Fee Estate or the Leasehold Estate therein, and payable with respect to any calendar or tax year or other period falling wholly or partly within the Term, including but not limited to any assessments or fees levied against the Units pursuant to any Permitted Encumbrances (all of which are hereinafter referred to collectively as "Taxes"), except that if any such tax, charge or assessment is levied with respect to a period beginning before the Commencement Date or ending after the Termination Date, the Tenant shall bear the full expense of only that percentage thereof equaling the percentage of such period falling within the Term; (b) shall pay the same when due and payable and before any penalty is incurred for late payment thereof; and (c) shall deliver to the Landlord the receipted bill for such Taxes within ten (10) days after the Landlord requests it from the Tenant in writing. The Tenant shall not be required to pay any income taxes otherwise chargeable to the Landlord.

#### Section 6.2. Delivery of Bills and Notices.

Each party hereto shall deliver to the other, promptly after such party's receipt thereof, the originals or accurate copies of any and all bills for Taxes and notices of assessments or reassessments made or to be made for the purpose of levying any Taxes. If the Premises are not now treated as a separate tax lot by the assessing authority, the Landlord shall use its reasonable efforts promptly hereafter to have the Premises so treated.

### Section 6.3. Proceedings to Contest.

The Tenant may, without postponing payment thereof, as aforesaid, bring proceedings to contest any Legal Requirement and to contest the validity or the amount of any Taxes, or to recover any amount thereof paid by the Tenant, provided that prior thereto the Tenant notifies the Landlord in writing that the Tenant intends to take such action. The Tenant shall indemnify and hold harmless the Landlord against and from any reasonable expense Landlord actually incurs that arises out of any such action. The Landlord shall, upon written request by the Tenant, cooperate with the Tenant in taking any such action, provided that the Tenant indemnifies and holds harmless the Landlord against and from any expense Landlord incurs or liability arising out of such cooperation.

### Section 6.4. Operating Expenses.

#### 6.4.1 Tenant's Obligation.

Subject to the Tenant's legal right to dispute expenses, and to the terms of Section 9.2.3 hereof, the Tenant will pay (or cause to be paid) directly to the providers of such services all costs and expenses attributable to or incurred in connection with the development, construction, completion, marketing, leasing, maintenance, management and occupancy of the Premises and the Improvements (collectively, "Operating Expenses") including without limitation (a) all energy sources for the Improvements, such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) all water, sewer and trash disposal services; (c) all maintenance, repair, replacement and rebuilding of the Improvements including, without limitation, all Equipment; (d) all landscaping, maintenance, repair and striping of all parking areas; (e) all insurance premiums relating to the Premises and the Improvements, including fire and extended coverage, public liability insurance, rental insurance and all risk insurance; (f) all property management fees; and (g) the cost and expenses of all capital improvements or repairs (whether structural or non-structural) required to maintain the Improvements in good order and repair, including but not limited to any required by any governmental or quasi-governmental authority having jurisdiction over the Premises or the Improvements.

#### 6.4.2 Permits and Licenses.

The Tenant shall also procure, or cause to be procured, at the Tenant's sole cost and expense, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, cables, pipes, conduits, tubes, fiber optics and other equipment and appliances for use in supplying any such service to the Improvements and upon the Premises. The Landlord, upon request of the Tenant, and at the sole expense and liability of the Tenant, will join with the Tenant in any application required for obtaining or continuing any such services.

#### Section 6.4.3. Landlord's Payment of Certain Impositions.

Notwithstanding anything to the contrary set forth in this Lease, it is expressly understood

and agreed that Tenant shall not be required to pay or reimburse Landlord for (a) any franchise tax, gross receipts tax, revenue tax, premium tax, income tax or profits tax of Landlord, or any such tax imposed after the date hereof by any Governmental Authority or jurisdiction if such tax is determined on the basis of the general assets, or the general net income or net revenue of Landlord; or (b) any estate, inheritance, devolution, succession, transfer, stamp, legacy, or gift tax which may be imposed upon or with respect to any transfer of Landlord's interest in the Property or any part thereof.

#### Section 6.5. Right to Pay Taxes and Mortgage.

Any Permitted Leasehold Mortgagee and/or Limited Partner shall have the right (but not the obligation) to pay any taxes payable by the Landlord or the Tenant with respect to the Premises, and to cure any monetary or non-monetary default by the Landlord or the Tenant under any mortgage or other encumbrance on the Premises which has priority over this Lease; and if Permitted Leasehold Mortgagee or Limited Partner does so pay or cure, the Landlord or the Tenant, as applicable agrees that it will reimburse Permitted Leasehold Mortgagee or Limited Partner, as applicable, for the amount thereof promptly following request by the Permitted Leasehold Mortgagee or Limited Partner, as applicable, therefor unless the Landlord or the Tenant is protesting such taxes in good faith.

### **Article 7 Insurance and Indemnification**

#### Section 7.1. Insurance to Be Maintained by Tenant.

The Tenant shall maintain at its expense throughout the Term insurance adequate to protect the Tenant's and the Landlord's interests in the Property and the insurance specified in the Tenant's Partnership Agreement. The Landlord has approved the insurance requirements attached hereto as Exhibit C; provided, however, in the event of a conflict between the insurance requirements specified in the Partnership Agreement and the insurance requirements listed on Exhibit C, the Partnership Agreement shall control. The Tenant shall fully comply with all of the insurance requirements imposed upon the Tenant under the Permitted Leasehold Mortgage and the Bond Loan Documents and Taxable Loan Documents to which the Tenant is a party. All insurance coverages shall have waiver of subrogation provisions reasonably acceptable to Landlord and Tenant, and all insurance coverages approved by a Permitted Leasehold Mortgagee or the Investor Limited Partner shall be deemed to be approved by Landlord. Approval, disapproval or failure to act by the Landlord regarding any insurance applied by the Tenant shall not relieve the Tenant of full responsibility or liability for damages or accidents as set forth in this Lease. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Tenant from any such liability.

#### Section 7.2. Insureds.

Each such policy shall name as insureds thereunder (a) the Tenant, (b) the Landlord and (c) as additional insureds, each designee of the Landlord and any Permitted Leasehold Mortgagee. Landlord's entitlement to proceeds from Tenant's insurance policies is subordinate to the rights of all Permitted Leasehold Mortgagees under all Permitted Leasehold Mortgages.

### Section 7.3. Insurer.

All insurance required and all renewals of insurance shall be issued by companies of recognized responsibility licensed to issue such policies and otherwise transact business in the State of Texas. All insurance policies will expressly provide that such policies will not be canceled or altered without thirty (30) days' prior written notice to the Landlord, and any other named insured thereunder, in the case of "All Risk" coverage insurance, and to the Landlord, and all other named insureds thereunder, in the case of general liability insurance. Such insurance will, to the extent obtainable, provide that no act or omission of the Tenant which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained; and will, to the extent obtainable, contain a waiver by the insurer of its rights of subrogation against the Landlord. Upon issuance, each insurance policy or duplicate or certificate of such policy shall be delivered to the Landlord.

Section 7.4. Evidence.

Tenant shall deliver to Landlord a certificate of insurance or an original or a signed duplicate copy of each such policy(including any replacement policy ) in conjunction with its delivery of such certificate or policy to Investor Limited Partner and Permitted Leasehold Mortgagee. All public liability, property damage liability, and casualty policies maintained by Tenant will be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry.

Section 7.5. Indemnification of Landlord.

- (a) THE TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE LANDLORD FROM THIRD PARTY CLAIMS NOT ATTRIBUTABLE TO THE LANDLORD'S OR ANY OF LANDLORD'S RELATED PARTIES' ACTION OR INACTION AND AGAINST AND FROM ANY AND ALL LIABILITY, CLAIM OF LIABILITY OR EXPENSE INCURRED BY LANDLORD AND ARISING OUT OF OR IN ANY WAY CONNECTED WITH (A) THE USE, OCCUPANCY, CONDUCT, OPERATION OR MANAGEMENT OF THE PROPERTY DURING THE TERM, OR (B) ANY WORK OR THING WHATSOEVER DONE OR NOT DONE ON THE PROPERTY DURING THE TERM, OR (C) ANY BREACH OR DEFAULT BY THE TENANT IN PERFORMING ANY OF ITS OBLIGATIONS UNDER THIS LEASE OR APPLICABLE LAW, OR (D) ANY NEGLIGENT, INTENTIONALLY TORTIOUS OR OTHER ACT OR OMISSION OF THE TENANT OR ANY OF ITS AGENTS, CONTRACTORS, SERVANTS, SUBTENANTS, LICENSEES OR INVITEES DURING THE TERM, OR (E) ANY INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO ANY PROPERTY, OCCURRING ON THE PROPERTY DURING THE TERM (WHETHER OR NOT SUCH EVENT RESULTS FROM A CONDITION EXISTING BEFORE THE EXECUTION OF THIS LEASE EXPRESSLY EXCLUDING ANY HAZARDOUS SUBSTANCE CONDITION UNKNOWN TO THE TENANT AS OF, AND EXISTING BEFORE, THE EXECUTION OF THIS LEASE) AND FROM AND AGAINST ALL EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR ANY ACTION OR PROCEEDING BROUGHT THEREON (INCLUDING BUT NOT LIMITED TO THE REASONABLE FEES OF ATTORNEYS, INVESTIGATORS AND EXPERTS), ALL REGARDLESS OF WHETHER SUCH CLAIM IS ASSERTED DURING OR AFTER THE EXPIRATION OF THE TERM OR ANY EARLIER TERMINATION OF THIS LEASE BUT EXCLUDING, HOWEVER, ANY LIABILITY, CLAIM OF LIABILITY OR EXPENSE CAUSED BY THE LANDLORD, THE LANDLORD'S RELATED PARTIES, OR AN EMPLOYEE OR AGENT OF LANDLORD'S RELATED PARTIES. THIS SECTION 7.5 SHALL SURVIVE THE TERMINATION OF THIS LEASE.
- (b) SUBJECT TO SECTION 7.5(a) ABOVE, THE TENANT AGREES THAT THE LANDLORD SHALL NOT BE LIABLE FOR ANY DAMAGE OR LIABILITY OF ANY KIND OR FOR ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO

PROPERTY OF THE TENANT OR ANY OTHER PERSON FROM ANY CAUSE WHATSOEVER BY REASON OF ANY WORK, LABOR OR MATERIALS PERFORMED OR DELIVERED TO, OR CONNECTED TO THE USE, OCCUPANCY, OR ENJOYMENT OF THE PREMISES BY THE TENANT OR ANY PERSON ON THE PREMISES OR HOLDING ALL OR ANY PART OF THE PREMISES UNDER THE TENANT. THE TENANT DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE LANDLORD FROM ALL CLAIMS, ACTIONS, DEMANDS, COSTS AND EXPENSES AND LIABILITY WHATSOEVER, INCLUDING REASONABLE ATTORNEYS' FEES, ON ACCOUNT OF ANY SUCH REAL OR CLAIMED DAMAGE OR LIABILITY SUSTAINED BY THIRD PARTIES AND FROM ALL LIENS, CLAIMS AND DEMANDS OCCURRING IN OR AT THE PREMISES, OR ARISING OUT OF THE CONSTRUCTION, USE, OCCUPANCY OR ENJOYMENT OF THE PREMISES AND ITS FACILITIES, OR ANY REPAIRS OR ALTERATIONS WHICH THE TENANT MAY MAKE UPON THE PREMISES, OR OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF THE TENANT, ITS AGENTS, CONTRACTORS, SERVANTS, INVITEES OR ANY OTHER PARTY, OTHER THAN CLAIMS, ACTIONS, DEMANDS, COSTS AND EXPENSES AND LIABILITIES ARISING DIRECTLY AND SOLELY FROM THE ACTS OF THE LANDLORD, THE LANDLORD'S RELATED PARTIES, OR EMPLOYEES OR AGENTS OF LANDLORD'S RELATED PARTIES.

