

UNOFFICIAL COPY

This instrument was prepared by:
Gregory C. Whitehead
Albert, Whitehead, P.C.
10 North Dearborn, Suite 600
Chicago, Illinois 60602

After recording, return to:
Chicago Housing Authority
200 W. Adams St., Suite 2100
Chicago, IL 60606
Attn: Cherie Strong, Esq.



Doc#: 0515727118
Eugene "Gene" Moore Fee: \$138.00
Cook County Recorder of Deeds
Date: 06/06/2005 03:14 PM Pg: 1 of 58

BA 53877 CILC CUB
340744

GROUND LEASE
FOR A PORTION OF THE
ROOSEVELT SQUARE PHASE I DEVELOPMENT

BETWEEN

CHICAGO HOUSING AUTHORITY,
an Illinois municipal corporation, Landlord

AND

RS HOMES I LLC,
an Illinois limited liability company, Tenant

Property Address: 914 South Racine Avenue, Chicago, Illinois

DATED: as of May 1, 2005

Box 334

UNOFFICIAL COPY

GROUND LEASE

This Lease is dated as of May 1, 2005 (the "Commencement Date"), and is between Chicago Housing Authority, an Illinois municipal corporation ("Landlord"), and RS Homes I LLC, an Illinois limited liability company ("Initial Tenant"). Capitalized terms not otherwise defined herein shall have the meanings set forth in Article 2.

PREAMBLE

- A. Landlord is the record owner of the Land;
- B. Initial Tenant desires to construct a residential leasehold condominium development (the "Project") on the Land, containing the number of units, to be constructed in the Building, as are more specifically described on the Rider attached hereto and made a part hereof;
- C. The Project is part of a larger development to be known as the Roosevelt Square Phase I Development, which is to be constructed on the parcels (collectively, the "Development Parcels") described on Exhibit D attached hereto and made a part hereof.
- D. Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord on the terms and subject to the conditions herein set forth.

ACCORDINGLY, Landlord and Tenant hereby agree as follows:

ARTICLE 1

PREMISES AND TERM

1.1 Premises; Term. In consideration of the Rent to be paid and the terms, covenants, conditions, agreements and obligations to be performed and observed by Tenant as herein provided, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, to have and to hold for and during a term (the "Term") of ninety-nine (99) years commencing on the Commencement Date and expiring on April 30, 2104 (the "Expiration Date"), unless terminated or partially terminated earlier pursuant to Sections 11.1, 12.2 or 16.2(a) or extended pursuant to Section 1.2. As used herein, the term "Premises" means the real property located in the City of Chicago, Cook County, Illinois legally described on Exhibit A attached hereto and made a part hereof (the "Land"), together with: (i) Landlord's right, title and interest, if any, in and to all public or private infrastructure improvements which may now or hereafter be located thereon; (ii) all of Landlord's interest in any private easements, rights of way or other improvements appurtenant thereto; (iii) all privileges, rights, easements, hereditaments, and appurtenances thereunto belonging; and (iv) all right, title and interest of Landlord in and to any streets, passages and other rights of way included therein or adjacent thereto, other than such streets, passages and other rights-of-way dedicated to Governmental Authorities (collectively, "Appurtenant Rights"). Tenant acknowledges that, as of the date of this Lease, title to the Land is subject to: (a) the title exceptions listed on Exhibit B attached hereto and made a part hereof (collectively, the "Permitted Exceptions"); and (b) any interests or acts of or judgments against Tenant or anyone claiming or acting by, through or under Tenant.

UNOFFICIAL COPY

1.2 Landlord's Option to Purchase at Expiration of Term.

(a) The Condominium Association shall use reasonable efforts to deliver written notice to Landlord, not more than 24 months and not less than 21 months prior to the Expiration Date, of the Expiration Date and the option granted to Landlord in this Section 1.2. Failure to deliver such notice in a timely manner shall not, however, cause this Lease to terminate on the Expiration Date. If such notice is not timely delivered, and if Landlord does not deliver the Purchase Notice (hereinafter defined) to the Condominium Association on or before the 240th day prior to the Expiration Date, the Expiration Date and certain of the procedural dates specified below shall instead be extended as provided in Section 1.2(d). Landlord shall have the option (the "Purchase Option") to purchase all, but not less than all, of the Property for its appraised fair market value (the "Appraised Value") on the terms and conditions hereinafter set forth. If Landlord desires to possibly exercise the Purchase Option, Landlord shall deliver a written notice of such desire (a "Purchase Option Notice") to the Condominium Association on or before the later of: (i) 18 months prior to the Expiration Date; and (ii) 90 days after receipt of the aforesaid notice from the Condominium Association (Landlord may, at any time after the end of the 25th month prior to the Expiration Date, deliver a Purchase Option Notice without having received a notice from the Condominium Association). If Landlord delivers the Purchase Option Notice, the Appraised Value shall be determined in accordance with Article 19 unless the Condominium Association, within 60 days after receipt of the Purchase Option Notice, delivers to Landlord a certification that a Superminority of Unit Owners have voted to disapprove Landlord's purchase of the Property regardless of what the Appraised Value might be (which certification shall include a list of the Unit Owners who have so voted to disapprove Landlord's purchase, and their respective percentage interests in the Common Elements). In such event, Landlord's Purchase Option shall be null and void and Landlord shall take the actions in the last sentence of this Section 1.2(a). Within 90 days after the Appraised Value has been so determined, Landlord shall deliver a written notice to the Condominium Association stating whether Landlord has elected to proceed with such purchase (a "Purchase Notice") or waive the Purchase Option. If Landlord so delivers a Purchase Notice, Landlord's purchase of the Property shall be subject to ratification by an affirmative vote of a Supermajority of Unit Owners within 90 days after receipt of Landlord's Purchase Notice. If less than a Supermajority of Unit Owners so ratify Landlord's purchase of the Property, or if a Superminority of Unit Owners disapproves Landlord's purchase, then the Purchase Option and Landlord's exercise thereof shall be null and void. If the Purchase Option is so exercised, and the required affirmative vote of a Supermajority of Unit Owners is obtained, Landlord's purchase of the Property shall be consummated at a closing or closings to be held with each Unit Owner on such date as Landlord and each Unit Owner shall agree, which date shall be no earlier than 90 days and no later than 30 days prior to the Expiration Date. If Landlord fails to give either the Purchase Option Notice or the Purchase Notice contemplated by this Section 1.2(a), Landlord shall be deemed to have irrevocably waived the Purchase Option. If Landlord's purchase of the Property is not so ratified, or is disapproved by a Superminority of Unit Owners, or if Landlord waives or is deemed to have waived the Purchase Option, then on the Expiration Date, Landlord shall convey its reversionary interest in the Premises to or as directed by the Condominium Association, by recordable quitclaim deed, free and clear of all liens and encumbrances created by Landlord, and the Condominium Association shall take such actions as may be necessary to perpetuate the existence of the Condominium Association and the Property as condominium

UNOFFICIAL COPY

property (i.e. a fee simple condominium rather than a leasehold condominium) and preserve the existing legal relationships, ownership rights and security interests of all Unit Owners, Unit Mortgagees and other interested parties.

(b) If Landlord's Purchase Option is duly exercised and ratified, the portion of the Appraised Value of the Property to be paid to the owner of each Unit, as the purchase price for such Unit, shall be equal to the Appraised Value of such Unit.

(c) Each Unit Owner shall be obligated (and the Condominium Declaration shall so provide) to sell such Unit Owner's interest in the Property in accordance with the provisions of this Section 1.2 if Landlord's Purchase Option is duly exercised and ratified, and such Unit Owner shall execute and deliver all instruments and perform all acts necessary to effect such sale. Provided that the entire net proceeds of the sale of a Unit (i.e. the proceeds remaining after the payment of customary seller's expenses such as transfer taxes, recording fees, and closing or escrow fees, and net proration credits due to the purchaser) that is then encumbered by a Unit Mortgage (or such portion of such net proceeds as is necessary to pay in full all amounts due under such Unit Mortgage) is paid to the Unit Mortgagee at the closing, the lien of such Unit Mortgage shall automatically be deemed to be released concurrently with the closing. Such Unit Mortgagee shall, nevertheless, execute and deliver appropriate releases in recordable form.

(d) If the third sentence of Section 1.2(a) applies, the Expiration Date shall be extended if, and only if, under the timetable provided in Section 1.2(a), Landlord is not required to deliver the Purchase Notice on or before the 240th day prior to the original Expiration Date (Landlord is required to deliver the Purchase Notice on or before such 240th day only if the Appraised Value has been determined on or before the 330th day prior to the original Expiration Date) and Landlord does not, in fact, deliver the Purchase Notice on or before such 240th day. In such event, and provided that Landlord has not waived the Purchase Option in writing, the Expiration Date, and the beginning and ending dates of the period during which the closings must occur, shall each be extended by the number of days, in the period commencing on such 240th day to the day on which Landlord delivers the Purchase Notice.

1.3 Addition of Vacated Public Alleys and Rights-of-Way. 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. In the future, 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, or dedicated to any Governmental Authority in conjunction with the Project. In each case, with the prior written approval of Tenant and all Leasehold Mortgagees, 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. 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 Premises. No such amendment shall require the approval of, or need be executed by, any Unit Owner or any Unit Mortgagee. Any such vacated land acquired by Landlord shall become part of the common elements only and shall not result in any reallocation of percentage interests or adjustments to voting rights under the Condominium Declaration.

UNOFFICIAL COPY

1.4 Delivery of Possession. Landlord shall deliver possession of the Premises to Tenant on the Commencement Date, free of all interests of any third parties other than (i) the Permitted Exceptions, and (ii) any interests or acts of or judgments against Tenant or anyone claiming or acting by, through or under Tenant.

ARTICLE 2

DEFINITIONS

The following defined terms are used in this Lease and shall have the following meanings:

2.1 “Additional Rent” shall mean all sums due and payable by Tenant or required to be reimbursed to Landlord under this Lease, if any, other than Ground Rent. “Additional Rent” shall include any interest, penalties or other amounts payable by Tenant to third parties in connection with any of the foregoing and, if Landlord has paid any such required amounts on behalf of Tenant, interest payable to Landlord at the Lease Interest Rate. Any Additional Rent payable by the Condominium Association shall be part of the common expenses.

2.2 “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. “Control” shall be deemed to exist if such person or entity possesses, directly or indirectly, the power to direct the management and policies of such person or entity, whether through the ownership of voting securities, ownership interests, contract rights or otherwise. “Affiliate,” however, shall not include any Leasehold Mortgagee or Unit Mortgagee.

2.3 “Appraised Value” shall mean fair market value as determined in accordance with the provisions of Article 19.

2.4 “Appraisal Review Period” shall have the meaning set forth in Section 19.2(a).

2.5 “Appurtenant Rights” shall have the meaning set forth in Section 11.

2.6 “Bankruptcy Proceeding” shall mean any case, action or other proceeding filed or taken under the provisions of any federal, state or other bankruptcy, reorganization, debt arrangement, composition, readjustment, dissolution, liquidation, insolvency law or under any other similar law relating to or affording debtors any protection from creditors.

2.7 “Building” shall mean the building (including without limitation a low-rise or mid-rise building, a townhome unit and any ancillary building) included in and constructed as part of the Project, or any part thereof, together with any Changes and Alterations thereto constructed in accordance with Article 13.

2.8 “Business Day” shall mean a day other than a Saturday, Sunday or national banking holiday.

UNOFFICIAL COPY

2.9 **“By-Laws”** shall have the meaning set forth in Section 6.1.

2.10 **“Casualty”** shall mean any event or occurrence resulting in loss or damage to any portion of the Property, including but not limited to fire, lightning, windstorm, hail, smoke, explosion, riot, riot attending a strike or civil commotion, collision with aircraft or vehicles, vandalism and malicious mischief, sprinkler leakage, collapse, earthquake, war or public emergency, whether or not covered by insurance and regardless of the identity of the Person or Persons causing or otherwise responsible for the same.

2.11 **“Changes and Alterations”** shall have the meaning set forth in Section 13.1.

2.12 **“Claim”** or **“Claims”** shall mean any and all liabilities, obligations, losses, claims, demands, causes of action, suits, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses). **“Claim Notice”** shall have the meaning set forth in Section 14.2.

2.13 **“City”** shall mean the City of Chicago, Illinois, a municipal corporation, or any successor or successors to such City having the rights and obligations referred to herein.

2.14 **“Code”** shall mean the Internal Revenue Code of 1986, as amended.

2.15 **“Commencement Date”** shall be the date set forth in the Preamble for the commencement of the Term of this Lease.

2.16 **“Common Elements”** shall mean, with respect to those portions of the Property that have been Converted, all portions thereof, which, under the terms and provisions of the Condominium Declaration, do not constitute any part of the Units. **“Common Elements”** includes any Limited Common Elements.

2.17 **“Condemnation Proceeding”** shall mean any notice or judicial proceeding filed or issued in connection with the exercise of any power of eminent domain, condemnation or right of taking by any Governmental Authority, and shall include any agreement between Landlord, Tenant and such Governmental Authority in lieu of the filing of or in settlement of any such judicial proceeding, but shall exclude any voluntary dedication.

2.18 **“Condominium Act”** shall mean the Illinois Condominium Property Act (765 ILCS 605/1 *et seq.*), as such act may be amended from time to time to the extent any such amendment would be binding on the parties hereto.

2.19 **“Condominium Association”** shall have the meaning set forth in Section 6.1.

2.20 **“Condominium Declaration”** shall mean the instrument or instruments by which any portion or portions of the Project are lawfully subjected to the Condominium Act, as such instrument or instruments may be from time to time amended.

UNOFFICIAL COPY

2.21 “Construction Completion Deadline” shall mean date by which Initial Tenant must complete the construction of all Buildings and related Improvements comprising the Project (which date is set forth in the Rider), which date shall be extended by the period of any Unavoidable Delay.

2.22 “Conversion Date” shall mean the date on which the Property, or a portion thereof, is Converted.

2.23 “Converted” shall mean the lawful submission of the Property, or a portion thereof, to the Condominium Act.

2.24 “Development” shall mean the development described on the Rider attached hereto, of which the Project is a part, which is to be constructed on the Development Parcels.

2.25 “Environmental Agreement” shall mean that certain Remediation Agreement, dated September 1, 2004, between Initial Landlord and Initial Tenant relating to the Development.

2.26 “Environmental Event” shall mean a disposal, release, threatened release or the presence or management of Hazardous Substances on, over, under, from or affecting the Property or any portion thereof improvements in violation of any Environmental Laws that was caused or permitted by, attributed or related to or otherwise arose or occurred during the use or occupancy of the Property by Tenant or by anyone acting by, through or under Tenant and that requires Remediation.

2.27 “Environmental Laws” shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., as amended; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended; the Clean Air Act, 42 U.S.C. 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. 1251 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. 655 et seq. and any other federal, state, local or municipal laws, statutes, regulations, rules or ordinances imposing liability or establishing standards of conduct for protection of the environment.

2.28 “Event of Default” shall have the meaning set forth in Section 16.1.

2.29 “Excluded Environmental Condition” shall mean: (i) all Pre-Existing Environmental Conditions except to the extent any such Pre-Existing Environmental Condition is exacerbated by the actions or conduct of Tenant and/or its agents, contractors, subcontractors, employees, tenants or invitees; (ii) any environmental conditions in any public streets or rights of way in or adjacent to any portion of the Premises except to the extent such environmental conditions in such public streets or rights of way are caused or exacerbated by the actions or conduct of Tenant and/or its agents, contractors, subcontractors, employees, tenants or invitees; (iii) any migration of Hazardous Materials to the Premises from another site or location not within the Premises after the date of this Lease; (iv) any environmental condition at any off-site disposal facility attributable to the Hazardous Materials removed from the Premises pursuant to the Environmental Agreement and for which Initial Landlord and/or the City of Chicago is the generator pursuant to the Environmental Agreement; and (v) any environmental condition caused by Initial Landlord or its agents or contractors.

