

UNOFFICIAL COPY

0021419216

3986/0165 90 001 Page 1 of 65

2002-12-20 16:21:13

Cook County Recorder 152.00

210390

Ground Lease 101- Horner 12/20/02



0021419216

This instrument was prepared by  
and after recording return to:  
Chicago Housing Authority  
Office of the General Counsel  
200 W. Adams St., Suite 2100  
Chicago, Illinois 60606  
Attn: Carol Turner, Esq.

**GROUND LEASE**

This Ground Lease (this "Lease") is made as of the 1st day of December, 2002, by and between:

Chicago Housing Authority, an Illinois municipal corporation ("Landlord"), having an office at 626 West Jackson Boulevard, 7th Floor, Chicago, Illinois 60661

and

West Maypole, L.P., an Illinois limited partnership, having an office at 666 Dundee Road, Northbrook, Illinois 60662 (the "Owner"). The Owner, in its capacity as tenant under this Lease, together with its successors and permitted assigns, is hereinafter referred to as "Tenant".

**RECITALS:**

A. Landlord is the owner of fee simple title to that certain parcel or parcels of land located in the City of Chicago, Illinois, more particularly described in Exhibit A attached hereto (the "Land"). As indicated on Exhibit A and described on the Rider, the Land is comprised of the East Parcel and the West Parcel. In accordance with appropriate resolutions adopted by Landlord, Landlord desires to facilitate the development on the Land of residential rental housing containing 155 dwelling units and related improvements.

B. Landlord and Tenant have agreed to enter into this Lease in order to implement the Development (as that term is hereinafter defined) and to facilitate the construction and operation and financing thereof.

Box 430

UNOFFICIAL COPY

Property of Cook County Clerk's Office

## AGREEMENT:

### ARTICLE 1

#### Lease of Property-Term of Lease

**1.01 Lease; Term.** Landlord, for and in consideration of the rents to be paid and of the covenants and agreements hereinafter contained to be kept and performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, the Land;

Together with all right, title and interest of Landlord, if any, in and to any Improvements (as that term is hereinafter defined), and in and to any streets, driveways, sidewalks, parkways or alleys adjacent thereto or included within the Land; and

Together with all right, title and interest of Landlord, if any, in, to and under all agreements, easements, rights of way, gores of land, air rights, sewer rights, water courses and water rights, and all privileges, liberties, tenements, and appurtenances whatsoever in any way belonging, relating or appertaining to the Land or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Landlord, and the estate, rights, title, interest, property, possession, claims and demands whatsoever, at law or in equity of Landlord in and to the same;

Subject, however, to all agreements, easements, encumbrances and other charges or matters affecting the Land listed on Exhibit B attached hereto (the "Permitted Exceptions"), and subject to the provisions of Section 1.02.

TO HAVE AND TO HOLD the same, subject to the Permitted Exceptions, for a Term of ninety-nine (99) years (the "Term") commencing on the date of this Lease referenced on Page 1 (the "Commencement Date") and ending on November 30, 2101 (the "Expiration Date") (unless this Lease shall sooner be terminated as hereinafter provided) upon and subject to the covenants, agreements, terms, provisions, conditions and limitations hereinafter set forth, all of which Tenant covenants and agrees to perform, observe and be bound by.

**1.02 Addition of Vacated Public Alleys and Rights-of-Way.** Landlord and Tenant contemplate that, as a part of the approvals of the City of Chicago (the "City") for the Project, certain land lying within or comprising existing public alleys and rights-of-way adjacent to portions of the Land may be vacated by the City and acquired by Landlord and certain streets, passages and other rights-of-way may be dedicated to Governmental Authorities (as that term is hereinafter defined) in conjunction with the City's approval of final development plans and zoning and land use approvals for the Project. In each case, with the prior written approval of Tenant and all Leasehold Mortgagees, which shall not be unreasonably withheld or delayed, the foregoing shall automatically, and without the necessity of amending this Lease, be included (or excluded, in the event of any such dedication of a portion of the Land to Governmental Authorities) in the Land. Upon completion of the alleys and rights-of-way vacation process, however, if requested by Landlord or Tenant, the other party shall promptly execute an amendment to this Lease to include a revised legal description for the Land conforming to the final configuration of the Land, including such vacated portions of the alleys and rights-of-way

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(or such dedicated portions of the Land). The parties acknowledge that all vacations and dedications necessary for, or contemplated in connection with, the Project have been completed prior to the execution of this Lease. Following completion of construction of the Project, no such dedication shall be permitted without the prior written consent of Tenant and all Leasehold Mortgagees, which consent shall not be unreasonably withheld or delayed.

## ARTICLE 2

### Definitions

2.01 The terms defined in this Section shall, for all purposes of this Lease, have the following meanings:

(a) "ACC" shall mean whichever of the following is in effect from time to time with respect to the Public Housing Units: (1) the Consolidated Annual Contributions Contract C-1150, dated December 11, 1995, between HUD and the Receiver; (2) the Consolidated Annual Contributions Contract C-1014, dated December 11, 1995, between HUD and CHA; or (3) any successor Annual Contributions Contract; including any Mixed Finance Amendment to any of the foregoing, as and to the extent made applicable to the Public Housing Units by the specific amendment referring thereto.

(b) "Affiliate" shall mean, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by or under common control with such person or entity. A person or entity shall be deemed to control another person or entity if such person or entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, general partnership or limited liability company interests, by contract or otherwise and shall include, with respect to any so-called "Illinois land trust" that is at any time the landlord or tenant under this Lease, such land trustee's beneficiary and all persons or entities having the power of direction under such land trust, but shall not include any Leasehold Mortgagee.

(c) "All Applicable Public Housing Requirements" shall mean the Housing Act, HUD regulations thereunder (except to the extent that HUD has granted waivers of regulatory requirements), the ACC (including the Mixed-Finance Amendment), the Mixed Finance Proposal, the HOPE VI grant agreement and the HOPE VI Revitalization Plan (if applicable), the Declaration of Trust and Restrictive Covenants, the Regulatory and Operating Agreement, the Gautreaux Court Orders, the Horner Court Orders, the MTW Agreement, and all other pertinent Federal statutory, executive order and regulatory requirements, as such requirement may be amended from time to time. If there is a conflict between public housing requirements and legal requirements of an overlapping program, except as otherwise provided herein, the public housing requirements will control.

(d) "Building" shall mean a building comprising the Project or a portion thereof, including without limitation a low-rise or mid-rise building, a townhome unit and any ancillary building.

(e) "CHA" shall mean the Chicago Housing Authority, and any successor thereto.

UNOFFICIAL COPY

000000

Property of Cook County Clerk's Office

- (f) "CHA Mortgage Loan" shall mean a loan secured by a Leasehold Mortgage in favor of CHA (or a nominee for CHA).
- (g) "CHA Tenants" shall mean tenants who qualify as being eligible to occupy "public housing" (as defined in Section 3(b) of the Housing Act) and who are determined, in accordance with All Applicable Public Housing Requirements, to be eligible to occupy the Public Housing Units in the Project.
- (h) "City" shall mean the City of Chicago.
- (i) "City Leasehold Mortgage" shall mean a Leasehold Mortgage held by the City (or a nominee for the City).
- (j) "City Mortgage Loan" shall mean a loan secured by a Leasehold Mortgage in favor of the City (or a nominee for the City).
- (k) "City Regulatory Agreement" shall mean a Regulatory Agreement entered into between Tenant and the City relating to the Project.
- (l) "Closing Costs" shall have the meaning given in Section 23.02.
- (m) "Code" shall have the meaning given in Section 9.01(b).
- (n) "Construction Completion Deadline" shall mean the date by which Tenant must complete the construction of all Buildings comprising the Project (which date is set forth in the Rider), which date shall be extended by the period of any Unavoidable Delay.
- (o) "Declaration of Trust and Restrictive Covenants" shall mean that certain Declaration of Trust and Restrictive Covenants, dated as of December 1, 2002, made by Tenant to CHA for the benefit of HUD.
- (p) "Deductible" shall have the meaning given in Section 8.01.
- (q) "Default" shall mean any condition or event that constitutes or would, after notice or lapse of time, or both, constitute an Event of Default.
- (r) "Developer" shall mean BMH-I, LLC, an Illinois limited liability company.
- (s) "Development" shall mean the Project.
- (t) "Development Agreement" shall mean that certain Redevelopment Agreement between Landlord and the Receiver and Developer, as amended from time to time.
- (u) "Encumbrances" shall have the meaning given in Section 9.02.
- (v) "Environmental Agreement" shall mean Section 3.14 of the Development Agreement, and any other written agreement between Landlord (and the Receiver, if applicable) and Tenant (and/or Developer) relating to environmental matters involving the Project.

UNOFFICIAL COPY

2/28/2017

Property of Cook County Clerk's Office



- (w) "Event of Default" shall have the meaning provided in Section 10.01.
- (x) "First Leasehold Mortgagee" shall mean the Leasehold Mortgagee whose Leasehold Mortgage is most senior in priority.
- (y) "Full Insurable Value" shall mean the replacement cost (excluding, as to the insurance required pursuant to Section 7.1(a), foundation and excavation costs), as determined, at the request of Landlord (not more frequently than at three-year intervals), at Tenant's expense, by an architect, engineer, contractor, appraiser, appraisal company, or insurance company, selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.
- (z) "Full Restoration" shall have the meaning given in Section 8.01.
- (aa) "Gautreaux Court Orders" shall mean applicable orders of the United States District Court for the Northern District of Illinois relating to Gautreaux vs. CHA et al., Case No. 66 C 1459.
- (bb) "Governmental Authority" or "Governmental Authorities" shall mean any one or more of the federal, state and local governmental or quasi-governmental body or bodies having jurisdiction at any time or from time to time during the Term over the Property or the Project or the construction, repair, maintenance, operation or use thereof.
- (cc) "Horner Court Orders" shall mean applicable orders of the United States District Court for the Northern District of Illinois relating to Henry Horner Mothers Guild et al. vs. Chicago Housing Authority et al., Case No. 91 C 3316.
- (dd) "Housing Act" shall mean the United States Housing Act of 1937, as amended and as may hereafter be amended from time to time or any successor legislation, together with all regulations implementing the same.
- (ee) "HRC" shall mean a committee designated by the plaintiffs in the case Henry Horner Mothers Guild, et al. v. Chicago Housing Authority, et al., 91 C 3316 at the Henry Horner Homes, Horner Annex and Village of West Haven LAC consisting of no more than seven (7) LAC members and the HRC plaintiffs class' counsel, whose address for notices is 1936 West Washington Street, Room 105, Chicago, Illinois 60612, Attention: Mamie Bone, with a copy to: National Center for Poverty Law, 111 North Wabash, Suite 500, Chicago, Illinois 60602, Attention: William Wilen.
- (ff) "HUD" shall mean the United States Department of Housing and Urban Development, or any successor thereto.
- (gg) "Impositions" shall mean all taxes, assessments, special assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees and other charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed upon or become payable out of or become a lien on the Property, or any part thereof, or any appurtenances thereto; provided, however, that if

UNOFFICIAL COPY

11/15/2025

Property of Cook County Clerk's Office

at any time during the Term the present method of taxation or assessment shall be so changed that there shall be substituted in whole or in part for the types of taxes, assessments, levies, assessed or imposed on real estate and the Improvements thereon a capital levy or other tax levied, assessed or imposed on the rents received by Landlord from said real estate or the rents reserved herein or any part thereof, then any such capital levy or other tax shall, to the extent that it is so substituted, be deemed to be included within the term "Impositions." Impositions affecting the Property shall be those attributable to the Improvements, the Leasehold Estate, and/or the fee simple ownership of the Land.

(hh) "Improvements" shall mean the buildings, structures and other improvements, including equipment, fixtures, furnishings and appurtenances, now or at any time hereafter erected or located on the Land.

(ii) "Incurable Default" shall have the meaning given in Section 9.03(i).

(jj) "Intercreditor Agreement" shall mean that certain Subordination and Intercreditor Agreement, dated as of December 1, 2002, being entered into and recorded concurrently with this Lease among Tenant and all Leasehold Mortgagees.

(kk) "Land" shall mean the parcels of land described in Exhibit A, exclusive of the Improvements, and the appurtenant rights of Landlord.

(ll) "Landlord" shall mean the Chicago Housing Authority, or its successors in interest.

(mm) "Lease Interest Rate" shall mean a floating interest rate equal to (i) 3% plus the rate announced from time to time by Bank One, Chicago Branch (or any successor thereto), as its "corporate base rate," "prime rate," "reference rate" or other similar rate and in effect on the date interest first begins to accrue with respect to any sum that becomes payable pursuant to any provision or provisions of this Lease, or (ii) in the event such bank has ceased announcing any such rate, then such rate as may be announced by the Chicago branch or such other national bank as Landlord shall reasonably designate as its "prime rate" "reference rate" or other similar rate, plus 3%, or (iii) if Landlord fails to designate another bank, then the rate of interest on 90-day Treasury Bills issued by the United States government having an issue date as near as may be practicable to and preceding such date plus 6%; provided, however that if the Lease Interest Rate as so determined shall exceed the maximum rate allowed by law, then the "Lease Interest Rate" shall mean the maximum contract rate permitted by law at such time. The Lease Interest Rate shall change concurrently with each announced change in such "corporate base rate," "prime rate," "reference rate" or other similar rate, or Treasury Bill rate.

(nn) "Lease Year" shall mean a calendar year. The first full Lease Year during the Term shall commence on the Commencement Date, or if the Commencement Date is not the first day of a calendar year, on the first day of the calendar year next following the Commencement Date. Each succeeding Lease Year shall commence on the January 1 immediately following the December 31 of the preceding Lease Year.

(oo) "Leasehold Estate" shall mean the leasehold estate of Tenant created by this Lease.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(pp) "Leasehold Mortgage" shall mean any mortgage, deed of trust, assignment of rents and leases, Uniform Commercial Code security agreement and financing statement, or similar security instrument created by Tenant pursuant to and in accordance with the provisions of Section 9.03 and which constitutes a lien or security interest on the Tenant Property or any part thereof.

(qq) "Leasehold Mortgage Loan" shall mean a loan secured by a Leasehold Mortgage.

(rr) "Leasehold Mortgagee" shall mean the owner or owners, holder or holders from time to time of any Leasehold Mortgage (including trustees under deeds of trust).

(ss) "Lender" shall mean any commercial real estate lender, state or national bank, commercial or savings bank, pension fund, real estate investment trust, or governmental agency or instrumentality, or any Affiliate of the foregoing, authorized to make loans secured by real property located in the State of Illinois.

(tt) "Mixed Finance Amendment" shall mean whichever of the following is in effect from time to time with respect to the Public Housing Units: (1) that certain Mixed Finance Amendment to the Consolidated ACC, which amends that certain Consolidated Annual Contributions Contract C 1150, dated December 11, 1995, between HUD and the Receiver; and (2) any Mixed Finance Amendment to any ACC that is applicable to the Public Housing Units.

(uu) "MTW Agreement" shall mean that certain Moving to Work Demonstration Agreement between CHA and HUD, dated February 6, 2000, as amended.

(vv) "Net Insurance Proceeds" shall have the meaning given in Section 8.02.

(ww) "NFRL" shall mean a "No Further Remediation" letter issued by the Illinois Environmental Protection Agency pursuant to the Site Remediation Program, 415 ILCS 5/58 et. seq., as amended from time to time, with respect to any portion of the Property.