- (c) The Tenant acknowledges that the Landlord is not required to provide security for persons or property in or about the Premises. The Tenant hereby waives and releases any claim against the Landlord for injury to or death of any person and any property damage arising out of or attributable to any criminal activity in or about the Premises, specifically including, but not limited to, vandalism, theft, burglary, robbery, rape, murder or assault unless arising directly from the acts of the Landlord, the Landlord's Related Parties, its employees or agents.
- (d) THE TENANT HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD THE LANDLORD AND THE LANDLORD'S RELATED PARTIES HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTIONS AND SUITS FOR INJURY TO OR DEATH OF ANY OF THE TENANT'S RELATED PARTIES OR RESIDENTS OF THE UNITS RESULTING FROM CRIMINAL ACTIVITIES IN OR ABOUT THE PREMISES, INCLUDING ALL COSTS, REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED OTHER THAN CLAIMS, ACTIONS, DEMANDS, COSTS AND EXPENSES AND LIABILITIES ARISING FROM THE ACTS OF THE LANDLORD, THE LANDLORD'S RELATED PARTIES OR THEIR EMPLOYEES OR AGENTS. SUBJECT TO THE FOREGOING LIMITATION, THE TENANT SHALL DEFEND ANY CLAIM, CAUSE OF ACTION OR SUIT MADE OR BROUGHT AGAINST THE LANDLORD OR THE LANDLORD'S RELATED PARTIES AT THE TENANT'S SOLE EXPENSE, BY COUNSEL REASONABLY SATISFACTORY TO THE LANDLORD. AS USED HEREIN, "LANDLORD'S RELATED PARTIES" SHALL MEAN AND REFER TO THE LANDLORD'S OFFICERS, DIRECTORS, AFFILIATES, AGENTS, CONTRACTORS, VOLUNTEERS AND EMPLOYEES, AND THEIR RESPECTIVE HEIRS AND PERSONAL REPRESENTATIVES, SUCCESSORS



AND ASSIGNS. AS USED HEREIN, "TENANT'S RELATED PARTIES" SHALL MEAN THE TENANT'S AGENTS, CONTRACTORS, PATRONS, BUSINESS INVITEES AND GUESTS.

- (e) SUBJECT TO THE LIMITATIONS SET FORTH BELOW, THE TENANT HEREBY AGREES TO INDEMNIFY THE LANDLORD AND HOLD THE LANDLORD HARMLESS FROM AND AGAINST ANY AND ALL LOSS, DAMAGES, LIABILITIES, EXPENSE AND COST INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, PAID, INCURRED OR SUFFERED BY THE LANDLORD AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, EMISSION, DISCHARGE, MIGRATION OR RELEASE FROM THE PROPERTY OF ANY HAZARDOUS SUBSTANCE. THE FOREGOING INDEMNITY SHALL BE LIMITED TO MATTERS WHICH FIRST OCCUR DURING THE TERM AND WHICH MATTERS ARE DIRECTLY OR INDIRECTLY CAUSED BY THE TENANT'S USAGE OF THE PREMISES AND NOT CAUSED BY ACTS OF GOD AND NOT CAUSED, DIRECTLY OR INDIRECTLY, BY THE LANDLORD, THE LANDLORD'S RELATED PARTIES, OR THEIR EMPLOYEE, OR AGENT. THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT THE LIABILITY OF THE TENANT FOR SUCH MATTERS WHICH FIRST OCCUR DURING THE TERM, BUT WHICH ARE DISCOVERED SUBSEQUENT TO THE EXPIRATION OF THE TERM.

Section 7.6. Increase in Risk.

The Tenant shall not do or permit to be done any act or thing as a result of which either (a) any policy of insurance of any kind covering any or all of the Property or any liability of the Landlord in connection therewith may become void or suspended and such insurance policy is not replaced prior to any such void or suspension taking place, or (b) the insurance risk under any such policy would (in the opinion of the insurer thereunder) be made materially greater and action is not taken to address the risk. If such insurance is maintained by the Landlord, the Tenant shall pay as additional Rent the amount of any increase in any premium for such insurance resulting from any breach of such covenant, within ten (10) business days after the Landlord notifies the Tenant in writing of such increase.

Section 7.7. Participation by Permitted Leasehold Mortgagee.

Subject to subsection 12.3, Landlord agrees that the Permitted Leasehold Mortgagee will participate with Tenant in the settlement of all insurance claims and shall control disbursements, and control use of all insurance proceeds.

Section 7.8. Insurance Proceeds.

Notwithstanding anything to the contrary set forth in this Lease, Landlord and the Tenant hereby agree that for so long as a Permitted Leasehold Mortgage is outstanding, any and all insurance proceeds and condemnation awards received by the Tenant or the Landlord in connection with the Property shall be applied in accordance with the most senior Permitted

Leasehold Mortgage and the Loan Documents executed in connection therewith. If no Permitted Leasehold Mortgage is outstanding, such proceeds shall be payable to Tenant and may be applied to restore or repair the Improvements and Equipment. Without limiting the foregoing, Landlord agrees that the provisions of this Lease with respect to insurance policies, condemnation, casualty or the proceeds of casualty insurance, including without limitation, the types and amounts of insurance to be maintained by Tenant, the form of insurance policies, and provisions regarding the use of any casualty or condemnation process, are subject and subordinate to and shall be controlled by any Permitted Leasehold Mortgage and the Loan Documents executed in connection therewith, and to the applicable Permitted Leasehold Mortgagee's right thereto and thereunder, including, but not limited to, provisions relating to the use of proceeds of insurance and the Permitted Leasehold Mortgagee's right to participate in any proceeding regarding a casualty or condemnation.

## **Article 8 Leasehold Mortgage Requirements**

### Section 8.1. Future Fee Estate Mortgages.

Other than Permitted Encumbrances and restrictive covenants comprising any Land Use Restriction Agreement ("LURA") required by the Texas Department of Housing and Community Affairs, the Landlord shall not consent to any future mortgages or permit any future liens, or encumbrances against the Fee Estate or Premises, or otherwise pledge, assign or otherwise dispose of the Fee Estate or Premises without the prior written consent of the Tenant, the Class B Limited Partner, the Investor Limited Partner (if during the Compliance Period), the Guarantor (only until the Guaranty Date), and any Permitted Leasehold Mortgagee. To the extent a future Mortgage on the Fee Estate is permitted hereunder, such Mortgage shall expressly provide that it is subordinate and subject to the Tenant's interest under this Lease. Additionally, the Tenant shall not subordinate its leasehold interest to any future Mortgage of the Fee Estate obtained by the Landlord. The Landlord shall consent to the recording of the LURA in the form and manner required by the Texas Department of Housing and Community Affairs.

### Section 8.2. Nonmerger.

This Lease shall not terminate as to any Permitted Leasehold Mortgagee because of any conveyance of the Tenant's leasehold interest to the Landlord or of the Landlord's interest hereunder to the Tenant. Accordingly, if the Leasehold Estate created pursuant to this Lease and the Fee Estate in the Premises are commonly held, then they shall remain separate and distinct estates and shall not merge without consent by all Permitted Leasehold Mortgagees and the Limited Partner.

### Section 8.3. Foreclosure Rights of Leasehold Mortgagee.

Upon foreclosure, exercise of power of sale or assignment in lieu of foreclosure or exercise of the power of sale of the Leasehold Estate, the foreclosing Permitted Leasehold Mortgagee shall have the right to acquire this Lease in its own name or the name of a nominee without consent or approval of the Landlord, but subject to any senior Permitted Leasehold Mortgagee. In the event that the Tenant's Leasehold Estate hereunder is acquired by any Leasehold Mortgagee, or its

nominee or designee, then such Leasehold Mortgagee, or its nominee or designee, shall also have the right to further assign or sublet the leasehold interest hereunder to a third party without the consent or approval of the Landlord. In addition, upon such Permitted Leasehold Mortgagee's notice to the Landlord of the commencement of a foreclosure, exercise of the power of sale or deed in lieu of foreclosure or exercise of the power of sale of the Leasehold Estate, at the election of such Permitted Leasehold Mortgagee, the Landlord shall promptly cause the Manor Housing Public Facility Corporation, the sole member of the General Partner (the "General Partner Sole Member"), or an Affiliate of the General Partner Sole Member (the "General Partner Sole Member Affiliate") (together, the General Partner Sole Member and the General Partner Sole Member Affiliate shall be referred to as the "MHPFC Affiliate"), to enter into an agreement of limited partnership with the Permitted Leasehold Mortgagee, or its nominee or designee, to form a new tenant (the "New Tenant") on substantially the same terms as the Partnership Agreement or as otherwise reasonably acceptable to the MHPFC Affiliate. Upon Permitted Leasehold Mortgagee's foreclosure, exercise of the power of sale or deed in lieu of foreclosure or exercise of the power of sale of the Leasehold Estate or other termination of this Lease for the reasons giving rise to such foreclosure, power of sale or deed in lieu of foreclosure, the Landlord shall promptly enter into a new ground lease with New Tenant on substantially the same terms as this Lease.

Foreclosure of any Permitted Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Leasehold Mortgage, or in lieu of, foreclosure or other appropriate proceeding in the nature thereof, shall not require the consent of the Landlord or constitute a breach of any provision of, or a default under, this Lease, and upon such foreclosure, sale or conveyance, the Landlord shall recognize the purchaser or other transferee in connection therewith as the tenant under this Lease (the "*New Transferee*"). Following such foreclosure, sale or conveyance in lieu thereof, the tenant shall have the right to further assign or sublet the Leasehold Estate to a third party without the consent or approval of the Landlord. Furthermore, following such foreclosure, or sale or conveyance in lieu thereof, and assignment or sublet to a third party, the Landlord shall provide an automatic release of the New Transferee or Permitted Leasehold Mortgagee from obligations under the foreclosed Lease.

For purposes of this Section 8.3, "*Affiliate*" shall mean any entity, directly or indirectly, controlling or controlled by or under direct or indirect common control with the Landlord. For purposes of this definition, "control" shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests.

#### Section 8.4. Obligations of Tenant.

Any tenant acting as tenant pursuant to the second paragraph of Section 8.3 hereof shall only be personally obligated for performance of obligations under this Lease commencing as of the date of the foreclosure, sale or conveyance in lieu of and ending as of the date of any assignment of this Lease to a successor Tenant.

Section 8.5. Voluntary Surrender.

The Landlord shall not accept a voluntary surrender of this Lease at any time during which the Leasehold Estate is encumbered by a Permitted Leasehold Mortgage or prior to the expiration of the Compliance Period for the last building in the Project.

