



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
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## Legislation Text

File #: SO2022-1771, Version: 1

### SUBSTITUTE ORDINANCE

WHEREAS, by virtue of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois, the City of Chicago (the "City") is a home rule unit of local government and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, as a home rule unit and pursuant to the Constitution, the City is authorized and empowered to issue multi-family housing revenue obligations for the purpose of financing the cost of the acquisition, construction, rehabilitation, development, and equipping an affordable multi-family housing facility for low- and moderate-income families located in the City ("Multi-Family Housing Financing"); and

WHEREAS, the City has determined that there exists within the City a serious shortage of decent, safe and sanitary rental housing available for persons of low- and moderate-income and that the continuance of a shortage of affordable rental housing is harmful to the health, prosperity, economic stability and general welfare of the City; and

WHEREAS, by this ordinance (this "Ordinance"), the City Council of the City (the "City Council") has determined that it is necessary and in the best interests of the City to provide Multi-Family Housing Financing and certain other funding, as provided herein, to WHP-IID, LLC, an Illinois limited liability company (the "Borrower"), the managing member of which is WHP-IID Manager, LLC, an Illinois limited liability company (the "Managing Member"), the members of which are Brinshore PL, LLC, an Illinois limited liability company, and Michaels Chicago Holding Company 2, LLC, an Illinois limited liability company, to enable it to pay or reimburse a portion of the costs of acquiring, leasing, constructing, rehabilitating and equipping of low- and moderate- income residential facilities and related common facilities consisting of one 12-story tower attached to a 4-story component and containing approximately 96 residential rental apartments, of which 38 units will be set aside for existing public housing individuals and families (with a right of return under the CHA's "Relocation Rights Contract") and eligible applicants from the Chicago Housing Authority waitlist (the "CHA Units"), approximately 4,250 square feet of ground floor retail space (together with related common areas along with parking lot facilities and as further described on Exhibit A hereto, the "Bond Project"), on property located at the southeast corner of North Damen Avenue and West Lake Street, commonly known as 145 North Damen Avenue (also known as 1951-1959 West Lake Street) in Chicago, Cook County, Illinois, as more particularly described on Exhibit F hereto (collectively, the "Property"), and to pay a portion of the costs of issuance and other costs incurred in connection therewith; and

WHEREAS, by this Ordinance, the City Council has determined that it is necessary and in the best interests of the City to enter into a funding loan agreement (the "Funding Loan Agreement") with BMO Harris Bank, NA., a national banking association (the "Funding Lender"), pursuant to which the City will borrow an aggregate principal amount not to exceed Thirty Million Dollars (\$30,000,000) (the "Funding Loan") for a portion of the purposes set forth above and in evidence of its limited, special obligation to repay that borrowing, issue a tax-exempt revenue note, to be designated as the Multi-Family Housing Revenue Note (Westhaven Park IID), Series 2022 (the "Note") under the terms and conditions of this Ordinance and the Funding Loan Agreement, and the City will thereafter loan the proceeds of the Funding Loan to the Borrower (the "Borrower Loan") pursuant to a borrower loan agreement (the "Borrower Loan Agreement") between the City and the Borrower, as evidenced by that certain Borrower promissory note (the "Borrower Note"), in order to finance a portion of the cost of the Bond Project in return for loan payments sufficient to pay, when due, the principal of, prepayment premium, if any, and interest on the Note; and

WHEREAS, the Chicago Housing Authority, an Illinois municipal corporation under the Housing Authorities Act, as

amended (310 ILCS 10/1 et seq.) (the "CHA"), has indicated that it expects to make certain funds from CHA sources available for the Bond Project which, when available, may be used to secure and repay a portion of the Note; and

WHEREAS, the CHA owns the Property, as separately identified on Exhibit F; and

WHEREAS, CHA intends to make a donation to the Sponsor of a long-term ground lease of the Property, whereupon the Sponsor will immediately assign its leasehold interest in such portion of the Property to the Borrower, who will develop the Bond Project on such portion of the Property; and

WHEREAS, the principal of, prepayment premium, if any, and interest payable on the Note will be secured by, among other things, the Borrower Note, a mortgage on the Property and certain other related collateral, by certain capital contributions to be made to the Borrower by its investor member(s) in connection with the allocation to the Borrower of federal low-income housing tax credits and by pledges and/or assignments of certain funds, personal property, and contractual rights of the Borrower and its affiliates; and

WHEREAS, the Funding Loan and the Note and the obligation to pay interest thereon do not now and shall never constitute an indebtedness of or an obligation of the City, the State of Illinois or any political subdivision thereof, within the purview of any Constitutional limitation or statutory provision, or a charge against the general credit or taxing powers of any of them. No party to the Funding Loan Agreement or holder of any Note shall have the right to compel the taxing power of the City, the State of Illinois or any political subdivision thereof to pay any principal installment of, prepayment premium, if any, or interest on the Note or obligations under the Funding Loan Agreement; and

WHEREAS, in connection with the execution and delivery of the Funding Loan Agreement and the issuance of the Note, the City Council has determined by this Ordinance that it is necessary and in the best interests of the City to enter into (i) the Funding Loan Agreement, providing for the security for and terms and conditions of the Funding Loan, and the Note to be issued thereunder, (ii) the Borrower Loan Agreement providing for the loan of the proceeds of the Funding Loan to the Borrower and the use of such proceeds, (iii) one or more tax regulatory agreements and/or tax certificates (each, a "Tax Agreement" and collectively, the "Tax Agreements") between the City and the Borrower, and (iv) a Land Use Restriction Agreement between the City and the Borrower (the "Land Use Restriction Agreement"); and

WHEREAS, pursuant to an ordinance adopted by the City Council on February 16, 2000, and published at pages 25276-25408 of in the Journal of the Proceedings of the City Council (the "Journal") of such date, a certain redevelopment plan and project (the "Central West Plan") for the Central West Tax Increment Financing Redevelopment Project Area (the "Central West Area") was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq.) (the "Act"); and

WHEREAS, pursuant to an ordinance adopted by the City Council on February 16, 2000, and published at pages 25408-25420 of the Journal of such date, the Central West Area was designated as a redevelopment project area pursuant to the Act; and

WHEREAS, pursuant to an ordinance adopted by the City Council on February 16, 2000, and published at pages 25421-25431 of the Journal of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain Central West Area redevelopment project costs (as defined in the Act) incurred pursuant to the Central West Plan (the "TIF Ordinance"); and

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WHEREAS, the Bond Project is necessary for the redevelopment of the Central West Area; and

WHEREAS, the Borrower and Michaels Community Services Corporation a/k/a Better Tomorrows, a New Jersey not-for-profit corporation (or its affiliate) (the "Sponsor," and together with the Borrower, the "Developer") or an affiliate of the Developer acceptable to the City's Commissioner of Housing or a designee thereof (the "Authorized DOH Officer") will be obligated to undertake the Bond Project in accordance with the terms and conditions of a proposed redevelopment agreement ("Redevelopment Agreement") to be executed by the Developer and the City, with such Bond Project to be financed in part by certain pledged incremental taxes deposited from time to time in the Central West Redevelopment Project Area Special Tax Allocation Fund for the Area (the "TIF Fund") pursuant to Section 5/11-74.4-8(b) of the Act ("Incremental Taxes"); and

WHEREAS, pursuant to Resolution No. 21-CDC-05, adopted by the Community Development Commission of the City (the "Commission") on March 9, 2021, the Commission has recommended that the Borrower, together with its affiliates, be designated as the developer for the Bond Project described in Exhibit A hereto, and that the City's Department of Planning and Development ("DPD") be authorized to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Borrower; and

WHEREAS, pursuant to an ordinance adopted on October 27, 2021, and published at pages 40213-40503 of the Journal of such date, the City Council authorized the issuance of general obligation bonds in one or more series, in an aggregate principal amount not to exceed \$660,000,000 for the Chicago Recovery Plan to finance the costs of the Recovery Purposes (as defined therein); and

WHEREAS, there has been presented to this meeting of the City Council forms of the following documents in connection with the Note:

- a) the form of Borrower Loan Agreement (attached as Exhibit B hereto);
- b) the form of Funding Loan Agreement, which includes a form of the Note to be issued by the City (attached as Exhibit C hereto); and

WHEREAS, there has been presented to this meeting of the City Council a form of the Land Use Restriction Agreement (attached as Exhibit D hereto) in connection with the issuance of the Note; and

WHEREAS, DOH has preliminarily reviewed and approved the making of a loan to the Borrower in an amount not to exceed \$4,371,322 (the "Loan"), to be funded from Multi-Family Program Funds pursuant to the terms and conditions set forth in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Borrower now desires to obtain financing from various sources including, but not limited to, the Borrower Loan, all such financing as described in Exhibit A; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

1. Incorporation of Recitals. The recitals contained in the preambles to this Ordinance are hereby incorporated into this Ordinance by this reference. All capitalized terms used in this Ordinance, unless otherwise defined herein, shall have the meanings

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ascribed thereto in the Funding Loan Agreement or the Redevelopment Agreement, as applicable.

2. Findings and Determinations. The City Council hereby finds and determines that the delegations of authority that are contained in this Ordinance, including the authority to make the specific determinations described herein, are necessary and desirable because the City Council cannot itself as advantageously, expeditiously or conveniently exercise such authority and make such specific determinations. Thus, authority is granted to the Authorized Officer (as defined in Section 3) to establish the terms of the Funding Loan Agreement and related Note, the Borrower Loan Agreement and the related Borrower Note on such terms as and to the extent such officer determines that such terms are desirable and in the best financial interest of the City. Any such designation and determination by an Authorized Officer shall be signed in writing by such Authorized Officer and filed with the City Clerk and shall remain in full force and effect for all purposes of this Ordinance unless and until revoked, such revocation to be signed in writing by an Authorized Officer and filed with the City Clerk.

3. Authorization of the Funding Loan Agreement, the Note the Borrower Loan Agreement and Related Agreements. Upon the approval and availability of the additional financing as shown in Exhibit A (the "Additional Financing"), the execution and delivery of the Funding Loan Agreement and the issuance of the Note in an aggregate principal amount of not to exceed \$30,000,000 are hereby authorized. The aggregate principal amount of the Note to be issued, and its division into one or more series of Note, if applicable, shall be as set forth in the Funding Loan Notification referred to in Section 6 below.

The Funding Loan Agreement and the Note shall contain a provision that they are executed and delivered under authority of this Ordinance. The maximum term of the Funding Loan shall not exceed 25 years from the date of execution and delivery of the Note. The Note shall bear interest at a rate or rates equal to the rate of interest on the related Borrower Loan as provided in the Borrower Loan Agreement (which shall not exceed the lesser of 10.0% or the maximum rate of interest allowable under state law) and shall be as determined by the Authorized Officer and shall be payable on the payment dates as set forth in the Funding Loan Agreement and the Funding Loan Notification (defined herein). The Note shall be dated, shall be subject to prepayment, shall be payable in such places and in such manner and shall have such other details and provisions as prescribed by the Funding Loan Agreement, the form(s) of the Note therein and the Funding Loan Notification. The provisions for execution, signatures, payment and prepayment, with respect to the Funding Loan Agreement and the Note shall be as set forth in the Funding Loan Agreement and the form(s) of the Note therein.

Each of (i) the Mayor of the City (the "Mayor"), the (ii) Chief Financial Officer of the City (as defined below) or (iii) any other officer designated in writing by the Mayor (the Mayor, the Chief Financial Officer or any such other officer being referred to as an "Authorized Officer") is hereby authorized to execute by their manual or, in the case of the Note, manual or facsimile signature, and to deliver on behalf of the City, and the City Clerk and the Deputy City Clerk are hereby authorized to attest by their manual or, in the case of the Note, manual or facsimile signature, the Funding Loan Agreement and the Note, in substantially the form attached hereto as Exhibit B and made a part hereof and hereby approved, with such changes therein as shall be approved by the Authorized Officer executing the same, with such execution to constitute conclusive evidence of such officer's approval and the City Council's approval of any changes or revisions from the form of the Funding Loan Agreement and Note therein attached to this Ordinance and reflecting the terms as determined in the Funding Loan Notification.

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As used herein, the term "Chief Financial Officer" shall mean the Chief Financial Officer of the City appointed by the Mayor, or, if there is no such officer then holding said office, the City Comptroller.