2.30 “Expiration Date” shall have the meaning set forth in Section 1.1.

UNOFFICIAL COPY

2.31 **“First Notice”** shall have the meaning set forth in Section 19.1(b).

2.32 **“501(c)(3) Entity”** shall have the meaning set forth in Section 10.4.

2.33 **“Full Restoration”** shall mean any and all work necessary to repair any damage to the Property as nearly as possible to the same condition and character as existed immediately prior to any loss due to Casualty or any taking in any Condemnation Proceeding, as the case may be, lien-free and ready for use.

2.34 **“Governmental Authority”** shall mean any federal, state and local governmental or quasi-governmental body (including their respective departments and bureaus), now existing or hereafter created, having jurisdiction at any time or from time to time during the Term over the Property or any portion thereof except Initial Landlord.

2.35 **“Governmental Requirements”** shall mean any or all statutes, ordinances, codes, rules, regulations and other requirements of any Governmental Authority.

2.36 **“Ground Rent”** shall have the meaning set forth in Section 3.1.

2.37 **“Hazardous Condition”** shall have the meaning given in the Environmental Agreement.

2.38 **“Hazardous Substances”** shall mean and include (a) any friable asbestos or asbestos-containing material, polychlorinated biphenyls, dioxins or urea formaldehyde foam insulation; (b) any petroleum or petroleum-derived products; (c) any lead-based paint; (d) any waste, substance, material, pollutant or contaminant defined as hazardous or toxic in (or for purposes of) any Environmental Law, and (e) any waste substance, material, pollutant or contaminant the presence, disposal, release or threatened release of which on, onto or from the Property (or any other property), is or would constitute an Environmental Event or is prohibited or restricted by any applicable Environmental Law.

2.39 **“Improvements”** shall mean and include: (i) the Building or Buildings to be constructed as a part of the Project and (ii) all other improvements appurtenant thereto or required in connection therewith, including without limitation all driveways, parking facilities, landscaped areas and other facilities or amenities located on the Premises, together with any renewals or replacements thereof, additions thereto and substitutions therefor; and (iii) all Changes and Alterations.

2.40 **“Indemnitee”** shall have the meaning set forth in Section 14.3.

2.41 **“Indemnitor”** shall have the meaning set forth in Section 14.3.

2.42 **“Initial Landlord”** shall mean the Chicago Housing Authority, an Illinois municipal corporation.

2.43 **“Initial Sale”** shall mean the initial sale of any Unit to any purchaser thereof who is not Tenant.

UNOFFICIAL COPY

2.44 “Initial Tenant” shall mean RS Homes I LLC, an Illinois limited liability company, and any permitted assignee of Initial Tenant to which Initial Tenant’s interest in this Lease is assigned.

2.45 “Land” shall have the meaning set forth in Section 1.1.

2.46 “Landlord” shall include Chicago Housing Authority, and its permitted successors and assigns.

2.47 “Landlord’s Estate” shall mean Landlord’s fee simple right, title and interest in the Premises (which is subject to the Tenant’s Leasehold Estate), and which includes Landlord’s reversionary interest or estate in or title to the Premises. “Landlord’s Estate” does not include any interest of Landlord in the Buildings or other Improvements.

2.48 “Lease” shall mean this instrument, as the same may hereafter be supplemented or amended.

2.49 “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 of 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%. 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.

2.50 “Leasehold Mortgage” shall have the meaning set forth in Section 10.2(a).

2.51 “Leasehold Mortgagee” shall mean the then holder or holders of any note or other documents evidencing the debt and other obligations secured by a Leasehold Mortgage.

2.52 “Limited Common Elements” shall mean those portions of the Common Elements, if any, that are designated as limited common elements in the Condominium Declaration.

2.54 “Mortgage” shall mean any instrument in the nature of a mortgage, collateral assignment of beneficial interest, security agreement or similar instrument creating a lien or security interest on the Property or any portion thereof (including any Unit) as security for any debt or giving rise (absent a waiver) to a right of redemption of any interest identified under this Lease, and any supplement thereto or any renewal, modification, consolidation, replacement or extension thereof.

UNOFFICIAL COPY

2.55 “Net Insurance Proceeds” shall mean all insurance proceeds received by Landlord or Tenant on account of any damage to or destruction of the Improvements during the Term, less the actual costs, expenses and fees, if any, incurred in connection with the adjustment of the loss.

2.56 “NFR Letter” 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, and, with respect to any underground storage tank subject to Title 16 of the Illinois Environmental Protection Act, a “No Further Remediation” letter with respect to such underground storage tank pursuant to said Title 16.

2.57 “Partial Restoration” shall mean a Restoration that is less than a Full Restoration. A Partial Restoration may be applicable when the sum of the Net Insurance Proceeds plus the 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; (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.

2.58 “Permitted Exceptions” shall have the meaning set forth in Section 1.1. “Permitted Exceptions” shall also include the easements and licenses, if any, hereafter granted or consented to by Landlord in accordance with Section 5.3.

2.59 “Person” shall mean any natural person or legal entity.

2.60 “Planned Development Ordinance” shall mean that certain Planned Development Ordinance adopted by the City Council of the City on January 14, 2004, as it may be amended hereafter.

2.61 “Plans and Specifications” shall mean the plans and specifications for the Building and other Improvements comprising the Project, which have been approved by Landlord and are described on Exhibit C attached hereto and made a part hereof, as such plans and specifications are amended from time to time with the written consent of Landlord.

2.62 “Potential Claim” shall have the meaning set forth in Section 14.2.

2.63 “Pre-Existing Environmental Condition” shall mean any Hazardous Condition present on, under or about the Land on the date of execution of the Environmental Agreement, whether known or unknown.

2.64 “Premises” shall mean the Land and Appurtenant Rights as described in Section 1.1.

2.65 “Project” shall have the meaning set forth in the Preamble.

2.66 “Property” shall mean the Premises and the Improvements.

2.67 “Protected Persons” shall mean any or all of Landlord’s (which term, for purposes of this definition, shall include the Receiver) or Tenant’s, as the context so requires, respective members,

UNOFFICIAL COPY

managers, partners, officers, directors, shareholders, employees, advisors, attorneys, consultants and Affiliates, and, with respect to Landlord (or the Receiver), shall include Landlord's (and the Receiver's) officials and Board members, and, with respect to Tenant only, shall include also the Condominium Association and the Unit Owners and, as the context so requires, the Condominium Association's respective managers, officers, directors, members, employees, advisors, attorneys, consultants and Affiliates.

2.68 "Public Improvements" shall mean any and all water, sanitary sewer or storm water trunk lines, mains and laterals and other improvements dedicated to and accepted by the City or another Governmental Authority, including without limitation those infrastructure improvements, if any, that the City is obligated to make and install pursuant to the TIF Redevelopment Agreement.

2.69 "Purchase Notice" shall have the meaning set forth in Section 1.2(a).

2.70 "Purchase Option" shall have the meaning set forth in Section 1.2(a).

2.71 "Purchase Option Notice" shall have the meaning set forth in Section 1.2(a).

2.72 "Receiver" shall mean The Habitat Company, LLC and Daniel E. Levin, jointly, solely in their capacity as court-appointed receiver in *Gautreaux v. CHA et al.*, Case Nos. 66 C 1459 and 1460 (Note: *Gautreaux v. CHA et al.*, No. 66 C 1460, and the consent decree thereunder was terminated in 1997).

2.73 "Remediation" shall mean the cleanup activity or other remedial action required by any Environmental Law or any NFR Letter, or by any Governmental Authority under any Environmental Law.

2.74 "Rent" shall mean and include all Ground Rent and all Additional Rent payable by Tenant under this Lease.

2.75 "Restoration" shall mean a Full Restoration or Partial Restoration, as applicable.

2.76 "Substantially Commenced" shall mean, with respect to any Building to be constructed, that the footings and foundation walls of such Building have been completed (including all necessary excavation work).

2.77 "Substantially Complete" shall mean, with respect to Units in any Building, that the construction of such Units, the Building, and the other Improvements and any Public Improvements serving such Building, is sufficiently complete such that the Units in such Building (x) are ready for closings on an Initial Sale or (y) would be so ready within thirty (30) days after the execution of a contract for a Initial Sale but Tenant has elected not to complete such Unit prior to the execution and delivery of such a contract, or (z) are ready for occupancy, as evidenced by (i) the issuance by the City of partial certificates of occupancy, or (ii) if the City is not then issuing partial certificates of occupancy for individual Units within such Building, Tenant or any other Unit Owner, occupant or tenant of such Building of the Project is in actual occupancy or could be in actual occupancy of such Units, in either case

UNOFFICIAL COPY

irrespective of whether any minor or weather-dependent portions or so-called “punch list items” remain unfinished or subject to correction or completion.

2.78 **“Supermajority of Unit Owners”** shall mean Unit Owners owning not less than seventy-five percent (75%) of the total undivided percentage interests in the Common Elements.

2.79 **“Superminority of Unit Owners”** shall mean Unit Owners owning more than twenty-five percent (25%) of the total undivided percentage interests in the Common Elements.

2.80 **“Taxes”** shall mean any and all taxes, assessments, water and sewer rates and charges imposed by any Governmental Authority on or which become a lien on the Property or any portion thereof or any interest therein, and all occupancy taxes, leasing taxes, rent taxes or similar taxes (whether or not imposed on or measured by all or any portion of the Rent paid or payable by Tenant), or on any payments to Landlord with respect thereto, and all other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever including, but not limited to, assessments on the Landlord’s Estate, and assessments for public improvements or benefits, as well as any and all of the foregoing imposed on Landlord that are, in whole or in part, in substitution for or in lieu of any of the foregoing.

2.81 **“Tenant”** shall mean, with respect to any portion of the Property that has not been Converted, Initial Tenant, and any assignee or transferee of Initial Tenant’s interest under this Lease permitted pursuant to Article 6 and Section 10.1. With respect to any Converted portion of the Property, “Tenant” shall mean the Condominium Association, acting on behalf of all Unit Owners, as described in Section 6.5.

2.82 **“Tenant’s Leasehold Estate”** shall mean the leasehold estate created by this Lease.

2.83 **“Term”** shall have the meaning set forth in Section 1.1.

2.84 **“Termination Date”** shall mean any date prior to the Expiration Date on which this Lease is partially terminated or terminated pursuant to Sections 11.1, 12.2 or 16.2.

2.85 **“Termination Notice”** shall have the meaning set forth in Section 12.2(a).

2.86 **“Third Appraiser”** shall have the meaning set forth in Section 19.2(a).

2.87 **“Third Party Arbitration Service”** shall have the meaning set forth in Section 18.1(b).

2.88 **“TIF Lender”** shall mean any lender providing funds secured by a pledge of incremental taxes from the Property or any portion thereof.

2.89 **“TIF Redevelopment Agreement”** shall mean that certain Redevelopment Agreement, dated as of _____, 2005, between Initial Tenant and the City relating to the Development.

UNOFFICIAL COPY

2.90 **“Turn-Over Date”** shall mean the date on which the election of the first Unit Owner Board of Managers of the Condominium Association occurs pursuant to the Condominium Act.

2.91 **“Unavoidable Delays”** shall mean delays due to strikes, lockouts, acts of God, inability to obtain materials or commercially reasonable substitutes for such materials, governmental restrictions, enemy action, prohibition of access to the Property, civil commotion, fire, extreme weather conditions, unavoidable casualty or similar causes, provided such similar causes are beyond the reasonable control of Tenant or Landlord, as the case may be, and with respect to Tenant shall also include any delay arising out of: (a) Landlord’s failure to take any action required by the terms of this Lease to be taken by Landlord within the time period or periods specified hereunder for such action; (b) the failure of the City to timely complete the Public Improvements necessary for the Tenant to construct the Buildings; (c) unforeseen soil conditions, such as underground storage tanks and building foundations; and (d) delays caused by Landlord or the Receiver affecting the construction of the Project.

2.92 **“Unit Lease Assignment”** shall have the meaning set forth in Section 6.3(a).

2.93 **“Unit Mortgage”** shall have the meaning set forth in Section 6.4(a).

2.94 **“Unit Mortgagee”** shall mean the then holder or holders of any note or other documents evidencing the debt and other obligations secured by a Unit Mortgage.

2.95 **“Unit Owner”** shall mean the then owner or owners of a Unit, and shall include the Initial Tenant with respect to any Units owned by the Initial Tenant.

2.96 **“Units”** shall mean, with respect to those portions of the Property that have been Converted, the units as described and delineated in the Condominium Declaration. A "Unit" shall include such Unit's undivided percentage interest in the Common Elements and all Limited Common Elements appurtenant to such Unit, if any.

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 PAYMENTS

3.1 **Ground Rent.** The full ground rent (“Ground Rent”) due and owing from Tenant to Landlord for the Term of this Lease is \$99.00, which has been pre-paid in full concurrently with the execution of this Lease.

3.2 **Other Costs, Expenses and Obligations; Net Lease.** The Ground Rent is intended to be net to Landlord for the Term of this Lease, except as provided in Section 4.2. Accordingly, Tenant shall be responsible for the payment of all costs and expenses and the performance of all obligations of every kind relating to the Property and Landlord’s Estate that may arise or accrue during the Term, including

UNOFFICIAL COPY

but not limited to any and all Taxes, but not including the obligations of Landlord under the Environmental Agreement or under applicable law with respect to any Excluded Environmental Condition. All of such costs, expenses and obligations payable or performable by the Condominium Association shall be part of the common expenses. In addition, except as provided in the Environmental Agreement, Initial Tenant shall be responsible, at its sole cost and expense, for the procurement of any and all necessary permits, licenses or other authorizations from Governmental Authorities and private utilities as may be required for the lawful and proper construction and occupancy of the Property or any portion thereof, and for the Conversion thereof. The Condominium Association shall be responsible, at its sole expense, and as part of the common expenses, for the procurement of such permits, licenses or other authorizations as may be required for the occupancy, use and operation of any portion of the Property that has been Converted.

ARTICLE 4

TAXES

4.1 Responsibility for Payment of Taxes.

(a) All Taxes, other than Taxes assessed against any Unit pursuant to a separate bill, shall be paid before any fine, penalty, interest or cost may be added thereto for the non-payment thereof: (i) by Initial Tenant as to any portion of the Property that has not been Converted; and (ii) by the Condominium Association (or the Initial Tenant to the extent required by the Condominium Act) as to any portion of the Property that has been Converted. Any Taxes payable by the Condominium Association shall be part of the common expenses (except to the extent that the Initial Tenant is required to pay such Taxes pursuant to the Condominium Act).

(b) From and after the date of the issuance of separate bills for Taxes assessed against a Unit, the Unit Owner of such Unit shall pay all Taxes allocable to such Unit Owner's Unit that are separately billed.

(c) Notwithstanding anything contained in Sections 4.1(a) or 4.1(b), if any Taxes relate to a fiscal period of the taxing authority with respect to which is partially included within the Term, the amount of such Taxes shall be adjusted as between Landlord and Tenant so that Landlord pays that portion of such Taxes that are allocated to the part of such fiscal period included in the period of time after the Expiration Date or prior to the Commencement Date, as the case may be, and Tenant pays the remainder of such Taxes.