(xx) "Organizational Documents" shall mean: (i) with respect to a corporation, its articles of incorporation and by-laws; (ii) with respect to a general partnership, its partnership agreement; (iii) with respect to a limited partnership, its certificate of limited partnership and limited partnership agreement; and (iv) with respect to a limited liability company, its articles of organization and operating agreement; in each case as amended prior to such entity becoming Tenant under this Lease and as amended from time to time thereafter; provided, however, that no amendment to any Organizational Document that materially adversely affects the rights of Landlord may be made after such entity becomes Tenant hereunder except as required by law, consented to in writing by Landlord or is made to effect a transfer or substitution of interests in Tenant which does not otherwise require the consent of Landlord hereunder, and any amendment that contravenes this prohibition shall be null and void.

(yy) "Partial Restoration" shall mean all work in connection with a Restoration that is less than a Full Restoration (see Article 8). A Partial Restoration may be applicable when the sum of the Net Insurance Proceeds plus Deductible plus all other monies provided by any Person for such Restoration are insufficient to accomplish a Full Restoration. Examples of Partial Restorations include: (1) if a six-flat is destroyed, building a three-flat or townhomes on the lot;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(2) if the top unit in a three-flat is destroyed, making the Building into a two-flat; and (3) if an end townhome unit is destroyed, not re-building that unit and making the adjoining unit into an end unit.

(zz) "Permitted Exceptions" shall have the meaning given in Section 1.01. "Permitted Exceptions" shall also include the easements and licenses, if any, hereafter granted or consented to by Landlord in accordance with Section 9.01(d).

(aaa) "Permitted Refinancing" shall mean: (a) with respect to any loan secured by a Leasehold Mortgage, after the PHU Purchase Date, any refinancing of such loan or any additional loan secured by a Leasehold Mortgage (no consent of Landlord to such refinancing or additional loan is required under this Lease); (b) with respect to any loan secured by a Leasehold Mortgage, on or prior to the PHU Purchase Date, any refinancing of such loan, provided that the aggregate of the unpaid principal balance plus accrued interest of the new loan on the PHU Purchase Date will not exceed what it would have been under the loan being refinanced assuming timely payments of principal and/or interest due under both loans, plus reasonable and necessary costs associated with such refinancing and/or the closing thereof (no consent of Landlord to such refinancing is required under this Lease); (c) with respect to any loan secured by a Leasehold Mortgage, any refinancing of such loan permitted under the documents evidencing or securing a CHA Mortgage Loan; (d) with respect to any loan secured by a Leasehold Mortgage, any refinancing of such loan (other than as provided in (a), (b) or (c)) consented to in writing by Landlord, which consent may be withheld, granted or granted with such conditions as Landlord may require, in Landlord's sole and absolute discretion; and (e) any additional loan secured by a Leasehold Mortgage that is either expressly permitted under the terms of this Lease or consented to in writing by Landlord, which consent may be withheld, granted or granted with such conditions as Landlord may require, in Landlord's sole and absolute discretion. Notwithstanding the foregoing, during the Public Housing Use Period, no such refinancing or additional loan shall constitute a "Permitted Refinancing" without the prior written consent of HUD.

(bbb) "Permitted Transfer" shall mean: (a) after the completion of the construction of the Project and the initial rent-up of at least ninety percent (90%) of the units (including the rental of all of the Public Housing Units to CHA Tenants in accordance with the Regulatory and Operating Agreement), a sale or transfer of the Tenant Property or any portion thereof to a Person reasonably acceptable to Landlord; (b) the sale or transfer of interests of investors in Tenant or interests in such investors to Affiliates of such investors in Tenant and Affiliates of owners of interests in such investors, in each case with the consent of Landlord, which consent shall not be unreasonably withheld or delayed; (c) the sale or transfer of interests of investors in Tenant or interests in such investors after all of the equity required to be provided by such investors (other than the final installment of equity to be used to pay a developer fee) has been provided in accordance with the provisions of Tenant's Organizational Documents; (d) a sale or transfer of interests of such investors in Tenant or interests in such investors permitted under the Regulatory and Operating Agreement; (e) the removal of a general partner, limited partner, member or manager of Tenant pursuant to a Removal Right in accordance with the provisions of Tenant's Organizational Documents, and the substitution of a replacement general partner, limited partner, member or manager, as the case may be, reasonably acceptable to Landlord; provided, however, that Landlord's consent shall not be required if the Special Limited Partner is

# UNOFFICIAL COPY

Property of Cook County Clerk's Office



the substitute general partner; (f) the transfer of the Tenant Property or any portion thereof to a Leasehold Mortgagee (or any nominee of such Leasehold Mortgagee); (g) any other transfer consented to by Landlord in writing; and (h) a transfer to Bank of America, N.A. of the limited partner's interest in Tenant in accordance with Section 9(e) of the Regulatory and Operating Agreement. Notwithstanding the foregoing, during the Public Housing Use Period: (1) no sale, assignment or transfer of the Tenant Property, or any portion thereof, whether voluntary, involuntary or by operation of law, shall constitute a "Permitted Transfer" without the prior written consent of HUD, unless permitted under the Regulatory and Operating Agreement; and (2) a transfer of a "Controlling Interest" or a "Non-Controlling Interest" (as those terms are defined in the Regulatory and Operating Agreement) shall constitute a "Permitted Transfer" only if made in compliance with the Regulatory and Operating Agreement.

(ccc) "Person" shall mean any person, corporation, partnership, limited liability company or other legal entity.

(ddd) "PHU Purchase Date" shall mean the earlier of: (i) the date that Landlord purchases the Public Housing Units (pursuant to the Right of First Refusal Agreement or otherwise); and (ii) the date by which Landlord must purchase the Public Housing Units, if at all, under the Right of First Refusal Agreement.

(eee) "Pre-Existing Environmental Event" shall mean the generation, disposal, release, threatened release or the presence or management of Hazardous Substances on, over, under, from or affecting the Property in violation of any Environmental Laws or any other violation of any Environmental Laws that was caused or permitted by, attributed or related to or otherwise arose or occurred prior to the use or occupancy of the Property by Tenant or by anyone acting by, through or under Tenant and that requires Remediation. "Pre-Existing Environmental Event" does not include any Pre-Existing Environmental Event that Tenant is required to Remediate under the Environmental Agreement.

(ggg) "Project" shall mean the 155-unit multi-family residential development to be constructed by Tenant on the Land (containing the number of units, to be constructed in the Buildings to be located on the East Parcel and the West Parcel, respectively, as are more specifically described on the Rider attached hereto and made a part hereof) and as to the Public Housing Units, operated by Tenant in accordance with the Regulatory and Operating Agreement and any other Public Housing Use Agreement.

(hhh) "Property" shall mean the Land and the Improvements.

(iii) "Protected Persons" shall mean Landlord or Tenant, as the context so requires, and such party's respective members, managers, partners, officers, directors, agents, employees, advisors, attorneys, consultants and Affiliates, and, in the case of Landlord, shall include its officials and members of its Board.

(jjj) "Public Housing Tenant" shall mean a CHA Tenant leasing a unit in the Project pursuant to a Public Housing Use Agreement.

*\*and a transfer to Bank of America, N.A. of the general partner's interest in Tenant pursuant to that certain Security Agreement (Assignment of Partnership Interests) among Tenant, West Maypole Partners, LLC and 9 Bank of America, N.A.*

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

21419216

(kkk) "Public Housing Units" shall mean the units in the Project that are to be leased by Tenant to CHA Tenants pursuant to the Regulatory and Operating Agreement or any other Public Housing Use Agreement.

(lll) "Public Housing Use Agreement" shall mean the Declaration of Trust and Restrictive Covenants and the Regulatory and Operating Agreement, whereby Tenant is obligated to lease units in the Project to CHA Tenants.

(mmm) "Public Housing Use Period" shall mean the term of the Regulatory and Operating Agreement and any other period during which Tenant is obligated to lease units in the Project to CHA Tenants pursuant to a Public Housing Use Agreement.

(nnn) "Receiver" shall mean The Habitat Company and Daniel E. Levin, jointly, as court appointed receiver in Gautreaux et. al. v. Chicago Housing Authority et. al., Case No. 66C1459.

(ooo) "Regulatory and Operating Agreement" shall mean the Regulatory and Operating Agreement, dated as of December 1, 2002, between Landlord and Tenant relating to the Public Housing Units within the Project.

(ppp) "Remediation" shall mean the cleanup activity or other remedial action required by any Environmental Law or any applicable Governmental Authorities under any Environmental Law.

(qqq) "Removal Right" shall mean the right, if any, given in Tenant's Organizational Documents, to remove a general partner, limited partner, member or manager of Tenant, and designate a substitute.

(rrr) "Rent" shall have the meaning defined in Section 3.01.

(sss) "Requirements" shall mean any and all present and future laws, statutes, ordinances, codes, rules, regulations, orders or other requirements of any Governmental Authority and of any applicable fire rating bureau or other body exercising similar functions, applicable to or affecting the Property or any part thereof, including without limiting the generality of the foregoing, the ordinances of the City.

(ttt) "Restoration" shall have the meaning given in Section 8.01.

(uuu) "Right of First Refusal Agreement" shall have the meaning given in Section 23.01.

(vvv) "Special Limited Partner" shall mean The Richman Group Capital Corporation, a Delaware corporation, whose address for purposes of notices is 599 W. Putnam Ave., Greenwich, CT 06830, Attn: Richard P. Richman; with a copy to: Holland & Knight LLP, 10 St. James Ave., Boston, MA 02116, Attn: Douglas W. Clapp.

(www) "Tenant" shall mean the party named as Tenant herein; provided, however, that whenever this Lease and the Leasehold Estate shall be assigned or transferred in the manner

UNOFFICIAL COPY

11/11/2024

Property of Cook County Clerk's Office

specifically permitted herein, then from and after such assignment or transfer and until the next such assignment or transfer, the term "Tenant" shall mean the permitted assignee or transferee named therein, as if such transferee or assignee had been named herein as Tenant.

(xxx) "Tenant Property" shall mean the Improvements and the Leasehold Estate.

(yyy) "Term" shall mean the term of this Lease described in Section 1.01.

(zzz) "Unavoidable Delay" shall mean a delay beyond the reasonable control of Tenant and without the fault or negligence of Tenant, such as: (1) an act of God; (2) fire; (3) flood; (4) epidemic; (5) quarantine restriction; (6) civil disorder; (7) enemy action; (8) strike, lockout or other labor dispute; (9) unavailability of labor or materials; (10) freight embargo; (11) action or inaction of Landlord; (12) the act or failure to act of a contractor in the performance of a contract with Landlord; (13) the act or failure to act of any Governmental Authority; (14) injunctive relief or other legal proceedings of any court; (15) war; and (16) terrorism.

**2.02** "The words "herein," "hereof" or "hereunder" and words of similar import refer to provisions contained in this Lease as a whole and not to any particular section or subdivision thereof. All exhibits and riders referred to in the text of this Lease and attached hereto are incorporated into this Lease.

## ARTICLE 3

### Rent

**3.01 Rent.** From and after the Commencement Date through the Term, Tenant shall pay to Landlord at the place for which notices to Landlord are to be sent in accordance with Article 16, or to such other person, firm or corporation, or at such other place as shall be designated from time to time by written notice from Landlord to Tenant, fixed rent at the rate of One Dollar (\$1.00) for each Lease Year ("Rent"). Landlord acknowledges that such Rent, in the amount of \$99.00, has been prepaid in full concurrently with the execution of this Lease. Landlord and Tenant acknowledge and agree that, given the restrictions on the use of the Land, the Rent represents the fair market rent for the Land.

**3.02 No Partnership.** Landlord and Tenant agree that they are not partners or joint venturers and that, except in respect to the proceeds of insurance and condemnation awards under the provisions of Articles 8 and 12, they do not stand in any fiduciary relationship to each other.

**3.03 Payment of Rent.** All payments of Rent made to Landlord hereunder shall be in lawful money of the United States of America and shall be paid to Landlord or to such other Person and/or at such other place as Landlord may designate from time to time in writing.

**3.04 Net Lease.** Tenant shall pay to Landlord throughout the Term all Rent, free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected

UNOFFICIAL COPY

Property of Cook County Clerk's Office

or required to make any payment of any kind whatsoever hereunder or be under any other obligation or liability hereunder except as otherwise expressly set forth herein.

**3.05 No Abandonment.** Except to the extent provided in Section 8.01, no happening, event, occurrence, or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay the full Rent, or relieve Tenant from any of its other obligations under this Lease. Tenant waives any rights now or hereafter conferred upon it by statute, proclamation, decree, or otherwise, or to claim any abatement, diminution, reduction or suspension of the Rent on account of any such event, happening, occurrence or situation. This Section 3.05 shall not apply to the City (or a nominee of the City) at any time either shall be Tenant under this Lease.

**3.06 Reimbursements to Landlord; Arrearages.** Tenant shall reimburse Landlord for all reasonable expenditures, costs, expenses and fees, including reasonable attorneys' fees, made or incurred by Landlord in curing any Event of Default of Tenant for which Landlord has given Tenant any notice required under Section 10.01. Such amounts shall become due upon delivery by Landlord, after the expiration of the notice and cure period afforded Tenant, of written notice stating the amount of such expenditures, costs, expenses and fees by Landlord. Tenant shall also pay to Landlord, upon delivery of notice by Landlord, all amounts payable to Landlord as reimbursements or indemnities pursuant to Sections 6.03 and 6.04.

**3.07 Interest on Overdue Amounts.** All Rent and other amounts due to Landlord hereunder that are not paid prior to the expiration of the applicable cure period, if any, shall bear interest at the Lease Interest Rate from time to time in effect from the due date to the date received by Landlord. Such interest shall be payable by Tenant to Landlord upon demand. The collection of such interest by Landlord shall not limit or modify any other right or remedy of Landlord under this Lease or otherwise available to Landlord by reason of Tenant's failure to pay such amount when due or by reason of any other Event of Default.

**ARTICLE 4**

**Impositions**

**4.01 Payment.** Throughout the Term, subject to the provisions of Section 4.04, Tenant shall pay or cause to be paid, as and when the same become due, all Impositions, except that:

(a) All Impositions attributable on the accrual basis to a calendar year or other period for which this Lease is in effect for less than the entire calendar year or other period shall be apportioned;

(b) Where any Imposition is permitted by law to be paid in installments, Tenant may pay such Imposition in installments, as and when each such installment becomes due (Tenant acknowledges and agrees that Tenant is obligated to pay all such installments of any Imposition from which Landlord is or would be exempt, whether such installment is due prior to or after the Expiration Date); and

(c) Where any Imposition is entitled to an abatement, refund, exemption or other diminution or reduction under law, whether available to Landlord or Tenant, the parties shall use

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

21419216

their best efforts, at Tenant's sole expense, to cause such benefits to be afforded to Tenant under this Lease.

## 4.02 Deposit of Impositions.

(a) Tenant shall timely pay, as additional rent, all Impositions, and all premiums on insurance required to be carried under Article 7, as and when the same are ascertainable, billed, and due and payable without interest, penalty or fine. Within thirty (30) days after Landlord's written request, Tenant shall deliver reasonable proof of such payment to Landlord.

