

## City of Lexington Lease

THIS LEASE, entered into this 27 day of September, 2024, by and between Davis Park Station, LLLP, hereinafter referred to as "Lessor", and Lexington Fayette Urban County Government, hereinafter referred to as "Lessee". The Lessor and Lessee are collectively hereinafter referred to as "the Parties".

### WITNESS

A. Lexington Community Land Trust, Inc. ("Prime Lessor"), is the fee owner of that certain real property in City of Lexington, County of Fayette, and the Commonwealth of Kentucky, more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Estate").

B. Pursuant to that certain Land Lease dated as of October 11, 2023, by and between Prime Lessor and Lessor (the "Prime Lease"), a true and complete copy of which is attached hereto as Exhibit B and incorporated herein by reference, Lessor holds a leasehold interest in certain commercial space of a building located on the Real Estate (the "Building") located at 501 DeRoode Street. The Building consists of approximately 2,381 square feet of gross rentable area and will be known as Davis Park Station Community Service Facility (hereinafter referred to as the "Center" of the "Leased Premises"). The boundaries and location of the Leased Premises are crosshatched on a diagram of the Center, which is attached hereto and marked as Exhibit E sets forth the general layout of the Center and shall not be deemed a warranty, representation, or arrangement on the part of Lessor that said Center will be as exactly indicated on said diagram.

C. Lessee desires to sublease the Leased Premises from Lessor, and Lessor desires to sublease the Leased Premises to Lessee, subject to the terms and conditions hereof.

NOW THEREFORE, in consideration of the mutual promises, covenants herein contained and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, hereby agree as follows:

### 1. PREMISES

The above and foregoing Recitals are hereby incorporated herein by reference. Lessor subleases to and Lessee rents from Lessor upon and subject to the terms and provisions of this Lease, the Leased Premises. Lessee agrees that possession of the Leased Premises shall be in an "AS IS/ WHERE IS" condition as of the Commencement Date of this Lease.

### 2. TERM

This Lease shall be effective upon the date of its execution but the term of this Lease and Lessee's obligation to pay rent hereunder shall commence when Leased Premises is ready for occupancy (the "Commencement Date"). The initial term of this Lease shall end June 30, 2026, but shall automatically renew for fourteen (14) additional one-year terms thereafter if all payments required

under this Lease are appropriated by Lessee for the respective fiscal year in which the payments are due.

### **3. ANNUAL RENT**

The first (1<sup>st</sup>) year's rent is due and payable upon Lessor's tender of possession of the Leased Premises to Lessee. Said annual rent shall be One Dollar per year (\$1) due and payable on January 15th of each year thereafter.

### **4. ALTERATIONS**

No changes, additions or alterations to the Leased Premises shall be made by Lessee without the written consent of Lessor and Lessor's Limited Partner, which consents shall not be unreasonably withheld, conditioned or delayed providing that such alterations are at Lessee's sole cost and expense. All alterations, both structural and non-structural, shall be agreed by the parties in writing. All such alterations shall be completed in a good and workmanlike manner with first-class materials and workmanship. Lessee shall make no additions or alterations whatsoever to the exterior of the Leased Premises without prior written consent of Lessor. In all cases Lessee must obtain Lessor's written consent before making any roof (or other) penetrations for the purpose of installing vents, exhaust fans, or similar devices to serve the Leased Premises or for any other purpose. No such consent shall be required pursuant to maintenance in the ordinary course as referenced in Section 14.

### **5. LIENS**

Lessee agrees that it will, during the term or any extensions hereof, promptly remove or release, by posting of a bond or otherwise, any lien attaching to or upon said Leased Premises by any act or omission on the part of the Lessee. For the purposes of financing Lessee's (or sublessee's) trade fixtures and equipment, if so requested, Lessor shall subordinate all Lessor's liens.

### **6. CONTENTS & COMMERCIAL GENERAL LIABILITY INSURANCE**

Lessee agrees to have proper insurance on the contents of the Leased Premises. Lessee also agrees to carry Commercial General Liability (CGL) with limits of Insurance not less than \$1,000,000 each occurrence, \$1,000,000 Personal Injury and \$2,000,000 Annual General Aggregate. Lessor understands that Lessee is self-insured and such self-insurance satisfies the requirements of this section.

### **7. COMMON AREA COSTS**

On or after the Commencement Date, in each Lease Year, Lessee shall pay to Lessor, in annual payments a pro rata share of the "Center Operating Cost", ("Additional Rent") herein defined, based upon the ratio of the square feet of the Leased Premises to the total square feet of all leasable building floor area in the Center and the 73 additional units. The total building area of Davis Park Station is 84,562 square feet. The Leased Premises amounts to 2.816% of the total rentable space

at Davis Park Station. "Center's Operating Cost" means the total cost of those items listed in Exhibit C. Notwithstanding the foregoing to the contrary, as used in this Lease, Lessee's "proportionate share" of all real estate taxes and assessments levied upon or with respect to the Leased Premises by federal, state or local governments (excluding income, franchise, estate or inheritance taxes and taxes based on receipt of rentals, unless the same shall be in substitution for or in lieu of a real estate tax or assessment), including payments in lieu of taxes, and any personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and appurtenances owned by Lessor and located on or used exclusively in connection with the operation of the Leased Premises ("Real Estate Taxes") for purposes of this Lease shall mean one hundred percent (100%) of such Real Estate Taxes equitably allocated to the Leased Premises, if applicable.

For the first term, the estimated amount provided in Exhibit C shall be paid within thirty (30) days of execution of the Lease as Additional Rent for the first term. The Lessor shall draw down these funds on a regular basis (i.e. monthly or quarterly) in order to pay for the amounts actually owed by Lessee pursuant to the first paragraph of this Section 7. In January 2026, the Lessor shall perform a reconciliation between the Additional Rent paid and the applicable pro rata share of the actual expenses incurred for the Center's Operating Cost as described in Exhibit C. Should the Lessee have paid in excess of the amount due under first paragraph of Section 7, the excess shall be credited toward Additional Rent for the subsequent term, if the lease is extended as provided in Section 2. Otherwise, the excess shall be repaid to the Lessee. Should the Lessee have paid less than the amount due under the first paragraph of Section 7, the Lessee shall pay the difference.

For subsequent terms, if the lease is extended as provided in Section 2, the annual payment required for Additional Rent shall be paid at the end of the respective term based on the applicable pro rata share of the actual expenses incurred for the Center's Operating Cost as described in Exhibit C for that term. Billing for subsequent terms may be done quarterly, if agreed between the parties.

#### **8. Use of the Leased Premises.**

The Leased Premises may be used and occupied for such purposes as Lessee shall determine, including without limitation a [community service center] and any other uses that may be incidental to such use from time to time, provided that such use does not in Lessor's reasonable opinion materially interfere or undermine the use of the non-commercial portion of the Building for residential purposes. Provided further, notwithstanding anything to the contrary set forth in this Lease, the use of the Leased Premises shall meet the programmatic and regulatory requirements for a "community service facility" contained in the Section 42 of the Internal Revenue Code, as amended. Notwithstanding the foregoing, the Leased Premises may not be used: (i) for any unlawful purposes or in any unlawful manner; (ii) for any prohibited use described hereto and made a part hereof (any such use a "Prohibited Use") Prohibited Uses include: 1) Trades or businesses consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, race track or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off the premises 2) Trades or businesses consisting predominantly of the development or holding of intangibles for sale or license. (iii) for any use which would materially and adversely interfere with the ability to use the Building (other than the Leased Premises) as a multifamily housing project; (iv) for any use that would unreasonably increase the rate of casualty insurance above rates

generally paid for mixed-use properties of similar size within the general geographic area surrounding the Building; (v) for any use that would cause the cancellation of any insurance policy on the Building and prevent the replacement of said policy on commercially reasonable terms; or (vi) in any way that would materially violate the requirements of Section 42 of the Internal Revenue Code, as amended, including without limitation, the requirements for a "community service facility" under Section 42 of the Internal Revenue Code, as amended. An additional list of Prohibited Uses is attached as Exhibit D.

## **9. DEFAULT.**

In the event Lessee fails to observe or perform or is otherwise in default of any of its obligations under this Lease in the manner or within the time specified herein, Lessor may exercise any right or remedy against Lessee available to Lessor at law or in equity including, without limitation, the right to terminate this Lease and Lessee's rights to use and occupy the Leased Premises or any part thereof. For purposes of this Lease, Lessee shall be deemed to be in default hereunder (an "Event of Default") if:

- (i) Lessee shall fail to pay any Rent or any other amounts due Lessor from Lessee within thirty (30) days after written notice of non-payment is sent to Lessee by Lessor; or
- (ii) Lessee shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after notice thereof from Lessor; provided, however, that if the term, condition, covenant or obligation to be performed by Lessee is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such failure to perform shall not be deemed a default hereunder so long as Lessee commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same not to exceed an additional sixty (60) day cure period. Notwithstanding the foregoing, if such failure cannot reasonably be cured within such sixty (60) day period, as determined by Lessor in its reasonable discretion, giving due and good faith consideration to Lessee's input regarding such issues, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such sixty (60) day period, which shall in no event exceed ninety (90) days after receiving notice of such failure from Lessor.

In the event Lessor fails to observe or perform or is otherwise in default of any of its obligations under this Lease, Lessee may pursue all rights and remedies available at law or in equity relating to such default.

## **10. NOTICES.**

All notices, payments and demands which may or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to be given when delivered or mailed by United States mail (certified or registered mail in the case of notices and demands), postage prepaid, addressed to Lessor at its office address set forth in the preamble hereof, or addressed to Lessee, at its office address set forth in the preamble hereof, or to such other firm or to such other place as each party hereto or its authorized agent may from

time to time designate in writing to the other party. A copy of any notice required to be sent to Lessor shall also be sent to Lessor's Limited Partner as follows:

To: Davis Park Station Limited Liability Limited Partnership  
c/o AU Associates, Inc.  
Attn: John Graham  
159 Old Georgetown Street  
Lexington, KY 40508  
[Email Address]

And to: Community Equity Fund XXVII Limited Partnership  
c/o Community Affordable Housing Equity Corporation  
7700 Falls of Neuse Road, Suite 200  
Raleigh, North Carolina 27615  
Attention: Legal Department

And:  
  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Asher Ball

## **11. PROPERTY INSURANCE**

Lessor agrees to obtain and keep in force during the term of this Lease, a policy or policies of insurance providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and special extended perils (all risk). Said insurance shall provide for payment for losses thereunder to Lessor. Lessee agrees to pay the cost of said insurance premium amount based upon the ratio of square feet occupied by Lessee to the total square feet occupied by Lessee to the total square feet of leasable building floor area in the Center. An estimated amount of Lessee's share of the Property Insurance shall be payable in annual installments as a part of the Common Area Cost Above.

## **12. NUISANCE**

The Leased Premises shall not be maintained as, nor shall they become, a public or private nuisance. Lessee shall not commit or allow to be committed and nuisance, noise, odor, waste, or refuse or anything which may disturb the quiet enjoyment of any other tenant in the Center. Lessee shall keep the interior of the Leased Premises at all times orderly, tidy and reasonably clean and free from rubbish and dirt and shall store all trash and garbage in proper receptacles in designated areas. Lessee shall not conduct any auction, fire, going-out-of business or bankruptcy sales, nor do any act to injure the reputation of the Center.

### **13. WASTE**

Lessee, its sub-tenants (if any), employees and agents, shall not place any trash or rubbish of any kind on the sidewalks adjacent to the Leased Premises nor in any of the interior, exterior, adjacent walks and landscaped areas of the Building and Real Estate (the "Common Area"). Lessee will not place or permit any sub-tenant to place on any exterior door, window or any wall of the premises or otherwise, any sign, awning, canopy, advertising matter, decoration, lettering, or other materials of any kind without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

### **14. REPAIRS AND MAINTENANCE**

Lessee shall, at its expense, maintain the Leased Premises and the improvements thereon, in the same condition in which they were received, reasonable wear and tear excepted, except if any damage to the Leased Premises was caused by the negligence of Lessor. Such maintenance, repair and replacement shall include, but not limited to, interior walls, replacement of interior glass, floor and floor covering, bathroom fixtures, kitchen fixtures, ceiling, plumbing and electrical systems within the Leased Premises, heating and air-conditioning equipment and components, except that if the heating and air-conditioning equipment and system serving the Leased Premises also serves additional space within the Center not occupied by the Lessee. Lessee shall maintain at Lessee's expense the whole of said Leased Premises in a clean and sanitary condition in accordance with all applicable state, city and county health and sanitation laws and ordinances and as directed by the proper public officials during the term of this Lease. Lessee covenants and agrees to pay promptly when due all claims for work and materials furnished in connection with the repair or maintenance of its improvements and shall not permit or suffer any liens or encumbrances to attach to the Leased Premises and, to the extent permitted by law and without waiving the defense of sovereign immunity, shall indemnify Lessor against loss therefrom. All installation, repair, and maintenance performed by either party pursuant to this Section 14 shall be performed in a reasonably 1) non-disruptive, excluding temporary disruptions, noise and dust customarily resulting from construction activities, and 2) safe manner in accordance with all applicable laws, ordinances, rules and regulations.

### **15. UTILITIES**

Shared utilities shall be billed as function of the annual Common Area Costs. Any default in payment of utilities will be the sole responsibility of the Lessee, provided, however, Lessor shall not act to discontinue existing services to the Leased Premises and Improvements, except in case of emergency. Notwithstanding the foregoing, Lessee shall pay for all separately metered utilities exclusively serving the Leased Premises, including but not limited to water, sewer, gas and electric.

### **16. INSPECTIONS**

Per Kentucky Housing Corporation requirements for funding, annual inspections will be required for compliance. These inspections will be scheduled in advance and with ample notice to the

Lessee. Lessor and its agents and Lessor and its agents shall have the right during the Lease Term to enter the Leased Premises with reasonable advance notice to Lessee, unless the same would not be practical under the circumstances, for inspection or any other purpose reasonably related to: (i) protecting Lessor's interests in the Leased Premises or in the Building; (ii) ensuring that Lessee is fulfilling all of its obligations under this Lease; and (iii) showing the Leased Premises to prospective assignors, tenants (during the final 12 months of the Lease Term), purchasers or mortgagees..

## **17. ASSIGNMENT AND SUBLETTING**

Lessee shall not, either voluntarily sell, assign, hypothecate, sublease, or transfer this Lease or sublet the Leased Premises or any part thereof, or permit the Leased Premises to be occupied by anyone other than Lessee or Lessee's employees, without the prior written consent of Lessor.

## **18. COMPLIANCE WITH LAW**

Lessee agrees, at Lessee's expense, to comply promptly with all applicable statutes, ordinances, rules, regulations, orders and requirements of appropriate governmental agencies (the "Legal Requirements"), in effect during the term or any extensions hereof regulating the Leased Premise by Lessee of the Leased Premises. Lessee shall make all modifications, alterations, and improvements to the Leased Premises, at its sole cost, that are required by any Legal Requirement because of (i) Lessee's specific use or occupancy of the Leased Premises, (ii) Lessee's application for any permit or governmental approval, or (iii) Lessee's making of any modifications, alterations or improvements to or within the Leased Premises ("Lessee's Compliance Work").

## **19. RESIDENTIAL RENTAL PROPERTY**

Notwithstanding anything else in this Lease, it is the intention of the parties that the Building be classified as "residential rental property" for purposes of and as defined in Section 168(e) of the Internal Revenue Code of 1986, as amended (as so amended, "Section 168(e)") and Lessee shall at all times sublease the Leased Premises in such a way so as to allow the Building to be classified as "residential rental property" for purposes of Section 168(e). To the extent any provisions of this Lease would cause the Building to lose such designation as "residential rental property," then such provisions shall have no force or effect and shall be altered to preserve such classification as "residential rental property." To the extent any provisions of any sub-lease between Lessee and its sub-tenant would cause the Building to lose such designation as "residential rental property," then such provisions shall have no force or effect and shall be altered to preserve such classification as "residential rental property" by lessee refunding to the applicable lessee the amount by which all rents for the Leased Premises under the Lease exceeds 20% of the gross rental income of the entire Project or, with the consent of Lessor's Limited Partner in its sole discretion, Lessee shall compensate Lessor's Limited Partner for any negative tax consequences arising therefrom, including, without limitation, the deceleration of any depreciation deductions or loss of tax credits in such year. The parties shall work in good faith to preserve the Building's "residential rental property" classification.



