



Horner IIB Rental – 10/24/06

Doc#: 0630442178 Fee: \$46.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/31/2008 01:14 PM Pg: 1 of 12

This instrument was prepared by:

Jay Gilbert, Esq.  
Kutak Rock LLP  
1 South Wacker Dr., Suite 2050  
Chicago, Illinois 60606

After recording, this instrument  
should be returned to:

Carol Turner, Esq.  
Office of the General Counsel  
Chicago Housing Authority  
200 W. Adams Street, Suite 2100  
Chicago, Illinois 60606

4371065 (6)

## DECLARATION OF RESTRICTIVE COVENANTS

(HORNER IIB RENTAL)

**THIS DECLARATION OF RESTRICTIVE COVENANTS** (this “**Declaration**”) is made and entered into as of the 1st day of October, 2006, by the Chicago Housing Authority, an Illinois municipal corporation (the “**Authority**”), and WHP-IIB, LLC, an Illinois limited liability company (the “**Developer**”), for the benefit of the United States of America, acting by and through the Secretary of Housing and Urban Development (“**HUD**”).

WHEREAS, pursuant to the U.S. Housing Act of 1937, as amended from time to time, and any successor legislation (the “**Act**”), the Authority and HUD have entered into (i) a Consolidated Annual Contributions Contract Number: C-1150, dated December 11, 1995, as previously amended from time to time by the Authority (or Daniel E. Levin and The Habitat Company (now The Habitat Company LLC), as receiver for the development of new non-elderly public housing by the Authority (the “**Receiver**”), acting on its behalf), as the same may be amended from time to time, and (ii) a Consolidated Annual Contributions Contract Number: C-1014, dated December 11, 1995, as previously amended from time to time and as the same may be amended from time to time (which collectively, together with any successor annual contributions contract applicable to the Project, the “**ACC**”), which provides for grants and annual contributions to be made by HUD to assist the Authority in developing, maintaining and operating its public housing units in accordance with All Applicable Public Housing Requirements (as defined below); and

WHEREAS, as of the date of execution of this Declaration, HUD, the Receiver, and the Authority have entered into those certain Mixed Finance Amendments, Amendment No.

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91 to ACC No. C-1150 and Amendment No. 165 to ACC No. C-1014 (collectively, the "**Mixed Finance ACC Amendment**") adding to the ACC, under Project Number IL06P802229, the seventy (70) public housing rental units (the "**PHA-Assisted Units**") and any associated appurtenances in the City of Chicago, County of Cook, in the State of Illinois (which, together with any fixtures, rents, revenues, other income and personalty related to such units and appurtenances shall hereafter collectively be referred to as the "**Project**") to be constructed as part of the Development (as defined below). The Project is part of a larger one hundred and twenty-seven (127)-unit rental development known as Westhaven Park Phase IIB Rental (the "**Development**"), which is part of the larger Phase IIB of the redevelopment of the Henry Horner Homes site, which Phase IIB includes both rental and for-sale subphases; and

WHEREAS, the Authority and the Developer are, concurrently herewith, entering into a Regulatory and Operating Agreement, dated of even date herewith (the "**Regulatory and Operating Agreement**"), and other agreements, whereby the Authority has agreed to: (a) provide the Developer with assistance obtained under the Mixed Finance ACC Amendment to pay a portion of the development costs of the Project; and (b) to provide the Developer with Operating Fund assistance to assist in operating and maintaining the low-income character of the public housing units in the Development. All capitalized terms used in this Declaration, unless otherwise defined herein, shall have the same meanings as are ascribed to such terms in the Regulatory and Operating Agreement; and

WHEREAS, the parties intend that the Project shall be eligible to receive the benefit of operating subsidies provided to the Authority by HUD pursuant to Section 9 of the Act and the Regulatory and Operating Agreement;