(d) If, by law, any Taxes are payable, or may at the option of the taxpayer be paid, in installments, the party obligated for the payment of such Taxes under this Section 4.1 may elect to pay the same, together with any accrued interest payable on the unpaid balance of such Taxes, in installments as the same respectively become due and before any fine, penalty, interest or cost may be added thereto for the non-payment of any such installment and interest. Such party's obligation to make such payments shall survive the expiration or termination of this Lease.

UNOFFICIAL COPY

(e) 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 that may be available for the Landlord's Estate.

4.2 Landlord's Taxes. Nothing contained in this Lease shall require Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax imposed on Landlord, or any income, excess profits or revenue tax imposed on Landlord, except that Tenant shall pay (a) any such tax which is, in whole or in part in substitution for or in lieu of any other taxes which Tenant is obligated to pay under Section 4.1, and (b) any rent tax described in Section 4.7 which is not, in whole or in part, in substitution for or in lieu of any tax which Landlord is obligated to pay pursuant to this Section 4.2.

4.3 Proof of Payment. Initial Tenant and the Condominium Association, as the case may be, shall deliver to Landlord, promptly upon request, reasonable proof of the payment of Taxes that are obligated to be paid by such Person pursuant to this Lease.

4.4 Notices of Taxes. Landlord shall send to Initial Tenant or to the Condominium Association, as appropriate, within 30 days after Landlord's receipt thereof, copies of any notices of Taxes (and notices of assessment and any other information concerning Taxes) received by Landlord from any Governmental Authority; provided, however, that Landlord's failure to send any such notice to Initial Tenant or the Condominium Association shall not relieve Tenant from any obligation hereunder if Tenant has actual notice of such Taxes or if Tenant is not materially damaged or prejudiced by such failure.

4.5 Contesting Taxes.

(a) Each party obligated to pay any Taxes pursuant to this Article 4 shall have the right to contest the amount or validity of any Taxes payable by such party, by appropriate legal proceedings. This right shall not be deemed or construed in any way to relieve, modify or extend the obligation to pay any Taxes at the time and in the manner provided in this Article 4.

(b) Initial Tenant or the Condominium Association, as the case may be, shall promptly notify Landlord of its intent to contest any Taxes. If necessary and requested in writing to do so, Landlord shall join in any proceeding therefor, in which event the requesting party shall reimburse Landlord for all costs and expenses, including attorneys' fees, incurred by Landlord in connection therewith.

4.6 Tax Parcel Divisions. Initial Tenant shall file any necessary petitions, applications or other instruments with the appropriate Governmental Authority to obtain separate tax parcel permanent index numbers for each lot comprising the Land (and separate tax parcel permanent index numbers for Landlord's Estate in those lots and for the Tenant's Leasehold Estate in those lots, if applicable) and, upon the recording of the Condominium Declaration, for each Unit. Landlord shall, at Tenant's sole expense, cooperate in good faith in such actions. Tenant shall make available to Landlord, at Tenant's sole expense, copies of any surveys and plats prepared in connection with any such filing.

4.7 Rent Tax. If, at any time during the Term of this Lease, a tax or excise on rents or other tax, however described, is levied or assessed by any Governmental Authority against Landlord or upon

UNOFFICIAL COPY

the receipt of rent such as the Ground Rent and/or the Additional Rent, Initial Tenant or the Condominium Association, as applicable, shall pay and discharge such tax or excise on rents or other tax but only (a) to the extent of the amount thereof which is lawfully assessed or imposed upon Landlord and that was so assessed or imposed as a direct result of (i) Landlord's ownership of the Premises, (ii) this Lease, or (iii) the Rent payable under this Lease, and (b) if such tax is not a tax required to be paid by Landlord under Section 4.2 or Section 4.4. The payment to be made by Initial Tenant or the Condominium Association, as the case may be, pursuant to this Section 4.7 shall be made before any fine, penalty, interest or costs may be added thereto for the non-payment thereof, and Initial Tenant or the Condominium Association, as applicable, shall furnish to Landlord reasonable evidence of such payment promptly upon request. Such tax or excise on rents or other tax referred to in this Section 4.7 shall be Additional Rent.

ARTICLE 5

CONSTRUCTION OF THE PROJECT

5.1 Construction of the Project. Initial Tenant is obligated to construct the Project on the Premises in accordance with various agreements entered into between Initial Tenant and Landlord (and/or the Receiver). Initial Tenant shall Substantially Complete the construction of the Project prior to the Construction Completion Deadline. The recording of a certificate of completion executed by Landlord or the Receiver with respect to the Project, or any Building or Units therein, shall be conclusive evidence that the Project, or such Building or Units, has been constructed in accordance with all such agreements. If Landlord has the authority to issue such a certificate of completion instead of the Receiver, Landlord agrees to, within fifteen (15) business days after receipt of a written request therefor (which notice shall be accompanied by a certificate of occupancy for a Building located thereon or, with respect to Units, a partial certificate of occupancy for such Units): (a) issue a certificate of completion with respect to Building or Units; or (b) state in writing Landlord's reasons for refusing to issue such certificate.

5.2 Title to Buildings and Improvements. At all times during the Term of this Lease, the Buildings and all other Improvements (exclusive of any Public Improvements), shall, whether or not affixed to the Land, be the property of Initial Tenant, the Unit Owners or the Condominium Association as to their respective interests in the Property or portion thereof, as may be applicable from time to time, subject always to the terms of this Lease. Notwithstanding the foregoing, if, and only if, this Lease is terminated or partially terminated pursuant to Sections 11.1, 12.2 or 16.2(a) prior to the Expiration Date, or if Landlord purchases the Property in accordance with Section 1.2, then title to the Buildings and all other Improvements (or, in the case of a partial termination, the Buildings and other Improvements on the terminated portion) shall automatically vest in Landlord from and after such date without any act or the recording of any instrument on the part of Landlord or Tenant.

5.3 Utility Easements. The parties acknowledge that it may become necessary or desirable 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 Property, or for purposes other than to provide utility services. All such easements and licenses shall be subject to the prior written consent of Landlord, which shall not be unreasonably withheld or delayed if for utility services (Landlord's consent to easements or licenses for other purposes may be withheld, granted or

UNOFFICIAL COPY

conditioned in Landlord's sole and absolute discretion). If required, Landlord shall grant or join with Tenant in the grant of such easements and licenses, so as to subject Landlord's fee simple interest in the Land to such easements and licenses. All costs in connection with such easements and licenses shall be borne by Tenant.

ARTICLE 6

DEVELOPMENT OF THE PREMISES AS A RESIDENTIAL CONDOMINIUM DEVELOPMENT

6.1 Condominium Declaration. Prior to the Initial Sale of any Unit, Initial Tenant shall execute, acknowledge and record in the Office of the Recorder of Cook County, Illinois, a Condominium Declaration, shall cause the incorporation and organization of an Illinois not-for-profit corporation to act as the Unit Owners' association in accordance with the Condominium Declaration and the Condominium Act ("Condominium Association") and shall cause the Condominium Association to adopt by-laws ("By-Laws"), in each case in full compliance with the provisions and requirements of the Condominium Act. Landlord agrees, at Tenant's sole expense, to execute and deliver any and all documents required of Landlord in order to: (i) submit the Property to the Condominium Act as a leasehold condominium; (ii) create the Condominium Association; and (iii) construct the Project as a residential condominium development with other such uses as shall be permitted by the Planned Development Ordinance. If the Project is to be developed in phases, and portions of the Property are to be subjected to the Condominium Declaration from time to time, Landlord agrees to execute at Tenant's expense, amendments or supplements to the Condominium Declaration and such other documents as are necessary to subject such portions of the Property to the Condominium Declaration, as requested by Initial Tenant. The Condominium Declaration shall be subject to Landlord's prior written consent and shall provide, among other things, that:

- (a) all Rent due to Landlord under this Lease shall be part of the common expenses;
- (b) the Condominium Association shall assess and collect from all Unit Owners, as part of the common expenses, all amounts that may become payable as Rent under this Lease;
- (c) the Condominium Association shall enforce, for the benefit of Landlord, any provisions of this Lease and the Condominium Declaration that require actions by Unit Owners;
- (d) by joining in the execution of the Condominium Declaration, as ground lessor, Landlord does not assume any of the obligations or liabilities of the developer under the Condominium Declaration or the Condominium Act;
- (e) notwithstanding the Unit Lease Assignments, in any action to enforce the obligations of Tenant as to any portion of the Property that has been Converted, Landlord need only name the Condominium Association as defendant and Landlord need not name any Unit Owner as a defendant in such action;

UNOFFICIAL COPY

(f) the Condominium Declaration may not be amended (except to make technical corrections, modifications to the unit and parking configurations that do not modify the exterior dimensions or location of the Building and corresponding modifications to percentage ownership interests and for add-on amendments) without Landlord's prior written consent, and any amendment to the Condominium Declaration that requires such consent that is recorded without such consent or the deemed consent of Landlord as hereinafter provided shall be null and void and of no force or effect; Landlord shall be given not less than thirty (30) days prior written notice of any proposed amendment; Landlord shall not unreasonably withhold or delay its consent to any proposed amendment that does not adversely affect the rights, powers, privileges or interest of Landlord. Landlord may, in Landlord's sole and absolute discretion, withhold, grant or condition its consent to any proposed amendment that adversely affects its rights, powers, privileges or interest; provided that if Landlord fails to respond in writing to a request for approval of any such amendment within such thirty (30) day period, Landlord's consent thereto shall be deemed to be given if such request includes a notice to Landlord of such deemed consent if Landlord fails to respond within such thirty (30) day period; and

(g) the foregoing provisions (among others in the Condominium Declaration) are expressly for the benefit of Landlord.

6.2 Covenants of Condominium Association. The obligations of Tenant under this Lease shall be covenants running with the land (i.e. the Tenant's Leasehold Estate), and shall be binding upon Initial Tenant (and any successor to the Tenant's Leasehold Estate in the Property or any portion thereof) and the Condominium Association (acting on behalf of all Unit Owners) with respect to all portions of the Property that have been Converted.

(a) Unless Landlord otherwise agrees in writing, the Condominium Association shall at all times conduct its business in accordance with the requirements of the Condominium Act, the Condominium Declaration and the By-Laws; and

(b) Landlord shall be a third-party beneficiary of all of the terms and provisions of the Condominium Declaration which expressly benefit Landlord or which require the Condominium Association or the Unit Owners to perform any obligations thereunder for the benefit of Landlord, or to perform any obligations of Tenant under this Lease.

6.3 Assignment of Undivided Interests in this Lease to Unit Owners and to the Condominium Association; Release of Initial Tenant.

(a) As part of the closing of each Initial Sale of each Unit, the instrument of conveyance of such Unit to the purchaser of such Unit shall be deemed to include (even though the same is not expressly mentioned or described therein) an assignment (a "Unit Lease Assignment") by Initial Tenant to such purchaser of an undivided interest in Tenant's Leasehold Estate in that portion of the Property that has been Converted. Notwithstanding anything to the contrary contained in this Lease: (i) no purchaser of a Unit shall be deemed, by virtue of such Unit Lease Assignment, to have assumed any obligation of Initial Tenant under this Lease: (y) with respect to the construction of the Project; or (z) with respect to the obligations under the

UNOFFICIAL COPY

Environmental Agreement; and (ii) no purchaser of a Unit shall be obligated to perform any obligation of Tenant under this Lease, all of the obligations under this Lease are assumed and are to be performed by the Condominium Association on behalf of all Unit Owners (however, each Unit Owner shall be obligated, in common with all of the other Unit Owners, to pay assessments for all common expenses). Each subsequent instrument of conveyance of such Unit shall be deemed to include a Unit Lease Assignment to the grantee (even though the same is not expressly mentioned or described therein), and the acceptance of such instrument by the grantee shall be deemed to be a non-recourse assumption of such Unit Lease Assignment by such grantee.

(b) Upon the execution and delivery by Initial Tenant, and acceptance by the purchaser, of the instrument of conveyance to a Unit in accordance with this Section 6.3, Initial Tenant shall be automatically released from its obligations under this Lease with respect to that Unit, other than those obligations arising or relating to the period prior to the date of such transfer. Immediately following the Initial Sale of the last Unit in the Project, Initial Tenant shall, except as provided in Section 6.3(c), be completely released from all obligations under this Lease, which obligations shall then be those of the Unit Owners and/or the Condominium Association, as provided in this Article VI.

(c) Nothing contained in this Section 6.3 shall relieve: (i) Initial Tenant or any other owner of a Unit that has not yet been the subject of an Initial Sale from complying with its pre-closing obligations as a Unit Owner or under a contract for the Initial Sale of such Unit or for pre-closing obligations as a Unit Owner; or (ii) Initial Tenant from performing: (x) any post-closing obligations under any contract for any previously closed Initial Sale; (y) any then remaining obligations as a developer under the Condominium Act; or (z) any obligations with respect to the construction of the Project or under the Environmental Agreement.

6.4 Rights of a Unit Owner to Assign, Mortgage and Transfer a Unit.

(a) At all times, a Unit Owner shall have the right, without the consent of Landlord or Tenant, but subject to the terms and conditions of the Condominium Declaration and the By-Laws, to sell, lease or mortgage such Unit Owner's Unit pursuant to a Mortgage (any Mortgage on a Unit, and any amendment thereto or any modification renewal, replacement or extension thereof, being referred to herein as a "Unit Mortgage"). No Unit Mortgage shall encumber any portion of Landlord's Estate.

(b) A Unit Mortgage shall not operate to assign or transfer, other than as collateral security, the Unit Owner's undivided interest in Tenant's Leasehold Estate to the Unit Mortgagee, nor shall any Unit Mortgagee, as such, be deemed an assignee or transferee of such undivided interest so as to require the Unit Mortgagee, as such, to assume the performance of any obligation of the Unit Owner hereunder. In addition, the consent of Landlord shall not be required for any sale of a Unit Owner's undivided interest in and to Tenant's Leasehold Estate in any proceedings for the foreclosure of any Unit Mortgage, or the assignment or transfer of the Unit in lieu of the foreclosure of any such Unit Mortgage. However, any purchaser at a foreclosure sale and assignee or transferee in lieu of the foreclosure of a Unit Mortgage shall have all of the rights and obligations of the Unit Owner of such Unit for so long as such purchaser, assignee or transferee

UNOFFICIAL COPY

remains the owner of such Unit. For purposes of this Section 6.4(b), the purchaser, assignee or transferee shall be deemed to become the owner upon the earlier to occur of: (i) the entry of an order confirming the sale of the Unit pursuant to a judgment of foreclosure and the expiration of all applicable redemption and reinstatement periods; (ii) the issuance of an order placing the Unit Mortgagee or its designee in possession; (iii) the issuance of an order appointing a receiver with respect to such Unit; and (iv) the voluntary transfer of the Unit by the Unit Owner to the Unit Mortgagee or its designee by a deed or other transfer in lieu of foreclosure.

6.5 Condominium Association Representative of Unit Owners; Obligations of Tenant.

The Condominium Association shall be the representative of the Unit Owners in all matters regarding this Lease. From and after the Conversion Date, the Condominium Association shall have rights and obligations of Tenant under this Lease with respect to all portions of the Property that have been Converted, and the Condominium Association shall perform or cause such obligations to be performed. Initial Tenant shall retain the rights and obligations of Tenant as to all portions of the Property that have not yet been Converted. Neither the Condominium Association nor the Unit Owners shall have: (a) any rights or obligations with respect to any portion of the Property that has not yet been Converted, or (b) any rights or obligations of Initial Tenant hereunder.