**20. HAZARDOUS MATERIALS**

Lessee shall not be responsible for any Hazardous Materials existing on the Leased Premises prior to Lessee's possession or brought onto the Leased Premises by a party other than the Lessee, its employees, agents, licensees or invitees. Lessee shall not use the Leased Premises or any other portion of the Center for storage, use, treatment, disposal of any Hazardous Materials, except for those used in normal commercial and retail applications and sold as retail consumer products. To the extent permitted by law, and without waiving the defense of sovereign immunity, Lessee agrees to indemnify Lessor from loss due to the presence of Hazardous Materials in the Leased Premises or Center caused by the acts of Lessee, its employees, agents, licensees or invitees.

**21. SUCCESSORS AND ASSIGNS.**

Subject to Section 17 hereof, this Lease shall inure to the benefit and be binding upon the successors and assigns of the parties hereto.

**22. QUIET POSSESSION.**

If Lessee shall perform all the covenants and obligations herein provided to be performed by Lessee, Lessee shall at all times during the Lease Term have the peaceful and quiet possession of the Leased Premises without any manner of hindrance from Lessor or any persons lawfully claiming under Lessor, subject to the terms and provisions of this Lease, including Lessor's remedies following Lessee's default.

**23. RELATIONSHIP OF THE PARTIES.**

Nothing herein contained shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent, partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and tenant.

**24. GOVERNING LAW, JURISDICTION AND VENUE.**

The laws of the State of Kentucky shall govern the validity, performance and enforcement of this Lease.

**25. SEVERABILITY.**

The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision, and this Lease shall be construed in all respects as if such invalid or unenforceable provision has not been contained herein.

**26. COMPLETE AGREEMENT.**



All exhibits attached to this Lease are incorporated herein by this reference. The headings of the several Articles and Sections contained herein are for convenience only and do not define, limit or construe the contents of such Articles and Sections. All negotiations, considerations, representations and understandings between the parties are incorporated and set forth herein and may be modified or altered only by agreement in writing signed by both parties.

**27. CONSTRUCTION OF TERMS.**

Whenever the singular or plural number, or masculine, feminine or neuter gender is used herein, it shall equally include the other, and the terms and provisions of this instrument shall be construed accordingly.

**28. AUTHORITY.**

Lessee and Lessor each covenant to the other that the execution and delivery of this Lease has been duly authorized by all necessary action, and that this Lease has been duly executed and delivered, and constitutes a legal, valid and binding agreement enforceable against the respective parties, as the case may be, in accordance with its terms and provisions.

**29. SURRENDER.**

Upon the expiration or earlier termination of this Lease, Lessee will at once surrender and deliver up the Leased Premises, together with all improvements thereon, to Lessor in good condition and repair, reasonable wear and tear excepted. Lessee shall surrender to Lessor all keys to the Leased Premises and make known to Lessor the combination of all combination locks which Lessee is permitted to leave on the Leased Premises.

**30. REMOVAL OF LESSEE'S PROPERTY.**

Upon the expiration of this Lease, Lessee shall remove Lessee's articles of personal property incident to Lessee's business ("Trade Fixtures"); provided, however, that Lessee shall repair any injury or damage to the Leased Premises and/or the Building which may result from such removal and shall restore the Leased Premises and/or the Building, as applicable, to substantially similar condition as prior to the installation thereof. If Lessee does not remove Lessee's Trade Fixtures from the Leased Premises prior to the expiration or earlier termination of the Lease Term, Lessor may, at its option, remove the same (and repair any damage occasioned thereby and restore the Leased Premises and/or the Building, as applicable, as aforesaid) and dispose thereof or deliver the same to any other place of business of Lessee, or warehouse the same, and Lessee shall pay the cost of such removal, repair, restoration, delivery or warehousing to Lessor on demand, or Lessor may treat said Trade Fixtures as having been conveyed to Lessor with this Lease as a Quitclaim Bill of Sale, without further payment or credit by Lessor to Lessee.

**31. HOLDING OVER.**

Lessee shall have no right to occupy the Leased Premises or any portion thereof after the expiration of this Lease or after termination of this Lease or of Lessee's right to possession in consequence

of an Event of Default hereunder. In the event Lessee or any party claiming by, through or under Lessee holds over, Lessor may exercise any and all remedies available to it at law or in equity to recover possession of the Leased Premises, and to recover damages. For each and every month or partial month that Lessee or any party claiming by, through or under Lessee remains in occupancy of all or any portion of the Leased Premises after the expiration of this Lease or after termination of this Lease or Lessee's right to possession, Lessee shall pay, as minimum damages and not as a penalty, monthly rental at a rate equal to one hundred fifty percent (150%) of the rate of the Rent payable by Lessee hereunder immediately prior to the expiration or other termination of this Lease or of Lessee's right to possession. The acceptance by Lessor of any lesser sum shall be construed as payment on account and not in satisfaction of damages for such holding over.

### **32. SUBORDINATION.**

This Lease shall be subordinate to all existing and future mortgages on the Building and/or the Real Estate, as applicable, and Lessee agrees to subordinate this Lease to any future mortgage and to attorn to Lessor's successor following any foreclosure sale, or transfer in lieu thereof, provided that Lessee's rights under this Lease shall not be disturbed. If requested by Lessor, or any lender to Lessor, Lessee agrees to enter into a commercially reasonable Subordination, Non-Disturbance and Attornment Agreement containing customary terms and provisions.

### **33. ESTOPPEL CERTIFICATE.**

Lessee agrees that, from time to time upon not less than ten (10) days' prior request by Lessor, or Lessor's Limited Partner, Lessee will deliver to Lessor, Lessor's Limited Partner, as applicable, a statement in writing signed by Lessee certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and identifying the modifications); (ii) the date upon which Lessee began paying Rent and the dates to which the Rent and other charges have been paid; (iii) that Lessor is not in default under any provision of this Lease, or, if in default, the nature thereof in detail; (iv) that (if applicable) the Leased Premises have been completed in accordance with the terms hereof and Lessee is in occupancy and paying Rent on a current basis with no rental offsets or claims; (v) that there has been no prepayment of Rent other than that provided for in this Lease; (vi) that there are no actions, whether voluntary or otherwise, pending against Lessee under the bankruptcy laws of the United States or any state thereof; and (vii) such other matters as may be reasonably required by Lessor, Lessor's Limited Partner.

### **34. GENERAL INDEMNITY.**

To the extent permitted by law and without waiving the defense of sovereign immunity, Lessee shall indemnify Lessor against all damages, claims and liability arising out of Lessee's use and occupancy of the Leased Premises during the Lease Term or any extension thereof, unless due to the negligence or misconduct of other tenants, Lessor, or any of their members, agents, employees, licensees, invitees, successors or assigns. Lessor shall indemnify Lessee against all damages, claims, and liability arising from any accident or injury whatsoever during the Lease Term or any extension thereof, which accident or injury occurs in the Common Area unless due to the negligence or misconduct of Lessee or any of its members, agents, employees, licensees, invitees,

successors or assigns. The indemnification herein provided shall include all costs, reasonable counsel fees, expenses and liabilities incurred in connection with any such claim or action or proceeding brought thereon.

### **35. PARTIAL OR TOTAL DESTRUCTION OF THE LEASED PREMISES.**

In case the Leased Premises shall be partially or totally destroyed by fire, explosion, or any other casualty insured against by a fire and extended coverage insurance policy, such that the Leased Premises become partially or totally unusable for that which it was leased for, then the same shall at the option of Lessor, be repaired as speedily as possible at the expense of Lessor. In the event that the partial or total destruction of the Building is such that Lessee cannot continue to normally operate its business out of the Leased Premises, then the Rent shall be abated until such time that the Leased Premises have been repaired or replaced so that Lessee can recommence to operate its business from the Leased Premises; provided, however, that in the event Lessee cannot recommence its normal business operations within ninety (90) days after the casualty, then Lessee shall have the right to terminate this Lease upon thirty (30) days' written notice to Lessor. Either Lessor or Lessee shall have the right to terminate the Lease if the Leased Premises are not rebuilt within two hundred forty (240) days after casualty or if the repairs are estimated to take longer than two hundred forty (240) days to rebuild, or if a casualty occurs during the last twelve (12) months of the Lease Term, or if the costs of rebuilding is not covered by insurance. Lessor agrees to provide an estimate to complete repairs within thirty (30) days after Lessee's request. Notwithstanding the foregoing, Lessor's mortgage and the rights of any mortgagee shall govern restoration and the disbursement of insurance proceeds, to the extent provided therein.

### **36. CONDEMNATION.**

If all of the Leased Premises shall be taken by public authority, under the power of eminent domain, then this Lease shall terminate as of the date possession is required by the condemnor. If thirty percent (30%) or more of the Leased Premises is so taken, then Lessor or Lessee may terminate this Lease by giving written notice of such termination to the other party within thirty (30) days of the date possession is required. In the event that part of the Building, but not the Leased Premises, is condemned to the extent that the Building cannot, in Lessor's sole judgment, be economically restored within a reasonable time, Lessor shall have the option by notice given to Lessee within ninety (90) days after the date the condemning authority takes possession to terminate this Lease as of the date of such possession. In the event that part of the Building, but not the Leased Premises, is condemned which results in the Lessee's use of the Leased Premises becoming reasonably impractical or not economically viable in Lessee's good judgment, Lessee shall have the option by notice given to Lessor within ninety (90) days after the date the condemning authority takes possession to terminate this Lease as of the date of such possession.

### **37. DAMAGES.**

All damages awarded for such a taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall be specifically allocated between Lessor and Lessee, as to their respective damages. That is, Lessor shall first receive a sufficient sum to compensate it for

the diminished market value of the Building and for the loss of rental income and the negative impact upon the Building due to the termination of Lessee's business. Thereafter, Lessee shall then receive a sum for the cost of the removal of Lessee's inventory and the loss of its goodwill or lost profits or moving expenses incurred in the termination of Lessee's business. Notwithstanding the foregoing, Lessor's mortgage and the rights of any mortgagee shall govern restoration and the disbursement of condemnation proceeds, to the extent provided therein

**38. NO PERSONAL LIABILITY.**

Neither Lessor nor Lessee, nor any of either of their constituent partners, officers, directors or employees, shall have any personal liability under this Lease, and each party hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under such party.

**39. SUBORDINATION OF LEASE TO PRIME LEASE.**

This Lease and all the rights of parties hereunder are subject and subordinate to the Prime Lease. Each party agrees that it will not, by its act or omission to act, cause a default under the Prime Lease, of which default it has been made aware of in writing in advance to allow compliance to avoid default. In furtherance of the foregoing, the parties hereby confirm, each to the other, that it is not practical in this Lease to enumerate all of the rights and obligations of the various parties under the Prime Lease and specifically to allocate those rights and obligations in this Lease. Accordingly, in order to afford to Lessee the benefits of this Lease and of those provisions of the Prime Lease which by their nature are intended to benefit the party in possession of the Leased Premises, and in order to protect Lessor against a default by Lessee which might cause a default or event of default by Lessor under the Prime Lease:

- A. Provided Lessee shall timely pay all Rent and other amounts payable by Lessee to Lessor hereunder when and as due under this Lease, Lessor shall pay, when and as due, all base rent, additional rent and other charges payable by Lessor to Prime Lessor under the Prime Lease.
- B. Lessor hereby grants to Lessee the right to receive all of the services and benefits with respect to the Leased Premises which are to be provided by Prime Lessor under the Prime Lease. In the event of any default or failure of such performance by Prime Lessor, Lessor agrees that it will, upon notice from Lessee, make demand upon Prime Lessor to perform its obligations under the Prime Lease.
- C. Lessor represents and warrants to Lessee that this Lease is permitted under the Prime Lease and, if necessary, that Lessor has obtained all consents required under the Prime Lease to enter into this Lease.

**40. TERMINATION OF THE PRIME LEASE.**

Notwithstanding anything herein contained to the contrary, if the Prime Lease shall terminate during the Lease Term hereof, for any reason whatsoever, this Lease shall terminate upon such termination of the Prime Lease with the same force and effect as if such termination date had been named herein as the Expiration Date hereof. Notwithstanding the foregoing, the Lessor shall not be relieved from liability to the Lessee under this Lease by reason of the termination of this Lease following the termination of the Prime Lease as a result of a default by Lessor under its obligations under the Prime Lease. Notwithstanding the foregoing, the Lessee shall not be relieved from liability to the Lessor under this Lease by reason of the termination of this Lease following the termination of the Prime Lease as a result of a default by the Lessee under its obligations under this Lease.

#### **41. ACTION OF LESSEE.**

Lessee shall not knowingly do or permit anything to be done which would cause the Prime Lease to be terminated or forfeited by reason of any right of termination or forfeiture reserved or vested in Prime Lessor under the Prime Lease, and, to the extent permitted by law and without waiving the defense of sovereign immunity, Lessee shall indemnify and hold Lessor harmless from and against all claims (including reasonable attorneys' fees) of any kind whatsoever by reason of any breach or default by reason of which the Prime Lease may be terminated or forfeited as a result of Lessee's use, occupancy and possession of the Leased Premises.

#### **42. ACTION OF LESSOR.**

Lessor shall not do or permit anything to be done which would cause the Prime Lease to be terminated or forfeited by reason of any right of termination or forfeiture reserved or vested in the Prime Lessor under the Prime Lease, and Lessor shall indemnify and hold Lessee harmless from and against all claims (including reasonable attorneys' fees) of any kind whatsoever by reason of any breach or default by Lessor under the Prime Lease by reason of which the Prime Lease may be terminated or forfeited by Prime Lessor as a result of Lessor's acts or omissions and use, occupancy and possession of the Leased Premises, Lessee's use, occupancy and possession of the Leased Premises excepted.

#### **43. DISPUTE RESOLUTION.**

If any claim, controversy or dispute arises relating to this Lease cannot be resolved through informal negotiation by the parties, then the Lessee and Lessor will first proceed in good faith to submit the matter to mediation. Either party may request mediation by notifying the other party of its desire to submit the matter to mediation. Within ten (10) business days following notice of intent to mediate, the parties shall jointly select, appoint and arrange to meet with an impartial person who can mediate and seek to help resolve the dispute between the parties informally and confidentially. The mediator shall not be entitled to impose binding decisions. The parties must agree to the terms of any settlement arising out of the mediation before it is binding. The parties will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate if the parties have not been able to resolve their dispute within sixty (60) calendar days from the date written notice requesting mediation is sent by one party to the other party.

#### **44. RECORDING.**

The parties agree not to record this Lease but rather to execute a Memorandum of Lease ("Memorandum of Lease") in recordable form, complying with applicable law, and reasonably satisfactory to Lessor and Lessee. In no event shall the Memorandum of Lease set forth the rent or other charges payable by Lessee under this Lease; the Memorandum of Lease shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease. Subject to the provisions contained herein, the Memorandum of Lease may be re-recorded by either party at any time to preserve its respective rights hereunder.

*[Signature Pages Follows]*

IN WITNESS THEREOF, Lessor and Lessee have signed and sealed this Lease as of the day and year first above written.

LESSEE:

Lexington Fayette Urban County Government

By: Linda Gorton

Title: Mayor

LESSOR:

Davis Park Station Limited Liability  
Limited Partnership

By: Tam Con

Title: Manager of General Partner



**EXHIBIT A**

**LEGAL DESCRIPTION**

The Land referred to herein below is situated in the County of Fayette, State of Kentucky, and is described as follows:

Being all of Lots No. 30 and 31 as shown on the Final Record Plan of Southend Park, Section 2, 757 De Roode Street, Fayette County, Kentucky, as shown by Plat of record in Plat Cabinet S, Slide 184, in the Office of the Clerk of Fayette County, Kentucky.

