

## DEED OF GROUND LEASE

**THIS DEED OF GROUND LEASE** (this “Lease”) is made as of this \_\_\_ day of February 2009, by and among (i) **The County Board of Arlington County, Virginia**, a body politic (“Landlord”), and (ii) **Buckingham Village LLC**, a Delaware limited liability company (“Tenant”), a wholly-owned subsidiary of **Neighborhood Associates Corporation**, a tax-exempt, District of Columbia non-profit corporation.

### RECITALS

A. Landlord is the contract purchaser of certain Land (all capitalized terms used in these Recitals are defined below) currently improved with sixteen (16) residential apartment buildings, containing approximately one hundred forty (140) residential units, known as Buckingham Village 3 (RPC № 20023002), pursuant to the terms of the Purchase Agreement (as hereinafter defined).

B. Landlord issued a Request for Proposals (“RFP”) from developers for the re-development of the Property (hereinafter defined), including without limitation, for the design, permitting, renovation and financing for the Affordable Dwelling Units (hereinafter defined) to be located on the Property. Tenant responded to the RFP in January 2008. Based on Tenant’s response to the RFP, Landlord selected Tenant in 2008 to re-develop the Property.

C. Landlord issued a letter of intent to Tenant on August 1, 2008, providing that Tenant would refine and determine the specific elements of the Affordable Housing Program (hereinafter defined), the renovation and construction plan, and the financing plan for the Project related to the redevelopment of the Property, as approved by Landlord.

D. Landlord has, effective upon Landlord’s settlement on its purchase of the Property, agreed to lease the Land and convey the existing Improvements (hereinafter defined), under the terms and conditions hereof, to Tenant for Tenant’s and its Affiliates’ re-development of the Land and Improvements, comprised of approximately one hundred forty (140) rental residential units, consistent with the general plan approved by the County Board for the Property on June 9, 2007 and the Affordable Housing Program, and any amendments thereto approved by Landlord and Tenant (collectively, the “Project”).

E. Tenant shall be considered to be the owner of the Improvements on the Land, subject to the terms of this Lease.

F. Tenant and Landlord intend that the Affordable Dwelling Units in the Improvements shall be operated so as to qualify for Low-Income Housing Tax Credits (hereinafter defined), except as otherwise set forth in the Affordable Housing Program, and so as to comply with all County Requirements (hereinafter defined).

G. Tenant is considering proposals to develop a portion of the Property as for sale affordable housing. Landlord supports the concept of developing part of the Property as affordable for sale housing consistent with the Affordable Housing Program. Tenant and its Affiliates may have the ability to develop part of the Property for affordable for sale housing subject to the Landlord and Tenant reaching an agreement on the terms and conditions thereto. The parties contemplate that such an agreement would be reflected by an amendment to this Lease which would be subject to the approval of both Tenant and the Arlington County Board.

**NOW, THEREFORE, IN CONSIDERATION** of the foregoing and the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord all of that tract of Land in Arlington County, Virginia,

**TOGETHER WITH** any and all rights, alleys, ways, privileges, servitudes, appurtenances and advantages, now or hereafter to the same belonging or in any way appertaining (all of which, together with the Land, are hereinafter referred to collectively as the "Premises"),

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

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

## **ARTICLE I DEFINITIONS**

**Section 1.01 Specific.** As used herein, the following terms have the following meanings:

*"Additional Base Rent Installments"* has the meaning given it in Section 3.01(c).

*"Affiliate"* means an entity that controls Tenant or is controlled by Tenant or under common control such that Tenant either (a) operates and manages the entity, and/or (b) has greater than 50% of the voting rights in the entity.

*"Affordability Covenants"* shall mean the covenants providing restrictions on the use of the Affordable Dwelling Units described in Section 4.04.

*"Affordable Dwelling Units"* shall mean the Residential Dwelling Units in the Improvements to be operated consistent with the Affordable Housing Program at all times and to be operated, following Construction Completion, so as (i) to qualify for Low-Income Housing Tax Credits, or (ii) to satisfy other financing requirements, including but not limited to the County Requirements.

*"Affordable Housing Program"* means the mix of "for lease" and "for sale" Affordable Dwelling Units that will be developed by Tenant on the Property and the income level and size of families to be served by the Project, as specified on Exhibit E attached hereto and made a part hereof and any amendments thereto approved by Landlord and Tenant.

*"Annual Base Rent Installments"* has the meaning given it in Section 3.01(c).

*"Applicable Law"* shall mean all Federal, State and local laws, ordinances and regulations applicable to all or any portion of the Property, the Project and/or the transactions contemplated by the terms of this Lease, including without limitation, all requirements of the Buckingham Historic District (which shall be applicable to the Property as of the Commencement Date hereunder), and all requirements of site plans applicable to the Property.

*"Appraisal"* has the meaning given it in Section 3.01(f).

“*Area Median Income*” shall be the median income for the Washington, D.C. Metropolitan Area, as adjusted annually for household size, as published by the United States Department of Housing and Urban Development.

“*Bankruptcy*” shall be deemed, for any person or entity, to have occurred either:

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

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

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

“*Commencement Date*” means the date that Landlord becomes the fee simple owner of the Property, which is currently scheduled to occur on or before March 19, 2009.

“*Condemnation Award*” means the aggregate amount of any condemnation award or awards payable with respect to a Taking, whether by agreement or pursuant to a judgment or otherwise, with any interest payable on such amount, including consequential damages to any portion of the Property not taken, net of any costs and expenses of collecting the same.

“*Construction Completion*” means that the Project has received all applicable final certificates of occupancy.

“*Construction Mortgage*” any Mortgage or Mortgages providing funding for the renovation of the Project.

“*County Manager*” means the County Manager of Arlington County, Virginia, or his or her designee.

“*County Requirements*” means all generally applicable legal requirements established by Arlington County, Virginia from time to time that are applicable to the Property.

“*Date of Taking*” means the date as of which Tenant is deprived of possession of any property involved in a Taking.

“*Depository*” shall mean any Permitted Leasehold Mortgagee, which is an Institutional Lender, which is qualified to do business in Virginia that serves as Depository from time to time.

“*Environmental Laws*” shall mean any and all federal, state or local statutes, laws, rules, regulations, ordinances, or codes pertaining to the environment in effect and any judicial or administrative interpretation thereof specifically relating to the Property (including, but not

limited to, any judicial or administrative order, consent decree or judgment relating to the environment or Hazardous Materials, or exposure to Hazardous Materials on the Property) including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, and the Toxic Substances Control Act, as amended.

*“Event of Default”* has the meaning given it in Section 14.01.

*“Expiration Date”* has the meaning given it in Section 2.01.

*“Extended Term”* means the 5-year Option Period for which the Term will continue beyond the Initial Term resulting from Tenant exercising its option to extend the Term provided in Section 2.01 of this Lease.

*“Extended Use Agreement”* means the agreement to be entered into between the limited partnership that undertakes the rental part of the Project and the Virginia Housing Development Authority as required pursuant to Section 42 of the Code.

*“Federal Historic Tax Credit”* shall mean the tax credit allowable pursuant to Section 47 of the Code for Federal Qualified Rehabilitation Expenditures incurred in connection with the certified rehabilitation of the Improvements.

*“Federal Qualified Rehabilitation Expenditures”* has the meaning set forth in Section 47(c)(2)(A) of the Code for qualified rehabilitation expenditures.

*“Fee Mortgage”* shall mean a Mortgage encumbering Landlord’s fee interest in the Property, subject to the terms of this Lease.

*“Fee Mortgagee”* means the holder of a Fee Mortgage.

*“General Contractor”* means Harkins Builders and/or such other entities as may be designated by Tenant and approved by Landlord to undertake all or a part of the renovation provided for in the Renovation Documents.

*“Governmental Authority”/“Governing Authority”* means all federal, state, county, municipal and other governments and all subdivisions, agencies, authorities, departments, courts, commissions, boards, bureaus and instrumentalities of any of them having jurisdiction over Landlord, Tenant and the Land, or any of them.

*“Hazardous Materials”* has the meaning given it in Section 4.02(b).

*“Historic Credits Entity”* has the meaning given it in Section 13.03.

*“HTC Master Lease”* has the meaning given it in Section 13.03

*“Improvements”* means the buildings and other improvements on the Land described in the Recitals, together with all appurtenances thereto and any buildings and other improvements that may be hereafter constructed on the Land, as the same may be hereafter repaired, restored, altered or improved, and together with all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter attached or affixed to the Premises or the other Improvements and necessary for the proper operation and maintenance of the Premises or

the Improvements. The Improvements shall include the rights over, upon, across and under the Land for all purposes strictly related to uses permitted by Section 4.01, including, but not limited to the rights to use the Land for sub-adjacent support and ingress and egress, including the right to remove or relocate the Improvements, subject to the terms hereof.

*"Improvement Purchase Price"* has the meaning given it in Section 3.01(d)(ii).

*"Initial Base Rent Installment"* has the meaning given it in Section 3.01(a).

*"Initial Term"* means the 75-year period beginning on the Commencement Date and expiring on the Expiration Date.

*"Institutional Lender"* means any entity which is either a commercial bank, savings bank, savings and loan institution, credit union, pension fund, business trust (including, without limitation, real estate investment trust), insurance company authorized to do business in the Commonwealth of Virginia, governmental revenue or development authority, any governmental agency or entity or any bondholder or bondholder representative, any entity which is regularly engaged in financing the purchase, construction or rehabilitation of real estate and which is subject to regulatory oversight by any federal or state governmental authority, or any affiliate or subsidiary of any of the foregoing entities.

*"Indemnified Party"* has the meaning given it in Section 19.01.

*"Investor Limited Partner"* means any entity having a 20% or greater interest in the limited partnership that undertakes the development of the rental part of the Project.

*"Land"* shall mean that tract of realty located in Arlington County, Virginia, which is described in Exhibit A attached hereto.

*"Landlord"* means The County Board of Arlington County, Virginia and its successors and assigns as holder of fee simple interest in the Land.

*"Landlord Event of Default"* has the meaning given it in Section 14.05.

*"Land Records"* means the Official Public Records of Real Property of Arlington County, Virginia.

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

*"Leasehold Mortgagee"* means any lender holding a Mortgage on all or any part of the Leasehold Estate and/or Improvements.

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

*"LIHTC Housing Requirements"* means applicable Low-Income Housing Tax Credits requirements as provided in Section 42 of the Code, and as required during the compliance period specified therein and any extended use period under the Extended Use Agreement.

*"Low-Income Housing Tax Credits"* shall mean the Low-Income Housing Tax Credit provided for under Section 42 of the Code, or any corresponding provision or provisions of succeeding law.

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

*“Mortgagor”* means the Person having obligations secured by a Mortgage.

*“Mortgagee”* means the holder of a Mortgage.

*“Notice”* shall mean any notice(s), request(s) or other communication(s) required or permitted to be given under this Lease, shall be in writing, and shall be delivered by hand or reputable courier (including Federal Express and other such services), or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth hereunder.

*“Option Period”* has the meaning given it in Section 2.01.

*“Partial Taking”* means a Taking that is not a Total Taking or a Temporary Taking.

*“Permitted Leasehold Mortgage”* has the meaning given in Section 7.02.

*“Permitted Transfer”* has the meaning given in Section 13.02.

*“Permitted Leasehold Mortgagee”* means a Mortgagee secured by a Permitted Leasehold Mortgage, as defined in Section 7.02.

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

*“Pre-Development Expenses”* has the meaning given it in Section 2.04(b)(i).

*“Premises”* has the meaning given it in the Recitals hereinabove.

*“Prime Rate”* shall mean the then applicable *Wall Street Journal* Prime Rate (U.S. money center commercial banks) or its successor publication (or in the absence thereof, such similar rate as Landlord may reasonably designate).

*“Project”* has the meaning given it in Recital D.

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

*“Property Expenses”* has the meaning given it in Section 3.01(c).

*“Property Revenue”* has the meaning given it in Section 3.01(c).

*“Purchase Agreement”* means that certain Agreement of Sale dated June 21, 2007 by and between 4319 North Pershing Drive Apartments Investors LLC, as Seller, and The County Board of Arlington County, Virginia, as Purchaser, with respect to the Property.

*“Renovation Documents”* has the meaning given it in Section 8.01(a).

*“Renovation, Finance and Management Plan”* has the meaning given it in Section 8.01(a).

*“Rent”* means all rent payable under Article III.

*“Requirements of Governmental Authority”* means all laws, statutes, codes, acts, constitutions, ordinances, judgments, decrees, injunctions, orders, resolutions, rules, regulations, permits, licenses, authorizations, administrative orders and other requirements of any Governmental Authority.

*“Resident”* shall mean a Person occupying a Residential Dwelling Unit, including but not limited to an Affordable Dwelling Unit, pursuant to a Tenancy Agreement.

*“Residential Dwelling Unit”* shall mean a rental dwelling unit in the Improvements.

*“Restricted Fair Market Value”* has the meaning given it in Section 3.01(f).

*“RFP”* has the meaning given it in Recital B.

*“State and Local Laws and Ordinances”* shall mean all applicable laws, regulations, codes, and ordinances in the Commonwealth of Virginia and Arlington County relating to health, safety, the environment, liens, housing and building requirements and conditions.

*“State Historic Tax Credit”* shall mean the Virginia historic rehabilitation tax credit described in Virginia Code Section 58.1-339.2 and 17 VAC 10-30.

*“Second Base Rent Installment”* has the meaning given it in Section 3.01(b).

*“Second Base Rent Installment Deadline”* has the meaning given it in Section 3.01(b).

*“Security Deposits”* has the meaning given it in Section 16.01.

*“Substantial Completion”* or *“Substantially Complete”* shall mean for each Residential Dwelling Unit, the date that (a) the Work for the Residential Dwelling Unit is sufficiently complete, in accordance with the Construction Documents related thereto, such that the Residential Dwelling Unit can be occupied, (b) the Architect has issued a Certificate of Substantial Completion for such Residential Dwelling Unit or the building of which it is part, and (c) the Residential Dwelling Unit can be legally occupied.

*“Substantial Completion Date”* has the meaning given it in Section 3.01(b)(i).

*“Taking”* means any taking or damaging of all or any part of, interest in, or right appurtenant to the Property by any Governmental Authority as a result of or in lieu of or in anticipation of or under threat of the power of condemnation or eminent domain, including severance, damage and any change in grade.

*“Tax”* and *“Taxes”* have the meanings given in Section 5.01.

*“Tax Credits”* shall mean, collectively, the Low-Income Housing Tax Credit, the Federal Historic Tax Credit and the State Historic Tax Credit.

*“Temporary Taking”* means a temporary Taking that does not extend beyond the Term, so that Landlord's interest in the Property is unaffected by such Taking.

“*Tenancy Agreement*” shall mean the lease agreement between Tenant (or Tenant’s predecessor-in-interest or successor-in-interest with respect to the Improvements) and a Resident under the terms of which a Resident is entitled to enjoy possession of a Residential Dwelling Unit.

“*Tenant’s Fiscal Year*” has the meaning given it in Section 3.01(c).

“*Tenant’s Value in the Improvements*” means the “AS IS” value of the Improvements as of the date of the Taking, taking into account the effect on such value of this Lease (had the Taking not occurred) and all other matters effecting such interest; provided, however, in no event shall Tenant’s Value in the Improvements be less than the then-current balance owed by Tenant under all Permitted Leasehold Mortgages of record on the Property as of the date of the Taking..

“*Term*” has the meaning given it in Section 2.01.

“*Termination Fee*” has the meaning given it in Section 2.04(b)(ii).

“*Total Taking*” means a Taking, whether permanent or temporary, the effect of which is that the portion or portions of the Property remaining cannot, in the good faith judgment of Tenant, be practically and economically used or converted for use by Tenant for the purposes for which the Property were being used prior to the Taking or for other uses acceptable to Tenant, in Tenant’s sole and absolute discretion.

“*Transfer*” has the meaning given it in Section 13.01.

“*Work*” has the meaning given it in Section 12.03(b).

**Section 1.02 General.** Any other term to which meaning is expressly given in this Lease shall have such meaning.

**Section 1.03 Construction.** Any Rent or any other amount paid hereunder shall be construed as made by Tenant solely for the use of the Land, as Tenant shall be deemed to own the Improvements for all purposes, subject to the terms of this Lease. Any covenants contained herein made by the Tenant regarding the Improvements shall be construed solely to protect Landlord from liability in connection with the Improvements.