ARTICLE 7

USE OF PREMISES; COMPLIANCE WITH REQUIREMENTS; MAINTENANCE AND REPAIR

7.1 Use of Premises. At all times during the Term of this Lease, the Property shall be used by Tenant, the Condominium Association and the Unit Owners as a multi-unit residential condominium development, together with such other uses as are permitted by or consistent with the Planned Development Ordinance.

7.2 Conformity with Legal and Insurance Requirements. Both Initial Tenant and the Condominium Association, as applicable, shall keep or cause the Property to be kept in conformance with: (a) all applicable Governmental Requirements, other than with respect to any Excluded Environmental Condition; and (b) the requirements of all policies of insurance maintained in force on or with respect to the Property or any portion thereof. Notwithstanding the foregoing, Initial Tenant, with respect to any portion of the Property not yet Converted, and the Condominium Association with respect to any portion of the Property that has been Converted, shall have the right to contest, by appropriate legal proceedings, any Governmental Requirement, provided that the nature of such legal proceedings is such that, during the pendency of such proceedings, the proceedings shall operate to prevent the sale of Landlord's Estate or any portion thereof. Landlord shall cooperate in all reasonable respects in connection with such contest.

7.3 Maintenance and Repair of Premises.

(a) Initial Tenant shall maintain all portions of the Property, at its sole cost and expense, prior to the date on which such portions are Converted. After any portion of the Property has been Converted, the Condominium Association shall maintain all portions of the Property that

UNOFFICIAL COPY

have from time to time been Converted, with all expenses being common expenses under the Condominium Declaration (except to the extent that Initial Tenant is required to pay such expenses itself).

(b) For purposes of this Section 7.3, “maintain” shall mean make, install or furnish all repairs, replacements, renewals, alterations, additions and betterments necessary to keep the Property in compliance with all applicable Governmental Requirements, except that such obligations shall not apply to any Excluded Environmental Condition.

7.4 Covenant Against Waste. Tenant covenants not willfully to do or willfully to suffer any waste to the Premises, the Buildings or the other Improvements, or any portion thereof.

ARTICLE 8

INSURANCE

8.1 Property Damage Insurance for Common Elements and Limited Common Elements. The Condominium Association shall maintain the following insurance with respect to those portions of the Property that have been Converted:

(a) property damage insurance covering the Buildings and other Improvements located on such portion of the Property, including the Common Elements, to the extent required by the Condominium Act or the Condominium Declaration; and

(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 (which are part of any Buildings) 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 reasonable and customary (and which are available) for similar projects and uses in the City of Chicago.

Such insurance shall include a so-called “cost of clearing” endorsement covering cost of clearing debris and returning the Land to grade in the event any Building or other Improvements are not rebuilt after the occurrence of any Casualty.

8.2 Liability and Other Insurance Coverages for Condominium. The Condominium Association shall maintain the following kinds and amounts of insurance with respect to those portions of the Property that have been Converted:

(a) 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 contractual liability, and having limits of liability equal to the greater of: (i) \$1,000,000 per occurrence / \$2,000,000 in the aggregate; and (ii) limits that are then reasonable and customary for similar projects and uses in the City of Chicago (which limits may be by means of primary only or primary and umbrella policies issued on a “following form” basis); and

UNOFFICIAL COPY

(b) such other liability insurance for such coverages and in such amounts as is reasonable and customary for similar projects and uses in the City of Chicago.

All of the foregoing policies of insurance shall: (i) name Landlord and, if obtainable, Landlord's Protected Persons as additional insureds with respect to all liability coverages, (ii) provide that any loss shall be payable as therein provided notwithstanding any act or negligence of Landlord, Tenant or any Unit Owner or other occupant of the Property which might otherwise result in a forfeiture of said insurance, and (iii) be primary with respect to Landlord and, if obtainable, Landlord's Protected Persons, but only with respect to any claim arising solely out of activities or occurrences relating to the Property, and the policies shall contain appropriate endorsements to such effect. Landlord shall, from time to time, provide Tenant in writing with the specific names of such of any Landlord's Protected Persons that Landlord wishes to have separately named as additional insureds, if obtainable, in any policies required pursuant to this Section 8.2.

8.3 Responsibility for Obtaining and Maintaining Insurance Prior to Conversion.

(a) Initial Tenant, at its sole cost and expense, shall procure and maintain all property damage and other insurance required under this Lease or by any Leasehold Mortgagee with respect to all portions of the Property that have not yet been Converted.

(b) Initial Tenant, as the developer under the Condominium Act, shall procure and maintain, with respect to all portions of the Project that have been Converted, all property damage and other insurance required under Sections 8.1 and 8.2 until the Turn-Over Date, after which the board of managers of the Condominium Association shall procure and maintain such insurance.

8.4 Approval and Evidence of Insurance. All insurance shall be secured from duly licensed insurers. Upon the execution of this Lease and thereafter upon receipt of a written request from Landlord, Tenant shall deliver to Landlord true, correct and complete copies of all insurance policies (including amendments, renewals or replacements thereof), certified by the respective insurers, or other evidence of the existence or continuation of all required insurance, together with evidence reasonably satisfactory to Landlord of the payment of the applicable premiums thereon. In the event actual policies are not available at such time, Tenant shall deliver binders or certificates evidencing such insurance and shall deliver the policies required as soon as practicable thereafter.

8.5 No Separate Insurance. Tenant shall not obtain separate insurance concurrent in form or contributing in the event of a loss with that required by this Article to be furnished by Tenant unless Landlord is included therein as an additional insured or named insured (as the case may be) with losses payable as provided in this Lease. Tenant shall give Landlord notice it has procured any such separate insurance and shall deliver evidence thereof to Landlord as provided in Section 8.4.

8.6 Notice of Cancellation. All insurance required pursuant to this Article 8, to the extent obtainable, shall contain an agreement by the insurers that such coverage shall not be canceled or not renewed without at least 30 days' prior written notice to Landlord, except that only ten days' notice shall be required with respect to cancellation or non-renewal due to non-payment of premiums.

UNOFFICIAL COPY

8.7 Adjustment of Losses. Losses shall be adjusted in accordance with Article 12.

8.8 Renegotiation; Disputes. Landlord and the Condominium Association shall negotiate in good faith from time to time what constitutes reasonable and customary coverages and coverage amounts in light of changing practices in the insurance industry, customarily available coverages and costs thereof; provided, however, that Landlord may not require insurance coverages or changes in insurance coverages with respect to any portion of the Property that has been Converted that violate the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, the Federal Housing Administration, the Department of Veteran's Affairs (formerly known as the Veteran's Administration), or any other Governmental Authority acting in its capacity as a primary or secondary mortgage market participant, although Landlord may require more stringent insurance coverages provided Landlord's requirements are not unreasonable and are customary. Disputes under this Article 8 shall be determined by mediation followed by arbitration pursuant to Article 18, except that the arbitrator or arbitrators selected shall be a person or persons of recognized standing in the insurance industry.

ARTICLE 9

LIENS

9.1 No Authority To Create Liens Against Landlord's Interest. Tenant shall have no right, authority or power to bind Landlord for the payment of any claim for labor or material or for engineering or architectural fees, or for any charge or expense incurred in the erection, construction, repair, renewal, replacement, reconstruction, alteration, restoration, maintenance, operation or management of the Project or the Property, or any portion thereof, nor to subject the Landlord's Estate, or any portion thereof, to any lien or claim for lien for any labor, material, service (including management services) or for any other charge or expense incurred in connection therewith. In addition, Tenant shall not be considered the agent of Landlord in authorizing or conducting any such work or in the management or operation of the Project. 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, or any service rendered at the Property for Tenant or any Unit Owner and that no mechanic's or other lien for such work or materials or services shall attach to or affect the Landlord's Estate, unless specifically ordered by Landlord in writing.

9.2 No Liens, Charges, or Encumbrances Against Landlord's Estate. Subject to Section 9.3, Tenant, at all times, shall keep the Landlord's Estate free and clear of mechanics', materialmen's, and other liens, and all charges, claims and encumbrances caused or created by Tenant or anyone claiming by, through or under Tenant.

9.3 Tenant's Duty to Obtain Discharge of Liens Against Premises. If any claim for lien, or any mechanics' or other lien, charge, or order for the payment of money or other encumbrance shall be filed against Landlord or any portion of the Property (whether or not such claim, lien, charge, order, or encumbrance is valid or enforceable as such), other than those resulting from an act of Landlord or any employee or agent of Landlord or any environmental lien arising from an Excluded Environmental Condition, Tenant shall indemnify and hold Landlord harmless against and from all Claims resulting therefrom. In addition, if any such lien, charge, order or encumbrance shall be filed against the

UNOFFICIAL COPY

Landlord's Estate, or any portion thereof, Tenant, at its own cost and expense, after written notice from Landlord requesting the same, shall cause same to be discharged of record or bonded or insured over within 90 days after such notice; and if Tenant fails to comply with the foregoing provisions, Landlord may discharge or bond or insure over any such claim, lien, charge, order, or encumbrance. Tenant shall reimburse Landlord upon demand for all costs, expenses, and other sums of money in connection therewith (as Additional Rent) with interest at the Lease Interest Rate from the date of Landlord's expenditure. Landlord may not so discharge or remove any lien, nor shall Tenant be deemed to be in breach of Section 9.2, if Tenant is in good faith contesting such lien, by appropriate legal proceedings; provided the nature of such legal proceedings is such that, during the pendency of such proceedings, they shall operate to prevent the sale of Landlord's Estate or any portion thereof.

ARTICLE 10

ASSIGNMENTS, SUBLEASES, MORTGAGES AND SALES

10.1 Assignment by Initial Tenant.

(a) Except as specifically permitted under Sections 10.1(b) and 10.2 or elsewhere in this Lease, Initial Tenant shall not, under any circumstance, whether voluntary or involuntary, or by operation of law, assign or transfer the Property or this Lease, without in each case first obtaining the prior written consent of Landlord, which consent may be granted, withheld, or granted with such conditions as Landlord may require, in Landlord's sole and absolute discretion.

(b) Landlord's consent shall not be required in connection with: (i) the assignments or transfers in connection with Initial Sales of Units or any subsequent sale of a Unit; (ii) assignments or transfers to or by a Leasehold Mortgagee or its nominee exercising its rights and remedies under a Leasehold Mortgage (provided that notice of any such transfer is given by the Leasehold Mortgagee to Landlord) or to or by a Unit Mortgagee exercising its rights under a Unit Mortgage; (iii) the granting of licenses or easements in connection with the development of the Project or the operation of the Property; or (iv) the granting of security interests in personal property, trade fixtures and trade equipment.

10.2 Mortgage by Initial Tenant.

(a) Initial Tenant may grant one or more Leasehold Mortgages for the purpose of financing the construction of the Project, and refinancing such Leasehold Mortgages, for any amounts and upon any terms desired by Initial Tenant. Any Leasehold Mortgage, and any amendment thereto or any modification renewal, replacement or extension thereof, is referred to herein as a "Leasehold Mortgage". No Leasehold Mortgage or other Mortgage shall extend to or affect any portion of Landlord's Estate.

(b) Initial Tenant shall, upon execution of any Leasehold Mortgage (including any amendment thereto or assignment thereof), provide to Landlord: (i) a copy of such Leasehold Mortgage, certified by the Initial Tenant as being a true, correct and complete copy thereof; and

UNOFFICIAL COPY

(ii) written notice containing the name and address of the then Leasehold Mortgagee if such Leasehold Mortgagee does not include a notice provision providing such information.

(c) Initial Tenant acknowledges that: (A) the only reason that Landlord is leasing the Premises to Initial Tenant is so that the Project will be constructed thereon, the Property Converted, and the Units sold; and (B) if Initial Tenant fails to Substantially Complete the construction and Conversion of any portion of the Project prior to the Construction Completion Deadline, and such failure is not cured by Initial Tenant or any Leasehold Mortgagee or purchaser at a foreclosure sale, prior to the expiration of the applicable cure periods provided in this Lease, then Landlord may, except as provided in Section 10.2(d) and subject to the rights of any Leasehold Mortgagee or purchaser at a foreclosure sale granted in this Section 10.2, terminate this Lease as to the portions of the Property not yet Converted. By accepting a Leasehold Mortgage, each Leasehold Mortgagee acknowledges and agrees to the preceding sentence, subject to Section 10.2(d).

(d) If the construction of a Building on the Property has been Substantially Commenced and if a Leasehold Mortgagee has disbursed proceeds of its loan to pay for the so-called "hard costs" of such construction, then Landlord may not terminate this Lease with respect to the Property (or such phase).

(e) If the Project to be constructed on the Property is to be constructed in phases then, in order to give the Leasehold Mortgagee an opportunity to realize the value of the entire Property as security for its loan, Landlord will not terminate this Lease with respect to those portions of the Property comprising phases on which the construction of a Building has been Substantially Commenced, provided that the Leasehold Mortgagee proceeds in accordance with the remaining provisions of this Section 10.2(e). Landlord shall give each Leasehold Mortgagee notice of an Event of Default under Section 16.1(a)(i). If a Leasehold Mortgagee desires to avail itself of the provisions of this Section 10.2(e), such Leasehold Mortgagee shall, within sixty (60) days after receipt of Landlord's notice: (i) notify Landlord of such desire (which notice shall specify those portions of the Property (or each phase) with respect to which the Leasehold Mortgagee desires to proceed); and (ii) commence negotiations to acquire such portions of the Property by deed in lieu of foreclosure and legal proceedings (herein called "foreclosure proceedings") to foreclose the lien of its Leasehold Mortgage (such negotiations and foreclosure proceedings are hereinafter collectively referred to as "acquisition proceedings"). Such Leasehold Mortgagee shall diligently proceed with its acquisition proceedings and thereafter diligently proceed to cause a foreclosure sale to be held, or, alternatively, shall obtain a deed in lieu of foreclosure. The Leasehold Mortgagee shall be excused from so diligently proceeding for so long as such Leasehold Mortgagee is enjoined or stayed in any bankruptcy or insolvency proceedings filed by or against Tenant. Notwithstanding the foregoing, but subject to the limitation on terminating this Lease contained in Section 10.2(d), if such sheriff's deed or a deed in lieu of foreclosure has not been obtained prior to the expiration of two (2) years after the date of the Leasehold Mortgagee's receipt of Landlord's notice, Landlord may partially terminate this Lease, by written notice to the Leasehold Mortgagee, as to all such portions of the Property (or phases) for which such a deed has not been obtained. The Leasehold Mortgagee shall promptly notify Landlord of the date on which a deed in lieu of foreclosure is obtained or the date of issuance of a sheriff's deed pursuant to a

UNOFFICIAL COPY

foreclosure sale (whichever date is applicable is hereinafter referred to as the "Foreclosure Date") and furnish a copy of such deed to Landlord. The Leasehold Mortgagee shall have a period (the "Leasehold Mortgagee's Commencement Period") of eighteen (18) months, commencing on the Foreclosure Date, within which to all of the following shall be accomplished with respect to such portions of the Property (or such phases):

(1) notify Landlord (and the Receiver) that: (A) the Leasehold Mortgagee will proceed to complete the development of those portions of the Project to be constructed on such portions of the Property (or such phases) that were specified in the Leasehold Mortgagee's notice itself or through a designated subsidiary or affiliate of the Leasehold Mortgagee; or (B) the Leasehold Mortgagee has or is prepared to enter into an agreement with a third-party developer, to whom such portion of the Property (or such phases) is to be transferred and who will agree to complete such development (whichever of the Leasehold Mortgagee or its subsidiary or affiliate, or third-party developer, who will be proceeding with such development is hereinafter referred to as the "Successor Developer");

(2) such third party developer, if any, has been approved by Landlord and the Receiver, which approvals shall not be unreasonably withheld or delayed;

(3) the Successor Developer has provided evidence reasonably satisfactory to Landlord and the Receiver of: (A) the availability of sufficient equity and financing to pay all of the costs of completing such development; and (B) the satisfaction of all conditions precedent to availability of such equity and financing to pay such costs; which approvals shall not be unreasonably withheld or delayed;

(4) the Successor Developer has executed and delivered to Landlord, a guaranty of completion of the construction of the Buildings and related Improvements comprising those portions of the Project to be constructed on such portions of the Property (or such phases) that were specified in the Leasehold Mortgagee's notice, in form substantially the same as the guaranty executed by the Initial Tenant; and

(5) the Successor Developer has Substantially Commenced the construction of a Building on such portion of the Property (and each such phase).

