

**GROUND LEASE**

**between**

**AUSTIN HOUSING FINANCE CORPORATION,  
as Landlord**

**and**

**AUSTIN DMA HOUSING III, LLC,  
as Tenant**

**Dated as of March 1, 2018**

# GROUND LEASE

between

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and

**AUSTIN DMA HOUSING III, LLC, as Tenant**

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#### **Addenda and Exhibits**

Exhibit A	Description of Land
Exhibit B	Schedule of Permitted Encumbrances
Exhibit C	Notice Addresses

## **GROUND LEASE**

This Ground Lease (the “**Lease**”) is dated as of March 1, 2018 (and effective March 15, 2018), by and between the undersigned parties: **AUSTIN HOUSING FINANCE CORPORATION**, a Texas housing finance corporation established under Section 394 of the Texas Local Governmental Code, as amended, having an address at 1000 East 11<sup>th</sup> Street, Suite 200, Austin, Texas 78702, as landlord (“**Landlord**”), and **AUSTIN DMA HOUSING III, LLC**, a Texas limited liability company, having an address at 4101 Parkstone Heights, Suite 310, Austin, Texas 78746, as tenant (“**Tenant**”).

### **R E C I T A L S**

**WHEREAS**, Landlord is a housing finance corporation established under the laws of the State of Texas, with its offices in the City of Austin, Texas, and is the owner of certain Land (as defined herein) all of which Landlord has agreed to lease under the terms and conditions hereof to Tenant for Tenant’s construction and operation of a rental project (“**Project**”) to be comprised of 174 rental units (the “**Units**”); and

**WHEREAS**, Tenant and Landlord intend that 141 of the Units shall be rented to Residents (hereinafter defined) whose incomes do not exceed sixty percent of the area median income so as to qualify the Units for Low Income Housing Tax Credits as defined in Section 42 of the Code (as defined herein), and that certain of such Units will be subject to additional restrictions (the “**Restricted Units**”); and

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

**NOW THEREFORE, IN CONSIDERATION** of the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord all of that tract of land in the City of Austin, Texas, which is described in Exhibit A attached hereto, together with any and all rights, alleys, right of ways, privileges, appurtenances, easements, and advantages, to the same belonging or in any way appertaining (collectively, the “**Land**”);

**SUBJECT TO THE OPERATION AND EFFECT** of the Permitted Encumbrances,

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

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

## **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 4.1.2.

“**Administrative Member**” means DMA Nightingale, LLC, a Texas limited liability company, together with its successors and assigns

“**Annual Rent**” has the meaning given to it in paragraph 4.1.1.

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

(a) if and when such Person (i) applies for or consents to the appointment of a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of its creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with its creditors or seeks to take advantage of any insolvency law, (v) performs any other act of bankruptcy, or (vi) files an answer admitting the material allegations of a petition filed against such Person in any bankruptcy, reorganization or insolvency proceeding; or

(b) if (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating such Person a bankrupt or an insolvent, approving a petition seeking such an adjudication, or reorganization, or appointing a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, or (ii) there otherwise commences with respect to such Person or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for any period of ninety (90) consecutive days after the expiration of any stay thereof.

“**Bill of Sale**” has the meaning given it in paragraph 20.2.

“**CBLP Diminution**” has the meaning given to it in Section 20.1(a).

“**City**” means the City of Austin, Texas.

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

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

“**Compliance Period**” means the fifteen year tax credit compliance period under Section 42 of the Code.

“**Construction Completion Date**” has the meaning given it in paragraph 9.1.3.

“**Conveyance Documents**” shall have the meaning given it in paragraph 20.2.

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

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

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

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

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



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

**“Ground Lease Assignment”** has the meaning given it in paragraph 20.2.

**“Hazardous Materials”** means any pollutants, contaminants or industrial, toxic, hazardous or extremely hazardous chemicals, wastes, materials or substances, and in such amounts, which are defined, determined, classified or identified as such in any Environmental Law or in any judicial or administrative interpretation of any Environmental Law, including, without limitation, oil, petroleum, petroleum by-products, friable asbestos, polychlorinated biphenyls and urea formaldehyde, excluding, within legal limits, household cleaners, lawn products and pesticides.

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

**“HUD”** means the United States Department of Housing and Urban Development.

**“ILP Diminution”** has the meaning given to it in Section 20.1(a).

**“Improvements”** means any and all buildings, structures, alterations, improvements, fixtures, and non-movable Equipment now located or at any time in the future located on or in the Premises, and all subsequent alterations, additions, and/or replacements thereto and/or thereof.

**“Independent Appraiser”** has the meaning given to it in Section 20(b).

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

**“Investor Member”** means Boston Capital Direct Placement, A Limited Partnership, a Massachusetts limited partnership, and any entity which succeeds to its interest as an investor member in the Tenant.

**“Investor Members”** means the Investor Member and Special Investor Member.

**“Landlord”** means Landlord and its successors and assigns as owner of the Fee Estate.

**“Landlord Event of Default”** shall have the meaning given it in paragraph 15.5.

**“Landlord’s Related Parties”** shall have the meaning given it in paragraph 7.5.4.

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

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

**“Leasing Consideration Payment”** has the meaning given to it in paragraph 4.1.1.

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

**“LIHTC/Bond/Additional Housing Requirements”** means (i) applicable Low Income Housing Tax Credits requirements as found in Section 42 of the Code, and as required by the Texas Department of Housing and Community Affairs for the appropriate extended use period, (ii) the applicable tax-exempt bond-related requirements as found in Section 142(d) and related sections of the Code, (iii) the affordable housing requirements set forth in the Landlord’s Special Warranty Deed for the Land, (iv) the affordable housing requirements set forth in the restrictive covenants relating to the subordinate loans made by Austin Housing Finance Corporation for the benefit of the Project, and (v) and other applicable affordable housing requirements with respect to the Project.

**“LURA”** has the meaning given to it in paragraph 8.1.

**“Managing Member”** means AHFC Nightingale Non-Profit Corporation, a Texas non-profit corporation, and any entity which succeeds to its interest as a managing member in the Tenant.

**“Mortgage”** means any mortgage or deed of trust at any time encumbering any or all of Tenant’s leasehold interest in the Property, and any other security interest therein existing at any time under any other form of security instrument or arrangement used from time to time in the locality of the Property (including but not limited to any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code – Secured Transactions, or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein. Notwithstanding anything to the contrary which may be construed hereunder, all Mortgages are subordinated in all respects to this Lease.

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

**“New Tenant”** has the meaning given to it in paragraph 8.3.

**“Operating Agreement”** means that certain Amended and Restated Operating Agreement of Austin DMA Housing III, LLC, as amended.

**“Operating Expenses”** has the meaning given it in paragraph 6.4.1.

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

**“Option Exercise Notice”** has the meaning given it in paragraph 20.1.

**“Partial Taking”** has the meaning given it in paragraph 13.4.

**“Permitted Encumbrances”** means any and all instruments and matters of record or in fact on the date hereof, including but not limited to the instruments and matters listed in a schedule attached hereto as Exhibit B and matters permitted under paragraph 9.1.10 herein, and including without limitation, the LURA, any liens or encumbrances securing any construction and/or permanent loans made to the Tenant, at Tenant’s request, in connection with the Project and matters permitted by Permitted Leasehold Mortgagees of such loans.

**“Permitted Leasehold Mortgage”** has the meaning given to it in paragraph 9.1.10.

**“Permitted Leasehold Mortgagee”** means the Person owed indebtedness the repayment of which is secured by a Permitted Leasehold Mortgage.

**“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 paragraph 9.1.1.

**“Premises”** mean the Land, together with all Improvements and Equipment now or hereafter thereon; provided, that if at any time any portion of the Premises becomes no longer subject to this Lease, “Premises” shall mean so much thereof as remains subject to this Lease.

**“Property”** means the Premises, the Improvements and the Equipment.

**“Purchase Price”** has the meaning given in paragraph 20.1.

**“Rent”** means the Leasing Consideration Payment, all Annual Rent, and all Additional Rent.

**“Resident”** means a person occupying a Unit in the Project pursuant to a Tenancy Agreement.

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

**“Special Investor Member”** means BCCC, Inc., a Massachusetts corporation, together with its successors and assigns.

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

“**TDHCA**” means the Texas Department of Housing and Community Affairs or a successor state department.

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

“**Tenant**” means Tenant and its successors and permitted assigns as holder of the Leasehold Estate.

“**Tenant’s Property**” has the meaning given it in paragraph 20.1.

“**Tenant’s Related Parties**” has the meaning given it in paragraph 7.5.4.

“**Term**” has the meaning given it in paragraph 3.1.1.

“**Termination Date**” has the meaning given it in paragraph 3.1.1.

“**Total Taking**” has the meaning given to it in paragraph 13.3.

“**Transfer**” has the meaning given it in paragraph 14.1.

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

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

**SECTION 2. TITLE.** Tenant and Landlord hereby acknowledge that the Fee Estate upon which the Improvements are to be constructed and operated is held exclusively by Landlord.

**SECTION 3. TERM.**

3.1 Length.

3.1.1 Original Term. This Lease shall be for a term (“**Term**”) commencing on March 15, 2018 (“**Commencement Date**”), and (b) terminating at 11:59 o’clock P.M. on the day immediately before the ninety-ninth (99th) anniversary of the first (1st) day of the first (1st) full calendar month following the Commencement Date (March 31, 2117 (the “**Termination Date**”, except that if the date of such termination is hereafter advanced to an earlier date or postponed pursuant to any provision of this Lease, or by express, written agreement of the parties hereto (and only with the written consent of the Managing Member, Investor Member, Permitted Leasehold Mortgagee and Administrative Member), or by operation of law, the date to which it

is advanced or postponed shall thereafter be the “**Termination Date**” for all purposes of this Lease). Nothing in this Lease shall be deemed in any way to extend or permit the extension of the Term beyond the ninety-ninth (99th) anniversary, anything in this Lease to the contrary notwithstanding.

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

### 3.2 Surrender.

3.2.1 Tenant shall, at its expense, at the expiration of the Term or any earlier termination of this Lease, subject to the terms of paragraph 3.4, (a) peaceably leave, quit and surrender the Premises promptly yield up to Landlord the Property in a condition similar to a like property of a similar age, subject to reasonable ordinary wear and tear, and damage by casualty, subject to Section 12, excepted, and broom clean, (b) remove therefrom Tenant’s personal property that is not part of the Property or otherwise owned by Landlord or a Resident, and (c) repair any damage to the Property caused by such removal, all subject to the rights of Residents in possession of Units under Tenancy Agreements with Tenant. Upon such expiration or termination, the Premises, Improvements and Equipment, 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 (other than the Permitted Encumbrances and such other encumbrances which may be granted from time to time in accordance with the terms hereof).

