

RESOLUTION NO. 20081106-AHFC002

WHEREAS, the Austin Housing Finance Corporation (AHFC) owns unimproved real property located at the corner of E.M. Franklin Avenue and East Martin Luther King Boulevard (the "Property");

WHEREAS, the AHFC may use, develop, or convey real property for the purpose of providing affordable housing;

WHEREAS, the Chestnut Senior Housing Corporation, a domestic non-profit corporation, requested a ground lease on the Property for the purposes of developing a multi-family apartment building for elderly low-income residents, including an option to purchase the Property upon expiration of the ground lease;

WHEREAS, the AHFC's Budget Resolution approved on September 8, 2008, by Resolution No. 20080908-AHFC001 requires AHFC Board approval for any agreement transferring an interest in real estate valued at more than \$250,000;

WHEREAS, the parties signed a ground lease with an option to purchase attached hereto as Exhibit A, the effectiveness of the ground lease contingent upon AHFC Board approval; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
AUSTIN HOUSING FINANCE CORPORATION:**

The ground lease attached hereto as Exhibit A is approved.

ADOPTED: November 6, 2008

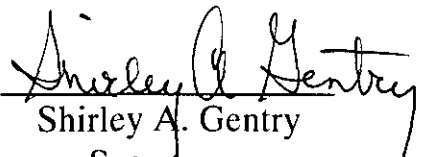
ATTEST: 
Shirley A. Gentry
Secretary

Exhibit A

**Ground Lease with Option to Purchase
(Chestnut Senior Housing)**

GROUND LEASE WITH OPTION TO PURCHASE

THIS GROUND LEASE (this "Lease") is made as of October____, 2008, by and between **AUSTIN HOUSING FINANCE CORPORATION**, a public, non-profit corporation organized and operated under Chapter 394, Texas Local Government Code, and having an address at 1000 East Eleventh Street, Suite 300, Austin, Texas 78702 ("Landlord"), and **Chestnut Senior Housing, Inc.** a Texas non-profit corporation having an address at 2211 E. Martin Luther King Jr. Blvd, Austin, Texas 78702 ("Tenant").

RECITALS

A. Tenant is a Texas non-profit corporation.

B. Landlord is the owner of the Land. Landlord has agreed to lease the Land to Tenant for Tenant's use as set forth in Section 4 of this Lease, including, without limitation, the development and construction upon the Land of a newly constructed affordable housing rental project, to be comprised of twenty-two (22) residential rental units (collectively, the "**Units**").

Landlord and Tenant intend that all of the Units be rented to lessees who are eligible under the requirements of the General Obligation Bond and Rental Housing Development Assistance Program Guidelines.

AGREEMENT

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, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord all of that tract of land more particularly described on Exhibit A, attached hereto and made a part hereof, located in Austin, Texas (the "**Land**").

TOGETHER WITH any and all easements, rights, alleys, ways, privileges, appurtenances and advantages, to the same belonging or in any way appertaining to the Land (collectively, together with the Land, the "**Premises**"), subject to the operation and effect of the Permitted Encumbrances (as defined in Section 1.1); **TO HAVE AND TO HOLD** the Premises unto Tenant, its successors and permitted assigns, for the sole purpose and term of years set forth herein, **ON THE TERMS AND SUBJECT TO THE CONDITIONS** which are hereinafter set forth.

SECTION 1 DEFINITIONS.

1.1 Specific. As used herein, the following terms have the following meanings:

"**Additional Rent**" has the meaning given to it in Section 3.1.2.

"**Affordable Rent**" has the meaning given to it in Section 4.3.1(a)

"**Annual Rent**" has the meaning given it in Section 3.1.1.

"Award" has the meaning given it in Section 11.2

"Base Rent" and **"Basic Rent"** shall mean for the first Lease Year the amount equal to the sum of **THIRTY-FIVE THOUSAND, TWO HUNDRED SEVENTY EIGHT AND NO/100 CENTS (\$35,278.00)**, and for each Lease Year following the first Lease Year during the Term shall mean an amount equal to the Base Rent for the immediately preceding Lease Year multiplied by **1.03**.

"Board" means the Board of Directors of the Austin Housing Finance Corporation.

"Commencement Date" has the meaning given it in Section 2.1.

"Construction Completion Date" has the meaning given it in Section 7.1.3.

"Construction Start Date" has the meaning given it in Section 7.1.2

"Depository" means (a) a federally-insured bank or trust company designated by Landlord, and reasonably acceptable to Tenant, having capital of not less than \$50,000,000 and having its main office in Texas, or (b) if no such bank or trust company is willing to act as such, then Landlord shall so act. For purposes of this Lease, 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 the terms of this Lease, and agrees to undertake the duties provided for herein.

"Eligible Household" means a household whose combined yearly income does not exceed fifty-percent (50%) of the Austin-Round Rock MSA Median Family Income (MFI), as determined periodically by HUD.

"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, any judicial or administrative order, consent, decree or judgment relating to the environment or Hazardous Substances (as defined in this Section 1.1), 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 of Tenant's right, title and interest in all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter located on or within the Premises or the Improvements (as defined in this Section 1.1) 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 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, heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; furnaces and heaters, 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 and lobby decorations 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 13.1.

"Extended Termination Date" has the meaning given it in Section 2.6.

"Fee Estate" means the fee simple estate in the Premises, subject to the operation and effect of this Lease.

"First Leasehold Mortgage" means a leasehold deed of trust, security interest and financing statement that may be granted by Tenant to the Austin Housing Finance Corporation covering the Leasehold Estate and securing a promissory note executed by Tenant which is senior in priority to any other Mortgage encumbering the Leasehold Estate or any such portion thereof, as the same may be amended, modified or supplemented from time to time, and shall include any deed of trust and other security documents executed by Tenant to refinance any then existing First Leasehold Mortgage.

"First Leasehold Mortgagee" means the beneficiary of the First Leasehold Mortgage.

"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) acts of domestic or foreign terrorism, riot, war, insurrection or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather conditions resulting in cessation of work on the Improvements 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.

"Hazardous Substances" means any substances known to be hazardous such as, without limitation, hazardous waste, lead or lead-based paint, methane gas, urea formaldehyde insulation, oil, toxic substance, underground storage tanks, polychlorinated biphenyls (PCBs), radon gas, petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by-product thereof, asbestos or asbestos-containing materials, any explosive or radioactive substances, or any other substance, material, waste, or mixture which is or shall be listed, defined, or otherwise determined by any governmental authority to be hazardous, toxic, dangerous, or otherwise regulated, controlled, or giving rise to liability under any Environmental Laws.

"Holdover Rent" has the meaning given it in Section 2.3.2.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Grant Agreement" means the Agreement between Tenant and HUD for funds to be provided for construction of improvements on the Premises.

"Improvements" has the meaning given it in Section 4.1.

"Insurance Requirements" has the meaning given it in Section 4.2.1.

"Landlord" means Landlord and its successors and assigns as holder of the Fee Estate.

"Land Records" means the Real Property Records of Travis County, Texas.

"Lease Year" means (a) the period commencing on the Commencement Date and terminating on the first (1st) anniversary of the last day of the calendar month containing the Commencement Date, and (b) each successive period of twelve (12) calendar months thereafter during the Term.

"Leasehold Estate" means the leasehold estate in the Premises held by Tenant under this Lease.

"Legal Requirements" has the meaning given it in Section 4.2.1.

"Low Income Restrictions" means the restrictions described in Section 4.3.1.

"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.

The term **"Mortgage"** shall be inclusive of 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 any such form of security instrument has been recorded in 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 beneficiary of a Mortgage.

"Mortgagee's Notice" has the meaning given it in Section 18.15.2(d).

"New Lease" has the meaning given it in Section 18.15.2(g).

"Partial Taking" has the meaning given it in Section 11.4.

"Permitted Encumbrances" means all instruments and matters listed in the schedule attached hereto and labeled **Exhibit B.**

"Permitted Leasehold Mortgage" means the First Leasehold Mortgage, the HUD Grant Agreement, a Mortgage covering all or a portion of the Leasehold Estate and securing a promissory note executed by Tenant for the benefit of a particular Permitted Leasehold Mortgagee, or such other Mortgage for which Tenant has obtained Landlord's prior written consent pursuant to Section 18.14.

"Permitted Leasehold Mortgagee" means the First Leasehold Mortgagee, HUD, and any other beneficiary of a Permitted Leasehold Mortgage, and their respective successors and assigns (collectively, the **"Permitted Leasehold Mortgagees"**).

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

"Plans and Specifications" has the meaning given it in Section 7.1.1.

"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.

"Property" means the Premises, the Improvements, the Reserves, the Security Deposits and the Equipment.

"Rent" means all Annual Rent and all Additional Rent.

"Reserves" means any reserve Tenant has deposited in an account for the purpose of making repairs or improvements to the Property.

"Resident" shall mean a person occupying a Unit in the Improvements 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 Tenant in accordance with this Lease, together with any temporary repairs or improvements made to protect the Property pending the completion of such work.

"Restoration Criteria" has the meaning given it in Section 11.4.2.

"Security Deposits" means all amounts that Tenant has received from a Resident Tenant as security for such Resident's performance under its Tenancy Agreement.

"Taking" has the meaning given it in Section 11.1.

"Taxes" has the meaning given it in Section 5.1.

"Tenancy Agreement" shall mean any lease agreement between Tenant and a Resident under the terms of which a Resident is entitled to possession of a Unit.

"Tenant" means Tenant and its successors and permitted assigns as holder of the Leasehold Estate.

"Term" has the meaning given it in Section 2.1.

"Termination Date" has the meaning given it in Section 2.1.