(b) During the continuance of any Event of Default, Tenant agrees to deposit with Landlord on the first day of each and every month thereafter during the Term one-twelfth (1/12) of (1) all Impositions due and payable from Tenant during the next succeeding 12-month period, based on the most recent ascertainable Impositions, plus (2) annual premiums on insurance policies required to be carried by Tenant under Article 7. Further, upon the occurrence of any Event of Default, Tenant shall deposit, as least thirty (30) days prior to the due date of any Imposition, such additional amount as may be necessary to provide Landlord with sufficient funds in such deposit account to pay each such Imposition and annual insurance premium at least thirty (30) days in advance of the due date thereof. The rights granted hereunder to Landlord shall not be exclusive to Landlord's rights and remedies following an Event of Default by Tenant. Landlord shall have no obligation to pay interest to Tenant on any amounts deposited by Tenant. Landlord shall apply any such deposits for the purpose held not later than the last day on which any such charges may be paid without interest or penalty. If, at any time, the amount of any Imposition or insurance premium is increased or Landlord receives reliable information from a Governmental Authority or insurer, as applicable, that an Imposition or insurance premium will be increased, and if the monthly deposits then being made by Tenant for such item (if continued) would not produce a fund sufficient to pay such item thirty (30) days prior to its due date, such monthly deposits shall thereupon be increased and Tenant shall deposit with Landlord, on demand by Landlord, additional sums in an amount which, when added to the monies then on hand for the payment of said item plus the increased one-twelfth (1/12) payments, shall be sufficient to pay such item at least thirty (30) days before the same becomes due and payable. For purposes of determining whether Landlord has on hand sufficient monies to pay any particular Imposition or insurance premium at least thirty (30) day prior to the due date therefor, deposits for each item shall be treated separately, it being the intention that Landlord shall not be obligated to use monies deposited for the payment of any item for the payment of another that is due and payable.

Tenant shall not be required to make any specific deposit required under this Section if a deposit for the same purpose is made by Tenant to an escrow or otherwise to persons pursuant to a requirement by any Leasehold Mortgagee.

This Section 4.02(b) shall not apply to the City (or a nominee of the City) at any time either shall be Tenant under this Lease. This Section 4.02(b) shall not apply to any Leasehold Mortgagee that becomes Tenant hereunder through foreclosure or transfer by deed in lieu of foreclosure unless: (i) the Event of Default arises after such Leasehold Mortgagee becomes Tenant hereunder; or (ii) the Event of Default arises prior to such Leasehold Mortgagee becoming Tenant hereunder and such Event of Default is not an Incurable Default and is an

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Event of Default that such Leasehold Mortgagee is obligated to cure under the provisions of this Lease, and such Leasehold Mortgagee fails to commence or cure such Event of Default within the time and in the manner required by this Lease.

**4.03 Contest of Impositions.** Tenant may, if it shall so desire, contest the validity or amount of any Imposition, in whole or in part, by an appropriate proceeding diligently conducted in good faith. Tenant may conduct such a contest only after payment of the challenged Imposition unless Tenant shall, at least fifteen (15) days prior to the date such Imposition is due: (i) have deposited with an escrow agent acceptable to Landlord an amount sufficient to pay such contested Imposition, together with interest and penalties thereon, which amount shall be applied to the payment of such Imposition, interest and penalties when the amount thereof shall be finally fixed and determined; or (ii) have provided to Landlord a bond, letter of credit or other security reasonably acceptable to Landlord. Nothing herein contained, however, shall be construed as to allow such Imposition to remain unpaid for such length of time as shall permit the Property, or any part thereof, or the lien thereon created by such Imposition, to be sold or forfeited for the nonpayment of the same. If the amount so deposited as aforesaid shall exceed the amount of such Imposition, interest and penalties when finally fixed and determined, the excess (or the entire amount if no such payment is required) shall be released from the escrow to Tenant, or in case there shall be a deficiency, the amount of such deficiency shall be forthwith paid by Tenant. The provisions of the second and fourth sentences of this Section 4.03 shall not apply to the City (or a nominee of the City) at any time either shall be Tenant under this Lease.

**4.04 Reduction of Impositions.** Tenant, at its expense, may, if it shall so desire, endeavor at any time or times, upon prior written notice to Landlord, to obtain a lowering of the assessed valuation upon the Property for the purpose of reducing taxes thereon and, in such event, Landlord will offer no objection and, at the request of Tenant, will cooperate with Tenant, but without expense to Landlord, in effecting such a reduction. Tenant shall be authorized to collect any tax refund payable as a result of any proceeding Tenant may institute for that purpose and any such tax refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant, subject, however, to the apportionment provisions contained in Section 4.01, after deducting from such refund the costs and expenses, including legal fees, incurred in connection with obtaining such refund.

**4.05 Joinder of Landlord.** Landlord shall not be required to join in any action or proceeding referred to in Sections 4.03 or 4.04 unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event, any such action or proceeding may be taken by Tenant in the name of, but without expense to, Landlord. Notwithstanding the foregoing, Landlord shall execute, when and as required and requested to do so by Tenant in writing, all applications, affidavits and other documents required to obtain or maintain any tax abatement or exemption which may be available for the Public Housing Units. Tenant hereby agrees to indemnify, defend and hold Landlord's Protected Persons harmless from and against all costs, expenses, claims, loss or damage, including reasonable attorney's fees, by reason of, in connection with, on account of, growing out of, or resulting from, any such action or proceeding. The requirement to indemnify in the preceding sentence shall not apply to the City at any time the City shall be Tenant under this Lease.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

**4.06 Tax Divisions.** Landlord and Tenant acknowledge and understand that portions of the Land are included in tax parcels ("Shared Tax Parcels") which include land other than the Land owned by Landlord ("Other Land"). The parties have heretofore caused to be recorded plats of subdivision, the result of which will be the assignment of new, separate tax parcel designations for each new subdivided lot comprising the Land, but excluding the Other Land. Until such tax parcel re-designation occurs, Landlord agrees to pay or cause to be paid, when due, all property taxes assessed against the Other Land, and Tenant agrees to reimburse Landlord upon demand for any property taxes attributable to the Land, or any portion thereof, and any Improvements thereon that are taxed as part of a Shared Tax Parcel. Landlord may, if it shall so desire, contest the validity or amount of any such taxes, in whole or in part, by an appropriate proceeding diligently conducted in good faith. Tenant will promptly forward on to Landlord copies of any property tax bills it receives covering the Other Land.

## **ARTICLE 5**

### **Improvements**

**5.01 Required Improvements.** Tenant hereby covenants and agrees to commence and diligently pursue the construction of the Improvements comprising the Project on the Land, complete construction of the Improvements, and obtain certificates of occupancy for all such Improvements from the City. Landlord agrees that, upon receipt of written request from Tenant or a Leasehold Mortgagee, Landlord will cooperate with Tenant in applications for permits, licenses or other authorizations required for such Improvements; provided, however, that all expenses in connection therewith shall be borne by the requestor. This Section 5.01 shall not apply at any time while the City (or a nominee of the City) is Tenant under this Lease.

**5.02 Other Capital Improvements.** With respect to any Major Capital Improvement other than the Project that Tenant desires to construct on the Land, Tenant shall not commence construction unless Landlord shall have specifically approved such Major Capital Improvement and Tenant has complied with Section 5.03. A "Major Capital Improvement" is a capital improvement involving, as to any parcel of real estate constituting the Land, an estimated cost of more than \$100,000.00, and shall include additional buildings and additions, alterations, renovations, restorations, replacements or rebuildings, whether or not required to be made in compliance with Tenant's obligations under this Article, or connection with a Restoration made under Article 8 as a result of damage or destruction, or under Article 12 as a result of a Taking. Notwithstanding the foregoing, during such time as the Intercreditor Agreement is in effect: (a) provided that Fannie Mae or Bank of America, N.A. is the First Leasehold Mortgagee, Landlord's consent to a Restoration of the Improvements shall not be required under this Article 5; (b) Landlord's consent under this Article 5 shall not be required in connection with a Restoration of the Improvements under Article 8 or Article 12 to the condition that existed immediately prior to the casualty or condemnation; and (c) provided that Fannie Mae is the First Leasehold Mortgagee, Landlord's consent shall not be required under this Article 5 to any repair to or replacement of the Improvements made pursuant to the Replacement Reserve and Security Agreement entered into in connection with the First Leasehold Mortgage.

**5.03 Major Capital Improvements Requirements.** Prior to the commencement of any Major Capital Improvement the following shall be submitted to Landlord:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(a) complete plans and specifications for the Major Capital Improvement prepared by a licensed architect which plans shall also include landscaping plans and specifications;

(b) copies of all permits and licenses for the construction of the Major Capital Improvement issued by the appropriate Governmental Authority;

(c) a signed construction contract or contracts for all of the work, material and equipment comprising the Major Capital Improvement in accordance with the plans and specifications delivered pursuant to Section 5.03(a), together with appropriate liability policies; and

(d) a copy of one or more commitments from a Lender or Lenders for loans to be made available to Tenant, on both a construction loan and long-term take-out loan basis, in an amount that, together with equity that is available and specifically allocated thereto, is sufficient to pay the budgeted costs of construction of the Major Capital Improvement.

**5.04 Demolition.** Except in connection with a Restoration under Articles 8 or 12, Tenant shall not demolish the Improvements, including any improvements to such Improvements required under Section 5.01 or any Major Capital Improvements permitted under Section 5.02, without the prior written consent of Landlord and HUD.

**5.05 Accessibility and Visitability Requirements.** All units in the Project that are subject to the accessibility requirements of the Fair Housing Act shall be designed and constructed in accordance with such requirements. All ground floor units in the Project and, to the greatest extent feasible, all other units in the Project shall be built in accordance with the concept of visitability, which recognizes that persons with disabilities should be able to enjoy the same privileges of accessibility to other living quarters outside their residence. "Visitability" means that: (a) at least one entrance is at grade (i.e. no steps), approached by an accessible route; and (b) the entrance door and all interior doors on the first floor are at least 34 inches wide, offering 32 inches of clear passage space. Landlord acknowledges that the Project, as designed, complies with the requirements of this Section 5.05.

## ARTICLE 6

### Use, Maintenance, Alterations, Repairs, Etc.

**6.01 Condition of Land and Property.** Tenant has leased the Land after a full and complete examination thereof, as well as the title thereto and its present uses and restrictions, and, except as expressly provided in the Environmental Agreement, Tenant accepts the same without any representation or warranty, express or implied, in fact or by law, by Landlord and without recourse to Landlord as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Property or any part thereof may be put; provided, however, that upon the commencement of this Lease, title to the Land shall be subject only to the Permitted Exceptions. Except as expressly provided in the Environmental Agreement, Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the

UNOFFICIAL COPY

Property of Cook County Clerk's Office



Property, throughout the Term. Other than the obligations of Landlord, if any, under the Environmental Agreement and any Public Housing Use Agreement, Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the entire Property.

**6.02 Use of Property.** The Property shall be used and occupied only for multifamily residential uses and for uses incidental thereto, and for no other purpose, unless Landlord has consented in writing to such other use, which consent may be granted, withheld or granted with such conditions as Landlord may require, in Landlord's sole and absolute discretion.

**6.03 Prohibited Use.** Tenant shall not use or occupy the Property or permit the same to be used or occupied, nor do or permit anything to be done in, on or to the Property, or any part thereof, in a manner that would in any way (a) materially violate any construction permit or certificate of occupancy affecting the Property or any Requirement, (b) make void or voidable any insurance then in force or make it impossible to obtain fire or other insurance required to be furnished by Tenant hereunder, (c) cause or be apt to cause structural injury to the Property, or any part thereof, or (d) materially violate any material provision of this Lease. Notwithstanding anything to the contrary contained in this Lease, Landlord may not terminate this Lease by reason of an act or omission of a resident of the Project. Tenant shall promptly and diligently take all reasonable steps, in accordance with the provisions of such resident's lease and applicable Requirements, to evict such resident who materially violates any material provision of his or her lease, which violation constitutes a material violation of a material provision of this Lease. Notwithstanding the first sentence of this Section 6.03, Tenant may, in good faith, upon prior written notice to Landlord (and where necessary in the name of, but without expense to, Landlord) and, after having secured Landlord to its reasonable satisfaction against loss or damage, by cash or by a letter of credit or surety bond in an amount, with an issuer or surety, and in form and substance reasonably satisfactory to Landlord, contest the validity of any Requirement and, pending the determination of such contest may postpone compliance therewith, provided that in no event shall such act or omission of Tenant: (i) subject Landlord to any fine or penalty or to prosecution for a crime; (ii) cause the Property, or any part thereof, to be condemned or to be vacated; or (iii) cause any material interference with the operation of the Project for the purposes set forth in Section 6.02 or the occupancy, use, benefit and enjoyment thereof by any resident of the Project. Tenant shall indemnify, defend and hold harmless Landlord's Protected Persons from and against any recovery or loss to which any Landlord's Protected Person may be subject or which any Landlord's Protected Person may sustain, including reasonable attorneys' fees and expenses incurred by any Landlord's Protected Person arising from any breach of this covenant or by reason of any action or proceeding which may be brought against any Landlord's Protected Person or against the Property, or any part thereof, by virtue of any Requirement, which do not arise out of any negligent act or willful misconduct of Landlord, or any event of default by Landlord hereunder. Landlord shall provide notice to Tenant of any action brought against Landlord that affects the Property, or any part thereof.

**6.04 Maintenance of Property.** Subject to Section 8.01, Tenant shall make all necessary repairs to and replacements of the Improvements, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Improvements in good and safe order, repair and condition. Tenant covenants and agrees that throughout the Term: (a) all building systems, facilities and equipment, including HVAC

UNOFFICIAL COPY

Property of Cook County Clerk's Office

systems, common area lighting and the like, shall be maintained in good operating order and repair, and (b) the Property shall, at all times, have adequate means of ingress and egress to and from the abutting public streets and alleys. Tenant shall indemnify, defend and hold Landlord's Protected Persons harmless from and against any and all claims and demands arising from the failure of Tenant to perform the covenants contained herein or arising from any accident, injury or damage to any person or property that shall or may happen in or upon the Property or any part thereof, however caused, other than Landlord's negligent act or willful misconduct, and shall keep the Property free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Property.

**6.05 Waste.** Tenant shall not do, permit or suffer any waste, damage, disfigurement or injury to or upon the Property, or any part thereof, without repairing the same within a reasonable period of time. Tenant shall have the right at any time and from time to time to sell or dispose of any equipment or fixtures subject to this Lease that may have become obsolete or unfit for use or that is no longer useful, necessary or profitable in the conduct of Tenant's business; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other equipment or fixtures at least of equal quality and utility in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion set forth in written notice to Landlord, the property so removed was performing an obsolete function and replacement thereof is not necessary or appropriate to maintain the operation or character of the Project, or its use and occupancy by residents of the Project and licensees or its overall value without impairment.