**Section 1.04 Incorporation of Recitals.** The Recitals set forth above are hereby incorporated and made a part of this Lease.

## ARTICLE II TERM

**Section 2.01 Length.** This Lease shall be for a term (“Term”) commencing on the Commencement Date, and expiring at 11:59 p.m. on the day immediately before the Seventy-fifth (75<sup>th</sup>) anniversary of the first day of the first full calendar month following the Commencement Date (the “Expiration Date,” except that if the date of such expiration or termination is hereafter advanced to an earlier date, extended or postponed pursuant to any provision of this Lease or by operation of law, the date to which it is advanced, extended or postponed shall thereafter be the “Expiration Date” for all purposes of this Lease). Upon the occurrence of the Commencement Date, Landlord and Tenant shall execute the “Confirmation as to Commencement Date” attached hereto and made a part hereof as Exhibit D, which shall confirm the Commencement Date and the Expiration Date. Tenant’s failure to execute such Exhibit D shall not in any manner affect the Commencement Date or Expiration Date otherwise

established pursuant to the terms of this Lease. So long as Tenant is not in default of any term or condition of this Lease, Tenant shall have an option to extend the Term by five (5) years (the "Option Period"). Tenant shall be deemed to have exercised the option to so extend the Term if Tenant provides Landlord with written notice of Tenant's desire to so extend the Term at least eighteen (18) months prior to the original Expiration Date. In the event that Tenant fails to timely and properly exercise its option to extend the Term as aforesaid, the Term of this Lease shall expire upon the original Expiration Date. If Tenant timely exercises the option to so extend the Term, all of the terms and conditions of this Lease shall continue to apply during the Option Period, including without limitation, Tenant's obligation to pay Annual Base Rent Installments pursuant to Section 3.01(c) below.

**Section 2.02 Surrender.** Tenant shall, at its expense as provided herein, at the expiration of the Term or any earlier termination of this Lease, (a) remove from the Property Tenant's signs, goods and effects and any machinery, trade fixtures and equipment used in conducting Tenant's trade or business and not made part of the Property or otherwise owned by Landlord, (b) repair any damage to the Property caused by such removal, and (c) promptly yield up to Landlord the Property (and execute any documents necessary for such legal transfer), in a good repair and condition (except as may otherwise be provided in Article IX) and in compliance with all applicable state and local laws and ordinances, subject to ordinary wear and tear, and as affected by condemnation or damaged by casualty (subject to restoration, as provided herein), subject to Article XI and Article XII. Upon such expiration or termination (whether by reason of an Event of Default or otherwise), (x) neither Tenant nor its creditors and representatives shall thereafter have any right at law or in equity in or to any or all of the Property or to repossess any of same, or in, to or under this Lease, and Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of any creditor of Tenant or any other person whatsoever (but subject to any rights hereunder of Permitted Leasehold Mortgagees, if any, and subject to the rights of any person then holding any lien, right, title or interest in or to the Land), and (y) Tenant hereby waives any and all rights of redemption which it may otherwise hold under any applicable law.

**Section 2.03 Ownership of Improvements.** Landlord and Tenant acknowledge and agree that during the Term and with respect to the tax years during which the Term begins and ends, for federal and state tax purposes, ownership of the Improvements shall be vested in Tenant (its assigns and successors) alone, and Tenant shall be entitled to all of the tax attributes of ownership of the Improvements, including, without limitation, the right to claim depreciation or cost recovery deductions, Tax Credits and other benefits for federal and state income tax purposes attributable to the ownership of the Improvements. In confirmation of the foregoing, Landlord hereby grants to Tenant, without any express or implied warranty, any and all right, title and interest of Landlord in and to the Improvements now or hereafter located on the Land, subject to the terms, covenants and conditions of this Lease. Without limiting the foregoing, Tenant hereby agrees to own, operate, maintain, repair, replace, manage, finance, use and only transfer any rights in or to the Improvements subject to the terms, covenants and conditions of this Lease. Subject to the provisions of Article VII hereof, upon the expiration or earlier termination of this Lease, title to the Improvements shall automatically be granted, assigned and transferred to, and without the need of any instrument of transfer shall re-vest in, Landlord and shall be surrendered to Landlord in the condition required under Section 2.02 hereof.

## **Section 2.04 Landlord Termination Rights.**

(a) Landlord shall have the right, by Notice to Tenant, to terminate this Lease in the event Tenant fails to achieve any of the following requirements, which Notice shall be given by Landlord, if at all, not later than ninety (90) business days following the date on which the applicable requirement was to have been satisfied:

(i) Obtain Landlord's approval to the Renovation Documents required for the initial Low-Income Housing Tax Credits application within twelve (12) months after the Commencement Date;

(ii) Procure the initial construction permit to commence renovation of the Project and close on the Construction Mortgage within twenty-four (24) months after Renovation Documents approval, and thereafter to diligently pursue the renovation of the Project to Substantial Completion, using all available and reasonable commercial means; or

(iii) Substantially Complete the renovation of the rental component of the Project as required by the Renovation, Finance and Management Plan within thirty-six (36) months after the later of (A) receipt from the Landlord of final approval of the Renovation Documents as set forth in Section 8.01 hereof, or (B) the date on which the Construction Mortgage is recorded.

The force majeure provisions of Section 14.04 apply to the time periods for performance set forth in this Section 2.04(a).

(b) Landlord shall have the right to terminate this Lease for any or no reason at Landlord's sole and absolute discretion by providing a Notice to Tenant exercising the termination right at any time on or before the earlier to occur of (i) February 1, 2010, or (ii) the day prior to the date upon which Tenant closes on its Construction Mortgage; provided, however, a closing on Tenant's Construction Mortgage prior to February 1, 2010 shall only serve to reduce the deadline for Landlord to exercise its right to terminate this Lease if Tenant shall have provided Landlord with written notice of such closing date at least forty-five (45) days prior to such closing date and further provided that such written notice shall include the following caption in bold, all-capitalized letters: "THE OCCURRENCE OF THE CONSTRUCTION MOTGAGE CLOSING DESCRIBED BY THIS NOTICE SHALL ELIMINATE THE COUNTY'S RIGHT TO TERMINATE THE DEED OF GROUND LEASE PURSUANT TO SECTION 2.04(b) OF THE DEED OF GROUND LEASE." In the event that Landlord exercises the termination right provided for in this Section 2.04(b), Landlord shall, so long as Tenant complies with all of its obligations under this Lease, pay Tenant a termination fee equal to (A) the reasonable out-of-pocket expenses that Tenant actually incurred with third-parties in connection with this Lease and the pre-development of the Project (collectively, the "Pre-Development Expenses"), plus (B) a fee to Tenant equal to Nine Hundred Eighty-five Thousand and <sup>No</sup>/<sub>100</sub> Dollars (\$985,000.00) (collectively with the Pre-Development Expenses, the "Termination Fee"). Within thirty (30) days after Tenant's receipt of Landlord's Notice exercising its right to terminate this Lease pursuant to this Section 2.04(b), Tenant shall provide Landlord with Tenant's calculation of the Pre-Development Expenses and all invoices and other support documentation reasonably requested by Landlord to back-up the requested amount of Pre-Development Expenses. Landlord shall pay the Termination Fee within thirty (30) days after Landlord's review and approval of such invoices and support documentation. Upon Landlord's payment of the Termination Fee, Tenant shall provide Landlord with any and all plats, plans,

drawings, calculations, work sheets, contracts and other documentation constituting the work product associated with and/or paid for by the Pre-Development Expenses.

### **ARTICLE III RENT**

**Section 3.01 Rent.** In consideration of the Landlord conveying ownership of the Improvements and leasing the Land to Tenant, Tenant agrees to pay Landlord Rent during the Term, without set off, deduction or counterclaim, as follows:

(a) On the date on which the Construction Mortgage is recorded encumbering the Premises and the Improvements, Tenant shall prepay to Landlord the initial installment of base rent ("Initial Base Rent Installment") in the amount of One Million and <sup>No</sup>/<sub>100</sub> Dollars (\$1,000,000.00). In the event that the Initial Base Rent Installment is not paid by June 30, 2010 then, in such event, Tenant shall pay to Landlord on a quarterly basis, commencing July 1, 2010, fifty percent (50%) of Tenant cash flow remaining after payment of all cash costs and expenses of the Tenant in connection with the Tenant's management, business affairs and operations, including but not limited to capital expenditures approved by the County (which approval shall not be unreasonably withheld, conditioned or delayed), amounts allocated to reserves, debt service on loans (except for any payment of deferred developer fee or any loans payable solely out of cash flow), and payment of any fees; and said quarterly payments shall continue until the Initial Base Rent Installment is paid in full.

(b) On the later of (i) the date on which Substantial Completion has occurred for all Residential Dwelling Units (the "Substantial Completion Date"), or (ii) the date on which the loan secured by the Construction Mortgage has been repaid and a Permitted Leasehold Mortgage securing a permanent, amortizing first lien on the Premises and Improvement has been recorded, Tenant shall prepay to Landlord the second installment of base rent in the amount of Twelve Million Five Hundred Thousand and <sup>No</sup>/<sub>100</sub> Dollars (\$12,500,000.00) (the "Second Base Rent Installment"); provided, however, notwithstanding the foregoing, the amount of the Second Base Rent Installment shall be paid to Landlord no later than August 31, 2015 (the "Second Base Rent Installment Deadline"); and

(c) Commencing on that date which is sixty (60) days from and after the Substantial Completion Date and continuing thereafter throughout the Term, Tenant shall pay additional annual installments of base rent in the amounts set forth in the Annual Base Rent Installments schedule, as specified on the schedule attached hereto and made a part hereof as Exhibit F (the "Annual Base Rent Installments"), which Annual Base Rent Installments shall be paid in arrears within ninety (90) days of the close of the Tenant's fiscal year, which is the twelve (12) month period from January 1 to December 31 ("Tenant's Fiscal Year"). The Annual Base Rent Installments shall be paid from fifty percent (50%) of Tenant cash flow remaining after deducting all reasonable and customary costs and expenses of the Tenant in connection with the Tenant's management and operation of the Property, including but not limited to capital expenditures, amounts allocated to reserves, debt service on loans (except for any payment of deferred developer fee or any loans payable solely out of cash flow) and accounting, audit and compliance costs including the asset management fee to the Investor Limited Partner (collectively, "Property Expenses"), from any and all revenues received from Tenant in connection with the operation of the Property ("Property Revenue"). Notwithstanding the foregoing, Tenant shall only be entitled to deduct Property Expenses from Property Revenue for

purposes of determining cash flow if and to the extent such Property Expenses are consistent with an annual Property operating budget prepared by Tenant and approved in writing by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. The form of such annual Property operating budget shall be as reasonably required by Landlord from time to time. Tenant shall provide Landlord with (i) quarterly reports within thirty (30) days after the completion of each quarter during each Tenant's Fiscal Year detailing the Property Revenue received and the Property Expenses incurred during such prior quarter, and (ii) audited financial statements with respect to the operation of the Property for each Tenant's Fiscal Year within one hundred eighty (180) days after the completion of each Tenant's Fiscal Year, time being of the essence. If Tenant fails to timely provide such audited financial statements, Landlord shall have the right at any time, upon reasonable prior written notice, to audit Tenant's books and records with regard to the operation of the Property within twelve (12) months after the expiration of any Tenant's Fiscal Year and for the two (2) immediately preceding Tenant's Fiscal Years. In the event such a Landlord audit reveals that cash flow was understated for any Tenant's Fiscal Year, then Tenant shall pay to Landlord, within thirty (30) days after Landlord provides its audit report to Tenant, any Annual Base Rent Installments that were deferred as a result of such understatement of cash flow. If and to the extent that the equity investment and permanent mortgage loan for the proposed development of the Property are insufficient, after payment of all development expenses other than the deferred development fee, to fund the full Second Base Rent Installment then, in such event, up to one-half ( $\frac{1}{2}$ ) of the Second Base Rent Installment may be deferred and paid from Tenant's cash flow in subsequent years. If and to the extent Tenant's cash flow in any year is insufficient to pay all or a portion of the Annual Base Rent Installment then due, such unpaid portion of the Annual Base Rent Installment shall accrue and be payable from fifty percent (50%) of Tenant cash flow in subsequent years.

(d) Landlord and Tenant agree that for federal and state income tax purposes, this Lease will be treated as a sale of the Improvements for the sum of (i) the entire amount of the Second Base Rent Installment, and (ii) the subsequent payments of Annual Base Rent Installments thereafter due under this Lease (the sum of the amount set forth in clauses (i) and (ii) of this sentence being defined herein as the "Improvement Purchase Price"), and that the Tax Credits will be transferred to the Tenant as a result. Consistent with this treatment, Landlord and Tenant agree that (x) a portion of every Annual Base Rent Installment will be treated as interest and a portion will be treated as principal, in the same manner and amount as if the payments of Annual Base Rent Installments were described as debt payments on a self-amortizing 75-year loan, bearing adequate stated interest at the Applicable Federal Rate published by the Internal Revenue Service, and (y) in no event will the Improvement Purchase Price be treated as rent for federal or state tax purposes.

(e) Upon the occurrence of the Substantial Completion Date, Landlord and Tenant shall execute a document, as prepared by Landlord, confirming the Substantial Completion Date and shall complete the Annual Base Rent Installments schedule to confirm the timing of Tenant's obligation to pay such Annual Base Rent Installments in light of the determination of the Substantial Completion Date. Tenant's failure to execute such confirmation shall not in any manner affect the Substantial Completion Date or Annual Base Rent Installments otherwise established pursuant to the terms of this Section 3.01. In addition, upon the written request of Landlord or Tenant at any time after the Substantial Completion Date and such Applicable Federal Rate are determined, the parties shall confirm, in writing, a schedule that calculates what portion of each payment of the Annual Base Rent Installments constitutes

principal and which portion constitutes interest. Landlord and Tenant agree that they shall not take any position on any federal or state income tax return that is inconsistent with the treatment of the Lease as (i) a sale of the Improvements for the Improvement Purchase Price (as adjusted pursuant to the following paragraph, if applicable), and (ii) a lease of the Land in exchange for (A) the Initial Base Rent Installment, and (B) any payments made by the Tenant pursuant to the requirements of Sections 3.02 and/or 3.04.

(f) Tenant's obligation to pay the Rent as aforesaid shall fully survive the expiration or earlier termination of the Term of this Lease. Notwithstanding anything herein to the contrary, in no event shall the Improvement Purchase Price pursuant to Section 3.01(d) above exceed the fair market value of the Improvements, taking all restrictions into account (the "Restricted Fair Market Value"), which Restricted Fair Market Value shall be evidenced by an appraisal, obtained by Tenant at its expense, in form and substance reasonably acceptable to Tenant and Landlord and dated as of the Commencement Date (the "Appraisal"). If and to the extent the Restricted Fair Market Value of the Improvements is determined to be less than the Improvement Purchase Price set forth in this Section 3.01, the parties hereto shall verify same in writing and, Tenant's payments pursuant to Sections 3.01(b) and (c) herein will be reduced in chronological order, such that the Improvement Purchase Price equals the Restricted Fair Market Value of the Improvements.

**Section 3.02 Tax on Lease.** If federal, state or local law now or hereafter imposes any tax, assessment, levy or other charge (other than any income tax) directly or indirectly upon Landlord with respect to this Lease or the value thereof, Tenant shall pay the amount thereof within thirty (30) days of Landlord's written demand therefor.

**Section 3.03 Security Deposit.** NONE.

**Section 3.04 Net Lease.** Other than as is expressly set forth in this Lease (and except for Landlord's legal fees, third-party consultants retained by Landlord and Landlord's own costs), all costs, expenses, liabilities, or other charges whatsoever with respect to the Property and the acquisition, rehabilitation, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of the Property shall be the sole responsibility of and payable by Tenant. Nothing contained herein will require the Tenant to indemnify, hold harmless or pay any costs, expenses or liabilities for the Landlord for any such claim or liability resulting from the Landlord's negligence or the Landlord's willful and wrongful acts or that of its agents, representatives, board members, contractors, or employees.

**Section 3.05 Late Payment Interest.** In the event that Tenant shall fail to pay when due any Rent payable under this Lease, interest shall accrue thereon at the rate of the Prime Rate plus two (2) percentage points per annum until such late Rent is paid, and, Tenant shall pay Landlord such late payment interest within fifteen (15) days after demand, in addition to all other Landlord rights and remedies hereunder.

**Section 3.06 No Offset, Abatement or Deduction.** Tenant shall pay all Rent to Landlord without notice or demand and free of any offset, diminution, abatement, counterclaim or other deduction whatsoever, except as contained herein. The parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease.