3.2.2 Upon such expiration or termination (whether by reason of an Event of Default or otherwise), (a) neither Tenant nor its representatives shall thereafter have any right at law or in equity in or to any or all of the Property (including the Units and the rest of the Improvements) or to repossess any of same, or in, to or under this Lease, and Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of any creditor of Tenant or any other Person whatsoever (but subject to the rights of any Person then holding any lien, right, title or interest in or to the Fee Estate, the Leasehold Estate, or the Property), and (b) Tenant hereby waives any and all rights of redemption which it may otherwise hold under any applicable law

### 3.3 Holding Over.

3.3.1 Nothing in this Lease shall be deemed in any way to permit Tenant to use or occupy the Premises after the expiration of the Term or any earlier termination of this Lease. If and only if Tenant continues to occupy the Premises after such expiration or termination after obtaining Landlord’s express, written consent thereto,

(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, by at least thirty (30) days before the end of any calendar month,

that the party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate;

(b) subject to the provisions of subparagraph 3.3.1(c), but anything in the remaining provisions of this Section to the contrary notwithstanding, the rent payable with respect to each such monthly period shall equal the Additional Rent payable under Section 4; and

(c) such month-to-month tenancy shall be on the same terms and subject to the same conditions as those set forth in this Lease, except that if Landlord gives Tenant, by at least thirty (30) days before the end of any calendar month during such month-to-month tenancy, written notice that such terms and conditions (including any thereof relating to the amount and payment of Rent) shall, after such month, be modified in any manner specified in such notice, then such tenancy shall, after such month, be on the said terms and subject to the said conditions, as so modified.

3.3.2 If Tenant continues to occupy the Premises 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, (a) Tenant hereby agrees to pay to Landlord immediately on demand by Landlord as holdover rental ("**Holdover Rent**") for the Premises, for each calendar month or portion thereof after such expiration of the Term or such earlier termination of this Lease, as aforesaid, until Tenant surrenders possession of the Premises to Landlord, a sum equaling the allocable monthly Additional Rent plus Fifty and 00/100 Dollars (\$50.00) per each day of such holdover occupancy, and (b) Tenant shall surrender possession of the Premises to Landlord immediately on Landlord's having demanded the same. Nothing in this Lease shall be deemed in any way to give Tenant any right to remain in possession of the Premises after such expiration or termination, regardless of whether Tenant has paid any such Holdover Rent to Landlord, without Landlord's express written approval.

3.4 Title to and Alterations of Improvements. At all times during the Term of this Lease, legal and beneficial title to the Improvements and the Equipment shall be vested in the Tenant and during the Term, to the extent permitted by applicable law, 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 and the right to claim the low-income housing tax credit described in Section 42 of the Code, if applicable, and Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Property.

#### **SECTION 4. RENT.**

4.1 Amount. As rent for the Premises, Tenant shall pay to Landlord:

4.1.1 Rent. Landlord hereby acknowledges the receipt of the payment of One Million Nine Hundred Fifty Thousand and 00/100 Dollars (\$1,950,000.00), representing the payment in full of 100% of the rent due for the entire Term of the Lease (the "**Leasing Consideration Payment**"). Accordingly, no annual rent ("**Annual Rent**") shall be due under this Lease.

4.1.2 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 (which Additional Rent shall include 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, other than the Leasing Consideration Payment). Such Additional Rent, unless required to be paid sooner hereunder, shall be due and payable within 30 days of Landlord’s written demand therefor.

4.2 Tax on Lease. If federal, state or local law now or hereafter imposes any tax, payment in lieu of tax, assessment, levy or other charge (other than any income tax) directly or indirectly upon (a) Landlord with respect to this Lease or the value thereof, (b) Tenant’s use or occupancy of the Premises, (c) the Rent, or (d) this transaction, Tenant shall pay the amount thereof as Additional Rent to Landlord upon demand unless Tenant is prohibited by law from doing so, provided Tenant shall not be obligated to pay any tax which is solely attributable to Landlord’s ownership interest as owner of the Land.

4.3 Security Deposit. None.

4.4 Net Lease. Other than as is expressly set forth in this Lease (and except for Landlord’s legal fees, third-party consultants retained by Landlord and Landlord’s own costs), all costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of Tenant’s Leasehold Estate shall be the sole responsibility of and payable by Tenant, including, but not limited to any reasonable cost, expenses, liabilities, charges or other sums incurred by Landlord in connection with this Lease that are Tenant’s responsibility pursuant to the terms of this Lease; all of which costs, expenses, liabilities and charges shall be deemed Additional Rent hereunder.

4.5 Condition of the Premises. **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 AT OR 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 HAZARDOUS MATERIALS 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 LEGAL REQUIREMENTS (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 5. USE OF PROPERTY.**

5.1 Nature of Use. Tenant shall throughout the Term use and operate the Property only for residential rental apartments and related uses, including the construction, development, operation, marketing for lease, and leasing of the Units, in each case in a manner which satisfies the requirements of this Lease.

5.2 Compliance with Law and Covenants. Tenant, throughout the Term and at its sole expense, in its development, construction, possession, operation, leasing and all other uses of the Premises, the Units, the Improvements, and the Equipment:

5.2.1 shall comply promptly and fully with (a) all applicable laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments and all departments, commissions, boards and officers thereof, including all applicable LIHTC/Bond/Additional Housing Requirements (all of which are hereinafter referred to collectively as “**Legal Requirements**”); and (b) all requirements imposed by any policy of insurance required by Section 7 to be maintained by Tenant (all of which are hereinafter referred to collectively as “**Insurance Requirements**”); and (c) the provisions of the other Permitted Encumbrances, all if and to the extent that any of the Legal Requirements, the Insurance Requirements or the said provisions relate to any or all of the Premises, the Improvements, the Equipment, the fixtures and equipment upon the Premises, or the use or manner of use thereof, whether any of the foregoing are foreseen or unforeseen, or are ordinary or extraordinary;

5.2.2 (without limiting the generality of the foregoing provisions of this subsection) shall keep in force throughout the Term all licenses, consents and permits required from time to time by all applicable Legal Requirements to permit the Property to be used in accordance with this Lease;

5.2.3 shall pay or cause to be paid before past due all personal property taxes, income taxes, license fees and other taxes or special assessments assessed, levied or imposed upon Tenant or any other Person (other than Landlord) in connection with the operation of the Project or its use thereof;



5.2.4 shall not take or fail to take any action, as the result of which action or failure to act Landlord's estate, right, title or interest in and to any or all of the Premises or the rest of the Property might be impaired; and

5.2.5 shall not (either with or without negligence) (a) knowingly cause or permit the escape, disposal or release of any Hazardous Materials, or (b) knowingly allow the storage or use Hazardous Materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, or (c) knowingly allow any Hazardous Materials to be brought onto the Property except to use in the ordinary course of Tenant's business or by Residents for use within the Units in quantities permitted under the Legal Requirements. If any Permitted Leasehold Mortgagee or governmental agency reasonably requires testing to ascertain whether or not there has been any release of Hazardous Materials on the Premises while this Lease is in effect, then the reasonable costs thereof paid by Landlord shall be reimbursed by Tenant to Landlord upon demand as Additional Rent if such requirement applies to the Premises. Tenant shall execute affidavits, representations and the like from time to time at Landlord's reasonable request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials on the Premises.

### 5.3 Restrictions Applicable to Units.

5.3.1 Tenant shall comply with the restrictive covenants contained in any land use restrictions that are now or hereafter recorded in the Land Records and pertain to the Property, including, without limitation, the LURA, the restrictive covenants in the Landlord's Special Warranty Deed for the Land and the restrictive covenants relating to the bonds issued by Austin Housing Finance Corporation and the loan made to the Tenant from the bond proceeds, the subordinate loan made by Texas Department of Housing and Community Affairs to the Tenant, and the subordinate loan made by Austin Housing Finance Corporation to the Tenant.

5.3.2 Tenant shall comply with the provisions of the Legal Requirements prohibiting discrimination in housing on the grounds of race, color, creed, national origin, sex, marital status, sexual orientation, 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).

5.3.3 The Restricted Units are subjected to and benefited by the terms and conditions of the LIHTC/Bond/Additional Housing Requirements. All LIHTC/Bond Housing/Additional Requirements and this Section 5 with respect to applicable Restricted Units shall be binding upon Landlord and Tenant and each of their respective successors and assigns, except for, to the extent permitted by applicable Legal Requirements, any entity which succeeds to Tenant's interest in the Premises by foreclosure or an instrument in lieu of foreclosure. The Landlord (in its capacity as Landlord) shall have no control or participation in the control or operation of the Property and shall not be entitled to any benefits from or uses thereof except for the Rent required hereunder.

5.3.4 Notwithstanding anything to the contrary contained in this Lease, following foreclosure by any Permitted Leasehold Mortgagee or assignment of the Leasehold

Estate in lieu of such foreclosure, the use restrictions contained in this Section 5.3 shall be terminated and of no further force and effect to the extent permitted by applicable Legal Requirements.

## **SECTION 6. TAXES AND OPERATING EXPENSES.**

6.1 Tenant to Pay. Tenant (a) shall bear the full expense of any and all real property, personal property or other taxes, including any and all PILOT Payments, if applicable, city, county, metropolitan district charges or other state or local assessments, charges or fees levied against any or all of the Premises, the Units, the other Improvements and the Equipment, whether against the Fee Estate or the Leasehold Estate therein, or the condominium association, if any, and payable with respect to any calendar or tax year or other period falling wholly or partly within the Term, including but not limited to any assessments or fees levied against the Units pursuant to any Permitted Encumbrances (all of which are hereinafter referred to collectively as “**Taxes**”), except that if any such tax, charge or assessment is levied with respect to a period beginning before the Commencement Date or ending after the Termination Date, Tenant shall bear the full expense of only that percentage thereof equaling the percentage of such period falling within the Term; (b) shall pay the same before past due and before any penalty is incurred for late payment thereof; and (c) shall deliver to Landlord the receipted bill for such Taxes within ten (10) days after Landlord requests it from Tenant in writing. Tenant shall not be required to pay any income taxes otherwise chargeable to the Landlord. Landlord hereby agrees, as owner of the Premises, to use its best efforts to maintain any existing or future ad valorem tax exemption under the Texas Tax Code for the Premises.

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

6.3 Tenant Proceedings to Contest; Indemnification of Landlord. Tenant may, without postponing payment thereof, as aforesaid, bring proceedings to contest any Legal Requirement and to contest the validity or the amount of any Taxes, or to recover any amount thereof paid by 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. Landlord shall, upon written request by Tenant, cooperate with Tenant in taking any such action, provided that Tenant indemnifies and holds harmless Landlord against and from any expense or liability arising out of such cooperation.

6.3.1 Property Tax Exemption. The Property is anticipated to qualify for exemption from all state and local government real estate taxes. Tenant and Landlord, and/or Landlord’s successors, will use best efforts to entitle the Property to qualify for the exemption from state and local government real estate taxes. Landlord agrees not to take any action within its reasonable control which would jeopardize the property tax exemption, and further agrees to take such commercially reasonable action as Tenant or Investor Member may request (at

Tenant's expense) to preserve such real estate taxes, unless such action is otherwise prohibited by law.