**6.06 Compliance with Requirements.** Except as expressly provided in the Environmental Agreement, Tenant shall comply, at its own expense, with all Requirements during the Term and with the reasonable requests of any insurance company having a policy outstanding with respect to the Property, or any part thereof, whether or not such Requirements or requests require the making of structural alterations or the use or application of portions of the Property for compliance therewith, or interfere with the use and enjoyment of the Property, and shall indemnify, defend and hold harmless Landlord's Protected Persons from and against all fines, penalties, and claims for damages of every kind and nature arising out of any failure to comply with any such Requirement or request. It is the intention of the parties that Tenant during the Term shall discharge and perform all obligations of Landlord, as well as all obligations of Tenant, arising as aforesaid, and hold harmless Landlord's Protected Persons therefrom (except as expressly set forth in the Environmental Agreement), so that at all times the Rent shall be net to Landlord without deductions or expenses on account of any such Requirement or request, whatever it may be. Tenant may, in good faith upon prior written notice to Landlord (and wherever necessary, in the name of, but without expense to, Landlord), contest the validity of any such Requirement or request and, pending the determination of such contest, may postpone compliance therewith, provided that in no event shall such contest or postponement: (i) subject Landlord to any fine or penalty or to prosecution for a crime; (ii) cause the Property, or any part thereof, to be condemned or to be vacated; or (iii) cause any material interference with the operation of the Project for the purposes set forth in Section 6.02 or the occupancy, use, benefit and enjoyment thereof by any resident of the Project. Notwithstanding anything to the contrary in this Section 6.06, except as expressly provided for in the Environmental Agreement, Tenant has no compliance responsibility or liability for matters existing prior to the commencement of the Term.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

**6.07 Exculation of Landlord.** Landlord shall not be responsible or liable for any destruction, damage or injury to any property or to any person or persons at any time on the Property resulting from any casualty, occurrence or condition occurring or existing during the Term of this Lease (except as expressly set forth in the Environmental Agreement), including without limitation those from steam, gas or electricity, or from water, rain or snow, whether the same may leak into, issue or flow from or within any part of the Property or from the pipes or plumbing of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury (including death) to any of Tenant's subtenants, employees or agents, or to any person or persons in or about the Property or the streets, driveways, sidewalks, parkways or alleys adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor (except for actions caused by Landlord's negligent act or willful misconduct) and will further indemnify, defend and hold Landlord's Protected Persons harmless from and against any and all claims, liability, penalties, damages, expenses and judgments arising from injury to persons or property of any nature and also for any matter or thing arising out of or resulting as a direct or indirect consequence from the use or occupancy of the Property. Nothing herein contained shall be deemed to release Landlord from providing contracted services to Tenant and the Project, or from the consequences to Tenant and the Tenant Property of Landlord's negligent act or breach of its representations, warranties and covenants set forth herein or in the Environmental Agreement.

**6.08 Landlord's Right of Entry.** Landlord shall have the right, upon reasonable advance notice to Tenant and subtenants, when appropriate, on any business day, to enter upon the Property, or any part thereof, for the purpose of ascertaining the condition thereof, or whether Tenant is observing and performing the obligations assumed by it under this Lease, Landlord shall also have the right, upon not less than 10 days prior written notice (except in the event of an emergency) to Tenant and subtenants, when appropriate, or to make any repairs or perform any work, all without hindrance or molestation from Tenant, or anyone claiming by, through or under Tenant, whether as subtenant or otherwise. The above mentioned rights of entry shall be exercisable at reasonable times, at reasonable hours and on reasonable advance notice; provided, however, that entry may be made at any time without notice in the event of an emergency (although Landlord shall endeavor to give Tenant prior notice thereof). Nothing contained herein, however, shall impose or imply any duty on the part of Landlord to make any such repairs or perform any such work.

**6.09 No Liens.** Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanics' or other lien for any such labor or material shall attach to or affect the estate or interest of Landlord in and to the Property or any part thereof.

**6.10 Inapplicability to the City.** Notwithstanding any provision of this Lease to the contrary, in the event that the City Leasehold Mortgagee or the City becomes owner of the Tenant Property, or otherwise becomes tenant of the Property, the City or the City Leasehold Mortgagee, as the case may be, agrees to be bound by the following sections of this Article 6, except to the extent qualified below:

--6.01--Condition of Land and Property.

--6.05--Waste.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

- 6.07--Exculpation of Landlord.
- 6.08--Landlord's Right of Entry.
- 6.09--No Liens.
- 6.02--Use of Property—only to the extent that the City or the City Leasehold Mortgagee, as the case may be, agrees to be bound by the Regulatory and Operating Agreement and to operate the Public Housing Units as residential housing only during the term of the Regulatory and Operating Agreement.
- 6.03--Prohibited Use--except that the City or the City Leasehold Mortgagee, as the case may be, does not agree to indemnify.
- 6.04--Maintenance of Property--except that the City or the City Leasehold Mortgagee, as the case may be, does not agree to indemnify.
- 6.06--Compliance with Requirements—except that the City or the City Leasehold Mortgagee, as the case may be, does not agree to be bound by Section 6.06 with respect to the requests of insurance companies and does not agree to indemnify.

## ARTICLE 7

### Insurance

**7.01 Maintenance of Insurance** During the Term, Tenant shall, at its sole expense, obtain and maintain policies of:

(a) Property damage insurance covering the Improvements, insuring against all risk of physical loss, including, but not limited to, loss or damage caused by fire, lightning, windstorm, hail, smoke, explosion, riot, riot attending a strike or civil commotion, aircraft and vehicles, vandalism and malicious mischief, sprinkler leakage, collapse or earthquake to the extent coverage for such risks is from time to time customarily available at commercially reasonable rates in the commercial property insurance market for the Project, in an amount equal to not less than 100% of the Full Insurable Value of the Improvements, with deductibles or self-insured retentions of not more than 0.05% of such Full Insurable Value (or such lesser amount as is customary and reasonable and (which are available) for similar projects and uses in the City of Chicago);

(b) To the extent there is a central heating and cooling system for any portion of the Project, boiler and machinery insurance with respect to all equipment and objects customarily covered by such insurance, in an amount equal to their replacement cost, with property damage and personal injury coverages in such amounts as are customary and reasonable (and which are available) for similar projects and uses in the City of Chicago;

(c) Commercial general liability insurance with a broad form endorsement providing insurance against claims for bodily injury (including death), property damage occurring upon or in the Property and the streets, driveways, sidewalks, parkways or alleys adjacent thereto, and contractual liability, and having limits of liability equal to the greater of (i) \$1,000,000 per occurrence / \$5,000,000 in the aggregate, and (ii) the limits reasonably required by Landlord from time to time, provided that such limits are not in excess of limits that are customary for similar projects and uses in the City of Chicago

UNOFFICIAL COPY

Property of Cook County Clerk's Office



(which limits may be by means of primary only or primary and umbrella policies issued on a "following form" basis); and

(d) Such other insurance in such amount as is customary and reasonable (and which is available) for similar projects and uses in the City of Chicago as Landlord may require from time to time.

Such insurance shall, where appropriate, include among others as named insureds Landlord and Tenant, as their interests may appear, and may also name, as named insured, as its interest may appear, any Leasehold Mortgagee. Such insurance shall also include (i) so-called "increased cost of construction" and "demolition cost" endorsements covering costs that may be incurred in connection with elements of rebuilding or reconstruction required to comply with changes to building codes and other governmental requirements and costs of demolishing undamaged portions of the Building if required by law, and (ii) a so-called "cost of clearing" endorsement covering cost of clearing debris and returning the Land to grade in the event any Building and/or other Improvements are not rebuilt after the occurrence of any Casualty.

**7.02 Form of Policies.** Except as provided in Section 8.02, any policies of insurance of the character described in Clause (a) of Section 7.01, shall expressly provide that any losses thereunder shall be adjusted with Tenant and all Leasehold Mortgagees as their interests may appear (or, absent a Leasehold Mortgagee, with Landlord). All such insurance shall be carried in the name of Tenant and loss thereunder shall be payable to Tenant and the Leasehold Mortgagees, if any, and Landlord as their respective interests may appear. All such insurance may be in the form of a so-called "blanket policy" covering more than two properties, provided that the amount of coverage shall be not less than the aggregate of the Full Insurable Values of all covered properties and the policy shall include an "agreed amount" endorsement on a no-coinsurance basis.

**7.03 Evidence of Insurance and Payment.** Upon the execution and delivery of this Lease, and thereafter not later than fifteen (15) days prior to the expiration date of an expiring policy theretofore furnished pursuant to this Article, certificates of insurance evidencing the required coverages, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord. Upon request from Landlord, Tenant shall deliver to Landlord duplicate originals or certified copies of the policies required by this Article 7.

**7.04 Separate Insurance.** Tenant shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required in this Article to be furnished by or that may reasonably be required to be furnished by Tenant unless Landlord is included therein as an additional insured, with loss payable as required in this Lease. Tenant shall immediately notify Landlord of the obtaining of any such separate insurance and shall deliver duplicate originals or certified copies of the policy or policies so obtained as provided in Section 7.03.

**7.05 Cancellation.** Each policy of insurance delivered hereunder shall contain an agreement by the insurer that such policy shall not be cancelled or materially altered without at least ten (10) days' prior written notice given to Landlord and to each Leasehold Mortgagee named in such policy.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

**7.06 Inapplicability to the City.** Notwithstanding any provision of this Lease to the contrary, none of the provisions or requirements of this Article 7 shall apply to the City Leasehold Mortgagee or the City in the event that any such party becomes owner of the Tenant Property, or otherwise becomes tenant of the Land.

**ARTICLE 8**

**Damage and Restoration**

**8.01 Damage or Destruction.** In the event of any damage to or destruction of the Improvements during the Term, Tenant shall give Landlord immediate notice thereof and, subject to Section 8.05, Tenant shall promptly and diligently restore, replace, rebuild and repair the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction, in accordance with the following provisions of this Article 8. Landlord shall in no event be called upon to restore, replace, rebuild or repair such Improvements, or any portion thereof, or to pay any of the costs or expenses thereof. All work in connection with such restoration, replacement, rebuilding and repairing, including all temporary repairs to the Improvements or repairs made for the protection of the Improvements pending the completion of the permanent restoration, replacement, rebuilding and repairing, is hereinafter collectively referred to as "Full Restoration." In the event of any such damage to or destruction of the Improvements occurring during the Term, if the Net Insurance Proceeds (as that term is hereinafter defined) available for a particular Restoration (as that term is hereinafter defined) plus the amount of any applicable deductible or self-insurance (the "Deductible"), which amount shall be deposited by Tenant with the First Leasehold Mortgagee (or, if none, with Landlord or into the special bank account referred to in Section 8.02), are insufficient to accomplish the Full Restoration, then Landlord may terminate this Lease with respect to the lot or lots on which such damaged or destroyed Improvements were situated, by written notice to Tenant, unless: (a) within one hundred twenty (120) days after the amount of Net Insurance Proceeds has been determined, Tenant deposits with the First Leasehold Mortgagee (or, if none, with Landlord) cash, a letter of credit and/or evidence satisfactory to the First Leasehold Mortgagee (or, if none, to Landlord) of the availability of funds (from a loan or otherwise) in an amount equal to the Restoration Deficiency (as that term is hereinafter defined); or (b) within one hundred fifty (150) days after the expiration of said 120-day period, any one or more of the Leasehold Mortgagees and/or any other Person so deposits the Restoration Deficiency with the First Leasehold Mortgagee (or, if none, to Landlord); or (c) within one hundred eighty (180) days after the amount of Net Insurance Proceeds has been determined, the First Leasehold Mortgagee agrees to a Partial Restoration and agrees to make the Net Insurance Proceeds available for such Restoration. The Full Restoration or Partial Restoration, as applicable, is hereinafter referred to as the "Restoration". As used herein, the term "Restoration Deficiency" shall mean additional funds in an amount sufficient, when added to the Net Insurance Proceeds available for a Restoration plus the Deductible, to complete such Restoration. If this Lease is terminated pursuant to this Article 8 with respect to a lot or lots then, at the option of Landlord, Tenant shall, at Tenant's sole expense, demolish and/or remove such of the Improvements on such lot or lots as are designated by Landlord, provided that, if the costs of such demolition and removal exceed the Deductible, sufficient Net Insurance Proceeds are made available to Tenant for that purpose. Notwithstanding the foregoing provisions of this Section 8.01, in the event and to the extent of any conflict or inconsistency between the provisions of this Lease and the provisions of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Intercreditor Agreement, the provisions of the Intercreditor Agreement relating to damage or destruction, insurance proceeds and Restoration shall apply and control for so long as the Intercreditor Agreement is in effect.

**8.02 Disbursements.** Adjustment of any insurance claim shall, subject to the terms of any Leasehold Mortgage, be negotiated by Tenant. All insurance proceeds shall be deposited in a special bank account controlled by the First Leasehold Mortgagee or, if none, by Landlord, and administered as provided in the First Leasehold Mortgage or, if none, as hereinafter set forth. All insurance proceeds received by Landlord or Tenant on account of such damage or destruction, less the actual costs, expenses and fees, if any, incurred in connection with the adjustment of the loss (the "Net Insurance Proceeds"), shall be applied in accordance with the terms of this Article. Such Net Insurance Proceeds plus the Deductible shall be paid out from time to time as such Restoration progresses and is approved.

**8.03 Deficiencies.** If, at any time during the course of a Restoration, the projected Restoration Deficiency increases, Tenant shall either, before proceeding with the Restoration, deposit with the First Leasehold Mortgagee (or, if none, with Landlord) cash, a letter of credit and/or evidence satisfactory to Landlord of the availability of funds (from a loan or otherwise) in an amount equal to the increase in the Restoration Deficiency, or deliver to the First Leasehold Mortgagee (or, if none, to Landlord) a surety bond from a company and in form and substance satisfactory to the First Leasehold Mortgagee (or, if none, to Landlord) for such increase in the Restoration Deficiency, the premium for which shall have been paid by Tenant. Thereupon, Tenant may proceed with the Restoration.

**8.04 Landlord's Right to Complete.** Subject to any rights of the First Leasehold Mortgagee under Section 8.01, if a Restoration is commenced or required to be commenced, and if Tenant shall fail to promptly and diligently commence and complete such Restoration, Landlord, after first giving all Leasehold Mortgagees written notice and at least 60 days thereafter to commence such Restoration and thereafter promptly and diligently complete such Restoration, may complete the same and apply the Net Insurance Proceeds plus the Deductible and any additional funds provided by Tenant to the cost of Restoration.

**8.05 Leasehold Mortgages.** Except as provided in the last sentence of Section 8.01: (a) all provisions of this Article 8 are subject to the rights of the First Leasehold Mortgagee and the provisions of the Leasehold Mortgage of the First Leasehold Mortgagee; (b) the provisions of such Leasehold Mortgage shall govern in the event of any conflict or inconsistency between the provisions of this Article 8 and the provisions of such Leasehold Mortgage; and (c) application of Net Insurance Proceeds shall be subject to the terms of the Leasehold Mortgages, and the respective priorities of the Leasehold Mortgagees thereunder, including the Leasehold Mortgagees' rights, if any, to apply proceeds of insurance to the payment of outstanding debt owed by Tenant to such Leasehold Mortgagees in lieu of Restoration. In such an event, Landlord and Tenant shall adjust any remaining balance of insurance proceeds as their respective interests may be affected by such damage or destruction, and this Lease shall terminate as to the lot or lots on which the damaged or destroyed Improvements were situated. No termination of this Lease shall occur under this Article 8 so long as at least one Leasehold Mortgagee is diligently proceeding to obtain such insurance proceeds and, if applicable, to exercise its rights with respect to the Restoration; provided, however, that the foregoing prohibition against

UNOFFICIAL COPY

Property of Cook County Clerk's Office

termination shall no longer be applicable when the First Leasehold Mortgagee elects to apply such insurance proceeds to repay outstanding debt in lieu of Restoration.

**ARTICLE 9**

**Title and Ownership; Leasehold Mortgage**

**9.01 Restrictions on Transfer.**

(a) Except for Permitted Transfers and Permitted Refinancings: (i) Tenant shall not at any time without the prior written consent of Landlord and, during the Public Housing Use Period, the prior written consent of HUD: (A) sell, assign, transfer, or convey all or any part of its interest under this Lease, or (B) sell, assign, transfer or convey all or any part of any structure or other Improvement located on the Land; (C) sublet all or any part of the Tenant Property except for subletting of the dwelling units to subtenants pursuant to subleases with a term (including options to extend or renew) not in excess of one (1) year; and (ii) there shall not be a change of control of Tenant or the sale, assignment, transfer or conveyance of any interest in Tenant. Landlord's consent to any of the foregoing may be granted, withheld or granted with such conditions as Landlord shall require, in its sole and absolute discretion. This Section 9.01(a) shall not apply to the City (or a nominee of the City) if either becomes Tenant under this Lease.