**EXHIBIT B**

**PRIME LEASE**

## MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the “**Memorandum**”), is executed as of the 11<sup>th</sup> day of October, 2023, by:

LEXINGTON COMMUNITY LAND TRUST, INC.,  
a Kentucky non-profit corporation  
P.O. Box 171  
Lexington, KY 40588 (“**Landlord**”)

and

DAVIS PARK STATION LIMITED LIABILITY LIMITED PARTNERSHIP,  
a Kentucky limited liability limited partnership  
159 Old Georgetown Street  
Lexington, KY 40508 (“**Tenant**”)

### WITNESSETH:

In consideration of the premises, the mutual covenants and agreements set forth in a certain Land Lease (the “**Lease**”) of even date herewith, by and between Landlord and Tenant, Landlord has leased to Tenant, and Tenant has leased from Landlord, the real estate located in Fayette County, Kentucky described in Exhibit A, attached hereto and made a part hereof, for a term of 99 years beginning on the date hereof.

This Memorandum is executed for the purpose of giving notice of the existence of the Lease and the terms thereof. Reference is made to the Lease for the full description of the rights and duties of Landlord and Tenant, and this Memorandum shall in no way affect the terms and conditions of the Lease or the interpretation of rights and duties of Landlord and Tenant thereunder except as expressly set forth herein.

THE INTEREST CONVEYED HEREBY IS SUBJECT TO (i) AN ENVIRONMENTAL COVENANT DATED MARCH 30, 2015 RECORDED IN THE REAL PROPERTY RECORDS OF THE OFFICE OF THE FAYETTE COUNTY CLERK, KENTUCKY, IN DEED BOOK 3301, PAGE 572, (ii) AN ENVIRONMENTAL COVENANT DATED MARCH 30, 2015 RECORDED IN THE REAL PROPERTY RECORDS OF THE OFFICE OF THE FAYETTE COUNTY

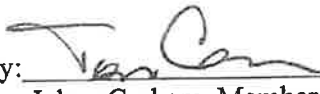
CLERK, KENTUCKY, IN DEED BOOK 3305, PAGE 629, and (iii) AN ENVIRONMENTAL COVENANT DATED APRIL 28, 2021 RECORDED IN THE REAL PROPERTY RECORDS OF THE OFFICE OF THE FAYETTE COUNTY CLERK, KENTUCKY, IN DEED BOOK 3838, PAGE 382.

(signatures on following page)



DAVIS PARK STATION LIMITED  
LIABILITY LIMITED PARTNERSHIP,  
a Kentucky limited liability limited partnership

By: Davis Park Station GP, LLC a  
Kentucky limited liability company  
General Partner

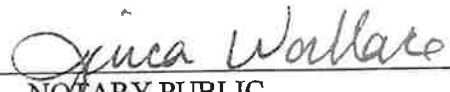
By:   
Johan Graham, Member

COMMONWEALTH OF KENTUCKY     )  
                                                           )  
COUNTY OF FAYETTE                     )

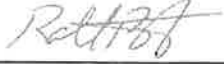
The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of October, 2023, by Johan Graham, as member of Davis Park Station GP, LLC, a Kentucky limited liability company, the General Partner of DAVIS PARK STATION LIMITED LIABILITY LIMITED PARTNERSHIP, a Kentucky limited liability limited partnership, on behalf of the limited liability limited partnership.

My commission expires: 4-21-2027



  
NOTARY PUBLIC  
NOTARY ID: KYNP 71143

THIS INSTRUMENT PREPARED BY  
AND UPON RECORDATION RETURN TO:



---

Robert B. Vice, Jr.  
Vice Cox & Townsend PLLC  
2303 River Road  
Suite 301  
Louisville, Kentucky 40206  
Telephone: (502) 290-6768

## **EXHIBIT A**

### **Legal Description**

The Land referred to herein below is situated in the County of Fayette, State of Kentucky, and is described as follows:

Being all of Lots No. 30 and 31 as shown on the Final Record Plan of Southend Park, Section 2, 757 De Roode Street, Fayette County, Kentucky, as shown by Plat of record in Plat Cabinet S, Slide 184, in the Office of the Clerk of Fayette County, Kentucky.

For informational purposes only:

Being the same property conveyed to Lexington Community Land Trust, Inc., a Kentucky non-profit corporation, by that certain Special Warranty Deed, dated July 29, 2021, of record in Deed Book 3864, Page 110.



**LAND LEASE**

by and between

**LEXINGTON COMMUNITY LAND TRUST, INC.**  
a Kentucky non-profit corporation,  
as Lessor

and

**DAVIS PARK STATION LIMITED LIABILITY LIMITED PARTNERSHIP**  
a Kentucky limited liability limited partnership,  
as Lessee

Dated October 11, 2023

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## LAND LEASE

**THIS LAND LEASE (“Lease”)** is made and entered into this 11<sup>th</sup> day of October, 2023 (the “**Effective Date**”), by and between LEXINGTON COMMUNITY LAND TRUST, INC., a Kentucky non-profit corporation, as “**Lessor**,” and DAVIS PARK STATION LIMITED LIABILITY LIMITED PARTNERSHIP, a Kentucky limited liability limited partnership, as “**Lessee**.”

The following Exhibits are attached hereto and made a part of the Lease:

|           |                     |
|-----------|---------------------|
| Exhibit A | LEASED PREMISES     |
| Exhibit B | PERMITTED MORTGAGES |

## RECITALS

- A. Lessor owns that certain parcel of land located in the City of Lexington, County of Fayette, and the Commonwealth of Kentucky, as more particularly described and depicted on Exhibit A attached hereto (the “**Land**”), which is part of real property owned by Lessor (the “**Development**”). Except as otherwise expressly set forth herein, Lessee will own the buildings, structures, fixtures, and other improvements to be constructed upon the Land as provided in this Lease (collectively, the “**Improvements**”). Lessor shall lease the Land (the “**Leased Premises**”) to Lessee and Lessee shall construct, own and use the Improvements as provided in this Lease. Lessee’s interest in the Leased Premises is referred to as the “**Leasehold Estate**.”
- B. Lessor is organized exclusively for charitable purposes, including, without limitation, the purpose of providing affordable housing opportunities for low and moderate income people.
- C. One purpose of Lessor is to carry out those portions pertaining to the Community Land Trust in the “Record of Decision” of the Newtown Pike Redevelopment Project, a copy of which has been provided by Lessor to Lessee (as amended from time to time, the “**Decision**”).
- D. Lessor and Lessee have agreed to enter into this Lease to further Lessor’s charitable purpose, and to enable Lessor to develop 73 rental units (the “**Housing**”) which shall be developed, owned, leased, and operated in accordance with Sections VI(A), VI(D), VI(D)(1), VI(D)(2), VI(D)(3), VI(G), and VI(I) of the Decision (the “**Applicable Decision Sections**”) and any and all restrictions recorded in the real property records of the Office of the Clerk of Fayette County, Kentucky (the “**Clerk’s Office**”), including but not limited to, those certain regulations (“**HOME Regulations**”) promulgated by the U.S. Department of Housing and Urban Development (“**HUD**”) to the extent affecting the Leased Premises due to the receipt of HOME funds from the Lexington Fayette Urban County Government (“**LFUCG**”) and that certain Land Use Restriction Agreement in favor of Kentucky Housing Corporation (the “**LURA**”, and collectively with the Applicable Decision Sections, HOME Regulations, and LURA, the “**Eligibility Requirements**”).
- E. It is mutually understood and accepted by Lessor and Lessee that all of the terms, covenants, conditions and provisions of this Lease shall be construed as covenants running with the Leased Premises and the fee simple estate of the Land, as applicable and subject to any and all rights, conditions, restrictions, and covenants of record in Clerk’s Office, and all rights given to and obligations imposed upon the respective parties shall be construed as inuring to and binding upon the successors-in-interest and assigns of the parties hereto, respectively.

## AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

### ARTICLE 1. DEMISE OF PREMISES

**1.1 PREMISES:** Lessor, in consideration of the amounts to be paid by Lessee hereunder and the terms and conditions of this Lease, does hereby demise and lease unto Lessee, and Lessee does hereby take and lease from Lessor, the Leased Premises subject to any and all rights, conditions, restrictions, and covenants (including but not limited to the Decision) of record in the real property records of the Office of the Clerk's Office; *provided, however*, that Lessor expressly reserves all mineral rights (if any) related and appurtenant to the Land, which shall not be deemed part of the Leased Premises; *further provided, however*, that Lessor agrees that it shall not mine any part of, or under, the Leased Premises. Pursuant to Article 2, below, Lessee has performed its own inspections, has obtained (or has waived its right to obtain) its own title report and leasehold title insurance policy, and is relying solely upon such information and its own investigations as to the physical condition of the Leased Premises and as to the condition of title to the Leased Premises except for any representations and warranties of Lessor expressly provided in this Lease. Lessee hereby accepts the Leased Premises "AS IS" and "WHERE IS" without any representation or warranty, express or implied, by Lessor as to its physical condition or as to the status of title thereto.

### ARTICLE 2. REQUIRED CONSTRUCTION APPROVALS

**2.1 SITE PLAN; CONSTRUCTION COSTS:** Prior to Lessee entering the Leased Premises for the use and enjoyment of the rights conferred upon Lessee pursuant to the terms hereof, Lessee shall have delivered to Lessor a copy of Lessee's proposed site plan of the Leased Premises as well as all plans and specifications (collectively, the "**Plans and Specs**"), showing, in reasonable detail, all of Lessee's intended Improvements, ingress and egress plans, parking configurations, proposed landscaping, locations of all utilities and the building footprint of each structure Lessee intends to construct on the Leased Premises, together with the proposed exterior elevations indicating colors and materials of each structure Lessee intends to construct on the Leased Premises, all in compliance with the Decision, and all applicable laws and regulations, including without limitation, all applicable zoning codes and other laws of any governmental entity having jurisdiction over the Leased Premises. Lessee shall also provide Lessor with any requested reports conducted in connection with its due diligence of the Leased Premises, including but not limited to title reports, building reports, or surveys prepared by or for Lessee in connection with the construction of the Improvements (collectively, the "**Reports**"), each of which (1) shall be paid for by Lessee and acceptable to Lessor in its sole but reasonable discretion and (2) is hereby confirmed by Lessor to be acceptable to Lessor.

**2.2 GOVERNMENTAL APPROVALS:** The Lessee shall provide to Lessor with reasonable evidence that all governmental approvals required for the development and operation of Lessee's intended Improvements have been or will be issued prior to the commencement of construction (with regard to the building permits) and prior to the leasing of residential units (with regard to those permits that involve occupancy and operation of the Housing), as applicable (collectively, the "**Permits**"). The Permits shall enable the Lessee to construct the Improvements in accordance with the Plans and Specs.

### ARTICLE 3. LEASE TERM; DEMOLITION

**3.1 PRINCIPAL TERM:** The term of this Lease shall be 99 years, commencing on the date hereof (the "Primary Term"), unless terminated sooner or extended as provided herein.

**ARTICLE 4. USE OF LEASED PREMISES**

**4.1 USE:** Lessee shall use, and shall cause all occupants to use, the Leased Premises and Improvements only in furtherance of the purposes of this Lease (the "Lease Purpose"), which includes but is not limited to the development, operation and maintenance of a multifamily residential rental facility of not less than 73 units, together with any functionally related facilities, and subject to and in compliance at all times with (the following being collectively known as "Applicable Restrictions and Laws") the Applicable Decision Sections, and any and all applicable zoning, building, subdivision, landlord and tenant, land use, and any other applicable laws, and all covenants, conditions, easements and restrictions of record in the Clerk's Office, if any.

**4.2 RESPONSIBLE USE AND COMPLIANCE WITH LAW; MAINTENANCE:** Lessee shall, and shall cause Lessee's employees, associates, contractors, subcontractors, and agents to use the Leased Premises in a manner so as not to cause harm to others or create any nuisances, public or private, and to dispose of any and all waste in a safe and sanitary manner. At all times during the term of this Lease (except during Force Majeure events, casualty, and/or condemnation events, in which case the other applicable provisions of this Lease shall control), Lessee, at its sole cost and expense, shall maintain the Leased Premises and Improvements in good, safe, and habitable condition in all respects except for normal wear and tear for similar developments, in compliance with all applicable laws and regulations, whether now existing or hereinafter enacted, and in such condition as is required to maintain the insurance coverage required by Section 9.4 of this Lease, it being the intent that all repairs that may be required on the Leased Premises, either inside or outside, structural or non-structural, ordinary or extraordinary, whether or not capital in nature, foreseen or unforeseen, shall be the obligation of Lessee, and Lessor shall in no event be required to make any alterations, rebuilding, replacements, changes, additions, improvements or repairs except repairs due to damage caused by Lessor and/or its employees, associates, contractors, subcontractors, agents and representatives, or any of its visitors or invitees while such visitors or invitees are on the portion of the Development other than the Leased Premises.

**4.3 INSPECTION:** Subject to Section 4.5 below, Lessor may, at any time, inspect any portion of the Leased Premises except the interior(s) of Lessee's Improvements, at any reasonable time, and in a commercially reasonable manner. In the event of emergency or a perceived danger to someone's health or safety as reasonably determined by Lessor, Lessor may inspect any portion of the Leased Premises, including the interior(s) of Lessee's Improvements if such emergency would require such interior access, without notice provided Lessor shall have made reasonable efforts to give advance notice to Lessee. Except as provided in this Section and expressly permitted under this Lease, Lessor and its agents, contractors, employees, successors, assigns, and licensees shall not have the right to enter the Leased Premises during the Primary Term or any renewal thereof without the prior approval of Lessee.

**4.4 LESSEE'S RIGHT TO PEACEFUL ENJOYMENT:** So long as there is no Event of Default hereunder, past any applicable notice and cure period, and subject to the terms and conditions set forth herein, Lessee shall have the right to the peaceful and quiet enjoyment and occupancy of the Leased Premises.

**4.5 HAZARDOUS MATERIALS:**

(a) Lessee shall not cause or permit any Hazardous Materials to be brought, kept, leaked, released, leached or used in or about the Leased Premises and/or the remainder of the Development by Lessee, its employees, associates, contractors, subcontractors, agents and representatives, or any visitors

or invitees while such visitors or invitees are on the Leased Premises except in full compliance with all applicable Environmental Laws. To the extent permitted by Kentucky law, Lessee agrees to indemnify and hold Lessor and Lessor's members, managers, officers, employees, agents, attorneys, consultants, contractors and its successors and assigns (collectively, the "**Related Parties**") harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, judgments, administrative orders, remediation requirements, enforcement actions of any kind, and all costs and expense (including without limitation, reasonable attorneys' fees and expenses) (collectively, "**Losses**") arising out of any breach by Lessee of the foregoing obligation, expressly excluding, however, from the foregoing indemnification obligations any Losses to the extent arising out of activities carried out after the Effective Date by or on behalf of Lessor and any other acts or omissions of Lessor or Lessor's Related Parties after the Effective Date or any of Lessor's visitors or invitees after the Effective Date while such visitors or invitees are on the remainder of the Development other than the Leased Premises. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present in the soil or ground water on or under the Leased Premises and/or the remainder of the Development which results from a breach of this Section 4.5(a). Without limiting the foregoing, if the presence of any Hazardous Materials in the Leased Premises and/or the remainder of the Development caused or permitted by Lessee results in any contamination of the Leased Premises and/or the remainder of the Development, Lessee shall promptly take all actions at its sole expense as are necessary to return the Leased Premises and/or the remainder of the Development to the conditions existing prior to the introduction of such Hazardous Materials to the Leased Premises and/or the remainder of the Development; provided that Lessor's approval of such actions, and the contractors to be used by Lessee in connection therewith, shall first be obtained.

(b) Lessee acknowledges that the Leased Premises are the subject of a Site Management Plan approved by the Kentucky Department of Environmental Protection, Division of Waste Management ("**KDWM**"). Lessee further acknowledges that Lessor has submitted to KDWM for its review and approval a Property Management Plan for the Leased Premises. Lessee has reviewed both the Site Management Plan and Property Management Plan. Lessee, its employees, associates, contractors, subcontractors, agents and representatives, or any visitors or invitees, shall at all times comply with the requirements of the Site Management Plan and of the Property Management Plan, as may be amended or supplemented from time to time, including without limitation, all requirements of any soils handling health and safety plan, vapor intrusion mitigation measures, and post-construction maintenance and monitoring requirements. Additionally, Lessee, its employees, associates, contractors, subcontractors, agents and representatives, or any visitors or invitees, shall at all times comply with the requirements of any Environmental Covenant or other institutional controls placed on the Leased Premises. Lessee shall include in any subsequent residential lease affecting any portion of the Leased Premises language, approved by the Lessor, requiring the residents to comply with the Environmental Covenant or any other institutional control placed on the Leased Premises. For purposes herein, the Environmental Covenant shall mean that certain Environmental Covenant dated March 30, 2015 recorded in the real property records of the Office of the Fayette County Clerk, Kentucky, in Deed Book 3301, page 572, (ii) an Environmental Covenant dated March 30, 2015 recorded in the real property records of the office of the Fayette County Clerk, Kentucky, in Deed Book 3305, page 629, and (iii) an Environmental Covenant dated April 28, 2021 recorded in the real property records of the Office of the Fayette County Clerk, Kentucky, in deed book 3838, page 382.

