

UNOFFICIAL COPY



Doc# 1627418074 Fee \$64.00
RHSP Fee:\$9.00RPRF Fee \$1.00
Karen A.Yarbrough
Cook County Recorder of Deeds
Date: 09/30/2016 02:35 PM Pg: 1 of 14

**This instrument was prepared by:
and after recording, should be returned to:**

**LaRue Little
Deputy General Counsel
Chicago Housing Authority
Office of the General Counsel
60 E. Van Buren St., 12th Floor
Chicago, Illinois 60605**

40027117 (60FG)

CONTROL AGREEMENT

BETWEEN

CHICAGO HOUSING AUTHORITY

AND

CHICAGO HOUSING ADMINISTRATION, LLC

BL

UNOFFICIAL COPY

CHA CONTROL AGREEMENT

THIS CHA CONTROL AGREEMENT (this “**Agreement**”), dated and effective as of September 30, 2016, is made by and between **Chicago Housing Authority**, an Illinois municipal corporation (the “**Authority**”), and **Chicago Housing Administration, LLC**, an Illinois limited liability company (the “**Owner**”).

RECITALS

A. The Authority is the owner of a public housing development commonly known as Daniel Burnham Apartments (the “**Former Public Housing Development**”), which currently consists of 181 residential rental units and is currently designated by the United States Department of Housing and Urban Development (“**HUD**”) as PIC Development No. IL002075000. The property on which the Former Public Housing Development is located is described on Exhibit A attached hereto and made a part hereof (the “**Land**”). The building on the Land is hereinafter referred to as the “**Building**”.

B. The Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011, 42 U.S.C. 1437f(o)(13)) (as heretofore or hereafter amended, the “**RAD Act**”), authorized the Rental Assistance Demonstration (“**RAD**”) program (the “**RAD Program**”), which for RAD projects using project-based voucher (“**PBV**”) assistance follow 24 CFR 983 (as heretofore or hereafter amended, the “**PBV Regulations**”). Subsequently, HUD issued PIH Notice 2012-32 published on July 26, 2012, and amended by PIH 2012-32 Rev. 2 on June 10, 2015, (the “**RAD Notice**”). Under the RAD Program, public housing authorities can convert funding for public housing units to PBV assistance.

C. The Authority desires to convert the funding for the Former Public Housing Development to PBV assistance. To that end, the Authority has applied to HUD to convert 179 units to RAD PBV units (“**RAD Units**”).

D. The Authority has submitted to HUD a RAD application and financing plan, including the Authority’s plan to lend funding to the Owner for an initial deposit to the replacement reserve and for some renovation of the Building, which have been approved by HUD. HUD and the Authority have entered into a Rental Conversion Commitment (“**RCC**”) for the RAD Units as provided in the RAD Act, and HUD has issued, and the Authority has accepted, a Commitment to Enter into a Housing Assistance Payments Contract (“**CHAP**”) for the RAD Units.

F. In connection with the conversion of the Former Public Housing Development, concurrently herewith, among other things: (1) the Authority is entering into a 99-year ground lease for the Land (the “**Ground Lease**”) with the Owner; (2) title to the Building is being conveyed to the Owner; (3) the Owner and the Authority are entering into a Rental Assistance Demonstration Use Agreement (the “**RAD Use Agreement**”) with the Secretary of Housing and Urban Development (the “**Secretary**”) with respect to the RAD Units; and (4) the Authority, in its capacity as contract administrator (in such capacity, the “**HAP Contract Administrator**”), and the Owner are entering into a Project-Based Voucher Rental Assistance Demonstration

UNOFFICIAL COPY

Housing Assistance Payments Contract with respect to the RAD Units (as it may hereafter be amended, the “**RAD HAP Contract**”).

G. It is anticipated that, following the execution of this Agreement, the Authority will be performing various activities and providing various services in connection with the RAD Units and the Development, as more particularly described on Exhibit B attached hereto and made a part hereof.