**Section 3.07 Form and Place of Payment.** Tenant shall pay all Rent in the lawful money of the United States of America to Landlord at Landlord's address for Notices as determined pursuant to Article XVII or to such other Person or address (or account, for electronic fund transfers) as may have been identified in a Notice given by Landlord to Tenant pursuant to Article XVII.

#### **ARTICLE IV USE OF PROPERTY**

**Section 4.01 Nature of Use.** Tenant and its successors and assigns, and any entity which succeeds to Tenant's interests in the Property by foreclosure or an assignment or deed in lieu of foreclosure, shall only use the Property for the re-development, renovation, ownership, use, maintenance, repair and replacement of the Project and for no other purpose, without the prior written consent of Landlord, which consent may be withheld or denied at Landlord's sole and absolute discretion.

The use of the Property shall be further restricted by all Applicable Laws and by the terms of the Affordability Covenants. Notwithstanding the foregoing provisions in this Section 4.01, in the event of foreclosure on the portion of the Improvements comprising the Affordable Dwelling Units by a Permitted Mortgagee under its Permitted Leasehold Mortgage or an assignment or deed of all or any part of the Leasehold Estate and/or Improvements in lieu of foreclosure thereunder, the occupancy restrictions applicable to the Affordable Dwelling Units shall, subject to the terms of Section 4.04(c) below, remain in effect as long as is necessary to comply with the LIHTC Housing Requirements, the Affordability Covenants, and any other requirements, as applicable.

Tenant may only alter the use of the Property as set out in the first paragraph of this Section 4.01 with Landlord's prior written consent, which consent may be withheld or denied at Landlord's sole and absolute discretion, and further subject to compliance with any applicable Low-Income Housing Tax Credit or other regulatory requirement.

**Section 4.02 Compliance With Law and Covenants.** Tenant, throughout the Term and at its sole expense, in its re-development, possession and use of the Premises and the Improvements shall:

(a) materially and promptly comply with (i) all applicable Federal, State and Local Laws and Ordinances; and (ii) all requirements to keep in force throughout the Term all licenses, consents and permits required from time to time by applicable law to the Property;

(b) not (either with or without negligence) knowingly cause or permit Hazardous Materials on the Property, except any use thereof in the ordinary course of Tenant's and/or an Affiliate's business or by Residents and only in compliance with all applicable Environmental Laws. Notwithstanding the foregoing, if during the Term, Tenant allows Hazardous Materials on the Property in violation of this Lease, then to the extent required by the relevant or lead governmental enforcement agency, the Tenant shall diligently take the steps necessary to adopt a plan of remediation by a qualified environmental consultant with respect to any such Hazardous Materials and take prompt action for the containment of any such Hazardous Materials or the removal of any such Hazardous Materials in compliance with all applicable federal, state, and local regulations. For purposes of this Lease, "Hazardous Materials" shall include those substances described as such in any Environmental Law.

**Section 4.03 Easements and Approvals.** Subject to the terms of the Section of this Lease entitled “Role of Landlord/Landlord Decisions; No Waiver,” (a) Landlord shall grant or join in granting, or assist in obtaining and, if necessary, modifying or abandoning such rights-of-way, easements and other interest on or over the Land as may be required to provide the Land with ingress and egress, and electric, telephone, gas, water, sewer and other public utilities reasonably necessary to the re-development and operation of the Project on the Land, and (b) if requested by Tenant, Landlord shall join in (but only if strictly required by Applicable Law) Tenant’s applications, at Tenant’s sole cost and expense, to obtain zoning approvals, easements and arrangements to enable Tenant to construct the Project, pursuant to the Arlington County Zoning Ordinance (i) as it exists on the date of execution of this Lease and/or (ii) as may be modified in the future during the Term of this Lease.

**Section 4.04 Affordable Dwelling Units.** The Affordable Dwelling Units shall be:

(a) Leased and operated so as (i) to qualify for and maintain compliance with all provisions and requirements of the Low-Income Housing Tax Credit program, throughout the Low-Income Housing Tax Credit compliance period or other affordable housing programs as applicable and appropriate, or (ii) to satisfy the terms and conditions of the County Requirements.

(b) Rents and utilities for the Affordable Dwelling Units, commencing upon Construction Completion through the Expiration Date, as extended, shall be calculated based on the LIHTC Housing Requirements or other program requirements, as applicable.

(c) Subject to the applicable provisions of LIHTC Housing Requirements, including without limitation Section 42(h)(6)(E)(ii) of the Code or other program requirements, upon foreclosure of a Leasehold Mortgagee’s interest in the Residential Dwelling Unit, this Section 4.04 shall no longer apply.

**Section 4.05 Historic Designation.** Landlord shall promptly pursue, at its cost, the designation of the Property as a historic property and its listing in the National Register of Historic Places. In doing so, Landlord shall provide Tenant a reasonable opportunity to review and comment on the related materials.

## **ARTICLE V TAXES AND OPERATING EXPENSES**

**Section 5.01 Tenant To Pay.** Tenant (a) shall bear the full responsibility for the expense of any and all real property or other taxes relating to the Property, including any and all payments in lieu of taxes, if applicable, special and general assessments, and any water and sewer charges charged against any or all of the Premises, the Residential Dwelling Units, and the other Improvements and payable with respect to any calendar or tax year or other period falling wholly or partly within the Term, including but not limited to any assessments or fees levied against the Land and the Improvements by a Governmental Authority (each a “Tax” and all of which are “Taxes”), except that if any such Tax is levied with respect to a period beginning before the Commencement Date or ending after the Expiration Date, Tenant shall bear the full expense of only that percentage thereof equaling the percentage of such period falling within the Term; (b) shall pay the same before any penalty is incurred for late payment thereof; and (c) shall deliver to Landlord the receipted bill for such Taxes within 10 business days after Landlord requests it from Tenant in writing. Tenant shall not be required to pay any income taxes

otherwise chargeable to the Landlord. Tenant shall have the rights, to the extent permitted by law, to apply for the conversion of any assessment for local improvements assessed during the Term of this Lease in order to cause the same to be payable in annual installments, and upon such conversion, the Tenant shall discharge such installments as they become due and payable during the Term. If to the extent strictly required by Applicable Law, then, subject to review and approval by the County Attorney, Landlord agrees to permit the application for the foregoing conversion to be filed, if necessary, in the Landlord's name, but at Tenant's sole cost and expense, and shall execute any and all reasonably acceptable documents requested by Tenant to accomplish the foregoing result

**Section 5.02 Proceedings To Contest.** Tenant may bring proceedings to contest the validity or the amount of any Taxes or to recover any amount thereof paid by Tenant, provided that prior thereto Tenant pay any and all Taxes then due and Tenant notify Landlord in writing that Tenant intends to take such action. Tenant shall indemnify and hold harmless Landlord against and from any expense arising out of any such action. Any refunds or credits relating to any successfully contested taxes shall be paid to the Tenant.

**Section 5.03 Operating Expenses.** Since this is a "Triple Net Lease," Tenant shall obtain on its own account and pay or cause to be paid any and all charges for water, electricity, gas, sewage, waste and trash removal and garbage disposal, telephone and other utility services furnished to the Property and for any and all other costs and expenses related to the ownership, operation, management, maintenance, repair and replacement of the Project.

## **ARTICLE VI INSURANCE**

**Section 6.01 Insurance To Be Maintained by Tenant.** Tenant shall maintain at its expense throughout the Term the insurance required in Exhibit B attached hereto and made a part hereof. Approval, disapproval or failure to act by Landlord regarding any such insurance shall not relieve Tenant of full responsibility or liability for damages or accidents as set forth in this Lease. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Tenant from any such liability. Tenant may include the interest of each Permitted Leasehold Mortgagee in all fire and other hazard insurance policies pursuant to a standard mortgagee clause or endorsement, may name each Permitted Leasehold Mortgagee as a loss payee, and may deposit an original or copy of such policies with each Permitted Leasehold Mortgagee. Tenant may name each Permitted Leasehold Mortgagee as an additional insured in all comprehensive general liability insurance policies.

**Section 6.02 Insureds.** Each such liability insurance policy shall name as insureds or additional insureds thereunder (a) Tenant and (b) Landlord, as their interests may appear.

**Section 6.03 Insurer.** All insurance required and all renewals of insurance shall be issued by companies that satisfy the requirements of Exhibit B, and that are authorized to issue such policies and otherwise transact business in the Commonwealth of Virginia. All insurance policies will expressly provide that such policies will not be canceled or altered without 30 days' (10 days in the event of a failure to pay premiums) prior written notice to Landlord. Such insurance will, to the extent obtainable, at no material cost to the Tenant, provide that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained; and all property insurance will, to the extent obtainable at customary and commercially

reasonable cost to the Tenant, contain a waiver by the insurer of its rights of subrogation against the Landlord.

**Section 6.04 Evidence.** Upon written request of Landlord, Tenant shall deliver to Landlord within 30 days a copy of each such insurance policy or certificates thereof, and Tenant shall keep such originals available on the Property or elsewhere for Landlord's inspection, as provided herein.

**Section 6.05 Increase in Risk.** Tenant shall not do or permit to be done (within its commercially reasonable control) any act or thing as a result of which any policy of insurance of any kind covering any or all of the Property or any liability of Landlord in connection therewith may become void or suspended.

**Section 6.06 Insurance Proceeds.** The Landlord and the Tenant hereby agree that for so long as any Permitted Leasehold Mortgage is outstanding, any and all insurance proceeds received by the Tenant in connection with the Property shall be applied in accordance with the most senior Permitted Leasehold Mortgage governing the application of such proceeds.

## **ARTICLE VII MORTGAGES**

### **Section 7.01 Mortgages on the Land.**

(a) Subordination. Each and every Fee Mortgage which may now or hereafter affect the Property, or any portion thereof, and all renewals, extensions, supplements, amendments, modifications, consolidations, and replacements thereof or thereto, substitutions therefor, and advances made thereunder, shall be subject to this Lease. In confirmation of the foregoing, Landlord shall execute and obtain execution of the Fee Mortgagee and deliver to Tenant at the time of entering into the Fee Mortgage, an instrument evidencing such subordination and non-disturbance that Tenant reasonably may request in a form acceptable to Landlord and the Fee Mortgagee. Upon any foreclosure or other exercise of remedies by a Fee Mortgagee, all rights of Tenant and any Leasehold Mortgagee under this Lease shall remain in full force and effect. No Fee Mortgagee shall have any rights pursuant to this Lease until Tenant has received Notice of such Fee Mortgagee's status as same, name and address.

(b) Attornment. If any Fee Mortgagee, or any of its successors or assigns, or any other person claiming by or through any such Fee Mortgagee or by or through any foreclosure proceeding of any such Fee Mortgagee shall succeed to the rights of Landlord under this Lease, such Fee Mortgagee or other person shall accept this Lease and recognize Tenant as the holder of all of the rights of Tenant hereunder, and Tenant shall attorn to and recognize such successor as Tenant's landlord under this Lease, and such successor and Tenant shall promptly execute and deliver at any time any instrument that may be reasonably necessary to evidence such acceptance and attornment. In addition, any Fee Mortgage shall provide that in the event that the Fee Mortgagee thereunder shall succeed to the rights of Landlord under this Lease pursuant to foreclosure, deed in lieu of foreclosure or other proceedings, such Fee Mortgagee shall recognize all Tenancy Agreements which were in effect immediately prior to such foreclosure or other proceedings pursuant to their terms, including any covenant of quiet enjoyment contained in such Tenancy Agreements, so long as the particular Resident is not in default beyond any applicable cure period set forth in its Tenancy Agreements. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between Tenant and

such successor Landlord, upon and subject to all of the then executory terms, covenants and conditions of this Lease. The provisions of this Section 7.01(b) shall be self-operative and no instrument of any such attornment shall be required or needed by the holders of any such Fee Mortgage. In confirmation of any such attornment, Tenant shall, at Landlord's request or at the request of any such Fee Mortgagee, promptly execute and deliver such further instruments as may be reasonably required by any such Fee Mortgagee.

(c) Liability of Fee Mortgagee. Neither the Fee Mortgagee nor anyone claiming by, through or under such Fee Mortgagee shall be:

(i) liable for any act or omission of any prior Landlord (including without limitation, the then defaulting Landlord), or

(ii) bound by any payment of Rent which Tenant might have paid for more than one (1) year in advance to any prior Landlord (including without limitation, the then defaulting Landlord), or

(iii) bound by any covenant to make any payment to Tenant which was required to be made prior to the time such Fee Mortgagee succeeded to any prior Landlord's interest, or

(iv) bound by any amendment or modification of this Lease that decreases the rental obligation, shortens the length of the Term, if such amendment or modification is made without the written consent of such Fee Mortgagee, or

(v) bound by any warranties or representations made by Landlord in the Lease other than the representations and warranties set forth in Section 16.03 below, or

(vi) bound to Tenant subsequent to the date on which such Fee Mortgagee shall transfer its interest in the Property to any other party, so long as said other party delivers to Tenant a subordination and non-disturbance agreement to the extent required by Section 7.01(a) above.

(d) Notice of Default. Provided that Tenant has received Notice of a Fee Mortgagee, Tenant hereby agrees to give to any such Fee Mortgagee copies of all Notices of default by Landlord under this Lease at the same time and in the same manner as and whenever Tenant shall give any such Notice of default to Landlord, and no such Notice of default shall be deemed given to Landlord hereunder unless and until a copy of such Notice has been so delivered to such Fee Mortgagee. Such Fee Mortgagee shall have the right to remedy any default of Landlord under this Lease or to cause any default of Landlord under this Lease to be remedied and for such purpose Tenant hereby grants such Fee Mortgagee such additional period of time as may be reasonable to enable such Fee Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default; provided, however, that in no event shall such additional period of time granted to such Fee Mortgagee exceed ten (10) days in the case of a monetary default or thirty (30) days in the case of all other defaults. Tenant shall accept performance by such Fee Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under this Lease with the same force and effect as though performed by Landlord. No default under this Lease shall exist or shall be deemed to exist (i) as long as such Fee Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence subject to delays beyond Fee Mortgagee's reasonable control, or (ii) if possession of

the Property is required in order to cure such default, or if such default is not susceptible of being cured by such Fee Mortgagee, as long as such Fee Mortgagee, in good faith, shall have notified Tenant that such Fee Mortgagee intends to institute proceedings under the Fee Mortgage, and thereafter, within fourteen (14) days after the giving of such Notice, commences such foreclosure proceedings and prosecutes such proceedings with reasonable diligence and continuity (subject to delays beyond Fee Mortgagee's reasonable control), and upon obtaining such possession, commences promptly to cure the default and prosecutes the same to completion with reasonable diligence and continuity (subject to delays beyond Fee Mortgagee's reasonable control). Neither such Fee Mortgagee nor its designee or nominee shall become liable under this Lease unless and until such Fee Mortgagee or its designee or nominee becomes, and then only for so long as such Fee Mortgagee or its designee or nominee remains, the fee owner of the Land. As provided in Section 7.01(c)(i) above, neither the Fee Mortgagee nor anyone claiming by, through or under such Fee Mortgagee shall be liable for any act or omission of any prior Landlord. Such Fee Mortgagee shall have the right, without Tenant's consent, to foreclose the Fee Mortgage or to accept a deed in lieu of foreclosure of such Fee Mortgage, provided that no such foreclosure or deed in lieu of foreclosure shall have any impact on Tenant's rights under this Lease.

**Section 7.02 Mortgages on the Leasehold Estate or Improvements.** The Tenant shall not, without prior written consent of the Landlord, encumber the Leasehold Estate or the Improvements with any Mortgage (or record any such Mortgage) other than Permitted Leasehold Mortgages described in this Section. The total loan to value ratio for all Permitted Leasehold Mortgages, in the aggregate, on the Leasehold Estate and/or the Improvements shall not, (a) if the Property is valued subject to the Affordability Covenants, exceed one hundred percent (100%), or (b) if the Property is valued free of the Affordability Covenants, exceed eighty percent (80%). Tenant shall, prior to granting a Mortgage on the Leasehold Estate, provide Landlord with a then-current appraisal of the Property prepared by an independent MAI appraiser in compliance with FIRREA, in order to support Tenant's compliance with the foregoing loan to value ratio limits; provided, however, Landlord agrees to accept the Appraisal for this purpose for two (2) years after the Commencement Date. Any Mortgage permitted by this Section 7.02 without the consent or approval of the Landlord and any other Mortgage on all or any part of the Leasehold Estate or the Improvements to which the Landlord consents shall be a Permitted Leasehold Mortgage.