#### Section 8.6. Attornment.

If any Permitted Leasehold Mortgagee succeeds to the interest of Tenant under this Lease by foreclosure of a Permitted Leasehold Mortgage or by a deed in lieu of foreclosure or otherwise, this Lease shall be recognized as a direct lease from Landlord to such Permitted Leasehold Mortgagee or such Permitted Leasehold Mortgagee's designee, and Landlord and the Permitted Leasehold Mortgagee or its designee shall each be bound to the other under all of the covenants, terms, conditions, and agreements of this Lease and any modifications or amendments thereof approved by the Permitted Leasehold Mortgagee in writing, during the remainder of the term thereof to the same extent as set forth therein, and with the same force and effect as if the Permitted Leasehold Mortgagee were the Tenant named in this Lease. Upon such attornment, Landlord shall waive all defaults by Tenant which occurred prior to the Permitted Leasehold Mortgagee gaining possession of the Premises. Landlord waives all notices, joinder and/or service of any and all foreclosure actions by the Permitted Leasehold Mortgagee with respect to the Premises, and of any actions at law by the Permitted Leasehold Mortgagee to gain possession of the Premises. It shall not be necessary, except as required by law, for the Permitted Leasehold Mortgagee to name Landlord as a party to enforce its rights under the Loan Documents, or to prosecute any action at law to gain possession of the Premises. Notwithstanding anything to the contrary contained herein or in this Lease, Landlord hereby covenants and agrees that any Permitted Leasehold Mortgagee who succeeds to the interest of Tenant under this Lease, and such Permitted Leasehold Mortgagee's successors and assigns, shall not be (i) subject to any offsets or defenses which Landlord might have as to the Tenant, (ii) required to pay Landlord rent or additional rent or any rental period beyond the current rental period which Tenant might have paid to Landlord, or (iii) bound by or required to perform any duty, obligation, covenant, term or agreement of this Lease contained in any amendments or modifications of this Lease which have not been approved by the Permitted Leasehold Mortgagee.

#### Section 8.7. Approval Rights of Investor Limited Partner.

In the event that a Permitted Leasehold Mortgagee exercises its rights of foreclosure, assignment in lieu of foreclosure, or enters into a new lease on the terms of this Lease, after the expiration of all applicable notice and cure periods, any approval rights that the Investor Limited Partner has under this Lease shall no longer be applicable.

### **Article 9 Improvements to Premises**

#### Section 9.1. Construction, Renovation or Rehabilitation of Improvements.

9.1.1 *Utilities.* Prior to the commencement of any construction, rehabilitation or excavation activities by the Tenant, the Tenant shall contact all appropriate utility agencies for the purpose of verifying the location, depth and nature of all utilities affecting the Premises and any areas bordering upon the Premises.

9.1.2 *Safety.* The Tenant shall comply in all respects with the overall safety programs promulgated by any applicable governmental or quasi-governmental agency, from time to time, applicable to the Premises.

9.1.3 *Alterations.* Any improvements made to the Premises by either party hereto shall be made only in good and workmanlike manner using new materials of the same quality as the original Improvements, if applicable, and in accordance with all applicable building codes and other laws.

9.1.4 *Permitted Leasehold Mortgages.*

- (a) The Landlord acknowledges and agrees that it will not be possible for the Tenant to construct the Improvements without obtaining a loan or loans from one or more persons or entities in order to finance the construction and/or rehabilitation of said Improvements and the development and operation of the Project. Therefore, the Landlord hereby covenants and agrees that its interest in this Lease and its ownership interest in the Premises are and shall be subject to, subordinate and inferior to any and all loans (interim, permanent, “cash flow”, “soft” or refinancings thereof) obtained by the Tenant for the purpose of financing the construction and/or rehabilitation of the Improvements and the development and operation of the Project, and to the lien of any mortgages (each, a “Permitted Leasehold Mortgage”), assignments of rents and leases, security agreements, and other collateral or security documents or instruments required by the lender or lenders providing such financing, and to all renewals, extensions, modifications, consolidations, replacements and refinancings thereof, and to all advances made or hereafter to be made upon the security of such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments. The Landlord shall, at the Tenant’s request, join in, execute and/or deliver any and all such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments as may be required by such lender or lenders in order to subject and subordinate the Landlord’s interest in this Lease and its ownership interest in the fee simple title to the Property or to otherwise consent to or facilitate the subordination or encumbrance of the Tenant’s interest in this Lease and the Improvements to the lien of such documents or instruments, and upon the Tenant’s request shall join in, execute and/or deliver any and all such further instruments or assurances as any such lender or lenders may reasonably deem necessary to evidence or confirm the subordination of this Lease or the encumbrance of the Landlord’s interest herein and the Landlord’s ownership interest in the Land to the lien of any such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments; provided, however, and notwithstanding anything contained herein to the contrary, the Landlord shall not be required to suffer, incur, accept or assume any personal liability for any such financing, loans or indebtedness, or any costs or expenses thereof, or any other indebtedness or liability of the Tenant thereunder, and any mortgage, assignments of rents and leases, security agreements, and other collateral or security documents or instruments of any nature whatsoever which the Landlord may be called upon to join in, execute and/or deliver under and pursuant to this Article 9 shall expressly exculpate the Landlord from and against any and all such personal liability.
- (b) The Tenant may, without the Landlord’s consent, assign or mortgage this Lease (including any options it contains) to any Leasehold Mortgagee for the purposes described in subsection 9.1.4(a) above, each a “Permitted Leasehold Mortgagee”. A Permitted Leasehold Mortgagee (and anyone whose title derives from a Permitted Leasehold

Mortgagee) may, without the Landlord's consent, hold a foreclosure sale or exercise its power of sale, take title to this Lease, and transfer or assign this Lease, either in its own name or through a nominee.

- (c) Except: (i) as permitted pursuant to subsections 9.1.4(a) and (b), and (ii) as to the successor to a Permitted Leasehold Mortgagee, neither the Tenant nor any successor in interest to the Premises or any part thereof shall engage in any financing or any other transaction creating any Mortgage or other encumbrance or lien upon the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Premises, except as approved with the prior written consent of the Landlord and the Permitted Leasehold Mortgagees in each instance, which consent may not be unreasonably withheld, condition or delayed in the Landlord's reasonable discretion (any Mortgage consented to as aforesaid is also hereinafter referred to singularly as a Permitted Leasehold Mortgage), and except for an inchoate lien for taxes or municipal obligations, utility and access easements, restrictions required by Sections 42 and 142 of the Code, other encumbrances incurred in the ordinary course of business of the Tenant, and other matters set forth in the Tenant's Policy for title insurance issued by Fidelity National Insurance Company.
- (d) A Permitted Leasehold Mortgagee shall not assume any liability under this Lease except from and after the point at which it becomes mortgagee in possession, takes title to the Premises or becomes or the tenant under a new lease. The Investor Limited Partner's rights hereunder shall terminate when a Permitted Leasehold Mortgagee or the purchaser under a foreclosure, exercise of the power of sale or following a deed in lieu foreclose or exercise of the power of sale becomes the tenant hereunder.
- (e) For clarification purposes and notwithstanding anything to the contrary contained herein, the Tenant shall be permitted to refinance the construction loan at or prior to its maturity on commercially reasonable terms in an amount equal to the then outstanding principal balance of the construction loan, including in connection with the issuance of the governmental note (the "*Refinanced Loan*"), and the Landlord hereby consents to the granting of a mortgage by Tenant of its leasehold interest in the Property for such Refinanced Loan.

## Section 9.2. Mechanics' or Other Liens.

9.2.1 The Tenant shall: (a) within sixty (60) days after Tenant receives notice, have released (by bonding, insuring over, or otherwise) any mechanics', materialman's or other lien filed against any or all of the Premises, the Property, by reason of labor or materials provided for or about any or all of the Premises, the Units, or the Improvements or the Property during the Term, or otherwise arising out of the Tenant's use or occupancy of any or all of the Premises, the Units, or the Improvements or the Property, and (b) defend, indemnify and hold harmless the Landlord against and from any and all liability, claim of liability or reasonable expense (including but not limited to that of reasonable attorneys' fees) incurred by the Landlord on account of any such lien or claim other than such liens arising out of the actions of the Landlord or its agents, acting as Landlord.

9.2.2 Nothing in this Lease shall be deemed in any way (a) to constitute the Landlord's

consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair to any or all of the Property if doing so would give rise to the filing of any mechanic's or materialman's lien against any or all of the Property or the Landlord's estate or interest therein, or (b) to give the Tenant any right, power or authority to contract for or permit to be furnished any service or materials, if doing so would give rise to the filing of any mechanics' or materialmens' lien against any or all of the Property or the Landlord's estate or interest therein, or (c) to evidence the Landlord's consent that the Property be subjected to any such mechanic's or materialman's lien.

9.2.3 Notwithstanding the provisions of subsections 9.2.1 or 9.2.2 of this Lease to the contrary, the Tenant shall not be in default for failure to comply with any Legal Requirement or to pay or discharge any tax, assessment, fine, claim, or mechanic's or materialman's lien asserted against the Property if, and so long as (a) the Tenant shall have notified the Landlord of same within five (5) business days of obtaining knowledge thereof; (b) the Tenant shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Property or any part thereof, to satisfy the same; and (c) the Tenant complies with all requirements under the Bond Loan Documents and the Taxable Loan Documents necessary to avoid a default thereunder. Upon the discharge and/or dismissal of all tax assessments, fines and liens covered by this Section 9.2, the Landlord shall return any unexpended funds delivered to it by the Tenant to fulfill its obligation under this subsection 9.2.3.

#### Section 9.3. Fixtures.

Any and all improvements, repairs, alterations and all other property attached to or otherwise installed as a fixture within the Premises by the Landlord or the Tenant shall, immediately on the completion of their installation, become part of the Units and remain with the Units at the expiration or earlier termination of this Lease, except that any machinery, equipment or fixtures installed by the Tenant at no expense to the Landlord and used in the conduct of the Tenant's trade or business (rather than to service the Premises, the Units or the Property generally) and not part of the Equipment shall remain the Tenant's property, and shall be removed from the Premises by the Tenant at the end of the Term (and any damage to the Property caused by such removal shall be repaired at the Tenant's expense). Notwithstanding the foregoing, during the Lease Term all such Equipment, Improvements, alterations and all other property attached to or otherwise installed as a fixture within the Improvements or the Premises by Landlord or Tenant shall be owned by and remain the sole property of Tenant.

#### Section 9.4. Joinder.

Without limiting Landlord's obligations under any other provision of this Lease, Landlord shall, promptly at Tenant's request and expense at any time during the Term (and provided that Landlord thereby assumes no liability or obligation), join in any and all applications for building permits, subdivision plat approvals or certificates of dedication thereon, public works or other agreements and permits for sewer, water or other utility services, other instruments of dedication or other permits or approvals, the granting of or entry into which by any governmental or quasi-governmental authority having jurisdiction over the Property is necessary to permit (a) the



subdivision, development, improvement, use and occupancy of the Property for the purposes permitted by this Lease, without violating applicable law; and (b) the dedication to the City of Manor, the applicable utility providers, and/or the State of Texas easements for utility, roadway and slope or storm drainage areas or facilities as are, in Tenant's opinion, necessary or desirable in connection therewith. Subject to the provisions of subsection 9.1, Landlord shall, at no expense to Landlord, use its reasonable efforts to cooperate with Tenant in Tenant's efforts to obtain such final approval and recordation. Landlord shall also join in the execution of any Restrictive Covenants that may be required to fulfill the purposes of this Section 9.4.

#### Section 9.5. Signs.

The Tenant shall have the right to erect from time to time about the Units, in accordance with applicable law, such signs as it desires, and are approved in writing by the Landlord (or as required by the Bond Loan Documents or the Taxable Loan Documents), and provided that any such sign has been approved by all architectural review committees having jurisdiction over any portion of the Property pursuant to any Permitted Encumbrance. Moreover, the Tenant shall erect from time to time, at the Tenant's expense, and upon the request of the Landlord, about the Units, in accordance with applicable law, such signs as the Landlord reasonably desires in order to advise the public of the Landlord's participation in the Project.

#### Section 9.6. Tenant Control.

Notwithstanding anything to the contrary herein, the Landlord shall have no control over the construction and/or rehabilitation of the Improvements.