Each Authorized Officer is hereby authorized to act as an authorized City representative (each an "Authorized City Representative") of the City for the purposes provided in the Funding Loan Agreement.

An Authorized Officer is hereby authorized to execute and deliver on behalf of the City, and the City Clerk and the Deputy City Clerk are hereby authorized to attest, the Borrower Loan Agreement in substantially the form attached hereto as Exhibit C, and made a part hereof and hereby approved, with such changes therein as shall be approved by the Authorized Officer executing the same, with such execution to constitute conclusive evidence of such Authorized Officer's approval and the City Council's approval of any changes or revisions from the form of the Borrower Loan Agreement (and the Borrower Note referred to therein) attached to this Ordinance and reflecting the terms as determined in the Funding Loan Notification.

An Authorized Officer is hereby authorized to execute and deliver one or more Land Use Restriction Agreements on behalf of the City, in substantially the form attached hereto as Exhibit D and made a part hereof and hereby approved with such changes therein as shall be approved by the Authorized Officer executing the same, with such execution to constitute conclusive evidence of such Authorized Officer's approval and the City Council's approval of any changes or revisions from the form of the Land Use Restriction Agreement attached to this Ordinance and reflecting the terms as determined in the Funding Loan Notification.

An Authorized Officer is hereby authorized to execute and deliver and the City Clerk and the Deputy City Clerk are hereby authorized to attest the Tax Agreements on behalf of the City, in substantially the forms of such documents used in previous tax-exempt multi-family housing financings (with appropriate revisions to reflect the terms and provisions of the Funding Loan Agreement and the Note and the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder), and with such other revisions in text as the Authorized Officer executing the same shall determine are necessary or desirable in connection with the exclusion from gross income for federal income tax purposes of interest on the Note. The execution of the Tax Agreements by the

Authorized Officer shall be deemed conclusive evidence of the approval of the City Council to the terms provided in the Tax Agreements.

An Authorized Officer is hereby authorized to execute and deliver on behalf of the City such security or collateral documents securing payment of the Note as the Authorized Officer regards as appropriate, in substantially the form of the security documents used in previous issuances of tax-exempt bonds pursuant to programs similar to the Note, with appropriate revisions to reflect the terms and provisions of the Note and with such other revisions as the Authorized Officer executing the same shall determine are appropriate and consistent with the other provisions of this Ordinance. The execution of security or collateral documents by the Authorized Officer shall be deemed conclusive evidence of the approval of the City Council to the terms provided in such documents.

4. Security for the Funding Loan Agreement and the Note. The obligations of the City under the Funding Loan Agreement and the Note shall be limited obligations of the City, payable solely from and/or secured by a pledge of the following security (other than certain Unassigned Rights of the City):

(a) all right, title and interest of the City in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and

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receipts derived by the City from the Borrower relating to the Bond Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments derived by the City under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under the Funding Loan Agreement shall not impair or diminish the obligations of the City under the provisions of the Borrower Loan Agreement;

b) all right, title and interest of the City in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding Loan Agreement, and all other payments, revenues and receipts derived by the City under and pursuant to, and subject to the provisions of, the Funding Loan Agreement;

c) any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under the Funding Loan Agreement, subject to the provisions of the Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth therein;

d) any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of the Funding Loan Agreement as additional security by the City or anyone on its part or with its consent, or which pursuant to any of the provisions of the Borrower Loan Agreement may come into the possession or control of the Funding Lender or a receiver appointed pursuant to the Funding Loan Agreement;

e) certain capital contributions to be made to the Borrower by its low income housing tax credit non-managing member in accordance with the terms and conditions of the operating agreement of the Borrower in connection with the allocation to the Borrower of federal low-income housing tax credits and certain other funds, personal property and contractual rights of the Borrower and its affiliates pledged and/or assigned to the Funding Lenders (defined herein); and

f) a mortgage on and security interest in the Bond Project and related collateral.

In order to secure the payment of the principal of, prepayment premium, if any, and interest on the Note, such rights, proceeds and investment income are hereby pledged to the extent and for the purposes as provided in the Funding Loan Agreement and are hereby appropriated for the purposes set forth in the Funding Loan Agreement. Nothing contained in this Ordinance shall limit or restrict the subordination of the pledge of such rights, proceeds and investment income as set forth in the Funding Loan Agreement to the payment of any other obligations of the City enjoying a lien or claim on such rights, proceeds and investment income as of the date of execution and delivery of the Funding Loan Agreement and the Note, all as shall be determined by the Authorized Officer at the time of the execution and delivery of the Funding Loan Agreement and the Note. The Funding Loan Agreement shall set forth such covenants

with respect to the application of such rights, proceeds and investment income as shall be deemed necessary by the Authorized Officer in connection with the execution and delivery of the Funding Loan Agreement and the Note.

5. Delivery of the Funding Loan Agreement Sale and Delivery of Note. Subject to the terms and conditions of the Funding Loan Agreement and such additional terms as are set forth in the Funding Loan Notification with the approval of an Authorized Officer, the Note shall be sold and delivered to BMO Harris Bank, N.A., a national banking association, or such other funding lender as approved by an Authorized Officer (the "Funding Lenders"), and shall hold the Funding Loan Agreement and the Note,

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subject to the terms and conditions of the required transferee representations (the "Required Transferee Representations") which shall be delivered to the City by the Funding Lender. Any subsequent Funding Lender approved by an Authorized Officer, to the extent required under the Funding Loan Agreement, may succeed the initial Funding Lenders as the registered holder of all or a portion of the Funding Loan, but only if such subsequent Funding Lender executes and delivers to the City the Required Transferee Representations, substantially in the form of the Required Transferee Representations set forth in the Funding Loan Agreement. The aggregate costs of origination of the Funding Loan paid from the proceeds of the Funding Loan to the Funding Lenders shall not exceed one and one half percent (1.5%) of the aggregate principal amount of the Note.

6. Funding Loan Notification. Subsequent to the execution and delivery of the Funding Loan Agreement and the sale of any Note, the Authorized Officer shall file in the Office of the City Clerk a Funding Loan Notification for such Funding Loan Agreement and the Note directed to the City Council setting forth (i) the aggregate original principal amount of, maturity schedule, redemption provisions for and nature of each series of the Note sold, (ii) the extent of any tender rights to be granted to the holders of the Note, (iii) the identity of the Funding Lenders, if different from BMO Harris Bank, N.A., (iv) the interest rates on the Note and/or a description of the method of determining the interest rates applicable to the Note from time to time, (v) the origination fee or other compensation paid to the Funding Lenders in connection with the origination of the Funding Loan and issuance of the Note, and (vi) any other matter authorized by this Ordinance to be determined by an Authorized Officer at the time of the sale of any Note ("Funding Loan Notification"). There shall be attached to such notification the final form of the Funding Loan Agreement, a specimen of the each of the Note and the Borrower Loan Agreement.

7. Limited Obligations. The Note, when issued and outstanding, will be limited obligations of the City, payable solely as provided in the Funding Loan Agreement. The Note and the interest thereon shall never constitute a debt or general obligation or a pledge of the faith, the credit or the taxing power of the City within the meaning of any Constitutional or statutory provision of the State of Illinois. The Note shall be payable solely from the funds pledged therefor pursuant to the terms of the Funding Loan Agreement herein described.

8. Use of Proceeds. The proceeds from the Funding Loan (as evidenced by the sale of the Note) shall be deposited as provided in the Funding Loan Agreement and used for the Bond Project.

9. Volume Cap. The Funding Loan Agreement and the Note are obligations taken into account under Section 146 of the Code in the allocation of the City's volume cap.

10. Developer Designation. The Developer is hereby designated as the developer for the Bond Project pursuant to Section 5/11-74.4-4 of the Act.

11. Redevelopment Agreement. Upon the approval and availability of the Additional Financing, the City's Commissioner of DPD or a designee thereof (the "Authorized DPD Officer") is hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver the Redevelopment Agreement and such other supporting documents as may be necessary to carry out and comply with the provisions of such agreements, with such changes, deletions and insertions as shall be approved by the persons executing such agreements. The Redevelopment Agreement shall be in substantially the form attached

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hereto as Exhibit E and made a part hereof and hereby approved with such changes therein as shall be approved by the Authorized DPD Officer executing the same, with such execution to constitute conclusive evidence of such officer's approval of any changes or revisions from the form of Redevelopment Agreement attached to this Ordinance.

**12. Payment of Incremental Taxes. The City Council hereby finds that the City is authorized to pay an aggregate amount not to exceed \$10,000,000 ("City Funds") from Incremental Taxes deposited in the general account of the Central West TIF Fund (the "General Account"). The proceeds of the City Funds are hereby appropriated for the purposes set forth in this Section 12.**

13. Multi-Family Loan. Upon the approval and availability of the Additional Financing as shown in Exhibit A hereto, the Authorized DOH Officer is hereby authorized, subject to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable in connection with the implementation of the Loan. The Authorized DOH Officer is hereby authorized, subject to the approval of the Corporation Counsel, to negotiate any and all terms and provisions in connection with the Loan which do not substantially modify the terms described in Exhibit A hereto. Upon the execution and receipt of proper documentation, the Authorized DOH Officer is hereby authorized to disburse the proceeds of the Loan to the Borrower.

14. Proxies. Each Authorized Officer may designate another to act as their respective proxy and to affix their respective signatures to the Note, whether in temporary or definitive form, and to any other instrument, certificate or document required to be signed by such Authorized Officer pursuant to this Ordinance or the Funding Loan Agreement. In each case, each shall send to the City Council written notice of the person so designated by each, such notice stating the name of the person so selected and identifying the instruments, certificates and documents which such person shall be authorized to sign as proxy for the Mayor and the Authorized Officer, respectively. A written signature of the Mayor or the Authorized Officer, respectively, executed by the person so designated underneath, shall be attached to each notice. Each notice, with signatures attached, shall be recorded in the Journal of Proceedings of the City Council of the City of Chicago and filed with the City Clerk. When the signature of the Mayor is placed on an instrument, certificate or document at the direction of the Mayor in the specified manner, the same, in all respects, shall be as binding on the City as if signed by the Mayor in person. When the signature of the Authorized Officer is so affixed to an instrument, certificate or document at the direction of the Authorized Officer in the specified manner, the same, in all respects, shall be as binding on the City as if signed by the Authorized Officer in person.

15. Additional Authorization. Each Authorized Officer, the City Treasurer, and, upon the approval and availability of the Additional Financing, the Authorized DOH Officer are each hereby authorized to execute and deliver and the City Clerk and the Deputy City Clerk are each hereby authorized to enter into, execute and deliver such other documents and agreements, including, without limitation, any documents necessary to evidence the receipt or assignment of any collateral for the Funding Loan Agreement and the related Note, the Borrower Loan Agreement or the Borrower Note from the Borrower, and perform such other acts as may be necessary or desirable in connection with the City Agreements (as defined in Section 20 hereof), including, but not limited to, the exercise following the delivery date of the City Agreements of any power or authority delegated to such official under this Ordinance with respect to the City Agreements upon original execution and delivery, but subject to any limitations on or

restrictions of such power or authority as herein set forth. Notwithstanding anything contained herein (including but not limited to Sections 3 and 11 hereof), if any portion of the Additional Financing is not approved and available at such time as the Authorized Officer and the Authorized DOH Officer otherwise deem it in the best interest of the City to execute the City Agreements, then the Authorized Officer and the Authorized DOH Officer may so execute the City Agreements (with such changes thereto as the Authorized Officer and the Authorized DOH Officer deem necessary and advisable) and any necessary ancillary documents and may impose such conditions upon the approval and availability of such Additional Financing as they deem necessary and advisable.

16. Public Hearing. This City Council hereby directs that the Note shall not be issued unless and until the requirements of Section 147(1) of the Code, including particularly the approval requirement following any required public hearing, have been fully satisfied, and that no contract, agreement or commitment to issue the Note shall be executed or undertaken prior to satisfaction of the requirements of said Section 147(f) unless the performance of said contract, agreement or commitment is expressly conditioned upon the prior satisfaction of such requirements. To the extent that

such requirements are satisfied prior to the date of this Ordinance, this Ordinance shall constitute formal approval thereof. All such actions taken prior to the enactment of this Ordinance are hereby ratified and confirmed.