Additionally, Tenant, at its option and without the consent of Landlord, shall have the unlimited and unrestricted right, at any time and from time to time, at Tenant's own expense, to negotiate and obtain one or more loans financed by an Institutional Lender (or any other lender approved by the Landlord, which approval shall not be unreasonably conditioned, delayed, or denied) and secured by Mortgages on all or any part of the Leasehold Estate and/or the Improvements, provided all loan proceeds are used exclusively for one or more of the following purposes: the renovation of the Project or any of the Improvements including, without limitation, all design, financing, legal, and other costs and fees; redemption or purchase of one or more of the Investor Limited Partner's interests; refinancing of existing debt; repair, demolition, expansion or renovation of any Improvements, or construction of new improvements allowed under the terms of this Lease, including all design, financing, legal, and other costs and fees related to such purposes. Notwithstanding the foregoing, the total loan to value ratio for all Permitted Leasehold Mortgages on the Leasehold Estate and/or the Improvements, shall not, (i) if the Property is valued subject to the Affordability Covenants, exceed one hundred percent (100%), or (ii) if the Property is valued free of the Affordability Covenants, exceed eighty

percent (80%). Any loan financed by an Institutional Lender pursuant to the Renovation, Finance and Management Plan shall be deemed a Permitted Leasehold Mortgage.

Upon the recording of a Permitted Leasehold Mortgage, Tenant shall notify Landlord thereof and in such notice shall specify the address of the Leasehold Mortgagee to which notices shall be sent pursuant to this Lease. Tenant shall not record any Mortgage against all or any part of the Leasehold Estate and/or the Improvements unless it is a Permitted Leasehold Mortgage.

**Section 7.03 Nonmerger.** This Lease shall not terminate as to the Permitted Leasehold Mortgagee because of any conveyance of Tenant's Leasehold Estate or any portion thereof to Landlord or of the Landlord's interest in the Property to the Tenant. Accordingly, if the Leasehold Estate and the fee estate are commonly held, then they shall remain separate and distinct estates. They shall not merge without the written consent of all Permitted Leasehold Mortgagees.

**Section 7.04 Foreclosure.** Upon foreclosure or assignment or deed in lieu of foreclosure of all or any part of the Leasehold Estate and/or the Improvements, any Permitted Leasehold Mortgagee (or its designee or nominee) or any purchaser at foreclosure shall have the right to acquire all or any part of the Leasehold Estate and/or Improvements without consent or approval of Landlord and shall also have the right to further sell, transfer, assign or sublet all or any part of the Leasehold Estate and/or Improvements to a third party without the consent or approval of Landlord. In the event of any such transfer by foreclosure or by assignment or deed in lieu of foreclosure, the transferee and its successors and assigns shall have no liability for the payment of any sums or the performance of any obligation required by this Lease to be paid or performed by Tenant prior to such transfer. Such transferee and each of its successors and assigns shall become Tenant, as applicable, shall be the owner of all or any part of the Leasehold Estate and/or Improvements (or part thereof) so transferred for all purposes under this Lease, shall be responsible for the payment of all sums and the performance of all obligations as Tenant, as applicable, thereafter becoming due or arising under this Lease, and shall be entitled to all of the rights, benefits and privileges of Tenant, as applicable, under this Lease; provided, however, that any Permitted Leasehold Mortgagee (or its designee or nominee) who has acquired all or any part of the Leasehold Estate and/or Improvements by such transfer shall have no liability for the payment of any sums or the performance of any obligations to be paid or performed after any subsequent assignment or transfer of all or any part the Leasehold Estate and/or Improvements to any other party.

**Section 7.05 No Subordination.** Tenant acknowledges and agrees that Landlord is under no obligation to subordinate this Lease or any rights thereto and that any request for subordination to any Leasehold Mortgage will have to be approved in writing by the Landlord in its sole discretion. Each and every Leasehold Mortgage which may now or hereafter affect the Premises or Improvements, or any portion thereof, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder, shall be subject to Landlord's fee interest in the Property and to the terms and conditions of this Lease. At Landlord's written request to Tenant from time to time, any Leasehold Mortgagee shall, within fifteen (15) days of Landlord's request, sign and deliver a certificate confirming its subordinate position consistent with the terms of this Section 7.05. Upon any foreclosure or other exercise of remedies by a Leasehold Mortgagee, all rights of Landlord under this Lease shall remain in full force and effect. Tenant further acknowledges and agrees that no Leasehold Mortgagee shall be entitled to any

protections of this Article VII unless and until a true copy of the original of the instrument creating and effecting such Leasehold Mortgagee's Leasehold Mortgage, certified by the Leasehold Mortgagee to be a true copy of such instrument, and written Notice containing the name and post office address of the Leasehold Mortgagee, shall have been delivered to Landlord.

## **ARTICLE VIII IMPROVEMENTS TO PREMISES**

### **Section 8.01 Improvements by Tenant.**

(a) **Renovation.** Tenant has submitted and Landlord has approved the general plans for the re-development of the Project (together with all amendments thereto approved by the County Manager or the County Board, if County Board approval is required by Applicable Law, being referred to as the "Renovation, Finance and Management Plan"), attached hereto and made a part hereof as Exhibit C. Tenant shall proceed with due diligence, at Tenant's sole cost and expense except as otherwise may be agreed to in writing by the parties, to re-develop, or cause to be re-developed, architectural designs, plans and specifications for the design, renovation and managing the Project (the "Renovation Documents"), in accordance with the Renovation, Finance and Management Plan. The plans for the renovation of the Project and related matters, including, but not limited to any interior or exterior alterations thereof shall at all times be subject to the approval of Landlord, which approval shall not unreasonably be withheld, conditioned or delayed. Tenant shall submit the proposed final Renovation Documents to Landlord for approval, and Landlord shall have thirty (30) business days to approve or disapprove and specify all objections to the proposed final Renovation Documents. Landlord's failure to give Tenant notice within such thirty (30)-business day period shall be deemed to be Landlord's approval of the Renovation Documents. If Landlord disapproves, then Tenant shall have thirty (30) business days to revise the proposed final Renovation Documents and resubmit the same for Landlord's review, which shall be expeditious. Landlord's approval of the Renovation Documents shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with applicable laws, ordinances, rules and regulations of government authorities. Following Construction Completion, Tenant shall have the right, from time to time, to make alterations to the Property and to construct new improvements to the Property fully consistent with the definition of Project herein, upon the prior written consent of the Landlord (which consent shall not be unreasonably withheld, conditioned or delayed), provided such repairs, alterations and new improvements comply with all Applicable Laws.

(b) **Commencement of Renovation.** Provided all approvals, easements and appurtenances required to renovate the Project have occurred and/or been obtained and a building permit has been obtained, Tenant shall commence the renovation of the Project, and shall complete the same with all due diligence subject to force majeure events in Section 14.04 below or any other delays that are not the fault of Tenant. Tenant agrees that no construction shall be commenced until all insurance required under Section 6.01 above has been obtained in accordance with the provisions thereof. The terms of this Section shall not be deemed or construed to alter or limit Landlord's rights under Section 2.04 of this Lease.

(c) **Inspection Rights.** After the Commencement Date, in accordance with Article X herein, Landlord shall, in addition to Landlord's rights as a Governmental Authority pursuant to Applicable Laws, have the right to enter the Property from time to time to inspect it

at reasonable times and intervals and upon reasonable prior notice (not less than 24 hours) during the course of the construction work. Any entry shall be subject to the supervision of Tenant and the construction contractors, and any entry shall be at Landlord's own risk. Any entrant shall be duly empowered to sign, and shall sign, a reasonable standard waiver form and shall comply with all safety policies and procedures of the Project and construction thereof. Any entry shall be conducted with due regard for the business activities conducted at the Property and Tenant's construction work, and no entry shall unreasonably interfere with the business activities conducted on the Land, the progress of the construction work, or violate the safety plan for the construction site.

### **Section 8.02 Mechanics or Other Liens.**

(a) Tenant shall: (i) within ninety (90) days after it is filed, have released (by bonding or otherwise) any mechanics', materialman's or other lien filed or claimed against the Property by reason of labor or materials provided by or for Tenant during the Term, or otherwise arising out of Tenant's use or occupancy of any or all of the Property, and (ii) defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or expense (including but not limited to that of reasonable attorneys' fees) incurred by Landlord on account of any such lien or claim. In the event that Tenant fails to timely remove or have released any such lien, Landlord shall have the right and option to remove same at Tenant's expense, in which case, Tenant shall fully reimburse Landlord for all costs so expended by Landlord within fifteen (15) days of demand as additional rent hereunder.

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

**Section 8.03 Fixtures.** Any and all improvements, repairs, alterations and all other property attached to or otherwise installed as a fixture within the Improvements by Tenant shall, immediately on the completion of their installation, become part of the Improvements and remain with the Property at the expiration or earlier termination of this Lease, except that any machinery, equipment or fixtures installed by Tenant at no expense to Landlord and used in the conduct of Tenant's trade or business (rather than to service the Premises or the Improvements generally) shall not be deemed part of the Improvements, and such machinery, equipment or fixtures shall remain Tenant's property, and shall be removed from the Property by Tenant at the end of the Term (and any damage to the Property caused by such removal shall be repaired at Tenant's expense) and except for improvements whose useful life does not extend to the expiration or earlier termination of this Lease or are otherwise demolished or removed as allowed under this Lease.

**Section 8.04 Signs.** Tenant shall have the right to erect from time to time about the Improvements and the Premises, in accordance with Applicable Law, such signs as it desires for the use and operation of the Project.

**Section 8.05 Tenant Control.** Landlord, in its role as a property owner and not in its role as a Governing Authority, shall have no control over the means and methods of the construction of the improvements and Landlord shall have no right to accept the improvements on behalf of Tenant, Tenant being solely responsible for such construction activities.

## **ARTICLE IX REPAIRS AND MAINTENANCE**

Tenant shall (1) maintain the Property in good repair and in clean, safe and sanitary condition, ordinary wear and tear excepted, (2) not commit or permit waste of the Property, (3) not create, permit or allow to exist on or with respect to the Property any condition whereby the Property shall become less valuable or marketable because of such condition allowed by Tenant, (4) use commercially reasonable efforts to ensure that any additional buildings or improvements to the Property shall be built in good and workmanlike manner using materials of the same quality as the Project, and in accordance with all applicable building codes and other laws, and (5) comply with all State and Local Laws and Ordinances applicable to the Property and not suffer or permit any violations thereof. The Tenant shall promptly correct any deficiencies in the maintenance of the Property. Without limiting the foregoing, Landlord, as Landlord under this Lease, shall not have any responsibility for the repair or maintenance of the Property.

## **ARTICLE X LANDLORD'S RIGHT OF ENTRY**

Subject to the rights of any Resident or other tenant under a Tenancy Agreement, Landlord and its authorized representatives shall, in addition to Landlord's rights as a Governing Authority, be entitled to enter the Property at any time during normal business hours upon five (5) business days' written notice to inspect the Property or for other reasonable purposes.

## **ARTICLE XI FIRE AND OTHER CASUALTIES**

### **Section 11.01 Restoration.**

(a) Subject to provisions of Sections 6.06 and 11.02 hereof, if any or all of the Property is damaged or destroyed, Tenant shall, if any insurance proceeds are available to Tenant and adequate for such purposes, commence and complete restoration with reasonable diligence as nearly as possible to the Property's value, condition and character immediately before such damage or destruction, to the extent such insurance proceeds are available to Tenant therefore, provided that such construction can reasonably be completed within the Term. In the event that damage or destruction occurs to the Property within the last five (5) years of the Term, Tenant shall have no obligation to restore the Property.

(b) Subject to the provisions of Sections 6.06 and 11.02 hereof, insurance proceeds (other than any proceeds which are separately paid on account of any damage to or destruction of Tenant's personal property, inventory or work-in-process, all of which shall be paid to Tenant) payable as a result of such casualty under policies of insurance held by or for the account of Tenant with respect to the Property pursuant to Article VI against such casualty and received by Tenant and/or Landlord, as the case may be (less such reasonable attorneys' fees or other expenses as are incurred by the Landlord and/or Tenant in the collection thereof, which

shall be paid out of such proceeds), shall be used, if available proceeds are sufficient therefor, to restore the Improvements in accordance with Subsection (a) of this Section. Any remaining proceeds shall be disbursed as follows: (i) to the Permitted Leasehold Mortgagees in order of priority of their liens to the extent governed and required by their loan documents and (ii) to the Tenant, to the extent of any remaining proceeds after disbursement pursuant to (i) above.

(c) Anything in this Lease to the contrary notwithstanding other than Section 6.06 and Section 11.02 hereof, upon the expiration or earlier termination of this Lease before such restoration is completed free and clear of any liens, any insurance proceeds not theretofore applied to the cost of such restoration or to Permitted Leasehold Mortgages (in order of priority of their liens, to the extent governed and required by the Mortgage loan documents) shall be paid to the Tenant and Landlord to the extent permitted by the Permitted Leasehold Mortgage documents.

**Section 11.02 Rights of the Parties Under the Loan Documents.** Notwithstanding the foregoing, for so long as any Permitted Leasehold Mortgage is in effect, the most senior Permitted Leasehold Mortgage governing any casualty proceeds shall control (a) the disbursement, use and application of such casualty proceeds, including, without limitation, any application of insurance proceeds to the payment of indebtednesses secured by Permitted Leasehold Mortgages prior to application (if any) to restore the Property, and (b) this Lease termination provisions hereunder. If any Permitted Leasehold Mortgagee (or its designee or nominee) shall acquire all or any part of the Leasehold Estate and/or Improvements by foreclosure or assignment or deed in lieu of foreclosure, such Permitted Leasehold Mortgagee (or its designee or nominee) and its successors and assigns shall not be obligated to demolish, repair or restore the Property (regardless of whether such damage or destruction occurred before or after foreclosure), and the Permitted Leasehold Mortgagee (or its designee or nominee) may apply all or a portion of the insurance proceeds to payment of the unpaid indebtedness then or previously secured by its Permitted Leasehold Mortgage.

In the event that the Property so damaged by casualty is not fully restored, the insurance proceeds distributable to Tenant and Landlord (after any application to pay indebtednesses secured by Permitted Leasehold Mortgages) shall be allocated among them based upon the relative values of their respective interests in the Property or portions thereof damaged or destroyed by casualty and not restored, which distribution shall be determined without regard to any termination of this Lease. If the Tenant and the Landlord cannot agree upon such values within sixty (60) days after such proceeds are available for distribution, then the matter may be submitted by the Tenant, the Landlord, or any Leasehold Mortgagee to the Arlington County Circuit Court for a decision.

### **Section 11.03 Termination.**

(a) Except as otherwise provided herein, no total or partial damage to or destruction of any or all of the Property shall entitle Tenant or Landlord to surrender or terminate this Lease, or shall relieve Tenant from its liability hereunder to pay in full any Rent and all other sums and charges which are otherwise payable to Landlord by Tenant hereunder, or from any of its other obligations hereunder, and Tenant hereby waives any right now or hereafter conferred upon it by statute or otherwise, on account of any such damage or destruction, to surrender this Lease, to quit or surrender any or all of the Property, or to have any suspension, diminution, abatement or reduction of any sum payable by Tenant hereunder. Notwithstanding the

foregoing, in the event that (i) all of the Residential Dwelling Units in the Property are substantially damaged or the damage would prevent the use and operation of the Improvements as a multi-family rental housing development, and (ii) insurance proceeds available to Tenant are insufficient to restore the damaged Property in accordance with Section 11.01(a) above, or (iii) five (5) years or less remain in the Term, the Tenant shall have the right, subject to the prior written approval of each Permitted Leasehold Mortgagee, to terminate this Lease after payment of any Rent due prior to the casualty.

(b) Notwithstanding any other term or provision hereof to the contrary, in the event of a casualty that causes substantial damage or destruction to the Improvements and Tenant's failure to fully repair and restore the Improvements within three (3) years after the occurrence of such casualty, then Landlord shall have the right to terminate this Lease upon thirty (30) days prior written notice to Tenant, regardless of whether or not Tenant has received sufficient insurance proceeds unless Tenant has started and is diligently attempting to restore the Improvements in which event the Landlord's right to terminate this Lease shall be delayed for one (1) year to allow Tenant to complete restoration of the Improvements provided Tenant is diligently pursuing the same. Additionally, in the event that the full amount of Rent payable to Landlord pursuant to Section 3.01 above has not been paid as of the date of any casualty to the Improvements, such amount of unpaid Rent shall first be paid to Landlord from any insurance proceeds before such insurance proceeds are used to reconstruct the Improvements or pay any Leasehold Mortgagee or for any other purpose.