H. As used in this Agreement, the term “**All Applicable RAD Requirements**” means all requirements of the RAD Program that are applicable to the Authority with respect to the RAD Units or to the owner from time to time of the RAD Units, including, without limitation, the requirements under the RAD Act, the PBV Regulations, the RAD Use Agreement, the RAD HAP Contract, and all related HUD directives and administrative requirements, including, without limitation, those contained in the RAD Notice, except to the extent HUD has granted waivers of those requirements, the ACC, the Administrative Plan, and the MTW Agreement.

I. It is a condition of HUD’s approval of the redevelopment of the Former Public Housing Development, as described above, and All Applicable RAD Requirements, that the Authority preserve its interest in the property, which is being accomplished, in part, by the provisions of this Agreement. It is a condition of the Authority’s willingness to proceed with that redevelopment that the Owner enter into this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **Recitals.** The foregoing preambles and recitations are, by this reference, incorporated into the body of this Agreement.

2. **Duration of this Agreement.** The provisions of this Agreement shall remain in effect for so long as a RAD HAP Contract, or a similar HAP Contract, is in effect with respect to the RAD Units or any of them. The Owner acknowledges and agrees that, under the RAD Act, upon the expiration of the initial RAD HAP Contract, and each renewal RAD HAP Contract, the Owner must accept a renewal of such contract, subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal.

3. **Additional Definitions.**

“ACC” shall mean the Consolidated Annual Contributions Contract(s), including all relevant amendments, pursuant to which HUD provides funding to the CHA for the administration, management and operation of the Section 8 Program including the converting RAD units within the Development.

“Administrative Plan” shall mean Chicago Housing Authority’s FY2015 Administrative Plan for the Housing Choice Program, as may be amended from time to time.

UNOFFICIAL COPY

“First Mortgage Lender” shall mean Chicago Housing Authority., its successors and/or assigns.

“MTW Agreement” shall mean that certain Amended and Restated Moving to Work Demonstration Agreement between CHA and HUD, dated June 26, 2008, and the 1st through 7th amendments to the Amended and Restated Moving to Work Demonstration Agreement, as may be hereinafter amended.

4. Binding on Subsequent Owners. The provisions of this Agreement shall be binding upon the Owner and its successors and assigns, including each owner from time to time of the Development or any portion thereof.

5. General Obligations. The Owner acknowledges and agrees that:

- (a) The Owner is obligated to abide by and perform All Applicable RAD Requirements which pertain to the owner of any RAD Unit.
- (b) The Authority will maintain and administer the waiting list for the RAD Units. No RAD Unit may be leased to a tenant or tenants other than those that CHA refers to the Owner or the Owner’s property manager in accordance with All Applicable RAD Requirements.
- (c) The Authority has approved The Habitat Company LLC, an Illinois limited liability company, as the property manager for the Development. No other person or entity may act as property manager for the Development without the prior written consent of the Authority.
- (d) The Owner is obligated to maintain each of the RAD Units in a condition that complies with HUD’s Uniform Property Compliance Standards (“UPCS”) or such other inspection standards acceptable to the Authority and HUD, and that the Authority, in its capacity as HAP Contract Administrator, has the right to inspect the RAD Units.

6. Reserves. The Owner is obligated under the RAD HAP Contract and the RCC to make periodic deposits into a reserve fund for replacements (the “Replacement Reserve”) with respect to the Development. No funds may be withdrawn from the Replacement Reserve without the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed. In the event of the disposition of the Development or the dissolution of the Owner, any funds in the Replacement Reserve shall be transferred to the new owner or otherwise continue to be used in connection with the Development in accordance with All Applicable RAD Requirements.

UNOFFICIAL COPY

7. **Disposition.** The Owner shall not demolish or dispose of its interest in the Development or the RAD Units (including, without limitation, by conveyance or lease not in the ordinary course of business of the RAD Units), without the prior written approval of the Authority and HUD and except in accordance with All Applicable RAD Requirements.