(b) If a Permitted Transfer consisting of a sale, assignment, transfer or other conveyance of the Leasehold Estate occurs, the transferee or assignee shall enter into an assumption agreement with Landlord by which it assumes all of Tenant's rights and obligations under this Lease from and after the transfer date (as such rights and obligations are limited under this Lease if the City (or a nominee of the City) is the transferee or assignee). Upon the consummation of such Permitted Transfer and the delivery to Landlord of such assumption agreement executed by the transferee or assignee, the transferee or assignee shall succeed to all rights and obligations of Tenant under this Lease, and shall be deemed a permitted assignee of Tenant, and Tenant making such sale, assignment, transfer or other conveyance shall be and hereby is relieved of any continuing obligations hereunder arising thereafter. Concurrently herewith, Landlord and Tenant are entering into the Declaration of Trust and Restrictive Covenants and the Regulatory and Operating Agreement requiring that the Public Housing Units be leased to CHA Tenants. Landlord acknowledges that Tenant intends the Improvements, or a portion thereof, to qualify for housing "low income families" and/or "very low income families," for the period required under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). Tenant may cause the Improvements, or a portion thereof, to qualify for other state and/or federal assistance, including but not limited to financing arranged through or insured by HUD. To the extent required by the Code and/or HUD as a condition to such qualification, and as may be required under Article 15, Tenant is authorized to enter into restrictive covenants encumbering the Tenant Property pertaining to the use of the Tenant Property. Landlord agrees to enter into a subordination agreement relating to this Lease as to such restrictive covenants as may be required to obtain and maintain such qualifications.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



(c) In addition to any other requirements that may restrict Landlord's right to transfer the Land, Landlord shall not, without the prior written consent of Tenant, all Leasehold Mortgagees and HUD, sell, assign, transfer, convey, mortgage or create a lien upon (i) all or any part of the Land, or (ii) all or any part of its interest in this Lease or any Improvement.

(d) The parties acknowledge that it may become necessary to grant easements and/or licenses over, under, upon and across the Land for the provision of gas, electricity, telephone service, cable television, Internet access, water, sewer, and other utilities to serve the Improvements. All such easements and licenses shall be subject to the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. If required, Landlord shall grant or join with Tenant in the grant of such easements and licenses, so as to subject Landlord's interest in the Land to such easements and licenses. All costs in connection with such easements and licenses shall be borne by Tenant.

**9.02 Liens.** Other than the Permitted Exceptions and the encumbrances listed on Exhibit D (the "Encumbrances"), and any Permitted Refinancing, Tenant shall not create or permit to be created or to remain, and shall promptly discharge, any lien (including but not limited to any mechanic's, contractor's, subcontractor's or materialman's lien or any lien, encumbrance or charge arising out of any Imposition, conditional sale, title retention agreement, chattel mortgage, security agreement, financing statement or otherwise) upon the Property or any part thereof or the income therefrom, and Tenant shall not suffer any matter or thing whereby the estate, rights and interests of Landlord in the Property or any part thereof will be impaired. Notwithstanding the foregoing prohibitions, Tenant shall have the right to contest any such lien upon compliance with the same conditions as are applicable to the contest of any Imposition under Section 4.03. If Tenant shall fail to cause any such matter to be discharged of record or contested in the foregoing manner, then Landlord may, but shall not be obligated to, in addition to any other right or remedy, discharge such lien at any time after delivery of notice to Tenant, either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bonding proceedings or otherwise, and in any such event Landlord shall be entitled, if it so elects, to compel the prosecution of an action for foreclosure of such lien by the lienor and to pay the amount of judgment in favor of the lienor with interest, costs and advances. Any amount so paid by Landlord and all costs, expenses and fees incurred by Landlord in connection therewith shall be reimbursed by Tenant to Landlord, from and to the extent of Permitted Sources. This Lease shall constitute notice that Landlord shall not be liable for any work performed or to be performed, or any materials furnished or to be furnished, at the Land for Tenant or any subtenant upon credit, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Land, unless such work or materials is specifically ordered by Landlord in writing.

**9.03 Leasehold Mortgage.**

(a) In order to enable Tenant to finance a portion of the cost of construction of the Project and/or the Development, Tenant shall have the right, at or prior to commencement of construction of the Improvements required under Section 5.01, to mortgage its Leasehold Estate, together with its ownership interest in the Improvements, and execute and record a Leasehold Mortgage or Mortgages with respect to both such

UNOFFICIAL COPY

Property of Cook County Clerk's Office

estates, respectively (collectively, the "Initial Leasehold Mortgages"), to secure the repayment of a loan or loans made to Tenant by and to secure the reimbursement obligations of Tenant under a letter of credit that will secure bond financing for the Project, and will be issued by, a Lender or Lenders (collectively, the "Initial Leasehold Mortgagees") in an aggregate amount not to exceed the estimated cost of the Development, or such other amount as is reasonably approved by Landlord. The Initial Leasehold Mortgagees and their addresses for purposes of notices are listed on Exhibit C. In addition to the Initial Leasehold Mortgages, Tenant shall have the right, provided that Tenant first obtains all consents and/or approvals required under All Applicable Public Housing Requirements and under this Lease, at any time and from time to time, to grant one or more Leasehold Mortgages. Landlord's interest in the Land or this Lease shall at no time be encumbered by and shall at no time be subject or subordinate to any Leasehold Mortgage (i.e. the foreclosure of any such Leasehold Mortgage shall not divest Landlord of its fee simple title or reversionary interest), except as to rights expressly granted to any Leasehold Mortgagee in this Lease. For purposes of this Article 9, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. A Leasehold Mortgagee may become the holder of the Leasehold Estate and succeed to Tenant's interest under this Lease by foreclosure of its Leasehold Mortgage (either in its own name, or in the name of its nominee) or as a result of the assignment of the Tenant's interest under this Lease in lieu of foreclosure, and any purchaser at any sale of Tenant's interest under this Lease in any proceeding for the foreclosure of any Leasehold Mortgage or the assignee or transferee of Tenant's interest under this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee approved by Landlord and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such assignment or transfer (as the same may be limited under the terms of this Lease as to the City (or a nominee of the City) if either is the assignee or transferee), but only for so long as such purchaser, assignee or transferee is the owner of the Leasehold Estate.

(b) In addition to the Initial Leasehold Mortgagees identified on Exhibit C, if Landlord shall be notified in writing of the existence of any other Leasehold Mortgage, and provided that the Leasehold Mortgagee shall have designated in a written notice to Landlord the address of the Leasehold Mortgagee for the service of notices, then notice of any Event of Default by Tenant in the performance of the covenants of this Lease shall simultaneously be given to such Leasehold Mortgagee, and such Leasehold Mortgagee shall have the right, within the respective periods as prescribed in Subsection 9.03(c), to take such action or to make such payments as may be necessary to cure any such default to the same extent and with the same effect as though done by Tenant.

(c) If there shall be an Event of Default by Tenant under this Lease, Landlord agrees that it will not terminate this Lease or invoke its right to take possession of the Tenant Property if: (i) any Leasehold Mortgagee shall cure the default within 180 days

UNOFFICIAL COPY

Property of Cook County Clerk's Office

after expiration of the time for Tenant to cure said default, or if such default cannot reasonably be cured within said 180-day period, and any Leasehold Mortgagee in good faith commences within said 180-day period and thereafter diligently prosecutes all actions required to cure such default, such longer period as may be reasonably necessary; or (ii) within 180 days after notice of such default by Landlord to a Leasehold Mortgagee, such Leasehold Mortgagee commences legal proceedings (herein called "foreclosure proceedings") to foreclose the lien of its Leasehold Mortgage and if such Leasehold Mortgagee diligently proceeds with its foreclosure proceedings (including seeking to be put in possession as mortgagee-in-possession or seeking to obtain the appointment of a receiver in such foreclosure proceedings; provided however, the City shall not be required to seek mortgagee-in-possession status or seek to obtain appointment of a receiver); or (iii) such Event of Default cannot, by its nature, be cured by any Leasehold Mortgagee. In addition to other Events of Default that cannot be cured by a Leasehold Mortgagee, an Event of Default under Section 10.01(f) shall be deemed not curable by a Leasehold Mortgagee by its nature if the cure involves the initial construction or the completion of the initial construction of a Building and, as a result of such Event of Default, one or more of the City, CHA or the Illinois Housing Development Authority (in their capacities as Leasehold Mortgagees) has elected to discontinue funding its loan, or to reduce the funding of such loan, so as to leave the other Leasehold Mortgagees without adequate loan proceeds to complete the construction of such Building. The foregoing 180-day periods shall be extended for so long as such Leasehold Mortgagee is enjoined or stayed in any bankruptcy or insolvency proceedings filed by or against Tenant. Nothing in this Article 9 shall require any Leasehold Mortgagee, as a condition to the exercise of rights provided under this Article 9, to cure any Event of Default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee. The foregoing shall not be deemed to excuse a Leasehold Mortgagee from performing covenants relating to the construction (provided that neither the City, CHA nor the Illinois Housing Development Authority has elected to discontinue or reduce the funding of its loan) or condition of Improvements on the Land or other similar matters requiring access to and/or control of the Property from and after such time as such Leasehold Mortgagee acquires the Leasehold Estate by foreclosure or otherwise. Landlord may invoke any or all of its remedies under this Lease, including the remedy of termination, if no Leasehold Mortgagee commences and prosecutes either curative action or foreclosure proceedings as provided above. In the event the purchaser at foreclosure sale or the assignee of such purchaser acquires the Leasehold Estate and Tenant's interest in the Improvements, such purchaser or assignee shall thereupon become Tenant under this Lease and hereby agrees to assume and perform each and all of Tenant's obligations and covenants hereunder from and after the date that such purchaser or assignee acquires the Leasehold Estate and Tenant's interest in the Improvements (as the same may be limited under the terms of this Lease as to the City (or a nominee of the City) if either is the purchaser or assignee).

(d) In the event there is a Leasehold Mortgage listed on Exhibit C or a Leasehold Mortgage of which Landlord has received notice as provided in Subsection 9.03(b), Landlord agrees that it will not accept a surrender of the Tenant Property or a cancellation of this Lease from Tenant prior to the expiration of the Term of this Lease and will not amend this Lease without in each case the prior written consent of each such Leasehold Mortgagee.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(e) If Landlord shall terminate this Lease, or if this Lease shall be terminated by reason of the rejection of this Lease by a debtor in possession or a trustee or receiver appointed by a court of competent jurisdiction in bankruptcy or insolvency proceedings involving Tenant, and if in either such event the rights of the First Leasehold Mortgagee or the City to take a new lease as provided in Articles 9 and 20 shall have terminated without either of said parties taking a new lease, then and in either such event Landlord will make and enter into a new lease with any other Leasehold Mortgagee (or the nominee of a Leasehold Mortgagee designated by such mortgagee by written notice to Landlord) provided that:

(i) such Leasehold Mortgagee makes written request of Landlord for a new lease within the ninety (90) days following the date of termination of all rights to take a new lease under Articles 9 and 20; and

(ii) at the time of termination of this Lease, and at the time of such Leasehold Mortgagee's written request for a new lease, and at the time of execution and delivery of such new lease by and between Landlord and such Leasehold Mortgagee (or the nominee of such Leasehold Mortgagee, as the case may be), such Leasehold Mortgagee shall have cured all defaults of Tenant under this Lease that can reasonably be cured by such Leasehold Mortgagee or shall be proceeding in accordance with Section 9.03(c);

then, concurrently with the execution, delivery and recording of the new lease, this Lease shall be deemed to have terminated.

(f) Each Leasehold Mortgagee, by accepting its Leasehold Mortgage, agrees for the benefit of Landlord:

(i) that such Leasehold Mortgagee will use reasonable efforts to give to Landlord notice of all events of default declared by such Leasehold Mortgagee with respect to such Leasehold Mortgage that give such Leasehold Mortgagee the right of acceleration, concurrently with or promptly after notice thereof is given to Tenant; and Landlord shall have the right, but shall not be obligated, to cure any such defaults on the part of Tenant within the time period, if any, allowed by the Leasehold Mortgage; and

(ii) prior to commencing foreclosure proceedings or accepting a deed in lieu of foreclosure, such Leasehold Mortgagee shall give Landlord a written notice describing the action proposed to be taken by such Leasehold Mortgagee and stating the aggregate amount of the indebtedness then due and secured by the Leasehold Mortgage, and setting forth in reasonable detail the respective portions of said indebtedness attributable to principal, interest, attorneys' fees and expenses and other costs, fees and expenses. Landlord shall have a period of twenty (20) days after Landlord receives such notice from such Leasehold Mortgagee within which Landlord, at its election, may purchase from such Leasehold Mortgagee, without representation, warranty or recourse (other than as to the purchase price), the Leasehold Mortgage, the indebtedness secured thereby,

UNOFFICIAL COPY

Property of Cook County Clerk's Office



and any other security held by such Leasehold Mortgagee for such indebtedness, for a purchase price equal to the amounts due such Leasehold Mortgagee under the Leasehold Mortgage. In the event that Landlord purchases the First Leasehold Mortgage and if Bank of America is then the holder of a Leasehold Mortgage with a lien that is second in priority, Landlord agrees to subordinate the lien of the First Leasehold Mortgage to the Bank of America Leasehold Mortgage, and thereafter, notwithstanding anything to the contrary contained in this Lease or in the Intercreditor Agreement, Bank of America shall be deemed to be the First Leasehold Mortgagee under this Lease and the Senior Lender under the Intercreditor Agreement.

(g) So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Land and the Leasehold Estate shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of said fee title and Leasehold Estate by any single owner, other than by termination of this Lease by Landlord in compliance with the provisions of this Article 9.

(h) Upon termination of this Lease pursuant to Section 10.02, Landlord shall immediately seek to obtain possession of the Land and the Improvements. Upon acquiring such possession, Landlord shall notify all Leasehold Mortgagees. The First Leasehold Mortgagee shall have six (6) months from the date of such notice of acquisition to elect to take a new lease on the Land and on the Improvements. Such new lease shall have a term equal to the unexpired portion of the Term of this Lease and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this Lease, except that the First Leasehold Mortgagee's liability for Rent shall not extend beyond its period of occupancy under such new lease. Landlord shall tender such new lease to the First Leasehold Mortgagee within thirty (30) days after a request for such lease and shall deliver possession of the Land and Improvements immediately upon execution of the new lease. Upon executing a new lease, the First Leasehold Mortgagee shall pay to Landlord the amount by which (a) the sum of any unpaid Rent due under this Lease (or which would have been due under this Lease if it had not been terminated) from the date that Landlord obtains possession of the Land and Improvements to the commencement date of the new lease, plus any Impositions that were liens on the Land and/or the Improvements and which were paid by Landlord, exceeds (b) any rent or other income received by Landlord from the Land and/or the Improvements during the period after Landlord obtains possession to (but not including) the commencement date of the new lease. The provisions of this Section 9.03(h) shall not apply to a partial termination of this Lease by reason of an Event of Default under Section 10.01(f), unless the default causing such termination could not, by its nature, be cured by the First Leasehold Mortgagee. The First Leasehold Mortgagee shall not have the right to elect to take a new lease if the First Leasehold Mortgage is paid in full prior to the First Leasehold Mortgagee notifying Landlord of its election to take a new lease.