### **Article 10 Repairs and Maintenance**

#### Section 10.1. Repairs.

The Tenant shall, throughout the Term and at its expense, use commercially reasonable efforts, normal wear and tear excepted, to:

10.1.1 take good care of the Property and keep it in good order and condition;  
and

10.1.2 promptly make any and all repairs, ordinary or extraordinary, foreseen or unforeseen, to the Property (including but not limited to the landscaping thereon) as are necessary to maintain it in good condition, subject to ordinary wear and tear (including but not limited to any and all such repairs to the plumbing, heating, ventilating, air-conditioning, electrical and other systems for the furnishing of utilities or services to the Property), and replace or renew the same where necessary (using replacements at least equal in quality and usefulness to the original improvements, equipment or things so replaced), and the Landlord shall have no obligation hereunder as to the same.

#### Section 10.2. Maintenance.

The Tenant shall use commercially reasonable efforts to keep and maintain all of the

Property in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice.

## **Article 11 Landlord's Right of Entry**

### **Section 11.1. Inspection and Repair**

Subject to the rights of any Resident under a Tenancy Agreement, the Landlord and its authorized representatives shall be entitled to enter the Project and Units and the rest of the Property (except in the event of an emergency) at any time during the Tenant's business hours and at any other reasonable time upon ten (10) business days' written notice to (a) inspect the Property at any time with such notice and (b) with the prior written consent of the Permitted Leasehold Mortgagees (except in connection with repairs for life and/or safety issues, in which case prompt notice shall be provided to the Permitted Leasehold Mortgagees), and subject to the rights of any tenants, make any repairs thereto and/or take any other action therein which is required by applicable law or which the Landlord is permitted to make by any provision of this Lease, after giving the Tenant at least forty-eight (48) hours' written notice during business days of the Landlord's intention to take such action and allowing the Tenant reasonable time to take the appropriate action (provided, that in any situation in which, due to an emergency or otherwise, the health, welfare or safety of the Residents or physical condition of the Project and Units or any other part of the Property would be unreasonably jeopardized unless the Landlord were to take such action immediately, the Landlord shall give only such notice, if any, to the Tenant as is reasonable under the circumstances, and may enter the same at any time).

Nothing in this Article 11 shall be deemed to impose any duty upon the Landlord to make any such repair or take any such action, and the Landlord's performance thereof shall not constitute a waiver of the Landlord's right hereunder to have the Tenant perform such work. The Landlord may, while taking any such action upon the Property, store therein any and all necessary materials, tools and equipment, and the Tenant shall have no liability to the Landlord for any damage to or destruction of any such materials, tools and equipment, except if and to the extent that such damage or destruction is proximately caused by the gross negligence or intentional misconduct of the Tenant or its agents and employees. The Landlord shall not in any event be liable to the Tenant for any inconvenience, annoyance, disturbance, loss of business or other damage sustained by the Tenant by reason of the making of such repairs or the taking of such action, or on account of the bringing of materials, supplies and equipment onto the Property during the course thereof (except if and to the extent the same is proximately caused by the gross negligence or willful misconduct of Landlord or Landlord Related Party), and the Tenant's obligations under the provisions of this Lease shall not be affected thereby. In exercising its rights under this Section 11.1, the Landlord shall not cause or allow any interference or disruption of the Tenant's work or the Tenant's use, operation or enjoyment of the Property, or that of any Resident.

### **Section 11.2. Exhibiting the Premises.**

The Landlord and its business invitees may from time to time, after giving at least ten (10) business days' written notice thereof to the Tenant, and subject to the rights of any Resident under a Tenancy Agreement, enter the Project and the Units and the rest of the Property during the Tenant's normal business hours to exhibit the Premises for purposes of (a) during the last twenty-four (24) months of the Term (or at any time after the Landlord or the Tenant has exercised any

right to terminate this Lease which it holds hereunder), leasing the Premises to any prospective tenant thereof and (b) exhibiting the same to any governmental and/or quasi-governmental authorities or other third-parties which may have an interest in developments similar to the Property or similarly financed or for any other business purpose; provided that in doing so the Landlord and each such invitee observes all reasonable safety standards and procedures which the Tenant may require. In exercising its rights under this Section 11.2, the Landlord shall use its good faith, reasonable efforts to minimize any interference or disruption of the Tenant's work or the Tenant's use or operation of the Property, or that of any residential tenant.

## **Article 12 Fire and Other Casualties**

### **Section 12.1. Restoration.**

**Application of Insurance Proceeds.** All insurance proceeds (other than any proceeds which are separately paid on account of any damage to or destruction of the Tenant's personal property, inventory or work-in-process, all of which shall be paid to the Tenant) payable as a result of such casualty under policies of insurance held by or for the account of the Tenant pursuant to Article 7 hereof against such casualty and received by the Tenant or the Depository, as the case may be (less such reasonable attorneys' fees or other expenses as are incurred by the Depository, the Landlord or the Tenant in the collection thereof, which shall be paid out of such proceeds), shall be paid to the most senior Permitted Leasehold Mortgagee or a trustee it designates, to be used first to restore the Improvements or otherwise in accordance with the applicable Bond Loan Documents, the Taxable Loan Documents, or any loan documents then in place. Any remainder shall be disbursed to the Tenant. In the case of a casualty, this Lease shall continue.

*12.1.2 Application of Proceeds on Termination.* Anything in this Lease to the contrary notwithstanding, upon the expiration or earlier termination of this Lease before such restoration is completed free and clear of any liens, any insurance proceeds not theretofore applied to the cost of such restoration or disbursed to Permitted Leasehold Mortgagees (the most senior Permitted Leasehold Mortgagee being entitled to proceeds first) shall be paid to the Tenant to the extent permitted by the Mortgages.

### **Section 12.2. No Termination.**

Subject to Section 12.5 below, no total or partial damage to or destruction of any or all of the Property shall entitle the Tenant or the Landlord to surrender or terminate this Lease, or shall relieve the Tenant from its liability hereunder to pay in full all the sums and charges which are payable by the Tenant hereunder, or from any of its other obligations hereunder, and the Tenant hereby waives any right now or hereafter conferred upon it by statute or otherwise, on account of any such damage or destruction, to surrender this Lease, to quit or surrender any or all of the Property, or to have any suspension, diminution, abatement or reduction of the sums payable by the Tenant hereunder (except that, if and to the extent that the Landlord has, on account of any such sum, received for its own account the proceeds of any rent insurance pursuant to the provisions of this Lease, the Tenant shall be entitled to a credit therefor against its obligations hereunder to pay such Rent and other sums, by applying such credit toward the unpaid sums in the order in which they fall due hereunder).

### Section 12.3. Rights of the Parties Under the Bond Loan Documents.

Notwithstanding anything herein to the contrary, for so long as the Bond Loan is in effect, the Bond Loan Documents shall control the use and application of all casualty proceeds relating to the Property. In any event, the Tenant and the Permitted Leasehold Mortgagee will participate in any proposed settlement.

### Section 12.4. Notice.

The Landlord will provide reasonable prior notice to Permitted Leasehold Mortgagees, the Limited Partners and the Tenant of any proceeding for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit the Permitted Leasehold Mortgagees, the Limited Partners and the Tenant to participate therein as interested parties.

### Section 12.5. Termination Upon Non-Restoration.

Following a casualty, this Lease may be terminated by the Tenant, with the prior written consent of the Permitted Leasehold Mortgagee, Guarantor (if prior to the Guaranty Date), and the Limited Partners, if such casualty prevents the use and operation of Improvements as a low-income or moderate-income development under Section 42 of the Code or if the insurance proceeds made available to the Tenant are insufficient to restore the Improvements to a condition substantially similar to the conditions existing prior to such casualty.

## **Article 13 Condemnation**

### Section 13.1. Notice of Taking.

Forthwith upon receipt by either the Landlord or the Tenant of notice of the institution of any proceedings for the taking or condemnation of all or a portion of the Property or Improvements by the government of the United States of America, State of Texas, County of Travis or any other governmental authority, or any corporation under the right of eminent domain (a "Taking"), the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

### Section 13.2. Condemnation Awards.

The Tenant's share of any condemnation award shall be no less than the total condemnation award less the value of the Landlord's remainder interest in the Premises, considered as if unimproved but encumbered by this Lease and the Permitted Leasehold Mortgages. To the extent that the Tenant is entitled to any condemnation award, it shall be paid to the most senior Permitted Leasehold Mortgagee to be used first to restore the Improvements or otherwise in accordance with the applicable Mortgage, as determined by such Permitted Leasehold Mortgagee.

### Section 13.3. Total Taking.

Subject to the provisions of Section 13.8 hereof, in the event of a permanent Taking of the fee title to or of control of the Premises or of the entire Leasehold Estate hereunder (a “Total Taking”), this Lease shall thereupon terminate as of the effective date if such Total Taking, without liability or further recourse to the parties, provided that Tenant’s share of the proceeds will be determined in accordance with Section 13.2 hereof, with due credit given for any pre-payment of Rent.

### Section 13.4. Partial Taking.

Subject to the provisions of Section 13.8 hereof, in the event of a partial condemnation (a “Partial Taking”), this Lease shall continue. Any condemnation award shall be paid to the most senior Permitted Leasehold Mortgagee or a trustee it designates, to be used first to restore the Improvements or otherwise in accordance with the applicable Bond Loan Documents or the Mortgage. Any remainder shall be disbursed to the Tenant.

### Section 13.5. Notice.

The Landlord will provide reasonable prior notice to Permitted Leasehold Mortgagees, the Limited Partners and the Tenant of any proceeding for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit the Permitted Leasehold Mortgagees, the Limited Partners, Guarantor (if prior to the Guaranty Date), Class B Limited Partner, and the Tenant to participate therein as interested parties.

### Section 13.6. Termination upon Non-Restoration.

Following a Partial Taking, this Lease may be terminated by the Tenant, with the prior written consent of the Permitted Leasehold Mortgagee, Guarantor (if prior to the Guaranty Date) and the Limited Partner, if such Partial Taking prevents the use and operation of Improvements as a low-income or moderate-income development under Section 42 of the Code or if the proceeds made available to the Tenant are insufficient to restore the Improvements to a condition substantially similar to the conditions existing prior to such Partial Taking.

### Section 13.7. No Waiver.

No provisions in this Lease shall limit the rights of either the Landlord or the Tenant to seek compensation from a condemning authority as provided by statute, common law, the State of Texas or the United States Constitution.

### Section 13.8. Rights of the Parties Under the Bond Loan Documents.

Notwithstanding anything herein to the contrary, for so long as a Mortgage is in effect, the Mortgage documents shall control the use and application of all condemnation proceeds relating to the Property and, as applicable, the Lease termination provisions hereunder. In any event, the Tenant, the Limited Partners and the Permitted Leasehold Mortgagee shall participate in all

settlements. The parties acknowledge and agree that any condemnation award or payment to the Permitted Leasehold Mortgagee must be not less than the total award minus the value of the land that was taken pursuant to the Taking (considered as unimproved, but encumbered by this Lease).

## **Article 14 Assignment and Subletting**

### **Section 14.1. Limits on Transfers.**

Subject to the provisions of subsection 9.1.4 hereof, the Tenant hereby acknowledges that the Landlord has entered into this Lease because of the Tenant's financial strength, goodwill, ability and expertise and that, accordingly, this Lease is one which is personal to the Tenant, and the Tenant agrees for itself and its successors and assigns in interest hereunder that, subject to rights and remedies of Permitted Leasehold Mortgagees, it will not, other than by the Mortgage and rentals made in accordance with Section 19.15 hereof (a) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises, the Units, the rest of the Improvements, the Equipment or the Property generally or (b) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises, the Units, the rest of the Improvements, the Equipment or the Property or the occupancy or use thereof, other than in accordance with LIHTC Housing Requirements, and this Lease, or pursuant to a foreclosure or deed-in-lieu thereof of a Permitted Leasehold Mortgagee, (each of which is hereinafter referred to as a "Transfer"), without first obtaining the Landlord's express written consent thereto (which consent will not be unreasonably withheld, delayed or conditioned). Further notwithstanding anything to the contrary herein, during the term of this Lease, the Landlord shall not transfer, encumber or otherwise dispose of the Premises or any interest therein without the consent of the Tenant, Guarantor (until the Guaranty Date), the Limited Partners and the Permitted Leasehold Mortgagee.