(c) Within thirty (30) days prior written notice to Lessee, Lessor and its employees, representatives and agents shall have access to the Leased Premises during reasonable hours in order to conduct periodic non-invasive environmental inspections, including without limitation post-construction maintenance and monitoring inspections required by the Site Management Plan or by the Property

Management Plan, inspections required by the Environmental Covenant or other institutional controls placed on the Leased Premises, and tests for Hazardous Materials contamination of the Leased Premises, provided that Lessor and its employees, representatives and agents shall use all reasonable efforts to not interfere with Lessee's business in the Lessee's Premises in the exercise of such rights. In the event of emergency or a perceived danger to someone's health or safety as reasonably determined by Lessor, Lessor may inspect any portion of the Leased Premises, including the interior(s) of Lessee's Improvements if such emergency would require such interior access, without notice provided Lessor shall have made reasonable efforts to give advance notice to Lessee. In the event Lessor is required by any governmental entity to perform any invasive environmental inspections, Lessor shall be entitled to do so with the approval of Lessee, which approval shall not be unreasonably withheld, conditioned or delayed, and provided that Lessor shall promptly restore any damage caused by such invasive inspection at its sole cost and expense. The costs of any inspections and necessary restorations shall be paid by Lessor unless the results thereof reveal contamination arising after the Effective Date of this Lease, in which event, Lessee shall be responsible for the costs thereof. Lessor shall complete all such inspections within sixty (60) days after its written notice to Lessee; *provided, however*, so long as Lessor is diligently performing such inspections, upon written notice to Lessee, Lessor may extend such inspection period for an additional sixty (60) days.

(d) Lessor shall not cause or permit any Hazardous Materials to be brought, kept, leaked, released, leached or used in or about the remainder of the Development by Lessor, its employees, associates, contractors, subcontractors, agents and representatives, or any of Lessor's visitors or invitees while such visitors or invitees are on that portion of the Development other than the Leased Premises. Lessor agrees to indemnify and hold Lessee and Lessee's Related Parties harmless from and against any and all Losses arising out of the any breach by Lessor of the obligations stated in the preceding sentence or any falsity in any representation or warranty contained in Section 4.5(b), expressly excluding, however, from the foregoing indemnification obligations any Losses to the extent arising out of activities carried out by or on behalf of Lessee and any other acts or omissions of Lessee or Lessee's Related Parties or any of Lessee's visitors or invitees while such visitors or invitees are on the Leased Premises. This indemnification of Lessee by Lessor includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil or ground water on or under the Leased Premises which results from a breach of this Section 4.5(d). Without limiting the foregoing, if the presence of any Hazardous Materials in the Leased Premises and/or the remainder of the Development caused or permitted by Lessor results in any contamination of the Leased Premises, Lessor shall promptly take all actions at its sole expense as are necessary to return the Leased Premises to the conditions existing prior to the introduction of such Hazardous Materials to the Leased Premises.

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

**"Hazardous Materials"** shall mean (i) any substance, material or waste which is defined now or hereafter as a "contaminant," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "industrial waste," or other similar term or phrase under any Environmental Law, (ii) any substance, the presence of which on, under or in the Project site or contained in any structure thereon, is prohibited or regulated by Environmental Law or which requires investigation, removal, response or remediation under any Environmental Law and (iii) petroleum or any fraction or by-product thereof, asbestos, any polychlorinated biphenyl, urea formaldehyde foam insulation, radon or any other radioactive or explosive substance, methane, volatile hydrocarbons or an industrial solvent.

“**Environmental Law**” shall mean any federal, state, or local law, statute, ordinance, and regulation, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including, without limitation, any applicable judicial or administrative order, consent decree, or judgment applicable to the site of the Facility relating to the regulation or protection of human health, safety and/or the environment, natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species, and/or vegetation), as well as protected sites or artifacts of historical or cultural significance. By way of further example, and without limiting the breadth of the foregoing, “**Environmental Laws**” include, but are not limited to, the National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321 et seq.); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.); the federal Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.); the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.); the Toxic Substance Control Act, as amended (15 U.S.C. §§ 2601 et seq.); the Clean Water Act; the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.); the Federal Coastal Zone Management Act, as amended (16 U.S.C. §§ 1451 et seq.); the Occupational Safety and Health Act, as amended (29 U.S.C. §§ 651 et seq.); the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300(f) et seq.), and any and all regulations promulgated thereunder and all similar state and local laws, statutes, ordinances, regulations, judicial or administrative orders, consent decrees, or judgments.

#### ARTICLE 5. LAND LEASE RENT

##### 5.1 **RENT:**

(a) An initial rent payment shall be due and payable as of the effective date in the amount of \$543,000.00 (the “**Initial Rent Payment**”).

(b) During the Primary Term following the date that the first unit of the Housing is Placed in Service, as defined in the hereinafter defined Partnership Agreement (“**Annual Rent Commencement Date**”), Lessee covenants and agrees to pay Lessor, without offset, deduction, or previous demand therefor, rent in the amount of \$30,660 per annum (the “**Minimum Annual Rent**”), which shall increase by \$4,380.00 per annum on the five year anniversary of the Rent Commencement Date and each five year anniversary thereafter.

5.2 **PAYMENT OF RENT:** The Minimum Annual Rent shall be payable to Lessor in equal monthly payments at the address specified in this Lease as Lessor’s address on or before the first day of each month (the “**Payment Date**”) for as long as this Lease remains in effect (including any renewal term). If the Annual Rent Commencement Date commences on a day other than the first of the month, a *pro rata* portion of the Minimum Annual Rent shall be paid by Lessee on the Annual Rent Commencement Date for the balance of the year. Any Minimum Annual Rent not paid in full by January 31<sup>st</sup> of each year shall bear interest at the rate of 3% per annum (“**Default Rate**”), computed from and including the date such payment was due through and including the date of payment; *provided, however*, in no event shall Lessee be obligated to pay a sum of late charge and interest higher than the maximum legal rate then in effect.

In the event that any amount of Minimum Annual Rent (including late charges and accrued interest thereon) remains due and owing when and if the Improvements are sold and the Leasehold Estate is transferred to another party (only as permitted pursuant to the terms of this Lease), the amount of such due and owing Minimum Annual Rent (including late charges and accrued interest thereon) shall be paid to Lessor out of any proceeds of sale otherwise due to Lessee at the time of such sale or transfer.

**5.3 BOOKS, RECORDS AND FINANCIAL STATEMENTS:** Lessee shall keep, or cause to be kept, true and complete books of record and accounts, in accordance with generally accepted accounting principles. Lessee shall provide to Lessor copies of its audited annual financial statements within one hundred twenty (120) days of the end of each fiscal year of Lessee.

#### ARTICLE 6. TAXES, ASSESSMENTS AND UTILITIES

**6.1 TAXES AND ASSESSMENTS ON LAND, LEASED PREMISES, IMPROVEMENTS AND LEASEHOLD ESTATE:** Lessee shall be responsible for the direct payment of all taxes levied against the Leased Premises and/or Improvements on the Land imposed by any authority having the power to tax any legal or equitable interest of Lessor in the Land (collectively, the “**Real Property Taxes**”), and any other taxes assessed against or imposed upon on the Leasehold Estate or personalty located thereon during the Primary Term or any renewal thereof. Both parties shall take all commercially reasonable steps to ensure that notices of taxes due on any of the foregoing are sent by the applicable taxing authority to both Lessor and Lessee.

**6.2 LESSEE’S AND LESSOR’S RIGHT TO CONTEST:** Lessee shall have the right to contest the amount or validity of any Real Property Taxes on the Leased Premises, Improvements and/or Leasehold Estate. Lessor shall, upon written request by Lessee, join in any such proceedings if Lessee reasonably determines that it is necessary for Lessor to do so. All costs and expenses of such proceedings shall be paid by Lessee. Notwithstanding the foregoing, taxes or assessments against or including the Land shall be contested only by Lessor, or by Lessee only with the concurrence of Lessor in its sole discretion. All costs and expenses of such proceedings shall be paid by Lessor.

**6.3 PAYMENTS IN EVENT OF DELINQUENCY:** In the event that Lessee fails to pay the Real Property Taxes specified in this Article 6, Lessor, without having any obligation to do so, may pay the same on behalf of Lessee, whereupon Lessee shall reimburse Lessor for amounts so paid within thirty (30) days of Lessor’s demand for reimbursement. If Lessee fails to timely reimburse Lessor, in addition to all other remedies available to Lessor, such amounts shall bear interest at the Default Rate from the date due until paid in full.

**6.4 PROOF OF COMPLIANCE:** Concurrently with the payment of any taxes, assessments, and charges required or permitted by the provisions of this Lease, each party shall furnish evidence reasonably satisfactory to the other documenting such payment. A photocopy of a paid receipt for such charges showing payment prior to the due date shall be the usual method of furnishing such evidence.

**6.5 UTILITIES:** Lessee shall pay directly, when due, all service bills and utility charges relating to the Leased Premises and Improvements during the Primary Term and any renewal thereof.

#### ARTICLE 7. IMPROVEMENTS

**7.1 OWNERSHIP:** It is agreed that, except as otherwise expressly set forth herein, during the term of this Lease, all Improvements constructed or placed by Lessee on the Leased Premises at any time during the term of this Lease shall be property of Lessee, and title to such Improvements including without limitation for tax purposes, legal and beneficial title to the Improvements and the Equipment shall be and remain vested in Lessee and during the Term, Lessee alone shall be entitled to all of the tax attributes of such ownership, including, without limitation, the right to claim expenses, depreciation, or cost recovery deductions, amortization and the right to claim the low income housing tax credit described in Section 42 of the Code. Lessee shall have the right to amortize capital costs and to claim any other federal and state tax benefits attributable to the Property; provided, however, that Lessee’s ownership rights in the Improvements are subject to the provisions of this Lease, including but not limited to



provisions regarding the disposition of Improvements by Lessee and rights of first refusal related thereto, and the reversionary rights set forth in Section 14.2. Notwithstanding any provision in this Lease, in no event shall Lessee sever or remove the Improvements or any part thereof from the Land.

## **7.2 CONSTRUCTION; ALTERATIONS, MAINTENANCE:**

(a) Lessee shall construct and complete, and thereafter maintain, at Lessee's sole cost and expense, the Housing and related facilities, signage and related site and infrastructure improvements to the Leased Premises (collectively, "**Lessee's Construction Work**") by the Completion Date, as such term defined in the First Amended and Restated Agreement of Limited Partnership (the "**Partnership Agreement**") of the Lessee dated on or about the date hereof, all in conformance with the Plans and Specs and the Decision, and in a good and workmanlike manner in compliance with all permits, applicable laws and regulations, including all applicable zoning codes and other laws of any governmental entity having jurisdiction over the Leased Premises, and free of liens as further described in Section 7.4 below. Notwithstanding the foregoing, the Completion Date may be extended (1) in the event of any Force Majeure, casualty, or condemnation event occurring during construction of the Improvements, to the extent reasonably necessary to complete Lessee's Construction Work in accordance with the foregoing and (2) to the extent permitted by the Lessee's Partnership Agreement. For purposes hereof, "**Force Majeure**" means any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of Lessee; *provided, however*, that nothing contained herein shall be deemed or construed to permit Lessee to delay any payment obligations under this Lease, including without limitation, payment of the Minimum Annual Rent.

(b) Lessee's Construction Work shall include all items shown in the Plans and Specs; provided, however, any such change orders shall be provided to Lessor and, except for change orders approved by LFUCG or the Construction Lender, Lessor's consent shall be required for any change order exceeding \$25,000.00 or change orders exceeding \$50,000.00 in the aggregate; provided, however, Lessor's consent may not be unreasonably condition, delayed, or withheld.

(c) Lessee hereby covenants and agrees that no construction on the Leased Premises shall unreasonably interfere with the use or occupancy by any other tenant or user of property within the Development and adjoining the Leased Premises, excluding, however, temporary disruptions, noise and dust customarily resulting from construction activities. Lessee agrees that prior to commencement of construction of Lessee's Construction Work, Lessee shall obtain and deliver to Lessor a copy of Lessee's building permit issued by the applicable local governmental body for the construction of the Improvements and related activities. Lessee hereby agrees that prior to initiating any development on the Leased Premises, Lessee shall deliver to Lessor evidence of all necessary approvals from third parties for Lessee's development of the Leased Premises as may be required by covenants, conditions, easements or restrictions of record, including any required amendments thereto. Lessee shall not commence Lessee's Construction Work prior to receipt of written approval from Lessor of the Plan and Specs.

(d) Lessee agrees to indemnify and hold Lessor and Lessor's Related Parties harmless from and against any and all Losses arising out of Lessee's Construction Work, expressly excluding, however, from the foregoing indemnification obligations any Losses to the extent arising out of activities carried out by or on behalf of Lessor and any other acts or omissions of Lessor or Lessor's Related Parties or any of Lessor's visitors or invitees while such visitors or invitees are on the remainder of the Development other than the Leased Premises. Lessee covenants and agrees that Lessee's Construction Work, once commenced, shall be prosecuted diligently (according to contemporary standards for similar developments) to completion by the Completion Date, as may be extended in accordance with Section 7.2(a). Lessee agrees to promptly repair and restore any improvements,

including without limitation, parking facilities, landscaping, and/or other infrastructure improvements located on any adjoining property and/or any portion of the Development other than the Leased Premises that are damaged during the course of or as a result of Lessee's Construction Work. In addition, during the period of performance of Lessee's Construction Work, Lessee shall take all commercially reasonable action to protect and preserve Lessor's and all invitees' and licensees' safe access to the Leased Premises and the remainder of the Development.

(e) Upon completion of the Lessee's Construction Work, Lessee, at Lessee's sole cost and expense, shall obtain and provide to Lessor a copy of an "as built" survey, in form and substance reasonably satisfactory to Lessor, showing the location of all improvements (including without limitation, the Improvements) constructed by Lessee upon the Leased Premises and showing a legally sufficient boundary description (the "Survey"). Lessee shall provide a copy of the Survey to Lessor for Lessor's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Lessor shall be entitled to object to the boundary description of the Leased Premises to the extent that it is different than what was shown on the Plans and Specs, in which event the parties shall negotiate in good faith to resolve the boundary description. Lessor and Lessee shall enter into an amendment to this Lease at the request of either party which shall set forth the boundary description as agreed upon by Lessor and Lessee and as shown in the Survey as being the description of the Leased Premises.

**7.3 ALTERATIONS:** Except as otherwise expressly set forth in this Lease, including without limitation, Section 7.2 above: (a) Lessee may engage in any exterior or structural construction or alteration of existing or new Improvements so long as they are consistent with the Lease Purpose, the Applicable Decision Sections, and/or the Plans and Specs, as applicable and as approved in writing by Lessor, which approval shall not be withheld if otherwise in compliance with the foregoing provisions, and otherwise shall not be unreasonably withheld, conditioned or delayed; (b) all costs related to such construction and/or alteration activities shall be borne and paid for by Lessee; (c) all related and necessary permits shall be obtained by Lessee at its sole cost and expense; (d) all construction shall be performed with reasonable diligence to completion, subject to Force Majeure and in accordance to contemporary standards for similar developments, in a good and workmanlike manner, in compliance with all permits, applicable laws and regulations, and free of liens as further described in Section 7.4 below; (e) Lessee shall not interfere with the use or occupancy by any other tenant or user of property adjoining the Leased Premises (including the Development); and (f) all construction shall be consistent with the permitted uses set forth herein. With respect to the foregoing and prior to the commencement of any construction activities, Lessee shall furnish to Lessor copies of the related Plans and Specs for such construction, which Lessor may reasonably approve or disapprove in writing; provided, however, if Lessor does not approve the Plans and Specs within 10 business days, the Plans and Specs shall be deemed to have been approved. Lessee may also undertake and complete any interior or non-structural modifications to the Improvements without Lessor's prior written consent.