#### 6.4 Operating Expenses.

6.4.1 Tenant's Obligations. Subject to Tenant's legal rights to dispute expenses, 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 and rehabilitation, completion, marketing, leasing, maintenance, management and occupancy of the Premises, including the Improvements (collectively, "**Operating Expenses**"), including without limitation (a) all energy sources for the Improvements, such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) all water, sewer and trash disposal services; (c) all maintenance, repair, replacement and rebuilding of the Improvements including, without limitation, all Equipment; (d) all landscaping, maintenance, repair and striping of all parking areas; (e) all insurance premiums relating to the Premises and the Improvements, including fire and extended coverage, public liability insurance, rental insurance and all risk insurance; 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.

6.4.2 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 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.

6.5 Right to Pay Taxes and Senior Mortgage. Any Permitted Leasehold Mortgagee, Investor Member or Administrative Member shall have the right (but not the obligation) to pay any taxes payable by Landlord or Tenant with respect to the Premises, and to cure any monetary or non-monetary default by Landlord or Tenant under any Mortgage (excluding, with respect to a Permitted Leasehold Mortgagee, such Permitted Leasehold Mortgagee's Permitted Leasehold Mortgage) or other encumbrance on the Premises which has priority over the Lease, but only to the extent permitted by such Permitted Leasehold Mortgagee's Permitted Leasehold Mortgage; and if a Permitted Leasehold Mortgagee or Investor Member or Administrative Member do so pay or cure, Landlord or Tenant, as applicable, agrees that it will reimburse the Permitted Leasehold Mortgagee, Investor Member or Administrative Member, as applicable, for the amount thereof promptly following request by such Permitted Leasehold Mortgagee, Investor Member or Administrative Member, as applicable, therefor unless the Landlord or Tenant is protesting such taxes in good faith.

### **SECTION 7. INSURANCE AND INDEMNIFICATION.**

7.1 Insurance to be Maintained by Tenant. Tenant shall maintain at its expense throughout the Term the insurance specified in the Operating Agreement, as the same may be

reasonably modified from time to time due to changes in such insurance, as customarily provided for projects similar in scope and size to the Project, subject to Landlord's approval. Nothing in this subsection 7.1 is intended, nor shall be construed, to relieve Tenant from compliance with all of the insurance requirements imposed upon Tenant under each Permitted Leasehold Mortgage. All insurance coverages shall have waiver of subrogation provisions reasonably acceptable to Landlord and Tenant. Approval, disapproval or failure to act by Landlord regarding any insurance applied by Tenant shall not relieve Tenant of full responsibility or liability for damages or accidents as set forth in this Lease. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Tenant from any such liability.

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

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

7.4 Evidence. Tenant shall deliver to Landlord no later than thirty (30) days after the Commencement Date a certificate of insurance or a signed duplicate copy of each such policy, and upon Landlord's request, Tenant shall deliver to Landlord a certificate of insurance 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.

7.5 Indemnification of Landlord.

**7.5.1 TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD FROM THIRD PARTY CLAIMS NOT ATTRIBUTABLE TO LANDLORD'S OR ANY OF LANDLORD'S RELATED PARTIES' ACTION OR INACTION AND AGAINST AND FROM ANY AND ALL LIABILITY, CLAIM OF LIABILITY OR REASONABLE EXPENSE INCURRED BY LANDLORD AND ARISING OUT OF OR IN ANY WAY CONNECTED WITH (A) THE DEVELOPMENT, CONSTRUCTION, USE, OCCUPANCY, CONDUCT, OPERATION OR MANAGEMENT OF THE PROPERTY DURING THE TERM, OR (B) ANY WORK OR THING WHATSOEVER DONE OR NOT DONE ON THE PROPERTY DURING THE TERM OR ARISING OUT OF ANY FAILURE OF TENANT'S COVENANTS OR**

WARRANTIES IN SECTION 9.1.9, 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 TENANT'S RELATED PARTIES DURING THE TERM, OR (E) ANY INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO ANY PROPERTY, OCCURRING ON THE PROPERTY DURING THE TERM OR (F) ANY DEFAULT OR BREACH BY TENANT OF ANY PERMITTED LEASEHOLD MORTGAGE, AND FROM AND AGAINST ALL REASONABLE 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, THE PORTION OF ANY LIABILITY, CLAIM OF LIABILITY OR EXPENSE CAUSED WHOLLY AND DIRECTLY BY LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES. THIS SUBSECTION 7.5.1 SHALL SURVIVE THE TERMINATION OF THIS LEASE. SPECIFICALLY, AND NOT BY WAY OF LIMITATION OF ANY OTHER PROVISION HEREUNDER, TENANT SHALL INDEMNIFY LANDLORD FOR ANY LOSS SUFFERED BY LANDLORD UPON A REPURCHASE OF THE LAND BY THE GRANTOR PURSUANT TO EXHIBIT C OF THE LANDLORD'S SPECIAL WARRANTY DEED FOR THE LAND.

7.5.2 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 REASONABLE EXPENSES AND LIABILITY WHATSOEVER, INCLUDING REASONABLE ATTORNEYS' FEES, ON ACCOUNT OF ANY SUCH REAL OR CLAIMED DAMAGE OR LIABILITY SUSTAINED BY THIRD PARTIES AND FROM ALL LIENS, CLAIMS AND DEMANDS OCCURRING IN OR AT THE PREMISES, OR ARISING OUT OF THE CONSTRUCTION, USE, OCCUPANCY OR ENJOYMENT OF THE PREMISES AND ITS FACILITIES, OR ANY REPAIRS OR ALTERATIONS WHICH TENANT MAY MAKE UPON THE PREMISES, OR OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF TENANT OR ANY OF TENANT'S RELATED PARTIES, OTHER THAN THE PORTION OF CLAIMS, ACTIONS, DEMANDS, COSTS AND EXPENSES AND LIABILITIES ARISING DIRECTLY AND SOLELY FROM THE ACTS OR OMISSIONS OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES.

7.5.3 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.**

**7.5.4 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 OR RESIDENTS OF THE UNITS RESULTING FROM CRIMINAL ACTIVITIES IN OR ABOUT THE PREMISES, INCLUDING ALL COSTS, REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED. TENANT SHALL DEFEND ANY SUCH CLAIM, CAUSE OF ACTION OR SUIT MADE OR BROUGHT AGAINST LANDLORD OR LANDLORD'S RELATED PARTIES AT TENANT'S SOLE REASONABLE 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. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION 7.5.4, TENANT SHALL HAVE NO OBLIGATION TO INDEMNIFY LANDLORD PURSUANT TO THIS SECTION 7.5.4 IF SUCH LIABILITY ARISES DIRECTLY OR INDIRECTLY FROM THE ACTS OR OMISSIONS OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES.**

**7.5.5 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, REASONABLE 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 FROM THE PROPERTY OF ANY HAZARDOUS MATERIALS. THE FOREGOING INDEMNITY SHALL BE LIMITED TO MATTERS THAT ARE NOT CAUSED BY ACTS OF GOD AND NOT CAUSED BY LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES. THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT THE LIABILITY OF THE TENANT FOR SUCH MATTERS WHICH OCCUR DURING THE TERM, BUT WHICH ARE DISCOVERED SUBSEQUENT TO THE EXPIRATION OF THE TERM.**

**7.5.6 Notwithstanding anything in this Section 7.5 or in Section 4.5 to the contrary, in no event shall Tenant be liable to Landlord hereunder for (i) any Hazardous Materials contamination or conditions existing prior to the commencement of this Lease, unless any Legal Requirement imposes such liability, (ii) any item caused by the Landlord or any of Landlord's Related Parties, (iii) any environmental contamination migrating onto the Land from**

adjacent property, except to the extent such migration is exacerbated by Tenant, and (iv) any item caused by any managing member of the Tenant so long as the managing member of Tenant is an Affiliate of Landlord.

7.6 Increase in Risk. Tenant:

7.6.1 shall not do or permit to be done any act or thing as a result of which either (a) any policy of insurance of any kind covering any or all of the Property or any liability of Landlord in connection therewith becomes void or suspended and such insurance policy is not replaced, or (b) the insurance risk under any such policy would (in the opinion of the insurer thereunder) be made materially greater and action is not taken to address the risk; and

7.6.2 if such insurance is maintained by Landlord, Tenant shall pay as Additional Rent the amount of any increase in any premium for such insurance resulting from any breach of such covenant, within ten (10) business days after Landlord notifies Tenant in writing of such increase.

7.7 Insurance Proceeds and Condemnation Awards. Landlord and the Tenant hereby agree that any and all property insurance proceeds and/or condemnation awards received by the Tenant or Landlord in connection with the Property shall be treated as set forth in the most senior Permitted Leasehold Mortgage.

**SECTION 8. PERMITTED LEASEHOLD MORTGAGE REQUIREMENTS.**

8.1 Future Fee Estate Mortgages. Other than Permitted Encumbrances and restrictive covenants comprising a Land Use Restriction Agreement (“LURA”) required by TDHCA, the Landlord (pursuant to the Landlord’s Special Warranty Deed for the Land) or Austin Housing Finance Corporation as issuer of tax-exempt bonds under Section 142(d) of the Internal Revenue Code or as lender of two subordinate loans made with respect to the Property), Landlord shall not consent to any future mortgages or permit any future liens, or encumbrances against the Fee Estate or Premises, or otherwise pledge, subordinate, assign or otherwise dispose of the Fee Estate or Premises, without the prior written consent of Tenant, Investor Member and all Permitted Leasehold Mortgagees. To the extent a future mortgage on the Fee Estate is permitted hereunder, such mortgage shall expressly provide that it is subordinate and subject to the Tenant’s interest under this Lease. Additionally, the Tenant shall not subordinate its interest in the Leasehold Estate to any future mortgage of the Fee Estate obtained by Landlord.

8.2 Nonmerger. This Lease shall not terminate as to any Permitted Leasehold Mortgagee because of any conveyance of Tenant’s interest in the Leasehold Estate to Landlord or of the Landlord’s interest hereunder to the Tenant. Accordingly, if the Leasehold Estate and the Fee Estate are commonly held, then they shall remain separate and distinct estates. They shall not merge without the prior written consent from all Permitted Leasehold Mortgagees and Investor Member.

8.3 Foreclosure Rights of Permitted Leasehold Mortgagee. Upon foreclosure or assignment in lieu of foreclosure of the Leasehold Estate, the most senior Permitted Leasehold Mortgagee shall have the right to acquire the Lease in its own name or the name of a nominee without consent or approval of Landlord. In the event that Tenant’s interest in the Leasehold

Estate is acquired by any Permitted Leasehold Mortgagee, or its nominee, then such Permitted Leasehold Mortgagee, or its nominee, shall also have the right to further assign or sublet the Leasehold Estate to a third party with the consent of Landlord.

Foreclosure of any Permitted Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Leasehold Mortgage, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of, or a default under, the Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under the Lease (the “**New Tenant**”). Following such foreclosure, sale or conveyance in lieu thereof, the New Tenant shall have the right to further assign or sublet the Leasehold Estate to a third party with the consent of Landlord.

8.4 Obligations of New Tenant. The New Tenant shall only be personally obligated for performance of obligations under the Lease commencing as set forth in Section 21.20 hereof and ending as of the date of any permitted assignment of the Lease to a successor Tenant. New Tenant shall take the Leasehold Estate subject to the agreements, covenants, conditions and terms of this Lease on the part of Tenant to be kept, observed and performed, subject to the foregoing subsection.