### **Section 14.2. Permitted Transfers.**

Notwithstanding anything to the contrary set forth elsewhere in this Lease, (i) any transfer of a general partner or other partnership interest, directly or indirectly, in the Tenant in accordance with the terms of the Partnership Agreement or (ii) any transfer by way of the Permitted Leasehold Mortgages, shall be a permitted Transfer hereunder and shall not require the Landlord's consent, and any transfer, in whole or in part, of the Property or the Leasehold Estate in accordance with the Partnership Agreement, any Permitted Leasehold Mortgage or any transfers permitted thereunder, and any LURA between the Texas Department of Housing and Community Affairs and the Tenant, any transfer in the ordinary course of business including, without limitation, any residential lease and any utility and access easement, any transfer required by LIHTC Housing Requirements, and any right of first refusal under Section 42(i)(7) of the Code or otherwise given to the Landlord and any transfer pursuant to the purchase option granted to the General Partner or Class B Limited Partner shall be a permitted Transfer hereunder and shall not require the Landlord's consent.

For the avoidance of doubt, (i) Landlord approves the admission of the Limited Partners as limited partners of Tenant, (ii) Landlord's consent shall not be required for the transfer of the Partners' interests in the Tenant if such transfer is allowed by the Partnership Agreement, and (iii)

Landlord acknowledges the right of the Investor Limited Partner under the Partnership Agreement to remove the General Partner or Class B Limited Partner of Tenant and to designate a substitute General Partner or Class B Limited Partner of Tenant in accordance with the terms of the Partnership Agreement and pursuant to the terms of any pledge or security agreement between the General Partner, Class B Limited Partner and Investor Limited Partner, without Landlord's consent. Further, notwithstanding anything to the contrary herein, during the Term of this Lease, the Landlord shall not transfer, encumber or otherwise dispose of the Premises or any interest therein to any non-affiliate Persons without the consent of the Tenant, Limited Partners and Permitted Leasehold Mortgagee(s).

#### Section 14.3. Effect on Obligations.

Except as set forth in Section 19.19 hereof, no such Transfer shall alter or impair the obligations hereunder of the Tenant or any other person constituting the Tenant or holding any interest hereunder before any such Transfer.

#### Section 14.4. Benefit and Burden.

Subject to the foregoing provisions of this Article 14, this Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns in interest hereunder.

#### Section 14.5. Prohibited Transfers.

Except to the extent specifically provided herein, Tenant agrees for itself and its successors and assigns in interest hereunder that it will not, other than pursuant to any Permitted Leasehold Mortgages that are approved by Landlord and the exercise of remedies by any Permitted Leasehold Mortgagee thereunder: (1) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises or the rest of the Improvements, or (2) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises or the rest of the Improvements or the occupancy or use thereof, other than in accordance with the this Lease (including but not limited to (i) any sale at foreclosure or by the execution of any judgment of any or all of Tenant's rights hereunder, or (ii) any Transfer by operation of law), without first obtaining Landlord's and the U.S. Department of Housing and Urban Development's (if required) express written consent thereto. Notwithstanding the foregoing, Tenant shall have the right to transfer non-general partner interests within Tenant, or to transfer general partner interests pursuant to any removal or option provisions of Tenant's organizational documents, both without Landlord's consent, and any such transfer shall not (i) be an event of default hereunder, or (ii) entitle Landlord to raise the rent hereunder or impose any transfer fee, provided that such sale transfer or pledge complies with any such Housing Assistance Program contract applicable to the Premises.

### **Article 15 Default**

#### Section 15.1. Definition.

As used in this Lease, and subject to the expiration of all applicable notice, grace, and cure periods herein set forth, including without limitation those set forth in Section 15.2 below, each of the following events shall constitute an “Event of Default”:

- (a) to pay any Rent or other sum which it is obligated to pay under this Lease, when and as it is due and payable hereunder or
- (b) to perform any of its obligations under this Lease, including an obligation to construct the Improvements in the manner contemplated hereunder.

#### Section 15.2. Notice to Tenant; Grace Period.

15.2.1 *Notice and Opportunity to Cure.* Anything in this Article 15 to the contrary notwithstanding, if an Event of Default occurs (a) the Landlord shall not exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until the Landlord shall so notify, simultaneously and in writing, the Tenant, Guarantor (until the Guaranty Date), the Class B Limited Partner, the Limited Partners and all Permitted Leasehold Mortgagees (the “Notice”) and each shall have the right to cure such Event of Default as follows: (i) within thirty (30) days after the Notice if the Event of Default consists of failure to pay money, and (ii) within ninety (90) days after the Notice if the Event of Default consists of something other than a failure to pay money; and (b) the Landlord shall not terminate this Lease for the Tenant’s default unless and until the Landlord has given the Tenant, Guarantor (until the Guaranty Date), the Class B Limited Partner, the Limited Partners and all Permitted Leasehold Mortgagees and the Limited Partners notice of such Event of Default and ninety (90) days in addition to any applicable cure period given the Tenant in which to cure it. If it cannot be reasonably cured within ninety (90) days, then each of the Tenant, Guarantor (until the Guaranty Date), the Class B Limited Partner, the Limited Partners and all Permitted Leasehold Mortgagees or the Limited Partners shall have such additional time as it shall reasonably require, so long as the Permitted Leasehold Mortgagee or the Limited Partners are proceeding with reasonable diligence. For any Event of Default that cannot be cured without possession of the Premises, the Landlord shall allow such additional time as the Permitted Leasehold Mortgagee shall reasonably require to prosecute and complete a foreclosure or equivalent proceeding and obtain such possession including time to obtain relief from a Bankruptcy stay in the Tenant’s Bankruptcy. If a Permitted Leasehold Mortgagee and/or a Limited Partner completes a foreclosure of this Lease or otherwise diligently exercises its rights and remedies hereunder or obtains a new lease pursuant to Section 8.3 hereof, then the Landlord shall waive any Events of Default which cannot reasonably be cured by the Tenant, Guarantor (until the Guaranty Date), the Class B Limited Partner, the Limited Partners and all Permitted Leasehold Mortgagees as applicable. It is expressly agreed that any right of Landlord to terminate the Lease is subject to and limited by the further provisions of this Article 15.

#### 15.2.2 Reserved.

15.2.3 No such notice shall be required to be given by the Landlord other than to the Tenant, Guarantor (until the Guaranty Date), the Class B Limited Partner, the Limited Partners and all Permitted Leasehold Mortgagees (except for billing notices), and the Tenant shall be entitled to no such grace period, (i) in any emergency situation in which, in the Landlord’s judgment, it is necessary for the Landlord to act to cure such Event of Default without giving such notice, or (ii)



if the Tenant has substantially terminated or is in the process of substantially terminating its continuous occupancy and use of the Premises for the purpose set forth in Article 5 hereof (including remaining in compliance with LIHTC Housing Requirements).

15.2.4 Notwithstanding any provision of this Lease to the contrary, the Landlord shall take no action with respect to a particular Event of Default, including without limitation exercising any remedies under this Lease, if the Landlord or any of its affiliates is or controls the General Partner of the Tenant and such Event of Default is attributable to an action of the Landlord or an affiliate of the Landlord in its capacity as General Partner of the Tenant.

### Section 15.3. Landlord's Rights on Event of Default.

15.3.1 If an Event of Default occurs and continues beyond the applicable notice and cure periods, the Landlord may (subject to the provisions of Section 15.2 hereof) take any or all of the following actions:

- (a) subject to all Legal Requirements and any residential tenant agreements, reenter and repossess any or all of the Premises and any or all Improvements thereon and additions thereto; and/or
- (b) with the consent of all Permitted Leasehold Mortgagees and the Limited Partners, terminate this Lease by giving written notice of such termination to the Tenant, which termination shall be effective as of the date of such notice or any later date therefor specified by the Landlord therein (provided, that without limiting the generality of the foregoing provisions of this subsection 15.3.1(b) hereof, the Landlord shall not be deemed to have accepted any abandonment or surrender by the Tenant of any or all of the Premises or the Tenant's Leasehold Estate under this Lease unless the Landlord has so advised the Tenant expressly and in writing, regardless of whether the Landlord has reentered or relet any or all of the Premises or exercised any or all of the Landlord's other rights under this Article 15 or applicable law); and, on the date specified in such notice, the Tenant's right to possession of the Property will cease and the Leasehold Estate conveyed by this Lease upon the Tenant shall revert in the Landlord, provided, however, such reversion of the Leasehold Estate and the reentry by the Landlord shall be subject to and limited by and shall not defeat, render invalid or limit in any way the lien of any Permitted Leasehold Mortgage or any provision of LIHTC Housing Requirements; and/or
- (c) in the Landlord's own name (but either (i) as agent for the Tenant, if this Lease has not then been terminated, or (ii) for the benefit of the Tenant, if this Lease has then been terminated), relet any or all of the Premises, with or without any additional premises, for any or all of the remainder of the Term (or, if this Lease has then been terminated, for any or all of the period which would, but for such termination, have constituted the remainder of the Term) or for a period exceeding such remainder, on such terms and subject to such conditions as are acceptable to the Landlord in its reasonable discretion, and if this Lease has then been terminated, damages equaling the respective amounts of such installments of any Rent which would have accrued during such remainder, had this Lease not been terminated), less any monies received by the Landlord with respect to such remainder from

such reletting of any or all of the Premises, plus (ii) the reasonable cost to the Landlord of any such reletting (including but not limited to any reasonable attorneys' fees, leasing or brokerage commissions, repair or improvement expenses and the expense of any other actions taken in connection with such reletting), plus (iii) any other sums for which the Tenant is liable under subsection 15.3.4 hereof (and the Tenant hereby waives any and all rights which it may have under applicable law, the exercise of which would be inconsistent with this subsection 15.3.1(c) hereof); and/or

(d) enforce any one or more of the LIHTC Housing Requirements; and/or

(e) cure such Event of Default in any other manner; and/or

(f) with the consent of all Permitted Leasehold Mortgagees, pursue any combination of such remedies and/or any other right or remedy available to the Landlord on account of such Event of Default under this Lease and/or at law or in equity.

Nothing herein shall limit or prejudice the Landlord's right to prove for and obtain as damages, by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved.

15.3.2 No such expiration or termination of this Lease, or summary dispossession proceedings, abandonment, reletting, bankruptcy, re-entry by the Landlord or vacancy, shall relieve the Tenant of any of its liabilities and obligations under this Lease (whether or not any or all of the Premises are relet), and the Tenant shall remain liable to the Landlord for all damages resulting from any Event of Default, including but not limited to any damage resulting from the breach by the Tenant of any of its obligations under this Lease to pay Rent and any other sums which the Tenant is obligated to pay hereunder.

15.3.3 If any or all of the Premises are relet by the Landlord for any or all of the unexpired Term of this Lease, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

15.3.4 If an Event of Default occurs and continues beyond all applicable notice grace and cure periods, the Tenant shall, immediately on its receipt of a written demand therefor from the Landlord, reimburse the Landlord for (a) all reasonable expenses (including but not limited to any and all reasonable repossession costs, management expenses, operating expenses, legal expenses and reasonable attorneys' fees) incurred by the Landlord and detailed in such written demand (i) in curing or seeking to cure any Event of Default and/or (ii) in exercising or seeking to exercise any of the Landlord's rights and remedies under this Lease and/or at law or in equity on account of any Event of Default, and/or (iii) otherwise arising out of any Event of Default, plus (b) interest on all such expenses, at the lesser of the Prime Rate plus four percent (4%) or the highest rate then permitted on account thereof by applicable law, all of which expenses and interest shall be payable by the Tenant immediately on receipt of demand therefor by the Landlord.