**7.4 PROHIBITION OF LIENS:** There shall not be any claim of priority or paramount title to Lessor's title to the Land or under this Lease by title, lien or otherwise which claim of priority or paramount title is caused by or on behalf of Lessee, or as a result of an act or omission of Lessee. No lien for services, labor or materials resulting from Lessee's construction activities shall attach to the Land, Lessor's interest in the Land, Lessor's interest in this Lease, or to any other property owned by Lessor (including the Development). At the request of Lessor, Lessee shall provide to Lessor a list of all major contractors providing labor or furnishing laborers or materials in connection with construction of the Improvements. Lessee shall not permit any statutory or similar lien of which it has knowledge to be filed against the Development (including the Leased Premises), the Improvements, or any interest of Lessor or Lessee which remains more than ninety (90) days after it has been filed. Lessee shall cause any such lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law or acceptable to Lessor in its sole and absolute discretion. If Lessee fails to

cause such lien of which it has knowledge to be discharged within the ninety (90) day period, then, in addition to any other right or remedy, Lessor may, but shall not be obligated to, discharge the lien by paying the amount in question and Lessee shall reimburse Lessor the amount so paid by Lessor within thirty (30) days of Lessor's demand for reimbursement accompanied by documented proof of payment by Lessor. Lessee may, at Lessee's expense, contest the validity of any such asserted lien, provided that (a) none of the Development (including the Leased Premises), the Improvements, the Land, or any interest therein shall be in any danger of being sold, forfeited or lost by reason of such proceedings; (b) no Event of Default by Lessee shall then exist; (c) Lessee shall furnish a bond in an amount sufficient to release such lien or takes other steps acceptable to Lessor in its sole and absolute discretion that remove such lien or stays enforcement thereof; (d) Lessee promptly provides Lessor with copies of all notices received or delivered by Lessee and filings made by Lessee in connection with such proceedings; and (e) upon termination of such proceedings, it shall be the obligation of Lessee to pay the amount of any such lien or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable attorneys' fees and costs), interest, penalties or other liabilities in connection therewith. Any amounts paid by Lessor to discharge such liens shall be deemed to be an additional Minimum Annual Rent payable by Lessee within thirty (30) days of Lessor's demand for reimbursement accompanied by documented proof of payment by Lessor, bearing interest at the Default Rate if not timely paid as provided in Section 5.2.

**7.5 MAINTENANCE AND SERVICES:** Lessee shall, at Lessee's sole expense, maintain the Leased Premises and all Improvements as required by Section 4.2 above. Except as otherwise expressly provided in this Lease, Lessor shall not be required to furnish any services or facilities, including but not limited to heat, electricity, air conditioning or water, or to make any repairs to the Leased Premises or Improvements, and Lessee hereby assumes the sole responsibility for furnishing all services or facilities and maintenance and repairing the Leased Premises (including the Improvements); *provided, however*, Lessor shall not act to discontinue existing services to the Leased Premises and Improvements, except in case of emergency.

**7.6 DISPOSITION OF IMPROVEMENTS UPON EXPIRATION OF LEASE TERM:** Upon the expiration of the Primary Term of this Lease as such Primary Term may be renewed or sooner terminated in accordance with this Lease, Lessee shall surrender the Improvements together with the Leased Premises to Lessor, pursuant to and in accordance with Article 14. Notwithstanding the foregoing, upon expiration of this Lease or the sooner termination of this Lease for any reason other than Lessee's default hereunder, Lessor, in its sole and absolute discretion, may pay Lessee for the Improvements and Leasehold Estate, or may purchase the partnership interests of the partners of Lessee, in accordance with Article 13 of the Partnership Agreement.

## **ARTICLE 8. FINANCING**

**8.1 PERMITTED MORTGAGE:** Lessee may mortgage only the Improvements and Lessee's interest in the Leasehold Estate and only in accordance with the provisions of this Article 8; *provided, however*, that nothing contained in this Lease shall be deemed or construed as giving Lessee, any mortgagee (including any Permitted Mortgagee (defined below)) or any other person or entity as having the power or authority to mortgage or otherwise encumber the Land or Lessor's interest in this Lease. Lessee shall furnish to Lessor copies of every document to be executed by Lessor or Lessee in connection with such proposed mortgage. Lessor shall not withhold its consent to a proposed mortgage if (a) at the time such copies of documents are submitted and at the time proposed by Lessee (or prospective and permitted lessee) for the execution of such documents, no default hereunder is then outstanding or no event, which, with the passage of time, would constitute a default hereunder; and (b) the mortgage so

submitted is a “**Permitted Mortgage**” as defined in the attached **Exhibit B**. Notwithstanding any provision contained herein, no Permitted Mortgage shall release or discharge Lessee from any of its duties and obligations hereunder. To the extent that Lessor’s consent is required pursuant to this **Section 8.1**, Lessor shall have thirty (30) days from the later of (i) the date of receipt of such notice or (ii) if Lessor has first requested additional information and/or documentation in connection therewith during such thirty (30) day period, receipt of all such information and documentation, in which to make such determination, provided such request to Lessor is marked in bold lettering with the following language: “LESSOR’S RESPONSE IS REQUIRED WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A LAND LEASE BETWEEN THE UNDERSIGNED AND LESSOR” and the envelope containing the request must be marked “PRIORITY”. In the event that Lessor fails to respond within such time, Lessor’s approval shall be deemed given.

**8.2 RIGHTS OF PERMITTED MORTGAGEE:** Any holder of a Permitted Mortgage (a “**Permitted Mortgagee**”) shall without any additional requirement of consent by Lessor have the rights identified and defined in the attached **Exhibit B**.

**8.3 ATTORNMENT:** Lessee shall attorn to any successor of Lessor and shall continue to observe and perform Lessee’s obligations hereunder and to pay the Minimum Annual Rent and all other amounts due and payable by Lessee hereunder to whomsoever may be lawfully entitled to the same from time to time. Lessor’s successor shall agree to be bound by and assume all of Lessor’s obligations of this Lease and shall agree not to disturb Lessee’s possession and use of the Leased Premises so long as Lessee is not in default hereunder past any applicable notice and cure period.

**8.4 OTHER PERMITTED FINANCING ENCUMBRANCES.** Lessor acknowledges, and hereby permits, the LURA and any and all documents in favor of HUD in connection with its delivery of the HOME funds, to be recorded in the Clerk’s Office, provided, however, Lessee shall provide Lessor with copies of each prior to recording of the same.

#### ARTICLE 9. LIABILITY; INSURANCE; DAMAGE AND DESTRUCTION; EMINENT DOMAIN

**9.1 LESSEE’S LIABILITY:** Lessee assumes sole responsibility and liability to all persons and authorities related to its possession, occupancy and use of the Leased Premises and the Improvements.

**9.2 INDEMNIFICATION OF LESSOR:** Without in any way limiting or modifying Lessee’s other indemnifications set forth in this Lease, Lessee agrees to indemnify and hold Lessor and Lessor’s Related Parties harmless from and against any and all Losses arising out of (a) the use and occupancy of the Leased Premises, the Improvements and the remainder of the Development by Lessee or Lessee’s Related Parties or any of Lessee’s visitors or invitees while such visitors or invitees are on the Leased Premises; (b) the activities carried out by or on behalf of Lessee and any other actions or omissions of Lessee or Lessee’s Related Parties or any of Lessee’s visitors or invitees while such visitors and invitees are on the Leased Premises; and/or (c) any failure on the part of Lessee to perform or comply with any of Lessee’s obligations under this Lease or its terms, expressly excluding, however, from the foregoing indemnification obligations any Losses to the extent arising out of (i) the use and occupancy of the Leased Premises and the remainder of the Development by Lessor or Lessor’s Related Parties or any of Lessor’s visitors or invitees while such visitors or invitees are on the remainder of the Development other than the Leased Premises; (ii) the activities carried out by or on behalf of Lessor and any other negligent acts or omissions of Lessor or Lessor’s Related Parties or any of Lessor’s visitors or invitees while such visitors or invitees are on the remainder of the Development other than the Leased Premises; or (iii) any failure on the part of Lessor to perform or comply with any of Lessor’s obligations under this Lease or its terms, in which event Lessor shall indemnify and hold Lessee and Lessee’s Related Parties

harmless from and against all Losses for the matters identified in the foregoing clauses (i), (ii) and (iii) to the same extent as is otherwise set forth above from Lessee to Lessor.

**9.3 PAYMENT BY PARTIES:** In the event that (a) a party is required to reimburse the other party as described in this Lease; or (b) a party shall be required to pay any sum that is the other party's responsibility or liability under this Lease, then in either event, upon the requesting party's written request therefore (accompanied by all supporting documentation, including lien waivers, if required by this Lease), the other party, to the extent it is not, in good faith, disputing any such sum, shall promptly reimburse the requesting party for such payment. In addition to any other remedies available to the requesting party for nonpayment of amounts due hereunder not being disputed in good faith, such amounts shall bear interest at the Default Rate to the extent provided by this Lease.

**9.4 INSURANCE:**

(a) Fire and Extended Coverage. During the term of this Lease, Lessee shall, at its own cost and expense, keep the Leased Premises insured against loss or damage by fire and all standard extended coverage in an amount not less than the full replacement value. Copies of the policy or policies herein required, or certificates thereof, shall be delivered to Lessor. Lessee's policy or policies shall name Lessee, any Permitted Mortgagee, Lessor, and, at Lessor's request, Lessor's mortgagee, as their respective interests may appear; *provided, however*, subject to the terms of any Permitted Mortgage, the proceeds of such insurance shall be payable to Lessee, and, subject to the terms of any Permitted Mortgage, Lessee shall be the loss payee under such policy or policies.

(b) Proceeds. Subject to the requirements and terms of Lessee's Permitted Mortgage, all proceeds of Lessee's policy described in Section 9.4(a) shall be held in trust by the Permitted Mortgagee, or held by Lessee, to reconstruct the Improvements to its condition prior to such loss or damage, Lessee shall be permitted to use the insurance and condemnation proceeds and any other funds available to Lessee to reconstruct the Improvements. In the event that any of the Leased Premises shall be destroyed by fire or other casualty, Lessee shall remove all rubbish and debris at the sole cost of Lessee.

(c) Liability Insurance. During the term of this Lease, Lessee shall, at its sole cost and expense, effect and maintain a policy or policies of comprehensive general liability insurance, insuring Lessor and Lessee with respect to the Leased Premises, with minimum limits of not less than \$1,000,000 in respect of bodily injury or death to any one person, and to the limit of not less than \$2,000,000 in respect of any one accident or occurrence and to the limit of not less than \$250,000 for property damage with not more than \$10,000 deductible. Copies of any such policy or policies shall be delivered by Lessee to Lessor. At the request of Lessor, at the end of the first five years of the term of this Lease and at the end of each succeeding five-year period during the term of this Lease, Lessee shall deliver evidence reasonably acceptable to Lessor of the then prevailing minimum limits of comprehensive general liability insurance on projects similar to the Improvements in the Lexington, Kentucky metropolitan area. Based on such information or other information available to Lessor, Lessor, in its reasonable discretion, may require Lessee to increase the minimum limit provided by Lessee's comprehensive general liability insurance, provided that such amounts are otherwise commercially reasonable.

(d) Liability and Workmen's Compensation Insurance. During the construction of the Improvements and any other building or improvement to be located on the Leased Premises, Lessee or its contractor shall carry such liability and workmen's compensation insurance as shall be required by the laws of the Commonwealth of Kentucky.

(e) Form of Insurance. All insurance provided for in Section 9.4 shall be effected under standard form policies issued by insurers of recognized responsibility, authorized to do business in the state of Kentucky, which are well rated by national rating organizations and have been approved in writing by Lessor, such approval not to be unreasonably withheld.

(f) No Separate Insurance. Lessee shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this Section 9.4 to be furnished by, or which may reasonably be required to be, furnished by Lessee unless Lessor is included therein as an insured, with loss payable as provided in this Lease. Lessee shall immediately notify Lessor of the taking out of any such separate insurance and shall deliver the policy or policies as provided in this Section 9.4.

(g) Cancellation. Each policy delivered hereunder shall contain an agreement by the insurer that such policy shall not be cancelled without at least thirty (30) days' prior written notice to Lessor and to any mortgagee named in such policy.

(h) Payment of Premiums. Lessee further covenants and agrees that it will pay all premiums and charges on all of the above insurance promptly when the same become due, and if it shall fail to do so Lessor may, but shall not be obligated to, place such insurance or pay the premiums and charge therefore, and in the event of such payment the amount paid shall be added as an additional Minimum Annual Rent, payable by Lessee promptly upon demand for reimbursement by Lessor, and shall be collectible as additional rent in the same manner and with the same remedies as if it has been originally reserved as rent.

(i) Repair on Casualty. Subject to the requirements and terms of Lessee's Permitted Mortgage, if, at any time during the term of this Lease, the Leased Premises shall be damaged or destroyed by fire or other casualty (including any casualty for which insurance coverage was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Lessee, at its sole cost and expense and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting such loss) to repair, alter, restore, replace or rebuild the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction, subject to such alterations as Lessee may elect to make in conformity with the provisions of Article 7. Alterations, restoration, replacement or rebuilding, including such alterations pursuant to Article 7 and including temporary repairs or the protection of other property pending the completion of any thereof, are sometimes referred to herein as "**Work**".

(j) Performance of Work. Except as otherwise provided in this Section 9.4, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of Article 7.

(k) No Abatement. In no event shall Lessee be entitled to any abatement, allowance, reduction or suspension of the Minimum Annual Rent because part or all of the Leased Premises shall be untenable owing to the partial or total destruction thereof, and no such damage or destruction shall affect in any way the obligations of Lessee under this Lease.

(l) Protection from Subrogation. Anything in this Lease to the contrary notwithstanding, neither Lessor nor Lessee shall be liable to the other for any business interruption or any loss or damage to property or injury to or death of persons occurring on the Leased Premises or the Development, or in any manner growing out of or connected with Lessee's or Lessor's use and occupation of the Leased Premises, the Development, or the condition, thereof, caused by the negligence or other fault of Lessor or Lessee or of their respective agents, contractors, employees, subtenants or



tenants, licensees, assignees, guests or invitees, to the extent that such business interruption or loss or damage to property or injury to or death of persons is covered by or indemnified by proceeds received from insurance carried by the other party (regardless of whether such insurance is payable to or protects Lessor or Lessee or both) or for which such party is otherwise reimbursed; and, subtenants, licensees and assignees, for any such loss or damage to property or injury to or death of persons to the extent the same is covered or indemnified by proceeds received from any such insurance, or for which reimbursement is otherwise received. Nothing in this subsection shall be construed to impose any other or greater liability upon either Lessor or Lessee than would have existed in the absence of this subsection. If the application of this subsection should render void or diminish either party's insurance coverage, this section shall be null and void.

## **9.5 CONDEMNATION:**

(a) Total Condemnation. If all of the Leased Premises is taken by the exercise of the power of eminent domain, this Lease shall terminate as of the date possession is taken by the condemnor, and the prepaid or unpaid Minimum Annual Rent, and all other amounts due pursuant to the provision of this Lease shall be prorated accordingly. The entire compensation award attributable to the Land taken (less the value of Lessee's leasehold) shall belong to Lessor. Subject to the requirements and terms of any Permitted Mortgage, the entire compensation award attributable to the Improvements shall belong to Lessee, as well as the remaining value of the leasehold. Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor or out of any award to which Lessor is entitled hereunder, such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all damage to Lessee's business by reason of any condemnation and for or on account of any cost or loss to which Lessee might be put in removing or relocating Lessee's business, furniture, fixtures and equipment. Any award or any portion of any award made for the purpose of demolishing any remaining buildings or improvements shall, subject to the requirements and terms of any Permitted Mortgage, either be used by Lessee to demolish such buildings and improvements, or shall be delivered to Lessor; except for any portion thereof that is attributable to any demolition or related work performed or to be performed by a party, which amounts shall be paid to such party and shall be used by such party to perform such demolition or related work.