"Total Taking" has the meaning given it in Section 11.3.

"Transfer" has the meaning given it in Section 12.1.1.

"Units" has the meaning given it in paragraph B of the Recitals provision of this Lease.

SECTION 2 TERM.

2.1 Length. The term of this Lease ("**Term**") shall commence on the date this Lease is approved by the Board (the "**Commencement Date**"), and shall terminate at 11:59 o'clock P.M. on September 1, 2058 (the "**Termination Date**"). 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, 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.

2.2 Surrender. Upon the expiration of the Term or any earlier termination of this Lease, Tenant shall, at its expense and subject to Section 2.4 hereof, (a) promptly yield up to Landlord the Property, in good order and repair, ordinary wear and tear and damage by casualty (subject to Section 10) excepted, (b) remove therefrom Tenant's goods and effects not part of the Improvements or the Equipment or otherwise owned by Landlord, and (c) repair any damage to the Property caused by such removal.

2.3 Holding Over.

2.3.1 Possession Past Expiration of Termination of Lease. Nothing in this Lease shall be deemed in any way to permit Tenant to use or occupy the Premises or the Improvements after the expiration of the Term or any earlier termination of this Lease. The following shall apply if Tenant continues to occupy the Premises and/or the Improvements after such expiration or termination, and Tenant obtains Landlord's written consent:

(a) 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, at least thirty (30) calendar days before the end of any calendar month, that it elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate;

(b) Subject to the provisions of this Section 2.3.1, but anything in the remaining provisions of this Section to the contrary notwithstanding, the rental payable with respect to each month of such holdover tenancy shall equal the cumulative monthly rental due under all Tenancy Agreements then in effect with respect to the Property for such month, and the Additional Rent payable under Section 3; and

(c) Otherwise, such month-to-month tenancy shall be on the same terms and subject to the same conditions as those set forth in this Lease.

2.3.2 Holdover Rent. If Tenant continues to occupy the Premises or the Improvements after the expiration of the Term or any earlier termination of this Lease without having obtained Landlord's express written consent thereto, then without altering or impairing any of Landlord's rights under this Lease or applicable law, Tenant hereby agrees to pay holdover rent (the "**Holdover Rent**") to Landlord, promptly upon written demand therefore, for each calendar month or portion thereof after such expiration of the Term or such earlier

termination of this Lease, as aforesaid, until Tenant surrenders possession of the Premises and the Improvements to Landlord. The Holdover Rent shall be equal to 1.25 multiplied by the cumulative monthly rental under all Tenancy Agreements then in effect with respect to the Property for such calendar month; prorated based upon the number of days Tenant holds over, plus the Additional Rent. The Holdover Rent shall be in substitution of and not in addition to the amounts payable under Section 2.3.1(b). Tenant shall surrender possession of the Premises and the Improvements to Landlord promptly on Landlord's having demanded the same in writing.

2.4 Title to and Alterations of the Improvements and Equipment. At all times during the Term, the Improvements and the Equipment shall be owned by Tenant, and Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions. At the expiration or earlier termination of the Term, or any portion thereof, Tenant shall peaceably leave, quit and surrender the Property in the manner required under Section 2.2. Upon such expiration or termination, the Property, or any portion thereof so terminated, shall become the sole property of Landlord at no cost to Landlord, and shall be free of all liens and encumbrances and in good condition, subject only to reasonable wear and tear, and in the event of a casualty, to the provisions of Section 10.

2.5 Security Deposits and Reserves on Termination. In addition, any prepaid rents, Reserves and Security Deposits held or controlled by Tenant (other than prepaid rents and Security Deposits under Tenancy Agreements which Landlord elects not to continue after termination of this Lease) shall be transferred to Landlord upon any termination of this Lease.

2.6 Extension. If at the end of the Term, Lessee is not in default of any terms of this Lease, Tenant shall have the option to extend the Termination Date to September 1, 2083 (the "**Extended Termination Date**") in accordance with the following:

2.6.1 Tenant shall give Landlord notice of Tenant's intent to exercise its option to extend not later than 120 days prior to the Termination Date but not sooner than 180 days prior to the Termination Date;

2.6.2 All terms and conditions of this Lease will continue in full force and effect throughout the extended term.

SECTION 3 RENT AND OTHER CONSIDERATION.

3.1 Amount. As rent for the Premises and the Improvements, Tenant shall pay to Landlord, unless otherwise provided in this Lease:

3.1.1 Annual Rent. Annual rent ("**Annual Rent**") for each Lease Year of the Term shall accrue and shall be equal to the sum of the Base Rent for the Lease Year, and such Base Rent amounts shall be due and payable to Landlord in arrears annually, commencing on September 1, 2009, and continuing on the last day of each lease year thereafter. Each installment of Annual Rent shall be payable to Landlord by delivering or mailing it to Landlord's address as set forth herein, or to such other address as Landlord may provide to Tenant in writing. If on a due date for the payment of an installment of Annual Rent, Tenant is not in

violation of any of the terms and conditions of this Lease and Landlord is able to certify such compliance, Landlord will release Tenant from its obligation to pay that year's Annual Rent.

3.1.2 Additional Rent. Additional rent ("**Additional Rent**") in the amount of any payment referred to as such in this Lease which accrues while this Lease is in effect, including any and all charges or other amounts which Tenant is obligated to pay under this Lease, including, but not limited to, costs of taxes, insurance and public utility charges. Such Additional Rent, except as otherwise provided in this Lease, shall be due and payable within thirty (30) calendar days of Landlord's written demand therefor.

3.2 INTENTIONALLY DELETED

3.3 Tax on Lease. Except as otherwise provided in this Lease, if federal, state or local law now or hereafter imposes any tax, assessment, levy or other charge upon (a) Landlord with respect to this Lease or the value thereof, (b) Tenant's use or occupancy of the Premises and the Improvements, (c) the Annual Rent, Additional Rent or any other sum payable under this Lease, or (d) this transaction, Tenant shall pay to Landlord the amount thereof as Additional Rent within thirty (30) calendar days of Landlord's written demand, unless Tenant is prohibited by law from doing so. As long as Chestnut Senior Housing, Inc. is the Tenant, the Landlord will cooperate with Tenant in attempting to maintain the ad valorem tax exemption granted to the Tenant by the Travis County Appraisal District.

3.4 Security Deposit. No security deposit is required of Tenant under this Lease.

3.5 Net Lease. Except as otherwise provided in this Lease (and except for Landlord's legal fees, third party consultants retained by Landlord and Landlord's own personnel costs), all expenses, liabilities, charges or other deductions whatsoever with respect to the Property and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of the Property, or with respect to the Permitted Leasehold Mortgages, the Permitted Leasehold Mortgagees, or this Lease generally, shall be the sole responsibility of and payable by Tenant, including, but not limited to any cost, expenses, liabilities, charges or other sums incurred in connection with the closing of the Permitted Leasehold Mortgage, and/or otherwise incurred by Landlord in connection with the Permitted Leasehold Mortgage, all of which costs, expenses, liabilities and charges shall be deemed Additional Rent hereunder.

3.6 Condition of the Premises. EXCEPT AS SPECIFICALLY PROVIDED OTHERWISE IN THIS LEASE, THE PROVISIONS OF THIS SECTION 3.6 SHALL BE APPLIED. TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES SHALL BE LEASED TO TENANT AND TENANT SHALL ACCEPT THE PREMISES, "AS IS, WHERE IS, AND WITH ALL FAULTS." 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, LANDLORD AND TENANT HEREBY AGREE THAT 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 TENANT MAY PUT THE PREMISES; (C) ANY CONDITIONS WHICH AFFECT OR MAY AFFECT THE PREMISES WITH RESPECT TO ANY PARTICULAR PURPOSE, USE, DEVELOPMENT POTENTIAL OR OTHERWISE; (D) 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).

SECTION 4 USE OF PROPERTY.

4.1 Nature of Use. Tenant shall throughout the Term use and operate the Property only for constructing, rehabilitating, owning, financing, leasing, operating, and marketing a twenty-two (22) unit residential project to be constructed on the Property in accordance with the provisions of this Lease. Tenant shall make and pay for the following improvements to the Premises (all of which, together with the Units, are herein referred to collectively as the "**Improvements**");

4.1.1 Parking. Such number of off-street parking spaces as is required for the Property from time to time by the applicable zoning ordinances, as amended by any valid variance therefrom or other applicable law;

4.1.2 Driveways and Sidewalks. The driveways and sidewalks set forth on the final site plan covering the Premises, which site plan will be delivered to Landlord by Tenant when completed (the "**Site Plan**");

4.1.3 Utilities, Etc. Such utility lines and facilities, open space areas, landscaping or other improvements or features as are shown on the Site Plan;

4.1.4 Unit Amenities. Such interior Unit amenities as are contemplated by the Plans and Specifications; and

4.1.5 Replacements and Additions. Any replacement of or addition to the Units or Unit amenities or any of such parking facilities, driveways, sidewalks, utility lines and facilities, landscaping or other Improvements that may, in the reasonable discretion of Tenant, be needed from time to time.