#### 15.3.5 Intentionally Omitted.

15.3.6 Notwithstanding anything contained in this Lease to the contrary (except for subsection 15.2.4), the Landlord agrees that at any time during the period between the Commencement Date and the date that is the later of (i) the expiration of the Compliance Period and extended use period described in Section 42 of the Code, and (ii) the parties identified in Section 1.1 hereof as comprising the Investor Limited Partner and Special Limited Partner are no longer limited partners of the Tenant, the Landlord shall not exercise any of its remedies under this Lease, other than to specifically enforce the Tenant's obligation to comply with Article 5 and Section 7.5 hereof, and this Lease shall not be terminated without the prior written consent of the Investor Limited Partner and the applicable Permitted Leasehold Mortgagee(s).

15.3.7 Notwithstanding anything contained in this Lease to the contrary, the Landlord agrees that at any time a Permitted Leasehold Mortgage(s) encumbers the Property, the Landlord shall not exercise any of its remedies under this Lease other than to specifically enforce the Tenant's obligation to comply with Article 45 and Section 6.5 hereof, and this Lease shall not be terminated without the prior written consent of the applicable Permitted Leasehold Mortgagee(s).

15.3.8 The Landlord shall not be permitted to exercise any right or remedy against the Tenant, where the circumstance giving rise to each right or remedy resulted from an act or omission of the Landlord (or Landlord's affiliates) or the General Partner of the Tenant or where the same would cause a default under any of the Bond Loan Documents, the Taxable Loan Documents or loan documents then in place, to which the Tenant or the Property is subject or the Partnership Agreement.

15.3.9 Landlord agrees that its rights under this Lease upon the occurrence of an Event of Default by Tenant are subject and subordinate, automatically and without acknowledgment or agreement, to any Permitted Leasehold Mortgagee's rights under this Lease and under the Loan Documents, including, without limitation, all rights of Landlord set forth in this Section 15.3.

#### Section 15.4. Landlord Event of Default.

The Landlord shall be deemed in default of its obligations under this Lease if the Landlord shall fail to perform, in a timely manner in accordance with the terms of this Lease, any obligation under this Lease required to be performed by the Landlord, or if any Landlord representation made herein is false in any material respect, or Landlord is the subject of a bankruptcy proceeding under the U.S. Bankruptcy Code (each a "Landlord Event of Default"). If a Landlord Event of Default shall continue for thirty (30) days after written notice of such Landlord Event of Default from the Tenant, the Landlord shall be permitted an additional period as may be reasonably required to cure such Landlord Event of Default if the same may not be reasonably cured within thirty (30) days so long as the Landlord commences such cure within ten (10) days after notice thereof and thereafter diligently prosecutes the same to completion, but in any event such cure must be completed to the Tenant's reasonable satisfaction within ninety (90) days of the Tenant's notice to the Landlord subject to the parties' mutual agreement to extend such time period and subject to delays caused directly by force majeure, or Acts of God, and matters outside the reasonable control of the Landlord so long as the Landlord has acted diligently, with dispatch, and in good faith to

prevent or shorten any such delays. In no event shall the Landlord be entitled to any cure period for any failure to repay the Rent under the terms and conditions set forth in subsection 4.1.1 hereof. If the Landlord fails to complete such cure as provided above, then subject to the provisions of any Permitted Leasehold Mortgage, the Tenant shall thereupon be entitled to exercise any and all remedies available to the Tenant for such default under this Lease or at law or in equity. Without waiving or limiting any other remedies available to the Tenant, upon such default by the Landlord (and subject to the notice and cure rights of the Landlord), the Tenant shall be entitled (but not obligated) to perform or cause such obligations to be so performed on behalf of the Landlord, and the Landlord shall reimburse the Tenant for its reasonable third party out-of-pocket costs and expenses incurred by the Tenant in doing so, which amount shall be due within thirty (30) days of the Landlord's receipt of a written statement of the costs and expenses so incurred by the Tenant. In the event the Landlord or a creditor thereof files a petition for relief naming the Landlord as a debtor under Title 11 of the United States Code, the Landlord hereby acknowledges and agrees that the Tenant's possessory interest under this Lease and ownership of the Improvements are unique interests and cannot be converted into a cash claim under Section 363 of Title 11 of the United States Code unless the Tenant expressly consents to the same. Notwithstanding the foregoing, during the term of any Permitted Leasehold Mortgage, Tenant shall not terminate this Lease in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code, without the prior written consent of the Permitted Leasehold Mortgagees and any termination without the prior written consent of the Permitted Leasehold Mortgagees shall be deemed void ab initio. Notwithstanding anything to the contrary in this provision, Tenant may not terminate this Lease without the consent of the Investor Limited Partner and the Permitted Leasehold Mortgagees during the Compliance Period.

## **Article 16 Estoppel Certificate; Short Form**

### Section 16.1. Estoppel Certificate.

Each party hereto shall, at any time and from time to time within ten (10) days after being requested to do so by the other party and/or any Permitted Leasehold Mortgagee or Limited Partner in writing, execute, acknowledge, and address and deliver to the requesting party (or, at the latter's request, to any existing or prospective Mortgagee, transferee or other assignee of the requesting party's interest in the Property or under this Lease which acquires such interest in accordance with this Lease) a certificate in recordable form:

16.1.1 Certifying (a) that this Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) that the Tenant has accepted possession of the Premises, and the date on which the Term commenced; (c) as to the dates to which Rent and other charges arising hereunder have been paid; (d) as to the amount of any prepaid Rent or any credit due to the Tenant hereunder; (e) as to whether, to the best of such party's knowledge, information and belief, the requesting party is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default); and (f) as to any other fact or condition reasonably requested by the requesting party; and

16.1.2 acknowledging and agreeing that any statement contained in such certificate may

be relied upon by the requesting party and any such other addressee.

#### Section 16.2. Short Form.

The parties hereto shall, at the request of the Landlord, the Tenant or any Mortgagee, execute, enseat, acknowledge and deliver simultaneously with the execution of this Lease or at any time hereafter, in recordable form, a short form thereof (in form and substance satisfactory to each party hereto in its reasonable judgment) for recordation among the said Land Records at the expense of the person so requesting.

#### Section 16.3. Estoppel Certificates (Permitted Leasehold Mortgagees).

The Landlord shall, upon request by any Permitted Leasehold Mortgagee or the Investor Limited Partner, in form and content satisfactory to the requesting Permitted Leasehold Mortgagee or Investor Limited Partner, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to the Landlord's knowledge the Tenant is not in default, and the date through which Rent has been paid, or any other item reasonably requested.

### **Article 17 Conditions of Title and Premises**

#### Section 17.1. Limited Warranties.

The Tenant hereby acknowledges that it has examined the Premises, the title thereto, zoning which may be applicable thereto, if any, the municipal parking ordinance, the streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and subsurface conditions thereof, and the present uses and nonuses thereof, if any, and that it accepts each of them in its present condition or state, without restriction, representation, covenant or (except as is set forth in Section 17.2 hereof) warranty, express or implied, in fact or at law, by the Landlord or any other person, and without recourse to the Landlord, as to any appurtenances thereto, the nature, condition or usability thereof, or the uses to which any or all of the Property may be put.

#### Section 17.2. Quiet Enjoyment.

The Landlord hereby,

17.2.1 represents, warrants, covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (a) is the owner of the Fee Estate, subject to the operation and effect of and only of the Permitted Encumbrances and that it has no knowledge of any claim or demand contesting or impairing its interests in the Fee Estate, (b) has the full right, power and authority to enter into this Lease and thereby to lease the Premises, and (c) is not aware of any action, suit, or notice or threat of any action or suit that could prevent Landlord's execution or performance of this Lease or prevent Tenant's ability to construct, develop and operate the Project; and

17.2.2 warrants that the Tenant will have quiet and peaceful possession of the Premises during the Term so long as all of the Tenant's obligations hereunder are timely performed, except

if and to the extent that such possession is terminated pursuant to Articles 12 or 13 or any other provision of this Lease.

**Section 17.3. Limitation on Liability.**

Nothing in this Lease shall be deemed to impose on the Landlord any liability on account of any act or failure to act by any person other than the Landlord (or, where expressly so provided herein, the Landlord's affiliates, agents and employees). Notwithstanding anything to the contrary in this Lease, the Tenant shall not be liable under this Lease except to the extent of its ownership interest in the Property.

**Section 17.4. Title to Personal Property.**

Landlord hereby waives any landlord's lien it might hold, statutory, constitutional, contractual or otherwise, in any personal property owned or leased by Tenant and now or hereafter located in the Premises. If so requested by Tenant, Landlord shall execute a waiver of any right, title or interest or right to seize any of Tenant's personal property on the Premises that may be subject to a lien or security interest in favor of Permitted Leasehold Mortgagee or a seller of Tenant's personal property or creditor holding a security interest in such personal property.

**Article 18 Notices**

Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to the Landlord or the Tenant (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i) (1) five (5) business days after being sent as certified or registered mail with the United States Postal Service, postage prepaid, return receipt requested, or (2) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service, or (3) (if such party's receipt thereof is acknowledged in writing) upon having been sent by telefax or another means of immediate electronic communication, in each case to the address of such party as such party may designate from time to time by notice to each other party hereto, or (ii) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party.

Any notice required or permitted to be given under this Lease shall be deemed given if provided in accordance with the foregoing paragraph of this Article 18; provided, however, that any party may change its address for notice purposes by timely notice to the other party.

Landlord:

Manor Housing Public Facility Corporation  
105 E Eggleston Street  
Manor, Texas 78653  
Attention: City Manager

With copy to:

Bickerstaff Heath Delgado Acosta LLP  
1601 S. MoPac Expressway, Suite C400  
Austin, Texas 78746  
Attention: Gregory Miller

Tenant:

Manor Leased Housing Associates I, Limited Partnership  
c/o Dominion Development & Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, Minnesota 55441  
Attention: Neal Route

With copy to:

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402  
Attention: Jeffrey Drennan

All notices herein to be given to the Tenant shall be copied to the following:

Investor Limited Partner:

RBC Community Investments, LLC  
600 Superior Avenue, Suite 2300  
Cleveland, OH 44114  
Attn: President and General Counsel

With a copy to:

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Roger W. Holmes

The Landlord shall forward copies of any notices, demands, consents, approvals, requests and other communication and documents (other than Rent and other periodic billing notices) that are sent to the Tenant to the Permitted Leasehold Mortgagee and the Limited Partners. No notice given by the Landlord shall be effective against a Permitted Leasehold Mortgagee or the Limited Partners unless the Landlord has given a copy of the notice to such Permitted Leasehold Mortgagee and the Limited Partners.

## **Article 19 General**

### Section 19.1. Effectiveness.

This Lease shall become effective on and only on its execution and delivery by each party hereto.

### Section 19.2. Complete Understanding.

This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, the Premises, the Units, the rest of the Improvements, the Equipment, or the rest of the Property, and the rights and obligations of the parties hereto as to the same, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in this Lease. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein.

### Section 19.3. Amendment.

This Lease may be amended, modified, restated or supplemented by and only by an instrument executed and delivered by each party hereto, and only with the prior written consent of any Permitted Leasehold Mortgagee, the Guarantor (until the Guaranty Date), the Class B Limited Partner and the Investor Limited Partner (until the end of the Compliance Period).