WHEREAS, in return for the receipt of such assistance: (a) the Developer has agreed to develop, construct, operate and maintain the Project; all in accordance with all requirements applicable to public housing, including, without limitation, the Act, HUD regulations thereunder (except to the extent that HUD has granted waivers of regulatory requirements), the ACC (including the Mixed-Finance ACC Amendment), the Mixed Finance Proposal dated June 23, 2006, as amended, the HOPE VI Grant Agreement dated July 8, 1997, and the HOPE VI Revitalization Plan (if applicable), this Declaration, the Regulatory and Operating Agreement, the Gautreaux Court Orders (as defined in the Regulatory and Operating Agreement), the Horner Court Orders (as defined in the Regulatory and Operating Agreement), the MTW Agreement (as defined in the Regulatory and Operating Agreement), and all other pertinent Federal statutory, executive order and regulatory requirements, as such requirements may be amended from time to time (all such requirements are referred to in this Declaration as "**All Applicable Public Housing Requirements**"); and

WHEREAS, as of the date of this Declaration, the Authority holds title to the real property situated in the City of Chicago, County of Cook, in the State of Illinois, as more fully described in Exhibit A to this Declaration, on which the Development, of which the Project will be a part, will be constructed (the "**Development Property**"), and is entering into a ground lease with the Developer which demises the Development Property.

**NOW, THEREFORE**, to assure HUD of the performance by the Authority and the Developer, and any successors in interest to the Authority and the Developer, of All Applicable

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Public Housing Requirements in connection with the development, operation and maintenance of the Project for the Term (as defined below), the parties hereby acknowledge and agree:

1. The Authority does hereby acknowledge and declare that it is possessed of and holds, in trust for the benefit of HUD, for the purposes hereinafter stated, title to the Development Property.
2. The Developer does hereby acknowledge and declare that it is in possession of and holds, in trust for the benefit of HUD, for the purposes hereinafter stated, a leasehold interest in the Development Property, and holds title to all buildings and fixtures developed or to be developed thereon or appurtenant thereto and including all personalty.
3. The Developer and the Authority hereby acknowledge and declare that, during the Term (as defined below), the restrictive covenants set forth in this Declaration are, and shall be, covenants running with the Development Property, and are binding upon the Developer and the Authority, and their respective successors and assigns, for the Term.
4. The Authority shall cause the Developer to, and the Developer shall, develop the Project in compliance with All Applicable Public Housing Requirements, and thereafter operate and maintain the Project in compliance with All Applicable Public Housing Requirements for the Term. As used herein, the "Term" shall mean the period that commences on the date hereof and expires upon the later to occur of (i) forty (40) years after the date of the first occupancy of the last PHA-Assisted Unit to be initially occupied, or (ii) the expiration of the period during which the PHA-Assisted Units are required to be operated as "public housing" under the Act, including, if applicable, the period ending ten years after the end of the last PHA fiscal year for which Operating Fund assistance is provided by the Authority with respect to the Project or any portion thereof.
5. The Developer shall remain seized of its leasehold interest in and title to, as applicable, the Development Property and shall refrain from transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering or permitting or suffering any transfer of any kind of the Development Property, or any part thereof, or any rent, revenues, income, or receipts of the Project in connection therewith, or any of the benefits or contributions granted to it by or pursuant to the ACC, as amended, or any interest in any of the same, except to the extent approved in writing by HUD, as otherwise authorized by the ACC, as amended, or as authorized below:
  - A. mortgages and financing arrangements approved in writing by HUD under the terms of the Mixed Finance ACC Amendment, and the transfer of the Development or any portion thereof to the holder of any such approved loan, by foreclosure or deed-in-lieu of foreclosure, or to a third-party purchaser at a foreclosure sale, provided, however, that any such transfer shall be subject to the terms of this Declaration;
  - B. dwelling leases with eligible families for units in the Project;