17. Severability. If any provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Ordinance.

18. Administrative Fee. The City's Department of Housing (the "DOH") is hereby authorized to charge an administrative fee or fees in connection with the delivery and administration of the Funding Loan Agreement and the Note, which shall be collected under such terms and conditions as determined by the Authorized DOH Officer and which shall be in an amount as determined by the Authorized DOH Officer but not to exceed the maximum amount permitted under Section 148 of the Code to avoid characterization of the Funding Loan Agreement and the Note as "arbitrage bonds" as defined in such Section 148. Such administrative fee or fees shall be used by DOH for administrative expenses and other housing activities. Initially, such administrative fee or fees shall be an amount equal to (i) 1.5% of the original principal amount of the Note payable upon issuance of the Note, plus (ii) an on-going compliance fee of \$25 per unit payable annually.

19. Reserve for Legal Expenses. The City is authorized to assess a legal reserve fee with respect to the Bond Project, payable upon issuance of the Note from the proceeds of the Note or from funds contributed by the Borrower, which shall be in an amount equal to 0.10% of the original principal amount of the Note. Such fee shall be used by the City to pay legal costs or other expenses in connection with the Bond Project, the Note, or other City issuances.

20. No Recourse. No recourse shall be had for the payment of the principal of, prepayment premium, if any, or interest on any of the Note or for any claim based thereon or upon any obligation, covenant or agreement contained in this Ordinance, the Funding Loan Agreement, the Note, the Borrower Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement, or the Redevelopment Agreement (collectively, the "City Agreements") against any past, present or future officer, member or employee of the City, or any officer, employee, director or trustee of any successor, as such, either directly or through the City, or any such successor, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or

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otherwise, and all such liability of any such member, officer, employee, director or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the City Agreements and the issuance of the Note.

21. No Impairment. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code, or part thereof, is in conflict with the provisions of this Ordinance, the provisions of this Ordinance shall be controlling. No provision of the Municipal Code or violation of any provision of the Municipal Code shall be deemed to render voidable at the option of the City any document, instrument or agreement authorized hereunder or to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the rights of the holders of the Funding Loan and the Note to receive payment of the principal of, prepayment premium, if any, or interest on the Note or to impair the security for the Funding Loan Agreement and the Note; provided further that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the Municipal Code. Sections 2-44-070, 2-44-080(A)-(F) and 2-44-080(H)-(V) of the Municipal Code shall not apply to the Bond Project or the Property.

22. Effective Date. This Ordinance shall be in full force and effect immediately upon its passage and approval.



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Exhibit A

**BORROWER:** WHP-IID, LLC, an Illinois limited liability company, the managing member of which is WHP-IID Manager, LLC, an Illinois limited liability company, the members of which are Brinshore PL, LLC and Michaels Chicago Holding Company 2, LLC, an Illinois limited liability company.

**PROJECT:** Acquisition, leasing, constructing, developing, and equipping of low- and **moderate- income residential facilities and related common facilities and containing approximately 96 residential rental apartments (of which 38 will be CHA Units and an additional 25 shall be set aside for low and moderate income tenants) (together with related common areas along with parking lot facilities, the "Bond Project").**

**BOND FINANCING:**

1. The Note, as described in this Ordinance. The Note will be secured by a mortgage from the Borrower in favor of the holder of the Note (the "Note Mortgage"), as well as certain capital contributions to be made to the Borrower by its investor member pursuant to the terms of the Funding Loan Agreement. The Note Mortgage will grant the holder of the Note secured thereby a mortgage on the leasehold estate in the Bond Project that is senior in position subject to the terms of the regulatory agreement for the CHA Units.

**ADDITIONAL FINANCING:**

**2. CHA Construction/Permanent Loan:**

**Amount:** Approximately \$12,160,000 or such amount as may be acceptable to the Authorized DOH Officer.

Term: Approximately 40 years plus construction period or another term acceptable to the Authorized DOH Officer. Source: CHA or another entity acceptable to the Authorized DOH Officer. Interest: 0% during construction and 1.90% per annum thereafter or such interest rate as may be acceptable to the Authorized DOH Officer. Security: Mortgage on the leasehold estate in the Bond Project, junior to the Note Mortgage, and/or such other security acceptable to the Authorized DOH Officer.

**3. City of Chicago Multi-Family Program Funds Loan:**

Amount: Approximately \$4,371,322 or such amount as may be acceptable to the Authorized DOH Officer.  
Term: Approximately 40 years plus construction period or another term acceptable to the Authorized DOH Officer. Source: Multi-Family Program Funds  
Interest: 0% per annum or such interest rate as may be acceptable to the Authorized DOH Officer.  
Security: Mortgage on the leasehold estate in the Bond Project, junior to the Note Mortgage, CHA Construction/Permanent Loan Mortgage, and/or such other security acceptable to the Authorized DOH Officer.

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Amount: Not to exceed \$10,000,000 or such amount as may be acceptable to the Authorized DOH Officer.  
Source: The City's TIF funds from available incremental taxes from the Central West Redevelopment Project Area received by Sponsor pursuant to the Redevelopment Agreement, which funds will then be loaned to the Borrower and may be used to repay a portion of the lender financing.  
Term: Approximately 40 years plus construction period or another term acceptable to the Authorized DOH Officer.  
Interest: 0% per annum or such other interest rate acceptable to the Authorized DOH Officer.  
Security: , Mortgage on the leasehold estate in the Bond Project junior to the Note 'Mortgage, CHA Construction/Permanent Loan Mortgage, the Chicago Recovery Plan Loan Mortgage, the City Multi-Family Program Funds Loan Mortgage, the CHA DTC Mortgage, the Sponsor Seller Financing Loan Mortgage, and/or such other security acceptable to the Authorized DOH Officer.

**8. Low-Income Housing Tax Credit ("LIHTC") Proceeds:**

Amount: Approximately \$12,392,636 or such amount as may be acceptable to the Authorized DOH Officer, all or a portion of which may be paid in on a delayed basis, and all or a portion of which will be applied to the payment of a portion of the Note upon the completion of rehabilitation of the Bond Project.  
Source: To be derived from the syndication of the LIHTCs generated by the issuance of the Note.

**9. Managing Member Capital Contribution:**

Amount: Approximately \$100 or such amount as may be acceptable to the Authorized DOH Officer. Source: Managing Member or such other source as may be acceptable to the Authorized DOH Officer.

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**Ordinance Exhibit B Form of Funding Loan Agreement**

See Attached.

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**Ordinance Exhibit B Form of Funding Loan Agreement**

See Attached.

**B-1**

**FUNDING LOAN AGREEMENT Between**

**BMO HARRIS BANK, N.A., as Funding Lender**

**and**

**CITY OF CHICAGO, as Governmental Lender**

**Dated as of**

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### FUNDING LOAN AGREEMENT

**This Funding Loan Agreement, dated as of 1, 2022 (this "Funding Loan Agreement"), is entered into between BMO HARRIS BANK, N.A., a national banking association (together with any successor hereunder, (the "Funding Lender") and CITY OF CHICAGO, a municipality and home rule unit of local government duly organized and validly existing under the constitution and laws of the State of Illinois (together with its successors and assigns, the "Governmental Lender").**

### RECITALS



WHEREAS, the Governmental Lender has been duly created and organized pursuant to and in accordance with the provisions of Article VII, Section 6(a) of the 1970 Constitution of the State Illinois, is a home rule unit of local government and as such may provide a means of financing the costs of residential ownership and development that will provide decent, safe and sanitary housing for persons of low and moderate income at prices or rentals they can afford; and

WHEREAS, the Governmental Lender is authorized: (a) to make loans to any person to provide financing for rental residential developments located within the jurisdiction of the Governmental Lender and intended to be occupied in part by persons of low and moderate income, as determined by the Governmental Lender; (b) to incur indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish any required reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues, receipts or resources of the Governmental Lender, including the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender in order to secure the payment of the principal of, prepayment premium, if any, on and interest on such indebtedness of the Governmental Lender; and

WHEREAS, WHP-IID, LLC, an Illinois limited liability company (the "Borrower"), has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender (i) will advance funds (the "Funding Loan") to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to make a corresponding loan (the "Borrower Loan") to the Borrower to finance the acquisition, lease, construction, rehabilitation, development, and equipping of a multifamily residential project located in the City of Chicago, Cook County, Illinois, known or to be known as Westhaven Park IID and consisting of approximately 96 units (together with related common areas along with parking lot facilities, the "Project"); and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender and the Borrower will enter into a Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the "Borrower Loan Agreement"), whereby the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Borrower Note, as defined in the Borrower Loan Agreement (the "Borrower Note") and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Project pursuant to the Security Instrument (as hereinafter defined), made by the Borrower in favor of the Governmental Lender, as assigned to the Funding

Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan; and

WHEREAS, the Governmental Lender has executed and delivered to the Funding Lender its not to exceed \$30,000,000 City of Chicago Multi-Family Housing Revenue Note, Series 2022 (Westhaven Park IID) (the "Governmental Lender Note, Series 2022") (the "Governmental Lender Note"), dated as of the Closing Date (defined below) collectively evidencing its obligation to make the payments due to the Funding Lender, under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make the Funding Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

**ARTICLE I  
DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

Section 1.1. Definitions. For all purposes of this Funding Loan Agreement, except as otherwise expressly provided or unless the context otherwise clearly requires:

Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Borrower Loan Agreement.

The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Singular terms shall include the plural as well as the singular, and vice versa.

All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Approved Accounting Method. All references herein to "Approved Accounting Method" refer to such principles as they exist at the date of application thereof.

All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

References to the Governmental Lender Note as "tax-exempt" or to the "tax-exempt status" of the Governmental Lender Note are to the exclusion of interest payable on the Governmental Lender Note (other than any portion of the Governmental Lender Note held by a "substantial user" of the Project or a "related person" (within the meaning of Section 147 of the Code) thereto) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

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The following terms have the meanings set forth below:

"Additional Borrower Payments" shall have the meaning given such term in the Borrower Loan Agreement.

"Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

"Approved Institutional Buyer" means (1) a "qualified institutional buyer" ("QIB") as defined in Rule I44A promulgated under the Securities Act of 1933, as in effect on the date hereof (the "Securities Act") that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (2) an affiliate of the Funding Lender, or (3) a trust or custodial arrangement established by the Funding Lender or one of its affiliates the beneficial interests in which will be owned only by QIBs."

"Authorized Amount" shall mean \$30,000,000, the maximum aggregate principal amount of the Funding Loan under this Funding Loan Agreement.

"Authorized City Representative" shall have the meaning as set forth for the term "Authorized Officer" in the Ordinance.

"Borrower" shall mean WHP-IID, LLC, an Illinois limited liability company.

"Borrower Controlling Entity" shall mean, if the Borrower is a partnership, any general partner or managing partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower.

"Borrower Loan" shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the aggregate principal amount of the Borrower Loan Amount, as evidenced by the Borrower Note.

"Borrower Loan Agreement" shall mean the Borrower Loan Agreement, of even date herewith, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

"Borrower Loan Agreement Default" shall mean any event of default set forth in Section 8.1 of the Borrower Loan Agreement. A Borrower Loan Agreement Default shall "exist" if a Borrower Loan Agreement Default shall have occurred and be continuing beyond any applicable notice and cure period.

"Borrower Loan Amount" shall mean \$30,000,000, the maximum aggregate principal amount of the Borrower Loan under the Borrower Loan Agreement.

"Borrower Loan Documents" shall have the meaning given such term in the Borrower Loan Agreement.

"Borrower Note" shall mean the "Borrower Note" as defined in the Borrower Loan Agreement.

"Business Day" shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York, Chicago, Illinois or the cities in which the offices of the Funding Lender are located are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

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"Closing Date" shall mean \_\_\_\_\_, 2022, the date that initial Funding Loan proceeds are disbursed hereunder.

"Code" shall mean the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

"Construction Escrow Agreement" shall mean that certain Construction Escrow and Disbursement Agreement, dated as of \_\_\_\_\_, 2022, among the Title Company named therein, in its capacity as escrow agent, the Funding Lender, Governmental Lender, certain subordinate lenders named therein, and Borrower, as such agreement may be amended, modified, supplemented and replaced from time to time.