4.2 Compliance with Law and Covenants. Tenant, throughout the Term and at its sole expense, in connection with its construction, possession and use of the Property, shall:

4.2.1 Legal and Insurance Requirements. Comply timely and fully with (a) all laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments, and all departments, commissions, boards and officers thereof, including the CDBG Code (if applicable) (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 Section 6 to be maintained by Tenant (all of which are hereinafter referred to collectively as "**Insurance Requirements**"); all if and to the extent that any of the Legal Requirements or the Insurance Requirements relate to any or all of the Property, or the use or manner of use thereof, whether any of the foregoing are foreseen or unforeseen, or are ordinary or extraordinary;

4.2.2 Licenses. Without limiting the generality of the foregoing provisions of this Section 4.2, obtain and 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;

4.2.3 Taxes, Fees and Assessments. Pay or cause to be paid before past-due and incurring penalties, all personal property taxes, income taxes, license fees and other taxes or special assessments assessed, levied or imposed upon Tenant or any other person in connection with the operation of any business upon the Premises or in the Improvements, or its use thereof in any other manner;

4.2.4 Take Action. Not knowingly (a) take or (b) fail to take any action, the result of which is the impairment of Landlord's estate, right, title or interest in and to any or all of the Property; and

4.2.5 Hazardous Substances. Not (a) cause or permit the escape, disposal or release of any Hazardous Substances, (b) allow the storage or use of Hazardous Substances in any manner not sanctioned by law and by the highest standards prevailing in the industry for the storage and use of such substances, or (c) allow any Hazardous Substances to be brought onto the Premises and/or Improvements except to use in the ordinary course of Tenant's business. If any mortgagee of the Property or governmental agency reasonably requires testing to ascertain whether or not there has been any release of Hazardous Substances on the Premises during Tenant's tenancy of the Premises, then the costs thereof shall be reimbursed by Tenant to Landlord within thirty (30) calendar days of written demand therefore as Additional Rent. Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Substances on the Premises.

4.2.6 Mechanics Liens. In the event that any mechanic's liens or lien affidavits are filed against the Property or any part thereof, Tenant shall discharge such liens or lien affidavits (either by causing the same to be released or by bonding around as permitted by law, within sixty (60) calendar days of the filing thereof.

4.3 Restrictions Applicable to the Units.

4.3.1 Low Income Restrictions. Tenant shall rent the units to eligible households at an affordable rent, in accordance with the Rental Housing Development Guidelines.

(a) Maximum affordable rent is no more than 30% of an eligible household's monthly gross income, inclusive of utility charges.

4.3.2 Discrimination. Tenant shall comply with the provisions of the federal, state and local law prohibiting discrimination in housing on the grounds of race, color, creed, national origin, sex, marital status, or a physical or mental handicap, including, but not limited to, Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Title VIII of the Civil Rights Act of 1968 (Public Law 90-284) and the Fair Housing Act (42 U.S.C. §§3601-3620).

4.4 Tenant's Right to Protest. Notwithstanding anything to the contrary contained in this Lease or any other document, Tenant shall not be in default of any provisions of the Lease if Tenant, at its sole cost and expense, shall contest by appropriate legal proceedings the validity of any Legal Requirement, Insurance Requirement and/or Permitted Encumbrance and postpone compliance with the same and with the applicable provisions of this Lease, if by the terms of any such Legal Requirement, Insurance Requirement and/or Permitted Encumbrance, compliance therewith may legally be held in abeyance without (a) incurring any lien, charge or liability of any kind against any portion of the Property or any interest of Landlord or Tenant therein, and (b) subjecting Landlord to any civil or criminal liability for failure to comply therewith. If so, Tenant may postpone compliance therewith until the final determination of any such proceedings provided that all such proceedings shall be prosecuted with reasonable diligence and dispatch. If Tenant shall initiate or carry on 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) calendar days before initiating such proceedings. Such notices shall give full details as to the tribunal in which said proceedings are to be filed, the Legal Requirement, Insurance Requirement and/or Permitted Encumbrance contested, and such additional data as Landlord may 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 aforesaid contest 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 reasonable diligence and dispatch. Landlord shall give the Limited Partners and the Permitted Leasehold Mortgagees written notice of its receipt of any such security.

SECTION 5 TAXES AND OPERATING EXPENSES.

5.1 Tenant to Pay. Landlord and Tenant intend for the Fee Estate and the Leasehold Estate to be exempt from ad valorem taxation. Nonetheless, to the extent any taxes are assessed, Tenant 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 Property, whether against the Fee Estate or the Leasehold Estate, 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 Property pursuant to the Permitted Encumbrances (collectively, "Taxes"). Notwithstanding the foregoing, if any Taxes are levied with respect to a period beginning before the Commencement Date or ending after the Termination Date, or the earlier termination of this

Lease, Tenant shall bear the full expense of only that percentage thereof equaling the percentage of such period falling within the Term. Tenant shall pay the Taxes before past due and before any penalty is incurred for late payment thereof, and shall deliver to Landlord the receipted bill for such Taxes within ten (10) calendar days after Tenant receives the receipted bill.

5.2 Delivery of Bills and Notices. Each party hereto shall deliver to the other, promptly after such party's receipt thereof, 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 Land is not now treated as a separate tax lot by the assessing authority, Landlord shall use its best and continuing efforts promptly hereafter to have the Land so treated.

5.3 Proceedings to Contest. Tenant may, without postponing payment thereof, as aforesaid, bring proceedings to contest the validity or the amount of any Taxes, or to recover any amount thereof paid by Tenant, provided that prior thereto Tenant notifies Landlord in writing that Tenant intends to take such action. Tenant shall indemnify and hold harmless Landlord against and from any expense arising out of any such action that is not caused by Landlord's negligence or failure to act. Landlord shall, upon written request by Tenant, cooperate with Tenant in taking such actions provided that Tenant indemnifies and holds harmless Landlord against and from any expense or liability arising out of such cooperation not caused by Landlord's negligence or failure to act.

5.4 Contesting Validity. Any contest as to the validity or amount of any Taxes, whether before or after payment, may be made by Tenant, in the name of Landlord or of Tenant, or both, as Tenant shall determine, and Landlord agrees that it will, at Tenant's expense, cooperate with Tenant in any such contest to such extent as Tenant may reasonably request. It is understood, however, that Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any such proceeding brought by Tenant and Tenant covenants to pay, and to indemnify and save Landlord harmless from, any such costs or expenses not caused by Landlord's negligence or failure to act. Tenant shall be entitled to any refund of any such Taxes and penalties or interest thereon which have been paid by Tenant or which have been paid by Landlord and reimbursed to Landlord by Tenant.

5.5 Reimbursement of Landlord. Notwithstanding anything in this Lease to the contrary, 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 federal, state or local 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 any portion of the Property.

5.6 Operating Expenses.

5.6.1 Tenant's Obligation. 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 natural gas and electricity; (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 Insurance Requirements; and (f) 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.

5.6.2 Permits and Licenses. Tenant shall also procure, or cause to be procured, at 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 and in the Improvements 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. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

SECTION 6 INSURANCE AND INDEMNIFICATION.

6.1 Insurance to be Maintained by Tenant. Tenant shall maintain at its expense throughout the Term insurance adequate to protect Tenant's and Landlord's interests in the Property, meeting as a minimum the insurance requirements set forth in the attached **Exhibit D**. Nothing in this Section 6.1 is intended, nor shall be construed to relieve Tenant from full compliance with all of the insurance requirements imposed upon Tenant under each Permitted Leasehold Mortgage. All insurance coverage of Landlord and Tenant shall have mutual waiver of subrogation provisions reasonably acceptable to Landlord and Tenant. The bankruptcy, insolvency or denial of liability by the insurance company shall not exonerate Landlord or Tenant from liability.

6.2 Insureds. Each insurance policy shall name as insureds thereunder (a) Tenant, (b) Landlord, and (c) as additional insureds, each designee of Landlord and Tenant. However, the First Leasehold Mortgagee and any other Permitted Leasehold Mortgagee shall be the named loss payee as to all policies of property insurance.

6.3 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 fifteen (15) calendar days prior written notice to Landlord and any other named insured thereunder. Such insurance will, to the extent obtainable, provide that no act or omission of 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. Upon issuance, each insurance policy or duplicate or certificate of such policy shall be delivered to Landlord.

6.4 Evidence. Tenant shall deliver to Landlord no later than the Commencement Date an original or a signed duplicate copy of each such policy, and at least fifteen (15) calendar days before any such policy expires, Tenant shall deliver to Landlord an original or a signed duplicate copy of a replacement policy therefor. 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.

6.5 Indemnification of Landlord.

6.5.1 Use, Occupancy, Etc. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD AGAINST AND FROM ANY AND ALL LIABILITY, CLAIM OF LIABILITY OR EXPENSE 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 PREMISES OR IN THE IMPROVEMENTS DURING THE TERM, OR (C) ANY BREACH OR DEFAULT BY 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 TENANT OR ANY OF ITS AGENTS, CONTRACTORS, SERVANTS, EMPLOYEES, 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 PREMISES OR IN THE IMPROVEMENTS 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 TENANT AS OF, AND EXISTING BEFORE, THE EXECUTION OF THIS LEASE]) OR (F) ANY DEFAULT OR BREACH BY TENANT OF THE PERMITTED LEASEHOLD MORTGAGES, WHETHER OR NOT SUCH DEFAULT OR BREACH IS CLAIMED OR ASSERTED BY THE PERMITTED LEASEHOLD MORTGAGEE, RESPECTIVELY, 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 WHOLLY AND DIRECTLY BY LANDLORD, ITS EMPLOYEES OR AGENTS. THIS SECTION 6.5.1 SHALL SURVIVE THE TERMINATION OF THIS LEASE.