8.5 Voluntary Surrender. Notwithstanding anything set forth in this Lease to the contrary, Landlord shall not accept a voluntary surrender of the Lease at any time during which the Leasehold Estate (1) is encumbered by a Permitted Leasehold Mortgage; or (2) prior to the expiration of the Compliance Period or (3) prior to such time as Investor Member is no longer a member of the Tenant.

## **SECTION 9. IMPROVEMENTS TO PREMISES.**

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

9.1.1 Plans and Specifications. Landlord authorizes Tenant, at Tenant’s sole cost and expense, to construct Improvements on the Premises, provided that Tenant hereby obligates itself to undertake any construction of the Project substantially in accordance with plans and specifications (collectively, “**Plans and Specifications**”) previously submitted to and approved by Landlord.

9.1.2 Amendments to Plans and Specifications. Tenant shall take no action to effectuate any material amendments, modifications or any other alterations to the Plans and Specifications that are not permitted by the Permitted Leasehold Mortgagee.

9.1.3 Completion Schedule. Subject to Force Majeure delays, Tenant shall no later than the date which is thirty (30) months after the Commencement Date (the “**Construction Completion Date**”), construct the Improvements as herein provided to the extent required for Tenant to be issued a permanent, unconditional certificate of occupancy therefor or temporary occupancy permits subject to punch list items that do not interfere with occupancy of the Units by the Residents. Failure of Tenant to complete construction/rehabilitation of the Improvements and make such Improvements available for occupancy as contemplated hereunder by the Construction Completion Date shall constitute a default by Tenant hereunder; provided,



however, that Landlord shall give Tenant, any Permitted Leasehold Mortgagee, Investor Member and Administrative Member 90 days written notice and opportunity to cure such failure (and any additional time as provided by this Lease) prior to exercising any remedy under this Lease, and a cure of such failure shall cure such default.

9.1.4 Intentionally Omitted.

9.1.5 Utilities. Prior to the commencement of any construction, renovation or rehabilitation activities involving 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.

9.1.6 Safety. Tenant shall comply in all respects with the reasonable overall safety programs promulgated by Landlord and any governmental or quasi-governmental agency, from time to time, which are applicable to the Premises.

9.1.7 Post Completion Alterations. Except in the event of an emergency, as required for life-safety purposes or in the course of ordinary maintenance and repair (including capital repairs and replacements) of the Premises, Tenant shall not make any material post-completion alteration, improvement or addition to the Premises having a cost greater than \$100,000.00, or demolish any substantial portion thereof, without first presenting to Landlord complete plans and specifications (to the extent having been prepared) therefor and obtaining Landlord's written consent thereto (which consent shall not unreasonably be withheld so long as, in Landlord's reasonable judgment such alteration, improvement, addition or demolition will not violate applicable Legal Requirements or this Lease, or materially impair the value of the Property and Tenant's ability to perform in accordance with the terms of this Lease). Tenant shall make no post-completion alterations to the Premises until Tenant has procured, as applicable, required permits and authorizations required by the applicable governmental authorities and, if required, consents from Permitted Leasehold Mortgagees. Any post-completion improvements made to the Premises by either party hereto shall be made only in good and workmanlike manner using new materials of the same quality as the original Improvements and in accordance with all applicable building codes and other laws.

9.1.8 Intentionally Omitted.

9.1.9 Covenants and Warranties. Tenant covenants and warrants to Landlord that material and equipment furnished in connection with the construction of the Improvements, or any alteration, renovation or addition thereto, undertaken in accordance with paragraph 9.1.7, will be done in a good and workmanlike manner and of a quality consistent with industry standards and practices and substantially in accordance the Plans and Specifications, that all construction work associated with the construction of Improvements will be free from any material defect in workmanship and materials, 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 covenant excludes any damage to the extent directly caused by the gross negligence, violations of laws, or misfeasance by Landlord or any of Landlord's Related Parties, and normal wear and tear under normal usage. If required by Landlord, pursuant

to written notice from Landlord to Tenant, Tenant shall within twenty (20) days thereafter, furnish reasonably satisfactory evidence as to the kind and quality of materials and equipment. Without limiting the indemnification provisions of subsection 7.5, but intending to elaborate thereon, Tenant shall defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or reasonable 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 paragraph 9.1.9 shall survive the termination of this Lease for a period of twelve (12) months.

#### 9.1.10 Permitted Leasehold Mortgages.

(a) Landlord acknowledges and agrees that it will not be possible for the Tenant to construct the Improvements without obtaining a loan or loans from one or more Persons in order to finance the construction of said Improvements and the development and operation of the Project. Therefore, Landlord hereby covenants and agrees that the Landlord's interest in this Lease and its Fee Estate are and shall be subject to, subordinate and inferior to any and all loans (interim, permanent, "cash flow", "soft" or refinancings thereof) obtained by the Tenant for the purpose of financing the construction of the Improvements and the development and operation of the Project, and to the lien of any Mortgages evidencing any such loans (such Mortgages, together with assignments of rents and leases, security agreements, and other collateral or security documents or instruments required by the Permitted Leasehold Mortgagee(s) providing such financing, all other documents governing, securing, and/or evidencing the loan secured by the applicable Mortgage, and all renewals, extensions, modifications, consolidations, replacements, assignments and refinancings thereof, collectively a "**Permitted Leasehold Mortgage**"), and to all advances made or hereafter to be made upon the security of such Permitted Leasehold Mortgages. Landlord shall, at Tenant's request, join in, execute and/or deliver any and all Permitted Leasehold Mortgages as may be required by such Permitted Leasehold Mortgagees in order to subject and subordinate the Landlord's interest in this Lease and its Fee Estate, or to otherwise consent to or facilitate the subordination or encumbrance of the Tenant's interest in the Lease and the Property, to the lien of the Permitted Leasehold Mortgages, and upon Tenant's request, Landlord shall join in, execute and/or deliver any and all such further instruments or assurances as any such Permitted Leasehold Mortgagees may reasonably deem necessary to evidence or confirm the subordination of this Lease, or the encumbrance of the Landlord's interest herein and the Fee Estate, to the lien of the Permitted Leasehold Mortgages. Provided, however, and notwithstanding anything contained herein to the contrary, Landlord shall not be required to suffer, incur, accept or assume any personal liability for any such financing, loans or indebtedness, or any costs or expenses thereof, or any other indebtedness or liability of Tenant thereunder, and any Permitted Leasehold Mortgage and other collateral or security documents or instruments of any nature whatsoever which the Landlord may be called upon to join in, execute and/or deliver under and pursuant to this section, shall expressly exculpate Landlord from and against any and all such personal liability.

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, which consent may be withheld in Landlord's sole discretion, 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 Permitted Leasehold Mortgages.

(b) Landlord agrees to accept payment or performance by Permitted Leasehold Mortgagee as though Tenant had done the same.

(c) Landlord agrees that, for so long as the Permitted Leasehold Mortgage remains a Permitted Encumbrance, the following provisions shall apply:

(i) There shall be no cancellation, surrender, or modification of this Lease by joint action of Landlord and Tenant, without the prior written consent of Permitted Leasehold Mortgagee, provided such consent is not unreasonably withheld, delayed or conditioned; and

(ii) Without confirming any right of Landlord to terminate this Lease other than as expressly set forth in this Lease, if Landlord elects to terminate this Lease due to an Event of Default of Tenant, after the expiration of all applicable notice and cure periods, by delivery to Tenant and the Permitted Leasehold Mortgagee of a written notice of termination, then Permitted Leasehold Mortgagee shall have the right to nullify any such notice of termination within ninety (90) days after receipt of Landlord's notice of termination by either (1) curing such Event of Default; or (2) commencing to cure or cause to be cured any then existing Event of Default of Tenant, and promptly initiating action to acquire or sell Tenant's interest in this Lease by foreclosure of the Permitted Leasehold Mortgage or otherwise and prosecuting the same to completion with due diligence and without any interruption.

(d) Permitted Leasehold Mortgagee shall not be obligated or required to cure a default or an Event of Default of Tenant that is uniquely specific to Tenant, such as bankruptcy, and Landlord shall not terminate this Lease, provided Permitted Leasehold Mortgagee has cured any other non-specific default or Event of Default of Tenant, and Landlord enters into a new lease on substantially the same terms and conditions with the same priorities with Permitted Leasehold Mortgage.

(e) Permitted Leasehold Mortgagee shall have the right to assume this Lease as Tenant in its own name or in the name of a nominee upon foreclosure or assignment in lieu of foreclosure of the Permitted Leasehold Mortgage.

(f) Permitted Leasehold Mortgagee shall not be liable hereunder unless and until Permitted Leasehold Mortgagee expressly assumes such liability in writing. Furthermore, no assumption of liability hereunder shall be inferred from Permitted Leasehold Mortgagee's foreclosure or other appropriative proceedings in lieu thereof.

(g) Except as permitted pursuant to this Section 9.1.10, neither Tenant nor any successor in interest to the Premises or any part thereof shall engage in any transaction creating any encumbrance or lien upon the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Premises, except as approved with the prior written consent of Landlord in each instance, which consent may be withheld in Landlord's sole discretion (any Mortgage consented to by Landlord, as

aforesaid, is also hereinafter referred to singularly as a Permitted Leasehold Mortgage), and except for an inchoate lien for taxes or municipal obligations, utility and access easements, restrictions required by Section 42 of the Code, the LURA, other encumbrances incurred in the ordinary course of business of the Tenant, and Permitted Encumbrances.

## 9.2 Mechanic's or Other Liens.

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

9.2.2 Nothing in this Lease shall be deemed in any way (a) to constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair to any or all of the Property, if doing so would give rise to the filing of any mechanics' or materialmens' lien against any or all of the Property or Landlord's estate or interest therein or (b) to give Tenant any right, power or authority to contract for or permit to be furnished any service or materials, if doing so would give rise to the filing of any mechanics' or materialmens' lien against any or all of the Property or Landlord's estate or interest therein, or (c) to evidence Landlord's consent that the Property be subjected to any such mechanic's or materialman's lien.

9.2.3 Right to Contest Certain Claims. Notwithstanding the provisions of Sections 9.2.1 or 9.2.2 of this Lease to the contrary, Tenant shall not be in default for failure to comply with any Legal Requirement or to pay or discharge any tax, assessment, fine, claim, or mechanic's or materialman's lien asserted against the Property if, and so long as (a) Tenant shall have notified Landlord of same within ten (10) business days of obtaining knowledge thereof; (b) Tenant shall diligently and in good faith contest the same by appropriate legal proceedings which shall cooperate to prevent the enforcement or collection of the same and the sale of the Property or any part thereof, to satisfy the same; and (c) Tenant complies with all requirements under the most senior Permitted Leasehold Mortgage necessary to avoid a default thereunder. Upon the discharge and/or dismissal of all tax assessments, fines and liens covered by this Section 9.2.3, Landlord shall return any unexpended funds delivered to it by Tenant to fulfill its obligations under this Section 9.2.3.