"Construction Funding Agreement" shall mean that certain Construction Funding Agreement of even date herewith, by and among the Funding Lender and the Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and

replaced from time to time.

"Contingency Draw-Down Agreement" shall mean the Contingency Draw-Down Agreement of even date herewith between the Funding Lender and the Borrower relating to possible conversion of the Funding Loan from a draw-down loan to a fully funded loan.

"Control" shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

"Draw-Down Notice" shall mean a notice described in Section 1.01 of the Contingency Draw-Down Agreement regarding the conversion of the Funding Loan from a draw down loan to a fully funded loan.

"Equity Investor" shall have the meaning given to that term in the Borrower Loan Agreement. "Event of Default" shall have the meaning ascribed thereto in Section 9.1 hereof. "Fitch" shall mean Fitch, Inc.

"Funding Lender" shall mean BMO Harris Bank, 1M.A.

"Funding Loan Agreement" shall mean this Funding Loan Agreement, by and between the Funding Lender and the Governmental Lender, as it may from time to time be supplemented, modified or amended by one or more indentures or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

"Funding Loan Documents" shall mean (i) this Funding Loan Agreement, (ii) the Borrower Loan Agreement, (iii) the Regulatory Agreement, (iv) the Tax Compliance Agreement, (v) the Borrower Loan Documents, (vi) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (vii) all amendments, modifications, renewals and substitutions of any of the foregoing.

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"Government Obligations" shall mean noncallable, nonprepayable (i) direct, general obligations of the United States of America, or (ii) any obligations unconditionally guaranteed as to the full and timely payment of all amounts due thereunder by the full faith and credit of the United States of America (including obligations held in book entry form), but specifically excluding any mutual funds or unit investment trusts invested in such obligations.

"Governmental Lender" shall mean the City of Chicago, a municipality and home rule unit of local government duly organized and validly existing under the constitution and laws of the State of Illinois, together with its successors and assigns.

"Governmental Lender's Administrative Fee" shall mean the administrative fee of the Governmental Lender equal to 1.5% of the original aggregate principal amount of the Governmental Lender Note, payable upon issuance of the Governmental Lender Note.

"Governmental Lender Note" shall mean the Governmental Lender Note described in the recitals of this Funding Loan Agreement.

"Highest Rating Category" shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by each Rating Agency in the highest rating category given by that Rating Agency for that general category of security. If at any time the Governmental Lender Note are not rated (and, consequently, there is no Rating Agency), then the term "Highest Rating Category" means, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the highest rating given by that rating agency for that general category of security. By way of

example, the Highest Rating Category for tax-exempt municipal debt established by S&P is "A 1+" for debt with a term of one year or less and "AAA" for a term greater than one year, with corresponding ratings by Moody's of "MIG 1" (for fixed rate) or "VMIG 1" (for variable rate) for three months or less and "Aaa" for greater than three months. If at any time (i) the Governmental Lender Note are not rated, (ii) both S&P and Moody's rate a Permitted Investment and (iii) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, a Permitted Investment rated "AAA" by S&P and "Aa3" by Moody's is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Permitted Investment will be deemed to be rated below the Highest Rating Category. For example, a Permitted Investment rated "AAA" by S&P and "A 1" by Moody's is not rated in the Highest Rating Category.

"Material Funding Lender Event" shall mean the occurrence and continuation of one or more of the following:

(a) Prior to the advancement by the Funding Lender of the entire amount of the Funding Loan (i) a petition has been filed and is pending against the Funding Lender under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and has not been dismissed within 90 days after such filing; (ii) the Funding Lender has filed a petition, which is pending, under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or has consented in writing to the filing of any petition against it under such law; or (iii) an order, judgment or decree is entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, liquidator or trustee appointed for it or for the whole or substantially all of its property and has not been dismissed within 90 days after filing. The occurrence of a Material Funding Lender Event under this subsection (a) and the exercise of remedies upon any such declaration shall be subject to

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any applicable limitations of federal bankruptcy law affecting or precluding such declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings; or

(b) Prior to the advancement by the Funding Lender of the entire amount of the Funding Loan (i) the Funding Loan Agreement or the Construction Funding Agreement is declared by a non-appealable order of a court of competent jurisdiction to be null and void; (ii) the Funding Lender has, in writing, rescinded, repudiated or terminated the Funding Loan Agreement or the Construction Funding Agreement; or (iii) the Funding Lender is dissolved or confiscated by action of government due to war or peace time emergency or the United States government declares a moratorium on the Funding Lender's activities.

"Maturity Date" shall mean (i) the Construction Period Maturity Date (as defined in the Borrower Loan Agreement) with respect to the Governmental Lender Note, provided that if the Conditions to Conversion are satisfied on or before the Construction Period Maturity Date, the term of the Borrower Note shall be extended to the Term Period Maturity Date (as defined in the Borrower Loan Agreement) with respect to the Governmental Lender Note.

"Maximum Rate" shall mean the lesser of (i) 10% per annum and (ii) the maximum interest rate that may be paid on the Funding Loan under State law.

"Minimum Participation Percentage" shall mean an amount no less than fifteen percent (15%) of the outstanding principal amount of the Funding Loan.

"Moody's" shall mean Moody's Investors Service, Inc., or its successor.

"Noteowner" or "owner of the Governmental Lender Note" means the owner of a Governmental Lender Note as shown on the registration books maintained by the Funding Lender, as applicable, pursuant to Section 2.4(d).

"Negative Arbitrage Deposit" has the meaning set forth in the Contingency Draw-Down Agreement.

"Ongoing Governmental Lender Fee" shall mean an on-going compliance fee in the amount of \$25 per unit payable annually in advance by the Borrower to the Governmental Lender, commencing on the Closing Date and on each 1 thereafter, so long as any portion of the Funding Loan is outstanding.

"Opinion of Counsel" shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Funding Lender and the Governmental Lender with experience in the matters to be covered in the opinion; provided that whenever an Opinion of Counsel is required to address the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation, such opinion shall be provided by Tax Counsel.

"Ordinance" shall mean the Ordinance adopted by the Governmental Lender on April , 2022 authorizing the Funding Loan and the execution and delivery of the Funding Loan Documents to which Governmental Lender is a party.

"Permitted Investments" shall mean, to the extent authorized by law for investment of any moneys held under this Funding Loan Agreement:

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a) Government Obligations.

b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America (other than the Federal Home Loan Mortgage Corporation) or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

c) Obligations, in each case rated in the Highest Rating Category, of (i) any state or territory of the United States of America, (ii) any agency, instrumentality, authority or political subdivision of a state or territory or (iii) any public benefit or municipal corporation the principal of and interest on which are guaranteed by such state or political subdivision.

d) Any written repurchase agreement entered into with a Qualified Financial Institution whose unsecured short term obligations are rated in the Highest Rating Category.

e) Commercial paper rated in the Highest Rating Category.

f) Interest bearing negotiable certificates of deposit, interest bearing time deposits, interest bearing savings accounts and bankers' acceptances, issued by a Qualified Financial Institution if either (i) the Qualified Financial Institution's unsecured short term obligations are rated in the Highest Rating Category or (ii) such deposits, accounts or acceptances are fully collateralized by investments described in clauses (a) or (b) of this definition or fully insured by the Federal Deposit Insurance Corporation.

g) An agreement held by the Funding Lender for the investment of moneys at a guaranteed rate with a Qualified Financial Institution whose unsecured long term obligations are rated in the Highest Rating Category or the Second Highest Rating Category, or whose obligations are unconditionally guaranteed or insured by a Qualified Financial Institution whose unsecured long term obligations are rated in the Highest Rating Category or Second Highest Rating Category; provided that such agreement is in a form acceptable to such Funding Lender; and provided further that such agreement includes the following restrictions:

1) the invested funds will be available for withdrawal without penalty or premium, at any time that (A) such Funding Lender is required to pay moneys from the Fund(s) established under this Funding Loan Agreement to which the agreement is applicable, or (B) any Rating Agency indicates that it will lower or actually lowers, suspends or withdraws the rating on the Funding Loan on account of the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement;

2) the agreement, and if applicable the guarantee or insurance, is an unconditional and general obligation of the provider and, if applicable, the guarantor or insurer of the agreement, and ranks pari passu with all other unsecured unsubordinated obligations of the provider, and if applicable, the guarantor or insurer of the agreement;

3) the Funding Lender receives an Opinion of Counsel, which may be subject to customary qualifications, that such agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and, if applicable, an Opinion of Counsel that any guaranty or insurance policy provided by a guarantor or insurer is legal, valid, binding and enforceable upon the guarantor or insurer in accordance with its terms; and

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(4) the agreement provides that if during its term the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement, is withdrawn, suspended by any Rating Agency or falls below the Second Highest Rating Category, the provider must, within ten days, either: (A) collateralize the agreement (if the agreement is not already collateralized) with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Funding Lender or a third party custodian, such collateralization to be effected in a manner and in an amount reasonably satisfactory to the Funding Lender, or, if the agreement is already collateralized, increase the collateral with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Funding Lender or a third party custodian, in an amount reasonably satisfactory to the Funding Lender, (B) at the request of the Funding Lender, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium unless required by law or (C) transfer the agreement, guarantee or insurance, as applicable, to a replacement provider, guarantor or insurer, as applicable, then meeting the requirements of a Qualified Financial Institution and whose unsecured long term obligations are then rated in the Highest Rating Category or the Second Highest Rating Category. The agreement may provide that the down-graded provider may elect which of the remedies to the down grade (other than the remedy set out in (B)) to perform.

Notwithstanding anything else in this Paragraph (g) to the contrary and with respect only to any agreement described in this Paragraph (g) or any guarantee or insurance for any such agreement which is to be in effect for any period after the Conversion Date (as defined in the Borrower Loan Agreement), any reference in this Paragraph to the "Second Highest Rating Category" will be deemed deleted so that the only acceptable rating category for such an agreement, guarantee or insurance will be the Highest Rating Category.

(h) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Funding Lender or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated "AAAm-G" or "AAAm" by S&P or "Aaa" by Moody's so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If approved in writing by the Funding Lender, a money market mutual fund portfolio may also contain obligations

and agreements to repurchase obligations described in paragraphs (b) or (c). If the Governmental Lender Note is rated by a Rating Agency, the money market mutual fund must be rated "AAAm-G" or "AAAm" by S&P, if S&P is a Rating Agency, or "Aaa" by Moody's, if Moody's is a Rating Agency. If at any time the Governmental Lender Note is not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rated "AAAm-G" or "AAAm" by S&P or Aaa by Moody's. If at any time (i) the Governmental Lender Note is not rated, (ii) both S&P and Moody's rate a money market mutual fund and (iii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency.

(i) Any other investment authorized by the laws of the State, if such investment is approved in writing by the Servicer or the Funding Lender, if there is no Servicer.

Permitted Investments shall not include any of the following:

(1) Except for any investment described in the next sentence, any investment with a final maturity or any agreement with a term greater than one year from the date of

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the investment. This exception (1) shall not apply to Permitted Investments listed in paragraphs (g) and (i).

2) Except for any obligation described in paragraph (a) or (b), any obligation with a purchase price greater or less than the par value of such obligation.

3) Any asset backed security, including mortgage backed securities, real estate mortgage investment conduits, collateralized mortgage obligations, credit card receivable asset backed securities and auto loan asset backed securities.

4) Any interest only or principal only stripped security.

5) Any obligation bearing interest at an inverse floating rate.

6) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

7) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.



8) Any investment described in paragraph (d) or (g) with, or guaranteed or insured by, a Qualified Financial Institution described in clause (iv) of the definition of Qualified Financial Institution if such institution does not agree to submit to jurisdiction, venue and service of process in the United States of America in the agreement relating to the investment.

9) Any investment to which S&P has added an "r" or "t" highlighter.

"Person" shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Pledged Revenues" shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, prepayment premium, if any, and interest on the Funding Loan and the Governmental Lender Note, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by the Governmental Lender with respect to the Unassigned Rights) derived from or in connection with the Project and the Funding Loan Documents, including all Borrower Loan Payments due under the Borrower Loan Agreement and the Borrower Note, payments with respect to the Borrower Loan Payments and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (ii) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon.

"Potential Default" shall have the meaning ascribed to that term in the Borrower Loan Agreement.