## **ARTICLE XII CONDEMNATION**

**Section 12.01 General.** If, at any time during the Term, all or any part of the Property is involved in a Taking, then the provisions of this Article XII shall apply to the condemnation proceedings and the distribution of any Condemnation Awards pertaining to such Taking.

**Section 12.02 Total Taking.** If a Total Taking occurs, then any unpaid Rent shall be fully payable as of the Date of Taking, including without limitation, any amount of the Second Base Rent Installment or Annual Base Rent Installments previously deferred pursuant to the provisions of Section 3.01 above, and this Lease shall be terminated as of the Date of Taking. All sums, including damages and interest, constituting the Condemnation Award shall be deposited promptly with a Depository, and shall be distributed and disbursed in the following amounts and in the following order of priority:

(a) To Landlord, a sum equal to the value of Landlord's fee simple title to the Land, taking into account the effect on such value of this Lease (had the Taking not occurred) and all other matters affecting such interest; and

(b) To Tenant or Leasehold Mortgagee, the balance of the Condemnation Award.

Notwithstanding any other provision herein, if the Total Taking is undertaken by Arlington County or any political subdivision or entity of Arlington County, then in that event, said funds shall be distributed and disbursed in the following order of priority:

(i) To Tenant or Leasehold Mortgagee, a sum equal to the value of Tenant's Value in the Improvements taking into account the effect on said value of the Lease and all other matters effecting said interest; and

(ii) To Landlord, the balance of the Condemnation Award.

**Section 12.03 Partial Taking.** If a Partial Taking occurs, then the Term shall not be reduced or affected in any way, this Lease shall remain in full force and effect for the portion of the Property remaining after such Taking and the Tenant's obligation to pay Rent shall continue without abatement or diminution. All sums, including damages and interest constituting the Condemnation Award shall be deposited promptly with a Depositary, and shall be distributed and disbursed in the following amounts and in the following order of priority:

(a) First, to be used for restoration of the Land and Improvements to an economically feasible state, in the good faith judgment of Tenant; and

(b) The balance, *pro rata* between Landlord and Tenant (or Leasehold Mortgagee) in accordance with (i) as to Landlord, the value of Landlord's fee simple title in the portion of the Property so taken, taking into account the effect on such value of this Lease and all other matters affecting such interest (had the Taking not occurred), and (ii) as to Tenant (or Leasehold Mortgagee), the value of the Leasehold and Improvements to Tenant considering the number of years left in the Term.

Tenant, at its sole cost and expense, shall commence and thereafter proceed to repair, alter, raze or restore the remaining part of the Land, or otherwise to secure the Improvements and render the Improvements safe (the "Work"), all in Tenant's reasonable discretion and in accordance with Article IX above. If the Condemnation Award received by Tenant is insufficient to pay the entire cost of the work, then Tenant shall pay the full amount of any such deficiency. If the Condemnation Award received by Tenant shall exceed the entire cost of the Work, then Tenant shall assign its interest and any such excess portion of the Condemnation Award to the Depositary if any and, if none, may use such excess for such purposes as Tenant, in its sole discretion, deems appropriate. Under no circumstances shall Landlord be obligated to make any payment, disbursement or contribution towards or on account of the cost of the Work.

**Section 12.04 Temporary Taking.** If a Temporary Taking occurs, then the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rent, without reduction or abatement, in the manner and at the times specified in this Lease. Except only to the extent that Tenant is prevented (either legally or as a practical matter) from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such Taking had not occurred. Upon any such Temporary Taking, Tenant shall be entitled to receive the entire amount of any Condemnation Award made for such Temporary Taking whether such award is paid by way of damages, Rent or otherwise; provided, however, if the period of temporary use or occupancy shall extend beyond the date of the expiration or termination of the Term, then such Condemnation Award shall be prorated by Landlord and Tenant as of such date of expiration.

**Section 12.05 Condemnation Proceedings.** Tenant, Landlord and any Mortgagee shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all negotiations, hearings, trials and appeals in such proceeding.

**Section 12.06 Notice of Condemnation.** If Landlord or Tenant receives notification of any proposed or pending condemnation proceeding affecting the Land, then the party receiving such notification shall promptly give Notice to the other party.

**Section 12.07 New End of Term.** If a Partial or Temporary Taking occurs during the last five (5) years of the Term, then Tenant may, at Tenant's option, terminate this Lease on the same terms and conditions as are set forth in Section 11.03 above except that any Condemnation Award shall be treated as set forth in Section 12.02 above.

**Section 12.08 Other Governmental Action.** In case of any governmental action, not resulting in the Taking or condemnation of any portion of the Property but creating a right to compensation therefor, such as the curving of the grade of any street upon which the Land abuts, then this Lease shall continue in full force and effect without reduction or abatement of Rent and the award shall be paid to Tenant.

**Section 12.09 Mortgagees.** If there is more than one Leasehold Mortgage, Landlord shall recognize the Leasehold Mortgagee whose Leasehold Mortgage is senior in lien as the Leasehold Mortgagee having priority as to the rights of a Leasehold Mortgagee under this Article XII.

### **ARTICLE XIII TRANSFERS**

**Section 13.01 Prohibited.** Except as permitted in Section 13.02 below, Tenant hereby acknowledges that this Lease is one which is personal to Tenant and agrees for itself and its successors and assigns in interest hereunder that it will not (a) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises or the Improvements, or (b) make or permit any voluntary or involuntary total or partial sale, lease, sublease, assignment, conveyance, Mortgage, pledge, encumbrance or other transfer of any or all of the Premises or the Improvements, or the occupancy or use thereof (each of which is hereinafter referred to as a "Transfer"), without first obtaining Landlord's express written consent thereto. Landlord may withhold or deny its consent at its sole and absolute discretion.

**Section 13.02 Permitted Transfers.** Notwithstanding anything to the contrary herein, any Transfer (a) to a Resident pursuant to a Tenancy Agreement consistent with the terms and conditions of this Lease; (b) made pursuant to Sections 7.02, 7.04 or 13.03 hereof; or (c) in accordance with the Tax Credits and the Renovation, Finance and Management Plan or other applicable requirements, shall not require Landlord's consent, and, together with any other Transfer to which Landlord consents, shall be deemed a "Permitted Transfer."

**Section 13.03 Other Permitted Transfers.** For the Project to be eligible to receive the maximum equity contribution from the sale of the Federal Historic Tax Credit and the State Historic Tax Credit, on or after the Commencement Date, Tenant, as sublandlord, may sublease (the "HTC Master Lease") the Land and Improvements to a limited liability company or limited partnership, as subtenant, whose managing member or general partner, as applicable, shall be an Affiliate of Tenant (the "Historic Credits Entity"), subject to Landlord's prior written consent, which such consent shall not be unreasonably withheld, conditioned or delayed. Such HTC Master Lease shall be subject and subordinate in all respects to this Lease. It shall be the intent of Tenant, as sublandlord, and Historic Credits Entity, as subtenant, that Historic Credits Entity shall comply with and perform all of Tenant's obligations, and exercise all of Tenant's rights, under this Lease to the same force and effect as if Historic Credits Entity were named as the tenant hereunder. If Landlord consents to the HTC Master Lease to the Historic Credits Entity, Landlord shall be deemed to have consented to the addition from time to time of investor members or limited partners, as applicable, in the Historic Credits Entity so long as such

additions do not change the controlling ownership of the Historic Credits Entity. In addition, After the Substantial Completion of the Project, Tenant shall have the right, with the prior written consent of Landlord, which consent shall not unreasonably withheld, conditioned or delayed, to sell, transfer, sublease or assign, in whole or part, its rights and obligations in this Lease and/or all or any part of the Leasehold Estate and/or the Improvements, to any Affiliate approved by the Permitted Leasehold Mortgagees (if required). Landlord shall not disturb the possession, interest, or quiet enjoyment of any such sublessee, assignee and lessee. Tenant shall not have any liability for the acts or omissions of any such sublessee, assignee and lessee during the period of such sublease, assignment and lease, provided that such sublessee, assignee and lessee assume all of Tenant's obligations hereunder during such period.

**Section 13.04 Effect on Obligations.** Except as otherwise set forth in this Article XIII, no Transfer by a Tenant shall alter or impair Tenant's obligations hereunder arising during the Term, and Tenant shall not be released from any such obligations as a result of any Transfer without Landlord's express written consent thereto.

**Section 13.05 Benefit and Burden.** Except as otherwise provided in this Lease, this Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns in interest hereunder.

#### **ARTICLE XIV DEFAULT**

**Section 14.01 Definition.** As used in this Lease, each of the following events shall constitute an "Event of Default" to the extent not cured after any applicable notice and cure periods: if Tenant fails (a) to pay any Rent or other sum which it is obligated to pay to Landlord under this Lease, when and as it is due and payable hereunder, and/or (b) to perform any other of its obligations under this Lease if Landlord reasonably determines that such failure would have a material adverse effect on the Property or on Landlord's rights, benefits or interests under this Lease.

**Section 14.02 Notice; Grace Period.** Anything in this Section to the contrary notwithstanding, no Event of Default shall be deemed to have occurred and Landlord shall not exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until:

(a) **Notice and Opportunity To Cure.** (i) Landlord shall so notify in writing Tenant, all Investor Limited Partners as designated by Tenant and all Permitted Leasehold Mortgagees as designated by Tenant, each of whom shall have the right to cure such Event of Default, and (ii) Landlord shall not terminate this Lease for Tenant's default unless and until Landlord has given the Investor Limited Partner and such Permitted Leasehold Mortgagee notice of such Event of Default and thirty (30) days in addition to any applicable cure period given Tenant in which to cure it. Notwithstanding the foregoing, Landlord shall have no obligation to provide any notice to the Investor Limited Partner or to such Permitted Leasehold Mortgagee unless and until Tenant provides Landlord with written notice identifying such Investor Limited Partner and/or such Permitted Leasehold Mortgagee and providing the notice addresses for such parties. If an Event of Default, by its nature, cannot be reasonably cured within thirty (30) days, the Investor Limited Partner and Permitted Leasehold Mortgagee shall have such additional time as it shall reasonably require to effect such cure, so long as the Investor Limited Partner and such Permitted Leasehold Mortgagee is proceeding with all due diligence to effect such cure. In addition to the foregoing time periods with respect to such Permitted Leasehold Mortgagee, for

any Event of Default that cannot be cured without possession of the Property, Landlord shall allow such additional time as such Permitted Leasehold Mortgagee shall reasonably require to prosecute and complete a foreclosure, assignment or deed in lieu thereof or other proceeding in order to obtain such possession, including time to obtain relief from a bankruptcy stay in the Tenant's bankruptcy, of up to a maximum of an additional one hundred twenty (120) days.

(b) (i) Tenant fails to cure such Event of Default (A) if such Event of Default consists of a failure to pay money, within thirty (30) days after Landlord gives such written notice to Tenant, or (B) if such Event of Default consists of something other than a failure to pay money, within sixty (60) days after Landlord gives such written notice to Tenant (or, if such Event of Default cannot, by its nature, be reasonably cured within sixty (60) days, such additional time, but in no event more than an additional ninety (90) days, as shall be reasonably required to effect such cure provided that Tenant is proceeding with all due diligence; provided, however, if prior to the expiration of the cure period, Tenant establishes to Landlord's satisfaction that more than ninety (90) additional days are necessary to accomplish the cure, and Landlord provides Tenant with a written notice that grants Tenant additional time to accomplish such cure, then Tenant shall have the additional time to cure set forth in Landlord's notice), and (ii) neither the Investor Limited Partner nor the Permitted Leasehold Mortgagee has cured such Event of Default within the cure period (minimum of thirty (30) days) given Tenant in which to cure as set forth in Section 14.01(a) above.

(c) It is understood that Tenant and the Investor Limited Partner and the first priority Permitted Leasehold Mortgagee shall have the right, subject to the terms of Section 14.02(a) above, to cure any Event of Default, regardless of whether such Event of Default relates to the Improvements owned by Tenant or secured by the Permitted Leasehold Mortgage of such Permitted Leasehold Mortgagee.

### **Section 14.03 Landlord's Rights on Event of Default.**

(a) If an Event of Default occurs and is continuing (unless waived by Landlord in writing after receipt of notice pursuant to the provisions hereof), Landlord may (subject to the provisions of Section 14.02 above) take any or all of the following actions:

(i) reenter and repossess any or all of the Property pursuant to legal process; and/or

(ii) terminate this Lease by giving written notice of such termination to Tenant, all Investor Limited Partners as designated by Tenant and all Permitted Leasehold Mortgagees as designated by Tenant, which termination shall be effective as of the date of such notice or any later date therefor specified by Landlord therein (provided that, without limiting the generality of the foregoing provisions of this Section 14.03(a)(ii), Landlord shall not be deemed to have accepted any abandonment or surrender by Tenant of all or any part of the Leasehold Estate and/or Property unless Landlord has so advised Tenant and the Investor Limited Partner and such Permitted Leasehold Mortgagee expressly and in writing, regardless of whether Landlord has reentered or relet all or any part of the Property or exercised any or all of Landlord's other rights under this Section or applicable law); and, on the date specified in such notice, Tenant's right to possession of the Property will cease and the Leasehold Estate shall revert in Landlord; provided, however, such termination of this Lease and cessation of Tenant's right to possession and such reversion of the Leasehold Estate and reentry by Landlord shall be subject to and limited by and shall not defeat, render invalid or limit in any way any residential

Tenancy Agreements, any provision of LIHTC Housing Requirements and the Affordability Covenants;

(iii) in Landlord's own name (but either (A) as agent for Tenant, if this Lease has not then been terminated, or (B) for the benefit of Tenant, if this Lease has then been terminated), relet any or all of the Property, with or without any additional premises, for any or all of the remainder of the Term (or, if this Lease has then been terminated, for any or all of the period which would, but for such termination, have constituted the remainder of the Term) or for a period exceeding such remainder, on such terms and subject to such conditions as are acceptable to Landlord in its sole discretion (including but not limited to the alteration of any or all of the Property in any manner which, in Landlord's judgment, is necessary or desirable as a condition to or otherwise in connection with such reletting, and the allowance of one or more concessions or "free-rent" or reduced-rent periods), and collect and receive the rents therefor. Anything in this Lease or Applicable Law to the contrary notwithstanding, (1) Landlord shall not have any duty or obligation to relet all or any part of the Property as the result of any Event of Default, or any liability to Tenant or any other person for any failure to do so or to collect any Rent or other sum due from any such reletting; (2) Tenant shall have no right in or to any surplus which may be derived by Landlord from any such reletting, if the proceeds of such reletting exceed any Rent, installment thereof or other sum owed by Tenant to Landlord hereunder; and (3) Tenant's liability hereunder shall not be diminished or affected by any such failure to relet or the giving of any such initial or other concessions or "free-rent" or reduced rent periods in the event of any such reletting. Tenant shall be obligated to the Landlord for all unpaid expenses and costs during Tenant's ownership and possession of the Property. Tenant shall not have any liability for the expenses, costs, acts or omissions of any tenant or occupant subsequent to such reletting of the Property. Landlord shall abide by any restrictions, obligations and duties imposed by the LIHTC Housing Requirements and the Affordability Covenants;

(iv) without waiving or limiting any other remedies available to Landlord, upon such default by Tenant (and subject to the notice and cure rights of Tenant), Landlord shall be entitled (but not obligated) to perform or cause such obligations to be so performed on behalf of Tenant, and Tenant shall reimburse Landlord, as additional rent hereunder, for its reasonable third party out-of-pocket costs and expenses incurred by Landlord in doing so, which amount shall be due within thirty (30) days of Tenant's receipt of a written statement of the costs and expenses so incurred by Landlord; and/or

(v) pursue any combination of such remedies and/or any other right or remedy available to Landlord on account of such Event of Default under this Lease and/or at law or in equity, including without limitation, an action for specific performance or other injunctive relief. Nothing herein shall limit or prejudice Landlord's right to prove for and obtain as damages, by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved.