If the Leasehold Mortgagee fails to proceed in accordance with the provisions of this Section 10.2(e), or if any of the foregoing have not been accomplished prior to the expiration of the Leasehold Mortgagee's Commencement Period with respect to such portion of the Property (or any such phase) with respect to which Landlord's termination right has not been extinguished pursuant to Section 10.2(d), Landlord may terminate this Lease with respect to such portion of the Property (or such phase) by written notice to the Leasehold Mortgagee (and to the grantee in said deed, if different). There shall be no extension to the Leasehold Mortgagee's Commencement Period by reason of any Unavoidable Delay. By accepting a Leasehold Mortgage, each Leasehold Mortgagee acknowledges and agrees that the provisions of this Section 10.2 are reasonable and acceptable to such Leasehold Mortgagee.

UNOFFICIAL COPY

(f) If there shall be an Event of Default by Tenant under Section 16.1(a)(i) with respect to the Property or any portion thereof as to which Landlord's termination right has not been extinguished pursuant to section 10.2(d), and if, at that time, there is no Leasehold Mortgage in effect with respect to such portion of the Property, Landlord may terminate this Lease or invoke its right to take possession of such portion of the Property.

(g) Any foreclosure or exercise of any other rights pursuant to a Leasehold Mortgage by a Leasehold Mortgagee on account of a default thereunder by the Initial Tenant shall not result in a termination of this Lease, nor shall any such exercise alone be deemed an Event of Default under this Lease on the part of any other person or entity (including, but not limited to, the Condominium Association, any Unit Owner, any Unit Mortgagee, or any successor, purchaser, assignee or transferee of any of the foregoing).

(h) 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 10.

(i) So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, Landlord shall not accept a voluntary surrender of this Lease by Tenant.

(j) 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.

10.3 Mortgage by Landlord. Landlord may not, during the Term, create or permit a lien on or mortgage Landlord's Estate, or any portion thereof; provided, however, that the foregoing prohibition shall not create any obligation on Landlord with respect to a lien described in Section 9.2.

10.4 Transfer of Landlord's Estate. The parties acknowledge that the Condominium Act presently requires, in order to create a leasehold condominium, that the ground lessor must be: (a) an entity (a "501(c)(3) Entity") exempt from taxation under Section 501(c)(3) of the Code; (b) a limited liability company whose sole member is a 501(c)(3) Entity; or (c) a Public Housing Authority created

UNOFFICIAL COPY

under the Housing Authorities Act that is located in a municipality having a population in excess of 1,000,000 inhabitants. Landlord represents that Landlord is such a Public Housing Authority. Landlord reserves the right, at any time, to transfer the Landlord's Estate to a 501(c)(3) Entity or to an Illinois limited liability company of which a 501(c)(3) Entity is the sole member; provided that, at the time of such transfer, the transferee is a permitted ground lessor for purposes of creating or maintaining a leasehold condominium under the Condominium Act (a "Permitted Ground Lessor"). If, at any time, Landlord ceases to be a Permitted Ground Lessor, and if as a result thereof the Project no longer is permitted to remain a leasehold condominium under the Condominium Act, then Landlord shall, at Landlord's option, either: (x) transfer the Landlord's Estate to a new Permitted Ground Lessor; (y) submit its fee interest in those portions of the Property that have been Converted to the Condominium Declaration, so as to create a fee condominium; or (z) transfer the Landlord's Estate to the then Unit Owners (in undivided percentage interests equal to their then undivided percentage interests in the Common Elements), subject only to the Permitted Exceptions. The Bylaws of any such 501(c)(3) Entity shall provide that a majority of the directors of such 501(c)(3) Entity shall be ex officio members of Initial Landlord or other individuals reasonably acceptable to Tenant.

ARTICLE 11

CONDEMNATION

11.1 Condemnation of Entire Premises. If, at any time during the Term of this Lease, the entire Property or a portion thereof shall be taken in a Condemnation Proceeding, and Landlord and Tenant and any Leasehold Mortgagee agree in writing, in each party's sole discretion and determination, that the Property cannot be restored in a manner that permits the remaining Property to be operated as a residential development, this Lease shall terminate with respect to the remainder of the Property not taken on the date title is vested in the condemning Governmental Authority under such Condemnation Proceeding. In such event, there shall be no proration of any Rent paid by Tenant hereunder. If either party, with the consent of the Leasehold Mortgagees, determines that such continued operation is feasible, this Lease shall not terminate with respect to such remainder Property, and Section 11.2 shall apply.

11.2 Partial Condemnation. If, pursuant to Section 11.1, this Section 11.2 applies, this Lease shall not terminate but shall continue in full force and effect for the remainder of the Term. There shall be no abatement of Rent payable by Tenant under this Lease. Tenant, at its sole expense, but with the right to use the proceeds from the Condemnation Proceeding, shall promptly (except for Unavoidable Delays) restore the remainder Property to a residential development of the same general character and condition as existed before such taking.

11.3 Condemnation for Limited Time. If a Condemnation Proceeding takes all or any portion of the Property for a limited period of time, this Lease shall not terminate and Tenant shall continue to perform all obligations of Tenant under this Lease, except to the extent that such taking prevents such performance. In no event shall the Rent and all other sums and charges required to be paid by Tenant under this Lease with respect to the portions occupied by the Governmental Authority during the period of the temporary taking exceed the amounts received by Tenant from the condemning Governmental Authority and Tenant shall be entitled to the entire amount of the award for such taking. At the end of such temporary taking, Tenant, at its sole expense, shall promptly (subject to Unavoidable Delays and

UNOFFICIAL COPY

available condemnation proceeds) restore the Property as nearly as may be reasonably possible to its general condition and character as existed before such taking, ordinary wear and tear excepted.

11.4 Allocation and Use of Award. If this Lease is terminated or partially terminated pursuant to Section 11.1, all proceeds from such Condemnation Proceeding shall be paid, as applicable:

- (a) to Landlord, with respect to the portion of such proceeds allocable to any parcel on which construction has not Substantially Commenced;
- (b) in accordance with the terms of the Leasehold Mortgages with respect to the portion of such proceeds allocable to any remaining Property on which construction has Substantially Commenced but which has not yet been Converted;
- (c) to the Condominium Association, with respect to the portion of such proceeds allocable to any Converted Property, for application in accordance with the Condominium Declaration and the Condominium Act; and
- (d) any remaining balance shall be paid to Tenant.

ARTICLE 12

DAMAGE AND RESTORATION

12.1 Damage Requiring Restoration by Tenant. Except as otherwise provided in Section 12.2, if all or any portion of the Property shall be damaged or destroyed by a Casualty, and the Net Insurance Proceeds available for a particular Restoration plus the amount of any applicable deductible or self-insurance (the "Deductible") shall be sufficient to pay the costs of a Full Restoration, as reasonably estimated by Tenant or the Leasehold Mortgagee(s), as promptly as practicable after the date of such Casualty, Tenant shall cause the Full Restoration of the Property damaged or destroyed by such Casualty to be completed as soon as is reasonably practicable, in accordance with Sections 12.3 and 12.5. Each Leasehold Mortgagee shall be deemed to have agreed that the Net Insurance Proceeds shall be made available for such a Full Restoration under this Section 12.1 (rather than applying the Net Insurance Proceeds to reduction of debt) unless such Leasehold Mortgagee reasonably determines that a Full Restoration is not feasible.

12.2 Damage Allowing Tenant the Right to Terminate.

- (a) If all or any portion of the Property shall be damaged or destroyed by a Casualty and if the Net Insurance Proceeds available for the Restoration thereof plus the Deductible will not be sufficient to complete a Full Restoration, as reasonably estimated by Tenant or the Leasehold Mortgagee(s), if any, as promptly as practicable after the date of such Casualty, any determination to rebuild and any procedures governing such rebuilding, and the adjustment and application of insurance proceeds shall, as applicable: (1) be in accordance with the terms of the Leasehold Mortgages with respect to any portion of the Property not Converted and (2) be in accordance with the Condominium Declaration and the Condominium Act with respect to any Converted Property.

UNOFFICIAL COPY

If such determination results in a decision not to restore the damaged portion of the Property, then Tenant shall have the right to terminate this Lease with respect only to such damaged portions by giving notice to Landlord of its intent to terminate ("Termination Notice"). If Tenant so terminates this Lease, such termination shall be deemed effective as of the date of occurrence of the Casualty.

(b) If this Lease is terminated pursuant to Section 12.2(a), all amounts payable by Tenant under this Lease with respect to the terminated portion of the Property shall abate as of the date of the occurrence of the Casualty. Landlord shall have the right to require, by notice to Tenant, given within 120 days after the receipt of Tenant's Termination Notice, that Tenant clear the terminated portion of the Property and remove all debris, all in the manner provided in Section 12.3(b).

12.3 Procedures for Restoration or Demolition and Removal of Debris: Survival of Obligations.

(a) Tenant shall promptly commence any Restoration and shall diligently pursue the same to completion, subject to a reasonable allowance for the time needed to adjust any insurance claims and to Unavoidable Delays. Before Tenant commences the Restoration or let any contracts therefor, and at all times during the course of the Restoration, Tenant shall comply with the applicable provisions of Articles 9 and 13 and this Article 12. At all times Tenant shall continue to perform and observe all of the terms, covenants, conditions, agreements and obligations of Tenant to be performed under this Lease notwithstanding any loss, damage or destruction, except for temporary suspension of performance rendered impossible by such loss, damage or destruction.

(b) If Tenant elects to terminate this Lease with respect to any portion of the Property as a result of any Casualty, Tenant shall clear such portion of the Property and remove all debris, which obligations shall include demolishing and removing all Buildings and other Improvements, including all basements and foundations, filling all excavations, returning the surface to grade, and leaving the Property safe and free from debris and hazards, or such lesser degree of removal as is requested by Landlord.

12.4 Adjustment of Losses. Landlord shall not be entitled to participate in the adjustment of any losses arising from a Casualty (except in its capacity as a Leasehold Mortgagee, if applicable). The Leasehold Mortgagee shall be entitled to participate in the adjustment or settlement of any insurance claims relating to a Casualty.

12.5 Application of Insurance Proceeds. If this Lease is terminated pursuant to Section 12.2, if and to the extent requested by Landlord and not otherwise covered by any separate insurance maintained by Tenant to cover demolition of the Project and removal of all debris, all Net Insurance Proceeds on account of any loss, damage or destruction due to a Casualty shall be used as follows: (i) first, to clear the terminated portion of the Property and remove all debris (all in accordance with the provisions of Section 12.3(b)); and then (ii) the balance shall be distributed:

UNOFFICIAL COPY

(a) with respect to any portion of the Property that has not been Converted: (i) first, to the Leasehold Mortgagees in accordance with the respective priorities of their Leasehold Mortgages; and (ii) the balance, if any, to Initial Tenant; and

(b) with respect to any portion of the Property that has been Converted, in accordance with the Condominium Act and the Condominium Declaration.

ARTICLE 13

CHANGES AND ALTERATIONS

13.1 Conditions Governing Changes and Alterations.

(a) Initial Tenant and the Condominium Association, as applicable, shall each have the right to make or perform such replacements, renewals, additions, betterments, changes and alterations (including any Restoration required or permitted under Articles 11 or 12), structural or otherwise, to any Building or other Improvement, and each Unit Owner shall have such right with respect to such Unit Owner's Unit, as necessary or desirable ("Changes and Alterations").

(b) If Tenant receives notice that any excavation or other building operation is about to be made or shall be made upon any adjoining property, street or alley, Tenant, at its sole expense, to the extent required by applicable law, shall shore or cause to be shored the foundations and walls of the Buildings and other Improvements and do all other acts or things necessary for the safety and preservation of the Property. In addition, if any excavation or other building operation is about to be made or is made upon the Property, Tenant, at its sole cost and expense, shall assume all obligations imposed by law on the owner and occupant of the Property, or either thereof, to protect such adjoining property and buildings and structures thereon from damage, and shall do all acts and things necessary for the safety or preservation of the adjoining property and the buildings and structures thereon and to prevent any claims or liens against Landlord or Landlord's Estate.

13.2 Changes and Alterations Constitute a Part of Premises. Any Changes and Alterations that are made shall immediately become a part of the Property but shall remain the property of Tenant. If Landlord exercises its Purchase Option pursuant to Section 1.2 or if this Lease is terminated by Tenant pursuant to Section 16.2(a) with respect to any portion of the Property, title to all Changes and Alterations on the Property, or all Changes and Alterations on the terminated portion of the Property, as the case may be, shall vest in Landlord without any act on the part of or the recording of any instrument by Landlord or Tenant.

ARTICLE 14

INDEMNIFICATION BY TENANT

14.1 Indemnification by Tenant. The indemnification obligations of Initial Tenant with respect to environmental matters are set forth in the Environmental Agreement. Accordingly, the

UNOFFICIAL COPY

provisions of this Article 14 apply to each Tenant other than Initial Tenant. To the fullest extent not prohibited by applicable law, and except to the extent caused by the gross negligence or willful misconduct of the Protected Person, Tenant shall protect, indemnify, save harmless and defend Landlord (which, as indicated in the definition of "Protected Persons," includes the Receiver) and its (and their) respective Protected Persons from and against any and all Claims arising from or in any way related to: (i) the conduct, management or occupancy of or from any work or thing whatsoever done in and on the Property, or any part thereof; (ii) any breach or default on the part of Tenant under this Lease; (iii) any intentional or grossly negligent act of Tenant or any of Tenant's agents, contractors, servants, employees or invitees; (iv) any accident, injury or damage whatsoever caused to any Person or property occurring during the Term of this Lease, in or on the Property, or any part thereof; or (v) any Environmental Event or any personal injury (including wrongful death) or property damage (real or personal) arising out of or relating to any Environmental Event or any failure by Tenant to comply with any applicable Environmental Law; provided, however, that Tenant's obligations under this Section 14.1 shall not apply to any Excluded Environmental Condition.

14.2 Notice of Claim or Potential Claim. Upon obtaining actual knowledge of any Claim or of any occurrence or event which could give rise to a Claim (a "Potential Claim"), or promptly upon receiving notice from a Protected Person against or by whom such Claim or Potential Claim has or may be imposed, asserted or incurred, as the case may be, Landlord or a Landlord's Protected Person, as the case may be, shall notify Tenant of such Claim or Potential Claim (a "Claim Notice") and, in addition, shall promptly provide to its insurance carrier or carriers any notice required under any policy of insurance that is or may be applicable. A Claim Notice shall specify, in reasonable detail, the nature and estimated amount of any such Claim or Potential Claim, if known. Notwithstanding the foregoing, a Protected Person's failure to give such notice shall not relieve any Indemnitor of its indemnification obligations under this Lease, except to the extent that such Indemnitor is materially prejudiced as a result of such failure.