9.3 Fixtures. Any and all improvements, repairs, alterations and all other property attached to or otherwise installed as a fixture within the Premises by Landlord or Tenant shall, immediately on the completion of their installation, become part of the Property and, except as replaced in accordance with Section 10 hereof, remain with the Property at the expiration or earlier termination of this Lease, except that any machinery, equipment or fixtures installed by Tenant at no expense to Landlord and used in the conduct of Tenant's trade or business (rather

than to service the Premises, the Units or the Property generally) and not part of the Equipment shall remain Tenant's property, and may be removed from the Premises by Tenant at the end of the Term (and any damage to the Property caused by such removal shall be repaired at Tenant's expense).

9.4 Joinder. Without limiting Landlord's obligations under any other provision of this Lease, Landlord shall, promptly at Tenant's request and expense at any time during the Term (and provided that Landlord thereby assumes no liability or obligation), join in any and all applications for building permits, subdivision plat approvals or certificates of dedication thereon, public works or other agreements and permits for sewer, water or other utility services, other instruments of dedication or other permits or approvals, the granting of or entry into which by any governmental or quasi-governmental authority having jurisdiction over the Property is necessary to permit (a) the subdivision, development, improvement, use and occupancy of the Property for the purposes permitted by this Lease, without violating applicable law; and (b) the dedication to the City of Austin, the applicable utility providers, and/or the State of Texas after the Commencement Date of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are, in Tenant's opinion, necessary or desirable in connection therewith. Subject to the provisions of subsection 9.1, Landlord shall, at no expense to Landlord, use its reasonable efforts to cooperate with Tenant in Tenant's efforts to obtain such final approval and recordation.

9.5 Signs. Tenant shall have the right to erect from time to time about the Property, in accordance with applicable law, such signs as it desires, (or as required by the most senior Permitted Leasehold Mortgage and/or Investor Member), and provided that any such sign has been approved by all architectural review committees having jurisdiction over any portion of the Property pursuant to any Permitted Encumbrance. Moreover, Tenant shall erect from time to time, at Tenant's expense, and upon the request of Landlord, about the Property, in accordance with applicable law, such signs as Landlord reasonably desires in order to advise the public of Landlord's participation in the Project, if applicable.

9.6 Tenant Control. Notwithstanding anything to the contrary herein, the Landlord shall have no control over the construction and rehabilitation of the Improvements.

## **SECTION 10. REPAIRS AND MAINTENANCE.**

10.1 Repairs. Tenant shall, throughout the Term and at its expense, use commercially reasonable efforts to:

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

10.1.2 promptly make any and all repairs, ordinary or extraordinary, foreseen or unforeseen, to the Property (including but not limited to the landscaping thereon) as are necessary to maintain it in good condition, subject to ordinary wear and tear and casualty (including but not limited to any and all such repairs to the plumbing, heating, ventilating, air-conditioning, electrical and other systems for the furnishing of utilities or services to the Property), and replace or renew the same where necessary (using replacements at least equal in

quality and usefulness to the original improvements, equipment or things so replaced), and Landlord shall have no obligation hereunder as to the same

10.2 Maintenance. Tenant shall use commercially reasonable efforts to keep and maintain all of the Property in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice, and shall keep all grass, ground cover and other plantings mown, weeded and trimmed.

## **SECTION 11. LANDLORD'S RIGHT OF ENTRY.**

11.1 Inspection and Repair. Subject to the rights of any Resident under a Tenancy Agreement, Landlord and its authorized representatives shall be entitled to enter the Project and Units and the rest of the Property at any time during Tenant's business hours and at any other reasonable time after giving Tenant at least two (2) business days' written notice of Landlord's intention to take such action, to (a) inspect the Property, and (b) with the prior written consent of the Permitted Leasehold Mortgagees (except in connection with repairs for life and/or safety issues, in which case prompt notice shall be provided to the Permitted Leasehold Mortgagees), and subject to the rights of any Resident under a Tenancy Agreement, Landlord and its authorized representatives shall be entitled to make any repairs thereto and/or take any other action therein which is required by Legal Requirements, or which Landlord is permitted to make by any provision of this Lease, after giving Tenant at least two (2) business days' written notice of Landlord's intention to take such action and allowing Tenant reasonable time to take the appropriate action (in any situation in which, due to an emergency or otherwise, the health, welfare or safety of the Residents or physical condition of the Project and Units or any other part of the Property would be unreasonably jeopardized unless Landlord were to take such action immediately, 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 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 gross negligence or intentional conduct of Tenant or its agents and employees. Landlord 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 Property during the course thereof (except if and to the extent is proximately caused by the gross negligence or intentional conduct of Landlord or any Landlord Related Party), and Tenant's obligations under the provisions of this Lease shall not be affected thereby. In exercising its rights under this subsection 11.1, Landlord shall use reasonable efforts not to cause or allow any interference or disruption of Tenant's work or Tenant's use, operation or enjoyment of the Property, or that of any Resident, except in the event of an emergency.

11.2 Exhibiting the Premises. Landlord and its business invitees may from time to time, after giving at least two (2) business days' written notice thereof to Tenant, and subject to the rights of any Resident under a Tenancy Agreement, enter the Project and the Units and the

rest of the Property during Tenant's normal business hours to exhibit the Premises for purposes of (a) pledging or assigning any or all of Landlord's right, title and interest in and to the Premises or under this Lease (to the extent permitted hereunder), (b) 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 (c) exhibiting the same to any governmental and/or quasi-governmental authorities or other third-parties which may have an interest in developments similar to the Property or similarly financed or for any other business purpose; provided that in doing so Landlord and each such invitee observes all reasonable safety standards and procedures which Tenant may require. In exercising its rights under this subsection 11.2, 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, or that of any Resident.

## **SECTION 12. FIRE AND OTHER CASUALTIES.**

### **12.1 Where Cost of Restoration Exceeds Specified Sum.**

12.1.1 Subject to the provisions of Sections 12.2 and 12.4 hereof, if any or all of the Property is damaged or destroyed, Tenant shall (a) immediately notify Landlord thereof if the cost of Restoration on account thereof equals or exceeds Two Hundred Thousand and 00/100 Dollars (\$200,000.00), and (b) provided that insurance proceeds are available to Tenant and are adequate for such purposes and regardless of the dollar amount of such damage or loss (and regardless of whether the cost of Restoration is less than or greater than Two Hundred Thousand and 00/100 Dollars (\$200,000.00)), 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, to the extent that insurance proceeds are made available to Tenant by the Permitted Leasehold Mortgagee. After expiration of the Compliance Period pursuant to Section 42 of the Code, 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.

12.1.2 Subject to the provisions of Sections 12.1.1 and 12.4 hereof, 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 7 against such casualty and received by Tenant (less such reasonable attorneys' fees or other expenses as are incurred by the Landlord or Tenant in the collection thereof, which shall be paid out of such proceeds), shall be paid to the most senior Permitted Leasehold Mortgagee or a trustee it designates, to be used in accordance with the applicable Permitted Leasehold Mortgage. Upon receipt by Landlord of evidence satisfactory 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. In the case of a casualty, this Lease shall continue, unless Tenant and Landlord agree to terminate this Lease with the prior written consent of the Permitted Leasehold Mortgagee, Investor Member and Administrative Member.

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

12.3 No Termination. Except as provided in Section 12.1.2 and Section 12.6, no total or partial damage to or destruction of any or all of the Property shall entitle Tenant or Landlord to surrender or terminate this Lease, or shall relieve Tenant from its liability hereunder to pay in full the 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, to quit or surrender any or all of the Property, or to have any suspension, diminution, abatement or reduction of the 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 (or refund) therefor against its obligations hereunder to pay Rent and other sums, by applying such credit toward any unpaid installments of Rent in the order in which they fall due hereunder).

12.4 Rights of the Parties Under the Loan Documents. Notwithstanding anything herein to the contrary, for so long as any Permitted Leasehold Mortgages are in effect, the most senior Permitted Leasehold Mortgage shall control the use and application of all casualty proceeds relating to the Property.

12.5 Notice. The Landlord will provide reasonable prior notice to Permitted Leasehold Mortgagees, Investor Member and Tenant of any proceeding for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit the Permitted Leasehold Mortgagees and Tenant to participate therein as interested parties at each respective party's choosing.

12.6 Termination upon Non-Restoration. Notwithstanding anything in this Lease to the contrary, following a casualty, the Lease may be terminated by Tenant, with the prior written consent of the Permitted Leasehold Mortgagee, Investor Member and Administrative Member, if such casualty prevents the use and operation of Property as a low-income or moderate-income development under Section 42 of the Code and in accordance with the LURA or if the insurance proceeds made available to Tenant are insufficient to restore the Property to a condition substantially similar to the conditions existing prior to such casualty.

## **SECTION 13. CONDEMNATION.**

13.1 Notice of Taking. Forthwith 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 Property or Improvements by the government of the United States, State of Texas, County of Travis, 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 such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

13.2 Condemnation Awards. Subject to Section 13.8 hereof, Tenant's share of any condemnation award shall be no less than the total condemnation award less the value of Landlord's remainder interest in the Premises, considered as if unimproved but encumbered by this Lease and the Permitted Leasehold Mortgages. To the extent that Tenant is entitled to any condemnation award, it shall be paid to the most senior Permitted Leasehold Mortgagee to be used in accordance with the applicable Permitted Leasehold Mortgage, with any remaining balance being paid directly to Tenant.

13.3 Total Taking. Subject to the provisions of Section 13.8 herein, in the event of a permanent Taking of the entire Fee Estate, the Property 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 outstanding Rent payable or obligations owed by the Tenant to the Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full, with due credit given for any prepayment of Rent.

13.4 Partial Taking. Subject to the provisions of Section 13.6 and Section 13.8 herein, in the event of a permanent Taking of less than the entire Property (a "**Partial Taking**"), this Lease shall continue unless Tenant and Landlord shall agree to terminate the Lease with the prior written consent of the Permitted Leasehold Mortgagee, Investor Member and Administrative Member. Any condemnation award shall be paid to the most senior Permitted Leasehold Mortgagee or a trustee it designates to be used in accordance with the applicable Permitted Leasehold Mortgage. Any remainder shall be disbursed to the most senior Permitted Leasehold Mortgagee to the extent required by its loan documents and any excess to Tenant.

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

13.6 Termination upon Non-Restoration. Following a Partial Taking, the Lease may be terminated by Tenant, with the prior written consent of the Permitted Leasehold Mortgagee, Investor Member and Administrative Member, if such Partial Taking (a) prevents the use and operation of Property as a low-income or moderate-income development under Section 42 of the Code and in accordance with the terms of the LURA, (b) if the proceeds made available to Tenant are insufficient to restore the Improvements to a condition substantially similar to the conditions existing prior to such Partial Taking, or (c) Tenant reasonably determines that the continued use and occupancy of the remainder of the Property by Tenant cannot be made to be economically viable and structurally sound based upon the amount of eminent domain proceeds and, at Tenant's option, any other funds of Tenant as are demonstrably available for the purpose of paying for such Restoration.