### Section 19.4. Waiver.

No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not taken by the Landlord under this Article 19 or any other provision of this Lease (including but not limited to the Landlord's acceptance of the payment of Rent after an Event of Default occurs) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which the Landlord would otherwise have against the Tenant on account of such Event of Default under this Lease or applicable law (the Tenant hereby acknowledging that, in the interest of maintenance of good relations between the Landlord and the Tenant, there may be instances in which the Landlord chooses not immediately to exercise some or all of its rights if an Event of Default occurs).

### Section 19.5. Applicable Law.

This Lease shall be given effect and construed by application of the law of the State of



Texas, including its statutes of limitations and repose, without regard to its conflicts of law principles. Any action or proceeding arising hereunder shall be brought in the courts of the State of Texas. Exclusive venue shall be in a court of competent jurisdiction in Travis County, Texas.

#### Section 19.6. Time of Essence.

Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. Central Time on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

#### Section 19.7. Headings.

The headings of the Articles, Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

#### Section 19.8. Construction.

As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Article, Section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Article, Section, subsection, paragraph or subparagraph of this Lease. The Parties agree that, when interpreting this Lease, there shall be no presumption against any Party on account of the fact that such Party is the party that caused the drafting of this Lease.

#### Section 19.9. Exhibits.

Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

#### Section 19.10. Severability.

No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

#### Section 19.11. Disclaimer of Partnership Status.

Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the

existence of any such relationship.

Section 19.12. Commissions.

Each party hereto hereby represents and warrants to the other that, in connection with the leasing of the Premises hereunder, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof. Each party hereto shall defend, indemnify and hold harmless the other against and from any liability, claim of liability or expense arising out of any inaccuracy in such party's representation.

Section 19.13. Prevailing Party.

In the event either party hereunder initiates judicial action against the other in order to enforce the terms, covenants and provisions of this Lease, the non-prevailing party in such judicial action shall reimburse the prevailing party in such judicial action for all expenses, fees, costs, including attorney's fees incurred by the prevailing party in connection with such judicial action.

Section 19.14. Limited Third Party Rights.

Notwithstanding anything to the contrary set forth elsewhere in this Lease, the Limited Partners and Permitted Leasehold Mortgagees shall be deemed third-party beneficiaries of the provisions of the Lease that reference them. The foregoing rights of the Limited Partners and the Permitted Leasehold Mortgagees to be third-party beneficiaries under this Lease shall be the only right of the Limited Partners and the Permitted Leasehold Mortgagees (express or implied) to be third-party beneficiaries under this Lease.

Section 19.15. Subleases.

The Tenant may, without the Landlord's consent, sublease the Premises. The Landlord shall not disturb the possession, interest, or quiet enjoyment of any subtenant. Any sublease is subordinate to this Lease, the Permitted Leasehold Mortgage and any new lease entered into between the Landlord and Permitted Leasehold Mortgagees. The Landlord agrees to enter into a reasonable non-disturbance agreement with the subtenants. In connection with any subletting right, the subtenants will be required to attorn to the Permitted Leasehold Mortgagees if the Permitted Leasehold Mortgagees foreclose and become the owner of the leasehold estate.

Section 19.16. New Lease.

If this Lease terminates (to the extent termination is permitted by the terms of this Lease) because of an Event of Default of Tenant, because Tenant rejects it in bankruptcy or similar proceedings or any other reason other than expiration of the Term, then Landlord shall upon request enter into a new lease with the most senior Permitted Leasehold Mortgagee requesting to enter into such new lease or its nominee on the same terms and with the same priority as this Lease.

Section 19.17. Preservation of Lease.

Notwithstanding anything to the contrary set forth in this Lease, this Lease may not be amended, modified, changed, cancelled, waived or terminated without the prior written consent of the Parties hereto and all Permitted Leasehold Mortgagees and the Limited Partners. The Landlord shall not accept a voluntary surrender of this Lease without consent by all Permitted Leasehold Mortgagees and the Limited Partners. Any such amendment, modification, change, cancellation, waiver or termination shall not bind Permitted Leasehold Mortgagees or the Limited Partners or their successors and assigns unless made with such Permitted Leasehold Mortgagee's and the Limited Partners' consent. In the event of Lease termination due to an Event of Default that cannot be cured by the Permitted Leasehold Mortgagees, Landlord shall enter into a new ground lease with Permitted Leasehold Mortgagees on the same terms and conditions as the existing Lease.

Section 19.18. Tenant's Rights, Generally.

Upon and during the continuation of an Event of Default under, and subject to, any documents relating to the Property, any Permitted Leasehold Mortgagee and Limited Partner may exercise all of the Tenant's rights under this Lease, subject to the terms hereof.

Section 19.19. No Personal Liability.

No Permitted Leasehold Mortgagee or its designee or affiliate shall have any liability under this Lease for acts or omissions taking place prior to the date it acquires record title to the Tenant's interest and becomes the Tenant under this Lease. Any liability to the Landlord or the Landlord's successors and assigns shall be limited to the value of each Permitted Leasehold Mortgagee's or its designee's or affiliate's respective interest in the leasehold interest created hereunder. If a Permitted Leasehold Mortgagee, or its affiliate or designee shall succeed to the interest of the Tenant under this Lease, whether as a purchaser at a foreclosure sale or by the acceptance of a deed-in-lieu of foreclosure, such Permitted Leasehold Mortgagee or its affiliate or designee shall (a) not be liable for any act or omission of the Tenant and (b) be released from all liability prior to the date such Permitted Leasehold Mortgagee or its designee or affiliate succeeds to the interest of the Tenant.

Section 19.20. Acknowledgment.

Notwithstanding anything herein to the contrary, the parties hereto acknowledge that the Project is being financed with the proceeds of tax-exempt obligations and, as a result, is subject to the terms and conditions of that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated as of October [1], 2024, by and among the Landlord, the Tenant, and BOKF, NA, as trustee.

Section 19.21. Memorandum of Lease.

The Tenant shall cause a memorandum of this Lease to be recorded in the Land Records on or about the date of execution and delivery hereof.

#### Section 19.22. Approvals, Etc.

Except where expressly stated otherwise, whenever a Person is required under this Lease to provide its consent or approval, or render its determination, judgment, satisfaction, or decision (collectively, "Consent"), such Person will act in good faith and such consent, approval, determination, judgment, satisfaction, or decision (or the denial thereof, as the case may be) shall not be unreasonably withheld, delayed, or conditioned. Further, in each instance in which Guarantor has the right to provide its Consent under this Lease, such right will terminate on the Guaranty Date, and in each instance in which Investor Limited Partner has the right to provide its Consent, such right will terminate upon the expiration of the Compliance Period.

#### Section 19.23. Landlord Bankruptcy.

In the event of a bankruptcy of Landlord, Tenant shall not acquiesce in a rejection or disaffirmance of this Lease by Landlord or its trustee in bankruptcy under Section 365(h) of Title 11 of the United States Bankruptcy Code. Tenant shall timely object to any attempt by the Landlord's trustee to sell the Premises free and clear of this Lease under Section 363(f) of Title 11 of the United States Bankruptcy Code.

#### Section 19.24. Contest Proceedings.

Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity of any Applicable Law and to postpone compliance with the same, if by the terms of any such Applicable Law compliance therewith may legally be held in abeyance without incurring any lien, charge or liability of any kind against the Property or any interest of Landlord or Tenant therein, and without subjecting Landlord to any civil or criminal liability for failure so to comply therewith, and Tenant may postpone compliance therewith until the final determination of any such proceedings. If Tenant initiates any such legal proceedings in the name of Landlord, or of Landlord and Tenant, Tenant shall so advise Landlord in writing not less than thirty (30) days before initiating such proceedings. Such notices shall give details as to the tribunal in which said proceedings are to be filed, the Applicable Law contested, and such additional data as Landlord may reasonably require to enable it to understand the facts and evaluate them. If any lien, charge or civil liability, but not criminal liability, is incurred by reason of non compliance, Tenant may nevertheless make the contest as aforesaid and delay compliance as aforesaid, provided that Tenant furnishes to Landlord security reasonably satisfactory to Landlord, against any loss or injury by reason of such non compliance or delay and prosecutes the contest with due diligence and dispatch.

#### Section 20.25. Other Documents.

Landlord shall execute any instrument reasonably required by any Permitted Leasehold Mortgagee or the Investor Limited Partner (if during the Compliance Period) to confirm the provisions set forth in this Lease.

### **Article 20 Purchase Option and Right of First Refusal**

#### Section 20.1.

The Tenant hereby grants the Landlord the right (the “Option”) to purchase all of the Property owned by the Tenant at the time of purchase, including without limitation the Improvements and Tenant’s Leasehold Estate in the Premises (collectively, the “Tenant’s Property”), (i) on any date thirty (30) days after the Landlord delivers written notice to the Tenant, the Limited Partners and the Permitted Leasehold Mortgagees of the Landlord’s intent to exercise the Option (the “Option Exercise Notice”) and (ii) upon the Tenant’s receipt of the Purchase Price (as defined below). Should Landlord choose to exercise the Option during the Compliance Period, it must do so with respect to the entirety of Tenant’s Property; no partial conveyance of Tenant’s Property shall be permitted, unless approved by the Limited Partners. The “Purchase Price” for the Tenant’s Property pursuant to the Option shall be set forth herein below:

- (a) *Price Formula.* An amount, determined by the Tenant’s accountants and subject to the concurrence of the Limited Partners, equal to the sum of (i) the fair market value of the Tenant’s Property as determined in accordance with Section 20.1(b) below, plus (ii) an amount sufficient to pay all debts (including but not limited to developer fees) and liabilities of Tenant, including any debts or liabilities owed to Tenant’s partners or any Guarantor (as contemplated in clause (iii) below, upon its dissolution and liquidation which will occur immediately following the sale of Tenant’s Property to Landlord pursuant to the Option), including, but not limited to, partner loans and debt secured by Permitted Leasehold Mortgages together with any and all interest, fees, default interest, prepayment premiums and/or yield maintenance that may be due thereafter, plus (iii) an amount sufficient to assure receipt by the Investor Limited Partner from the proceeds of the sale of the Property (when distributed pursuant to liquidation provisions in the Partnership Agreement) of an amount not less than an amount equal to any unpaid obligations to which the Investor Limited Partner and its affiliates of the Investor Limited Partner are entitled under the Partnership Agreement (including, but not limited to, an amount equal to pay any exit taxes, any unpaid loans and accrued interest thereon made to the Tenant by the Investor Limited Partner or its affiliates, any unpaid tax credit adjusters pursuant to the Partnership Agreement and any accrued and unpaid Asset Management Fee (as defined in the Partnership Agreement)) plus (iv) if the Option is exercised during the Property’s Compliance Period, an amount sufficient to distribute to Investor Limited Partner cash proceeds equal to the diminution of economic value to the Investor Limited Partner as a result of the purchase of the Tenant’s Property by the Landlord during the Compliance Period (the “ILP Diminution”), which shall include without limitation, but without duplication, (A) all capital contributions of the Investor Limited Partner under the Partnership Agreement which shall not otherwise be returned to the Investor Limited Partner by the partners or the Partnership at the time of purchase or in respect of which the Investor Limited Partner has otherwise received full value, (B) the outstanding balance of all loans (and any accrued interest thereon) made to the Tenant by the Investor Limited Partner or its affiliates, which will not otherwise be repaid at the time of the purchase, (C) the amount of any projected tax credits, as set forth in the Partnership Agreement, which, as a result of the purchase will not be available to the Investor Limited Partner and the amount of any tax credits which will be recaptured from the Investor Limited Partner as a result of the purchase including any penalties and interest related to such recaptured tax credits, (D) all costs and penalties incurred by the Investor Limited Partner with respect to