"Prepayment Premium" shall mean (i) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any

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Prepayment Premium as set forth in the Borrower Note) and (ii) any premium payable on the Governmental Lender Note pursuant to this Funding Loan Agreement.

"Project" shall have the meaning given to that term in the Ordinance.

"Qualified Financial Institution" shall mean any (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, savings and loan association, or insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by the Funding Lender the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) other entity which is acceptable to the Funding Lender. With respect to an entity which provides an agreement held by a Funding Lender for the investment of moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term "Permitted Investments" or an entity which guarantees or insures, as applicable, the agreement, a "Qualified Financial Institution" may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

"Rating Agency" shall mean any one and each of S&P, Moody's and Fitch then rating the Governmental Lender Note or any other nationally recognized statistical rating agency then rating the Governmental Lender Note, which has been approved by the Funding Lender.

"Regulations" shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

"Regulatory Agreement" shall mean that certain Land Use Restriction Agreement, dated as of the Closing Date, by and between the Governmental Lender and the Borrower, as hereafter amended or modified.

"Remaining Funding Loan Proceeds Account" has the meaning set forth in the Contingency Draw-Down Agreement.

"Remaining Funding Loan Proceeds Account Earnings Subaccount" has the meaning set forth in the Contingency Draw-Down Agreement.

"Required Transferee Representations" shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

"Second Highest Rating Category" shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by each Rating Agency in the second highest rating category given by that Rating Agency for that general category of security. If at any time the Governmental Lender Note is not rated (and, consequently, there is no Rating Agency), then the term "Second Highest Rating Category" means, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the second highest rating category given by that rating agency for that general category of security. By way of example, the Second Highest Rating Category for tax-exempt municipal debt established by S&P is "AA" for a term greater than one year, with corresponding ratings by Moody's of "Aa." If at any time (i) the Governmental Lender Note is not rated, (ii) both S&P and Moody's rate a Permitted Investment and

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(iii) one of those ratings is below the Second Highest Rating Category, then such Permitted Investment will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated "AA" by S&P and "A" by Moody's is not rated in the Second Highest Rating Category.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security" shall mean the security for the performance by the Governmental Lender of its obligations under the Governmental Lender Note and this Funding Loan Agreement as more fully set forth in Article IV hereof.

"Security Instrument" shall mean the Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (as amended, restated and/or supplemented from time to time) of even date herewith, made by the Borrower in favor of the Governmental Lender, as assigned by the Governmental Lender to the Funding Lender, to secure the performance by the Governmental Lender of its obligations under the Funding Loan.

"Servicer" shall mean any Servicer appointed by the Funding Lender to perform certain servicing functions with respect to the Funding Loan and on the Borrower Loan pursuant to the Construction Funding Agreement or a separate servicing agreement to be entered into between the Funding Lender and the Servicer. Initially the Funding Lender shall be the Servicer pursuant to this Funding Loan Agreement and the Construction Funding Agreement.

"Servicing Agreement" shall mean any servicing agreement entered into between the Funding Lender and a Servicer with respect to the servicing of the Funding Loan and/or the Borrower Loan.

"S&P" shall mean Standard & Poor's Global Ratings Services and its successors.

"Special Investor Member" shall have the meaning given to that term in the Borrower Loan Agreement.

"State" shall mean the State of Illinois.

"Tax Compliance Agreement" shall mean the Tax Compliance Agreement, dated the Closing Date, executed and delivered by the Governmental Lender and the Borrower.

"Tax Counsel" shall mean ArentFox Schiff LLP, or any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Funding Lender having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

"Tax Counsel Approving Opinion" shall mean an opinion of Tax Counsel substantially to the effect that the Governmental Lender Note constitutes a valid and binding obligation of the Governmental Lender and that, under existing statutes, regulations, published rulings and judicial decisions, the interest on the Governmental Lender Note is excludable from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

"Tax Counsel No Adverse Effect Opinion" shall mean an opinion of Tax Counsel to the effect that the taking of the action specified therein will not impair the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof)-

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"UCC" shall mean the Uniform Commercial Code as in effect in the State.

"Unassigned Rights" shall mean the Governmental Lender's rights to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its right to payment of the Governmental Lender's Administrative Fee, the Ongoing Governmental Lender Fee and any other fees payable to the Governmental Lender under Section 2.5 thereof, its rights to attorneys' fees under Section 5.14 thereof, its rights to indemnification under Section 5.15 thereof, its rights of access under Section 5.17 thereof, its rights to enforce the terms of the Regulatory Agreement, including Borrower's covenants to comply with applicable laws, its rights to give and receive notices, reports and other statements and to enforce notice and reporting requirements and restrictions on transfers of ownership of the Project, and its rights to consent to certain matters, as provided in this Funding Loan Agreement and the Borrower Loan Agreement.

"Written Certificate," "Written Certification," "Written Consent," "Written Direction," "Written Notice," "Written Order," "Written Registration," "Written Request," and "Written Requisition" shall mean a written certificate, direction, notice, order or requisition signed by an Authorized Borrower Representative, an Authorized City Representative or an authorized representative of the Funding Lender and delivered to the Funding Lender, the Servicer or such other Person as required under the Funding Loan Documents.

"Yield" shall mean yield as defined in Section 148(h) of the Code and any regulations promulgated thereunder.

Section 1.2. Effect of Headings and Table of Contents. The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.3. Date of Funding Loan Agreement. The date of this Funding Loan Agreement is intended as and for a date for the convenient identification of this Funding Loan Agreement and is not intended to indicate that this Funding Loan Agreement was executed and delivered on said date.

Section 1.4. Designation of Time for Performance. Except as otherwise expressly provided herein, any reference

in this Funding Loan Agreement to the time of day shall mean the time of day in the city where the Funding Lender maintains its place of business for the performance of its obligations under this Funding Loan Agreement.

Section 1.5. Interpretation. The parties hereto acknowledge that each of them and their respective counsel have participated in the drafting and revision of this Funding Loan Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Funding Loan Agreement or any amendment or supplement or exhibit hereto.

## ARTICLE II TERMS; GOVERNMENTAL LENDER NOTE

### Section 2.1. Terms.

a) Principal Amount. The total aggregate principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount.

b) Draw-Down Funding. The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan evidenced by the Governmental Lender Note shall be advanced by the Funding Lender directly to the Borrower(s) for the account of the Governmental Lender as and when needed

to make each advance in accordance with the disbursement provisions of the Borrower Loan Agreement and the Construction Funding Agreement. Upon each advance of principal of the Borrower Loan under the Borrower Loan Agreement and the Construction Funding Agreement, a like amount of the Funding Loan shall be deemed concurrently and simultaneously advanced under this Funding Loan Agreement, including

the initial advance of \$ \_\_\_\_\_ Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after three years after Closing Date; provided, however, that upon the delivery of a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender such date may be changed to a later date as specified in such Tax Counsel No Adverse Effect Opinion. The Governmental Lender has reviewed and approved the form of Contingency Draw-Down Agreement and consents to the terms thereof and agrees to take all actions reasonably required of the Governmental Lender in connection with the conversion of the Funding Loan to a fully drawn loan pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Servicer or the Borrower.

c) Origination Date; Maturity. The Funding Loan shall be originated and the Governmental Lender Note shall be issued on the Closing Date and shall mature on the Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

d) Principal. The outstanding principal amount of the Governmental Lender Note and of the Funding Loan as of any given date shall be the total amount advanced by the Funding Lender to or for the account of the Governmental Lender to fund corresponding advances with respect to the Borrower Note under the Borrower Loan Agreement and the Construction Funding Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Lender Note previously received upon payment of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (d) and in paragraphs (e) and (f) of this Section 2.1.

The Funding Lender shall keep a record of all principal advances and principal repayments made under the applicable Governmental Lender Note and shall upon written request provide the Governmental Lender with a statement of the outstanding principal balance of the Governmental Lender Note and the Funding Loan.

e) Interest. Interest shall be paid on the outstanding principal amount of the Governmental Lender Note at the rate or rates set forth in the Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

f) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on the Governmental Lender Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the Borrower Note. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on the Borrower Note shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Governmental Lender Note.

g) Usury. The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Note and all agreements made in the Governmental Lender Note, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto. If, from any

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circumstances whatsoever, the fulfillment of any provision of the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. This paragraph shall control every other provision of the Governmental Lender Note, this Funding Loan Agreement and all other Funding Loan Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the Governmental Lender intends and agrees that (i) interest shall be computed upon the assumption that payments under the Borrower Loan Agreement and other Funding Loan Documents will be paid according to the agreed terms, and (ii) any sums of money that are taken into account in the calculation of interest, even though paid at one time, shall be spread over the actual term of the Funding Loan.

Section 2.2. Form of Governmental Lender Note. As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Note. The Governmental Lender Note shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement and the Ordinance.

Section 2.3. Execution and Delivery of Governmental Lender Note. The Governmental Lender Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of its Chief Financial Officer, and its corporate seal (or a facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced, and attested by the manual or facsimile signature of its City Clerk or Deputy City Clerk. In case any officer of the Governmental Lender whose signature or facsimile signature shall appear on the Governmental Lender Note shall cease

to be such officer before the Governmental Lender Note so signed and sealed shall have been actually delivered, such Governmental Lender Note may, nevertheless, be delivered as herein provided, and may be executed and delivered as if the persons who signed or sealed such Governmental Lender Note had not ceased to hold such offices or be so employed. The Governmental Lender Note may be signed and sealed on behalf of the Governmental Lender by such persons as, at the actual time of the execution of such Governmental Lender Note, shall be duly authorized or hold the proper office in or employment by the Governmental Lender, although at the date of the Governmental Lender Note such persons may not have been so authorized nor have held such office or employment.

**Section 2.4. Required Transferee Representations; Participations; Sale and Assignment.**

a) The Funding Lender shall deliver to the Governmental Lender the Required Transferee Representations in substantially the form attached hereto as Exhibit B on the Closing Date.

b) The Funding Lender shall have the right to sell (i) the Governmental Lender Note and the Funding Loan or (ii) participation interests, in whole or in part, to the extent permitted by Section 2.4(c) below, in the Governmental Lender Note and the Funding Loan, provided that (A) such sale shall be only to Approved Institutional Buyers that execute and deliver to the Funding Lender, with a copy to the Governmental Lender, the Required Transferee Representations and (B) if any amendment is to be made

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to this Funding Loan Agreement or any other Funding Loan Document in conjunction with such transfer, a Tax Counsel No Adverse Effect Opinion.

c) Notwithstanding the other provisions of this Section 2.4, no participation in any Governmental Lender Note and related Funding Loan shall be sold in an amount that is less than the Minimum Participation Percentage.

d) The Governmental Lender Note or any interest therein, shall be in fully-registered form transferable to subsequent holders only on the registration books which shall be maintained by the Funding Lender for such purpose and which shall be open to inspection by the Governmental Lender. The Governmental Lender Note shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

e) No service charge shall be made for any sale or assignment of the Governmental Lender Note or a participation therein, but the Governmental Lender may require payment of a sum sufficient to cover any tax or other charge that may be imposed in connection with any such sale or assignment and payment of any fees and expenses incurred by the Governmental Lender in connection therewith. Such sums shall be paid in every instance by the purchaser or assignee of the Governmental Lender Note or a participation therein.

**ARTICLE III PREPAYMENT**

Section 3.1. Prepayment of the Governmental Lender Note from Prepayment under the Borrower Note. The Governmental Lender Note is subject to voluntary and mandatory prepayment as follows:

a) The Governmental Lender Note shall be subject to voluntary prepayment in full or in part by the Governmental Lender, from funds received by the Governmental Lender to the extent and in the manner and on any date that the Borrower Note is subject to voluntary prepayment as set forth therein, in the Borrower Loan Agreement or in the Construction Funding Agreement, at a prepayment price equal to the principal balance of the Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium payable under such Borrower Note, plus any Additional Borrower Payments due and payable under the Borrower Loan Agreement through the date of prepayment.