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- C. conveyance or dedication of land for use as streets, alleys, or other public rights-of-way, and grants and easements for the establishment, operation, and maintenance of public utilities; and
  - D. normal uses associated with the operation of the Project, to the extent authorized by the ACC.
6. (A) No transfer, conveyance, or assignment shall be made without the prior written approval of HUD of: (i) any interest of a manager, managing member, general partner, or controlling stockholder (any such interest being referred to as a “**Controlling Interest**”) in the Developer; or (ii) a Controlling Interest in any entity which has a Controlling Interest in the Developer; or (iii) prior to the payment in full of all equity contributions described in the approved evidentiary documents listed in the Mixed Finance ACC Amendment, other than equity contributions to be made by the Investor (hereinafter defined) solely for the purpose of paying developer fees, any other interest (any such interest being referred to as a “**Non-Controlling Interest**”) in the Developer, or in any partner, member or stockholder thereof.
- (B) Notwithstanding the foregoing, HUD consent is not required for the transfer of a Non-Controlling Interest in the Developer, or any partner, member or stockholder thereof (regardless of whether payment in full of all equity contributions has been made to the Developer), provided that the Developer: (i) provides HUD with written notice in advance of such transfer; and (ii) certifies to HUD that the new owner of the Non-Controlling Interest is obligated to fund its equity contribution in accordance with the terms of the HUD-approved organizational documents of the Developer.
- (C) If HUD’s consent thereto is required under this Declaration, HUD will not unreasonably withhold, delay, or condition a request for HUD’s consent to any of the transfers of the Developer or any of the partners, members, managers or stockholders of the Developer contemplated by this Section 6.
- (D) HUD consent is not required to the pledge and collateral assignment by the Manager of its economic interest to JPMorgan Chase Bank, N.A. (the “**Bank**”) pursuant to that certain Collateral Assignment and Pledge Agreement (Membership Interest), dated as of October 1, 2006, in favor of the Bank; provided, however, that the exclusion of such pledge and collateral assignment from the transfer restrictions contained herein shall not permit the replacement of the existing manager or the admission of a new or substitute manager.
- (E) HUD consent is not required to: (1) the collateral pledge and assignment (the “**Investor Pledge**”) of the Non-Controlling Interest in the Developer to the Developer as security for the obligation of the Investor to make its capital contributions to the Developer pursuant to the Operating Agreement; and (2) the collateral pledge and assignment by the Developer of its economic interest in the Non-Controlling Interest in the Developer granted under the Investor Pledge to the Bank pursuant to that certain Collateral Assignment and Pledge Agreement (Investor Notes and Subscriptions), dated as of October 1, 2006; provided (x) HUD is provided with written notice of any

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enforcement action with respect to any such collateral pledge and assignment, and (y) the transferee pursuant to such enforcement action certifies to HUD that the new owner of the economic interest is obligated to fund, in accordance with the terms of the Operating Agreement, the portion of the remaining equity contributions, if any, to be used for construction of the Development and to otherwise comply with the terms of the Operating Agreement.

(F) Until such time as that certain Consent Decree entered into in the case of Henry Horner Mothers Guild, et al. v. Chicago Housing Authority, et al., 91 C 3316, terminates, the Developer shall give written notice to the Horner Residents Committee (the "HRC"), at the following address, of any of the foregoing transfers, conveyances or assignments of which the Developer becomes aware:

Horner Residents Committee  
100 N. Hermitage, Apt. 810  
Chicago, Illinois 60612  
Attn: Ms. Mamie Bone

With a copy to: Sargent Shriver National Center on Poverty Law  
50 E. Washington St. Suite 500  
Chicago, Illinois 60602  
Attn: William Wilson, Esq.

provided, however: (i) such written notice need not be given if the HRC is no longer operating; and (ii) failure on the part of the Rental Owner to give such notice shall not invalidate any such transfer conveyance or assignment. Any notice to be sent to the HRC shall be sent by certified mail, return receipt requested (and shall be deemed received on the earlier of actual receipt or five (5) days after mailing), or by personal delivery.

7. Upon expiration of the period during which the Project is required to be operated and maintained as public housing in accordance with All Applicable Public Housing Requirements, HUD will release this Declaration by an instrument to be recorded in the appropriate land records (the "**Release**"). The Release shall be prepared by the then owner of the Project and recorded at such owner's expense.

[Signatures appear on following pages.]

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**IN WITNESS WHEREOF**, the Authority and the Developer have caused this Declaration to be executed by their duly authorized signatories for proper recording in the public records.

## AUTHORITY

Chicago Housing Authority, an Illinois municipal corporation

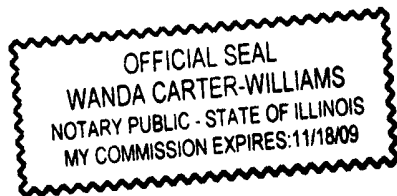
By:

Sharon Gist Gilliam  
Chief Executive Officer

## ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

This instrument was acknowledged before me on October 26, 2006,  
by Sharon Gist Gilliam, as Chief Executive Officer of the Chicago Housing Authority.