8. **Non-Discrimination and Other Federal Requirements.** The Owner shall comply with all applicable requirements of the following, as the same may be amended from time to time:

(a) the Fair Housing Act, 42 U.S.C. 3601-19, and regulations issued thereunder, 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR Part 107; the fair housing poster regulations, 24 CFR Part 110, and applicable advertising guidelines;

(b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and regulations issued thereunder relating to non-discrimination in housing, 24 CFR Part 1;

(c) the Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations issued thereunder, 24 CFR Part 146;

(d) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations issued thereunder, 24 CFR Part 8; the Americans with Disabilities Act, 42 U.S.C. 12181-89, and regulations issued thereunder, 28 CFR Part 36;

(e) Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its implementing regulations at 24 CFR Part 135; and

(f) Wage rates under the Davis-Bacon Act (40 U.S.C. § 276a *et seq.*) to the extent applicable.

9. **CHA Fees.** The Owner acknowledges and agrees that the services and activities provided by the Authority in general, as a public housing authority, and in neighborhoods surrounding the Development (such as local government collaboration, community engagement, resident services and programming, cooperation with Chicago police and general office functions and support) will benefit the Development. Accordingly, the Owner agrees to pay to the Authority, on a monthly basis, a fee (the "**CHA Asset Management Fee**") as provided in this Section. The amount of the fee shall initially be the sum of Thirty-Nine Thousand One Hundred Sixty Dollars (\$39,160.00), and shall be cumulative to the extent not paid in full in any month. The initial installment of the fee shall be due and payable on the first day of the month that the HAP is effective, with subsequent installments due on the first of each month thereafter. The fee shall be increased by three percent (3%) per annum; provided however, to the extent the activities or services in Exhibit B increase, the parties will renegotiate the amount of the fee to be paid.

UNOFFICIAL COPY

10. Owner Default and Remedies.

(a) **Default.** A default by the Owner under this Agreement shall occur if the Owner violates, breaches or fails to comply in any material respect with any provision of, or obligation under this Agreement or All Applicable RAD Requirements. A default by the Owner that is attributable to an action or omission of its property manager shall be deemed a default by the Owner for purposes of this Section.

(b) **Notice and Cure.** Upon a determination by the Authority that a default by the Owner has occurred, the Authority shall notify the Owner of: (1) the nature of the default; (2) the actions required to be taken by the Owner to cure the default; and (3) the time (no less than thirty (30) days) within which the Owner shall respond with a showing that all required actions have been taken; provided that if the default by its nature cannot be cured within the aforesaid thirty (30) day period, the Owner may have additional time, with the Authority's written approval, as may be reasonable given the circumstances to effect a cure of the default. The Authority reserves the right to monitor the Owner's efforts to cure; and further reserves the right to reduce and/or terminate the time period allowed herein (but in no event less than thirty (30) days) where further actions to cure have not been made by the Owner. Notwithstanding the foregoing, the Authority rights granted herein shall be subject to All Applicable RAD Requirements.

(c) **Remedies.** If the Owner fails to respond or take corrective action to the satisfaction of the Authority as provided herein the Authority shall have the right to exercise any remedy available to it by reason of such default, including without limitation, to seek appropriate relief in any court having jurisdiction, including but not limited to specific performance, injunctive relief, or the appointment of a receiver to take over and operate the RAD Units in accordance with the terms of this Agreement without prejudice to the right of the Authority, alternatively or in addition to the foregoing, to exercise any remedy available to it, if any, if the nature of such default hereunder, would constitute a default under agreement or document to which the Authority is a party. Notwithstanding the foregoing, the Authority's remedies herein shall be subject to All Applicable RAD Requirements.

11. Subordinate to RAD Use Agreement. This Agreement is subject and subordinate to the RAD Use Agreement.

12. Miscellaneous.

(a) **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, and heirs of each of the parties; provided, however, that the Owner may not assign any of its interest in this Agreement without the prior written consent of the Authority.