(i) Notwithstanding any provisions to the contrary in Sections 6.03, 6.04, 6.06, 9.01, 9.02, 9.03 or 11.02, Landlord agrees (without waiving any rights that Landlord may have against any former Tenant) that: (a) any Leasehold Mortgagee that succeeds to the Leasehold Estate and becomes a successor Tenant hereunder shall not be

UNOFFICIAL COPY

Property of Cook County Clerk's Office

responsible for any then existing indemnification of the former Tenant; (b) such Leasehold Mortgagee shall not be required to cure a default that cannot be cured by the payment of money or the taking of affirmative action (an "Incurable Default"); and (c) failure by such Leasehold Mortgagee to cure an Incurable Default or to assume such existing indemnification obligations of the former Tenant shall not constitute a basis for not recognizing such Leasehold Mortgagee as the successor Tenant or for terminating this Lease. Notwithstanding any provisions to the contrary in Sections 6.03, 6.04, 6.06, 9.01, 9.02, 9.03, 11.02 or 22.04, Landlord agrees (without waiving any rights that Landlord may have against any former Tenant) that any Leasehold Mortgagee that succeeds to the Leasehold Estate and becomes a successor Tenant hereunder shall not be responsible for any then existing environmental remediation obligations of the former Tenant, including without limitation any then existing environmental remediation obligations under the Environmental Agreement.

## ARTICLE 10

### Tenant Default: Rights and Remedies of Landlord

**10.01 Tenant's Event of Default.** Each of the following events shall be an "Event of Default" by Tenant under this Lease:

- (a) Tenant's failure to pay, when due, any installment of Rent or any other amount to be paid by Tenant under this Lease, and such failure shall continue for a period of thirty (30) days after written notice from Landlord specifying such failure;
- (b) Tenant shall be in default under Section 9.01(a);
- (c) if any insurance required to be maintained by Tenant shall lapse without replacement, so that any required coverage is not in effect;
- (d) Tenant shall fail to perform or observe any other material obligation, term or provision under this Lease, and such failure continues beyond sixty (60) days after written notice from Landlord to Tenant specifying such Event of Default; provided, however, that if Tenant in good faith commences within said 60-day period and thereafter diligently prosecutes all actions required to cure such default, Tenant shall be allowed a reasonable additional period to effect such cure;
- (e) A petition in bankruptcy is filed by or against Tenant, or if Tenant makes a general assignment for the benefit of creditors or is adjudged insolvent by any state or federal court, and in the case of any such involuntary petition, action or proceeding not initiated by Tenant such petition, action or proceeding is not dismissed or stayed within ninety (90) days after the commencement of such petition, action or proceeding; and
- (f) Tenant shall fail to commence and complete the construction of any Building prior to the Construction Completion Deadline, and such failure continues for a period of thirty (30) days after written notice from Landlord specifying such failure; provided, however, that if Tenant in good faith commences within said 30-day period and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

thereafter diligently prosecutes all actions required to cure any such failure, Tenant shall be allowed a reasonable additional period to effect such cure.

**10.02 Termination.** If an Event of Default shall occur, Landlord may not terminate this Lease for so long as the provisions of Section 9.03 or any other provision of this Lease that expressly limits Landlord's ability to terminate this Lease precludes such termination. Otherwise, Landlord, at its option, at any time thereafter during the continuance of such Event of Default, give to Tenant a notice of termination of this Lease (with a copy to the HRC), and upon the date specified in such notice, which date shall be after all cure periods and foreclosure proceeding periods without a cure or foreclosure (or exercise by a Leasehold Mortgagee of other remedies contemplated by Section 9.03(c)) being effected, then this Lease and all of Tenant's rights under this Lease shall expire and terminate as if that date were the date herein originally fixed for the expiration of the Term of this Lease, and on the date so specified, Tenant shall vacate and surrender the Property to Landlord. If an Event of Default under Section 10.01 (f) shall occur, then Landlord may not terminate the entire Lease by reason of such Event of Default, any termination shall only be a partial termination as hereinafter provided. If an Event of Default under Section 10.01(i) shall occur with respect to a lot on which construction of the Building has not commenced (i.e. the foundation has not been poured), then, subject to Section 9.03, Landlord may terminate this Lease with respect to such lot, but this Lease shall remain in effect with respect to the remainder of the Land. If an Event of Default under Section 10.01(f) shall occur with respect to a lot on which construction of the Building has commenced (i.e. the foundation has been poured), and no Leasehold Mortgagee has advanced proceeds of its loan to pay costs of such construction or any subsequent construction of such Building, then, subject to Section 9.03, Landlord may terminate this Lease with respect to such lot, but this Lease shall remain in effect with respect to the remainder of the Land. If an Event of Default under Section 10.01(f) shall occur by reason of a failure to diligently complete the construction of a Building, and any Leasehold Mortgagee has advanced proceeds of its loan to pay costs of such construction or any other subsequent construction of such Building, then, subject to Section 9.03, Landlord may terminate this Lease with respect to the lot on which such Building is being constructed, but this Lease shall remain in effect with respect to the remainder of the Land.

**10.03 Transfer of Deposits, etc.** In the event of any termination of this Lease under Section 10.02, all unearned insurance premiums, all deposits theretofore made by Tenant with utility companies, any claims for refund of any Imposition, any pending claims for insurance proceeds or condemnation awards, and all fuel and supplies on the Property owned by Tenant shall, subject to the rights of the Leasehold Mortgagees, be deemed to be and are hereby assigned to and transferred to Landlord to be applied in payment of Tenant's liability under this Lease.

**10.04 Re-entry.** In the event of termination of this Lease under Section 10.02 or by operation of law or otherwise, Landlord may without further notice re-enter and repossess the Property.

**10.05 Injunctive Relief.** In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to injunctive relief against such breach or threatened breach, and shall have the right to invoke any right or remedy available at law or in equity or by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Lease.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

**10.06 Re-letting by Landlord.** If Landlord has terminated this Lease in accordance with Section 10.02, Landlord may re-let the Property or any part thereof and receive the rent therefor, whether such rent is in the aggregate greater than or less than the Rent payable hereunder. Landlord shall not be responsible or liable in any way for failure to re-let the Property or any part thereof or for failure to collect any rent due on such re-letting, except as required by law to mitigate Landlord's damages.

**10.07 Receipt of Monies: No Waiver.** No receipt of money by Landlord from Tenant after termination of this Lease shall reinstate, continue or extend the term of this Lease or of any notice of termination theretofore given to Tenant, or operate as a waiver of Landlord's right to enforce the payment of Rent and any other payments or charges herein reserved or agreed to be paid by Tenant, then or thereafter falling due, or operate as a waiver of Landlord's right to recover possession of the Property by proper remedy, it being agreed that after service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after final order for the possession of the Property, Landlord may demand and collect any monies due or thereafter falling due in any manner without affecting such notice, proceeding, order, suit or judgment, and all such monies collected shall be deemed paid on account of the use and occupancy of the Tenant Property or, at Landlord's election, on account of Tenant's liability hereunder.

**10.08 No Implied Waivers.** Landlord's granting of a consent under this Lease, or Landlord's failure to object to an action taken by Tenant without Landlord's consent under this Lease, shall not be deemed a waiver by Landlord of its right to require such consent for any further similar act of Tenant. No waiver by Landlord of any breach of any of the conditions, covenants or agreements of this Lease shall be construed, taken or held to be a waiver of any other breach or be a waiver, acquiescence in or consent to any further or succeeding breach of the same term, condition, covenant or agreement. None of Tenant's covenants, agreements, obligations or undertakings under this Lease, and no breach thereof, may be waived, altered or modified except by a written instrument executed by Landlord.

**10.09 Remedies Not Exclusive.** Subject to provisions of Article 18 and other provisions of this Lease restricting Landlord's right to terminate this Lease, no right, power or remedy conferred upon or reserved to Landlord under this Lease or under law shall be considered exclusive of any other right, power or remedy, but such rights, powers and remedies shall be cumulative and shall be in addition to every other right, power and remedy given hereunder, or now or hereafter existing at law or in equity, or by statute or otherwise, and every right, power and remedy of Landlord may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, without precluding Landlord's simultaneous or later exercise of any or all other rights, powers or remedies. No delay or omission of Landlord in exercising any right, power or remedy arising from any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein.

**10.10 Waiver of Notice.** Tenant expressly agrees that any notice of intention to re-enter provided in any statute or to initiate legal proceedings to that end shall run concurrently with any applicable notice period provided hereby so that any required notice period shall not be longer than the longer of such statutory notice or notice required under this Lease. Tenant waives, for

UNOFFICIAL COPY

Property of Cook County Clerk's Office



and on behalf of itself and all persons and parties claiming through or under it (other than any Leasehold Mortgagee), any and all right of redemption provided by any law or now in force or hereafter enacted or otherwise, for re-entry or repossession, or to restore the operation of this Lease, in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge, or in case of re-entry or repossession by Landlord, or in case of any expiration or termination of this Lease.

**10.11 Suits for Damages.** Suits for damages or deficiencies, or for a sum equal to any installments of Rent, Impositions and other charges and payments hereunder shall be subject to the provisions of Article 18.

**10.12 Bankruptcy.** Nothing in this Article contained shall limit or prejudice the right of Landlord to prove and obtain as damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the damages referred to any of the preceding Sections.

**10.13 Leasehold Mortgagee's Rights.** Notwithstanding the remedies afforded to Landlord under this Article 10, such remedies shall be subject to and subordinate to the Leasehold Mortgagees' rights granted herein.

**10.14 Special Limited Partner's Rights in the Event of Tenant Default.** The following provisions shall apply for so long as the Special Limited Partner is a partner of Tenant:

(a) Landlord shall give the Special Limited Partner a duplicate copy of all notices of Event of Default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Lease. No notice by Landlord to Tenant under this Lease shall be effective unless or until a copy of such notice has been provided to the Special Limited Partner.

(b) The Special Limited Partner may, at its option and during the time specified for the Tenant to cure any Event of Default hereunder, either pay any amount or do any act or thing required of Tenant by the terms of this Lease. All payments made and all acts performed by the Special Limited Partner during the cure period shall be effective to prevent a termination of this Lease to the same extent as if they had been performed by Tenant. Tenant hereby authorizes the Special Limited Partner to take any such action at the Special Limited Partner's option and does hereby authorize entry upon the Property by the Special Limited Partner for such purpose.

(c) In addition to all other rights of the Special Limited Partner hereunder, if upon receipt of a written notice of default from Landlord, the Special Limited Partner shall have exercised its Removal Right and the substitute general partner, within thirty (30) days after being admitted to the Tenant partnership, either has cured such Event of Default or has commenced to cure and thereafter diligently and continuously pursues same, then Tenant shall not be considered in default or breach hereunder and Landlord shall not terminate this Lease.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

## ARTICLE 11

### Additional Rights and Remedies of Landlord

**11.01 Performance by Landlord.** If Tenant shall at any time fail to make any payment or perform any act to be made or performed by Tenant under this Lease and such failure continues beyond the cure period, if any, applicable thereto under this Lease, and provided that no Leasehold Mortgagee has cured such failure within the time period provided herein for such cure (provided, in the latter case, that any notice of default required by the terms of this Lease to be given to such the Leasehold Mortgagee by Landlord has been given), Landlord may, at its option (but shall not be required to), make any such payment or perform any such act, and for such purpose Landlord may enter upon the Property and take all actions thereon as may be deemed by Landlord necessary or desirable therefor. Any amount paid or incurred by Landlord in effecting or attempting to cure such failure shall be additional rent due from Tenant to Landlord, and shall be payable by Tenant upon demand.

### **11.02 Tenant to Provide Indemnification.**

(a) Unless arising from Landlord's negligent act or intentional misconduct or a breach of Landlord's obligations under this Lease or the failure of Landlord to perform its obligations under the Environmental Agreement, or until Landlord shall have re-entered the Property upon expiration or termination of this Lease, Tenant agrees to indemnify, defend and save Landlord's Protected Persons harmless against and from all liabilities, claims, suits, fines, penalties, damages, losses, charges, costs, expenses and fees (including attorney's fees) which may be imposed upon, incurred by or asserted against Landlord's Protected Persons by reason of any of the following occurring during the Term:

(i) any use, non-use, possession, occupation, condition (other than a Pre-Existing Environmental Event), operation, repair, maintenance or management of the Property, or any part thereof, or any occurrence of any of the same;

(ii) any act or omission on the part of Tenant or any subtenant, licensee or invitee, or any of its or their agents, contractors, servants, employees, licensees or invitees related to the Property or this Lease;

(iii) any accident, injury (including death) or damage, regardless of the cause thereof, to any person or property occurring in, on or about the Property or any part thereof;

(iv) any contest permitted pursuant to the provisions of Section 4.03 or 6.06;

(v) any litigation or proceeding related to the Property or this Lease to which Landlord becomes or is made a party without fault on its part, whether commenced by or against Tenant; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(vi) which may be incurred by Landlord in enforcing any of the covenants, agreements, terms and conditions of this Lease (provided Landlord prevails in the enforcement proceeding).

As to claims for which Tenant does not receive timely notice, there shall be no obligation of Tenant to indemnify.

(b) Unless arising from Tenant's negligence or intentional misconduct or a breach of Tenant's obligations under this Ground Lease, Landlord agrees to indemnify, defend and save Tenant harmless against and from all liabilities, claims, suits, fines, penalties, damages, losses, charges, costs, expenses and fees (including attorneys' fees) which may be imposed upon, incurred by or assessed against Tenant by reason of:

- (i) any action or omission on the part of Landlord or any of its officials, agents, or employees; or
- (ii) any litigation or proceeding to which Tenant becomes or is made a party without fault on its part, whether commenced by or against Landlord, or (provided Tenant prevails in such litigation or proceeding) which may be incurred by Tenant in enforcing any of Landlord's covenants and agreements contained herein;

provided, however, that, the provisions of this Subsection (b) do not apply to any matter covered by the Environmental Agreement or any other environmental event or condition on the Land. As to claims for which Landlord does not receive timely notice, there shall be no obligation of Landlord to indemnify.

(c) Landlord's and Tenant's obligations under this Section 11.02 shall survive the expiration or termination of this Lease.

**11.03 [Inapplicability to the City.** Notwithstanding any provision of this Lease to the contrary, none of the provisions or requirements of Section 11.02 or the last sentence of Section 11.01 shall apply to the City Leasehold Mortgagee or the City in the event that any such party becomes owner of the Leasehold Estate, or otherwise becomes tenant of the Land or owner or tenant of the Improvements.]

## ARTICLE 12

### Eminent Domain

**12.01 Total Taking.** Subject to Section 12.05 and Article 20, if, during the Term of this Lease, the entire Property or Tenant Property, or such substantial portion of the Property or Tenant Property as shall in the reasonable good faith judgment of Tenant make it economically unfeasible to continue to operate the remaining portion for the purposes herein stated, shall be taken by the exercise of the power of eminent domain, this Lease shall terminate on the date of vesting of title in the condemnor under such eminent domain proceedings, and all Rent and other sums payable by Tenant hereunder shall be prorated to the date of such vesting, and thereafter

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Tenant shall be relieved of all obligations to pay the Rent and to otherwise perform its agreements, obligations and undertakings under this Lease except those that expressly survive the termination of this Lease. The award granted with respect to such eminent domain proceedings shall be divided between Landlord, Tenant and any Leasehold Mortgagees in the following order:

(a) to the First Leasehold Mortgagee, an amount sufficient to obtain the release and satisfaction of the First Leasehold Mortgage;

(b) to any and all other Leasehold Mortgagees, as their interests appear, an amount sufficient to obtain a release and satisfaction of the Leasehold Mortgages, with payment being made in full to such Leasehold Mortgagees according to the priorities of their Leasehold Mortgages;

(c) to Tenant, an amount equal to the sum of: (y) the greater of: (1) the fair market value of the improvements and the fair market value of the unexpired Leasehold Estate, reduced by the amount, if any, paid under the preceding Clauses (a) and (b); and (2) the replacement cost of the Improvements and the fair market value of the unexpired Leasehold Estate, reduced by the amount, if any, paid under the preceding Clauses (a) and (b); plus (z) the value of any low-income housing tax credits recaptured or not available in future years as a result of such taking; and

(d) the balance, if any, shall be paid to Landlord.