6.5.2 Construction, Work, Etc. TENANT AGREES THAT 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 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 TENANT OR ANY PERSON ON THE PREMISES OR HOLDING ALL OR ANY PART OF THE PREMISES UNDER TENANT. TENANT DOES HEREBY INDEMNIFY AND SAVE HARMLESS 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 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 THE IMPROVEMENTS, OR ANY REPAIRS OR ALTERATIONS WHICH TENANT MAY MAKE UPON THE PREMISES, OR OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF TENANT, ITS AGENTS, CONTRACTORS, SERVANTS, EMPLOYEES, INVITEES OR ANY OTHER PARTY, OTHER THAN CLAIMS, ACTIONS, DEMANDS, COSTS AND EXPENSES AND LIABILITIES TO THE EXTENT ARISING FROM THE ACTS OR OMISSIONS OF LANDLORD, ITS

EMPLOYEES OR AGENTS. TENANT SHALL INDEMNIFY LANDLORD AGAINST DAMAGE OR INJURY OCCASIONED SOLELY BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ITS AGENTS, CONTRACTORS, SERVANTS OR EMPLOYEES BUT ONLY TO THE EXTENT SUCH DAMAGE OR INJURY ARISES FROM PERILS AGAINST WHICH TENANT IS REQUIRED BY THIS LEASE TO INSURE.

6.5.3 Security. Tenant acknowledges that Landlord is not required to provide security for persons or property in or about the Premises. Tenant hereby waives and releases any claim against 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, not caused by Landlord's willful and/or gross negligence.

6.5.4 Criminal Activities, Etc. TENANT HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD LANDLORD AND LANDLORD'S RELATED PARTIES HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTIONS AND SUITS FOR INJURY TO OR DEATH OF ANY OF TENANT'S RELATED PARTIES, THE RESIDENTS RESULTING FROM CRIMINAL ACTIVITIES IN OR ABOUT THE PREMISES, INCLUDING ALL COSTS, REASONABLE ATTORNEYS' FEES AND REASONABLE EXPENSES INCURRED. TENANT SHALL DEFEND ANY CLAIM, CAUSE OF ACTION OR SUIT MADE OR BROUGHT AGAINST LANDLORD OR LANDLORD'S RELATED PARTIES AT TENANT'S SOLE EXPENSE, BY COUNSEL REASONABLY SATISFACTORY TO LANDLORD. AS USED HEREIN, "LANDLORD'S RELATED PARTIES" SHALL MEAN AND REFER TO 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 TENANT'S AGENTS, CONTRACTORS, EMPLOYEES, PATRONS, BUSINESS INVITEES AND GUESTS.

6.5.5 Hazardous Substances. SUBJECT TO THE LIMITATIONS SET FORTH BELOW, TENANT HEREBY AGREES TO INDEMNIFY LANDLORD AND HOLD 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 LANDLORD AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, EMISSION, DISCHARGE, MIGRATION OR RELEASE OR THREATENED RELEASE FROM THE PROPERTY OF ANY HAZARDOUS SUBSTANCE. THE FOREGOING INDEMNITY SHALL BE LIMITED TO MATTERS WHICH OCCUR DURING THE TERM AND WHICH MATTERS ARE DIRECTLY OR INDIRECTLY CAUSED BY TENANT'S USAGE OF THE PREMISES AND NOT CAUSED BY ACTS OF GOD OR LANDLORD OR LANDLORD'S RELATED PARTIES. THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT THE LIABILITY OF TENANT FOR SUCH MATTERS WHICH OCCUR DURING THE TERM, BUT WHICH ARE DISCOVERED SUBSEQUENT TO THE EXPIRATION OF THE TERM.

SECTION 7 IMPROVEMENTS TO THE PREMISES.

7.1 Construction of the Improvements.

7.1.1 Plans and Specifications. Landlord authorizes Tenant, and Tenant hereby obligates itself, to construct the Improvements in substantial accordance with the plans and specifications (collectively, "**Plans and Specifications**") which have been prepared by Tenant and approved by Landlord. The Plans and Specifications shall include any amendments thereto proposed by Tenant and approved by Landlord.

7.1.2 Construction Start. Tenant shall, within twelve (12) months after the Commencement Date, obtain a building permit to construct a minimum of twenty-two (22) residential housing units on the Property from the City of Austin Watershed Protection and Development Department and commence construction of improvements to the Property which at a minimum must include pouring the concrete foundation of a minimum of one structure proposed to be newly constructed in the building permit.

7.1.3 Completion Schedule. Tenant shall, within twenty-four (24) months after the Commencement Date (the "**Construction Completion Date**"), construct the Improvements upon the Premises to the extent required for Tenant to be issued a permanent, unconditional certificate of occupancy therefor by the applicable governmental authorities of the said City of Austin for each of the buildings. The Construction Completion Date may be extended with the prior written approval of Landlord, which approval shall not be unreasonably withheld so long as construction is progressing toward completion in a reasonable manner.

7.1.4 Utilities. Prior to the commencement of any construction or excavation activities by Tenant, 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.

7.1.5 Warranty. Tenant warrants to Landlord that material and equipment furnished in connection with the construction of the Improvements, or any alteration or addition of or to the Improvements will be of good quality and new, that all construction work associated with the Improvements will be free from any material defects, and that such construction work will comply in all material respects with the requirements of the approved Plans and Specifications. All construction work not conforming to these requirements, including substitutions, shall be considered defective. Tenant's warranty excludes any of the following, to the extent caused by Landlord: damage or defect caused by abuse, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. If required by Landlord, Tenant shall furnish satisfactory evidence as to the kind and quality of the materials used. Without limiting the indemnification provisions of Section 6.5, but intending to elaborate thereon, Tenant shall defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or expense arising directly or indirectly, wholly or in part out of any failure of Tenant's warranties hereunder to be true, complete and accurate in all material respects. This Section 7.1.5 shall survive the termination of this Lease for a period of twelve (12) months.

7.1.6 Alterations and Improvements. Tenant will make no alterations or improvements to the Property without the written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned.

SECTION 8 REPAIRS AND MAINTENANCE. Subject to the terms of Section 10 and Section 11 of this Lease, Tenant shall, throughout the Term and at its expense, (a) take good care of the Property and keep it in good order and condition; and (b) 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 (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 Premises and the Improvements), 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 Landlord shall have no obligation hereunder as to the same.

SECTION 9 LANDLORD'S RIGHT OF ENTRY.

9.1 Inspection and Repair. Subject to the rights of any Resident, Landlord and its authorized representatives shall be entitled to enter the Units and the rest of the Premises and the Improvements at any time during Tenant's business hours and at any other reasonable time to (a) inspect the Property at any time without notice and (b) make any repairs thereto and/or take any other action therein which Landlord is permitted to make by any provision of this Lease, after giving Tenant at least forty-eight (48) hours' notice of Landlord's intention to take such 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 any part of the Property would be unreasonably jeopardized unless Landlord were to take such action immediately or if HUD or their authorized representatives shall desire to inspect the Property at any time without notice, Landlord shall give only such notice, if any, to Tenant as is reasonable under the circumstances, and may enter the same at any time). Nothing in this Section 9.1 shall be deemed to impose any duty upon Landlord to make any such repair or take any such action, and Landlord's performance thereof shall not constitute a waiver of Landlord's right hereunder to have Tenant perform such work. Landlord may, while taking any such action upon the Property, store therein any and all necessary materials, tools and equipment, and Tenant shall have no liability to 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 negligence or intentional conduct of Tenant or its agents and employees. Landlord or HUD shall not in any event be liable to Tenant for any inconvenience, annoyance, disturbance, loss of business or other damage sustained by 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 Premises and in the Improvements during the course thereof, and Tenant's obligations under the provisions of this Lease shall not be affected thereby.

9.2 Exhibiting the Premises. Landlord and its business invitees may from time to time, after giving notice thereof to Tenant, and subject to the rights of any Resident under a Tenancy Agreement, enter the Premises and/or the Improvements, including without limitation the Units, to exhibit the Premises and the Improvements for purposes of (a) during the last twenty-four (24) months of the Term (or at any time after Landlord or 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 Premises and the Improvements or similarly financed or for any other business purpose; provided that in doing so Landlord and each such invitee observes all reasonable safety standards and procedures which Tenant may require. In exercising its rights under this

Section 9.2, Landlord shall use its good faith, reasonable efforts to minimize any interference or disruption of Tenant's work or Tenant's use or operation of the Property.

SECTION 10 FIRE AND OTHER CASUALTIES.

10.1 Cost of Restoration Exceeds Specified Sum.

10.1.1 Notice and Commence Restoration. If any or all of the Property is damaged or destroyed, Tenant shall commence and complete restoration with reasonable diligence at Tenant's expense, as nearly as possible to the Property's value, condition and character immediately before such damage or destruction. Such restoration shall be in accordance with plans and specifications therefor which shall have been approved in writing by Landlord, such approval not to be unreasonably delayed, withheld or conditioned.

10.1.2 Use of Insurance Proceeds. All insurance proceeds (other than any proceeds which are separately paid on account of any damage to or destruction of Tenant's personal property, inventory or work-in process, all of which shall be paid to Tenant) payable as a result of such casualty under policies of insurance held by or for the account of Tenant pursuant to Section 6 against such casualty and received by Tenant, or any Permitted Leasehold Mortgagee, as the case may be (less such reasonable attorneys' fees or other expenses as are incurred in the collection thereof, which shall be paid out of such proceeds):

(a) Subject to Section 10.3 hereof, shall be paid to the Depository, and

(b) Subject to Section 10.3 hereof, shall be paid by the Depository to Tenant or as Tenant may direct, from time to time as such restoration progresses, to pay or reimburse Tenant for the cost of such restoration, upon Tenant's written request accompanied by evidence satisfactory to Landlord and any such Permitted Leasehold Mortgagee that an amount equaling the amount requested is then due and payable or has been paid, and is properly a part of such cost, and that the net insurance proceeds not yet advanced will be sufficient to complete such restoration. Before such construction commences and at any time thereafter upon notice to it from Landlord or any such Permitted Leasehold Mortgagee, Tenant shall deposit with the Depository such sums as are required (in addition to any amount then held by the Depository for such purpose) to complete such restoration. Upon receipt by Landlord and any such Permitted Leasehold Mortgagee of evidence satisfactory to them that such restoration has been completed and the cost thereof paid in full, and that no mechanics', materialmens' or similar lien for labor or materials supplied in connection therewith may attach to the Property, the balance, if any, of such proceeds shall be paid to Tenant or as it may direct.

