PARTNERSHIP AGREEMENT PROVISIONS

§1.1 Right of First Refusal to Purchase the Project Real Property. The Partnership will not transfer, sell or otherwise dispose of the Project Real Property (1) to any Person except in accordance with the Right of First Refusal of even date herewith (the “ROFR”) by and between the Partnership and the Sponsor (2).

§1.2 Option to Purchase of Limited Partner’s Partnership Interest. Provided that the General Partner has performed all of the covenants to be performed by it under this Partnership Agreement, the General Partner shall have the right to purchase the Limited Partner’s Partnership Interest for an amount equal to the greater of (a) fair market value of the Limited Partner’s Partnership Interest (3), as determined by an appraiser selected by agreement of the General Partner and the Limited Partner (or if they are unable to agree, the value determined by an M.A.I. appraiser selected by the M.A.I. appraisers selected by each of the General Partner and the Limited Partner), or (b) the sum of all taxes that would be owed by the Limited Partner, calculated pursuant to §________, and any and all unpaid sums due to the Limited Partner pursuant to the terms of this Partnership Agreement. The General Partner shall exercise said option, if at all, by delivering irrevocable written notice thereof to the Limited Partner within 60 days after the lapse of the ROFR Exercise Period (4), as defined in the ROFR, together with the General Partner’s suggested M.A.I. appraiser. Within 30 days, the Limited Partner shall either notify the General Partner that the suggested appraiser is acceptable or appoint its own appraiser (whereupon the two appraisers shall select a third appraiser). The selected appraiser shall complete its appraisal within 60 days following its selection, and the General Partner shall complete the purchase of the Limited Partner’s Partnership Interest within 30 days after the completion of the appraisal.

§1.3 Sale of the Project. Upon the conclusion of the ROFR Exercise Period without exercise of the ROFR or option granted in §1.2, the General Partner shall
investigate and report to the Limited Partner with respect to the sale of the Project and shall consider any offer by the general partner of the Limited Partner to purchase or re-syndicate the Project.

ROFR PROVISIONS

1. Right of First Refusal. After the end of the Compliance Period, the Partnership will not sell the Project Real Property without first offering the Project Real Property to the Purchaser (but not any assignee or successor of the Purchaser, unless such assignee or successor meets the requirements of Section 42(i)(7) of the Internal Revenue Code and is an affiliate of the Purchaser) at the price equal to the sum of:

   (a) the total amount (principal, unpaid interest and other amounts, is any) of all outstanding indebtedness owed by the Partnership, which debt may be assumed by the Purchaser in lieu of providing cash for the purchase price;

   (b) the total amount of federal, state and local taxes payable by the Partnership and each of the Partners that result from the sale and assuming the Partnership and each Partner are in the highest marginal federal, state and local tax brackets, but taking into account the deduction of state and local taxes in calculating taxable income for federal income tax purposes, provided that all loans made by the Investor Partner or any of its Affiliates, if any, are paid in full;

   (c) the total amount of indebtedness owed by the Partnership to the General Partner and its affiliates (generally as arose from amounts advanced to the Partnership in connection with guaranties); and

   (d) any transaction costs arising from the sale but excluding any disposition fees owed to any Partners of the Partnership pursuant to the Partnership Agreement.

In the event that Purchaser fails to notify all Partners in writing not less than one (1) year following the conclusion of the Compliance Period (the “ROFR Exercise Period”) of its intention to purchase the Project for such purchase price, then the right of first refusal granted herein shall lapse, and the General Partner shall proceed to dispose of the Project in accordance with Article 1 of the Partnership Agreement. It is the intent of this Agreement that the purchase price to be paid by Purchaser under this Agreement conform to the requirements of Section 42(i)(7) of the Internal Revenue Code and any Treasury Regulations promulgated thereunder, plus the amounts set forth in items 1(c) and 1(d) above (the “Refusal Price”).

2. Purchase Option. The Partnership grants to the Purchaser an option to purchase the Project Real Property (the “Option”) for a term of one (1) year following the conclusion of the Compliance Period (the “Option Exercise Period”). Purchaser shall be entitled to purchase the Project Real Property under the Option for a price that represents the greater of (i) the fair market value of the Project Real Property as determined by an
appraiser selected by agreement of the General Partner and Limited Partner in the manner described in §1.2 of the Partnership Agreement and (ii) the Refusal Price. (6)

NOTES:

1. Statutory ROFR only applies to real property, and thus excludes reserves, etc. (which would then wind up getting distributed in liquidation of the Partnership). Since the Sponsor is not a party to the Partnership Agreement, and the ROFR is best expressed in a separate, recordable document.

2. The typical formulation in a nonprofit sponsored transaction is for the nonprofit (which is the sole shareholder of the General Partner) to hold the ROFR, and for the General Partner to hold the Option to Purchase the LP interest.

3. The ROFR statute allows for a below-market price, but the Option (either to acquire the real property or the LP interest) must be at FMV.

4. The timing of the Option should run out further than the ROFR to allow for the appraisal mechanics.

5. Note that these provisions contemplate that the Buyer (Sponsor) and Seller (the Partnership) are under common control. Otherwise, the Seller might never decide to sell the Property such that the ROFR would never be triggered.

6. The Option to purchase the real property avoids the need for a triggering event. In markets in which there has not been significant appreciation in value, the FMV and ROFR price may be the same.