14.3 Defense of Claims. Tenant (referred to in this Article 14 as the "Indemnitor"), at its expense, shall undertake the defense of each Claim alleging any act, omission, occurrence or condition with respect to which Tenant must indemnify Landlord under Section 14.1 with attorneys of its own choosing reasonably satisfactory to each Protected Person giving the Claim Notice ("Indemnitee"). Indemnitor shall keep each Indemnitee informed of all significant developments and shall provide each Indemnitee and its attorneys with copies of all documents relating to such Claim or Potential Claim. Each Indemnitee shall have the right, at each such Indemnitee's expense, to monitor and be present at, either through its representatives or its attorneys, all proceedings, hearings, testimony and depositions and to receive copies of all pleadings, motions, orders, transcripts, interrogatories and other discovery documents relating to any Claim or Potential Claim. Indemnitor shall not pay, compromise or settle any Claim or Potential Claim without first consulting each Indemnitee respecting the same and seeking such Indemnitee's consent to such payment, compromise or settlement, which consent shall not be unreasonably withheld or delayed if the settlement provides for a complete release of such Indemnitee and other reasonably satisfactory terms.

14.4 Failure to Defend; Separate Representation. If Indemnitor fails to timely and diligently defend the Claim or Potential Claim for which it is liable under Section 14.1, each Indemnitee, at Indemnitor's expense and after giving notice to Indemnitor of such action, may undertake the defense of

UNOFFICIAL COPY

the Claim or Potential Claim and, without the consent of Indemnitor being required, may compromise or settle the Claim or Potential Claim, all for the account of Indemnitor. Each Indemnitee shall have the right to employ counsel to represent it with respect to any Claim or Potential Claim under this Article 14 at Indemnitor's cost.

14.5 Survival of Indemnities. The provisions of this Article 14 shall survive the expiration or earlier termination of this Lease with respect to any Claim Notice received by Tenant within one year after the later of (i) the expiration or earlier termination of this Lease or (ii) one year after the date on which the Protected Person first obtains actual notice of such Claim or Potential Claim; or such longer statutory period as may apply.

14.6 Excluded Environmental Conditions. Except as expressly provided in the Remediation Agreement, all liability and responsibility with respect to Excluded Environmental Conditions shall be determined pursuant to applicable federal, state or local law.

ARTICLE 15

INSPECTION AND EXHIBITION OF PREMISES BY LANDLORD

15.1 Inspection. Tenant agrees to permit Landlord and the authorized representatives of Landlord, at reasonable times and frequencies and upon reasonable prior written notice, to enter upon any portions of the Property (other than within a Unit Owner's Unit) for the purposes of inspecting the same and to assure Tenant's compliance with the provisions of this Lease.

ARTICLE 16

DEFAULTS, REMEDIES

16.1 Events of Default. An "Event of Default" shall occur under this Lease if any of the following events occurs:

(a) With respect to Tenant, if:

(i) Initial Tenant fails to Substantially Complete the construction of any Building and any related Improvements, and cause the same to be Converted, 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 Initial Tenant in good faith commences within said 30-day period and thereafter diligently prosecutes all actions required to cure any such failure, such failure shall not constitute an Event of Default hereunder; or

(ii) Tenant fails to pay, when due, any installment of Rent or any other amount to be paid by Tenant under this Lease, and such failure continues for a period of thirty (30) days after written notice from Landlord specifying such failure; or

UNOFFICIAL COPY

(iii) Tenant: (a) fails to maintain any of the insurance required under Article 8; or (b) for five (5) days following written notice from Landlord, fails to provide Landlord with evidence of such insurance or the payment of the premium therefor in accordance with Section 8.4; or

(iv) Tenant fails to perform or observe any other obligation, term or provision under this Lease, and such failure continues for 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, such failure shall not constitute an Event of Default hereunder.

(b) With respect to Landlord, if:

(i) Landlord fails to pay, when due, any amount required to be paid by Landlord hereunder and such failure continues for ninety (90) days after written notice thereof is given by Tenant to Landlord; or

(ii) Landlord fails to convey by this Lease, all of the parcels of the land to constitute the Project, as a whole, or

(iii) Landlord fails to perform or observe any other obligation, term or provision under this Lease, and such failure continues for sixty (60) days after written notice from Tenant to Landlord 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, such failure shall not constitute an Event of Default hereunder.

16.2 Landlord's Remedies.

(a) If an Event of Default under Section 16.1(a)(i) shall occur, Landlord may, subject to Section 10.2 and any other provision of this Lease that expressly limits Landlord's ability to terminate this Lease, at its option, at any time thereafter during the continuance of such Event of Default, give to Initial Tenant a notice of partial termination of this Lease with respect to a specific portion of the Premises as hereinafter provided in this Section 16.2(a), 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 being effected, then this Lease and all of Initial Tenant's rights under this Lease shall expire and terminate with respect to such portion 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, Initial Tenant shall vacate and surrender such portion to Landlord. Landlord may not terminate this Lease with respect to any portion of the Project that has been Converted.

(b) If an Event of Default under Section 16.1(a)(iii) shall occur, Landlord may (but shall not be obligated to) procure such insurance, at Tenant's expense. Any cost incurred or paid by Landlord in connection therewith, together with interest thereon at the Lease Interest Rate from

UNOFFICIAL COPY

the date incurred or paid by Landlord to the date of payment by Tenant, shall be Additional Rent due from Tenant upon demand. Tenant acknowledges that any insurance purchased by Landlord may be more expensive than if purchased by Tenant, and that if Tenant subsequently desires to replace any insurance purchased by Landlord, any refund of unearned premium due upon the cancellation of the policy purchased by Landlord will likely be less than prorata (based on the unexpired term of the policy).

(c) If any Event of Default other than under Section 16.1(a)(i) shall occur, Landlord may pursue any or all of its other rights and remedies provided in this Lease or available to Landlord at law or in equity; provided, however, that in no event shall such rights and remedies include the termination of this Lease. Landlord's only rights to terminate this Lease are under Section 16.2(a).

16.3 Additional Rights of Landlord and Other Parties.

(a) After the occurrence of an Event of Default and so long as such Event of Default is continuing, funds in the hands of Landlord (in its capacity as landlord under this Lease) that would otherwise be payable to Tenant shall be retained by Landlord and shall not be paid to Tenant until all Events of Default have been cured. If the Termination Date shall occur prior to Tenant's cure of each and every such Event of Default, Landlord shall be entitled to apply such funds to cure any unremedied Events of Default and to compensate Landlord for any amounts due under this Lease.

(b) If any Event of Default shall occur, and after the expiration of any applicable notice and cure period applicable to such Event of Default as provided in Section 16.1 and so long as such Event of Default is continuing, Landlord may, but shall have no obligation to, upon five (5) Business Days' prior notice to Tenant (except with respect to Tenant's failure to provide evidence of insurance, for which such five (5) Business Day notice shall not be required), cure any such Event of Default and all amounts expended by Landlord in connection therewith, together with interest thereon at the Lease Interest Rate from the date incurred or paid by Landlord to the date of payment by Tenant, shall be Additional Rent due from Tenant upon demand.

16.4 Rights Cumulative. Subject to the provisions of Section 16.2, the exercise by Landlord of any right or remedy against Tenant, the Property or the Condominium Association or any Unit Owner provided for herein shall not preclude the simultaneous or successive exercise of any other right or remedy provided for herein.

16.5 Waiver of Statutory Notice. To the fullest extent permitted by applicable law and except as otherwise specifically provided for in this Lease, Tenant, the Condominium Association and each Unit Owner hereby expressly waive the requirement of service of notice of intention to enter, re-enter or demand for possession provided for in any statute now or hereafter in force, or to institute legal proceedings to that end. As used in this Section 16.5 or in this Lease, the terms "enter", "re-enter", "entry", "re-entry" or "demand for possession" shall not be restricted to their technical legal meaning. Notwithstanding the foregoing, Tenant shall not be deemed by this Section 16.5 to have waived any provision of Section 16.1 requiring Landlord to give Tenant notice of an Event of Default.

UNOFFICIAL COPY

16.6 Tenant's Remedies. Upon an Event of Default by Landlord hereunder, Tenant shall have all of the rights and remedies afforded at law or in equity. In particular, upon any Event of Default by Landlord under this Lease, it is understood and agreed that Tenant shall be entitled to enjoin such breach or threatened breach, and shall have the right of specific performance (including without limitation the right to require the creation of a fee condominium or the transfer of the Landlord's Estate pursuant to Section 10.4), it being the agreement of the parties hereto that in certain circumstances of Landlord's Event of Default, Tenant's remedies at law will be inadequate to afford it the practical realization of the agreements herein made by the parties.

ARTICLE 17

LANDLORD'S AND TENANT'S ENVIRONMENTAL COMPLIANCE

17.1 Compliance With Environmental Laws. The obligations of Landlord and Initial Tenant with respect to Pre-Existing Environmental Conditions are set forth in the Environmental Agreement. Accordingly, the provisions of this Article 17 apply to each Tenant other than Initial Tenant. During the entire Term of this Lease, Tenant shall comply with all Environmental Laws applicable to Tenant's ownership and operation of the Property, including without limitation all NFR Letters. Tenant shall not permit the Property, or any portion thereof, to contain, be used to store or otherwise used to generate, treat or handle in any manner Hazardous Substances except as permitted under an NFR Letter and except for products stored in permitted containers or locations and in quantities normally associated with household maintenance uses permitted to be conducted on the Premises, including interior and exterior maintenance and cleaning and, in those instances, the Hazardous Substances shall be stored, generated, disposed of, managed or used in compliance with all Environmental Laws. Tenant acknowledges that its compliance shall include, by way of illustration and not by way of limitation, the completion and timely filing of all reports and statements required pursuant to any Environmental Laws and the payment of all charges, fees and costs that may be assessed or imposed from time to time in connection therewith; and the timely disclosure to Landlord upon request of any information required pursuant to the Illinois Environmental Protection Act, as may be amended or replaced from time to time, in order to permit Landlord or others to make full and complete assessments, disclosures or filings as required pursuant to such Acts. Landlord shall not take any actions that conflict with or impair Tenant's ability to comply with its obligations set forth in this Article 17. Nothing contained in this Section 17.1 shall be deemed or construed as an assumption by Tenant of any obligations with respect to any Pre-Existing Environmental Conditions or with respect to any Excluded Environmental Condition.

17.2 Environmental Tests. Tenant shall furnish Landlord a copy of any environmental assessments of the Property, or any portion thereof, provided to or obtained from any Leasehold Mortgagee, Unit Mortgagee, Governmental Authority or third party.

17.3 Tenant's Remediation Obligations.

(a) If any environmental assessment of the Property or any portion thereof, conducted by or on behalf of Tenant, any Leasehold Mortgagee, any Unit Mortgagee, or any Governmental Authority discloses an Environmental Event (other than an Excluded Environmental Condition), Tenant shall, at Tenant's sole expense, as promptly as practicable in light of the nature of such

UNOFFICIAL COPY

Environmental Event, comply with the applicable requirements of any Governmental Authorities or Environmental Laws with respect to such Environmental Event.

(b) Should an Environmental Event (other than an Excluded Environmental Condition) occur as a result of any intentional or unintentional act or omission on the part of Tenant or any other Person (other than Landlord or any employee or agent of Landlord), Tenant shall immediately notify Landlord thereof upon Tenant becoming aware of such Environmental Event and then as promptly as practicable, in light of the nature of such Environmental Laws and other relevant existing circumstances, complete any Remediation as required by applicable Environmental Laws and any applicable NFR Letter; provided, however, that the foregoing obligation shall not apply to any Excluded Environmental Condition.

(c) Tenant's failure to perform any Remediation required of Tenant pursuant to Sections 17.3(a) or 17.3(b) shall entitle Landlord, after expiration of the applicable notice and cure period referred to in Section 16.1(a)(iv), or such other time period as Tenant and Landlord shall agree is reasonable under the circumstances, to cause such Remediation to be conducted, and Tenant, immediately upon demand by Landlord, shall pay to Landlord all costs and expenses paid or incurred by Landlord as a result thereof. Landlord, in exercising its cure rights under Section 16.3(b), need not give any notice or cure period prior to commencing any Remediation that Tenant fails to perform if (i) Landlord is ordered to perform such Remediation by any Governmental Authority or (ii) there is an imminent risk of further contamination by Hazardous Substances of the Property or any other property or to the environment.

(d) Tenant shall have the right to contest, by appropriate legal or administrative proceedings, any required Remediation unless the failure of Tenant to immediately commence such Remediation would: (i) result in an imminent risk of further contamination by Hazardous Substances of the Property or any other property, or would endanger human health or the environment; or (ii) subject Landlord to any fine or penalty or to prosecution for a crime. In addition, Tenant's right to contest shall apply only if the nature of such proceedings is such that, during the pendency of such proceedings, they shall operate to prevent any portion of the Property from being condemned or vacated.

17.4 Landlord's Remediation Obligations. Landlord shall have no obligation to Remediate, or pay the cost of any Remediation, of any Pre-Existing Environmental Condition, except as expressly provided in the Environmental Agreement and except that responsibility for Excluded Environmental Conditions shall be determined pursuant to applicable law.

17.5 Insurance Requirements. Landlord and Tenant shall require all consultants and any contractors engaged in performing any Remediation to maintain insurance reasonably acceptable to the other party during the performance of the same. Such insurance shall include, at a minimum, commercial general liability insurance in a usual and customary form and shall name Landlord and Tenant as additional insureds.

UNOFFICIAL COPY

ARTICLE 18

MEDIATION AND ARBITRATION

18.1 Negotiation and Mediation Prior to Arbitration.

(a) If any provision of this Lease expressly requires mediation or arbitration with respect to a matter, Landlord and Tenant shall use good faith efforts to negotiate with respect to such matter, including at least one face-to-face meeting between business representatives of Landlord and Tenant.

(b) If the dispute has not been resolved within 30 days after such meeting, then the parties shall next attempt in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, or, if the American Arbitration Association no longer exists or provides mediation services, under the applicable rules or procedures of another recognized independent third-party organization then providing comparable mediation services ("Third Party Arbitration Service").

18.2 Procedure for Initial Appointment of Arbitrators. If any dispute has not been resolved pursuant to Section 18.1 within ninety (90) days after the face-to-face meeting, either party may demand arbitration by notice to the other party setting forth the points in dispute and the name and address of the individual appointed by it to act as arbitrator. Within ten (10) Business Days, the party so notified shall respond with a notice setting forth any additional points in dispute and the name and address of the individual appointed by it to act as arbitrator. Within ten (10) Business Days after of the second party's response, the two arbitrators shall jointly select a third arbitrator and give both parties notice of the name and address of the third arbitrator.

18.3 Failure to Appoint; Appointment of Successors. If an arbitrator appointed as provided in Section 18.2 or any successor arbitrator appointed as provided in this Section 18.3 dies, fails or refuses to act, resigns or becomes disqualified, the party selecting such arbitrator shall appoint a successor to fill the vacancy and, in the event said party fails to do so within ten (10) Business Days after demand by the other party, the latter may appoint the successor. If the vacancy involves an arbitrator appointed otherwise than by the parties, a successor shall be appointed in the same manner as the arbitrator he or she succeeds.