(b) Partial Condemnation. If more than fifty percent (50%) of the total floor area of the Improvements at the time is taken by the exercise of the power of eminent domain (herein referred to as "**Partial Condemnation**"), subject to the requirements and terms of any Permitted Mortgage, Lessee shall have the right to terminate this Lease if the portion of the Improvements (or such access or parking) remaining is such that its continued use for the purpose for which the same were being used immediately prior to such taking is reasonably impractical or not economically viable in Lessee's good faith judgment. The option to terminate herein granted shall be exercised in writing by Lessee within one hundred twenty (120) days after Lessee shall have received written notice of the date of the taking of possession by the applicable condemning authority. If this Lease is terminated, (i) termination shall be effective on the date that Lessee delivers possession of the Leased Premises to the condemning authority; and (ii) upon termination, the prepaid or unpaid Minimum Annual Rent, and all other amounts due pursuant to the provisions of this Lease shall be prorated and paid accordingly. The compensation award shall be distributed as provided in Section 9.5(a), subject to the rights of any Permitted Mortgagee; *provided, however*, if Lessee receives compensation for the repair or demolition of any remaining buildings or improvements on the Leased Premises ("**Repair Compensation**"), subject to the terms of any Permitted Mortgage, (A) if this Lease is not terminated, Lessee shall promptly undertake to repair, restore (to the extent possible according to the land area so taken to make the building a complete architectural unit) or demolish such remaining buildings and/or improvements, all such repairs, restoration and/or demolition to be done in a good and workmanlike manner, in conformity with all applicable governmental rules, regulations, ordinances and laws, and any additional requirements of any Permitted Mortgagee and in

accordance with Article 7, regardless of whether the Repair Compensation is sufficient to complete the foregoing; or (B) if this Lease is terminated, Lessee shall deliver Repair Compensation to Lessor. Regardless of any such taking described in this Section 9.5(b), the Minimum Annual Rent shall not be reduced or abated.

(c) Cooperation in Making Claims. Lessor and Lessee shall, in connection with any eminent domain proceedings, cooperate in making all claims for damages and bringing suit or action.

(d) Termination. Notwithstanding anything to the contrary contained herein, (i) no termination of the Lease provided for in this Section 9.5 shall affect the rights of Lessee to any condemnation or compensation award to which Lessee is entitled to hereunder, and Lessee's rights to any such award shall survive such termination; and (ii) upon termination, the parties' respective rights and obligations shall terminate except for those arising or accruing prior to termination or expressly stated to survive termination.

(e) Award. Notwithstanding anything to the contrary contained herein, any compensation awards made hereunder shall be made consistent with then applicable law, including *Com., D.O.H. v. Sherrod*, 367 S.W. 2d 844 (Ky. 1963) unless and to the extent the holding thereof is not applicable at the time of any taking of the Leased Premises.

#### ARTICLE 10. MANAGEMENT OF LEASED PREMISES

**10.1 MANAGEMENT OF LEASED PREMISES:** Subject to the provisions of Section 13.5, Lessee, at its sole cost and expense, shall be responsible for the management of the Leased Premises and Improvements. Lessee may manage the Leased Premises and Improvements using its own staff, or at Lessee's sole cost and expense, may employ a management company, in which event a management contract shall be executed and a copy provided to Lessor, and Lessee shall oversee said management company. Lessee shall ensure that the Improvements are maintained in good repair and condition and will be managed to meet the requirements of this Lease and all its exhibits, and any Permitted Mortgage. Absent an uncured default by Lessee (in which case Lessor may exercise all available remedies as further described in Article 13 hereof), Lessor shall not execute or incur any obligation with respect to management of the Leased Premises and Improvements.

Notwithstanding anything contained in this Lease to the contrary, Lessee shall (1) implement policies and procedures agreed to by Lessor ensuring that the rental procedures and marketing efforts for the Improvements are conducted in accordance with the Eligibility Requirements so that the priority populations in the Decision are targeted for the then existing vacancies and future rentals and (2) provide (a) written notice (from Lessee and/or the property manager) to Lessor of any default by a tenant of the Improvements (a "**Residential Tenant**") under such Residential Tenant's lease (a "**Residential Tenant Default Letter**"), and (b) a 30 day cure right (measured from Lessor's receipt of the Residential Tenant Default Letter) during which 30 day period Lessor may cure such default by a Residential Tenant (and if permitted by applicable laws, such 30 day cure right shall be extended to a 60 day cure right for lease defaults by those Residential Tenants who are relocatees from the project and mitigation area in Davistown, as identified in the Applicable Decision Sections). The foregoing requirements set forth in this paragraph shall be expressly set forth as a covenant for a property manager in any property management agreement executed by Lessee. Nothing contained herein shall obligate Lessor to cure any default by any Residential Tenant, but Lessor may do so at its election. Notwithstanding anything contained herein to the contrary, Lessee shall have no obligation to lease any unit in the Improvements to any proposed Residential Tenant that is qualified under the Decision but is not qualified under both the HOME Regulations and LURA.



**ARTICLE 11. TRANSFER, SALE OR DISPOSITION OF IMPROVEMENTS OR LAND**

**11.1 TRANSFERS BY LESSOR:** Lessor may transfer ownership of the Land to any other person or entity, whereupon this Lease shall not cease, but, subject to Section 8.3, shall remain binding and unaffected and the purposes of this Lease shall be honored.

**11.2 TRANSFERS BY LESSEE; LESSOR'S RIGHT OF FIRST REFUSAL:** Lessee shall not transfer (or permit the transfer of) the Improvements or Lessee's interest in the Leased Premises. Notwithstanding anything to the contrary set forth elsewhere in this Lease, any transfer of a partner interest in Lessee in accordance with the Partnership Agreement, Lessee shall be a permitted Transfer hereunder and shall not require Lessor's consent, and any transfer, in whole or in part, of the Property or the Leasehold Estate in accordance with the Partnership Agreement and Regulatory Agreement, any transfer in the ordinary course of business including, without limitation, any residential lease and any utility and access easement, any transfer required by LIHTC Housing Requirements, and any right of first refusal under Section 42 of the Code shall be a Permitted Transfer hereunder and shall not require Lessor's consent. For the avoidance of doubt, (i) Lessor approves the admission of Community Equity Fund XXVII Limited Partnership, a North Carolina limited partnership, its successors and assigns (the "Investor Limited Partner" as limited partner of Lessee, (ii) Lessor's consent shall not be required for the transfer of Investor Limited Partner's interest in the Lessee, the admission of any new limited partner into Lessee, or transfers of interests within the Investor Limited Partner, and (iii) Lessor acknowledges the right of the Investor Limited Partner under the Partnership Agreement to remove the General Partner of Lessee and to designate a substitute general partner of Lessee in accordance with the terms of the Partnership Agreement, without Lessor's advance consent. Further, notwithstanding anything to the contrary herein prior to and during the Compliance Period (defined below), the Lessor shall not transfer, encumber or otherwise dispose of the Premises or any interest therein without the prior written consent of Lessee and the Investor Limited Partner.

**11.3 NO ASSIGNMENT:** Lessee may not transfer any rights contained in this Article 11 except in compliance with Section 11.2 above and in conjunction with a permitted transfer of Lessee's entire interest herein (only as permitted herein) and then only to the permitted transferee thereof, except as otherwise specifically permitted herein. Any attempted transfer of Lessee's rights which is contrary to the terms of this Lease, including without limitation, this Article 11, shall be deemed null and void and shall constitute an Event of Default under this Lease.

**11.4 TERMINATION OF LESSEE'S RIGHTS:** Notwithstanding anything to the contrary, and without limiting Lessor's rights as set forth in and in accordance with Section 13.5 hereof and A Permitted Mortgagee's rights under Exhibit B, Lessee's rights under this Article 11 (including Section 11.1) shall terminate and be null and void and of no further force and effect if (a) this Lease terminates or the Lease term expires; or (b) the Improvements and/or Leased Premises are sold or transferred pursuant to the exercise of a private power of sale or judicial foreclosure or acceptance of a deed in lieu thereof. Lessee shall be in default of any of the terms and conditions of this Lease and has not, following applicable notice and cure rights, cured said default; provided, however, Lessor covenants that it shall use reasonable good faith efforts to exercise Lessor's rights under the Partnership Agreement to cure the applicable default prior to terminating the Lease pursuant to the terms hereof. In the event of termination or if the Lease term expires, Lessee shall execute a quitclaim deed and/or such other documents as Lessor shall reasonably request evidencing the termination of Lessee's right under this Article 11 (including Section 11.1). In the event that Lessee shall fail to execute and deliver such documents, and Lessee has not otherwise disputed Lessor's rights to such termination, Lessor is hereby authorized to do so and for the purposes of carrying out the provisions of this Section, Lessee hereby irrevocably constitutes and appoints Lessor its true and lawful attorney-in-fact with full power of substitution, to execute, acknowledge and deliver any instruments referred to in this Section in the name and on behalf of Lessee.

The power vested in said attorney-in-fact is, and shall be deemed to be, coupled with an interest and irrevocable and shall survive the dissolution, liquidation or termination of Lessee.

#### ARTICLE 12. ASSIGNMENT AND SUBLETTING

**12.1 APPROVAL REQUIRED:** Except as provided in this Article, Article 11, Exhibit B, Exhibit C, the Partnership Agreement, or an assignment of rents required by a Permitted Mortgagee (collectively, an “**Approved Transfer**”), Lessee shall not assign, sublet or transfer Lessee’s rights under this Lease without the prior written consent of Lessor, which consent shall not be withheld, conditioned or delayed so long as the following conditions are satisfied: (a) there shall be no Event of Default, nor shall any condition exist which, upon the giving of notice or the passage of time, or both, would constitute a default by Lessee under this Lease, at the time Lessee requests approval of an assignment or subletting; (b) the Lease Purpose will not change; and (c) unless otherwise agreed by Lessor, in its sole discretion, Lessee shall remain liable under this Lease irrespective of any assignment or sublease. Lessee shall provide Lessor with 10 day written notice of any Approved Transfer.

ARTICLE 13. DEFAULT. Each of the following shall constitute an “**Event of Default**” under this Lease.

**13.1 MONETARY DEFAULT BY LESSEE:** It shall be an Event of Default hereunder if Lessee fails to pay the Minimum Annual Rent or other charges required by the terms of this Lease and such failure is not cured by Lessee or a Permitted Mortgagee within thirty (30) days after written notice of such failure is given by Lessor and received by Lessee.

**13.2 NON-MONETARY DEFAULT BY LESSEE:** It shall be an Event of Default hereunder if Lessee fails to abide by any material term or condition in this Lease (other than as set forth in Section 13.1 above); *provided, however*, if any such failure does not involve the payment of the Minimum Annual Rent or other charges required by the terms of this Lease, is not a result of willful or intentional misconduct, does not place the Leased Premises, the Land, the Improvements or any rights or property of Lessor in immediate jeopardy, and is within the reasonable power of Lessee to promptly cure, all as determined by Lessor in its reasonable discretion giving due and good faith consideration to Lessee’s input regarding such issues, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lessor shall have given Lessee written notice thereof and a period of sixty (60) days shall have elapsed, during which period Lessee may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. Notwithstanding the foregoing, if such failure cannot reasonably be cured within such sixty (60) day period, as determined by Lessor in its reasonable discretion, giving due and good faith consideration to Lessee’s input regarding such issues, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such sixty (60) day period, which shall in no event exceed one hundred eighty (180) days after receiving notice of such failure from Lessor. If Lessee shall fail to correct or cure such failure within such one hundred eighty (180) day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. For purposes of the foregoing, a “material term” shall include, but not be limited to, the requirement of Lessee to operate the Leased Premises and Improvements in compliance with the Applicable Restrictions and Laws.

**13.3 DEFAULT UNDER PERMITTED MORTGAGE:** It shall be an Event of Default hereunder if Lessee shall be in default beyond applicable notice and cure periods under any Permitted Mortgage such that the applicable holder of the Permitted Mortgage shall have instituted foreclosure or similar proceedings thereunder and is not cured by Lessee or its agent within the statutory time periods allowed for such a cure.

**13.4 DEFAULT BY LESSEE RESULTING FROM JUDICIAL PROCESS:** It shall be an Event of Default if the estate hereby created is taken on execution or by other process of law, or if Lessee is judicially declared bankrupt according to law, or if any assignment is made of the property of Lessee for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of Lessee's property by a court of competent jurisdiction, or if a petition is filed for the reorganization of Lessee under any provisions of any bankruptcy laws now or hereafter enacted, or if Lessee files a petition for such reorganization, or for arrangements under any provision of any bankruptcy laws now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

**13.5 REMEDIES; TERMINATION:** In the case of any uncured default described herein, Lessor may exercise, at its option, concurrently, successively, or in any combination, any and all rights and remedies available at law or in equity, including without limitation, termination of this Lease and declaration of a forfeiture of all rights of Lessee hereunder, acceleration of rent, initiation of summary proceedings against Lessee, and/or obtaining possession of the Leased Premises and Improvements by any lawful means (with or without terminating this Lease), against Lessee, and/or correct or remedy any Event of Default. Additionally in the Event of Default by Lessee, Lessor may cure or proceed to cure such default, in which case all of the costs and expenses incurred by Lessor in so doing shall be deemed to be an additional Minimum Annual Rent payable by Lessee hereunder. In addition to other amounts which may be due to Lessor in connection with its pursuit of remedies hereunder, (a) Lessee agrees to pay and be liable for any unpaid Minimum Annual Rents, damages which may be due or sustained by Lessor in connection with its exercise of its remedies hereunder, and all reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees); and (b) without further action except for Lessor giving written notice thereof to Lessee, the Improvements shall become the property of Lessor. Without limiting the generality of the foregoing or limiting in any way the rights of Lessor under this Lease or otherwise under applicable law, at any time after the occurrence and during the continuance of an Event of Default, Lessor shall be entitled to apply for and have a receiver appointed by *ex parte* motion under applicable law by a court of competent jurisdiction in any action taken by Lessor to enforce its rights and remedies hereunder in order to protect and preserve Lessor's interest under this Lease or in the Leased Premises and Improvements, and in connection therewith, Lessee hereby irrevocably consents to and waives any right to object to or otherwise contest the appointment of a receiver after the occurrence, and during the continuance, of an Event of Default. Lessee, for Lessee and on behalf of any and all persons claiming through or under Lessee, including creditors of all kinds, does hereby waive and surrender all right and privilege which they or any of them might have under or by reason of any present or future law, to redeem the Leased Premises and/or Improvements or to have a continuance of this Lease for the term hereby demised after being dispossessed or ejected therefrom by process of law or under the terms of this Lease or after the termination of this Lease as herein provided.

Notwithstanding anything contained herein to the contrary, the right of Lessor to terminate this Lease shall be subject to the rights of any Permitted Mortgagee, as further set forth in **Exhibit B**.

**13.6 DEFAULT BY LESSOR:** Lessor shall in no event be in default in the performance of any of its obligations under the Lease unless and until Lessor has failed to perform such obligations within sixty (60) days, or such additional time as is required in Lessee's reasonable discretion to correct any default, after written notice by Lessee to Lessor specifying Lessor's failure to perform any such obligation. In the event of a default by Lessor, Lessee may pursue all rights and remedies available at law or in equity relating to such default.

#### ARTICLE 14. TERMINATION OF LEASE

**14.1 DELIVERY OF POSSESSION:** At the end of the term of this Lease, whether by expiration, termination or otherwise, Lessee shall peacefully deliver up to Lessor possession of the Leased Premises together with unencumbered title to the Improvements (subject to permitted encumbrances, which includes any restrictions in favor of HUD, the LURA, any security documents executed in favor of a Permitted Mortgagee, and any other encumbrances existing as of the date hereof of subsequently approved by Lessor), and which Improvements shall be, unless otherwise permitted in the Lease due to events of Force Majeure, condemnation, or other casualty, in good condition and state of repair, reasonable wear and tear (for similar developments) excepted. Except as expressly set forth herein, the Leased Premises and Improvements shall otherwise be delivered by Lessee to Lessor "as-is" and without warranty.