(b) Any such termination of this Lease, or summary dispossession proceedings, abandonment, reletting, bankruptcy, re-entry by Landlord or vacancy, shall not relieve Tenant of any of its liabilities and obligations under this Lease (whether or not any or all of the Property is relet), and Tenant shall remain liable to Landlord for all damages resulting from any Event of Default prior to such termination, abandonment, reletting, bankruptcy, re-entry or vacancy, including but not limited to any damage resulting from the breach by Tenant of

any of its obligations under this Lease to pay Rent that is then unpaid and any other sums which Tenant is then obligated to pay hereunder, provided that Tenant shall not be liable for Rent and other sums (except as provided in Section 14.03(d) below) that shall thereafter be due and payable under this Lease.

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

(d) If an Event of Default occurs that is not cured within the applicable notice and cure period, Tenant shall, immediately on its receipt of a written demand therefor from Landlord, reimburse Landlord for (i) all reasonable, out-of-pocket expenses (including but not limited to any and all reasonable repossession costs, management expenses, operating expenses, legal expenses and attorneys' fees) incurred by Landlord (A) in curing or seeking to cure any Event of Default, and/or (B) in exercising or seeking to exercise any of Landlord's rights and remedies under this Lease and/or at law or in equity on account of any Event of Default, and/or (C) otherwise arising out of any Event of Default, plus (ii) interest on all such expenses, at the lesser of 6% or the highest rate then permitted on account thereof by applicable law, all of which expenses and interest shall be Rent and shall be payable by Tenant immediately on demand therefor by Landlord.

(e) Notwithstanding anything contained in this Lease to the contrary, Landlord agrees that at any time during the period between the Commencement Date and the date that is the expiration of the applicable fifteen (15)-year tax credit compliance period and any extended use period provided under an Extended Use Agreement, Landlord shall not exercise any of its remedies for Tenant's default under this Lease that would cause a violation of the LIHTC Housing Requirements or other tax credit requirements or would interfere with the rights of any Investor Limited Partner to receive its Tax Credits or any other tax benefits due to the Investor Limited Partner, and this Lease shall not be terminated, without the prior written consent of the Investor Limited Partner. Any termination without such consent shall, except as provided in the immediately foregoing sentence, be void *ab initio*.

#### **Section 14.04 Force Majeure.**

(a) Subject to Section 14.04(b) below, any prevention, delay, nonperformance (other than nonperformance of an obligation to pay money to Landlord) or stoppage by Tenant due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof that was not in effect as of the date of this Lease, or civil or military authority; acts of God; acts or omissions of Landlord or its agents or employees; fire, explosion or floods; strikes, walkouts or inability to obtain materials; war, riots, sabotage or civil insurrection; or any other causes beyond the reasonable control of Tenant (but excluding delays of Tenant's contractors or subcontractors unless such delays arise from the bankruptcy or insolvency of Tenant's contractors or subcontractors).

(b) No prevention, delay, or stoppage of performance shall be excused unless:

(i) Tenant notifies Landlord within thirty (30) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Section 14.04; and

(ii) Tenant diligently proceeds within thirty (30) days of the conclusion of such prevention, delay or stoppage to commence to cure the condition causing the prevention, delay or stoppage; and

(iii) Tenant effects such cure within a reasonable time.

**Section 14.05 Landlord Event of Default.** Landlord shall be deemed in default of its obligations under this Lease if Landlord shall fail to perform, in a timely manner in accordance with the terms of this Lease, any obligation under this Lease required to be performed by Landlord, and such failure shall continue for thirty (30) days after written notice of such failure from Tenant (a “Landlord Event of Default”). Notwithstanding the foregoing, Landlord shall have such additional period as may be reasonably required to cure such failure, if the same, by its nature, may not be reasonably cured within thirty (30) days so long as Landlord commences such cure within thirty (30) days after notice thereof and thereafter diligently prosecutes the same to completion. If Landlord fails to complete such cure as provided above, then subject to the provisions of any Permitted Leasehold Mortgage, Tenant shall thereupon be entitled to exercise any and all remedies available to Tenant for such default under this Lease or at law or in equity; provided, however, Tenant shall have no right to exercise any “self help” right or remedy, to set off against Rents payable hereunder or to obtain any consequential damages against Landlord. Without waiving or limiting any other remedies available to Tenant, upon such default by Landlord (and subject to the notice and cure rights of Landlord), Tenant shall be entitled (but not obligated) to perform or cause such obligations to be so performed on behalf of Landlord, and Landlord shall reimburse Tenant, as additional rent hereunder, for its reasonable third party out-of-pocket costs and expenses incurred by Tenant in doing so, which amount shall be due within thirty (30) days of Landlord’s receipt of a written statement of the costs and expenses so incurred by Tenant. In the event Landlord or a creditor thereof files a petition for relief naming Landlord as a debtor under Title 11 of the United States Code, Landlord hereby acknowledges and agrees that Tenant’s possessory interest under this Lease and ownership of the Improvements are unique interests and cannot be converted into a cash claim under Section 363 of Title 11 of the United States Code unless Tenant expressly consents to the same. Notwithstanding anything in this Lease to the contrary, the Lease will not be terminated by Tenant without the prior written consent of the Permitted Leasehold Mortgagees and, during the applicable fifteen (15)-year tax credit compliance period under the LIHTC Housing Requirements, as well as any other applicable time period under other applicable requirements, the Investor Limited Partner. Any termination without such consent shall be void *ab initio*.

## **ARTICLE XV ESTOPPEL CERTIFICATE; RECORDATION**

**Section 15.01 Estoppel Certificate.** Each party hereto shall, at any time and from time to time within twenty (20) days after being requested to do so by the other party and/or any Investor Limited Partner or any Permitted Leasehold Mortgagee in writing, execute, acknowledge, and address and deliver to the requesting party (or, at the latter’s request, to any existing or prospective Mortgagee, transferee or other assignee of the requesting party’s interest

in the Property or under this Lease which acquires such interest in accordance with this Lease) a certificate in recordable form.

(a) certifying (i) that this Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (ii) that Tenant has accepted possession of the Property, and the date on which the Term commenced; (iii) as to the dates to which any Rent and other charges arising hereunder have been paid; (iv) as to the amount of any prepaid Rent or any credit due to Tenant hereunder; and (v) as to whether, to the best of such party's knowledge, information and belief, the requesting party has been sent a notice that it is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default); and

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

**Section 15.02 Recordation.** Concurrently with the execution of this Lease, a short form Memorandum of Deed of Ground Lease shall be recorded by Landlord, at its sole cost and expense in the Land Records for Arlington County, Virginia in form approved by Landlord. Without limiting the foregoing, such Memorandum shall include a statement that the Property is subject to the terms and conditions of the Affordable Housing Program. As a condition to Landlord's execution of such Memorandum, Landlord shall require that Tenant sign and deliver a certificate terminating and releasing such Memorandum, which certificate Landlord shall retain and shall be entitled to record upon the expiration or earlier termination of this Lease.

## **ARTICLE XVI CONDITION OF TITLE, PROPERTY AND TENANCY AGREEMENTS**

**Section 16.01 Limited Warranties.** Tenant hereby acknowledges that it has examined the Property, the title thereto, the existing Tenancy Agreements in force at the Property, zoning which may be applicable thereto, if any, the applicable parking ordinance, the streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and subsurface conditions thereof, and the present uses and nonuses thereof, if any, and that it accepts each of them in its present condition or state, without restriction, representation, covenant or (except as is set forth in Section 16.03 below) warranty, express or implied, in fact or at law, by Landlord or any other person, and without recourse to Landlord, as to any appurtenances thereto, the nature, condition or usability thereof, or the uses to which any or all of the Property may be put. Tenant hereby accepts the Property in its "AS IS," "WHERE IS" condition and acknowledges that Landlord has made no representations or warranties as to the Property, its physical or environmental condition, its ability to be re-developed or improved, its value, the status or condition of title to the Property, the status of Residents, Tenancy Agreements and/or any security deposits under Tenancy Agreements (the "Security Deposits"), the Applicable Laws pertaining to the Property, the ability to obtain any permit or approval necessary for the re-development of the Project, or any other matter relating in any way to the Property or its surroundings. Without limiting the foregoing, Tenant hereby acknowledges that it (i) has received and reviewed Phase I and Phase II environmental reports with respect to the Property, (ii) accepts the environmental condition of the Property, and (iii) shall hold Landlord harmless from any and all claims, costs, damages or liabilities, including without limitation, attorneys' fees, arising in connection with or as a result of any environmental condition of the Property, which condition first arises after the

Commencement Date of this Lease. Tenant shall be fully responsible, at its sole cost and expense, for all matters relating to the re-development and renovation of the Project and Landlord shall have no obligations related thereto, including without limitation, for any subsurface or soil conditions.

**Section 16.02 Tenancy Agreements.**

(a) Tenant acknowledges that it has received and reviewed the Purchase Agreement, including without limitation, the terms of Subparagraph 5i of the Purchase Agreement entitled “Leases and Rights of Possession,” and the rent roll attached as Exhibit D to the Purchase Agreement. Pursuant to Subparagraph 5i(iii) of the Purchase Agreement, Landlord, as purchaser under the Purchase Agreement, is entitled to receive an updated rent roll prior to closing on its purchase of the Property. If Landlord receives such updated rent roll, Landlord shall, within five (5) business days after Landlord’s receipt of such updated rent roll, provide a copy of same to Tenant. Landlord’s knowledge about the existing Residents and the existing Tenancy Agreements and the Security Deposits under the Tenancy Agreements is solely derived from the information provided by the seller under and pursuant to the terms of the Purchase Agreement. Landlord has no independent knowledge or information about such matters. Tenant has reviewed the existing Tenancy Agreements and the status thereof.

(b) Effective as of the Commencement Date hereunder, Landlord hereby assigns to Tenant all of Landlord’s right, title and interest in and to the Tenancy Agreements in effect as of such date, including without limitation, all Security Deposits actually received by Landlord, and Tenant hereby accepts such assignment and hereby assumes all obligations and liabilities of the landlord under such Tenancy Agreements. At Landlord’s option, Tenant shall execute and deliver the Assignment of Leases, Rents and Security Deposits substantially in the form attached to the Purchase Agreement as Exhibit E thereto in place of Landlord, in order to effectuate a direct assignment to Tenant effective as of the Commencement Date hereunder. In the event that Tenant fails to execute and deliver such Assignment of Leases, Rents and Security Deposits within five (5) days after Landlord’s written request, Tenant hereby appoints Landlord as Tenant’s attorney-in-fact for the sole purpose of executing and delivering such Assignment of Leases, Rents and Security Deposits on behalf of Tenant. Landlord shall, upon the Commencement Date hereunder, cause the Security Deposits to be paid directly to Tenant by the seller under the Purchase Agreement or, at Landlord’s option, Landlord shall pay the Security Deposits actually received by Landlord to Tenant.

(c) Tenant hereby acknowledges that Landlord has made no representations or warranties of or with respect to the Residents, the Tenancy Agreements and/or the Security Deposits. Tenant shall be solely responsible to comply with all obligations as landlord under the Tenancy Agreements and to comply with all Applicable Laws with respect thereto.

**Section 16.03 Quiet Enjoyment.** Landlord hereby:

(a) represents, warrants and covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (i) is the contract-purchaser of the Property and that it has no written notice of any claim or demand contesting or impairing its interests in the Property; and (ii) has the full right, power and authority to enter into this Lease and thereby to lease the Property; and



To Tenant: Telesis Corporation  
1101 30<sup>th</sup> Street, N.W., Fourth Floor  
Washington, D.C. 20007  
Attn: Mr. Bertrand Mason

And to: National Housing Trust-Enterprise Preservation Corporation  
1101 30<sup>th</sup> Street, NW, Fourth Floor  
Washington, DC 20007  
Attn: Scott Kline

Landlord shall forward to all Investor Limited Partners as designated by Tenant and all Permitted Leasehold Mortgagees as designated by Tenant copies of any notices, demands, consents, approvals, requests and other communication and documents (other than Rent and other periodic billing notices) sent to Tenant, so long as Tenant has previously provided Landlord with the name and notice address of such Permitted Leasehold Mortgagees and Investor Limited Partners.

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

No notice given by Landlord shall be effective against the Permitted Leasehold Mortgagees or the Investor Limited Partners to whom Landlord is required to provide notice hereunder unless Landlord has given a copy of the notice to such Permitted Leasehold Mortgagees and Investor Limited Partners, so long as Tenant has previously provided Landlord with the name and notice address of such Permitted Leasehold Mortgagees and Investor Limited Partners.

### **ARTICLE XVIII LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.**

Except to the extent (1) expressly prohibited by Applicable Law, (2) arising from actions by Landlord not related to its status as owner of the Land, or (3) directly caused by the negligence or willful misconduct of Landlord or Landlord's agents, representatives, board members, contractors, or employees, Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Property and its appurtenances nor for any injury or damage to the Property or to any property belonging to Tenant or any other Person which may be caused by any fire or breakage, or by the use, misuse and abuse of the Improvements (including but not limited to, any of the common areas within the Improvements, equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets and sidewalk area within the Land or which may arise from any other cause whatsoever. Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Land, or leakage of gasoline or oil from pipes, storage tanks, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-

public work. Nothing herein shall be construed to limit or waive in any way the sovereign immunity of Landlord, its officers, agents or employees.

## **ARTICLE XIX INDEMNIFICATION OF LANDLORD**

**Section 19.01 Tenant's Obligations.** Tenant shall protect, indemnify, defend and save Landlord (in Landlord's capacity as landlord under this Lease and not as a Governmental Authority) and any of Landlord's agents, representatives, board members, contractors, or employees (each an "Indemnified Party") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable engineers', architects' and attorneys' fees and disbursements, which may be imposed, upon or incurred by or asserted against any Indemnified Party by reason of any of the following occurring during or after (but attributable to a period of time falling within) the Term, unless the sum is the direct result of an Indemnified Party's negligence or willful misconduct (which exclusion does not waive or otherwise restrict Landlord's right to sovereign immunity):

(a) any demolition or razing or construction of the Improvements or any other work or thing done in, on or about the Land or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance, or management of the Property or any part thereof, or of any sidewalk, curb, or vault adjacent thereto that the owner of the Property is required to maintain pursuant to Applicable Law;

(c) any act on the part of the Tenant or any of its respective officers, agents, employees or licensees;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on or about the Land or any part thereof, or in, on or about any sidewalk, curb or vault adjacent thereto that the owner of the Property is required to maintain pursuant to Applicable Law;

(e) any failure on the part of Tenant to pay Rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be performed or complied with;

(f) any lien or claim which may be alleged to have arisen against or on the Land, or any lien or claim which may be alleged to have arisen out of this Lease and created or permitted to be created by Tenant against any assets of Landlord under the laws of the Commonwealth of Virginia or of any other Governmental Authority or any liability which may be asserted against Landlord with respect thereto;

(g) any claim by any Resident or other occupant of any portion of the Property for any cause; and

(h) any failure by Tenant to comply with Applicable Laws.

**Section 19.02 Effect of Insurance.** The obligations of Tenant under this Article XIX shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Property or any part thereof.

**Section 19.03 Tenant to Defend.** If any claim, action or proceeding is made or brought against Landlord against which it is indemnified pursuant to Section 19.01 above, then, upon demand by Landlord, Tenant shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Tenant shall reasonably select. The foregoing notwithstanding, Landlord may engage its own attorneys at Landlord's cost to defend it or to assist in its defense.

**Section 19.04 Survival.** The provisions of this Article XIX shall survive the Expiration Date with respect to any liability, suit, obligation, fine, damage, penalty, claim, cost, charge or expense arising out of or in connection with any wrongful action or failure to take action or any other matter occurring prior to the Expiration Date.

## **ARTICLE XX SURRENDER OF LAND AND IMPROVEMENTS**

**Section 20.01 Surrender.** Upon the expiration or earlier termination of the Term, Landlord shall become the sole and absolute owner of the Improvements, free of any interest of Tenant or any Leasehold Mortgagee, without the execution of any further instrument or the payment of any further consideration. Tenant shall, on the last day of the Term, or upon the sooner termination of the Term, quit and surrender to Landlord the Land and Improvements vacant, free of all equipment, furniture and other personal property, and in good order and condition, reasonable wear and tear excepted, and free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing on the Commencement Date, created by Landlord, without any payment or allowance whatever by Landlord. Tenant hereby waives any Notice now or hereafter required by law with respect to vacating the Property on any such Expiration Date or earlier termination date. Tenant's obligation to observe and perform this covenant shall survive the expiration or earlier termination of the Term.