18.4 Individuals Qualifying as Arbitrators. No individual shall be appointed as an arbitrator unless that individual shall be a disinterested and impartial individual of recognized standing and experience in the area of commercial arbitration. If requested by either Landlord or Tenant, any individual so appointed must disclose any and all circumstances likely to affect such individual's impartiality and must affirm under oath either the lack of or existence of any such circumstances. Any party objecting to the appointment of any arbitrator based on such information shall notify the other party and the American Arbitration Association (or other Third-Party Arbitration Service) of such objection. The American Arbitration Association (or other Third-Party Arbitration Service) is hereby authorized to determine whether the arbitrator should be disqualified, and such determination shall be conclusive and binding on the parties.

UNOFFICIAL COPY

18.5 Rules Governing Arbitration. Whenever a dispute arises which, under the terms of this Lease, is to be determined by arbitration, the Commercial Arbitration Rules of the American Arbitration Association or, if applicable, the applicable rules of a Third-Party Arbitration Service, as in effect as of the date the proceeding is initiated shall apply and govern the arbitration proceeding and the interpretation and enforcement of awards resulting therefrom, except as modified by the provisions of this Article 18.

18.6 Costs. Landlord and Tenant, respectively, shall each pay the fees and out-of-pocket expenses of its own appointed mediator or arbitrator and one-half of the fees and out-of-pocket expenses of any third party mediator or arbitrator.

ARTICLE 19

APPRAISAL

19.1 When Appraisals are to be Used; Procedure for Initial Appointment.

(a) The procedures set forth in this Article 19 shall apply when Section 1.2 applies and when both Landlord and Tenant have attempted to negotiate in good faith with respect to Appraised Value but have been unable to reach agreement by the dates specified elsewhere in this Lease as to the Appraised Value of the Property.

(b) Landlord shall, at the time of delivery of its Purchase Option Notice, give notice ("First Notice") to the Condominium Association stating the name and address of its appraiser. Within thirty (30) days after receipt of such notice, the Condominium Association shall give notice to Landlord, stating the name and address of its appraiser.

19.2 Procedures for Appraisals by Parties' Appraisers and Third Appraiser.

(a) Each appraiser shall separately, independently, and without consulting the other appraiser or obtaining any information with respect to the results of the other appraiser's appraisal, determine the Appraised Value. On or before the 60th day following appointment of the Second Party's appraiser, the two appraisers, shall exchange the results of their appraisals. Within thirty (30) days thereafter the two appraisers shall meet and attempt in good faith to agree upon the Appraised Value. If no agreement is reached within fifteen (15) days following the date they actually meet (the "Appraisal Review Period") and the difference between their Appraised Values is less than or equal to five percent (5%) of the average of such appraisals, then the Appraised Value for purposes of this Section shall be such average. If not, immediately after the Appraisal Review Period those two appraisers shall appoint, in writing, a disinterested third appraiser ("Third Appraiser").

(b) Within forty-five (45) days after being appointed, the Third Appraiser shall, separately and independently, determine the Appraised Value. The first two appraisers may communicate with and provide the Third Appraiser with all written documentation that supports their respective appraisals (provided that copies of all such documentation are sent simultaneously

UNOFFICIAL COPY

to the other appraisers), but may not otherwise consult with the Third Appraiser. The three appraisals shall be added together and their total divided by three, and the resulting quotient shall be the Appraised Value for the purposes set forth in this Lease; provided, however, that if either of the initial appraisals is ten percent (10%) or more above or below such quotient, such appraisal shall be disregarded and the Appraised Value shall be the average of the remaining appraisals. If each of the initial appraisals is ten percent (10%) or more above or below such quotient, then the Appraised Value shall be the average of the three appraisals.

19.3 Appointment of Successors. The provisions of Section 18.3 shall also apply to the appointment of a successor appraiser if an appraiser appointed as provided in this Section 19.3 dies, fails or refuses to act, resigns or becomes disqualified.

19.4 Individuals Qualified as Appraisers. No individual shall be appointed as an appraiser unless the individual shall (i) be a real estate appraiser doing business in the Chicago metropolitan area having not less than ten years active experience in appraising comparable property in said area; (ii) be a member in good standing of the Illinois Chapter of the American Institute of Real Estate Appraisers, or any successor to such institute hereafter constituted exercising similar functions; and (iii) subscribe and swear to an oath to fairly and impartially determine the Appraised Value, before proceeding to make any such determination. In addition to the foregoing requirements, the Third Appraiser shall not have had during the five (5) years prior to appointment hereunder any relationship with either Landlord or Tenant or their respective counsel or Affiliates or any other interest in the result of the appraisal reasonably likely to affect such individual's impartiality. Upon the request of either Landlord or Tenant, any individual appointed to act as the Third Appraiser shall be obligated to affirm under oath the lack of, or disclose under oath the existence of, any such relationships prior to accepting any appointment.

19.5 Basis for Determination of Appraised Value. For purposes of this Lease, the Appraised Value of the Property or any Unit shall be its fair market value as of the determination date. The Appraised Value shall be determined under such of the following assumptions as apply under the circumstances:

(a) In appraising the fair market value of the Units comprising the Property, the appraiser shall assume: (i) the Premises is comprised of the Land, the Appurtenant Rights and all other interests comprising the Premises; (ii) the Land is encumbered by the title exceptions listed on Exhibit B attached hereto; (iii) all utilities and public improvements are available at the perimeter of the Land; (iv) the Land is and will continue to be improved with those Buildings and other Improvements that exist on the date as of which a determination of Appraised Value is to be made; (v) no special deduction or adjustment shall be made for the environmental condition of the Property; and (vi) the continued operation of the Property as a residential condominium, but as a fee condominium (if still a leasehold condominium).

(b) An appraisal of the fair market value of an individual Unit shall be based on an arms-length sale of such Unit, and not on a bulk sale of all Units.

19.6 Payment of Expenses. Landlord and Tenant shall each pay the fee of its appraiser and one-half of the cost of any Third Appraiser.

UNOFFICIAL COPY

ARTICLE 20

SURRENDER OF PREMISES

If, and only if, Landlord purchases the Property pursuant to Section 1.2 or terminates this Lease pursuant to Section 16.2(a), Tenant shall surrender the Property, or the applicable portion thereof, to Landlord in good order, condition and repair (except for ordinary wear and tear), and free and clear of all tenancies and occupancies (other than those written leases or other agreements specifically permitted by this Lease or consented to in writing by Landlord) and free of all liens, encumbrances or restrictions other than those set forth in Exhibit B attached hereto, and as otherwise permitted by this Lease.

ARTICLE 21

QUIET ENJOYMENT

Landlord covenants that Initial Tenant, the Condominium Association and the Unit Owners, upon paying the Rent and all other charges required to be paid by Tenant hereunder and performing, observing and keeping all of the terms, covenants, conditions, agreements and obligations of this Lease on its part to be performed, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Landlord, subject, however, to the provisions of this Lease.

ARTICLE 22

LIMITATION OF LIABILITY

22.1 Landlord. The term "Landlord" as used in this Lease shall be limited to mean and include only the owner or owners of Landlord's Estate at the time any determination is made. In the event of any transfer of the Landlord's Estate, Initial Tenant (and in case of any subsequent transfer or conveyance, the grantor in any such transfer or conveyance) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all liability in respect of the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed. Notwithstanding the foregoing, or any other provision contained in this Lease, Landlord's obligations under this Lease shall not constitute a personal obligation of Landlord or any of its officers, directors, shareholders, partners, members or officials or Board members, and Tenant or any other person claiming by, through or under Tenant will look solely to Landlord's Estate for satisfaction of any liability of Landlord in respect of this Lease and will not seek recourse against any other assets of Landlord or against any of its shareholders, partners, members, officers, directors or employees or officials or Board members.

22.2 Condominium Association. The obligations of the Condominium Association under this Lease shall not constitute a personal obligation of the members, officers, directors, employees, contractors or representatives of the Condominium Association: provided, however, that each Unit Owner shall be obligated to pay such Unit Owner's share of all common expenses pursuant to the Condominium Declaration.

UNOFFICIAL COPY

22.3 Tenant. Except as provided in Section 22.4 with respect to Initial Tenant, notwithstanding the foregoing provisions of this Lease, Tenant's obligations shall not constitute a personal obligation of any of the members, managers, officers, directors, employees, contractors or representatives of Tenant and Landlord shall look solely to the Condominium Association for satisfaction of any liability of Tenant under this Lease with respect to any portion of the Property that has been Converted. The Condominium Association shall promptly assess and collect from all Unit Owners, as part of the common expenses, all amounts that may become payable as Additional Rent. Any such amount not paid by a Unit Owner shall, to the fullest extent permitted under the Condominium Act, give rise to a lien against such Unit Owner's Unit, which the Condominium Association shall enforce in accordance with the Condominium Act if the Condominium Association does not have sufficient funds to perform its obligations under this Lease.

22.4 Initial Tenant. Initial Tenant, but not any partner, officer, director, shareholder or member of Initial 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 Initial Tenant's interest in this Lease and the Improvements and any other asset of Initial Tenant and, to the extent provided for in this Lease, for the termination of this Lease and re-entry and possession of the Property. No deficiency judgment shall be sought or obtained against Initial Tenant or any partner, officer, director, shareholder or member of Initial Tenant, nor any employee or agent of any of the foregoing for any amount due under this Lease; provided, however, that nothing contained herein shall either relieve the Initial Tenant from personal liability and responsibility, or limit Landlord's other rights and remedies against the Initial Tenant 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 Initial Tenant with respect to the Property not caused by a default by Landlord under any Public Housing Use Agreement; (iv) for insurance proceeds and condemnation awards received by Initial Tenant and not handled in the manner required by this Lease; and (v) for any rents or other income from the Property received by Initial Tenant after an Event of Default under this Lease and not applied to the performance of Initial Tenant's obligations under this Lease or with respect to 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 ILC§ 210), or any successor thereto.

22.5 Leasehold Mortgagees. A Leasehold Mortgage shall not operate to assign or transfer, other than as collateral security, the Tenant's Leasehold Estate to the Leasehold Mortgagee, nor shall any Leasehold Mortgagee, as such, be deemed an assignee or transferee of the Tenant's Leasehold Estate so as to require the Leasehold Mortgagee, as such, to assume the performance of any obligation of Tenant hereunder. In addition, the consent of Landlord shall not be required for any sale of the Tenant's Leasehold Estate in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of the Tenant's Leasehold Estate in lieu of the foreclosure of any such Leasehold Mortgage. However, any purchaser at a foreclosure sale and assignee or transferee in lieu of the foreclosure of a Leasehold Mortgage shall have all of the rights and obligations of Tenant for so long as such purchaser, assignee or transferee remains the owner of the Tenant's Leasehold Estate. For purposes of this Section 22.5, the purchaser, assignee or transferee shall be deemed to become the owner upon the earlier to occur of: (i) the entry of an order confirming the sale of the Tenant's Leasehold Estate pursuant to a judgment

UNOFFICIAL COPY

of foreclosure and the expiration of all applicable redemption and reinstatement periods; (ii) the issuance of an order placing the Leasehold Mortgagee or its designee in possession; (iii) the issuance of an order appointing a receiver with respect to the Tenant's Leasehold Estate; and (iv) the voluntary transfer of the Tenant's Leasehold Estate by Tenant to the Leasehold Mortgagee or its designee by a deed or other transfer in lieu of foreclosure.

ARTICLE 23

NOTICES

23.1 Manner of Providing Notices. All notices and other communications in connection with this Lease shall be in writing, and any notice or other communication shall be deemed delivered to the addressee thereof (i) when actually delivered at the address set forth below for such addressee, or (ii) one (1) day after deposit with a reputable overnight courier service providing delivery receipts, delivery charges prepaid, or (iii) three (3) days after deposit thereof in any main or branch United States post office certified or registered mail, postage prepaid, return receipt requested, in each case, properly addressed to the parties, respectively, as follows:

For notices and communications to Landlord:

Chicago Housing Authority
626 West Jackson Boulevard, 7th Floor
Chicago, Illinois 60661
Attention: Chief Executive Officer

with copies to:

Chicago Housing Authority
Office of the General Counsel
200 West Adams Street, Suite 2100
Chicago, Illinois 60606
Attention: General Counsel

For notices and communications to Initial Tenant:

RS Homes I LLC
350 West Hubbard Street, Suite 301
Chicago, Illinois 60610
Attention: President and General Counsel

with a copy to:

Applegate & Thorne-Thomsen, P.C.
322 South Green Street, Suite 400
Chicago, Illinois 60607
Attention: Debra A. Kleban

Copies of notices to parties other than Landlord or Tenant are for information purposes only; and a failure of any person to send or receive any such copy shall not affect the validity of notice otherwise given to

UNOFFICIAL COPY

Landlord or Tenant in compliance with the provisions of this Article. Copies of notices may be sent by first class mail. Until all portions of the Property have been Converted, copies of all notices to Landlord shall be sent to the Receiver at:

The Habitat Company LLC
350 W. Hubbard Street
Chicago, Illinois 60610
Attn: General Counsel

23.2 Changes of Address or Addressee. By notice complying with the requirements of Section 23.1, each party shall have the right to change the address or addressee, or both, for all future notices and communications and payments to such party or for copies of notices provided for above, but no such notice shall be effective until actually received by the other party. After the Turn-Over Date, the Board of Managers of the Condominium Association shall be added as a notice party. So long as Initial Tenant (or an Affiliate of Initial Tenant) has an interest in this Lease or the Premises, any notices to Tenant shall also be sent to Initial Tenant.

ARTICLE 24

RIGHTS OF UNIT MORTGAGEES

24.1 Notices to Unit Mortgagees. Landlord, simultaneously with the giving of any notice of any Event of Default by the Condominium Association shall give a duplicate copy thereof to any Unit Mortgagee that has given notice of its Unit Mortgage to Landlord in the manner provided in Article 23, which notice shall include the name and address of such Unit Mortgagee and a certified copy of such Unit Mortgagee's Unit Mortgage. No such Event of Default notice to the Condominium Association shall be effective unless and until a copy of such notice is given to each such Unit Mortgagee in the manner provided pursuant to Article 23.

24.2 Right to Cure Event of Default. If an Event of Default by the Condominium Association under Section 16.1(a)(ii) occurs, each Unit Mortgagee will have a period of time equal to the cure period given the Condominium Association pursuant to Section 16.1(a)(ii), plus a reasonable additional period of time (if necessary after taking into account the cure period provided for in Article 16), for remedying such Event of Default or causing the same to be remedied pursuant to Article 16, and Landlord shall accept such performance on the part of such Unit Mortgagee as though the same had been done or performed by the Condominium Association.

24.3 Cooperation by Landlord. Landlord agrees to cooperate in good faith with any Unit Owner and any Unit Mortgagee in connection with such Unit Owner's financing and will agree to execute such documents or amendments to this Lease as may be required to reflect any Unit Mortgagee's rights and obligations hereunder, provided Landlord, in its sole and absolute discretion, determines that such documents or amendments will not adversely affect or diminish Landlord's rights hereunder.

24.4 Proceeds From Condemnation; Damage and Restoration. No provisions of this Lease shall be deemed to give a Unit Owner or any other party priority over the rights of the Unit Mortgagee

UNOFFICIAL COPY

pursuant to its Unit Mortgage in the case of a distribution to the Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit or (in the case of condemnation awards only) the Common Elements, or any portion thereof or interest therein. In such event the Unit Mortgagee of the Unit affected shall be entitled, upon specific written request, to timely written notice of any such loss. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any Condemnation Proceeding or is otherwise sought to be acquired by a condemning Governmental Authority, then the Unit Mortgagee of the Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of this Lease will entitle the Unit Owner of such Unit or other party to priority over such Unit Mortgagee with respect to the distribution of the proceeds of any award or settlement with respect to such Unit.

