

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (“Assignment”) is made effective as of the ____ day of _____ 2022, by and between 39TH PLACE APARTMENTS, LLC, a Missouri limited liability company, with an address of _____ (“Assignor”) and Azure Apartments, LLC, an Ohio limited liability company, with an address of _____ (“Assignee”), under the following circumstances:

RECITALS:

A. Pursuant to that certain lease agreement (“Lease”) dated January 1, 2020, by and between Assignor (as Lessee) and City of Independence, Missouri (as Lessor), Lessee leased from Lessor that certain property located at 19700 East 39th Place, Independence, Missouri 64057, consisting of a 280 apartment-unit property known as “Azure Apartments”, more particularly defined in the Lease (“Property”).

B. Notice of the Lease was given by Memorandum of Lease Agreement recorded with the Jackson County Recorder of Deeds as Instrument No. 2020E0004943.

C. The purposes of the Lease was to enable the Lessor to issue Taxable Industrial Development Revenue Bonds (39th Place Apartments Project), Series 2020, in the maximum principal amount of \$37,565,000 (“Bonds”) for the purpose of constructing the Azure Apartments on the Property, and having the Lessee make certain payments in lieu of taxes pursuant to the terms and conditions of the Trust Indenture with BOKF, N.A., Kansas City, Missouri, as Trustee to repay the Bonds.

D. As a material provision contained in the Lease, the Lessee was granted the option to purchase the Property at any time upon payment in full of the Bonds, with the obligation to purchase the Property upon the expiration of the Lease following full payment of the Bonds and other obligations as set forth in the Lease.

E. In connection with the Lease and the Bonds, the Lessor and the Lessee entered into a Bond Purchase Agreement dated as of January 1, 2020 and a Performance Agreement dated as of January 1, 2020 (collectively with the Lease, the “Lease Documents”).

F. Assignor desires to assign all of its right, title and interest under the Lease Documents, including the right to take title to the Property, to Assignee, and Assignee is willing to assume all of Assignor’s liabilities and obligations under the Lease Documents, upon the terms and conditions contained herein.

NOW, THEREFORE, for valuable consideration paid, receipt of which is hereby acknowledged, effective the date first written above, the parties agree as follows:

1. Assignor assigns to Assignee all of its right, title and interest in and to the Lease Documents, together with all rights arising under or by virtue of the Lease Documents effective as of the date of this Assignment. If the Assignee has materially defaulted under any terms or conditions contained in the Lease Documents at any time on or before the date of this Assignment, Assignor shall remain primarily liable under the Lease Documents until the default is remedied at the Assignors sole cost and expense.

2. Assignor represents and warrants to Assignee that (a) the Lease Documents are in full force and effect and Assignee has received all modifications or amendments; and (b) neither Assignor nor Landlord are in default under the Lease Documents beyond any applicable period for curing the default, nor to Assignor's knowledge has any event or condition occurred which, with the giving notice, the passage of time, or both, would constitute a default by the parties.

3. Assignee accepts this Assignment and assumes and agrees to perform all of the obligations of Assignor arising or occurring under the Lease Documents on and after the date of this Assignment.

4. Assignor shall defend, indemnify and hold Assignee harmless from and against all loss, damage, cost and expense that may be claimed against, imposed upon or incurred by Assignee by reason of Assignor's failure to perform any of its obligations under the Lease Documents before the date of this Assignment.

5. Assignee shall defend, indemnify and hold Assignor harmless from and against all loss, damage, cost and expense that may be claimed against, imposed upon or incurred by Assignor by reason of Assignee's failure to perform any of the obligations under the Lease Documents assumed by Assignee pursuant to Paragraph 3.

6. This Assignment shall be governed by the laws of the State of Missouri.

7. This Assignment may be executed in counterparts, all of which counterparts taken together shall be deemed to be but one original.

[remainder of page intentionally left blank]

SIGNED as of the date first written above.

ASSIGNOR:
39th Street Apartments, LLC,
A Missouri limited liability company

By: _____
Justin Garner, Chief Financial Officer

ASSIGNEE:

By: _____

CONSENT TO ASSIGNMENT OF LEASE

Pursuant to Article XIII (Assignment and Sublease) of the Lease, the undersigned being the Lessor under the above-referenced Lease hereby consents to the Assignment, including the right of the Assignor to purchase the Property pursuant to the terms and conditions set forth in Article XI of the Lease.

CITY OF INDEPENDENCE, MISSOURI

By: _____
Zachary Walker, City Manager

ATTEST:

By: _____
Rebecca Behrens, City Clerk