13.7 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.

13.8 Rights of the Parties Under the Loan Documents. Notwithstanding anything herein to the contrary, for so long as any Permitted Leasehold Mortgages are in effect the most senior Permitted Leasehold Mortgage shall control the use and application of all condemnation proceeds relating to the Property and, as applicable, the operation of the Lease termination provisions hereunder. In any event, the Tenant and the Permitted Leasehold Mortgagee shall participate in all settlements.

## **SECTION 14. ASSIGNMENT AND SUBLETTING.**

14.1 Limits on Transfers. Subject to the provisions of this Lease, Tenant hereby acknowledges that Landlord has entered into this Lease because of Tenant's financial strength, goodwill, ability and expertise, and that, accordingly, this Lease is one which is personal to Tenant, and Tenant agrees for itself and its successor and assigns in interest hereunder that it will not, other than by the terms of the Permitted Leasehold Mortgage and leases made in accordance with Section 21.17 herein, (a) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises, the Units, the rest of the Improvements, the Equipment or the Property generally, or (b) make or permit any voluntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises, the Units, the rest of the Improvements, the Equipment or the Property or the occupancy or use thereof, other than in accordance with LIHTC/Bond/Additional Housing Requirements and this Lease (each of which 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 paragraph 14.1 and is executed by Landlord (which consent will not be unreasonably withheld, delayed or conditioned). Further, notwithstanding anything to the contrary herein, the Landlord shall not transfer, encumber or otherwise dispose of the Fee Estate or the Property or any interest therein without the consent of the Tenant, Investor Member, the Permitted Leasehold Mortgagee and Administrative Member.

14.2 Permitted Transfers. Notwithstanding anything to the contrary set forth elsewhere in this Lease, any transfer or pledge of the interest of Managing Member, Administrative Member, Investor Member or any other member of Tenant, in accordance with the terms of the Operating Agreement or the Permitted Leasehold Mortgages, shall be a permitted Transfer hereunder and shall not require Landlord's consent. Any transfer, in whole or in part, of the Property or the Leasehold Estate (a) in accordance with the Operating Agreement or any Permitted Leasehold Mortgage, or any other transfers permitted thereunder, (b) in accordance with any Land Use Regulatory Agreement between TDHCA and Tenant, or Landlord and Tenant, including without limitation, the LURA, (c) in the ordinary course of business including, without limitation, any residential lease and any utility and access easement, (d) required by LIHTC/Bond/Additional Housing Requirements, and/or (e) any right of first refusal under Section 42(i)(7) of the Code or otherwise given to the Landlord, shall be a permitted transfer hereunder and shall not require Landlord's consent. For the avoidance of doubt, (i) Landlord approves the admission of the Investor Member as investor member of Tenant, (ii) Landlord's consent shall not be required for the transfer of any Investor Member interest in Tenant, the

transfer of Administrative Member's interest in Tenant, the admission of any new investor member into Tenant, or transfers of interests within Investor Member, and (iii) Landlord acknowledges the right under the Operating Agreement of an Investor Member to remove the managing member of Tenant and to designate a substitute managing member of Tenant in accordance with the terms of the Operating Agreement or pursuant to the terms of any pledge or security agreement between the managing member and an Investor Member without Landlord's consent. Further notwithstanding anything to the contrary herein, during the Term of this Lease, the Landlord shall not transfer, encumber or otherwise dispose of the Premises or any interest therein without the written consent of Tenant, Investor Member, the Permitted Leasehold Mortgagee and Administrative Member.

14.3 Effect on Obligations. Except as set forth in this Lease, 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.

14.4 Benefit and Burden. Subject to the foregoing provisions of this Section, 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 15.        DEFAULT.**

15.1 As used in this Lease, and subject to the expiration of all notice and cure periods herein set forth, including without limitation those set forth in paragraph 15.2 below, each of the following events shall constitute an **"Event of Default"**:

15.1.1 if Tenant fails (a) to pay any Rent, Additional Rent or other sum which it is obligated to pay under this Lease, when and as it is due and payable hereunder and after demand therefor, or (b) to perform any of its obligations under this Lease; or

15.1.2 Intentionally deleted; or

15.1.3 if Tenant's Bankruptcy occurs and such Bankruptcy is not consented to or acquiesced in by Managing Member or Administrative Member; or

15.1.4 Intentionally deleted.

15.1.5 if Tenant fails to abide by LIHTC/Bond/Additional Housing Requirements and Legal Requirements, and such failure is not cured during any applicable cure period or such longer period of time as provided by the applicable authority; or

15.1.6 if Tenant fails to comply in all respects with Tenant's obligations under any instrument, lease, Mortgage (other than a Permitted Leasehold Mortgage) or other agreement to which Landlord is a party, and a copy of which has been provided to Tenant, and for which a default under this Lease would constitute a default under such instrument, lease, Mortgage or other agreement, which failure is not cured by Tenant within any permissible cure period provided herein or in such instrument, lease, mortgage or other agreement.

15.2 Notice to Tenant; Opportunity to Cure. Anything in this Section to the contrary notwithstanding, if an Event of Default occurs, Landlord shall not exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until Landlord shall so notify Tenant, Administrative Member, Investor Member and all Permitted Leasehold Mortgagees in writing. Each shall have the right to cure such Event of Default, and Landlord shall not terminate this Lease for Tenant's default unless and until Landlord has given all Permitted Leasehold Mortgagees, the Investor Member and Administrative Member written notice of such Event of Default and 60 days in addition to any applicable cure period given Tenant in which to cure it. If it cannot be reasonably cured within 60 days, each Permitted Leasehold Mortgagee, Investor Member and Administrative Member shall have such additional time as it shall reasonably require (not to exceed 120 days unless delay is due to Force Majeure), so long as a Permitted Leasehold Mortgagee or Investor Member or Administrative Member is proceeding with reasonable diligence. Landlord agrees to accept any such cure by Investor Member, Administrative Member or Permitted Leasehold Mortgagee as if made by Tenant.

15.3 Landlord's Rights on Event of Default.

15.3.1 If an Event of Default occurs and continues beyond applicable notice and cure periods, Landlord may (subject to the other provisions of this Lease, including without limitation, subsections 9.1.3 and 15.2) take any or all of the following actions:

(a) subject to any Tenancy Agreements, Legal Requirements, and LIHTC/Bond/Additional Housing Requirements, reenter and repossess any or all of the Premises and any or all Improvements thereon and additions thereto; and/or

(b) declare any remaining unpaid balance of the Rent for the remainder of the Term to be due and payable immediately, and collect such balance in any manner not inconsistent with applicable law; provided that if Landlord elects to relet any or all of the Premises following such acceleration of Rent, the provisions of subparagraph 15.3.1(d) shall be applicable to the rights of Landlord and Tenant. Accelerated payments payable hereunder shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment of Rent; and/or

(c) if the Event of Default occurs after the expiration of the Property's initial 15-year tax credit compliance period, terminate this Lease by giving written notice of such termination to Tenant (and as otherwise required in accordance with the other provisions of this Lease), which termination shall be effective as of the date of such notice or any later date therefor specified by Landlord therein (provided, that without limiting the generality of the foregoing provisions of this subparagraph 15.3.1(c), 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 under this Lease 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 exercised any or all of Landlord's other rights under this Section or applicable law); and, on the date specified in such notice, Tenant's right to possession of the Property will cease and the Leasehold Estate conveyed by this Lease upon Tenant shall revert in Landlord, provided, however, such reversion 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 Permitted Leasehold Mortgage or any provision of LIHTC Housing Requirements; 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 acceptable to Landlord in its sole discretion (including but not limited to the alteration of any or all of the Premises in any manner which, in Landlord's 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, (i) Landlord shall not have any duty or obligation to relet any or all of the Premises as the result of any Event of Default, or any liability to Tenant or any other Person for any failure to do so or to collect any rent or other sum due from any such reletting; (ii) 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, if any, installment thereof or other sum owed by Tenant to Landlord hereunder; and (iii) Tenant's liability hereunder shall not be diminished or affected by any such failure to relet or the giving of any such initial or other concessions or "free-rent" or reduced rent periods in the event of any such reletting. In the event of any such reletting, Tenant shall pay to Landlord, at the times and in the manner specified by Section 4, both (i) the installments of Rent accruing during such remainder (or, if this Lease has then been terminated, damages equaling the respective amounts of such installments of 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 paragraph 15.3.4 (and Tenant hereby waives any and all rights which it may have under applicable law, the exercise of which would be inconsistent with this subparagraph 15.3.1(d)); and/or

(e) enforce any one or more of LIHTC/Bond/Additional Housing Requirements or Legal Requirements; and/or

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

(g) 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.

15.3.2 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 are relet), that arose during the Term of this Lease, 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.

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

15.3.4 If an Event of Default exists, Tenant shall, immediately on its receipt of a written demand therefor from Landlord, reimburse Landlord for (a) all reasonable expenses (including but not limited to any and all reasonable repossession costs, management expenses, operating expenses, legal expenses and reasonable attorneys' fees) incurred by 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, and/or (iv) (regardless of whether it constitutes an Event of Default) in connection with any action, proceeding or matter of the types referred to in paragraphs 15.1.2 and 15.1.3, plus (b) interest on all such expenses, at the lesser of prime rate (as reported by the Wall Street Journal's bank survey) plus four percent (4%) or the highest rate then permitted on account thereof by applicable law, all of which expenses and interest shall be Additional Rent and shall be payable by Tenant immediately on demand therefor by Landlord.

15.3.5 Tenant hereby expressly waives, so far as permitted by law and only if an Event of Default has occurred and is continuing, 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, 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. **BECAUSE THE PREMISES ARE LOCATED IN THE STATE OF TEXAS, TENANT EXPRESSLY WAIVES ANY AND ALL RIGHTS AND REMEDIES IT MAY HAVE, AND ANY DUTIES, LIABILITIES OR OBLIGATIONS LANDLORD MAY HAVE, ARISING OUT OF OR IN CONNECTION WITH SECTION 93.002 OF THE TEXAS PROPERTY CODE, AS IT MAY BE AMENDED OR SUPERSEDED FROM TIME TO TIME, PERTAINING TO THE INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY AND THE EXCLUSION OF A COMMERCIAL TENANT, WHICH STATUTE SHALL BE OF NO FORCE AND EFFECT.**

15.3.6 Notwithstanding anything contained in this Lease to the contrary, Landlord agrees that at any time a Permitted Leasehold Mortgage(s) encumbers the Property, Landlord shall not exercise any of its remedies under the Lease, other than to specifically enforce the Tenant's obligation to comply with Section 5 and Section 7.5 hereof, and the Lease shall not be terminated without the prior written consent of the applicable Permitted Leasehold Mortgagee(s).

15.3.7 Notwithstanding anything contained in this Lease to the contrary, Landlord agrees that it will not exercise any of its remedies under this Lease, other than to specifically enforce Tenant's obligations to comply with Section 5 and Section 7.5 hereof, at any time that Landlord or any of its affiliates directly or indirectly controls the managing member of Tenant and (i) the managing member wrongfully withdrew or was removed from Tenant as managing member, or (ii) Tenant's managing member is in default under the Operating Agreement.