10.1.3 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 such liens, any insurance proceeds not theretofore applied to the cost of such restoration shall be paid, subject to the rights of the Permitted leasehold Mortgagees, to Landlord.

10.2 No Termination. No total or partial damage to or destruction of any or all of the Property shall entitle Tenant to surrender or terminate this Lease, or shall relieve Tenant from its liability hereunder to pay in full the Annual Rent, any Additional Rent and all other sums and charges which are otherwise payable by Tenant hereunder, or from any of its other

obligations hereunder, and 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 or to surrender any or all of the Property, or to have any suspension, diminution, abatement or reduction of the Annual Rent or any Additional Rent or other sum payable by Tenant hereunder (except that, if and to the extent that Landlord has, on account of any such Rent or other sum, received for its own account the proceeds of any rent insurance pursuant to the provisions of this Lease, 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 installments of Annual Rent in the order in which they fall due hereunder).

10.3 Permitted Leasehold Mortgage Control. Notwithstanding anything to the contrary in this Section 10, the terms of the Permitted Leasehold Mortgages shall control with respect to any use of any insurance proceeds pertaining to a casualty during the term of the Permitted Leasehold Mortgages, provided that in any event, the Tenant's portion of any insurance proceeds shall be applied first to the debt secured by the Permitted Leasehold Mortgages before any of the Landlord's portion of the insurance proceeds may be so applied. The Permitted Leasehold Mortgagees shall have the same priority to such insurance proceeds as the priority of their lien on the Leasehold Estate (i.e., the First Leasehold Mortgagee shall have priority over any other Permitted Leasehold Mortgagee).

SECTION 11 CONDEMNATION.

11.1 Notice of Taking. Promptly upon receipt by either Landlord or Tenant of notice of the institution of any proceedings for the taking or condemnation of all or a portion of the Premises or the Improvements by the government of the United States, State of Texas, City of Austin 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 the Permitted Leasehold Mortgagees, and such other parties may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

11.2 Special Account. The full amount of any award whether pro tanto or final for any Taking (the "**Award**"), shall, notwithstanding any allocation made by the awarding authority, be paid, and allocated between Landlord and Tenant as provided by the law of the State of Texas, provided that there shall be deducted from the Award of each party all reasonable fees and expenses of collection of such party, including but not limited to, reasonable attorneys' fees and experts' fees, which shall be paid to the party which has incurred such fees and expenses.

11.3 Total Taking and Application of Proceeds. In the event of a permanent Taking of the fee title to or of control of the Premises, the Improvements or of the entire Leasehold Estate hereunder (a "**Total Taking**"), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that any Rental payable or obligations owed by Tenant to Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full. Anything in this Lease to the contrary notwithstanding, upon the expiration or earlier termination of this Lease following such Total Taking, any proceeds remaining following such Total Taking shall be paid, subject to the rights of the Permitted Leasehold Mortgagees, in the manner provided in Section 11.6.

11.4 Partial Taking: Course of Action. In the event of a permanent Taking of all or less than all of the Premises or the Improvements (a "**Partial Taking**"),

11.4.1 Continue to Use. Unless this Lease is terminated as provided in Section 11.4.2, the Premises and the Improvements shall be restored pursuant to Section 11.5.

11.4.2 Cannot Continue to Use. If (i) Tenant reasonably determines that the continued use and occupancy of the remainder of the Premises and/or the Improvements by Tenant is not or cannot be made to be economically viable, structurally sound, consistent with all Permitted Leasehold Mortgages if applicable, and otherwise feasible based upon the amount of eminent domain proceeds and any available other funds of Tenant as, at Tenant's option, are demonstrably available for the purpose of paying for such restoration (the "**Restoration Criteria**"), and (ii) all Permitted Leasehold Mortgagees so agree in writing, then this Lease may be terminated pursuant to Section 11.6.

After consultation with Landlord, Tenant shall within ninety (90) calendar days after the effective date of the Partial Taking give written notice to Landlord, together with back up analysis, as to whether it elects to restore the Premises and the Improvements or to terminate this Lease pursuant to this Section 11.4. Tenant's election to terminate this Lease pursuant to this Section 11.4 must be reasonable.

11.5 Restoration. If the remainder of the Premises and/or the Improvements are restored pursuant to Section 11.4, Tenant and Landlord shall reasonably agree upon and approve plans and specifications to modify the remaining Premises and the Improvements so as to restore them to as near their prior condition as is reasonably possible, consistent with City zoning and permit requirements. Upon approval of said plans, Tenant shall promptly proceed, at its expense, to commence and complete the restoration pursuant to the provisions of Section 10. Tenant may use the entire Award for such restoration, and may retain for its own use any portion of the Award attributable to the Improvements remaining after the completion of the restoration subject to the rights of Landlord to require that any such excess be applied first to the extent necessary to pay any outstanding Rent owed by Tenant to Landlord pursuant to this Lease. If the remainder of the Premises and Improvements are restored pursuant to Section 11.4, and if the cost of the restoration shall exceed the amount of the Award, the deficiency shall be paid by Tenant and deposited with an escrow agent reasonably acceptable to Landlord prior to the start of any restoration. Tenant's obligation hereunder shall not be affected by the unavailability or insufficiency of the Award, except to the extent that the Award is unavailable by virtue of the failure or refusal of Landlord to release it to Tenant to pay for restoration.

11.6 Termination and Application of Proceeds Upon Non-Restoration. Following a Partial Taking, if a decision is made pursuant to Section 11.4.2 to terminate this Lease, and provided all Permitted Leasehold Mortgagees have so agreed in writing, Tenant shall surrender the Premises and the Improvements to Landlord and this Lease shall thereupon be terminated without liability or further recourse to the parties hereto, provided that any Rent or obligations owed by Tenant to Landlord as of the date of the Taking shall have been paid in full. The Tenant's portion of the Award shall be applied to the extent necessary to pay such amounts.

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

11.8 Permitted Leasehold Mortgage Control. Notwithstanding anything to the contrary in this Section 11, the terms of the Permitted Leasehold Mortgages shall control with respect to any use of any Award pertaining to a Taking during the term of the Permitted Leasehold Mortgages, provided that in any event, the Tenant's portion of any Award shall be applied first to the debts secured by the Permitted Leasehold Mortgages before any of the Landlord's portion of the Award may be so applied. In addition, and notwithstanding anything to the contrary in this Section 11, but subject to the terms and provisions of the respective Permitted Leasehold Mortgages, the Permitted Leasehold Mortgagees shall be entitled to receive from any Award the greater of (i) that portion of the Award applicable to the Improvements to which the Tenant is entitled, or (ii) the total Award minus the value of the Landlord's remainder interest in the Premises considered as unimproved. The Permitted Leasehold Mortgagees shall have the same priority to such Award as the priority of their lien on the Leasehold Estate (i.e., the First Leasehold Mortgagee shall have priority over any other Permitted Leasehold Mortgagee).

SECTION 12 ASSIGNMENT AND SUBLETTING.

12.1 Transfers.

12.1.1 Permitted Transfers. Tenant hereby acknowledges that this Lease is one which is personal to Tenant, and Tenant agrees for itself and its successors and assigns in interest hereunder that it will not, other than pursuant to the terms of the Permitted Leasehold Mortgages, (a) assign this Lease or any of its rights under this Lease as to all or any portion of the Property, or (b) make or permit any voluntary or involuntary total or partial sale, lease, sublease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Property or the occupancy or use thereof (each of which act listed in (a) or (b) hereof is hereinafter referred to as a "**Transfer**") without first obtaining Landlord's express written consent thereto by an instrument which makes specific reference to this Section 12.1.1 and is executed by Landlord (which consent [a] may be delayed, withheld or conditioned; provided, however, if given, such consent shall not constitute a consent to any subsequent such Transfer, whether by Tenant or by any such transferee, but [b] shall not be deemed to have been given by Landlord's acceptance of the payment of Rent after such Transfer occurs [with or without Landlord's knowledge] or by any other act or failure to act by Landlord, other than the giving of such express, written consent, as aforesaid). Landlord shall be entitled, at its sole discretion, to condition its consent to any Transfer upon the condition of the proposed transferee's entry (other than a Permitted Leasehold Mortgagee) into an agreement with Landlord, such agreement to be in form and substance reasonably acceptable to Landlord, providing for such transferee's assumption of all of Tenant's obligations hereunder. Any person to whom any Transfer is attempted without such consent shall have no claim, right or remedy whatsoever hereunder against Landlord. Landlord shall have no duty to recognize any person claiming under or through the same. A Transfer includes but is not limited to (i) any sale of all or any of Tenant's rights hereunder at foreclosure or by the execution of any judgment (other than the sale after foreclosure or deed in lieu of foreclosure by a Permitted Leasehold Mortgagee to a purchaser at foreclosure sale under a Permitted Leasehold Mortgage, which sales are permitted without Landlord's consent), or (ii) any Transfer by operation of law.

12.1.2 Deemed Transfers. For purposes of this Section 12.1.2, a Transfer shall be deemed to have occurred whenever there is any transfer, sale, pledge,

encumbrance or other disposition, in any single transaction or cumulatively while this Lease is in effect, of control of Tenant.