**14.2 SURRENDER AND REVERSION:** Upon the termination of this Lease for any reason, whether by expiration of the term or otherwise, the title to the Improvements shall forthwith vest in and be the sole property of Lessor, free of any right, title, interest, claim or demand of Lessee, or of anyone claiming through or under Lessee (except for any of the same approved in writing by Lessor), and shall be delivered to Lessor in the condition required by Section 14.1 above, and Lessee hereby grants, bargains, sells and conveys to Lessor the same as of the date of such termination. Lessee agrees to execute such documents and instruments of conveyance as may be required by Lessor to confirm such ownership in Lessor. Such documents and instruments of conveyance, may include, at Lessor's option, an assignment by Lessee of all of Lessee's right, title and interest as "landlord" in and to all subleases (if any) and any deposits held in connection therewith affecting the Leased Premises and Improvements. For the purposes of carrying out the provisions of this Section, Lessee hereby irrevocably constitutes and appoints Lessor its true and lawful attorney-in-fact with full power of substitution, to execute, acknowledge and deliver any instruments referred to in this Section in the name and on behalf of Lessee. The power vested in said attorney-in-fact is, and shall be deemed to be, coupled with an interest and irrevocable and shall survive the dissolution, liquidation or termination of Lessee.

**14.3 EFFECT OF TERMINATION:** Upon the termination of this Lease for any reason, whether by expiration of the term or otherwise, subject to the provisions of Article 13 and Lessor's rights and remedies thereunder, all obligations of the parties hereto shall cease except for those obligations which have arisen or accrued prior to the date of termination, and except for those obligations expressly stated or intended to survive termination hereof.

## **ARTICLE 15. DISPUTE RESOLUTION**

**15.1 MEDIATION PROCESS:** If any claim, controversy or dispute arises relating to this Lease cannot be resolved through informal negotiation by the parties, then the parties will first proceed in good faith to submit the matter to mediation. Either party may request mediation by notifying the other party of its desire to submit the matter to mediation. Within ten (10) business days following notice of intent to mediate, the parties shall jointly select, appoint and arrange to meet with an impartial person who can mediate and seek to help resolve the dispute between the parties informally and confidentially. The mediator shall not be entitled to impose binding decisions. The parties must agree to the terms of any settlement arising out of the mediation before it is binding. The parties will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate if the parties have not been able to resolve their dispute within sixty (60) calendar days from the date written notice requesting mediation is sent by one party to the other party. Upon such termination, the claim, controversy or dispute shall be resolved pursuant to binding arbitration as set forth in Section 15.2.

**15.2 ARBITRATION:** To the maximum extent permitted by law, and subject to the provisions of Section 15.1 above, any unresolved claim, controversy or dispute shall be resolved through binding arbitration conducted by a service acceptable to the parties to such dispute or, if there is no such

agreement, the Judicial Arbitrator Group located in Lexington, Kentucky. The arbitrator's procedures or rules then in effect for commercial disputes shall govern any arbitration, and the arbitration shall take place in Lexington, Kentucky. The arbitrator's decision shall be final, binding and not subject to further review, and judgment on the award of the arbitrator may be entered in and enforced by any court having jurisdiction over the parties or their assets. Any costs incurred in conducting the arbitration shall be awarded to the prevailing party (as determined by the arbitrator).

EACH PARTY HERETO UNDERSTANDS THAT THIS AGREEMENT TO ARBITRATE ALL ARBITRABLE DISPUTES MEANS THAT EACH PARTY IS AGREEING TO WAIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW ANY RIGHT A PARTY MAY HAVE TO ASK FOR PUNITIVE DAMAGES OR A JURY OR COURT TRIAL IN ANY DISPUTE WITH ANY OTHER PARTY.

ARTICLE 16. GENERAL PROVISIONS

**16.1 NOTICES:** Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered (a) in person, (b) by certified or registered U.S. mail, return receipt requested, postage prepaid; or (c) delivered by facsimile or email transmission, to the party at the address set forth below, or such other address designated by like written notice, and such notice shall be effective upon (i) the date of delivery if hand-delivered, (ii) three (3) days after deposit in the U.S. mail if delivered by U.S. mail as provided above; and (c) upon receipt of confirmation of transmission if delivered by facsimile or email transmission:

If to Lessor: Lexington Community Land Trust  
Attn: Executive Director  
P.O. Box 171  
Lexington, KY 40588

With copy to: Vice Cox & Townsend PLLC  
2303 River Road, Suite 301  
Louisville, Kentucky 40206  
Attn: Robert B. Vice, Jr.  
[Bvice@vctfirm.com](mailto:Bvice@vctfirm.com)

If to Lessee: Davis Park Station Limited Liability Limited Partnership  
c/o AU Associates, Inc.  
Attn: President  
159 Old Georgetown Street  
Lexington, KY 40508  
[johan@auassociates.com](mailto:johan@auassociates.com)

With copy to: Community Equity Fund XXVII Limited Partnership  
c/o Community Affordable Housing Equity Corporation  
Attention: Legal Department  
7700 Falls of Neuse Road, Suite 200  
Raleigh, North Carolina 27615  
Telephone: 919-420-0063; Facsimile: 919-420-0019

and to:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Attention: Asher R. Ball, Esq

**16.2 NO BROKERAGE:** Each party warrants that it has not dealt with any broker in connection with the consummation of this Lease, and each party shall indemnify and hold harmless the other party and its Related Parties from and against any Losses which may arise by reason of any such claim.

**16.3 PERFORMANCE AT LESSEE'S EXPENSE:** Lessee acknowledges and confirms that Lessor may collect from Lessee its attorneys' fees, costs and expenses in connection with (a) the procurement of consents, waivers and approvals with respect to the Leased Premises and Improvements or any matter related to this Lease; and (b) the review of any assignment or sublease or proposed assignment or sublease or the preparation or review of any Permitted Mortgage.

**16.4 SEVERABILITY AND DURATION OF LEASE:** If any part of this Lease is unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other part of this Lease or give rise to any cause of action of Lessee or Lessor against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that their respective rights to purchase and all other rights under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and such rights shall be considered to be coupled with an interest.

**16.5 ESTOPPEL CERTIFICATES:** Within ten (10) business days after written request therefore by one party or any prospective purchaser or mortgagee of that same party, the other party shall furnish a written statement in form and substance reasonably acceptable to such requesting party, duly acknowledged, of the fact that this Lease is in full force and effect, the current rents payable hereunder, that there are no uncured defaults hereunder by Lessor or Lessee, if such is the case, and such other matters as such requesting party may reasonably request.

**16.6 WAIVER:** The waiver by a party at any given time of any term or condition of this Lease (including any reduction, delay or waiver of the Minimum Annual Rent, as described in Article 5 above), or the failure of a party to take action with respect to any breach of any such term or condition, shall not be deemed to be a waiver of such term or condition with regard to any subsequent breach of such term or condition, or of any other term or condition of the Lease. Either party may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by both parties before being effective.

The subsequent acceptance of Minimum Annual Rent payments by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term or condition of this Lease, other than the failure of Lessee to pay the particular Minimum Annual Rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such Minimum Annual Rent payment.

**16.7 RIGHT TO PROSECUTE OR DEFEND:** Each party shall have the right, but shall be under no obligation, to prosecute or defend any actions or proceedings appropriate to the protection of its interests under this Lease. Whenever requested by a party, so long as such party is not in default hereunder and the parties are not otherwise in dispute over the matter at hand, each party, without significant expense, shall give the other party all reasonable aid in any such action or proceeding.

**16.8 CAPTIONS:** The captions appearing in this Lease are for convenience only, are not a part of this Lease, and do not in any way limit or amplify the terms or conditions of this Lease.

**16.9 PARTIES BOUND:** This Lease sets forth the entire agreement between Lessor and Lessee with respect to the subject matter hereof; it is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written agreement executed by Lessor and Lessee or their legal representatives or, in accordance with the provisions of this Lease, their successors-in-interest.

**16.10 GOVERNING LAW; INTERPRETATION:** This Lease shall be interpreted in accordance with and governed by the laws of the Commonwealth of Kentucky, resolving any ambiguities and questions of the validity of specific provisions so as to preserve and give maximum effect to the Lease Purpose described above. Subject to the provisions of Article 15, venue for any dispute shall be Fayette County, Kentucky.

**16.11 RECORDING:** The parties agree not to record this Lease but rather to execute a Memorandum of Lease ("Memorandum of Lease") in recordable form, complying with applicable law, and reasonably satisfactory to Lessor and Lessee. In no event shall the Memorandum of Lease set forth the rent or other charges payable by Lessee under this Lease; the Memorandum of Lease shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease. Subject to the provisions contained herein, the Memorandum of Lease may be re-recorded by either party at any time to preserve its respective rights hereunder.

**16.12 WAIVER OF JURY TRIAL:** WITH RESPECT TO ANY DISPUTES HEREUNDER (OTHER THAN DISPUTES FOR WHICH MEDIATION OR ARBITRATION IS EXPRESSLY STATED TO BE THE EXCLUSIVE MEANS FOR RESOLVING SUCH DISPUTES), OR IN THE EVENT THAT A PARTY HERETO DESIRES TO BRING AN ACTION IN COURT TO ENFORCE THE DETERMINATION OF THE ARBITRATOR MADE PURSUANT TO ARTICLE 15, LESSOR AND LESSEE KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS LEASE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY HERETO.

**16.13 CONSENT:** Whenever this Lease requires the consent, permission or approval of a party, except as specified otherwise, the consent shall not be unreasonably withheld, conditioned or delayed.

**16.14 TIME IS OF THE ESSENCE:** Time is of the essence with respect to all obligations contained herein.

**16.15 LIMITED PARTNER PROVISIONS:**

(a) Lessor, upon providing Lessee any notice of default under this Lease, shall at the same time provide a copy of such notice to Lessee's limited partner if such notice is delivered during the Development's Compliance Period, as set forth in Section 42 of the Internal Revenue Code (the "Code"). Notice by Lessor to Lessee shall be deemed to have been duly given even in the absence of notice to Lessee's limited partner; provided, however, that the time periods with respect to such limited partner shall not commence until notice is given to such limited partner. From and after such notice has been given to the Lessee's limited partner, such limited partner shall have the same period, after the giving of

such notice upon it, for remedying any default (or acts or omissions which are the subject matter of such notice) or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee, plus in each instance, the additional periods of time specified below to remedy, commence remedying or cause to be remedied the defaults (or acts or omissions which are the subject matter of such notice) specified in any such notice. Lessor shall accept such performance by or at the instigation of such limited partner as if the same had been done by Lessee. Lessee authorizes its limited partner to take any such action at such limited partner's option and does hereby authorize entry upon the Leased Premises by the limited partner for such purpose.

(b) If any default shall occur which entitles Lessor to terminate this Lease, Lessor shall have no right to terminate this Lease unless, (1) if such default occurs before or during the Development's Compliance Period, as set forth in Section 42 of the Code, then following the expiration of the period of time given Lessee to cure such default (or the act or omission which gave rise to such default), Lessor shall notify the Investor Limited Partner of Lessor's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least seventy-five (75) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money and (2) the default is not otherwise cured in accordance with the terms of this Lease. Furthermore, if Investor Limited Partner is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that Investor Limited Partner shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that Investor Limited Partner shall not interfere with Lessor's efforts to seek compliance by the Lessee with any non-monetary obligation under this Lease. For purposes hereof, notice to the Investor Limited Partner shall be deemed to be given if provided in accordance with Section 16.1, above.

**16.16 DECISION DEFAULTS:** Notwithstanding anything contained herein to the contrary, it shall not be a default under this Lease if the Decision is violated by any third party who is not (a) in privity of contract with Lessee whereby such third party is providing services to Lessee (or an affiliate of Lessee or Lessee's General Partner, as defined in the Partnership Agreement) with respect to the Leased Premises, (b) a Residential Tenant, or (c) affiliated with the Lessee or Lessee's general partner.

*[Remainder of page intentionally left blank; signature page(s) to follow]*



IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first written above.

**LESSOR:**

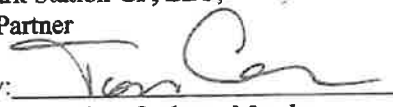
LEXINGTON COMMUNITY LAND TRUST, INC.  
a Kentucky non-profit corporation

By:   
Byron C. Mitchell, President

**LESSEE:**

**DAVIS PARK STATION LIMITED LIABILITY  
LIMITED PARTNERSHIP,**  
a Kentucky limited liability limited partnership

By: Davis Park Station GP, LLC,  
General Partner

By: 

Johan Graham, Member

**Exhibit A – LEASED PREMISES**

The Land referred to herein below is situated in the County of Fayette, State of Kentucky, and is described as follows:

Being all of Lots No. 30 and 31 as shown on the Final Record Plan of Southend Park, Section 2, 757 De Roode Street, Fayette County, Kentucky, as shown by Plat of record in Plat Cabinet S, Slide 184, in the Office of the Clerk of Fayette County, Kentucky.

## **Exhibit B**

### **PERMITTED MORTGAGES**

The provisions set forth in this **Exhibit B** shall be understood to be provisions of **Article 8** of the Lease to which this **Exhibit B** is attached and in which this **Exhibit B** is referenced and are incorporated into the Lease so as to preserve and give maximum effect to the Lease Purpose described above. All terms used in this **Exhibit B** shall have the meanings assigned to them in the Lease. The rights of the parties hereunder are in addition to any rights each may have under Kentucky law.

A) ***PERMITTED MORTGAGE:*** A “Permitted Mortgage,” as identified in **Section 8.1** of this Lease shall meet the following requirements:

1) Unless otherwise agreed to by Lessor in its reasonable discretion, such mortgage shall run in favor of either the Lessor or an “institutional lender” such as, but not limited to, a bank (including savings and loan association or insured credit union), a mortgage company, an insurance company, a pension and/or profit sharing fund or trust, or any combination of the foregoing, the policies and procedures of which institutional lender are subject to direct governmental supervision.

2) Such mortgage and related documentation shall provide, among other things, the following or substantially similar language:

In the event of a default in any of the mortgagor’s obligations under the mortgage, the mortgagor authorizes the mortgagee and its agents and employees to provide any information to Lessor, related to the loan secured by the mortgage, including without limitation, payment history and any information related to default in the mortgage and related loan. Mortgagor and mortgagee shall notify Lessor of receipt of a notice of default as soon as reasonably possible upon receipt of such notice. In addition, mortgagor and mortgagee shall notify Lessor at any time that a foreclosure under such mortgage is commenced. Lessor shall have the right (but not the obligation) to cure such default in mortgagor’s name and on mortgagor’s behalf, for sixty days beyond the period given by Lessor of any notice of default, to cure the default, and during any period prior to commencement of foreclosure by mortgagee.

3) Nothing in the mortgage shall purport to limit Lessee’s or Lessor’s right to cure or redeem, as an owner of the Leased Premises, as Lessor under this Lease, and/or as a junior lien holder (if and as applicable).

4) Such mortgage and related documentation shall not purport to encumber the Land or Lessor’s interest in the Lease or the Leased Premises, and shall not contain any provisions which could be construed as rendering Lessor or any subsequent holder of Lessor’s interest in and to this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such mortgage, related promissory note or any other instrument evidencing the related indebtedness, or any part thereof.

5) Such mortgage and related documentation shall contain provisions to the effect that mortgagee shall not look to Lessor or Lessor’s interest in the Lease, Land or Leased Premises, but will look solely to Lessee, the Leasehold Estate created hereby or the Improvements for the payment of the debt secured thereby or any part thereof. It is the intention of the parties hereto that Lessor’s consent to such mortgage shall be without any liability on the part of Lessor for any deficiency judgment.

6) Such mortgage and related documentation shall contain nothing that obligates Lessor to execute an assignment of the Minimum Annual Rent or other rent payable by Lessee under the terms of this Lease.

7) The principal amount of such mortgage (or the aggregate principal amount of all mortgages encumbering the Improvements and Leasehold Estate of Lessee, but not including any debt held by any partners of the Lessee) shall not exceed ninety percent (90%) of the limited value of the Improvements and Leasehold Estate, as determined by Lessor in its reasonable discretion; *provided, however*, that Lessor may waive this requirement, in its sole discretion.

8) Mortgagee and mortgagor shall immediately notify Lessor upon issuance or receipt of a notice of default upon issuance or receipt of such notice. In addition, mortgagor and mortgagee shall notify Lessor as a junior lien holder at the time foreclosure is commenced, if applicable. Lessor shall have the right (but not the obligation) to cure such default in the mortgagor's name and on mortgagor's behalf, during the period given by statute for the mortgagor or Lessor as owner of the Leased Premises, as Lessor under this Lease and/or as a junior lien holder (if applicable), to cure the default, and during any period prior to commencement of foreclosure by mortgagee. In the event Lessor cures the default of mortgagor as described above, Lessor shall have the right (but not the obligations) to succeed to all rights of Lessee to the Leased Premises and Improvements and to assume all of Lessee's rights and obligations under the first deed of trust, subject to the terms of this Lease. In such event, mortgagor shall forthwith quit mortgagor's interest in the Leased Premises and Improvements and relinquish possession thereof to Lessor, subject to the terms of this Lease.