The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the Governmental Lender Note to be prepaid, except as specifically permitted in the corresponding Borrower

Note, the Borrower Loan Agreement or in the Construction Funding Agreement, without the prior written consent of the Funding Lender, which may be withheld in the Funding Lender's sole and absolute discretion.

b) The Governmental Lender Note shall be subject to mandatory prepayment in whole or in part upon prepayment of the Borrower Note pursuant to the Borrower Loan Agreement or the Construction Funding Agreement at the direction of the Funding Lender in accordance with the terms of such Borrower Note at a prepayment price equal to the outstanding principal balance of the Borrower Note prepaid, plus accrued interest plus any other amounts payable under the Borrower Note or the Borrower Loan Agreement.

Section 3.2. Notice of Prepayment. Notice of prepayment of a Governmental Lender Note shall be deemed given to the extent that notice of prepayment of the Borrower Note is timely and properly given to the Funding Lender in accordance with the terms of the Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Lender Note is required to be given.

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#### ARTICLE IV SECURITY

**Section 4.1. Security for the Funding Loan. To secure the payment of the Funding Loan and the Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Note are secured, and in consideration of the premises and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender by these presents does grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding Lender (except as limited herein), a lien on and security interest in the following described property (excepting, however, in each case, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):**

a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

b) All right, title and interest of the Governmental Lender in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding Loan Documents, and all other payments, revenues and receipts derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Funding Loan Documents;

c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under this Funding Loan Agreement and any amounts held at any time in the Remaining Funding Loan Proceeds Account and the Remaining Funding Loan Proceeds Account Earnings Subaccount, any Negative Arbitrage Deposit and any other amounts held under the Contingency Draw-Down Agreement, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement; and the Funding Lender is hereby authorized to receive any and all such property as and for additional security for the corresponding Funding Loan and the Governmental

Lender Note and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Note by the Governmental Lender. The Security so pledged and then or thereafter received by the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

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Section 4.2. Delivery of Security. To provide security for the payment of the Funding Loan and the Governmental Lender Note, the Governmental Lender has pledged and assigned to secure payment of the Funding Loan and the Governmental Lender Note its right, title and interest in the Security to the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, the Governmental Lender shall deliver to the Funding Lender the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

- a) The Borrower Note endorsed without recourse to the Funding Lender by the Governmental Lender;
- b) The originally executed Borrower Loan Agreement and Regulatory Agreement;
- c) The originally executed Security Instrument and all other Borrower Loan Documents existing at the time of delivery of the Borrower Note and an assignment of the Security Instrument from the Governmental Lender to the Funding Lender, in recordable form;
- d) Uniform Commercial Code financing statements or other chattel security documents giving notice of the Funding Lender's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the Project, in form suitable for filing; and
- e) Uniform Commercial Code financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement.

The Governmental Lender shall deliver and deposit with the Funding Lender such additional documents, financing statements, and instruments as the Funding Lender may reasonably require from time to time for the better perfecting and assuring to the Funding Lender of its lien and security interest in and to the Security including, at the request of the Funding Lender, any amounts held under the Contingency Draw-Down Agreement, at the expense of the Borrower.

## ARTICLE V LIMITED LIABILITY

Section 5.1. Source of Payment of Governmental Lender Note and Other Obligations; Disclaimer of General Liability. The Governmental Lender Note, together with premium, if any, and interest thereon, are special, limited obligations of the Governmental Lender, payable solely from the security pledged hereunder. The Governmental Lender Note is not a general obligation of the Governmental Lender or a charge against its general credit or the general credit taxing powers of the State, the Governmental Lender, or any other political subdivision thereof, and shall never give rise to any pecuniary liability of the Governmental Lender, and neither the Governmental Lender, the State nor any other political subdivision thereof shall be liable for the payments of principal of and, premium, if any, and interest on the Governmental Lender Note, and the Governmental Lender Note is payable from no other source, but are special, limited obligations of the Governmental Lender, payable solely out of the security pledged hereunder and receipts of the



Governmental Lender derived pursuant to this Funding Loan Agreement. No holder of the Governmental Lender Note or any interest therein has the right to compel any exercise of the taxing power of the State, the Governmental Lender or any other political subdivision thereof to pay the Governmental Lender Note or the interest or premium, if any, thereon.

Section 5.2. Exempt from Individual Liability. No recourse shall be had for the payment of the principal of, premium, if any, or the interest on the Governmental Lender Note or for any claim based thereon or any obligation, covenant or agreement in this Funding Loan Agreement against any official, officer, agent, employee or independent contractor of the Governmental Lender or any person executing

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the Governmental Lender Note in his or her personal capacity. No covenant, stipulation, promise, agreement or obligation contained in the Governmental Lender Note, this Funding Loan Agreement or any other document executed in connection herewith shall be deemed to be the covenant, stipulation, promise, agreement or obligation of any present or future official, officer, agent or employee of the Governmental Lender in his or her individual capacity and neither any official of the Governmental Lender nor any officers executing the Governmental Lender Note shall be liable personally on the Governmental Lender Note or under this Funding Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of the Governmental Lender Note or the execution of this Funding Loan Agreement.

## **ARTICLE VI CLOSING CONDITIONS; APPLICATION OF FUNDS**

Section 6.1. Conditions Precedent to Closing. Closing of the Funding Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Funding Lender in its sole discretion of each of the conditions precedent to closing set forth in this Funding Loan Agreement, including but not limited to the following:

- a) Receipt by the Funding Lender of the original Governmental Lender Note;
- b) Receipt by the Funding Lender of the original executed Borrower Note, endorsed to the Funding Lender by the Governmental Lender;
- c) Receipt by the Funding Lender of executed counterparts of this Funding Loan Agreement, the Borrower Loan Agreement, the Construction Funding Agreement, the Regulatory Agreement, the Tax Compliance Agreement, the Security Instrument, and any UCC financing statement required by the Security Instrument;
- d) A certified copy of the Ordinance;
- e) Executed Required Transferee Representations from the Funding Lender;
- f) Delivery into escrow of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit, in accordance with Section 2.3(c)(ii) of the Borrower Loan Agreement;
- g) Receipt by the Funding Lender of a Tax Counsel Approving Opinion;
- h) Receipt by the Funding Lender of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Note is exempt from registration under the Securities Act, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;
- i) Delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender

and the Funding Lender to the effect that the Borrower Loan Documents and the Regulatory Agreement are

valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender and the Funding Lender; and

(j) Receipt by the Funding Lender of any other documents or opinions that the Funding Lender or Tax Counsel may reasonably require.

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## **ARTICLE VII FUNDS AND ACCOUNTS**

Section 7.1. Authorization to Create Funds and Accounts. No funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Funding Lender and the Servicer, if any, are authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender or the Servicer pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

Section 7.2. Investment of Funds. Amounts held in any funds or accounts created under this Funding Loan Agreement shall be invested in Permitted Investments at the direction of the Borrower, subject in all cases to the restrictions of Section 8.6 hereof and of the Tax Compliance Agreement.

## **ARTICLE VIII REPRESENTATIONS AND COVENANTS**

Section 8.1. General Representations. The Governmental Lender makes the following representations as the basis for the undertakings on its part herein contained:

a) The Governmental Lender is a municipality and home rule unit of local government duly organized and validly existing under the Constitution and laws of the State. The Governmental Lender has power and lawful authority to adopt the Ordinance, to execute and deliver the Funding Loan Documents to which it is a party (the "Governmental Lender Documents"), to execute and deliver the Governmental Lender Note and receive the proceeds of the Funding Loan, to apply the proceeds of the Funding Loan to make the Borrower Loan, to assign the revenues derived and to be derived by the Governmental Lender from the Borrower Loan to the Servicer, as administrative agent for the Funding Lender, and to perform and observe the provisions of the Governmental Lender Documents and the Governmental Lender Note on its part to be performed and observed.

b) The City Council of the Governmental Lender has approved the Ordinance and the Ordinance has not been amended, modified or rescinded and is in full force and effect as of the date hereof.

c) The Governmental Lender has duly authorized the execution and delivery of each of the Funding Loan Agreement and the Governmental Lender Note and the performance of the obligations of the Governmental Lender thereunder.

d) The Governmental Lender makes no representation or warranty, express or implied, that the proceeds of the Funding Loan will be sufficient to finance the acquisition, construction and equipping of the Project or that the Project will be adequate or sufficient for the Borrower's intended purposes.

e) The revenues and receipts to be derived from the Borrower Loan Agreement, the Borrower Note and this Funding Loan Agreement have not been pledged previously by the Governmental Lender to secure any of its notes or bonds other than the repayment of the Funding Loan.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE

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BORROWER IN CONNECTION WITH THE FUNDING LOAN OR THE BORROWER LOAN OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

Section 8.2. Further Assurances. The Governmental Lender will do, execute, acknowledge, when appropriate, and deliver from time to time at the request of the Funding Lender, to the extent permitted by the Ordinance, such further acts, instruments, financing statements and other documents as are necessary or desirable to better assure, transfer, pledge or assign to the Funding Lender or holders of interests in the Funding Loan, and grant a security interest unto the Funding Lender or holders of interests in the Funding Loan in and to the Security and the other properties and revenues herein described and otherwise to carry out the intent and purpose of the Funding Loan Documents and the Funding Loan.

Section 8.3. Payment of Funding Loan Obligations. The Governmental Lender will pay or cause to be paid the principal of, prepayment premium, if any, and the interest on the Funding Loan as the same become due, but solely from the Security, as described in Section 5.1 of this Funding Loan Agreement.

Section 8.4. Funding Loan Agreement Performance. The Funding Lender, on behalf of the Governmental Lender and with the Written Consent of the Governmental Lender, may (but shall not be required or obligated) perform and observe any such agreement or covenant of the Governmental Lender under the Funding Loan Agreement, all to the end that the Governmental Lender's rights under the Funding Loan Agreement may be unimpaired and free from default.

Section 8.5. Servicer. The Funding Lender may appoint a Servicer to service and administer the Governmental Loan and the Borrower Loan on behalf of the Funding Lender, including without limitation the fulfillment of rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to Section 2.1 of the Borrower Loan Agreement; provided, however, that no appointment of a Servicer shall release Funding Lender from ultimate responsibility for any obligation of the Funding Lender hereunder.

Section 8.6. Tax Covenants. The Governmental Lender covenants to and for the benefit of the Funding Lender and any other holders of an interest in the Governmental Lender Note that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will:

i) At all times do and perform all acts and things permitted by law and this Funding Loan Agreement which are necessary or desirable in order to assure, and will not knowingly take any action which will adversely affect, the tax-exempt status of the Governmental Lender Note; and

ii) Not use or knowingly permit the use of any proceeds of the Funding Loan or other funds of the Governmental Lender, directly or indirectly, in any manner, and will not take or permit to be taken any other action or actions, which would result in the Governmental Lender Note being treated as an obligation not described in Section 142(a)(7) of the Code by reason of the Governmental Lender Note or interest thereon not meeting the requirements of Section 142(d) of the Code;

In furtherance of the covenants in this Section 8.6, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Compliance Agreement, which are by this reference incorporated into

this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Funding Lender acknowledges receipt of the Tax Compliance Agreement and acknowledge its incorporation in this Funding Loan Agreement by this reference. The Funding Lender agrees it will invest funds held under this Funding Loan Agreement in Permitted Investments in accordance with the direction

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of the Borrower and the terms of this Funding Loan Agreement and the Tax Compliance Agreement (this covenant shall extend throughout the term of the Funding Loan, to all funds and accounts created under or in connection with this Funding Loan Agreement and all moneys on deposit to the credit of any Fund or Account); provided that the Funding Lender shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows directions of the Borrower not inconsistent with the terms of this Funding Loan Agreement and the Tax Compliance Agreement or otherwise complies with the provisions of the Funding Loan Agreement relating to funds and accounts.

For purposes of this Section 8.6 the Governmental Lender's compliance shall be based solely on matters within the Governmental Lender's control and no acts, omissions or directions of the Borrower, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender and/or the Funding Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel.

Section 8.7. Performance by the Borrower. Without relieving the Governmental Lender from the responsibility for performance and observance of the agreements and covenants required to be performed and observed by it hereunder, the Borrower, on behalf of the Governmental Lender and with the Written Consent of the Governmental Lender, may perform any such agreement or covenant if no Borrower Loan Agreement Default or Potential Default under the Borrower Loan Agreement exists.

Section 8.8. Repayment of Funding Loan. Subject to the provisions of Article V hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, but solely from the Security set forth in Article IV hereof, the Funding Loan, as evidenced by the Governmental Lender Note, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Note and this Funding Loan Agreement.