(b) **Entire Agreement.** This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes any prior agreement or understanding between among them with respect thereto.

UNOFFICIAL COPY

(c) **Amendments.** Subject to All Applicable RAD Requirements, this Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties and approved in writing by HUD.

(d) **No Waiver.** No delay or omission by either party in exercising any right or remedy available hereunder shall impair any such right or remedy or constitute a waiver thereof in the event of any subsequent occasion giving rise to such right or availability of remedy, whether of a similar or dissimilar nature.

(e) **Notices.** Any notice or other communication given or made pursuant to this Agreement shall be in writing and shall be deemed given if (i) delivered personally or by courier, (ii) sent by overnight express delivery, or (iii) mailed by certified mail, return receipt requested, to the respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party).

If to the Authority:

Chicago Housing Authority
60 E. Van Buren St. 12th Floor
Chicago, Illinois 60605
Attention: Chief Executive Officer

with a copy to:

Chicago Housing Authority
Office of the General Counsel
60 E. Van Buren St., 12th Floor
Chicago, Illinois 60605
Attention: Chief Legal Officer

And

Chicago Housing Authority
60 E. Van Buren St., 13th Floor
Chicago, Illinois 60605
Attention: Chief Property Officer

If to the Owner:

Chicago Housing Administration LLC
c/o Chicago Housing Authority
60 E. Van Buren St., 12th Floor
Chicago, Illinois 60605
Attention: Senior Director, RAD

UNOFFICIAL COPY

All such notices and other communication shall be deemed given on the date of personal or local courier delivery, the delivery to the overnight express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of delivery by overnight express delivery service, on the business day following dispatch, and (iv) in the case of mailing, on the date specified in the return receipt therefor.

(f) **Further Assurances.** Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transaction contemplated by this Agreement.

(g) **No Personal Liability.** No officer, director, board member, shareholder, partner, employee, agent or other person authorized to act for or on behalf of either party shall be personally liable for any obligation, express or implied, hereunder. The Owner shall look solely to the Authority funds that are legally available for such purpose, and, except as provided by law, the Authority shall look solely to the Owner, for the satisfaction of any remedy each might have with respect to the other for the other's failure to perform any of its obligations hereunder. Notwithstanding the foregoing, nothing contained herein shall either relieve the Owner or any managing member, manager or general partner, shareholder of the Owner from personal liability and responsibility, or limit the Authority's rights and remedies against such parties, either at law or in equity: (i) for fraudulent acts; (ii) for insurance proceeds and condemnation awards received by the Owner and not turned over to the Authority or used by the Owner for restoration or repair of the RAD Units to the extent required under this Agreement; and (iii) for any rents or other income from the RAD Units received by the Owner after an event of default under this Agreement and not applied to expenses of the RAD Units.

(h) **Neither Party an Agent.** Nothing in this Agreement shall be deemed to appoint either Owner or the Authority as an agent for or representative of the other, and neither one shall be authorized to act on behalf of the other with respect to any matters. Neither Owner nor the Authority shall have any liability or duty to any person, firm, entity or governmental body for any act of omission or commission, liability, or obligation of the other, whether arising from Owner's or the Authority's actions under this Agreement or otherwise.

(i) **Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the State of Illinois applicable to contracts made and to be performed therein.

(j) **Headings; Usage.** All section headings in this Agreement are for convenience of reference only and are not intended to modify the meaning of any section. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter as the identity of the person or persons may require. Where the context admits, the singular forms of terms used herein shall include the plural and the plural shall include the singular.

(k) **Severability.** If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement,

UNOFFICIAL COPY

or the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby.

(l) **Counterparts; Execution.** This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one agreement, binding on all parties hereto.

(m) **No Third Party Beneficiary.** The provisions of this Agreement shall not be construed for the benefit of or as enforceable by any person or entity not a party hereto, with the exception of HUD.