**12.02 Partial Taking.** If, during the Term, less than the entire Property or Tenant Property shall be taken by the exercise of the power of eminent domain, and in the reasonable good faith judgment of Tenant it is economically feasible to continue to operate the remaining portion of the Tenant Property for the purposes herein stated, this Lease shall not terminate but shall continue in full force and effect for the remainder of the Term, subject to the provisions of this Section 12.02. The amount of damages resulting to Landlord and Tenant, respectively, and to their respective interests in the Property and in, to and under this Lease, by reason of such exercise and partial taking under such eminent domain proceedings shall be separately determined and computed by the court having jurisdiction of such proceedings, and separate awards and judgments with respect to such damages to Landlord and Tenant shall be made and entered, and said awards shall, subject to Section 12.05 and Article 20, be paid to Landlord and Tenant, respectively, in accordance therewith; provided, however, that Tenant shall receive that portion of the award made as consequential damages to the Improvements located on the remaining portion of the Property and Tenant, at its expense, shall forthwith restore the remaining portion of the Improvements to substantially the same condition as existing prior to such taking (to the extent such restoration is possible, taking into account the extent to which a portion of the Improvements have been removed as a result of the taking), using such part of the award received by Tenant in said eminent domain proceeds as may be necessary therefor and, if the amount of such award is not sufficient, Landlord shall make its portion of the award available for such restoration. If the sum of such awards is not sufficient, Tenant shall have the right, but not the obligation, to provide the additional funds required. Notwithstanding anything to the contrary contained in Article 12 or elsewhere in this Lease (including without limitation Section

UNOFFICIAL COPY

Property of Cook County Clerk's Office



12.05), the provisions of the Intercreditor Agreement relating to takings, condemnation proceeds and restoration shall apply and control.

**12.03 Temporary Taking.** In the event of a taking for a temporary use, this Lease and the Term shall continue and the Rent thereafter due and payable shall be equitably reduced or abated. Tenant shall continue to perform and observe all of the other covenants, agreements, terms and conditions of this Lease. The entire amount of any proceeds with respect to such temporary taking shall be paid to Tenant.

**12.04 Other Governmental Action.** In the case of any governmental action not resulting in the taking of any portion of the Property or Tenant Property but creating a right to compensation therefor, this Lease shall continue in full force and effect without reduction or abatement of any Rent thereafter due and payable. If such governmental action results in any damage to the Improvements, Tenant shall be entitled to receive such portion of the proceeds (or all of the proceeds, if required for such purpose) estimated to be necessary to remedy any such damage and to compensate for the loss of low-income housing tax credits, and Tenant shall proceed with reasonable diligence to make all repairs, replacements, restorations and improvements necessary so to remedy such damage to the extent economically feasible, and, if the amount of such proceeds is not sufficient, Tenant shall have the right, but not the obligation, to provide the additional funds required. Any balance remaining from such proceeds, or if no damage is involved then all of such proceeds, shall be divided between Landlord and Tenant as their respective interests may appear.

**12.05 Leasehold Mortgagees.** The rights granted to Landlord and Tenant under this Article 12 shall be subject to the rights and interests of the Leasehold Mortgagees under their respective Leasehold Mortgages, except as provided in the last sentence of Section 12.02.

### **ARTICLE 13**

#### **Estoppel Certificates**

Upon written request by either party or any Leasehold Mortgagee, the party to whom the request was made will promptly certify to the requesting Person, or to any proposed assignee or grantee or mortgagee or trustee under deed of trust or trust deed or the proposed assignee of such mortgagee, deed of trust or trust deed, whether or not this Lease is valid and subsisting, whether or not it has been modified (and if there are modifications, stating them) and whether or not the party executing the certificate has knowledge of any default or breach by the other party under any of the terms of this Lease (and if any exists, stating them). If the party to whom a written request is directed under the preceding sentence shall fail to furnish the requested certificate within twenty (20) days after the receipt of such request, then by such failure such party shall be deemed to have certified to the requesting Person and to any proposed assignee or grantee or mortgagee or trustee under a deed of trust or trust deed, that this Lease is valid and subsisting, that there have been no modifications to this Lease, and that there are no known defaults or breaches by the other party under the terms of this Lease. Upon the issuance of a certificate of occupancy for the Project by the City in its municipal capacity following completion of the construction of the Improvements, Landlord shall give to Tenant an estoppel certificate (in

UNOFFICIAL COPY

Property of Cook County Clerk's Office

recordable form) certifying all obligations set forth in Section 5.01 have been satisfied, and Tenant shall cause such certificate to be recorded.

**ARTICLE 14**

**Surrender at End of Term: Title to Improvements**

**14.01 Surrender at End of Term.** Upon the expiration of the Term, all Improvements then on the Land shall, together with all fixtures, equipment and other personal property owned by Tenant and used in connection with the operation of the Project, shall become the property of Landlord without any payment or allowance whatever by Landlord on account of or for such Improvements, fixtures, equipment and personal property, whether or not the same or any part thereof shall have been constructed by, paid for, or purchased by Tenant. Tenant shall vacate and surrender possession of the Tenant Property to Landlord without delay, free and clear of all lettings, occupancies, and licenses, and free and clear of all liens, claims, encumbrances and security interests other than the Permitted Exceptions and the rights of tenants in possession under leases (which shall expire not later than one (1) year after the end of the Term), and those, if any, created by Landlord. Tenant agrees to execute and deliver to Landlord such quit claim deeds, bills of sale, assignments or other instruments of conveyance as Landlord may reasonably deem necessary to evidence such transfer of title to Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Property at any such termination date.

**14.02 Title to Improvements.** Landlord acknowledges and agrees that throughout the Term and until expiration or earlier termination of this Lease, title to all Improvements shall be in Tenant's name and that Tenant has, and shall be entitled to, all rights and privileges of ownership of such Improvements, including without limitation: (a) the right to claim depreciation or cost recovery deductions; (b) the right to claim the low-income housing tax credit described in Section 42 of the Code; (c) the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Tenant Property; and (d) the right to transfer such Improvements in accordance with the terms of this Lease; provided, however, that Tenant may not remove or substantially alter any of the Improvements (other than the disposition and replacement of equipment, appliances and other personal property in the ordinary course of business or in connection with the performance of its obligations under Section 5.04) without having first obtained the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

**ARTICLE 15**

**Other Landlord Obligations; Landlord Defaults**

**15.01 Use as Public Housing.** Landlord and Tenant acknowledge and agree that portions of the Project are being developed, constructed, owned, operated and managed, in part, to carry out certain of the programs, services and other requirements consistent with All Applicable Public Housing Requirements, as more particularly provided in the Regulatory and Operating Agreement for so long as the Regulatory and Operating Agreement is in force and effect. Tenant and Landlord shall enter into any restrictive covenants regulating the use, occupancy and disposition of portions of the Tenant Property as may be necessary to carry out such intents and purposes of the Housing Act during the term of the Regulatory and Operating Agreement.

**15.02 Regulatory and Operating Agreement.** Tenant is hereby authorized to enter into with Landlord a Regulatory and Operating Agreement for certain of the dwelling units in the Project, which shall be leased by Tenant to CHA Tenants. A material default by Landlord, or an Affiliate of Landlord, under the Regulatory and Operating Agreement that is not cured prior to the expiration of the applicable cure period, if any, provided therein, shall not constitute a default by Landlord under this Lease, but shall entitle Tenant to the right of offset, counterclaim and other legal or equitable defenses in regard to this Lease, in addition to all other rights and remedies as may be available to Tenant thereunder.

**15.03 Landlord's Default.** Each of the following events shall be an event of default by Landlord under this Lease:

- (a) Landlord's failure to pay, when due, any amounts required to be paid by Landlord hereunder, or under the Environmental Agreement, within sixty (60) days after receipt of Tenant's written notice of such failure;
- (b) Landlord's failure to lease by this Lease all of the parcels of the Land to constitute the Project, as a whole; or
- (c) Landlord's failure to perform any other term or provision to be performed by Landlord under this Lease, not otherwise described in subsections (a) through (b) hereof, and such failure shall continue beyond sixty (60) days after written notice received by Landlord from Tenant (with a copy of the notice to the HRC) specifying such event of default; provided, however, that if Landlord in good faith commences within said 60-day period and thereafter diligently prosecutes all actions required to cure such default, Landlord shall be allowed a reasonable period to effect such cure.

Upon an event of default by Landlord hereunder, Tenant shall have all of the rights and remedies afforded at law or in equity.

**15.04 Injunctive Relief.** Upon any event of default by Landlord, Tenant shall, in addition to any other remedies available to Tenant at law or in equity, be entitled to enjoin such breach or threatened breach, and shall have the right of specific performance, it being the agreement of the parties hereto that in certain circumstances of Landlord's event of default,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Tenant's remedies at law may be inadequate to afford it the practical realization of the agreements herein made by the parties.

**15.05 Remedies Not Exclusive.** No right, power or remedy conferred upon or reserved to Tenant under this Lease, or under law, shall be considered exclusive of any other right, power or remedy, but such rights, powers and remedies shall be cumulative and shall be in addition to every other right, power and remedy given hereunder, or now or hereafter existing at law or in equity, or by statute. Every right, power and remedy given by this Lease may be exercised from time to time and as often as occasion may arise or may be deemed expedient, without precluding Tenant's simultaneous or later exercise of any or all other rights, powers or remedies. No delay or omission of Tenant to exercise any right, power or remedy arising from Landlord's event of default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein.

**15.06 Waivers in Writing.** None of Landlord's covenants, agreements, obligations or undertakings, and no event of default of Landlord may be waived, altered, or modified except by a written instrument executed by Tenant and all Leasehold Mortgagees.

## **ARTICLE 16**

### **Notices**

All notices or demands under this Lease shall be in writing and shall be served and given by personal delivery or by certified mail, return receipt requested, or by nationally-recognized overnight courier, addressed (i) if to Landlord, to such person and at such address as Landlord may by notice in writing designate to Tenant, and in the absence of such designation, to Chicago Housing Authority, 626 West Jackson Boulevard, 7th Floor, Chicago, Illinois 60661, Attention: Chief Executive Officer, with a copy to Chicago Housing Authority, Office of the General Counsel, 200 West Adams Street, Suite 2100, Chicago, Illinois 60606, Attention: General Counsel, and (ii) if to Tenant to the address designated by Tenant in writing to Landlord, and in the absence of any such designation then:

UNOFFICIAL COPY

Property of Cook County Clerk's Office



West Maypole, L.P.  
c/o The Michaels Development Company, Inc.  
1 East Stow Road  
Mashton, New Jersey 08053  
Attn:

Levine, Staller, Sklar, Chan & Brodsky  
Attn: Arthur Brown, Esq.  
3030 Atlantic Avenue  
Atlantic City, NJ 08401

AND

West Maypole, L.P.  
c/o Brinshore Development, LLC  
666 Dundee Road, Suite 1104  
Northbrook, Illinois 60062

AND

The Richman Group Capital Corp.  
599 West Putman Avenue  
Greenwich, CT 06830

In addition, concurrently with the giving of any notice or demand by Landlord to Tenant, or by Tenant to Landlord, Landlord or Tenant, as the case may be, shall furnish a copy of such notice to any Leasehold Mortgagee, including the Leasehold Mortgagees listed on Exhibit C, and to any other party listed on Exhibit C. Each such notice or demand shall be deemed served, given and received when received or, when given by mail, on the third business day after the mailing thereof.

Any notices to be sent to the HRC shall be sent by certified mail, return receipt requested (and shall be deemed received on the earlier of actual receipt or five (5) days after mailing) or by personal delivery to:

Horner Residents Committee  
1936 West Washington, Room 105  
Chicago, Illinois 60612  
Attn: Ms. Mamie Bone

With a copy to:

National Center on Poverty Law  
111 North Wabash, Suite 500  
Chicago, Illinois 60602  
Attn: William Wilen, Esq.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

By written notice served in the foregoing manner, any party entitled to receive notices shall have the right to designate another person and another address to which notices and demands shall thereafter be sent.

**ARTICLE 17**

**Miscellaneous**

**17.01 Covenants Running With Land.** All terms, provisions, conditions, covenants, agreements, obligations and undertakings contained in this Lease shall, except as herein specifically limited or otherwise provided, extend and inure to be binding upon Landlord's successors and assigns and Tenant's successors and permitted assigns, as if such successors and assigns were in each case specifically named, and shall be construed as covenants running with the land. Wherever reference is made in this Lease to either party, it shall be held to include and apply to such successors and assigns.

**17.02 Amendments in Writing.** In no event shall this Lease or any terms, provisions or conditions hereof be deemed to be amended, modified or changed in any manner whatsoever, except and unless set forth and provided for in writing executed by Landlord and Tenant.

**17.03 Quiet Possession.** Landlord represents and warrants that it has full right and power to execute and perform this Lease and to convey the rights and interest demised hereby. Landlord agrees that during the Term and so long as no Event of Default exists and is continuing hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Land demised hereby, subject to the Permitted Exceptions, without molestation or disturbance by or from Landlord or any party claiming by, through or under Landlord, and free of any encumbrance created or suffered by Landlord except those expressly described herein to which this Lease is made subject and subordinate.

**17.04 Time of Essence.** Time is of essence of this Lease and of the performance of the respective obligations, covenants and agreements of Landlord and Tenant hereunder. If the day for the performance of any obligation hereunder occurs on a calendar day other than a business day, the time for such performance shall be extended to the next business day.

**17.05 Approvals.** All approvals or consents required under the provisions hereof shall be in writing. Unless herein expressly otherwise provided, any approval or consent of Landlord shall be sufficiently given if signed by Landlord's Chief Executive Officer. Tenant acknowledges and agrees that, in exercising any discretion granted to Landlord under this Lease, Landlord must take into account All Applicable Public Housing Requirements and its obligation to provide "public housing" under the Housing Act.

**17.06 Condition of Property.** Landlord has made no warranties or representations whatever with respect to the Land and, except for the obligations of Landlord under the Environmental Agreement, Tenant accepts the Land "as is".

UNOFFICIAL COPY

Property of Cook County Clerk's Office

**17.07 Captions.** The table of contents and captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

**17.08 Partial Invalidity.** If any term, provision or condition of this Lease or its application to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease and the application of such term, provision or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, provision and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**17.09 Applicable Law.** This Lease shall be construed and enforced in accordance with the law of the State of Illinois.

**17.10 Recording of Lease.** This Lease shall be recorded in its entirety with the Cook County Recorder of Deeds.

**17.11 Lease Not to be Construed Against Either Party.** The parties have each been represented by counsel in connection with the negotiation and drafting of this Lease. Accordingly, this Lease shall not be construed against or for either party.