12.2 Permitted Transfers. Notwithstanding anything to the contrary set forth elsewhere in this Section 12, Tenant shall be permitted to enter into Tenancy Agreements with Residents for the Units so long as the form of such Tenancy Agreement has been approved by Landlord, the term thereof does not exceed one (1) year, and the rental rate is consistent with the then current schedule of rental rates approved by Landlord.

12.3 Effect on Obligations. No such Transfer shall alter or impair the obligations hereunder of Tenant or any other person constituting Tenant or holding any interest hereunder before any such Transfer.

12.4 Benefit and Burden. Subject to the foregoing provisions of this Section 12, 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 13 DEFAULT.

13.1 Event of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder (herein called an "**Event of Default**"):

13.1.1 Rent. If Tenant fails to pay any installment of Rent provided for herein, or any part thereof, when the same shall become due and payable, and such failure shall continue for ten (10) calendar days after receipt of written notice thereof from Landlord to Tenant; or

13.1.2 Other Monetary. If Tenant fails to pay any other charge or sum required to be paid by Tenant hereunder, and such failure shall continue for fifteen (15) calendar days after receipt of written notice thereof from Landlord to Tenant; or

13.1.3 Non-Monetary. If Tenant fails to perform or observe any other requirement of this Lease (not hereinbefore in this Section 13.1 specified) on the part of Tenant to be performed or observed, and such failure shall continue for thirty (30) calendar days after receipt of written notice thereof from Landlord to Tenant; or

13.1.4 Cross Default Provision. The occurrence of a material default by Tenant under any Permitted Mortgage or the HUD Grant Agreement and the failure of Tenant to cure such default under any applicable cure period constitutes a default under this Ground Lease.

13.2 Notice to Tenant; Grace Period. Anything in this Lease to the contrary notwithstanding, if an Event of Default occurs, Landlord shall not exercise any right or remedy on account thereof which Landlord holds under this Lease or applicable law unless and until:

13.2.1 Written Notice. Landlord gives written notice thereof to Tenant and otherwise complies with the provisions of Sections 18.15.2 and 18.15.3 hereof, including without limitation, the running of all applicable cure periods; and

13.2.2 Event of Default Not Cured. Tenant fails (a) if such Event of Default consists of a failure to pay money within ten (10) calendar days after Landlord gives such notice, or (b) if such Event of Default consists of something other than a failure to pay money, within ninety (90) calendar days after Landlord gives such written notice, to cure such Event of Default.

13.3 Landlord's Rights on Event of Default. Nothing in this Section 13 in any way affects the rights granted to the Permitted Leasehold Mortgagee under Sections 18.15.2 and 18.15.3 of this Lease.

13.3.1 Landlord's Rights. If an Event of Default occurs, Landlord may take any or all of the following actions subject to Sections 13.2, 18.15.2 and 18.15.3 hereof:

- (a) Re-enter and repossess any or all of the Property; and/or
- (b) Declare the entire balance of the Annual Rent for the remainder of the Term to be due and payable immediately, and collect the then present value of such balance in any manner not inconsistent with applicable law. Accelerated payments payable hereunder shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment of Annual Rent in advance; and/or
- (c) Terminate this Lease by giving written notice of such termination to Tenant and the Permitted Leasehold Mortgagees, which termination shall be effective as of the date of such notice or any later date therefor specified by Landlord therein. Landlord shall not be deemed to have accepted any abandonment or surrender by Tenant of any or all of the Premises or Tenant's Leasehold Estate unless Landlord has so advised Tenant expressly and in writing, regardless of whether Landlord has reentered or relet any or all of the Premises or the Improvements or exercised any or all of Landlord's other rights under this Section 13.3 or applicable law). Tenant's right to possession of the Property will cease on the date specified in such notice, and the Leasehold Estate conveyed by this Lease upon Tenant shall revert in Landlord, provided, however, such reverting of the Leasehold Estate and the reentry by Landlord shall be subject to and limited by and shall not defeat, render invalid or limit in any way the lien of any Leasehold Mortgages; and/or
- (d) In Landlord's own name (but either (i) as agent for Tenant, if this Lease has not then been terminated, or (ii) for the benefit of 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 reasonable to Landlord (including but not limited to the alteration of any or all of the Premises in any manner which, in Landlord's reasonable judgment is necessary or desirable as a condition to or otherwise in connection with such reletting, and the allowance of one or more concessions or "free-rent" or reduced-rent periods), and collect and receive the rents therefor. Anything in this Lease or applicable law to the contrary notwithstanding, Tenant shall have no right in or to any surplus which may be derived by Landlord from any such reletting, if the proceeds of such reletting exceed any Rent, installment thereof or other sum owed by Tenant to Landlord hereunder. In the event of any such reletting, Tenant shall pay to Landlord, at the times and in the manner specified by Section 3 (unless Landlord has elected to accelerate Rent as provided in this Section 13.3, in which event Tenant shall be obligated to pay such accelerated amount),

both (i) the present value of any installments of the Annual Rent and any Additional Rent accruing during such remainder (or, if this Lease has then been terminated, damages equaling the respective amounts of such installments of the Annual Rent and any Additional Rent which would have accrued during such remainder, had this Lease not been terminated), less any monies received by Landlord with respect to such remainder from such reletting of any or all of the Premises, plus (ii) the reasonable cost to 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 Tenant is liable under this Section 13.3; and/or

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

(f) Pursue any combination of such remedies and/or any other right or remedy available to Landlord on account of such Event of Default under this Lease and/or at law or in equity.

Nothing herein shall limit or prejudice 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.

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

13.3.3 Tenant's Obligations. If an Event of Default occurs, Tenant shall, promptly upon its receipt of a written demand therefor from Landlord, reimburse Landlord for (a) all reasonable expenses (including but not limited to any and all repossession costs, management expenses, operating expenses, reasonable legal expenses and reasonable attorneys' fees) incurred by Landlord (i) in curing or seeking to cure any Event of Default and/or (ii) in exercising or seeking to exercise any of 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 rate of 8% per annum, all of which expenses and interest shall be Additional Rent and shall be payable by Tenant promptly on demand therefor by Landlord.

13.3.4 Waiver of Notice. Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to re-enter provided for in any statute and except as is herein otherwise provided. Tenant, for itself and all persons claiming through or under Tenant, also waives any and all right of redemption or re-entry or repossession in case Tenant is dispossessed by a judgment or warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter," "re-enter," "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meanings.

13.4 Landlord's Security Interest. With the exception of any security granted to Landlord in its capacity as a Permitted Leasehold Mortgagee by Tenant pursuant to a First Leasehold Mortgage or any promissory note or security agreement or financing statement executed pursuant thereto, Landlord hereby expressly waives any contractual and/or statutory security interest it may have in or upon any of Tenant's accounts receivable, inventory, equipment and personal property, whether or not located on the Premises.

SECTION 14 ESTOPPEL CERTIFICATE: SHORT FORM.

14.1 Estoppel Certificate. Each party hereto shall, at any time and from time to time within ten (10) calendar days after being requested in writing to do so by the other party and/or any Permitted Leasehold Mortgagee 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, (a) certifying (i) 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); (ii) that Tenant has accepted possession of the Premises, and the date on which the Term commenced; (iii) as to the dates to which Annual Rent and any Additional Rent and other charges arising hereunder have been paid; (iv) as to the amount of any prepaid Rent or any credit due to Tenant hereunder; (v) as to whether, to the best of such party's knowledge, information and belief, either Landlord or Tenant is then in default in performing any of its obligations hereunder (and, if so, specifying, the nature of each such default); and (vi) as to any other fact or condition reasonably requested by the requesting party; and (b) acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

14.2 Short Form. The parties hereto shall, at the request of Landlord, Tenant or any Mortgagee, execute, seal, 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 Tenant's expense.

SECTION 15 CONDITION OF TITLE AND THE PREMISES.

15.1 Limited Warranties. Tenant hereby acknowledges that it has examined the Premises, the title thereto, the zoning thereof, 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 15.3) warranty, express or implied, in fact or at law, by Landlord or any other person, and without recourse to Landlord, as to any appurtenances hereto, the nature, condition or usability thereof, or the uses to which any or all of the Property may be put.

15.2 Titles and Mortgagees. Landlord hereby represents and warrants to Tenant that it is the fee simple owner of the Premises and that no mortgage exists against the Premises. Notwithstanding anything herein to the contrary, Landlord is hereby prohibited from mortgaging its fee estate after the execution hereof unless there is an express subordination, approved in writing by Tenant, the Permitted Leasehold Mortgagees, of Landlord's fee mortgage to Tenant's interest under this Lease and the Permitted Leasehold Mortgages described herein,

and Tenant is also prohibited from subordinating its leasehold estate to a subsequent mortgage of the fee estate obtained by Landlord. Landlord and Tenant each agree that this Ground Lease shall not terminate, nor shall Tenant's rights hereunder be affected, because of the conveyance of the Tenant's interest to the Landlord or the conveyance of the Landlord's interest in the Property to the Tenant.

15.3 Quiet Enjoyment. Landlord hereby (a) covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (i) is the owner of a fee simple estate in and to the Premises, subject to the operation and effect of and only of the Permitted Encumbrances, and (ii) has the full right, power and authority to enter into this Lease and thereby to lease the Premises; and (b) warrants that Tenant will have quiet and peaceful possession of the Property during the Term, so long as all of Tenant's obligations hereunder are timely performed, except if and to the extent that such possession is terminated pursuant to Sections 10 or 11 or any other provision of this Lease.

15.4 Limitation on Liability. Nothing in this Lease shall be deemed to impose on Landlord any liability on account of any act or failure to act by any person other than Landlord.