**Section 8.9. Borrower Loan Agreement Performance.**

a) The Funding Lender, on behalf of the Governmental Lender, may (but shall not be required or obligated to) perform and observe any such agreement or covenant of the Governmental Lender under the Borrower Loan Agreement, all to the end that the Governmental Lender's rights under the Borrower Loan Agreement may be unimpaired and free from default.

b) The Governmental Lender will promptly notify the Borrower, the Servicer, if any, and the Funding Lender in writing of the occurrence of any Borrower Loan Agreement Default, provided that the Governmental Lender has received written notice or otherwise has actual knowledge of such event; and further provided that the Governmental Lender shall have no liability to any person for its failure to provide any such notice so long as it has made a good faith effort to comply with such provisions.

c) The Funding Lender will promptly notify the Borrower, the Servicer, if any, and the Governmental Lender in writing of the occurrence of any Event of Default hereunder or any Borrower Loan Agreement Default known to the Funding Lender.

**Section 8.10. Maintenance of Records; Inspection of Records.**

(a) The Funding Lender (or the Servicer as agent for the Funding Lender) shall keep and maintain adequate records pertaining to the funds and accounts, if any, established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Funding Loan and interests therein. The Funding Lender shall retain in its possession all

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certifications and other documents presented to it, all such records and all records of principal, interest and prepayment premium, if any, paid on the Funding Loan, subject to the inspection of the Borrower, the Governmental Lender, the Servicer and their representatives at all reasonable times and upon reasonable prior notice.

(b) The Governmental Lender will at any and all times, upon the reasonable request of the Servicer, the Borrower or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports and other papers of the Governmental Lender relating to the Project and the Funding Loan, if any, and to make copies thereof.

Section 8.11. Representations and Warranties of the Funding Lender. The Funding Lender represents to the Governmental Lender and the Borrower that it is duly authorized to enter into and perform this Funding Loan Agreement, and has full authority to take such action as it may deem advisable with respect to all matters pertaining to this Funding Loan Agreement.

#### **ARTICLE IX DEFAULT; REMEDIES**

Section 9.1. Events of Default. Any one or more of the following shall constitute an event of default (an "Event of Default") under this Funding Loan Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

a) A default in the payment of any interest upon the Governmental Lender Note when such interest becomes due and payable; or

b) A default in the payment of principal of, or premium on, the Governmental Lender Note when such principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory prepayment or otherwise; or

c) Subject to Section 8.7 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 11.1 hereof, to the Governmental Lender and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" under this Funding Loan Agreement; provided that, so long as the Governmental Lender, Borrower, Equity Investor or Special Investor Member has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender, Borrower, Equity Investor or Special Investor Member is diligently pursuing such cure to the satisfaction of the Funding Lender, with the Funding Lender's Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender or the Servicer) within which to cure such default; or

d) A default in the payment of any Additional Borrower Payments; or

e) Any other "Default" or "Event of Default" under any of the other Funding Loan Documents (taking into

account any applicable grace periods therein).

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**Section 9.2. Acceleration of Maturity; Rescission and Annulment.**

a) Subject to the provisions of Section 9.9 hereof, upon the occurrence of an Event of Default under Section 9.1 hereof, then and in every such case, the Funding Lender may declare the principal of the Funding Loan and the Governmental Lender Note and the interest accrued to be immediately due and payable, by notice to the Governmental Lender and the Borrower and upon any such declaration, all principal of and Prepayment Premium, if any, and interest on the Funding Loan and the Governmental Lender Note shall become immediately due and payable.

b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender or the Servicer may by Written Notice to the Governmental Lender, rescind and annul such declaration and its consequences if:

There has been deposited with the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Governmental Lender Note, (2) the principal of and Prepayment Premium on the Governmental Lender Note that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Governmental Lender Note, (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Governmental Lender Note, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above); and

All Events of Default, other than the non payment of the principal of the Government Lender Notes which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Funding Lender shall pursue no remedies against the Borrower or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default or a default under any other Funding Loan Document.

**Section 9.3. Additional Remedies; Funding Lender Enforcement.**

a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of this Section 9.3 and Section 9.9 hereof, proceed to protect and enforce the rights of the Funding Lender by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Funding Lender hereunder or now or hereafter existing at law or in equity or by statute.

b) Upon the occurrence and continuation of any Event of Default, the Funding Lender may proceed forthwith to protect and enforce the rights of the Funding Lender and this Funding Loan Agreement by such suits, actions or proceedings as the Funding Lender, in its sole discretion, shall deem expedient. The Funding Lender shall have upon the occurrence and continuation of any Event of Default all rights, powers, and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as are available under any other applicable law at the time in effect and, without

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limiting the generality of the foregoing, the Funding Lender may proceed at law or in equity or otherwise, to the extent permitted by applicable law:

i) to take possession of the Security or any part thereof, with or without legal process, and to hold, service, administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited to) the sale of all or part of the Security;

ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Funding Lender as anticipated by this Funding Loan Agreement, and recording the same in the real estate records of the jurisdiction in which the Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

iv) to take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents, or the Borrower Loan Documents, or in and of the execution of any power herein granted, or for foreclosure hereunder, or for enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect.

Whether or not an Event of Default has occurred, and except as provided in Section 9.15, the Funding Lender or the Servicer as administrative agent for the Funding Lender, in their/its sole discretion, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Note or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax-exempt status of the interest on the Governmental Lender Note, and provided that the Governmental Lender may enforce specific performance with respect to the Unassigned Rights.

If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after the Borrower and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default, the Funding Lender or the Servicer as administrative agent for the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder.

If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed pursuant to Sections 2.5, 5.14 or 5.15 of the Borrower Loan Agreement for fees, expenses or indemnification, the Funding Lender or the Servicer as administrative agent for the Funding Lender shall have the right to exercise all or their respective rights and remedies thereunder (subject to the last paragraph of Section 9.14 hereof).

Section 9.4. Application of Money Collected. Any money collected by the Funding Lender or the Servicer as administrative agent for the Funding Lender pursuant to this Article and any other sums

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then held by the Funding Lender or the Servicer as part of the Security, shall be applied in the following order, at the date or dates fixed by the Funding Lender:

a) First: To the payment of any and all fees due the Governmental Lender, the Servicer or the Rebate Analyst under the Borrower Loan Documents;

b) Second: To the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan;

c) Third: To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Note, then due and unpaid in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Governmental Lender Note) on overdue principal of, and Prepayment Premium and overdue installments of interest on the Governmental Lender Note; provided, however, that partial interests in any portion of the Governmental Lender Note shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender or the Servicer in its sole and absolute discretion; and

d) Fourth: The payment of the remainder, if any, to the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

e) If and to the extent this Section 9.4 conflicts with the provisions of the Servicing Agreement, the provisions of the Servicing Agreement shall control. Capitalized terms used in this Section 9.4 but not otherwise defined in this Funding Loan Agreement shall have the meanings given such terms in the Servicing Agreement.

Section 9.5. Remedies Vested in Funding Lender. All rights of action and claims under this Funding Loan Agreement or the Governmental Lender Note may be prosecuted and enforced by the Funding Lender or the Servicer as administrative agent for the Funding Lender without the possession of the Governmental Lender Note or the production thereof in any proceeding relating thereto.

Section 9.6. Restoration of Positions. If the Funding Lender or the Servicer shall have instituted any proceeding to enforce any right or remedy under this Funding Loan Agreement and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Funding Lender, then and in every such case the Governmental Lender and the Funding Lender shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Governmental Lender and the Funding Lender shall continue as though no such proceeding had been instituted.

Section 9.7. Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Funding Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 9.8. Delay or Omission Not Waiver. No delay or omission of the Funding Lender or the Servicer to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as

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often as may be deemed expedient, by Funding Lender or the Servicer. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

Section 9.9. Waiver of Past Defaults. Before any judgment or decree for payment of money due has been obtained by the Funding Lender, the Funding Lender or the Servicer as administrative agent for the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Governmental Lender and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 9.10. Remedies Under Borrower Loan Agreement or Borrower Note. As set forth in this Section 9.10 but subject to Section 9.9 hereof, the Funding Lender shall have the right, in its own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Note, whether or not the corresponding Governmental Lender Note have been accelerated or declared due and payable by reason of an Event of Default.

**Section 9.11. Waiver of Appraisal and Other Laws.**

a) To the extent permitted by law, the Governmental Lender will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Governmental Lender, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Security marshaled upon any enforcement hereof.

b) If any law now in effect prohibiting the waiver referred to in Section 9.11(a) shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section 9.11.

Section 9.12. Suits to Protect the Security. The Funding Lender shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect the interests of the Funding Lender in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any Governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.

Section 9.13. Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 9.14. Assumption of Obligations. In the event that the Funding Lender, the Servicer or their respective

permitted assignees or designees in accordance with Section 2.4 hereof shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement and any other Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default hereunder, rights and remedies may be pursued pursuant to the terms of the Funding Loan Documents, subject to the last paragraph of Section 9.2.

Section 9.15. Remedies upon Unremedied Material Funding Lender Event. Upon the occurrence of a Material Funding Lender Event affecting the Funding Lender which shall continue unremedied for a period of 60 days (a "Funding Lender Event of Default"), the Governmental Lender may direct that the Governmental Lender Note of such affected Funding Lender be transferred to and obligations and liabilities thereunder be assumed by another lender approved to act as Funding Lender by the Governmental Lender pursuant to Section 2.4(b) hereof and acceptable to the Borrower; provided, however, that no such transfer shall become effective until (a) the affected Funding Lender has been fully reimbursed for all advances made and all expenses incurred and all other amounts owed to such Funding Lender with respect to the applicable Governmental Lender Note through the date of transfer, (b) the Funding Lender shall be fully released in writing by the Governmental Lender, the Borrower and the successor Funding Lender from any and all continuing obligations and liabilities with respect to the applicable Funding Loan, (c) such other lender shall have executed and delivered to the affected Funding Lender the Required Transferee Representations, and (d) the Funding Lender shall be indemnified by the Borrower for any losses incurred by such Funding Lender with respect to the Funding Loan (except losses arising from such Funding Lender's gross negligence or willful misconduct or pursuant to clause (b) (2) of the definition of Material Funding Lender Event). Notwithstanding anything herein to the contrary contained, such Funding Lender shall not be liable to the Governmental Lender or the Borrower for any loss of tax-exemption, tax or other charge that may be imposed in connection with any such sale or assignment or for any fees and expenses incurred by the Governmental Lender or Borrower in connection therewith; nor shall such Funding Lender be liable to the Governmental Lender or Borrower for any special, indirect, consequential, exemplary or punitive damages, all such liability being expressly waived, to the fullest extent permitted by law. The Funding Lender shall not serve as administrative agent or Servicer for any replacement Funding Lender selected pursuant to this Section unless a separate servicing agreement is entered into between the replacement Funding Lender and the Funding Lender.

**ARTICLE X**  
**AMENDMENT; AMENDMENT OF BORROWER LOAN AGREEMENT AND OTHER DOCUMENTS**

Section 10.1. Amendment of Funding Loan Agreement. Any of the terms of this Funding Loan Agreement and the Governmental Lender Note may be amended or waived only by an instrument signed by the Funding Lender and the Governmental Lender, provided, however, no such amendment which materially affects the rights, duties, obligations or other interests of the Borrower shall be made without the consent of the Borrower, and, provided further, that if the Borrower is in default beyond any applicable notice and cure period under any Funding Loan Document, no Borrower consent shall be required unless such amendment has a material adverse effect on the rights, duties, obligations or other interests of the Borrower. All of the terms of this Funding Loan Agreement shall be binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender or any such successor or

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assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender.

Section 10.2. Amendments Requiring Funding Lender Consent. The Governmental Lender shall not consent to any amendment, change or modification of the Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender; provided, however, that such prior

Written Consent shall not be required with respect to any such amendment, change or modification undertaken by the Governmental Lender in order to preserve one or more of its Unassigned Rights. Governmental Lender agrees to provide the Funding Lender with prompt notification of any such amendments, modifications or changes not requiring the prior Written Consent of the Funding Lender.