**Section 20.02 Holding Over.** Tenant acknowledges that possession of the Land and Improvements must be surrendered to Landlord at the expiration or sooner termination of the Term. Tenant agrees to indemnify Landlord against and save Landlord harmless from all costs, claims, loss or liability resulting from the failure or delay by Tenant in so surrendering the Land and Improvements, including, without limitation, any claims made by any succeeding tenant founded on such failure or delay. The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant to surrender possession of the Land and Improvements timely as aforesaid may be extremely substantial, may exceed the amount of any Rent theretofore payable hereunder, and will be impossible to measure accurately. Unless Landlord and Tenant agree otherwise in writing, if possession of the Land and/or Improvements is not surrendered to Landlord upon the expiration or sooner termination of the Term, then Tenant shall pay to Landlord, as liquidated damages for each month and for each portion of any month during which Tenant holds over in the Land and/or Improvements after the expiration or sooner termination of the Term, in addition to any sums payable pursuant to the foregoing indemnity, a sum equal to 1.5 times the annual Rent payable under Section 3.01 of this Lease as reasonably determined by Landlord. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Land and/or Improvements after the expiration or sooner termination of the Term. If Tenant holds over in possession after the expiration or termination of the Term, such holding over shall not be deemed to extend the Term or renew this Lease, but the tenancy shall

be from month to month upon the terms and conditions of this Lease at the Rent as herein increased. This provision shall survive the expiration or earlier termination of this Lease.

**Section 20.03 End of Term.** On the last day of the Term or upon any earlier termination of the Lease, or upon re-entry by Landlord upon the Land, Tenant shall deliver to Landlord Tenant's executed counterparts of all Tenancy Agreements, any service and maintenance contracts that are in Tenant's possession and are then affecting the Land or Improvements, true and complete maintenance records for the Land and Improvements, all original licenses and permits then pertaining to the Land and Improvements which are in the possession of Tenant or its management agent, permanent certificates of occupancy then in effect for the Improvements, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or equipment installed in the Improvements, together with a duly executed assignment thereof to Landlord, and all financial reports, books and records required by this Lease and whatsoever relating to the Land.

**Section 20.04 Removal of Personal Property.** On the last day of the Term or upon any earlier termination of this Lease or upon a re-entry by Landlord upon the Land, Tenant, at its sole cost and expense, shall remove from the Property on or prior to such expiration, termination or re-entry, any personal property situated thereon which is not owned by Landlord, and shall repair any damage caused by such removal. Any property not so removed shall become the property of Landlord, and Landlord may cause such property to be removed from the Property and disposed of, but the cost of any such removal and disposition and of repairing any damage caused by such removal shall be borne by Tenant.

## **ARTICLE XXI GENERAL**

**Section 21.01 Effectiveness.** This Lease shall become effective on and only on its execution and delivery by each party hereto and the approval required by Section 21.20 below.

**Section 21.02 Complete Understanding.** This Lease, including all exhibits attached hereto, represents the complete understanding between the parties hereto as to the subject matter hereof, the Project, the Premises, the Improvements, the equipment, or the rest of the Property, and the rights and obligations of the parties hereto as to the same, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in this Lease. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein. Without limiting the generality of the foregoing, the RFP shall be superseded in its entirety by the terms and conditions of this Lease.

**Section 21.03 Waiver.** No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not taken by Landlord under this Section or any other provision of this Lease (including but not limited to Landlord's acceptance of the payment of Rent after an Event of Default

occurs) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which Landlord would otherwise have against Tenant on account of such Event of Default under this Lease or applicable law (Tenant hereby acknowledging that, in the interest of maintenance of good relations between Landlord and Tenant, there may be instances in which Landlord chooses not immediately to exercise some or all of its rights if an Event of Default occurs). No waiver by Tenant of (a) any provision of this Lease, (b) the performance by Landlord of any of its duties or obligations hereunder, or (c) any right, option, election, privilege or benefit of Tenant herein shall be effective without prior written consent of the Investor Limited Partner, and the first priority Permitted Leasehold Mortgagee, and any waiver without such consent shall be void *ab initio*.

**Section 21.04 Applicable Law.** This Lease shall be given effect and construed by application of the law of the Commonwealth of Virginia without regard to its conflicts of laws or principles, and Landlord and Tenant each irrevocably (a) agrees that any suit, action or other legal proceeding arising out of this Lease or any of the transactions contemplated hereby shall be brought in the Arlington County Circuit; (b) consents to the jurisdiction of such court in any suit, action, or proceeding; and (c) waives any objection he or it may have to the laying of venue of any such suit, action or proceeding in such court.

**Section 21.05 Time of Essence.** Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation except for the force majeure provisions in Section 14.04 above.

**Section 21.06 Headings.** The headings of the Sections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

**Section 21.07 Construction.** As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, paragraph or subparagraph of this Lease. Landlord agrees that, when interpreting this Lease, there shall be no presumption against Landlord on account of the fact that Landlord is the party that caused the drafting of this Lease.

**Section 21.08 Exhibits.** Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

**Section 21.09 Severability.** No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

**Section 21.10 Disclaimer of Partnership Status.** Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

**Section 21.11 Commissions.** Each party hereto hereby represents and warrants to the other that, in connection with the leasing of the Property hereunder, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof. Tenant shall defend, indemnify and hold harmless Landlord against and from any liability, claim of liability or expense arising out of any inaccuracy in Tenant's representation.

**Section 21.12 Limited Third-party Rights.** Notwithstanding anything to the contrary set forth elsewhere in this Lease, the Investor Limited Partner shall be deemed a third-party beneficiary of the following provisions of the Lease: Section 7.05 (No Subordination), Section 13.02 (Permitted Transfers), Section 14.02 (Notice; Grace Period), Section 14.03 (Landlord's Rights on Event of Default), Section 14.05 (Landlord Event of Default), Section 15.01 (Estoppel Certificate), and Article XVII (Notices), and the Investor Limited Partner shall have rights to enforce such terms. The foregoing rights of the Investor Limited Partner to be a third-party beneficiary under this Lease shall be the only right of Investor Limited Partner (express or implied) to be a third-party beneficiary under this Lease. Such rights of the Investor Limited Partner shall expire upon the expiration of the applicable 15-year tax credit compliance period as set forth in Section 42 of the Code.

**Section 21.13 New Lease.** In the event of termination of this Lease for any reason (other than pursuant to Sections 2.01, 2.04 or 2.05 above) prior to its stated Expiration Date or in the event of any acquisition by Landlord of the Leasehold Estate, Landlord shall give each Permitted Leasehold Mortgagee (of which Landlord has previously received written notice) notice of such termination or acquisition within ten (10) business days after such termination or acquisition. If any Permitted Leasehold Mortgagee gives notice of its request upon Landlord for the new lease within a period of thirty (30) calendar days from the date such notice of termination or acquisition is delivered to the Permitted Leasehold Mortgagee, Landlord shall, within twenty (20) business days after Landlord's receipt of such Permitted Leasehold Mortgagee's notice of a request for a new lease, (a) enter into a new lease of the Property with the Permitted Leasehold Mortgagee or its designee or nominee (or, in the event that more than one Permitted Leasehold Mortgagee so requests a new lease, the Landlord shall enter into a new lease with either (i) the Permitted Leasehold Mortgagee, or its designee or nominee, who has the most senior Permitted Leasehold Mortgage on all of the Premises and Improvements and has requested a new lease, or (ii) if no such Permitted Leasehold Mortgagee requests a new lease, each Permitted Leasehold Mortgagee, or its designee or nominee, who has the most senior Permitted Leasehold Mortgage on any portion of the Premises or Improvements and has requested a new lease, all of whom shall collectively be the Tenant under such new lease) for the remainder of the Term of this Lease upon all of the covenants, conditions, limitations and agreements herein contained, effective immediately upon such termination of such prior Lease, at the rental and upon the covenants, agreements, terms, conditions and limitations (except as may have been previously fulfilled or as may be inapplicable to the Permitted Leasehold Mortgagee or its designee or nominee) otherwise herein contained; and (b) execute such deeds or other instruments as the Permitted Leasehold Mortgagee may require and as are acceptable to Landlord in order to convey the Improvements to the Permitted Leasehold Mortgagee; provided that the Permitted

Leasehold Mortgagee (A) fully cures, simultaneously with entering into such new lease, any and all then existing defaults of Tenant other than defaults not reasonable susceptible of being cured by the Permitted Leasehold Mortgagee (including, without limitation, any default by reason of any bankruptcy, insolvency, actions by or for the benefit of creditors, or indebtedness of Tenant), and (B) pays Landlord for all expenses including, without limitation, reasonable attorneys' fees and disbursements and court costs incurred by Landlord in connection with the default by Tenant, the termination of this Lease and the preparation of the new lease. For the purpose of this Lease, the execution of a new Lease and conveyance of the Improvements shall be deemed to be an assignment or deed in lieu of foreclosure under its Permitted Leasehold Mortgage and shall have the same effect under the terms and provisions of this Lease as such an assignment or deed.

**Section 21.14 Preservation of Lease.** This Lease may be amended, modified, supplemented, changed, cancelled, or terminated only by instrument executed by the parties hereto (or their successors or permitted assigns) and only with the prior written consents of all Permitted Leasehold Mortgagees and the Investor Limited Partner. Landlord shall not accept a surrender of the Lease without consents of all Permitted Leasehold Mortgagees and Investor Limited Partner. Any such amendment, modification, supplement, change, cancellation, termination or surrender shall not bind Permitted Leasehold Mortgagees and the Investor Limited Partner or their successors and assigns and shall be void *ab initio* unless made with such Permitted Leasehold Mortgagees' and Investor Limited Partner's consent.

Each Permitted Leasehold Mortgagee, at its election at any time prior to termination of this Lease, may revoke any notice of Tenant's termination of the Lease or any notice of Tenant's intention to do so. If Tenant gives notice to Landlord of its termination of the Lease, or its intention to do any of the foregoing, Landlord shall notify, within seven (7) calendar days, each Leasehold Mortgagee (of whom Landlord has been notified in writing or has actual knowledge) in order that each Leasehold Mortgagee, at its election, may revoke any such notice to Landlord, on behalf of Tenant, prior to termination of this Lease.

**Section 21.15 Tenant's Rights, Generally.** Upon and during the continuation of an event of default under any Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee, who is the Mortgagee under such Permitted Leasehold Mortgage, may, subject to the terms hereof, exercise any or all of the rights under this Lease of the Tenant but only so long as Landlord shall have received prior written notice of such Permitted Leasehold Mortgagee.

**Section 21.16 No Personal Liability.** Except as otherwise provided by Section 21.13 above, no Permitted Leasehold Mortgagee or its designee or affiliate shall have any liability under this Lease for acts or omissions taking place prior to the date it acquires any Tenant's interest and becomes a Tenant under this Lease. If a Permitted Leasehold Mortgagee or its designee or affiliate shall succeed to the interest of Tenant under the Lease, whether as a purchaser at a foreclosure sale or by the acceptance of an assignment or deed in lieu of foreclosure, such Permitted Leasehold Mortgagee and its designee or nominee shall, except as otherwise provided by Section 21.13 above, (a) not be liable for any act or omission of Tenant, and (b) be released from all liability prior to the date such Permitted Leasehold Mortgagee or its designee or nominee succeeds to the interest of Tenant. The foregoing shall not diminish Landlord's rights under Section 14.03 above with respect to any Event of Default that has not been cured or under the obligation of the Permitted Leasehold Mortgagee or its designee or nominee to cure defaults under Section 21.13 above.

**Section 21.17 Role of Landlord/Landlord Decisions; No Waiver.** Tenant hereby acknowledges that Landlord has entered into this Lease in its role as landlord under this Lease and not as a Governing Authority. Accordingly, Landlord's execution of this Lease shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, including, without limitation, for the construction of the Improvements, or for any other governmental approval or consent required to be obtained by Tenant, including without limitation, any easement or permit pursuant to Section 4.03 above. Whenever in this Lease Landlord is required to join in, consent, give its approval, or otherwise act under this Lease, it is understood that such obligations are meant to apply to Landlord acting in its capacity as a landlord and not in its capacity as a Governing Authority. Further, Tenant hereby acknowledges that any and all decisions, determinations, consents, notifications or any other actions taken or to be taken by Landlord pursuant to this Lease, whether or not specifically contemplated hereunder, may be taken by the County Manager or by another Arlington County official or body pursuant to any means, mechanism or process as determined by Arlington County in its sole discretion, and Tenant shall have no right to question or challenge the propriety, authority or legality of any such Arlington County official or body, or means, mechanism or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by Landlord; provided such decision, determination, consent, notification, or other action by Landlord is taken in accordance with all applicable laws, rules, regulations, ordinances, codes, procedures, processes and orders. Notwithstanding the foregoing, nothing in this Lease shall be construed to waive any of Landlord's powers, rights or obligations as a Governing Authority or local governing body, whether or not affecting the Land or Improvements, including, but not limited to, its police power, right to grant or deny permits, right to collect taxes or other fees, or any other power, right or obligation whatsoever.

**Section 21.18 No Rights in Third Parties.** Except as specifically provided in Section 21.12 and otherwise within this document, the parties hereto mutually agree that no provision of this Lease shall create in the public, or in any person or entity other than those signing this Lease as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party or authorized assignee hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Lease or otherwise.

**Section 21.19 No Indemnification or Hold Harmless.** Notwithstanding any other term or provision of this Lease to the contrary, Landlord shall have no obligation to explicitly or implicitly indemnify or hold harmless Tenant or any third party or parties from any liability whatsoever.

**Section 21.20 Approval of Lease by Landlord.** This Lease shall not become effective unless and until the County Board approves this Lease. Such approval by the County Board shall be evidenced by the execution of this Lease by the Chairman of the County Board or other person designated by the County Board. Upon the execution and delivery by Tenant of a Lease that is acceptable to the County Manager, he shall use reasonable efforts to promptly obtain the approval of the County Board to this Lease consistent with the County process for the review and submission of documents to the County Board for consideration. If this Lease is not approved by the County Board as evidenced by the execution hereof by the County Manager or his designee, then no liability whatsoever shall accrue to Landlord or Tenant and Landlord and Tenant shall have no obligations whatsoever to each other hereunder.

**Section 21.21 Appropriation of Funds.** All of Landlord's obligations under this Lease shall be fully subject to the appropriation of funds by The County Board of Arlington County, Virginia for the specific purpose of satisfying the obligations of Landlord hereunder.

**Section 21.22 No Waiver of Sovereign Immunity by Landlord.** Notwithstanding any other provision of this Lease to the contrary, nothing in this Lease nor any action taken by Landlord pursuant to this Lease nor any document which arises out of this Lease shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of Landlord, or of its elected and appointed officials, officers and employees in its capacity as a Governing Authority.

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

Approved as to form:

**LANDLORD:**

**THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA,** a body politic

\_\_\_\_\_  
County Attorney

By: \_\_\_\_\_(seal)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

**BUCKINGHAM VILLAGE LLC,** a Delaware limited liability company

By: Neighborhood Associates Corporation, a District of Columbia non-profit corporation, its sole member

By: \_\_\_\_\_(seal)

Marilyn Melkonian, President

**EXHIBITS ATTACHED:**

Exhibit A – Description of Land

Exhibit B – Insurance Requirements

Exhibit C –Renovation, Finance and Management Plan

Exhibit D– Confirmation as to Commencement Date

Exhibit E – Affordable Housing Program

Exhibit F - Annual Base Rent Installments Schedule

**EXHIBIT A**  
**DESCRIPTION OF LAND**

**BUCKINGHAM VILLAGE 3**  
**Arlington County, Virginia**

BEGINNING AT A POINT ON THE SOUTHERN RIGHT-OF-WAY LINE OF NORTH THOMAS STREET, 40 FEET WIDE, SAID POINT ALSO BEING A NORTHWEST CORNER OF THE LAND HEREIN DESCRIBED;  
THENCE RUNNING WITH SAID NORTH THOMAS STREET SOUTH 47°48'50" EAST 355.07 FEET TO A POINT;  
THENCE 59.30 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1727.54 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 46°49'50" EAST, 59.30 FEET TO A POINT;  
THENCE SOUTH 45°50'49" EAST, 98.64 FEET TO A POINT;  
THENCE 32.52 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 00°43'51" WEST, 29.05 FEET TO A POINT ON THE NORTHERN RIGHT-OF-WAY LINE OF NORTH PERSHING DRIVE, 50 FEET WIDE;  
THENCE RUNNING WITH SAID NORTH PERSHING DRIVE SOUTH 47°18'30" WEST, 442.26 FEET TO A POINT;  
THENCE DEPARTING SAID NORTH PERSHING DRIVE AND RUNNING WITH THE NORTHERN LINES OF GEORGE MASON DRIVE, 64 FEET WIDE 31.42 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET AND A CHORD BEARING OF NORTH 87°41'30" WEST, 28.28 FEET TO A POINT THENCE 117.22 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 482.92 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 49°38'45" WEST, 116.94 FEET TO A POINT; THENCE NORTH 56°36'00" WEST, 280.07 FEET TO A POINT; THENCE DEPARTING SAID NORTH GEORGE MASON DRIVE AND RUNNING WITH THE EASTERN LINES OF 4TH STREET NORTH, 40 FEET WIDE 31.42 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 11°36'00" WEST, 28.28 FEET TO A POINT; THENCE NORTH 33°24'00" EAST, 495.69 FEET TO A POINT; THENCE 37.00 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 21.46 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 82°47'35" EAST, 32.58 FEET TO THE POINT OF BEGINNING CONTAINING 249,835 SQUARE FEET OR 5.73541 ACRES, MORE OR LESS.