(n) **Amendments to the Owner's Organizational Documents.** The Owner's Organizational Document may not be amended in any material respect without the prior written consent of the Authority.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized signatories as of the date first above written.

AUTHORITY

Chicago Housing Authority, an Illinois municipal corporation

By:

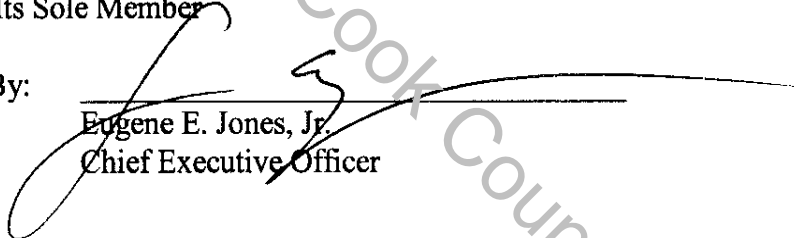

Eugene E. Jones, Jr.
Chief Executive Officer

OWNER

Chicago Housing Administration, LLC, an Illinois limited company

By: Chicago Housing Authority, an Illinois municipal corporation
Its Sole Member

By:


Eugene E. Jones, Jr.
Chief Executive Officer

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Michael S. Robinson, a Notary Public, in and for the State aforesaid, DO HEREBY CERTIFY that Eugene E. Jones, Jr., the Chief Executive Officer of the 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 signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 30 day of September, 2016.

(SEAL)



Notary Public



Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

The estates or interests in the Land:

A. Leasehold Estate created by the Ground Lease dated September 30, 2016 and recorded simultaneously herewith, made by and between Chicago Housing Authority, an Illinois municipal corporation, as Landlord, and Chicago Housing Administration, LLC, an Illinois limited liability company, as Tenant, which Lease demises the Land and all improvements located on the Land as of the date of the Lease for a term of 99 years commencing on the date of the Lease and ending September 29, 2115.

The Land:

Lots 12 to 23, both inclusive, in Fobey Ridge Boulevard Addition to Rogers Park, a subdivision of that part of Sublot 3 in the Superior Court Partition of Lot 2 in the Circuit Court Partition of the North $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 31, Township 41 North, Range 14 East of the Third Principal Meridian, and those parts of Lot 3 and 4 (except the South 20 feet of said Lot 4) in said Circuit Court Partition, all lying West of Ridge Road, as widened, in Cook County, Illinois, and vacated alleys.

also:

That part of Lot 2 in the Partition of Lot 2 lying West of Ridge Road (except the Easterly 7 feet of that part West of Ridge Road condemned February 20, 1897 for widening Ridge Road) in the Circuit Court Partition of the North $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 31, Township 41 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

B. Ownership of the building and improvements constructed and located on the Land after the date of the Lease.

Address: 1930 West Loyola Avenue, Chicago, Illinois

PIN(s): 11-31-400-018-0000; 11-31-400-039-0000; 11-31-400-040-0000; 11-31-400-041-0000;
11-31-400-049-0000

UNOFFICIAL COPY

EXHIBIT B CHA PROVIDED SERVICES AND ACTIVITIES

Service/Activity	CHA Department (Primary)	Monthly Cost
Reasonable Accommodation Requests, Grievance Processing, General Legal Support	Legal	\$ 1,335
Supervision and Support for Resident Services Provision at Property	Resident Services	\$ 4,450
Local Government Collaboration, Community Engagement, Emergency Response/Security Support/Cooperation with Chicago Police Department through existing Intergovernmental Agreement, Camera Monitoring	Property Office/	\$ 11,867
Program and Financial Monitoring, including Waitlist Administration, tracking of RAD Units Replacement Reserve deposits and other applicable RAD and PBV Compliance items	Property Office	\$ 20,247
Information Technology (IT) Support and Yard Maintenance	IT	\$ 1,261

Cook County Clerk's Office