15.4 Intentionally Omitted.

15.5 Landlord Event of Default. Landlord shall be deemed in default of its obligations under this Lease if Landlord shall fail to perform, in a timely manner in accordance with the terms of this Lease, any obligation under this Lease required to be performed by Landlord, or if any Landlord representation made herein is false in any material respect, or if Landlord is the subject of a bankruptcy action under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or its successor statute (each a "**Landlord Event of Default**"). If such Landlord Event of Default shall continue for sixty (60) days after written notice of such failure from Tenant or such additional period as may be reasonably required to cure such failure, if the same may not be reasonably cured within sixty (60) days so long as Landlord commences such cure within thirty (30) days after notice thereof and thereafter diligently prosecutes the same to completion, but in any event such cure must be completed to Tenant's reasonable satisfaction within one hundred twenty (120) days of Tenant's notice to Landlord subject to the parties' mutual agreement to extend such time period and subject to delays caused directly by Force Majeure and matters outside the reasonable control of Landlord so long as Landlord has acted diligently, with dispatch, and in good faith to prevent or shorten any such delays. In no event shall Landlord be entitled to any cure period for any failure to repay the Rent under the terms and conditions set forth in Section 4.1.1 herein. If Landlord fails to complete such cure as provided above, then subject to the provisions of any Permitted Leasehold Mortgage, Tenant shall thereupon be entitled to exercise any and all remedies available to Tenant for such default under this Lease or at law or in equity. Without waiving or limiting any other remedies available to Tenant, upon such default by Landlord (and subject to the notice and cure rights of Landlord), Tenant shall be entitled (but not obligated) to perform or cause such obligations to be so performed on behalf of Landlord, and Landlord shall reimburse Tenant for its reasonable third party out-of-pocket costs and expenses incurred by Tenant in doing so, which amount shall be due within sixty (60) days of Landlord's receipt of a written statement of the costs and expenses so incurred by Tenant. In the event Landlord or a creditor thereof files a petition for relief naming Landlord as a debtor under Title 11 of the United States Code, Landlord hereby acknowledges and agrees that Tenant's possessory interest under this Lease and ownership of the Improvements are unique interests and cannot be converted into a cash claim under Section 363 of Title 11 of the United States Code unless Tenant expressly consents to the same.

## **SECTION 16. ESTOPPEL CERTIFICATE; SHORT FORM.**

16.1 Estoppel Certificate. Each party hereto shall, at any time and from time to time within ten (10) days after being requested to do so by the other party, an Investor Member 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,

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

16.1.2 acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

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

## **SECTION 17.           CONDITION OF TITLE AND PROJECT.**

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

17.2 Quiet Enjoyment. Landlord hereby

17.2.1 represents, warrants, covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (a) is the owner of the Fee Estate, subject to the operation and effect of and only of the Permitted Encumbrances, and that it has no knowledge of any claim or demand contesting or impairing its interests in the Fee Estate, and (b) has the full right, power and authority to enter into this Lease and thereby to lease the Premises; and

17.2.2 warrants that Tenant will have quiet and peaceful possession of the Premises 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 12 or 13 or any other provision of this Lease.



17.3 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 (or, where expressly so provided herein, Landlord's agents and employees). Notwithstanding anything to the contrary in this Lease, Tenant shall not be liable under this Lease except to the extent of its ownership interest in the Property.

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

## **SECTION 18. INTENTIONALLY OMITTED.**

**SECTION 19. NOTICES.** Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i) (1) five (5) business days after being sent as certified mail with the United States Postal Service, postage prepaid, return receipt requested, or (2) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service, signature requested upon delivery, or (3) (if such party's receipt thereof is acknowledged in writing) upon having been sent by telefax or another means of immediate electronic communication, in each case to the address of such party set forth hereinabove or to such other address in the United States of America as such party may designate from time to time by notice to each other party hereto, or (ii) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party.

Any notice required or permitted to be given under this Lease shall be deemed given if provided in accordance with the foregoing paragraph of this Section 19, and addressed as indicated on Exhibit C attached hereto and made a part hereof; provided, however, that any party may change its address for notice purposes by timely notice to the other party.

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

## **SECTION 20. PURCHASE OPTION.**

20.1 Tenant hereby grants Landlord the right (the "**Option**") to purchase all of the Property owned by the Tenant at the time of purchase, including without limitation Tenant's Leasehold Estate (collectively, the "**Tenant's Property**"), (i) on any date thirty (30) days after Landlord delivers written notice to Tenant, Investor Member, Administrative Member and the

Permitted Leasehold Mortgagees of Landlord's intent to exercise the Option (the "**Option Exercise Notice**"), and (ii) upon the Tenant's receipt of the Purchase Price (as defined below). The "**Purchase Price**" for the Tenant's Property pursuant to the Option shall be set forth hereinbelow:

(a) Price Formula. An amount, determined by Tenant's accountants, equal to the greater of (i) the fair market value of the Tenant's Property as determined in accordance with Section 20.1(b) below, or (ii) an amount sufficient to ensure receipt by Investor Member from the proceeds of the sale of the Property (when distributed pursuant to liquidation provisions in the Operating Agreement) of an amount not less than an amount equal to any unpaid obligations to which Investor Member and Special Member are entitled under the Operating Agreement (including, but not limited to, an amount equal to any exit taxes, any unpaid loans (and any accrued interest thereon) made to Tenant by Investor Member or its affiliates, any unpaid credit adjusters pursuant to the Operating Agreement, and any accrued but unpaid Asset Management Fee (as defined in the Operating Agreement)), plus (iii) if the Option is exercised during the Compliance Period, an amount (determined on an after-tax basis) equal to the diminution of economic value to Investor Member as a result of the purchase of the Tenant's Property by the Landlord during the Compliance Period (the "**ILP Diminution**"), which shall include without limitation (A) all capital contributions of Investor Member under the Operating Agreement which shall not be returned by the members or Tenant, (B) the outstanding balance of all loans (and any accrued interest thereon) made to Tenant by Investor Member or its affiliates and the Permitted Leasehold Mortgagees, which will not otherwise be repaid at the time of the purchase, (C) the amount of any projected tax credits, as described in the Operating Agreement, and depreciation deductions and other federal, state and local tax benefits, which, as a result of the purchase will not be available to Investor Member over the course of the 15-year compliance period applicable to the Project under Section 42 of the Code and the amount of any Tax Credits, as defined in the Operating Agreement, depreciation deductions and other federal, state and local tax benefits which will be recaptured from, or disallowed with respect to, Investor Member as a result of the purchase, (D) all costs and penalties incurred by Investor Member with respect to the tax credits already received (including the costs of any recapture bonds), and (E) the present value and the anticipated cash flow payable to Investor Member using a discounted rate of 10% over the course of the 15-year compliance period applicable to the Project under Section 42 of the Code, and (F) all costs and expenses incurred by or on behalf of Investor Member with respect to (1) its admission to Tenant, (2) its activities with respect to Tenant prior to the Landlord's purchase of the Tenant's Property under this Option, and (3) an amount to distribute to Tenant's members sufficient to enable the members to pay, on an after-tax basis, after any and all taxes imposed on such distribution, the taxes projected to be imposed on the members as a result of the sale pursuant to the Option; plus (iv) if the Option is exercised during the Compliance Period, the diminution of economic value to Administrative Member as a result of the purchase of Tenant's Property by Landlord during the Compliance Period (the "**CBLP Diminution**"), which shall include without limitation (A) all capital contributions of Administrative Member under the Operating Agreement, (B) all outstanding loans made to Tenant by Administrative Member or Guarantor (as defined in the Operating Agreement), including without limitation, any Operating Deficit Loans (as such terms are defined in the Operating Agreement) and any earned deferred portion of the Development Fee (as defined in the Operating Agreement and that is due to Administrative Member's affiliate that is serving or served as the developer), that are subject to

repayment under the terms of the Operating Agreement and which will not be repaid at the time of the purchase, (C) the present value of the anticipated Net Cash Flow (as defined in the Operating Agreement) and fees payable to Administrative Member and its affiliates pursuant to the terms of the Operating Agreement using a 10% discount rate, and (D) all reasonable costs and expenses incurred by or on behalf of Administrative Member with respect to (A) its admission to Tenant, and (B) its activities with respect to Tenant prior to Landlord's purchase of Tenant's Property under this Purchase Option. The calculation of any ILP Diminution and CBLP Diminution shall be determined by the accountants to the Tenant and shall be approved by Investor Member and shall include the value of Special Member's interest using the formulas above, if applicable. All payments of ILP Diminution and the CBLP Diminution shall be paid directly by Landlord to Investor Member and Administrative Member, as applicable.

(b) Fair market value of the Tenant's Property for purposes of Section 20.1 shall be calculated as follows: As soon as practicable following the delivery of the Option Exercise Notice, the Landlord and the Tenant shall select a mutually acceptable Independent Appraiser (as defined below). In the event that the parties are unable to agree upon an Independent Appraiser within fifteen (15) business days following the date of delivery of the Option Exercise Notice, the Landlord and the Tenant each shall select an Independent Appraiser within the next succeeding five (5) business days. If either party fails to select an Independent Appraiser within such time period, the determination of the other Independent Appraiser shall control. If the difference between the Appraised Fair Market Values set forth in the two appraisals is not more than ten percent (10%) of the Appraised Fair Market Value set forth in the lower of the two appraisals, the fair market value for purposes of this Section shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two Independent Appraisers shall jointly select a third Independent Appraiser whose determination of Appraised Fair Market Value shall be deemed to be binding on all parties as long as the third determination is between the other two determinations. If the third determination is either lower or higher than both of the other two appraisals, then the average of all three appraisals shall be the Appraised Fair Market Value for purposes of Section 20.1. The Landlord and the Tenant shall each pay one-half of the fees and expenses of any Independent Appraiser(s) selected pursuant to this Section 20.1. For purposes of the foregoing, the term "**Independent Appraiser**" means a firm which is generally qualified to render opinions as to the fair market value of assets such as those owned by the Tenant, which is mutually acceptable to the Landlord and the Tenant and which satisfies the following criteria:

- (i) such firm is not a Partner, or an Affiliate (as such terms are defined in the Operating Agreement) of the Landlord or the Tenant;
- (ii) such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least ten (10) years;
- (iii) such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such a firm;

(iv) one or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group which establishes and maintains professional standards for its members; and

(v) such firm renders an appraisal to the Tenant only after entering into a contract that specifies the compensation payable for such appraisal.