Notary Public



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**DEVELOPER**

WHP-IIB, LLC,  
an Illinois limited liability company

By: WHP-IIB MANAGER, LLC,  
an Illinois limited liability company  
its Manager

By: Brinshore Holding, LLC,  
an Illinois limited liability company,  
a member

By: Brinshore Development, L.L.C.,  
an Illinois limited liability company,  
its sole member

By: RJS Real Estate Services, Inc.,  
an Illinois corporation, a member

By: \_\_\_\_\_  
Name: Richard Sciortino  
Title: President

By: Michaels Chicago Holding Company, LLC,  
an Illinois limited liability company,  
a member

By: \_\_\_\_\_  
Name: John O'Donnell  
Title: Vice President

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## ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Richard Sciortino, personally known to me to be the president of RJS Real Estate Services, Inc., a member of Brinshore Development, L.L.C., an Illinois limited liability company, the sole member of Brinshore Holding, LLC, an Illinois limited liability company, a member of WHP-IIB MANAGER, LLC, an Illinois limited liability company (the "Manager"), the sole Manager of WHP-IIB, LLC, an Illinois limited liability company, and 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 severally acknowledged that as such officer, he signed and delivered the said instrument, pursuant to authority given by the members of the Manager as the free and voluntary act of such person, and as the free and voluntary act and deed of the Manager and WHP-IIB, LLC, for the uses and purposes therein set forth.


Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Notary Public

STATE OF *New Jersey*  
COUNTY OF *Burlington*) SS

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that John O'Donnell, personally known to me to be the Vice President of Michaels Chicago Holding Company, LLC, an Illinois limited liability company, a member of WHP-IIB Manager, LLC, an Illinois limited liability company (the "Manager"), the Manager of WHP-IIB, LLC, an Illinois limited liability company, and 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 severally acknowledged that as such Vice President, he signed and delivered the said instrument, pursuant to authority given by the members of the Manager as the free and voluntary act of such person, and as the free and voluntary act and deed of the Manager and WHP-IIB, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this 26<sup>th</sup> day of October, 2006.

  
Notary Public

7-8  
CATHERINE ANN HARDING  
NOTARY PUBLIC IN THE STATE OF  
California Expires 01-01-2013



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**DEVELOPER**

WHP-IIB, LLC,  
an Illinois limited liability company

By: WHP-IIB MANAGER, LLC,  
an Illinois limited liability company  
its Manager

By: Brinshore Holding, LLC,  
an Illinois limited liability company,  
a member

By: Brinshore Development, L.L.C.,  
an Illinois limited liability company,  
its sole member

By: RJS Real Estate Services, Inc.,  
an Illinois corporation, a member

By:   
Name: Richard Sciortino  
Title: President

By: Michaels Chicago Holding Company, LLC,  
an Illinois limited liability company,  
a member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

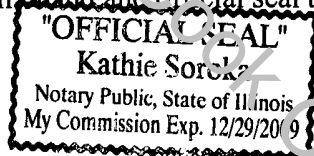
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## ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Richard Sciortino, personally known to me to be the president of RJS Real Estate Services, Inc., a member of Brinshore Development, L.L.C., an Illinois limited liability company, the sole member of Brinshore Holding, LLC, an Illinois limited liability company, a member of WHP-IIB MANAGER, LLC, an Illinois limited liability company (the "Manager"), the sole Manager of WHP-IIB, LLC, an Illinois limited liability company, and 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 severally acknowledged that as such officer, he signed and delivered the said instrument, pursuant to authority given by the members of the Manager as the free and voluntary act of such person, and as the free and voluntary act and deed of the Manager and WHP-IIB, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this 26 day of October, 2006.



**Notary Public**

STATE OF )  
 ) ss  
COUNTY OF )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of Michaels Chicago Holding Company, LLC, an Illinois limited liability company, a member of WHP-IIB Manager, LLC, an Illinois limited liability company (the "Manager"), the Manager of WHP-IIB, LLC, an Illinois limited liability company, and 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 severally acknowledged that as such \_\_\_\_\_, he signed and delivered the said instrument, pursuant to authority given by the members of the Manager as the free and voluntary act of such person, and as the free and voluntary act and deed of the Manager and WHP-IIB, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this            day of            , 2006.