the tax credits already received (including the costs of bonds or insurance policies to be provided to the Investor Limited Partner to indemnify the Investor Limited Partner with respect to any tax credits not recaptured at the time of the purchase but potentially subject to recapture due to events occurring thereafter), (E) all costs and expenses incurred by or on behalf of the Investor Limited Partner with respect to (1) its admission to the Tenant, (2) its activities with respect to the Tenant prior to the Landlord's purchase of the Tenant's Property under the Option, and (3) an amount to distribute to the Tenant's partners cash proceeds sufficient to enable the partners to pay, on an after-tax basis after any and all taxes imposed on such distribution, the taxes projected to be imposed on the partners as a result of the sale pursuant to the Option, (F) any recapture bonds, and (G) the present value of the anticipated Cash Flow and fees payable to the Investor Limited Partner and its affiliates pursuant to the terms of the Partnership Agreement using a 10% discount rate; plus (v) if the Option is exercised during the Compliance Period, the diminution of economic value to the Class B Limited Partner as a result of the purchase of the Tenant's Property by the Landlord during the Compliance Period (the "CALP Diminution"), which shall include without limitation (A) all capital contributions of the Class B Limited Partner under the Partnership Agreement which have not otherwise been returned to the Class B Limited Partner or in respect of which the Class B Limited Partner has otherwise received full value, (B) all outstanding loans made to the Tenant by the Class B Limited Partner or the Guarantor (as defined in the Partnership Agreement), including without limitation, any Operating Deficit Loan (as such term is defined in the Partnership Agreement) and any earned deferred portion of the Development Fee (as defined in the Partnership Agreement and that is due to the Class B Limited Partner's affiliate that is serving or served as the developer), that are subject to repayment under the terms of the Partnership Agreement and which will not be repaid at the time of the purchase, (C) the present value of the anticipated Cash Flow and fees payable to the Class B Limited Partner and its affiliates pursuant to the terms of the Partnership Agreement using a 3.82% discount rate, and (D) all reasonable costs and expenses incurred by or on behalf of the Class B Limited Partner with respect to (A) its admission to the Tenant and (B) its activities with respect to the Tenant prior to the Landlord's purchase of Tenant's Property under the Option. The calculation of any ILP Diminution and CALP Diminution shall be determined by the accountants to the Tenant and approved by the Investor Limited Partner and Permitted Leasehold Mortgagee in its reasonable discretion. All payments of ILP Diminution and the CALP Diminution shall be paid directly by the Landlord to the Investor Limited Partner and the Class B Limited Partner, as applicable, and shall be deemed to be part of the purchase price paid by the Landlord to the Tenant under this Section 20.1.

- (b) *Determination of Fair Market Value.* Fair market value of the Tenant's Property, appraised as low-income housing to the extent continuation of such use is required under any document of record, and taking into consideration any third-party liens on the Tenant's Property. For purposes of Section 20.1, fair market value shall be calculated as follows (the "Fair Market Value"): As soon as practicable following the delivery of the Option Exercise Notice, the Landlord and the Tenant shall select a mutually acceptable Independent Appraiser (as defined below), and as approved by the Investor Limited Partner and Permitted Leasehold Mortgagee. In the event that the parties are unable to agree upon an Independent Appraiser within fifteen (15) business days following the date of delivery of

the Option Exercise Notice, the Landlord and the Tenant each shall select an Independent Appraiser within the next succeeding five (5) business days. If either party fails to select an Independent Appraiser within such time period, the determination of the other Independent Appraiser shall control. If the difference between the Appraised Fair Market Values set forth in the two appraisals is not more than ten percent (10%) of the Appraised Fair Market Value set forth in the lower of the two appraisals, the fair market value for purposes of this Section shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two Independent Appraisers shall jointly select a third Independent Appraiser whose determination of Appraised Fair Market Value shall be deemed to be binding on all parties as long as the third determination is between the other two determinations. If the third determination is either lower or higher than both of the other two appraisers, then the average of all three appraisals shall be the Appraised Fair Market Value for purposes of this Section 20.1. The Landlord and the Tenant shall each pay one-half of the fees and expenses of any Independent Appraiser(s) selected pursuant to this Section 20.1. For purposes of the foregoing, the term "Independent Appraiser" means a firm which is generally qualified to render opinions as to the fair market value of assets such as those owned by the Tenant, which is mutually acceptable to the Landlord and the Tenant and which satisfies the following criteria:

- (i) such firm is not a Partner or an Affiliate (as such terms are defined in the Partnership Agreement) of the Landlord or the Tenant;
- (ii) such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least (10) years;
- (iii) such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such a firm;
- (iv) one or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group which establishes and maintains professional standards for its members; and
- (v) such firm renders an appraisal to the Tenant only after entering into a contract that specifies the compensation payable for such appraisal.

#### Section 20.2.

Upon determination of the Purchase Price, the Tenant and the Landlord, shall enter into a written contract for the purchase and sale of the Tenant's Property in accordance with the terms of this Lease and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area in which the Property is located, providing for a closing not later than the date specified in the Option Exercise Notice (which date shall be within one hundred twenty (120) days of the date of delivery of the Option Exercise Notice) or thirty (30) days after the Purchase Price has been determined, whichever is later. In the absence of any such contract, the terms of this Article 20 shall be specifically enforceable upon the exercise of the Option. The purchase and sale hereunder shall be closed through a deed-and-money escrow with

the title insurer of the Tenant's interest in the Property or another mutually acceptable title company. The Tenant's right, title, and interest in the Tenant's Property shall be conveyed by an assignment of Lease ("Ground Lease Assignment") and a blanket conveyance, bill of sale, an assignment agreement (the "Bill of Sale" and together with the Ground Lease Assignment, the "Conveyance Documents"). Upon closing, the Tenant shall deliver to the Landlord, along with the Conveyance Documents, a Texas form Owner's Title Policy dated as of the close of escrow, in the amount of the Purchase Price, subject to the liens, encumbrances and other exceptions then affecting the title. The Landlord shall be responsible for all costs including, but not limited to, transfer taxes, title policy premiums and recording costs. Rents, insurance, taxes, debt service then due and payable and other costs and revenues then prepaid or accrued, as the case may be, shall be apportioned as of midnight of the day preceding the closing of title, except that rents shall be apportioned as of the date of actual collection thereof (which obligation shall survive the closing).

### Section 20.3.

In consideration of the Option granted hereunder at the Purchase Price specified herein, the Landlord hereby agrees that the Ground Lease Assignment granting the Tenant's interest in the Property to the Landlord shall contain a covenant running with the land, restricting the use of the Property to low-income housing to the extent required by any document of record. Such covenant shall include a provision requiring the Landlord to pay any and all costs, including attorneys' fees, incurred by the Tenant and/or the Investor Limited Partner in enforcing or attempting to enforce such use restrictions, and to pay any and all damages incurred by the Tenant and/or the Investor Limited Partner from any delay in or lack of enforceability of the same. All provisions relating to such use restrictions contained the Ground Lease Assignment and in this Lease (but not the LURA and other pre-existing restrictions required by any Legal Requirements) shall be subject and subordinate to any third-party liens of Permitted Leasehold Mortgages encumbering the Tenant's Property. At closing, the Landlord shall deliver to the Investor Limited Partner the recapture bonds or insurance policies described in Section 20.1(a) above that will compensate the Investor Limited Partner for any recapture of tax credits attributable to a breach of any low-income housing restrictions of record.

### Section 20.4.

In the absence of a Ground Lease Assignment conforming to the requirements of this Lease, the provisions of this Lease shall run with the land. In the event that the Option is not exercised, or the sale pursuant thereto is not consummated, then, upon conveyance of the Tenant's Property to anyone other than the Landlord, the foregoing provisions shall terminate and have no further force or effect.

### Section 20.5.

Notwithstanding anything to the contrary set forth in this Lease, after the expiration of the Compliance Period, if the Class B Limited Partner is a partner in the Tenant, it shall have an exclusive and perpetual right to market the Property for sale (which shall include termination of this Lease without further obligation of the Landlord in regard to premises or payment after such termination and transfer of the Fee Estate after payment to the Landlord in the amount set forth in



Section 3.5 hereof; provided, however, that the purchase price pursuant to any bona fide third party offer under this Section 20.5 shall be at least the minimum purchase price under Section 42(i)(7)(B) of the Code; provided, further, that the Landlord shall be granted a right of first refusal to purchase the Improvements for the greater of Fair Market Value or the amount of such bona fide third party offer so long as the Class B Limited Partner is willing to accept such bona fide offer, in its sole and absolute discretion, and such right is exercised within thirty (30) days of receipt of notice of receipt of a bona fide third party offer of purchase by the Tenant (the "Right of First Refusal"). Neither the Option nor the Right of First Refusal may be assigned without the prior written consent of the Class B Limited Partner in its sole discretion. In the event the Right of First Refusal is exercised, the Landlord shall have ninety (90) days to close on the sale of the Improvements or such other time period set forth in the third party offer (not to exceed 120 days). In the event that the Class B Limited Partner receives such an offer to purchase the Property and the offer is acceptable to the Class B Limited Partner and subject to the terms of the Partnership Agreement, unless the Landlord exercises the Right of First Refusal, the Property and the Fee Estate shall be sold to such purchaser, and the Right of First Refusal will terminate.

#### Section 20.6.

Notwithstanding anything set forth in this Lease to the contrary (except as provided in Section 20.7 below), the Option and the Right of First Refusal will remain in effect so long as: (i) this Lease is in effect, and (ii) the General Partner remains the Tenant's general partner, and (iii) the General Partner is not in default of its duties in such capacity.

#### Section 20.7.

Notwithstanding anything set forth in this Lease to the contrary, if the Property Tax Exemption (as defined in the Partnership Agreement) terminates or is not obtainable and/or the General Partner is removed as Tenant's general partner, the Option and Right of First Refusal will terminate. In such event, the Tenant may elect to terminate this Lease, in which case the Landlord shall convey the Fee Estate to the Tenant at a cost of One Hundred Dollars (\$100) to the Tenant. In addition, if Landlord has not exercised the Option or Right of First Refusal to purchase the Property, the Option and Right of First Refusal will terminate upon a sale of the Property to a third party. The Landlord agrees to reasonably cooperate with the Class B Limited Partner and the Tenant as is necessary in order to facilitate the sale of the Property to such third party, including but not limited to, executing a release or termination of the Option, Right of First Refusal and this Lease, and conveyance documents related to the transfer of the Fee Estate to the third party.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, each party hereto has executed this Lease or caused it to be executed on its behalf by its duly authorized representatives, the day and year first above written.

LANDLORD:

MANOR HOUSING PUBLIC FACILITY CORPORATION,  
a Texas Public Facility Corporation

By: \_\_\_\_\_  
Scott Moore, General Manager

TENANT:

Manor Leased Housing Associates I, Limited Partnership, a Texas  
Limited Partnership

By: MHPFC TR GP 1, LLC, a Texas limited liability company,  
its General Partner

By: Manor Housing Public Facility Corporation, its Sole  
Member

By: \_\_\_\_\_  
Scott Moore, General Manager

**Exhibit A Description of Land**

**[to be added]**

## **Exhibit B Schedule of Permitted Encumbrances**

Any encumbrances, easements, conditions, mandatory homeowners' assessments and/or restrictions of record affecting the title to the Property to the extent such matters are validly existing and are applicable to the Project.

The LURA

Any Matters shown on the Title Policy

## **Exhibit C Insurance Requirements**

The insurance requirements set forth in the Partnership Agreement and the Permitted Leasehold Mortgage.