## EXHIBIT B

### INSURANCE REQUIREMENTS

During the Term of the Lease, Tenant shall obtain and keep in force, at Tenant's expense, the following insurance; provided however, that to the extent a partnership agreement or operating agreement of any Affiliate, or any Permitted Leasehold Mortgagee's insurance requirements require other insurance coverage, or a higher standard or amount of insurance coverage, to be maintained with respect to Tenant, Affiliate or the Property, such other coverage requirements and such higher standards or amounts shall apply.

During all phases of this Project and until the receipt of final certificates of occupancy, Tenant shall maintain, or cause Tenant's contractor (the "Builder") to maintain, an all-risk builder's risk insurance policy in non-reporting completed form. Limits of policy will be at least the estimated replacement value of the completed Project, plus the value of other property insured. The policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation; loss payment shall be to Tenant. Tenant, Landlord, Builder, General Contractor and subcontractors and suppliers of any tier as their interest may appear shall be the named insureds on the policy.

Commencing from the earliest (a) of receipt of final certificates of occupancy for the Project, or (b) the lapse in builder's risk coverage, and continuing throughout the term of the Construction Mortgage, Tenant shall maintain the following insurance coverages applicable to the Property:

(i) Property Insurance - insurance covering risks of direct physical loss or damage. Limits of policy will be at least the estimated replacement value of the Improvements comprising the Property, plus the value of the other property insured. The policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation, loss payment shall be made to Tenant. Tenant and Landlord shall be the named insureds on the policy.

(ii) Liability - Commercial general liability insurance against claims for bodily injury, property damage, personal injury or advertising injury occurring on, in or about the Property or the elevators or escalators therein, in amounts initially not less than \$1,000,000 per occurrence with a \$2,000,000 annual aggregate, and in such greater amounts as Landlord shall reasonably require from time to time during the Term upon at least forty-five (45) days prior written Notice to Tenant before the annual renewal date of the insurance policy. Tenant shall be the named insured on the policy and Landlord shall be the additional insured on the policy.

(iii) Umbrella/Excess Liability - Such insurance shall have the commercial general liability and automobile liability policies schedules as underlying policies. Limits on the policy shall initially be at least \$5,000,000 per occurrence and in the annual aggregate, and in such greater amounts as Landlord shall reasonably require from time to time during the Term upon at least forty-five (45) days prior written Notice to Tenant before the annual renewal date of the insurance policy. Landlord shall be named as an additional insured on the policy.

**EXHIBIT C**  
**RENOVATION, FINANCE AND MANAGEMENT PLAN**

**Proposed Renovation Plan:** The plan for the proposed renovation of Buckingham Village 3 is to completely renovate the interiors of the buildings and replace all major systems, to preserve the historic character and features of the buildings, and to produce an environmentally sensitive and highly energy-efficient property. In addition, the renovation would increase the size of units by utilizing basement spaces, breezeways and boiler rooms and by constructing additions (“bumpouts”) in carefully selected locations at the backs of certain buildings. This increase in space makes room for larger units and extra bathrooms as well as a number of three-bedroom units. The energy efficiency measures would include additional insulation and installation of energy efficient windows, heating, cooling and water systems, as well as Energy Star kitchen and bathroom appliances.

The following is a description of the principal features of the currently proposed work. Some elements may change as the detailed plans are prepared and approved by the County.

***Units***

- Kitchen upgrades, including new fixtures, Energy Star appliances, including disposals and dishwashers, base and wall cabinets, counters, and resilient flooring.
- Bathroom upgrades, including all-new water-saving toilets, tubs, vanities, ducted exhaust fans, and ceramic tile tub surrounds and resilient flooring.
- New unit entry and interior doors; refinish existing hardwood floors, where salvageable; alternatively, provide new carpet; finish upgrades throughout.
- Lighting upgrades, with all-new energy-star light fixtures
- SEER 14 high-efficiency split-system heat pumps and distribution systems
- New domestic water piping; individual electric hot water heaters
- Individually-metered 125-amp electrical service

***Common Areas***

- Building entry area renovations, including improved lighting; renovations to all stair corridors, including new railings, new lighting and finishes
- Convert basement and boiler room to provide community space, including an elevator; renovate unused basement to provide management office
- Complete renovations to the laundry rooms, including new folding tables and finishes; renovate basement areas to provide bicycle storage and trash recycling rooms.

***Building Exteriors***

- Remove all through-wall air-conditioning units and infill with new masonry and mortar to match existing.
- New slate roofs, flashing, and coping to match existing and restore/replace soffits, eaves, rakes, gutters and downspouts to match existing.
- New double-hung double-paned windows and new exterior doors that meet energy and historic standards.
- New bumpout additions at the rear of selected buildings.
- Enclose porches to provide sunrooms at adjacent units.

### ***Site***

- Tot lot and play lot; fill and grade bare areas.
- Storm and sanitary system upgrades and replacements, including new yard drains to improve drainage at flat areas of the site.
- Preserve existing trees, prune and mulch existing retained planting, and provide new landscaping to accentuate and screen existing and new features.
- Replace damaged concrete walks, curbs and gutters, and provide new concrete walks to enhance circulation; new fencing to improve appearance and reinforce circulation system; new site lighting to accentuate pathways and improve safety

### ***Historic Scope.***

- *Additions to building exteriors:* Bumpout additions at five or more approved locations. The additions would be similar to those at Gates of Ballston and would be sensitively located to maintain the character of the existing spaces and open space.
- *Community space addition:* Convert the existing basement and boiler room at #321 N. George Mason Drive into a community space with stairs and an elevator at the courtyard area behind the building.
- *Modifications to building exteriors:* remove through-wall A/C units and infill with brick, mortar and mortar joints to match existing. Remove existing shutters.
- *Replacement of roofs, doors and windows:* new slate roofing; doors to match existing; and “6 over 6” windows with SDL or actual muntons.
- *Breezeways:* enclose existing breezeways to create sunrooms at adjacent units.

### ***Green Scope.***

- *Sustainable Site Improvements:* to include stormwater, erosion and sediment control systems; bicycle storage areas or rooms with storage racks; enhanced pedestrian access; and Green Site Lighting with dark-sky friendly cut-off exterior lighting.
- *Water Efficiency improvements:* including water efficient landscaping; and water use reduction through inclusion of low-flow and water conserving fixtures.
- *Energy Efficiency improvements:* high SEER electric heat pump HVAC systems, energy-efficient windows, additional insulation at all attic spaces and crawl space ceilings, separate electrical metering of units, Energy Star appliances throughout, and Energy Star light fixtures.
- *Healthy Living Environment improvements:* exhaust fans in kitchens and bathrooms, low-VOC adhesives, sealants and paints, Green-Label certified carpet, and refinish existing hard surface flooring, where feasible.
- *Materials and Resources:* storage and collection spaces for recycling, efficient construction waste management practices, and recycled content materials
- *Management Practices:* green development plan for construction.

### **Proposed Financing Program:**

***Overall Financing Strategy.*** In March 2009, the County will purchase Buckingham Village 3 in order to preserve the existing, garden-style buildings as affordable housing. The Telesis/NHTE financing program both renovates the property and, through the ground lease, pays back to the County a substantial portion of the purchase price. Telesis/NHTE would make payments to the

County based on the property as a performing asset, through rents collected from tenants. In addition, Telesis/NHTE would make lump sum payments (i) as it closes on construction and permanent financing for the rental housing, and (ii) as condominiums are sold in the event part of the property is able to be developed as “for sale” housing.

***Rental Financing Strategy.*** Telesis will operate the property in its current condition as it secures financing for the affordable apartments. The proposed financing sources other than the County are the following: private equity investment based on Low Income Housing Tax Credits and historic tax credits; and conventional construction and permanent mortgage loan financing. All apartments would be affordable, consistent with the original objectives for the overall Buckingham redevelopment plan.

***Ownership Financing Strategy.***

Telesis will work with County staff to explore the feasibility of developing part of the property as a condominium in order to provide an opportunity for affordable homeownership. The sources of financing to be explored, in addition to the County’s contribution, are the following: private equity investment based on New Markets Tax Credits and historic tax credits; individual first mortgage loans (conventional, SPARC and FHA); and individual second mortgage loans under the County MIPAP or similar program.

Tenant and Landlord agree and acknowledge that the Annual Base Rent Installment schedule as specified in Section 3.01(c) of the Lease is based on a 100% affordable rental project of 140 units and that if an ownership component is developed consistent with the allowable Affordable Housing Program (Exhibit E attached to the Lease) the Annual Base Rent Installment schedule payments will be re-calculated.

**Management Plan:** Neighborhood Partners LLC (“NPLLC”), the property management member of the development team, was created by The CT Group and Telesis Corporation to combine the extensive property management experience of CT with Telesis's asset and community management skills. CT currently manages approximately 9,000 multifamily units, many of which are located in the DC metro region; and it specializes in managing properties with housing assistance program requirements, such as, Low Income Housing Tax Credits.

NPLLC would be responsible for the operation and management of the property. In addition to its regular property management duties Neighborhood Partners would have the following additional responsibilities:

- During the pre-construction period – work closely with the residents, community organizations and other members of the Development Team to establish regular meetings and communications with the residents and community organizations to facilitate their participation in the planning and implementation of the housing program and to prepare for relocation.
- During construction – insure effective communications with residents, community organizations and contractor; and coordinate and/or administer the relocation services.
- Upon completion of construction – coordinate the turnover and occupancy of the newly renovated units; be responsible for leasing and tax credit compliance under the rental

program; and coordinate with the sales marketing team under the homeownership program; work with residents on supportive services and activities program.

- To support energy-efficient operations – assist in preparing the building maintenance manual for property management and occupant manual for resident operation, and encourage the use of environmentally-friendly cleaning products by management and residents.
- To encourage community participation – establish a close working relationship with the Buckingham Village 3 residents, neighborhood community organizations and service providers so that the residents continue to have a substantial voice in the operation and management of the property.

**EXHIBIT D**

**CONFIRMATION AS TO COMMENCEMENT DATE**

Attached to and made a part of that certain Deed of Ground Lease dated the \_\_\_ day of February 2009 (the "Lease") by and among (i) **The County Board of Arlington County, Virginia**, a body politic ("Landlord"), and (ii) **Buckingham Village LLC**, a Delaware limited liability company ("Tenant"), a wholly-owned subsidiary of **Neighborhood Associates Corporation**, a tax-exempt, District of Columbia non-profit corporation.

Landlord and Tenant do hereby declare and evidence that possession of the Property was accepted by Tenant in its "as is" condition on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. The Lease is now in full force and effect. For the purpose of the Lease, the Commencement Date is confirmed as being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, and the Expiration Date is confirmed as being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

Approved as to form:

**LANDLORD:**

**THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic

\_\_\_\_\_  
County Attorney

By: \_\_\_\_\_(seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

**BUCKINGHAM VILLAGE LLC**, a Delaware limited liability company

By: Neighborhood Associates Corporation, a District of Columbia non-profit corporation, its sole member

By: \_\_\_\_\_(seal)  
Marilyn Melkonian, President

**EXHIBIT E**  
**AFFORDABLE HOUSING PROGRAM**

**Affordable Housing Program:** The affordable housing program for Buckingham Village 3 is consistent with the original objectives for the overall Buckingham redevelopment<sup>1</sup>. All 140 apartments will be renovated in compliance with local, state and federal historic guidelines and consist of a mix of affordable rental and ownership units. The majority of the units, 94, may be affordable apartments for households earning up to 60% of the Area Median Income (AMI); that is, households earning from \$40,000/year to \$70,000/year. The remainder, up to 46 units, may be considered for a future ownership component serving households between 60% and 80% of the AMI; (households earning from \$40,000/year to \$90,000/year). Rents for all 140 units will remain affordable during the construction phases.

**Affordable Rental Component:** The table below shows the proposed unit mix:

<b>Bedroom Size:</b>	<b>Number of Units:</b>	<b>Units/60% Rents:</b>	<b>50% Rents:</b>
<b>1 Bedroom</b>	44	32/\$1,040	12/\$856
<b>2 Bedroom</b>	38	32/\$1,243	6/\$1,022
<b>3 Bedroom</b>	12	11/\$1,430	1/\$1,174
<b>TOTAL</b>	<b>94</b>	<b>75</b>	<b>19</b>

The 2008 rents shown above do not include utilities.

The rental units will be developed under the Low Income Housing Tax Credit (LIHTC) program and shall remain affordable for the life of the Ground Lease (at least 75 years). At the end of the 15-year LIHTC compliance period the investment limited partnership created to undertake the development will transfer its lease-interest to a to-be-named non-profit housing corporation. This non-profit corporation would continue to operate the units for the remainder of the Ground Lease period (and any extensions that may be granted in the Ground Lease).

**Affordable Ownership Component:** Telesis and staff will continue to work to develop a plan to convert up to 46 units to condominiums for affordable ownership. The table below shows the bedroom mix with estimated sales prices. The ownership component would be implemented as market conditions and development requirements allow. The units shall remain affordable through the use of subordinate loans under Arlington County’s Moderate Income Purchase Assistance Program (MIPAP) or a similar County program.

<b>Bedroom Size:</b>	<b>Number of Units:</b>	<b>Estimated Sales Prices:</b>
<b>1 Bedroom</b>	18	\$222,500
<b>2 Bedroom</b>	28	\$272,500
<b>3 Bedroom</b>	10	\$332,500
<b>TOTAL</b>	<b>46</b>	

<sup>1</sup> Preserve as much affordable housing as possible and the historic preservation of Buckingham Village 3.

**EXHIBIT F**

**ANNUAL BASE RENT INSTALLMENTS SCHEDULE**

(Pursuant to Lease Section 3.01)

Annual Base Rent Installments							
1	-	21	198,342	41	358,227	61	646,998
2	-	22	204,292	42	368,974	62	666,408
3	-	23	210,421	43	380,043	63	686,400
4	120,000	24	216,733	44	391,445	64	706,992
5	123,600	25	223,235	45	403,188	65	728,202
6	127,308	26	229,932	46	415,284	66	750,048
7	131,127	27	236,830	47	427,742	67	772,550
8	135,061	28	243,935	48	440,574	68	795,726
9	139,113	29	251,253	49	453,792	69	819,598
10	143,286	30	258,791	50	467,405	70	844,186
11	147,585	31	266,555	51	481,427	71	869,511
12	152,012	32	274,551	52	495,870	72	895,597
13	156,573	33	282,788	53	510,746	73	922,465
14	161,270	34	291,271	54	526,069	74	950,139
15	166,108	35	300,010	55	541,851	75	978,643
16	171,091	36	309,010	56	558,106	76	1,008,002
17	176,224	37	318,280	57	574,849	77	1,038,242
18	181,511	38	327,829	58	592,095	78	1,069,389
19	186,956	39	337,663	59	609,858	79	1,101,471
20	192,565	40	347,793	60	628,154	80	1,134,515

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**DEED OF GROUND LEASE**

Among

The County Board of Arlington County, Virginia, a body politic  
as Landlord,

and

Buckingham Village LLC, a Delaware limited liability company  
as Tenant,

Dated: As of February \_\_, 2009

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EXHIBITS:

- Exhibit A – Description of Land
- Exhibit B – Insurance Requirements
- Exhibit C –Renovation, Finance and Management Plan
- Exhibit D– Confirmation as to Commencement Date
- Exhibit E – Affordable Housing Program
- Exhibit F - Annual Base Rent Installments Schedule