24.5 **Rights Inure to Unit Mortgagee.** This Article 24 and all rights and benefits hereunder shall be solely for the benefit of any Unit Mortgagee, its successors and assigns, and no such rights or benefits shall inure to Tenant or its successors and assigns. To the extent, if at all, that any other provisions of this Lease conflict with the provisions of this Article 24, the provisions of this Article 24 shall control.

ARTICLE 25

MISCELLANEOUS PROVISIONS

25.1 **No Interest on Deposited Funds.** Landlord has no obligation to invest any funds deposited by Tenant with Landlord under any provision of this Lease.

25.2 **Partial Invalidity.** If any term or provision of this Lease or the application thereof to any Person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, but such remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purposes and intent of this Lease to the greatest extent not prohibited by law.

25.3 **Covenants.** Provisions setting forth obligations or conditions to be performed or observed by Landlord or Tenant shall be construed as covenants by such party to perform or observe the same.

25.4 **Remedies.** Except as otherwise specifically set forth in Articles 10 and 16 or where mediation or arbitration are required under this Lease, the specific remedies to which Landlord or Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be entitled as herein provided in case of any breach or threatened breach by either of them or any provision of this Lease. Further, Landlord and Tenant acknowledge that any remedy at law for any such breach or threatened breach may be inadequate. Accordingly, Landlord and Tenant agree that, in addition to the other remedies provided in this Lease, each shall be entitled to seek the restraint by injunction of the violation, or attempted or threatened violation, of any of the terms, covenants, conditions, obligations, agreements or provisions of this Lease (including for the purpose of maintaining the *status quo* during mediation or arbitration) or to seek a decree compelling performance of any of the same.

UNOFFICIAL COPY

25.5 Consents, Amendments and Waivers. The failure of Landlord or Tenant to insist, in any one or more cases, upon the strict performance of any of the provisions of this Lease, or to exercise any right or option herein contained, shall not be construed as a waiver or relinquishment for the future of such provision, right or option. A receipt by Landlord of any sums due and owing with knowledge of the breach of any term, condition, obligation, covenant, agreement or provision contained in this Lease shall not be deemed a waiver of such breach, and no waiver, change, amendment, modification or discharge by either party hereto of this Lease or of any provision in this Lease, no surrender of the leasehold estate hereby created, and no agreement to effect the same or any abandonment of this Lease in whole or in part shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Landlord and Tenant or by the party against whom enforcement of the same is sought. No provision of this Lease affecting the rights, duties, powers or obligations of Initial Tenant may be waived, changed, amended, modified or discharged without the prior written consent of Initial Tenant, which consent may be withheld or conditioned in Initial Tenant's sole and absolute discretion. Neither the provisions of Section 10.2 or 16.1, nor any other provisions of this Lease that grant any rights to Leasehold Mortgagees, or any TIF Lender or guarantor, may be waived, changed, amended, modified or discharged without the prior written consent of such persons or entities. This Lease may not be amended or modified without the prior written consent of all Leasehold Mortgagees, if any. Neither the provisions of Article 24 nor any other provisions of this Lease that grant any rights to the Unit Mortgagees may be waived, changed, amended, modified or discharged without the prior written consent of all Unit Mortgagees. Landlord shall enter into such amendments to this Lease as may be reasonably requested by a Leasehold Mortgagee, provided such amendment does not, in Landlord's sole and absolute discretion, materially adversely affect the rights or obligations of Landlord under this Lease.

25.6 Special Amendment. Landlord and Tenant agree to record a special amendment to this Lease at any time and from time to time and from time to time which amends this Lease (i) to comply with requirements of the primary and secondary mortgage market participants identified in Section 8.8, or (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Units; provided that no such amendment materially limits, restricts or otherwise materially adversely affects or diminishes Landlord's rights under this Lease or imposes additional duties or obligations on Landlord, in each case as reasonably determined by Landlord.

25.7 Article and Section Headings. The headings, titles and captions of this Lease are inserted only as a matter of convenience and reference and in no way define, extend, limit or describe the scope or intent of this Lease.

25.8 Table of Contents. The table of contents preceding this Lease is only for the purpose of convenience and reference and in no way defines, extends, limits or describes the scope or intent of this Lease.

25.9 Executed Counterparts. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original.

25.10 Governing Law. This Lease shall be construed and enforced in accordance with the law of the State of Illinois (without reference to conflicts of laws principles or choice of law doctrine).

UNOFFICIAL COPY

25.11 Sundays and Holidays. Whenever the date for the performance of any term, condition, obligation, covenant, agreement or provision required or provided under this Lease falls on a Saturday, Sunday or legal holiday in the jurisdiction in which the Premises are located, such date shall be extended to the next succeeding Business Day.

25.12 Successors and Assigns. The covenants and agreements herein contained shall, subject to the provisions of this Lease, bind and inure to the benefit of the successors and assigns of the respective parties hereto, and the same shall be construed as covenants running with the Land.

25.13 Plurals; Gender. Whenever used in this Lease, the singular number shall include the plural; the plural, the singular; and the use of any gender shall be applicable to all genders.

25.14 Time of Essence. Time is of the essence with respect to this Lease and each and every term, condition, obligation, covenant agreement or provision contained herein.

25.15 Recording of Lease. Landlord and Tenant shall execute, acknowledge and deliver this Lease and shall cause this Lease to be recorded in the Office of the Recorder of Cook County, Illinois.

25.16 Landlord and Tenant Not Partners. Nothing contained in this Lease shall be construed to create a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or to cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other Person.

25.17 Mutual Cooperation. Landlord and Tenant shall do all things necessary or appropriate to carry out the terms and provisions of this Lease and to aid and assist each other in carrying out the terms and objectives of this Lease and the intentions of Landlord and Tenant as reflected by said terms, including without limitation the giving of such notices, seeking the holding of, and participating in, public hearings, seeking and securing the enactment by the City of resolutions and ordinances and the taking of such other actions as may be necessary to enable Landlord's and Tenant's compliance with the terms and provisions of this Lease and as may be necessary to give effect to the terms and objectives of this Lease and the intentions of Landlord and Tenant as reflected by said terms.

25.18 Estoppel. Landlord shall execute, acknowledge and deliver to Tenant from time to time, upon request by Tenant made at least fourteen (14) days prior to the requested date for delivery, a statement certifying to any existing or prospective assignee, subtenant, Leasehold Mortgagee, Unit Mortgagee or any other party designated in Tenant's request (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, stating the modifications), (ii) that the Ground Rent has been paid in full, (iii) whether any notices of Default have been given to Tenant, (iv) whether, to the knowledge of Landlord, any Default or Event of Default has occurred and if so, specifying each such known Default or Event of Default and whether any such alleged Default by Tenant has been cured by or on behalf of Tenant, and (v) such other matters as may be reasonably requested by Tenant.

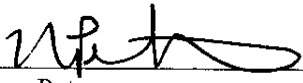
[Signature Pages Follow]

UNOFFICIAL COPY

WITNESS the due execution of this Lease by Landlord and Tenant as of the day and year first above written.

LANDLORD:

Chicago Housing Authority, an Illinois
municipal corporation

By: 
Terry Peterson
Chief Executive Officer

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ACKNOWLEDGMENT

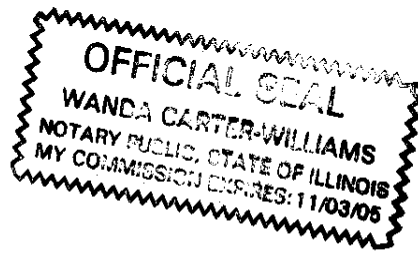
STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Terry Peterson, the Chief Executive Officer of Chicago Housing Authority, an Illinois municipal corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chief Executive Officer, appeared before me this day in person and acknowledged that he or she signed and delivered said instrument as his or her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 1st day of May, 2005.



Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

TENANT:

RS Homes I LLC, an Illinois limited liability company

By: ABLA Homes LLC, a Delaware limited liability company, its sole member

By: LR ABLA LLC, its manager

By: LR Development Company, LLC, a Delaware limited liability company, its sole member

By: *Bradford J. White*
Name: Bradford J. White
Title: Vice President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Danita Jaurigue, a Notary Public, in and for said County and State aforesaid, DO HEREBY CERTIFY that Bradford J. White, as Vice President of LR Development Company LLC, in its capacity as Sole Member of LR ABLA LLC, the Manager of ABLA Homes LLC, the sole member of RS Homes I LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he/she, being thereunto duly authorized, signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said RS Homes I LLC, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal, this 24th day of May, 2005.

Danita L. Jaurigue

Notary Public

"OFFICIAL SEAL"
DANITA L. JAURIGUE
Notary Public, State of Illinois
My Commission Expires 05/06/2006

County of Cook Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Legal Description of the Land

LOT 2 IN PLAT 1 ROOSEVELT SQUARE SUBDIVISION, A RESUBDIVISION OF BUCKLEYS SUBDIVISION, PART OF MACALASTER'S SUBDIVISION, AND SUBDIVISION OF BLOCK 14 OF VERNON PARK ADDITION TO CHICAGO, PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, ACCORDING TO PLAT 1 OF SAID ROOSEVELT SQUARE SUBDIVISION RECORDED MAY 27, 2004 AS DOCUMENT NUMBER 0414831142.

Property Address: 914 S. Racine Avenue

Permanent Index Number(s): 17-17-323-001

UNOFFICIAL COPY

EXHIBIT B

PERMITTED EXCEPTIONS

1. Liens for real estate taxes and special assessments that are not yet due and payable.
2. Matters raised by that certain Roosevelt Square Subdivision recorded May 27, 2004 as Document No. 0414831142.
3. Rights of the public and quasi-public utilities, if any, in vacated streets and previously vacated public alleys for maintenance therein of poles, conduits, sewers and facilities.
4. Rights of the municipality, the State of Illinois, the public and adjoining owners in and to vacated alleys.
5. Blanket easement in favor of Commonwealth Edison Company recorded as Document Number 18307976 and as shown on Plat 2 Roosevelt Square Subdivision recorded as Document Number 0414831143.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

Plans and Specifications

[A schedule identifying the final plans and specifications, and all addenda, will be attached before execution.]

Property of Cook County Clerk's Office

UNOFFICIAL COPY**BLDG 2A - 914 S. RACINE AVE.**

G000	Contract 020105
G001	Permit 010505
G002	Permit 010505
G003	Permit 010505
G004	Contract 020105
L101	Permit 010505
L102	Permit 010505
L103	Permit 010505
L104	Permit 010505
A001	Contract 020105
A002	Contract 020105
A101	Contract 020105
A102	Permit 010505
A103	Contract 020105
A104	Contract 020105
A105	Permit 010505
A200	Permit 010505
A200.1	Contract 020105
A201	Contract 020105
A202	Contract 020105
A203	Permit 010505
A204	Permit 010505
A300	Contract 020105
A301	Contract 020105
A400	Contract 020105
A401	Contract 020105
A402	Contract 020105
A403	Contract 020105
A404	Contract 020105
A405	Contract 020105
A501	Permit 010505
A502	Contract 020105
A503	Contract 020105
A504	Permit 010505
S1	Permit 010505
S2	Permit 010505
S3	Contract 020105
S4	Permit 010505
S5	Permit 010505
S6	Permit 010505
P01	Permit 010505
P02	Permit 010505
P1	Permit 010505
P2	Permit 010505
P3	Contract 020105
M01	Permit 010505
M1	Contract 020105
M2	Contract 020105
M3	Contract 020105
M4	Contract 020105
E0	Contract 020105
E1	Contract 020105
E2	Contract 020105
E3	Contract 020105
E4	Contract 020105

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT D

LEGAL DESCRIPTION OF DEVELOPMENT PARCELS

North Parcel

Lots 2, 6, 8, 9, 11, 17, 18, 20, 21, 22, 24, 25 and 26 in Plat 1 Roosevelt Square Subdivision, Resubdivision of Buckley's Subdivision, part of Macalister's Subdivision, and Subdivision of Block 14 of Vernon Park Addition to Chicago, Part of the East Half of the Southwest Quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian, City of Chicago, County of Cook, State of Illinois, according to the Plat thereof recorded May 27, 2004 as Document No. 0414831142.

PINS: 17-17-323-001 and 17-17-334-004

COMMON ADDRESSES:

LOT 2	914 S. Racine Ave.
LOT 6	907 S. Lytle St.
LOT 8	915 S. Lytle St.
LOT 9	925 S. Lytle St. / 1228 W. Taylor Street
LOT 11	1222 W. Taylor Street
LOT 17	1016 S. Racine Ave.
LOT 18	1022 S. Racine Ave.
LOT 20	1034 S. Racine Ave.
LOT 21	1038 S. Racine Ave.
LOT 22	1017 S. Lytle St.
LOT 24	1029 S. Lytle St.
LOT 25	1033 S. Lytle St.
LOT 26	1039 S. Lytle St.

AND

South Parcel (CONTINUED ON NEXT PAGE)

UNOFFICIAL COPY

South Parcel

Lots 33, 36, 38, 39, 40, 41, 42, 47, 48, 50, 51, 52, 54, 56, 57, 59, 60, and 61 in Plat 2 Roosevelt Square Subdivision, a Resubdivision of Blocks 6, 7, and Part of 8 of Henry Waller's subdivision, Part of the West Half of the Northeast Quarter of Section 20, Township 39 North, Range 14 East of the Third Principal Meridian, City of Chicago, County of Cook, State of Illinois, according to the Plat thereof recorded May 27, 2004 as Document No. 0414831143.

PINS: 17-20-200-062, 17-20-200-063 and 17-20-207-045

COMMON ADDRESSES:

LOT 33	1155 W. Roosevelt Road
LOT 36	1075 W. Roosevelt Road
LOT 38	1226 Blue Island Ave.
LOT 39	1232 Blue Island Ave.
LOT 40	1110 W. Washburne Ave.
LOT 41	1112 W. Washburne Ave.
LOT 42	1118 W. Washburne Ave.
LOT 47	1153 W. Washburne Ave.
LOT 48	1149 W. Washburne Ave.
LOT 50	1129 W. Washburne Ave.
LOT 51	1125 W. Washburne Ave.
LOT 52	1121 W. Washburne Ave.
LOT 54	1244 Blue Island Ave.
LOT 56	1254 Blue Island Ave.
LOT 57	1258 Blue Island Ave.
LOT 59	1270 Blue Island Ave.
LOT 60	1132 W. 13 th St.
LOT 61	1136 W. 13 th St.

UNOFFICIAL COPY

RIDER TO GROUND LEASE

THIS RIDER is attached to and made a part of that certain Ground Lease, dated May 1, 2005 (the "Lease"), by and between Chicago Housing Authority ("Landlord"), and RS Homes I LLC, an Illinois limited liability company ("Initial Tenant"). All of the capitalized terms used in this Rider that are not defined herein shall have the same meanings as defined in the Lease. In the event of a conflict, inconsistency or ambiguity between the provisions contained in the Lease and this Rider, the provisions of this Rider shall prevail.

Initial Tenant shall construct the Project in accordance with the Plans and Specifications

R-1 The Construction Completion Deadline is May 15, 2007.

Initial Tenant shall not Substantially Commence construction of any Building of the Project on any phase, prior to satisfying the conditions precedent to such commencement contained in the Leasehold Mortgage or other documents evidencing, securing or relating to the loan secured by such Leasehold Mortgage.