Notary Public

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## Exhibit A LEGAL DESCRIPTION Westhaven Park Phase IIB

LOTS 1, 14 AND 17 IN BLOCK 1 AND LOTS 1, 5, 6, 8, 10 AND OUT LOT 1 IN BLOCK 2 OF THE WESTHAVEN PARK RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 8, 2006, AS DOCUMENT NUMBER 0625145094, IN COOK COUNTY, ILLINOIS, BEING A RESUBDIVISION AND CONSOLIDATION IN THOMAS' SUBDIVISION OF THE WEST 152 FEET OF BLOCK 51 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN ASSESSOR'S DIVISION OF 146.98 FEET EAST OF AND ADJOINING THE WEST 152 FEET OF SAID BLOCK 51, AND IN THE SUBDIVISION BY TAYLOR OF THE EAST ½ OF SAID BLOCK 51, INCLUDING ALL OF THE VACATED EAST WEST AND NORTH-SOUTH ALLEYS AND VACATED WEST MAYPOLE AVENUE IN SAID BLOCK 51, TOGETHER WITH THAT PART OF THE WEST ½ OF THE SOUTHEAST ¼ OF SECTION 7, AFORESAID, LYING EAST OF THE EAST LINE OF ASSESSOR'S DIVISION AFORESAID, AND LYING WEST OF THE WEST LINE OF THE SUBDIVISION BY TAYLOR AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

Having the following Parcel Identification Numbers (PINs):

|               |               |               |
|---------------|---------------|---------------|
| 17-07-417-032 | 17-07-422-007 | 17-07-422-021 |
| 17-07-417-033 | 17-07-422-008 | 17-07-422-022 |
| 17-07-417-036 | 17-07-422-009 | 17-07-422-023 |
| 17-07-417-037 | 17-07-422-010 | 17-07-422-024 |
| 17-07-417-038 | 17-07-422-011 | 17-07-422-025 |
| 17-07-417-039 | 17-07-422-012 | 17-07-422-026 |
|               | 17-07-422-013 | 17-07-422-027 |
| 17-07-422-001 | 17-07-422-014 | 17-07-422-028 |
| 17-07-422-002 | 17-07-422-015 |               |
| 17-07-422-003 | 17-07-422-016 | 17-07-422-038 |
| 17-07-422-004 |               |               |
| 17-07-422-005 | 17-07-422-018 |               |
| 17-07-422-006 |               |               |

Formerly known as the following addresses, all in Chicago, IL:

140 N Wood  
1832 W Washington  
1836 W Washington  
1850 W Washington  
141 N Wolcott  
1847 W Lake

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Now currently known as the following addresses, all in Chicago, IL:

|                   |                |             |
|-------------------|----------------|-------------|
| 110 N Wood        | 1807 W Maypole | 1807 W Lake |
| 122 N Wood        | 1809 W Maypole | 1809 W Lake |
| 156 N Wood        | 1811 W Maypole | 1811 W Lake |
|                   | 1813 W Maypole | 1813 W Lake |
| 1804 W Washington | 1817 W Maypole | 1847 W Lake |
| 1820 W Washington | 1819 W Maypole | 1849 W Lake |
| 1822 W Washington | 1820 W Maypole | 1851 W Lake |
| 1824 W Washington | 1826 W Maypole | 1853 W Lake |
| 1826 W Washington | 1828 W Maypole |             |
| 1830 W Washington | 1830 W Maypole |             |
| 1832 W Washington | 1832 W Maypole |             |
| 1834 W Washington | 1836 W Maypole |             |
| 1836 W Washington | 1837 W Maypole |             |
| 1854 W Washington | 1838 W Maypole |             |
|                   | 1839 W Maypole |             |
| 103 N Wolcott     | 1840 W Maypole |             |
| 121 N Wolcott     | 1841 W Maypole |             |
| 155 N Wolcott     | 1845 W Maypole |             |
|                   | 1847 W Maypole |             |
|                   | 1849 W Maypole |             |
|                   | 1851 W Maypole |             |