SECTION 16 NOTICES. Any notice, demand, consent, approval, request or other communication or document to be given pursuant to this Lease must be in writing and will be deemed served and given at the time of: (a) three (3) business days after deposit in a depository receptacle under the care and custody of the United States Postal Service, properly addressed to the designated address of the addressee as set forth on Exhibit C, postage prepaid, registered or certified mail with return receipt requested, (b) delivery to the designated address of the addressee set forth below by a third party commercial delivery service, whether by overnight delivery or courier, (c) receipt at the facsimile receiving facility of the addressee if transmitted by facsimile transmission, or (d) receipt at the electronic mail address of the receiving facility of the addressee if evidenced by a read receipt returned electronically from the receiving facility to the sending facility. Notice given in any other manner will be effective only if and when received by the addressee. Any party has the right to change its address, facsimile numbers or electronic mail address for notice hereunder to any other location within the continental United States by giving notice to the other parties of such new address at least thirty (30) calendar days prior to the effective date of such new address.

SECTION 17 TENANT'S OPTION TO PURCHASE. If at the end of the Term, or if at the end of the Term as extended pursuant to Section 2.6, Tenant is not in default of any terms of this Lease, Tenant shall have the option and right of first refusal to purchase the Property subject to and in accordance with the following:

17.1 Tenant shall give Landlord notice of Tenant's intent to exercise its option to purchase not later than 120 days prior to the Termination Date or the Extended Termination Date as applicable, but not sooner than 180 days prior to the Termination Date or Extended Termination Date as applicable;

17.2 The purchase option price will be determined as follows:

17.2.1 Within 30 days of Tenant's notice of intent to exercise its option to purchase, Tenant or Tenant's lender shall provide Landlord at Tenant's expense an appraisal of the Property determining its fair market value performed by a qualified real estate appraiser

licensed in Texas.

17.2.2 The Landlord may elect to either accept the offer by Tenant for an amount equal to the fair market value of the Property as determined by the Tenant's appraisal or, elect to have its own appraisal of the Property performed within 30 days after receipt of Tenant's appraisal by a qualified real estate appraiser licensed in Texas.

17.2.3 Landlord's right to elect an alternate appraisal is waived if Landlord fails to provide Tenant with an alternate appraisal within 30 days of Landlord's receipt of the appraisal from Tenant or Tenant's lender.

17.2.4 The parties agree that the purchase price will be the average of the two appraisals, or in the event that landlord fails to timely provide or elects not to provide an alternate appraisal, the purchase price will be the fair market value as determined in the appraisal provided by Tenant or Tenant's lender.

17.3 Within 75 days of Tenant's notice of intent to exercise its option to purchase, Tenant shall provide Landlord with an acceptable earnest money contract to purchase the property for the purchase price determined by this section, including an earnest deposit for \$10,000.00.

17.4 Tenant's earnest money contract shall specify a closing date no later than the Termination Date or the Extended Termination Date as applicable.

17.5 Tenant's option and right of first refusal may not be assigned without Landlord's specific prior written approval to assign the option and right.

SECTION 18 GENERAL.

18.1 Effectiveness; Contingent Upon Board Approval. Excepting only those rights granted to Tenant to act as Landlord's limited agent under Section 18.16, this Lease, along with any and all rights in this Lease, including Tenant's Option to Purchase in Section 17, is contingent upon approval by the Board and is not effective until such approval. If execution of this Lease is not approved by the Board prior to March 26, 2009, this Lease shall automatically terminate and be of no further force and effect.

18.2 Complete Understanding. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, 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 a right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein.

18.3 Amendment. This Lease may be amended by and only by a written instrument executed and delivered by each party hereto.

18.4 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 Landlord under this Section or any other provision of this Lease (including but not limited to 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 Landlord would otherwise have against Tenant on account of such Event of Default under this Lease or applicable law (Tenant hereby acknowledging that, in the interest of maintenance of good relations between Landlord and Tenant, there may be instances in which Landlord chooses not immediately to exercise some or all of its rights if an Event of Default occurs).

18.5 Applicable Law. This Lease shall be given effect and construed by application of the law of the State of Texas, and any action or proceeding arising hereunder shall be brought in the courts of the State of Texas; provided, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the Western District of Texas, Austin Division or any successor federal court having original jurisdiction.

18.6 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. on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

18.7 Headings. The headings of the 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.

18.8 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 Section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such section, subsection, paragraph or subparagraph of this Lease.

18.9 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.

18.10 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.

18.11 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.

18.12 Commissions. Each party hereto hereby represents and warrants to the other that, in connection with the leasing of the Premises and the Improvements 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.

18.13 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 reasonable attorneys' fees incurred by the prevailing party in connection with such judicial action.

18.14 No Leasehold Mortgage Unless Permitted. No Mortgage or security interest in all or any part of the Leasehold Estate granted by this Lease may be granted by Tenant without the prior written consent of Landlord. Landlord may in its sole discretion condition its consent to a leasehold mortgage upon the leasehold mortgagee's agreement to subordinate its security interests and liens created thereby to the security interest and lien of a First Leasehold Mortgage.

18.15 Third Party Rights - Permitted Leasehold Mortgagees.

18.15.1 Permitted Leasehold Mortgagees. Notwithstanding anything to the contrary set forth elsewhere in this Lease, Landlord and Tenant hereby acknowledge and agree that the Permitted Leasehold Mortgagees shall be deemed a third-party beneficiary of the provisions of this Lease which specifically grant the Permitted Leasehold Mortgagees rights and/or benefits, including, without limitation, those provisions which entitle the Permitted Leasehold Mortgagee to receive notice and exercise the right to cure. In connection therewith, the Permitted Leasehold Mortgagees may seek any and all remedies available to the Permitted Leasehold Mortgagees in order to enforce such provisions.

18.15.2 Permitted Leasehold Mortgage. Neither Tenant nor any successor in interest to the Premises or any part thereof shall, without the prior written consent of Landlord in each instance, such consent not to be unreasonably delayed, withheld or conditioned, 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 for the lien of the Permitted Leasehold Mortgage, and except an inchoate lien for taxes or municipal obligations. With respect to a Permitted Leasehold Mortgage and notwithstanding anything to the contrary set forth in this Lease, the following provisions shall apply:

(a) Landlord agrees to accept payment or performance by any Permitted Leasehold Mortgagee as though Tenant had done the same, and any Permitted Leasehold Mortgagee shall have the right to cure any breach, default or Event of Default within the time periods provided in this Section 18.15.2.

(b) With respect to any notice of default or event of default any Permitted Leasehold Mortgagee gives to Tenant under the provisions of the Permitted Leasehold Mortgagee's loan documents, the Permitted Leasehold Mortgagee shall also use its best efforts to send a copy of any such notice to Landlord, and Tenant shall also within five (5) business days after Tenant receives such notice, send a copy thereof to Landlord.

(c) Landlord agrees to simultaneously give the Permitted Leasehold Mortgagees, at the addresses for the Permitted Leasehold Mortgagees set forth on **Exhibit C** or as subsequently modified in writing, attached hereto and made a part hereof, a written copy of all notices and demands that Landlord gives to Tenant. No notice or demand under this Lease shall be effective until after the Permitted Leasehold Mortgagees have been given such notice. All notices of a default or an Event of Default given by Landlord under this Lease shall describe the default or Event of Default with reasonable detail and set forth all of the applicable cure period(s).

(d) After receipt by Tenant of a notice of an Event of Default under this Lease, and the expiration of any applicable period of cure given to Tenant under this Lease, Landlord shall deliver an additional notice ("**Mortgagee's Notice**") to the Permitted Leasehold Mortgagees. Such notice shall specify the Event of Default and shall state that Tenant's period of time to cure has expired. Any Permitted Leasehold Mortgagee shall thereupon have the additional periods of time to cure any uncured Event of Default set forth below; provided, however, the Permitted Leasehold Mortgagee electing to cure there Event of Default shall pay to Landlord within thirty (30) calendar days following receipt of Mortgagee's Notice an amount equal to any due and unpaid Rent (other than accrued but unpaid Base Rent) as a condition to curing any Event of Default that is based upon the non-payment of Rent, plus any other monetary amounts due Landlord under Section 13.1.2 as a condition to curing any Event of Default based upon a non-monetary default under Section 13.1.3. For any non-monetary default, Landlord shall not terminate this Lease or exercise any other remedies under this Lease which result in a denial of Tenant's right to occupy the Premises under the Lease, if:

(i) the Event of Default can be cured without possession of the Property, within ninety (90) calendar days after the Permitted Leasehold Mortgagee's receipt of the Mortgagee's Notice, any Permitted Leasehold Mortgagee (A) cures the Event of Default, or (B) if the Event of Default reasonably requires more than ninety (90) calendar days to cure, commences to cure the Event of Default and diligently prosecutes the same to completion; or

(ii) the Event of Default cannot be cured by payment or expenditure of money or other action without possession of the Property, and any Permitted Leasehold Mortgagee initiate foreclosure or other appropriate proceedings to obtain possession within ninety (90) calendar days after receipt of the Mortgagee's Notice, cures all other Events of Default reasonably capable of cure, complies with all other covenants and conditions of this Lease reasonably capable of compliance that Tenant is otherwise required to comply with, pays all Rent (other than accrued Base Rent), all Taxes and insurance premiums otherwise required to be paid by Tenant under this Lease, and pursues such foreclosure or other appropriate proceeding to completion with due diligence.

(e) Landlord agrees to accept performance by any Permitted Leasehold Mortgagee of all cures, conditions and covenants as though performed by Tenant. Landlord and Tenant agree to permit the Permitted Leasehold Mortgagees access to the

Property to take all such actions as may be necessary or useful to perform Tenant's covenants under this Lease or to cure an Event of Default of Tenant.