**17.12 Cooperation.** Landlord and Tenant agree that they will cooperate with one another in all respects in furtherance of the Development. In particular, Landlord recognizes that the phased nature of the redevelopment process and the varied sources of project funding make it extremely difficult to anticipate every potential provision which may be required in this Lease. From time to time, Tenant may request modifications to this Lease to satisfy the requirements of financing sources, including without limitation government agencies and private lenders and equity sources. Landlord will use all reasonable efforts to accommodate such requests and will not unreasonably withhold or delay its approval and execution of modifications to this Lease that do not materially and adversely alter the basic terms hereof or Landlord's rights hereunder. Nothing herein shall impose upon Landlord any requirement to approve any modification or amendment to this Lease that would violate or contravene any applicable law (including All Applicable Public Housing Requirements) or any contract or agreement to which Landlord is a party or which is binding on Landlord. Landlord agrees that it will, upon request of Tenant, from time to time, enter into an amended and restated lease combining into one document the entire Lease and all modifications and amendments theretofore entered into. Tenant shall pay, or reimburse Landlord upon demand, for all expenses incurred by Landlord in connection with any such modification or amendment.

## **ARTICLE 18**

### **Exculpatory Provisions**

**18.01 Exculpatory Provision – Landlord.** It is expressly understood and agreed by Tenant that none of Landlord's covenants, undertakings or agreements herein set forth are made or intended as personal covenants, undertakings or agreements of Landlord, but are for the purpose of binding the premises demised hereby, and liability or damage for breach for

UNOFFICIAL COPY

Property of Cook County Clerk's Office

nonperformance by Landlord shall be collectible only out of the Land demised hereby and no personal liability is assumed by nor at any time may be asserted or enforced against Landlord or any other Landlord's Protected Persons or any of its or their heirs, legal representatives, successors or assigns, all such personal liability, if any, being expressly waived and released by Tenant. Nothing contained in this Section 18.01, however, shall in any way or manner limit the full recourse of Tenant against Landlord under the Environmental Agreement, the Regulatory and Operating Agreement or any other Public Housing Use Agreement, or under any non-monetary remedy granted Tenant in Section 15.04. [This Section 18.01 shall not apply to the City at any time it is the Tenant under this Lease.]

**18.02 Exculpatory Provision – Tenant.** Tenant, but not any partner, officer, director, shareholder or member of Tenant, nor any employee or agent of any of the foregoing, shall be personally liable for payment or performance under this Lease, it being acknowledged that Landlord's exclusive rights and remedies hereunder shall be limited to Tenant's interest in this Lease and the Improvements and any other asset of Tenant and, to the extent provided for in Section 10.2, for the termination of this Lease and re-entry and possession of the Property. No deficiency judgment shall be sought or obtained against Tenant or any partner, officer, director, shareholder or member of Tenant nor any employee or agent of any of the foregoing (collectively, "Exculpated Parties") for any amount due under this Lease; provided, however, that, except as hereinafter provided in this Section 18.02, nothing contained herein shall either relieve the Exculpated Parties from personal liability and responsibility, or limit Landlord's other rights and remedies against the Exculpated Parties hereunder, either at law or in equity: (i) for fraudulent acts; (ii) for the fair market value of any personal property or fixtures removed or disposed of from the Property in violation of the terms of this Lease; (iii) for waste committed by Tenant with respect to the Property other than waste resulting from the failure of Landlord to make any payment due under the Regulatory and Operating Agreement or any other Public Housing Use Agreement; (iv) for insurance proceeds and condemnation awards received by Tenant and not turned over to Landlord or used by Tenant for restoration or repair of the Property to the extent required under this Lease; and (v) for any rents or other income from the Tenant Property received by Tenant after an Event of Default under this Lease and not applied to the fixed and operating expenses of the Project. Notwithstanding the preceding sentence, if Tenant is a limited partnership, the liability of a limited partner of Tenant shall be limited to extent provided in the Revised Uniform Limited Partnership Act (805 ILCS 210), or any successor thereto.

## ARTICLE 19

**[Intentionally Omitted.]**

**19.01** [Intentionally Omitted.]

## ARTICLE 20

### Rights of the City

**20.01 Rights of the City.** During any time when neither Fannie Mae nor Bank of America is a Leasehold Mortgagee, the provisions of this Article 20 shall apply. If Fannie Mae

UNOFFICIAL COPY

Property of Cook County Clerk's Office



is a Leasehold Mortgagee, this Article 20 shall not apply (except Section 20.01(d)). Subject to the two preceding sentences, notwithstanding any other provision of this Lease, in the event of any conflict, inconsistency or ambiguity between the provisions of this Article 20 and the provisions of any other article, section or provision of this Lease, the provisions of this Article 20 shall prevail and control. During such time as there is a City Mortgage Loan, the following provisions shall be in full force and effect:

(a) Insurance policies shall be in an amount, and in such company or companies and in such form, and against such risks and hazards as shall be approved by the City. Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant to the City Leasehold Mortgagee. Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by Tenant to the City Leasehold Mortgagee.

(b) If all or any part of the Property or the Improvements or the Leasehold Estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the Leasehold Estate or damage to the Improvements or the Leasehold Estate shall, subject to the provisions of Articles 8 and 12, be paid to the City or otherwise disposed of as may be provided in the City Leasehold Mortgage. After the date of taking, the annual Rent shall be reduced ratably.

(c) In the event of a negotiated sale of all or a portion of the Property or the Tenant Property in lieu of condemnation, the proceeds shall be distributed and Rent reduced as provided in cases of condemnation, but the approval of the City shall be required as to the amount and division of the payment to be received.

(d) Upon termination of this Lease pursuant to Section 10.02, Landlord shall immediately seek to obtain possession of the Land and the Improvements. Upon acquiring such possession, Landlord shall notify the City. If the First Leasehold Mortgagee does not elect to enter into a new lease pursuant to Section 9.03(h), then Landlord shall give the City written notice thereof and the City shall have the right, within six (6) months thereafter, to elect to take a new lease on the Land and on the Improvements. Such new lease shall have a term equal to the unexpired portion of the Term of this Lease and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this Lease, except that the City's liability for Rent shall not extend beyond its period of occupancy under such lease. Landlord shall tender such new lease to the City within thirty (30) days after a request for such lease and shall deliver possession of the Land and Improvements immediately upon execution of the new lease. Upon executing a new lease, the City shall pay to Landlord the amount by which (a) the sum of any unpaid Rent due under this Lease (or which would have been due under this Lease if it had not been terminated) from the date that Landlord obtains possession of the Land and Improvements to the commencement date of the new lease, plus any Impositions that were liens on the Land and/or the Improvements and which were paid by Landlord, exceeds (b) any rent or other income received by Landlord from the Land and/or the Improvements during the period after Landlord obtains possession to (but not

UNOFFICIAL COPY

Property of Cook County Clerk's Office

including) the commencement date of the new lease. The provisions of this Section 20.01(d) shall not apply to a partial termination of this Lease by reason of an Event of Default under Section 10.01(f), unless the default causing such termination could not, by its nature, be cured by the City Leasehold Mortgagee or the City. The City shall not have the right to elect to take a new lease if the City Leasehold Mortgage is paid in full prior to the City giving Landlord notice of its election to take a new lease.

(e) Landlord agrees that, within ten (10) days after receipt of written request from the City, it will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the City may do under this Lease, and will also join in any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary for the operation of the Development.

(f) Nothing in this Lease shall require Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of Landlord, or any income, excess profits or revenue tax, or any other tax, assessment, charge or levy upon the Rent payable by Tenant under this Lease.

## ARTICLE 21

### Regulatory Agreements

**21.01 Regulatory Agreements.** Concurrently herewith, Tenant has entered into those agreements described in Exhibit E (collectively, the "Regulatory Agreements") relating to the operation of the Development. Notwithstanding any other provision of this Lease, Landlord agrees that (i) in the event that Landlord acts to perform any covenants of Tenant under this Lease pursuant to Section 11.01, it will not take any action inconsistent with the obligations of Tenant under the Regulatory Agreements, and (ii) in the event that Landlord terminates this Lease pursuant to Section 10.02, Landlord will operate (and cause any assignee, lessee or purchaser of the Improvements to operate) the Improvements in a manner consistent with the terms of the Regulatory Agreements if such Regulatory Agreements are then extant pursuant to their terms. The provisions of this Section 21.01 shall survive any termination of this Lease. Nothing in this Section 21.01 shall be deemed to extend the provisions of the Regulatory Agreements beyond their stated terms or to impose greater obligations upon Landlord (or any assignee, lessee or purchaser of the Improvements) under the Regulatory Agreements than are imposed by such documents in accordance with their stated terms.

## ARTICLE 22

### Hazardous Materials

**22.01 Definitions.** As used herein, the term "Hazardous Materials" shall mean and include any hazardous, toxic or dangerous waste substance or material defined as such in or for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601 *et seq.*), the Hazardous Materials Transportation Act,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

as amended (49 USC Section 1802, *et seq.*), and the Resource Conservation and Recovery Act, as amended (42 USC Section 6901 *et seq.*), or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect (collectively, the “Environmental Laws”).

**22.02 Prohibition Against Hazardous Materials.** Tenant shall not cause or permit any Hazardous Materials to be generated, released, stored, buried or deposited over, beneath, in or on (or used in the construction of) the Property or on or in any Improvements located on the Land from any source whatsoever, other than in accordance with the Environmental Agreement and the applicable NFRLs.

**22.03 Environmental Agreement.**

(a) The Environmental Agreement and this Section 22.03 sets forth the agreement of the parties with respect to any Hazardous Materials present on the Land on the date of this Lease and other matters as set forth therein. By executing this Lease: (1) the Owner acknowledges that it is an “Owner Entity” referred to in the Environmental Agreement, and hereby assumes the liabilities and obligations of the Owner Entity under the Environmental Agreement with respect to the Property; (2) Landlord agrees that the obligations of Landlord under the Environmental Agreement with respect to the Project run to the benefit of the Owner and that the Owner may enforce such obligations thereunder as if the Owner was a party thereto; and (3) Landlord acknowledges that its obligations under Section 3.14 of the Development Agreement with respect to developments other than the Project survive the execution of this Lease and the closing of the Initial Leasehold Mortgages. Developer, by its acknowledgement below: (i) agrees that the liabilities and obligations of the Developer under Section 3.14 of the Development Agreement, as applicable to the Phase Iia1 site, shall survive the execution of this Lease and the closing of the Initial Leasehold Mortgages; and (ii) agrees to the provisions of this Section 22.03.

(b) The parties acknowledge and agree that the “Estimated Remediation Amount” for Phase Iia1, as determined in accordance with Section 3.14 of the Development Agreement, is \$2,159,875. The parties further agree that, if the actual costs of completing the remediation Work exceed the Estimated Remediation Amount, the maximum amount of Cost Overrun Funding which CHA shall be obligated to pay is \$2,699,844, for a total Maximum Remediation Amount, as determined under Section 3.14 and subject to the limitations therein, of not to exceed \$4,859,719.

(c) The parties acknowledge that as of the date hereof, a Comprehensive Site Investigation Report (“CSIR”), Remedial Objectives Report (“ROR”) and Remedial Action Plan (“RAP”) have been submitted to the IEPA for the Henry Horner Homes Phase II site, and that the IEPA has issued two draft NFRLs in response, one for the western portion of the Phase II site and one for the eastern portion of the Phase II site. The parties intend to perform the remediation actions applicable to the Phase Iia1 Site set forth in such draft NFRLs as further set forth herein, and upon completion of such

UNOFFICIAL COPY

Property of Cook County Clerk's Office

actions, to seek the issuance of one or more final NFRLs for the Phase IIa1 Site. The parties agree that the conditions stated in the draft NFRLs are acceptable as to Phase IIa1.

(d) The parties acknowledge and agree that CHA shall implement certain of the remediation measures set forth in the draft NFRLs as applicable to the Phase IIa1 Site. The remediation measures to be implemented by CHA are as set forth in that certain Excavation and Disposal Agreement being executed concurrently herewith between CHA and Walsh Construction Company of Illinois (consisting of certain soil removal, soil disposal, and soil replacement activities). The Owner shall implement certain other remedial measures (consisting generally of constructing barriers) in connection with construction of the Development through its general contractor, Walsh Construction Company of Illinois. The parties agree that the activities to be conducted by Walsh as the Owner's general contractor are activities which the Developer and/or the Owner Entity would have had to incur in any event and that the costs of such activities are Project Costs, and that CHA has no obligation under Section 3.14 or this Section 22.03 to pay for such costs.

(e) Tenant hereby grants a right of entry to Landlord, its contractors, subcontractors, agents and employees (and to DOE, its contractors, subcontractors, agents, and employees) for the purpose of performing any Covered Remediation Work to be performed after the date of this Lease by CHA and for the purpose of performing testing, preparing reports, or related activities in connection with obtaining the issuance of final NFRL(s).

**22.04 Indemnity.** Tenant shall indemnify, defend and hold harmless Landlord's Protected Persons, and any current or former officer, director, employee or agent of Landlord (collectively, the "Indemnitees") from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to: (i) a violation of Section 22.02; (ii) any violation of an NFRL; or (iii) any exacerbation of a pollution condition caused by Tenant or any contractor of Tenant or any subcontractor of a contractor of Tenant and not arising from the negligent act or willful misconduct of any Indemnitee.

**22.05 Survival.** Tenant's obligations under this Article 22 shall survive the expiration or termination of this Lease.

## ARTICLE 23

### PUBLIC HOUSING UNITS

**23.01 Right of First Refusal Agreement.** Landlord and Tenant are, concurrently with the execution of this Lease, entering into a Right of First Refusal Agreement with respect to the Public Housing Units. That Right of First Refusal Agreement is binding upon Tenant and each subsequent owner of a Public Housing Unit and shall survive the termination of this Lease.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



ARTICLE 24

HUD-REQUIRED PROVISIONS

**24.01 HUD-Required Provisions.** Notwithstanding any provision herein to the contrary, the following provisions shall be applicable during such period as the ACC and the Mixed Finance Amendment are in effect with respect to the Project or any portion thereof, and shall prevail over any other provision of this Lease:

(a) This Lease may not be amended without the prior written consent of HUD.

(b) The parties acknowledge that the proposed transfer of the site to Tenant (pursuant to this Lease), and the transfer of HOPE VI funds, public housing development and/or operating assistance from Landlord to Tenant shall not be deemed to be an assignment by Landlord of the right to receive any such funding from HUD, and Tenant shall not succeed to any rights or benefits of Landlord under the ACC, the Mixed Finance Amendment, or any HOPE VI Grant Agreement, nor shall Tenant attain any privileges, authorities, interests, or rights in or under the ACC, the Mixed Finance Amendment, or any HOPE VI Grant Agreement.

(c) The parties further acknowledge that nothing in the ACC, the Mixed Finance Amendment, any HOPE VI Grant Agreement, or any other contract or agreement between the parties shall be deemed to create a relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD.

[Signatures appear on the following pages.]

UNOFFICIAL COPY

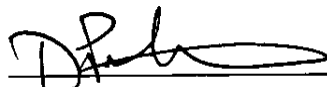
Property of Cook County Clerk's Office

# UNOFFICIAL COPY 21419216

IN WITNESS WHEREOF, this Lease is executed as of the date first written above by the duly authorized officers or representatives of the parties hereto.

## LANDLORD:

CHICAGO HOUSING AUTHORITY,  
an Illinois municipal corporation


By:   
Terry Peterson  
Chief Executive Officer

## TENANT:


West Maypole, L.P., an Illinois limited  
partnership

By: West Maypole Partners, LLC,  
its general partner

By: Brinshore, Inc., a manager

By:   
Name: RICHARD SCIORTINO  
Title: VICE PRESIDENT

By: The Michaels Development  
Company, Inc., a manager

By:   
Name: JOHN O'DONNELL  
Title: VICE PRESIDENT

J

UNOFFICIAL COPY

Property of Cook County Clerk's Office