9) Lessee agrees that it will give immediate notice to Lessor upon the first to occur of: (a) the date any notice of foreclosure is provided to Lessee or any foreclosure is commenced under the first deed of trust, or (b) the date when Lessee becomes thirty (30) days late in making a payment on any indebtedness encumbering Lessee's interest in the Leased Premises or the Improvements required to avoid foreclosure of the first deed of trust.

**B) *RIGHTS OF PERMITTED MORTGAGEE:*** The rights of a holder of a Permitted Mortgage ("**Permitted Mortgagee**") shall be as set forth below.

1) A Permitted Mortgagee shall without requirement of consent by Lessor have the right, but not the obligation, to:

- a. cure any default by Lessee under this Lease, and perform any obligation of Lessee required under this Lease, such cure or performance by a Permitted Mortgagee being effective as if it had been undertaken and performed by Lessee;
- b. acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Lessee by this Lease or otherwise by law, subject to the conditions and requirements set forth in this Lease, and subject to the provisions, if any, in said Permitted Mortgage, which may limit any exercise of any such right, remedy or privilege, so long as any transferee attorns to Lessor and otherwise complies with and meets the requirements of the provisions of this Lease, and in furtherance of the foregoing, a Permitted Mortgagee shall not be liable for any damages, losses, or liabilities accruing after Permitted Mortgagee transfers its right, title, and interest to the Leased Premises and this Lease to an unaffiliated third party; and

- c. rely upon and enforce any provisions of the Lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

2) A Permitted Mortgagee shall not, as a condition to the exercise of its rights under the Lease, be required to assume personal liability for the payment and performance of the obligations of Lessee under the Lease, unless such Permitted Mortgagee expressly assumes the same in writing (and in which event, the Permitted Mortgagee's liability under the Lease shall be limited to the value of its interest in the Lease). The foregoing limitation of liability shall be personal to the Permitted Mortgagee, and not to any successors or assigns not affiliated with such Permitted Mortgagee.

3) In the event that Lessor sends a notice of default under the Lease to Lessee, Lessor shall also send a notice of Lessee's default to a Permitted Mortgagee of which Lessor has notice; *provided, however*, that Lessor's failure to provide such notice shall not constitute a breach or default by Lessor. Such notice shall be given in the manner set forth in Section 16.1 of this Lease to the Permitted Mortgagee at the address which has been given by the Permitted Mortgagee to Lessor by a written notice to Lessor sent in the manner set forth in said Section 16.1 of this Lease.

C) ***OTHER PROVISIONS RELATED TO PERMITTED MORTGAGES:*** Notwithstanding anything contained in the Lease to the contrary:

1) Until all obligations of Lessee to a Permitted Mortgagee under the Permitted Mortgage (the "**Loan Obligations**") shall have been completely paid and performed and the Permitted Mortgage shall have been discharged, Lessor shall not take any action to terminate this Lease or to exercise any other remedy for default in the obligations of Tenant hereunder without first complying with the requirements of this Exhibit B.

2) Until all obligations of Lessee to Permitted Mortgagee under the Permitted Mortgage (the "**Loan Obligations**") shall have been completely paid and performed, neither Lessor nor Lessee shall terminate, amend or modify this Lease, convey, assign, transfer, pledge, or encumber any part of the Land, or exclude any parcel from this Lease, without Permitted Mortgagee's prior written consent, such consent not to be unreasonably withheld. Any such termination, amendment, modification or exclusion without Permitted Mortgagee's prior written consent shall not be binding upon Permitted Mortgagee, its successors or assigns.

3) In the event the ownership of the fee and leasehold interests in the Leased Premises becomes vested in the same person or entity, then as long as the Permitted Mortgage and respective Loan Obligations shall remain outstanding, such occurrence shall not result in a merger of title. Rather, the Lease and the Permitted Mortgage thereon shall remain in full force and effect.

4) If this Lease is terminated because of an Event of Default hereunder or for any other reason or is extinguished for any reason (including, without limitation, rejection of this Lease by a trustee in bankruptcy), then Permitted Mortgagee may elect to demand a new lease of the Leasehold Estate (the "**New Lease**") by notice to Lessor within thirty (30) days after such termination. Upon any such election, the following provisions shall apply:

- a. The New Lease shall be for the remainder of the Term of this Lease, effective on the date of termination, at the same rent and shall contain the same covenants, agreements, conditions, provisions, restrictions and limitations as were then contained in this Lease. Such New Lease shall be subject to all then-existing subleases demising space within the Leased Premises.

- b. The New Lease shall be executed by Lessor within thirty (30) days after receipt by Lessor of notice of Permitted Mortgagee's or such other acquiring person's election to enter into a New Lease.
  - c. Any New Lease and the leasehold estate created thereby shall, subject to the same conditions contained in this Lease, continue to maintain the same priority as this Lease with regard to any Permitted Mortgage or any other lien, charge or encumbrance affecting the Leased Premises. Concurrently with the execution and delivery of the New Lease, Lessor shall assign to the tenant named therein all of its right, title and interest in and to moneys, if any, then held by or payable to Lessor which Lessee would have been entitled to receive but for the termination of this Lease.
  - d. If Lessee refuses to surrender possession of the Leasehold Estate, Lessor shall, at the request of Permitted Mortgagee or such other acquiring person, institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove Lessee and all sublessees actually occupying the Leasehold Estate or any part thereof who are not authorized to remain in possession hereunder. Any such action taken by Lessor at the request of Permitted Mortgagee or such other acquiring person shall be at Permitted Mortgagee's or such other acquiring person's sole expense.
- 5) Notwithstanding anything provided to the contrary in this Lease (and without limiting the provisions of Section 16.15 therein), this Lease shall not be terminated because of an Event of Default on the part of Lessee, but only for so long as sums remain due and payable to a Permitted Mortgagee, until and unless:
- a. Notice of any such Event of Default shall have been delivered to Permitted Mortgagee in accordance terms of the Lease;
  - b. With respect to a monetary Event of Default (as set forth in Section 13.1, a "**Monetary Default**"), Permitted Mortgagee has not cured such Monetary Default within sixty (60) days following the expiration of any of Lessee's notice and cure period set forth in this Lease; and
  - c. With respect to an Event of Default, other than a Monetary Default, Permitted Mortgagee has not cured such Event of Default within ninety (90) days following the expiration of any of Lessee's notice and cure periods set forth in this Lease, or, if such Event of is curable but cannot be cured within such time period, (aa) Permitted Mortgagee has not notified Lessor within such time period that it intends to cure such Default, (bb) Permitted Mortgagee has not diligently commenced to cure such Event of, or (cc) Permitted Mortgagee does not prosecute such cure to completion.
  - d. Furthermore, notwithstanding anything to the contrary contained herein, if Permitted Mortgagee determines to foreclose or cause its designee to foreclose the Permitted Mortgage or to acquire or cause its designee to acquire the Leasehold Estate or to succeed or cause its designee to succeed to Lessee's possessory rights with respect to the Leasehold Estate or to appoint a receiver before it effectuates the cure of any Default other than a Monetary Default, the cure periods set forth above shall be tolled for any period during which foreclosure proceedings, or legal proceedings to succeed to Lessee's

possessory rights, or proceedings to appoint the receiver are conducted, as the case may be. Any such proceedings shall be commenced promptly after the notice of default is delivered to Permitted Mortgagee and shall be diligently prosecuted. Promptly after Permitted Mortgagee or a designee of Permitted Mortgagee acquires the Leasehold Estate pursuant to foreclosure proceedings or otherwise or succeeds to Lessee's possessory rights or promptly after a receiver is appointed, as the case may be, Permitted Mortgagee or its designee shall cure said breach or default.

- e. Notwithstanding anything provided to the contrary in this Lease, this Lease shall not be terminated because of a default or breach hereunder on the part of Lessee which is timely cured.

6) The provisions of this **Exhibit B** shall be binding upon and inure to the benefit of Permitted Mortgagee's successors and assigns. To the extent of any inconsistency between the terms and provisions contained in other sections of this Lease and the terms and conditions set forth in this Exhibit B, the terms and conditions set forth in this **Exhibit B** shall govern and control.

7) It is acknowledged that a Permitted Mortgage may be assigned by Permitted Mortgagee in accordance with its terms. Notwithstanding anything stated to the contrary in this Lease, the following transfers shall be permitted and shall not require the approval or consent of Lessor:

- a. A transfer of the Leasehold Estate at foreclosure sale under the Permitted Mortgage, whether pursuant to the power of sale contained therein or a judicial foreclosure decree, or by an assignment in lieu of foreclosure, or
- b. Any subsequent transfer by a Permitted Mortgagee or its nominee or designee if Permitted Mortgagee, or such nominee or designee, is the purchaser at such foreclosure sale or under such assignment in lieu of foreclosure.
- c. Any such transferee shall be liable to perform the obligations of Lessee under this Lease only so long as such transferee holds title to the Leasehold Estate, provided that upon any conveyance of title, such transferee's transferee expressly assumes and agrees to perform all of the obligations under this Lease; provided further, that the liability of any Permitted Mortgagee that obtains title to the Leasehold Estate shall be limited to Permitted Mortgagee's interest in the Leasehold Estate.
- d. Following any transfer described in Subsection 7(a) above, all noncurable defaults existing under this Lease prior to such transfer shall be deemed waived without further notice or action of any party.



**EXHIBIT C**  
**Davis Park Station, LLLP**

**ADDITIONAL RENT ATTACHMENT**

| Davis Park Station                          |               |         |                            | Quarterly Billing! |                                                                       |
|---------------------------------------------|---------------|---------|----------------------------|--------------------|-----------------------------------------------------------------------|
| Item                                        | Residential % | LFUCG % | Who get the original bill? | LFUCG Estimate     | Vendor/Notes                                                          |
| Water & Sewer                               | 33%           | 67%     | Residential                | \$ 3,200.00        | Building 4 is metered separately                                      |
| Garbage                                     | 97.184%       | 2.816%  | Residential                | \$ 253.44          |                                                                       |
| Property Insurance                          | 97.184%       | 2.816%  | Residential                | \$ 739.20          |                                                                       |
| Property Taxes                              | 97.184%       | 2.816%  | Residential                | \$ -               | If applicable                                                         |
| Internet                                    | 33%           | 67%     | Residential                | \$ 1,200.00        | Internet is only applicable to Building 4                             |
| Exterminating                               | 33%           | 67%     | Residential                | \$ 500.00          | Exterminating Bill for Building 4 only                                |
| Investor Asset Mgmt Fee                     | 97.184%       | 2.816%  | Residential                | \$ 168.96          | \$5,000 annually, inflates by 3%                                      |
| Fire Alarm Phone Lines                      | 97.184%       | 2.816%  | Residential                | \$ 67.58           | 2/3 of Building 4 ONLY, if needed (4 total buildings billed together) |
| Grounds and Snow                            | 97.184%       | 2.816%  | Residential                | \$ 400.00          |                                                                       |
| Fire Alarm Monitoring                       | 97.184%       | 2.816%  | Residential                | \$ 70.40           | Including Annual Inspections                                          |
| Electric                                    | 33%           | 67%     | Residential                | \$ 6,400.00        | Building 4 is metered separately                                      |
| Fire Extinguisher Inspections               | 97.184%       | 2.816%  | Residential                | \$ 70.40           |                                                                       |
| Annual Sprinkler Inspection                 | 100%          | 0%      | Residential                | \$ -               | No Sprinklers in LFUCG space                                          |
| Janitorial                                  | 33%           | 67%     | Residential                | \$ 3,466.67        | 2/3 of Building 4 ONLY, if needed                                     |
|                                             |               |         |                            | \$ 16,536.65       | Annually                                                              |
| <b>Billing Addresses and Phone Numbers</b>  |               |         |                            |                    |                                                                       |
| Lexington - Fayette Urban County Government |               |         |                            |                    |                                                                       |
| c/o Melissa McCartt-Smyth                   |               |         |                            |                    |                                                                       |
| 200 East Main Street                        |               |         |                            |                    |                                                                       |
| Lexington, KY 40507                         |               |         |                            |                    |                                                                       |
| Contact: Amy Glasscock                      |               |         |                            |                    |                                                                       |
| Phone Number: 859-258-3026                  |               |         |                            |                    |                                                                       |
| Email: aglasscock@lexingtonky.gov           |               |         |                            |                    |                                                                       |

**EXHIBIT D**

**Prohibited Uses**

None

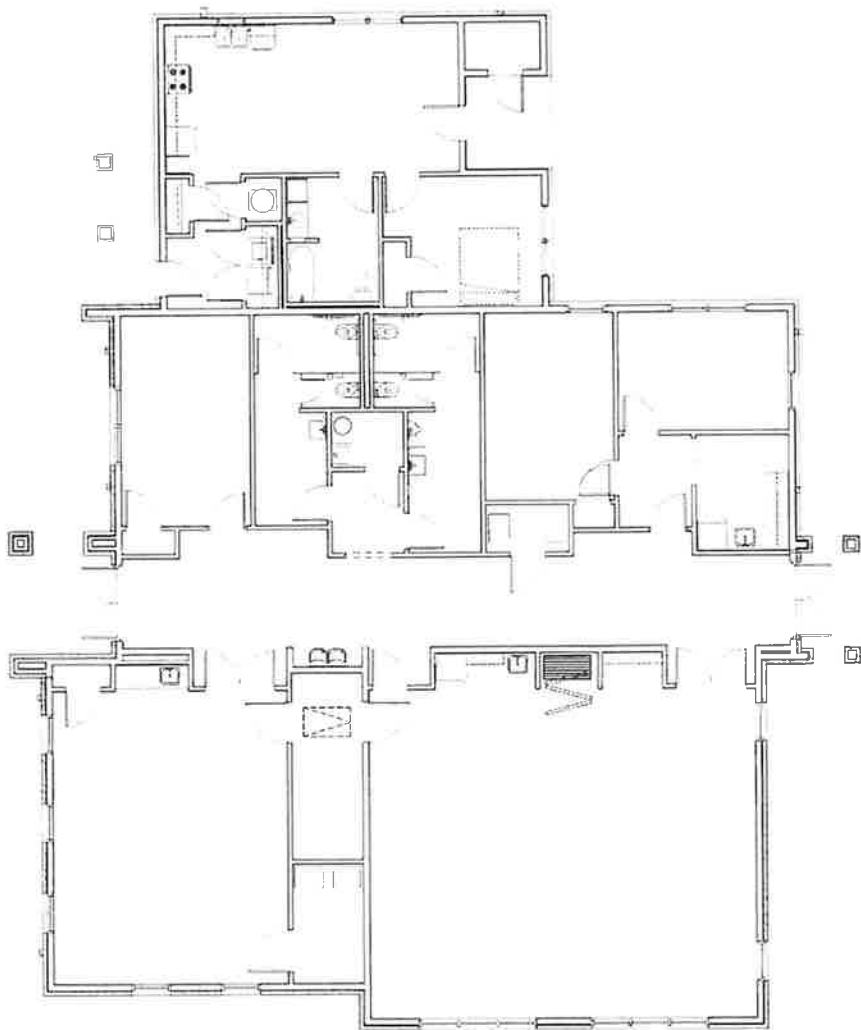
All prohibited uses are identified in Section 8 of the Lease.

**EXHIBIT E**

**LEASED PREMISES DEPICTION**

4879-9669-1133, v. 3





THE UNIVERSITY OF FLORIDA PRESS  
• 1948 •

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FINAL CONSTRUCTION DOCUMENTS

ARCHITECTURAL BLDG 1 - 1ST FLR PLAN, BLDG 1 &  
BLDG 3 - 2ND & 3RD FLR PLANS  
Copy 1

A110

DAVIS PARK STATION  
APARTMENTS  
501 & 512 DE ROODE STREET  
LEXINGTON, KY 40508  
FAYETTE COUNTY



A U ASSOCIATES

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