(f) If any Permitted Leasehold Mortgagee elects any of the above-mentioned options in this Section 18.15.2, then upon such Permitted Leasehold Mortgagee's or its nominee's acquisition of this Lease by foreclosure, whether by power of sale or otherwise or by deed or assignment in lieu of foreclosure, or by a receiver if appointed, this Lease shall continue in full force and effect, provided that, if such Permitted Leasehold Mortgagee elects the option provided in Section 18.15.2(d) above, then upon such Permitted Leasehold Mortgagee's acquisition of this Lease, it shall cure all prior Events of Default of Tenant within the time and to the extent set forth in Section 18.15.2(d) above, and Landlord shall treat such Permitted Leasehold Mortgagee as Tenant under this Lease. If the Permitted Leasehold Mortgagee cures all Events of Default by Tenant within the time and to the extent set forth in Section 18.15.2(d) above and no Permitted Leasehold Mortgagee acquires this Lease, or if any Permitted Leasehold Mortgagee commences an action as set forth in Section 18.15.2(d), and thereafter Tenant cures such Event of Default (which cure Landlord shall be obligated to accept) and such Permitted Leasehold Mortgagee terminates all proceedings under the option in Section 18.15.2(d) above, then this Lease shall remain in full force and effect between Landlord and Tenant.

(g) In the event any Permitted Leasehold Mortgagee acquires Tenant's rights hereunder, and so long as there is no uncured Event of Default, Landlord shall enter into a new lease (a "**New Lease**") with the applicable Permitted Leasehold Mortgagee or its nominee, which New Lease shall cover the leasehold estate created by this Lease. The New Lease shall be for the remainder of the Term, effective as of the Permitted Leasehold Mortgagee's acquisition, and shall include all the covenants, agreements, conditions, provisions, restrictions and limitations contained in this Lease, including the Rent provisions. In connection with a New Lease, Landlord shall assign to the applicable Permitted Leasehold Mortgagee or its nominee all of Landlord's interest in all existing subleases of all or any part of the Property and all attornments given by the subtenants. Landlord shall not terminate or agree to terminate any sublease or enter into any New Lease or sublease for all or any portion of the Property without the applicable Permitted Leasehold Mortgagee's prior written consent, unless such Permitted Leasehold Mortgagee fails to deliver its request for a New Lease under this Section 18.15.2(g).

(h) The applicable Permitted Leasehold Mortgagee, its nominee or any other purchaser at a foreclosure sale of the Permitted Leasehold Mortgage (or such Permitted Leasehold Mortgagee or its nominee if one of them enters into a New Lease with Landlord) shall succeed to all the interest of Tenant in any deposits or other payments paid by Tenant to Landlord.

(i) Landlord and Tenant shall not agree between themselves to any cancellation, surrender, amendment or modification of this Lease without the prior written consent of the applicable Permitted Leasehold Mortgagee, and no such cancellation, surrender, amendment or modification shall be effective without such consent.

(j) No Permitted Leasehold Mortgagee shall have any personal liability under this Lease, until such time as it becomes a mortgagee in possession, acquires the interest of the Tenant by foreclosure or sale pursuant to its applicable Permitted Leasehold Mortgage, or becomes a tenant under a New Lease.

18.15.3 Inability to Commence Foreclosure. So long as the Permitted Leasehold Mortgagees are prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the Permitted Leasehold Mortgagees shall not be deemed for that reason to have failed to commence such proceedings or to have failed to diligently prosecute such proceedings, provided that the Permitted Leasehold Mortgagees use reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

18.16 Authorizations. Landlord hereby grants Tenant a limited right to act as agent for Landlord, and with Landlord's full permission granted hereby may act as agent for Landlord under §25-1-81 of the Code of the City of Austin, for the limited purpose of requesting, applying for, and obtaining a permit or approval authorizing a particular use of the Property or a structure on the Property that may be regulated by Chapter 25 of the Code of the City of Austin.

Such right and agency is limited to the term of this lease and does not grant any right to request a permit for use of the Property or any structure thereon that is not in furtherance of the terms or intent of this Lease. Upon Tenant's request, landlord will promptly provide evidence of Tenant's authority and agent relationship under this section. Whether or not the benefit of any action taken by Tenant acting as Landlord's agent under this section directly or indirectly benefits Landlord, Tenant assumes all costs associated with such actions.

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

LANDLORD:

AUSTIN HOUSING FINANCE CORPORATION

By: 

Margaret Shaw, Treasurer

TENANT:

CHESTNUT SENIOR HOUSING, INC.

a Texas Non-profit Corporation

By: 

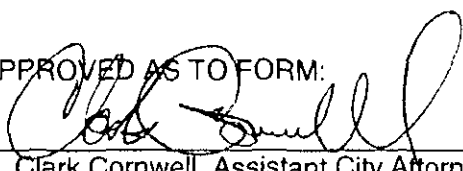
Name:

SEAN GARRETSON

Title:

PRESIDENT, CNRC

APPROVED AS TO FORM:



D. Clark Cornwell, Assistant City Attorney
Texas State Bar Number 00796406

Attached exhibits:

- Exhibit A - Description of Land
- Exhibit B - Permitted Encumbrances
- Exhibit C - Notice and Contact Information
- Exhibit D - Insurance Requirements

EXHIBIT A

DESCRIPTION OF LAND

The Land consists of:

Lot 1, MAUDE E. ROACH SUBDIVISION, an addition in the City of Austin, Travis County, Texas according to the plat recorded in Volume 65, Page 95, Plat Records of Travis County, Texas.

EXHIBIT B

SCHEDULE OF PERMITTED ENCUMBRANCES

Those items recorded in the Real Property Records of Travis County, Texas, and listed on Schedule B of the Commitment for Title Insurance issued by Ticor Title Insurance Company dated March 5, 2008:

1. Five foot public utility easement along the western, northern, and eastern property lines as recorded in Volume 65, Page 95, Plat Records of Travis County, Texas.
2. Building setback lines as set out on the plat recorded in Volume 65, Page 95, Plat Records of Travis County, Texas.

NOTICE AND CONTACT INFORMATION

Landlord: AUSTIN HOUSING FINANCE CORPORATION
1000 Eleventh Street, Suite 300
Austin, Texas 78702
Attn: RHDA Program Manager
Facsimile No.: (512) 974-3161
Electronic Mail Address: gary.adrian@ci.austin.tx.us

Tenant: CHESTNUT SENIOR HOUSING, INC.
2211 East Martin Luther King, Jr. Blvd
Austin, TX 78702
Attn: _____
Facsimile No.: 512-_____
Electronic Mail Address: _____

Exhibit D

INSURANCE REQUIREMENTS

A. Policies and Certificates of Insurance. The Tenant agrees to (1) carry and maintain, and (2) require its agents or contractors performing any services or work related to the Premises or improvements to the Premises to carry and maintain, insurance in the following types and amounts for the duration of this Lease, and furnish certificates of insurance and make available copies of policy declaration pages and policy endorsements as evidence thereof:

1. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers Liability of \$100,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee, including.

- (a) Waiver of Subrogation in favor of the Landlord, endorsement WC420304, and
- (b) Thirty (30) Day Notice of Cancellation in favor of the Landlord, endorsement WC 420601

2. Commercial General Liability with a combined single limit of \$500,000 per occurrence for coverages A&B including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under the Lease and all contracts relative to the project.
- (b) Independent Contractors coverage.
- (c) Landlord listed as an additional insured, endorsement CG 2010.
- (d) Thirty (30)-day Notice of Cancellation in favor of the Landlord, endorsement CG 0205.
- (e) Waiver of Transfer of Rights of Recovery Against Others in favor of the Landlord, endorsement CG 2404.

3. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the Landlord:

- (a) Waiver of Subrogation endorsement TE 2046A.,

- (b) Thirty (30)-day Notice of Cancellation, endorsement TE 0202A., and
- (c) Additional Insured, endorsement TE 9901B.

4. Professional Liability Insurance with a minimum limit \$500,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs, or specifications prepared or alleged to have been prepared by the assured. The policy shall provide for 30 day notice of cancellation in favor of the Landlord.

B. General Requirements.

1. The Tenant shall be responsible for insurance premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificates of insurance required above.

2. Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of commencement of this Lease and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The Tenant shall maintain continuous coverage for the duration of this Lease and for not less than twenty-four (24) months following the termination of the Lease. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Lease. The Tenant shall, on at least an annual basis, provide the Landlord with a certificate of insurance as evidence of such insurance.

3. If insurance policies are not written for amounts specified above, the Tenant shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

4. The Tenant shall not authorize entry of any contractors on to the Premises or improvements to the Premises until Tenant has obtained the required insurance and certificates of insurance from the contractors, and until such insurance has been reviewed by the Landlord. Approval of insurance by Landlord shall not relieve or decrease the liability of the Tenant hereunder.

5. Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A. M. Best rating of B+VII or better.

6. Certificate of Insurance and all endorsements shall read:

Austin Housing Finance Corporation

Attn: RHDA Program Manager
1000 East 11th Street, Suite 300
Austin, Texas 78702

7. The "other" insurance clause shall not apply to the Landlord where Landlord is an additional insured shown on the policy. It is intended that policies required in this Lease, covering both the Landlord and the Tenant, shall be considered primary coverage as applicable.

8. The Landlord may, upon request and without expense, receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

9. The Tenant shall not cause any insurance required under this Lease to be canceled or permit any insurance to lapse during the term of this Lease.

10. The Landlord reserves the right to review the insurance requirements of this section during the effective period of the Lease and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions or the claims history of the industry as well as the Tenant (such adjustments shall be commercially available to the Tenant).

11. Actual losses not covered by insurance as required by this Lease shall be paid by the Tenant.