20.2 Upon determination of the Purchase Price, Tenant and Landlord, shall enter into a written contract for the purchase and sale of the Tenant's Property in accordance with the terms of this Lease and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area in which the Property is located, providing for a closing not later than the date specified in the Option Exercise Notice or thirty (30) days after the Purchase Price has been determined, whichever is later. In the absence of any such contract, this Lease shall be specifically enforceable upon the exercise of the Option. The purchase and sale hereunder shall be closed through a deed-and-money escrow with the title insurer of Tenant's interest in the Property or another mutually acceptable title company. Tenant's right, title, and interest in the Tenant's Property shall be conveyed by an assignment of Lease ("**Ground Lease Assignment**") and a blanket conveyance, bill of sale, an assignment agreement (the "**Bill of Sale**" and together with the Ground Lease Assignment, the "**Conveyance Documents**"). Upon closing, the Tenant shall deliver to Landlord, along with the Conveyance Documents, a Texas form Owner's Title Policy dated as of the close of escrow, in the amount of the Purchase Price, subject to the liens, encumbrances and other exceptions then affecting the title. Landlord shall be responsible for all costs including, but not limited to, transfer taxes, title policy premiums and recording costs. Rents, insurance, taxes, debt service then due and payable and other costs and revenues then prepaid or accrued, as the case may be, shall be apportioned as of midnight of the day preceding the closing of title, except that rents shall be apportioned as of the date of actual collection thereof (which obligation shall survive the closing).

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

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

20.5 Notwithstanding any term to the contrary contained herein, the Option granted in this Section 20 shall be subordinate, in all respects, to the Mortgages held by the Permitted Leasehold Mortgagees.

## **SECTION 21. GENERAL.**

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

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

21.3 Amendment. This Lease may be amended, modified, restated or supplemented by and only by an instrument executed and delivered by each party hereto, and only with the prior written consent of any Permitted Leasehold Mortgagee, Investor Member, the Managing Member and Administrative Member. Any amendment, modification, change, cancellation, waiver or termination shall not bind Permitted Leasehold Mortgagees or its successors and assigns unless made with such Permitted Leasehold Mortgagee's consent.

21.4 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 if an Event of Default exists) 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 exists).

21.5 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 Northern District of Texas, or any successor federal court having original jurisdiction.

21.6 Consent. Except as otherwise herein provided, when a party hereto is required to provide its consent or approval, such consent or approval (or the denial of such consent or approval, as the case may be) shall not be unreasonably withheld or conditioned and shall be given within a reasonable time after its receipt of the request therefor, taking into consideration the circumstances of the request. Any requirement of consent from Administrative Member set forth herein shall only be applicable during such time as Administrative Member has guaranty liability to Investor Member or Permitted Leasehold Mortgagee, and such guaranty liability is related to the Project.

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

21.8 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.

21.9 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. The parties agree that when interpreting this Lease there shall be no presumption against any party on account of the fact that such party caused the drafting of this Lease.

21.10 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.

21.11 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.

21.12 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.

21.13 Commissions. Each party hereto hereby represents and warrants to the other that, in connection with the leasing of the Premises hereunder, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof. Each party hereto shall defend, indemnify

and hold harmless the other against and from any liability, claim of liability or expense arising out of any inaccuracy in such party's representation.

21.14 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 reasonable expenses, fees, costs, including reasonable attorneys' fees incurred by the prevailing party in connection with such judicial action.

21.15 Limited Third Party Rights. Notwithstanding anything to the contrary set forth elsewhere in this Lease, Investor Member and each Permitted Leasehold Mortgagee shall be deemed a third-party beneficiary of the provisions of this Lease that reference Investor Member and/or the Permitted Leasehold Mortgagees. The foregoing rights of Investor Member and each Permitted Leasehold Mortgagee to be a third-party beneficiary under this Lease shall be the only right (express or implied) of Investor Member and each Permitted Leasehold Mortgagee to be a third-party beneficiary under this Lease.

21.16 Intentionally Omitted.

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

21.18 Intentionally Omitted.

21.19 Tenant's Rights, Generally. Upon and during the continuation of an event of default under, and subject to, any documents relating to the Property, any Permitted Leasehold Mortgagee and/or Investor Member may exercise all of Tenant's rights under this Lease, subject to the terms hereof.

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

21.21 Memorandum of Ground Lease. The Parties shall execute, for recording purposes, a memorandum of ground lease in conformity with the law and practice of the State of Texas, and the same shall be placed of record at Tenant's expense. If requested by Landlord, Tenant shall, upon termination of this Lease as provided herein, execute and deliver to Landlord an appropriate release, in form proper for recording, of Tenant's interest in the Property.

21.22 Landlord Not Entitled to Proceeds. Landlord shall not be entitled to share in the proceeds of any loan obtained as a result of any financing or refinancing undertaken by Tenant that is secured by a Permitted Leasehold Mortgage.

21.23 No Subordination of Leasehold Estate. Except as otherwise provided in this Lease, at no time shall Tenant's Leasehold Estate, or Tenant's interest in this Lease, be subordinated in any manner to the interest of any Mortgagee with a security interest in the Fee Estate.



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

**LANDLORD:**

**AUSTIN HOUSING FINANCE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**TENANT:**

**AUSTIN DMA HOUSING III, LLC,**  
a Texas limited liability company

By: AHFC Nightingale Non-Profit Corporation,  
a Texas nonprofit corporation,  
Its: Managing Member

By: \_\_\_\_\_  
Name: Rosie Truelove  
Title: Vice President

STATE OF TEXAS

COUNTY OF TRAVIS

I HEREBY CERTIFY that on or about this \_\_\_\_ day of March, 2018, before me, a Notary Public for the state aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Ground Lease, who acknowledged that she is the \_\_\_\_\_ of Austin Housing Finance Corporation; that she has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

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

My commission expires on \_\_\_\_\_.

STATE OF TEXAS

COUNTY OF TRAVIS

I HEREBY CERTIFY that on or about this \_\_\_\_ day of March, 2018, before me, a Notary Public for the state aforesaid, personally appeared Rosie Truelove, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Ground Lease, who acknowledged that she is the Vice President of AHFC Nightingale Non-Profit Corporation, a Texas nonprofit corporation, the managing member of Austin DMA Housing III, LLC, a Texas limited liability company; that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

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

My commission expires on \_\_\_\_\_.

**EXHIBIT A**

**Description of Land**

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## **EXHIBIT B**

### **Schedule of Permitted Encumbrances**

1. Construction and Permanent Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of March 1, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC, to [Randall B. Durant], Trustee, and all terms, conditions and stipulations contained therein, including any additional indebtedness secured thereby, securing the payment of one promissory note of even date in the principal amount of \$\_\_\_\_\_, payable to JPMorgan Chase Bank, N.A.
2. Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of March 1, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC, to [Randall B. Durant], Trustee, and all terms, conditions and stipulations contained therein, including any additional indebtedness secured thereby, securing the payment of one promissory note of even date in the principal amount of \$\_\_\_\_\_, payable to JPMorgan Chase Bank, N.A.
3. Leasehold Deed of Trust, Security Agreement, and Financing Statement dated March \_\_, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC, to Rosie Truelove, Trustee, and all terms, conditions and stipulations contained therein, including any additional indebtedness secured thereby, securing the payment of one promissory note of even date in the principal amount of \$2,000,000.00, payable to Austin Housing Finance Corporation.
4. Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing (Breakage Fee) dated as of March \_\_, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC, to [Gary S. Farmer], trustee, and all terms, for the benefit of \_\_\_\_\_, conditions and stipulations contained therein, including any additional indebtedness secured thereby, securing the payment of one promissory note of even date in the maximum principal amount of \$\_\_\_\_\_, payable to \_\_\_\_\_.
5. Regulatory and Land Use Restriction Agreement by and among Austin Housing Finance Corporation, Austin DMA Housing III, LLC and BOKF, NA dated as of March 1, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas.

6. Restrictive Covenant Running with the Land dated March \_\_, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC for the benefit of AHFC Nightingale Non-Profit Corporation relating to Residential Housing Development Assistance Program Loan Agreement dated as of March \_\_, 2018 between Austin DMA Housing III, LLC and AHFC Nightingale Non-Profit Corporation.
7. Restrictive Covenant Running with the Land dated March \_\_, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC for the benefit of Austin Housing Finance Corporation relating to Residential Housing Development Assistance Program Loan Agreement dated as of March \_\_, 2018 between Austin DMA Housing III, LLC and Austin Housing Finance Corporation.

**EXHIBIT C**

**Notice Addresses**

**Landlord:**

Austin Housing Finance Corporation  
1000 East 11<sup>th</sup> Street  
Austin, Texas 78702  
Attn: Mandy DeMayo  
Telephone: (512) 974-3100

With a copy to:

William L. Gehrig  
Greenberg Traurig, LLP  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037  
Telephone: (202) 331-3170

**Tenant:**

Austin DMA Housing III, LLC  
4101 Parkstone Heights Drive  
Suite 310  
Austin, Texas 78746  
Attention: Diana McIver  
Telephone: (512) 328-3232

With a copy to:

AHFC Nightingale Non-Profit Corporation (Managing Member)  
1000 East 11<sup>th</sup> Street  
Austin, Texas 78702  
Attn: Mandy DeMayo  
Telephone: (512) 974-3100

With a copy to:

William L. Gehrig  
Greenberg Traurig, LLP  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037  
Telephone: (202) 331-3170

With a copy to:

Scott Marks  
Coats Rose  
901 S. Mopac Expressway  
Building 1, Suite 500  
Austin, Texas 78746  
Telephone: (512) 684-3843

Investor Member:

Boston Capital Direct Placement, A Limited Partnership  
c/o Boston Capital Partners, Inc.  
One Boston Place, 21st Floor  
Boston, MA 02108  
Attention: Asset Management (Nightingale at Goodnight Ranch)

With a copy to:

Kristen Cassetta  
Holland & Knight LLP  
10 Saint James Avenue  
11th Floor  
Boston, MA 02116  
Telephone: (617) 573-5875

Eric Lavin  
Holland & Knight LLP  
10 Saint James Avenue  
11th Floor  
Boston, MA 02116  
Telephone: (617) 305-2171

Christine R. Piraino  
Holland & Knight LLP  
200 South Orange Avenue  
Suite 2600  
Orlando, FL 32801  
Telephone: (407) 244-5149

Permitted Leasehold Mortgagee:

JPMorgan Chase Bank, N.A.  
Community Development Group  
221 West 6<sup>th</sup> Street, Floor 2  
Austin, Texas 78701  
Attention: David H. Saling  
Telephone: (512) 479-2218

With a copy to:

Greenberg Traurig, LLP  
1000 Louisiana Street  
Suite 1700  
Houston, TX 77002  
Attn: Wayne Yaffee  
Telephone: (713) 374-3655

With a copy to:

BOKF, NA (Fiscal Agent)  
801 Cherry Street  
Suite 3325, Unit 27  
Fort Worth, Texas 76102  
Attn: Pamela M. Black, CCTS, Senior Vice President  
Telephone: (817) 348-5797

With a copy to:

Naman, Howell, Smith & Lee, PLLC  
8310 Capital Texas Hwy. N., Suite 490  
Austin, Texas 78731  
Attn: William C. "Cliff" Blount, Esq.  
Telephone: (512) 807-2454

With a copy to:



Administrative Member:

DMA Nightingale, LLC  
4101 Parkstone Heights Drive, Suite 310  
Austin, Texas 78746

With a copy to:

Coats Rose  
901 South Mopac Expressway  
Building 1, Suite 500  
Austin, Texas 78746  
Attn: Scott Marks  
Telephone: (512) 684-3843

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