Section 10.3. Consents and Opinions. No amendment to this Funding Loan Agreement or any other Funding Loan Document entered into under this Article X or any amendment, change or modification otherwise permitted under this Article X shall become effective unless and until (i) the Funding Lender shall have approved the same in writing in its sole discretion and (ii) the Funding Lender and the Governmental Lender shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and an Opinion of Counsel to the effect that any such proposed amendment is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations. No modification or amendment of the terms of the Borrower Loan Agreement or the Borrower Note may be undertaken without the prior Written Consent of the Governmental Lender and the Funding Lender and the provision to the Funding Lender and the Governmental Lender, at the expense of the Borrower, of a Tax Counsel No Adverse Affect Opinion with regard to such proposed modification.

Any consents required pursuant to this Article X from, or on behalf of, the Governmental Lender may be executed by an Authorized City Representative.

**ARTICLE XI  
MISCELLANEOUS**

**Section 11.1. Notices.**

(a) All notices, demands, requests and other communications required or permitted to be given by any provision of this Funding Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, commercial delivery service, overnight courier, telegraph, telex, telecopier or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows.

If to the Governmental Lender: City of Chicago  
Department of Housing and Economic Development 121 North LaSalle Street, 10<sup>th</sup> Floor Chicago, Illinois 60602  
Attention: Commissioner, Department of Housing and Economic Development Telephone: (312)744-4190 Facsimile: (312)742-2271

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City of Chicago  
Office of Corporation Counsel  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic Development D' Telephone: (312)744-0200 Facsimile: (312)744-8538

City of Chicago  
Office of the City Comptroller's Office 121 North LaSalle Street, Suite 700 Chicago, Illinois 60602 Attention:  
City Comptroller Telephone: (312)744-7106 Facsimile: (312) 742-6544

WHP-IID, LLCLLC c/o Brinshore Development, L.L.C. 1603 Orrington, Suite 450 Evanston, Illinois

60201 Attention: Richard J. Sciortino

WHP-IID, LLC c/o The Michaels Organization 2 Cooper Street, 14<sup>th</sup> Floor Camden, New Jersey  
08102 Attention: John J. O'Donnell

WHP-IID, LLC  
c/o The Michaels Organizations 542 S. Dearborn Street, Suite 560 Chicago, Illinois 60605 Attention: Greg  
Olson

Applegate & Thorne-Thomsen, P.C. 425 S. Financial Place, Suite 1900 Chicago, Illinois 60605 Attention:  
Nicole A. Jackson

Levine, Staller, Sklar, Chan & Brown, P.A. 3030 Atlantic Avenue Atlantic City, New Jersey 08401 Attention: Arthur  
Brown

BMO Harris Bank N.A. 115 S. LaSalle Street-19W Chicago, IL 60603 Attention: James J. West, Director

Charity & Associates, P.C. 20 North Clark Street, Suite 3300

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Chicago, Illinois 60602 Attention: Elvin E.  
Charity

If to Equity Investor: [TO COME]

And to: [TO COME]

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this Funding Loan Agreement: (i) three Business Days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (ii) on the date of transmission when delivered by telecopier or facsimile transmission, email or other telecommunication device, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (iii) on the next Business Day after the same is deposited with a nationally recognized overnight delivery service that guarantees overnight delivery; and (iv) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day; and provided further that notice to the Governmental Lender shall not be deemed to have been given until actually received by the Governmental Lender. Any facsimile, PDF or DocuSign signature by a Person on a document, notice, demand, request or communication required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person.

Any party to this Funding Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this Funding Loan Agreement by providing written notice of such change of address to all of the parties by written notice as provided herein.

Section 11.2. Term of Funding Loan Agreement. This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for (such payment or provision to be solely from the Security set forth in Article IV hereof as further provided in Section 8.8 hereof); except that on and after payment in full of the Governmental Lender Note, this Funding Loan Agreement shall be terminated, without further action by the parties

hereto.

Section 11.3. Successors and Assigns. All covenants and agreements in this Funding Loan Agreement by the Governmental Lender shall bind its successors and assigns, whether so expressed or not.

Section 11.4. Legal Holidays. In any case in which the date of payment of any amount due hereunder or the date on which any other act is to be performed pursuant to this Funding Loan Agreement shall be a day that is not a Business Day, then payment of such amount or such act need not be made on such date but may be made on the next succeeding Business Day, and such later payment or such act shall have the same force and effect as if made on the date of payment or the date fixed for prepayment or the date fixed for such act, and no additional interest shall accrue for the period after such date and prior to the date of payment.

Section 11.5. Governing Law. This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State.

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Section 11.6. Severability. If any provision of this Funding Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Note or in this Funding Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Funding Lender only to the full extent permitted by law.

Section 11.7. Execution in Several Counterparts. This Funding Loan Agreement may be contemporaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

**Section 11.8. Reserved.**

**Section 11.9. Reserved.**

Section 11.10. Electronic Transactions. The transactions described in this Funding Loan Agreement may be conducted, and related documents and may be stored, by electronic means. Copies, telecopies, facsimiles, PDFs, DocuSign, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 11.11. Reference Date. This Funding Loan Agreement is dated for reference purposes

only as of the first day of , 2022.

(Remainder of this page intentionally left blank)

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IN WITNESS WHEREOF, the Funding Lender and the Governmental Lender have caused this Funding Loan Agreement to be duly executed as of the date first written above.

BMO HARRIS BANK, N.A.,  
a national banking association, as Funding  
Lender

By: \_ Name: Title:

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**CITY OF CHICAGO**

By:  
Name: Jennie Huang Bennett Title: Chief Financial Officer

[SEAL] Attest:

By:  
Name: Andrea M. Valencia Title: City Clerk

Signature Page to Funding Loan Agreement

**EXHIBIT A**

**FORM OF GOVERNMENTAL LENDER NOTE**

**THIS NOTE MAY BE OWNED ONLY BY A PERMITTED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS FUNDING LOAN AGREEMENT (A) REPRESENTS THAT IT IS A PERMITTED TRANSFEREE AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS GOVERNMENTAL LENDER NOTE TO ANOTHER PERMITTED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT.**

**CITY OF CHICAGO**

**§**

**MULTI-FAMILY HOUSING REVENUE NOTE, SERIES 2022  
(WESTHAVEN PARK HD)**

DATED \_\_\_\_\_, 2022 not to exceed \$[FUNDING LOAN AMOUNT]

FOR VALUE RECEIVED, the undersigned CITY OF CHICAGO ("Obligor") promises to pay to the order of BMO HARRIS BANK N.A. ("Holder") the maximum principal sum of \_\_\_\_\_ Thousand and no/100 Dollars \$ \_\_\_\_\_, on \_\_\_\_\_, 2022, or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2022 (the "Funding Loan Agreement"), between Obligor and Holder, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on the Funding Loan then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts held derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance



with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Funding Loan so paid. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Funding Loan Agreement.

Obligor shall pay to the Holder on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.

The Funding Loan and this Governmental Lender Note are pass-through obligations relating to a construction loan (the "Borrower Loan") made by Obligor from proceeds of the Funding Loan to WHP-IID, LLC, an Illinois limited liability company, as borrower (the "Borrower"), under that certain Borrower Loan Agreement, dated as of 1, 2022 (as the same may be modified, amended or supplemented from time to time, the "Borrower Loan Agreement"), between the Obligor and the Borrower, evidenced by the Borrower Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan

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Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note, payments on which are passed-through under this Governmental Lender Note.

**This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds arid moneys and Security pledged and assigned under the Funding Loan Agreement. This Governmental Lender Note is not a general obligation of the Governmental Lender or a charge against its general credit or the general credit taxing powers of the State, the Governmental Lender, or any other political subdivision thereof, and shall never give rise to any pecuniary liability of the Governmental Lender, and neither the Governmental Lender, the State nor any other political subdivision thereof shall be liable for the payments of principal of and, premium, if any, and interest on this Governmental Lender Note, and this Governmental Lender Note is payable from no other source, but are special, limited obligations of the Governmental Lender, payable solely out of the security pledged hereunder and receipts of the Governmental Lender derived pursuant to this Funding Loan Agreement. No holder of this Governmental Lender Note or any interest therein has the right to compel any exercise of the taxing power of the State, the Governmental Lender or any other political subdivision thereof to pay this Governmental Lender Note or the interest or premium, if any, thereon.**

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or the Funding Loan at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement; and Obligor shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such Maximum Rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such Maximum Rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such Maximum Rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Governmental Lender Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity.

If there is an Event of Default under the Funding Loan Documents, then in any such event and subject to the requirements set forth in the Funding Loan Agreement, the Holder may declare the entire unpaid principal balance of this Governmental Lender Note and accrued interest, if any, due and payable at once. All of the covenants, conditions and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Lender Note.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

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Obligor shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

This Governmental Lender Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Obligor to pay the entire sum then due, and Obligor's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Obligor which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note or caused this Governmental Lender Note to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**OBLIGOR:**

**CITY OF CHICAGO**

By:  
Name: Jennie Huang Bennett Title: Chief  
Financial Officer

[SEAL] Attest:

By: Name: Andrea M. Valencia Title: City Clerk

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**EXHIBIT B**

**FORM OF REQUIRED TRANSFEREE REPRESENTATIONS**

[ ,20\_]

The undersigned, as holder (the "Holder" or the "Funding Lender") of the not to exceed \$30,000,000 Multi-Family Housing Revenue Note, Series 2022 (Westhaven Park IID) dated as of the Closing Date (a "Governmental Lender Note") issued pursuant to an Ordinance adopted on April , 2022 (the "Ordinance") by the City of Chicago (the "Governmental Lender") and under a Funding Loan Agreement dated as of 1, 2022 (the "Funding Loan Agreement") between the Governmental Lender and Holder, as a Funding Lender, hereby represents that:

1. The Funding Lender hereby acknowledges the execution and delivery of the Governmental

1. Lender Note, Series 2022 in the original aggregate principal amount of up to \$ .

2. The Funding Lender has authority to make the Funding Loan and to execute and deliver these representations and any other instrument and documents required to be executed by the Funding Lender in connection with the execution and delivery of the applicable Governmental Lender Note.

3. The Holder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the Project to be able to evaluate the risk and merits of the investment represented by the Governmental Lender Note. We are able to bear the economic risks of such investment.

4. The Holder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable lender would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project, the use of proceeds of the Governmental Lender Note, the Funding Loan Agreement and the applicable Funding Loan and the security therefor so that, as a reasonable lender, the Holder has been able to make its decision to extend the applicable Funding Loan [or an interest therein] and purchase the Governmental Lender Note [or an interest therein]. The Funding Lender understands that the Governmental Lender Note and the Borrower Loan Agreement are not registered under the Securities Act of 1933, as amended, and that such registration is not legally required as of the date hereof; and further understands that the Governmental Lender Note and the Borrower Loan Agreement (i) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (ii) will not be listed in any stock or other securities exchange, (iii) will not carry a rating from any rating service and (iv) will be delivered in a form which is not readily marketable. The Holder acknowledges that it has not relied upon the Governmental Lender for any information in connection with the Holder's purchase of the Governmental Lender Note [or an interest therein].

5. The Holder is an Approved Institutional Buyer (as defined in the Funding Loan Agreement).

6. The Holder acknowledges that it is purchasing [an interest in] the Governmental Lender Note for investment for its own account and not with a present view toward resale or the distribution thereof, in that we do not now intend to resell or otherwise dispose of all or any part of our interests in the Governmental Lender Note. Subject to paragraph 7 below, the Funding Lender acknowledges and agrees that the Governmental Lender Note, or interests therein, can be sold and subsequently transferred only to

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purchasers that execute and deliver to the Governmental Lender an representations from the transferee to substantially the same effect as these required transferee representations or in such other form authorized under the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

7. In the event any placement memorandum to be provided to any subsequent buyer or beneficial owner of such portion of the Governmental Lender Note will not disclose information with respect to the Governmental Lender other than its name, location and type of political subdivision and general information with respect to the Funding Loan and the corresponding Borrower Loan and related documents, the Holder will provide the Governmental Lender with a draft of such placement memorandum and the Governmental Lender shall have the right to approve any description of the Governmental Lender therein (which approval shall not be unreasonably withheld).

8. The Funding Lender understands that the Governmental Lender Note is a limited obligation of the Governmental Lender; payable solely from funds and moneys pledged and assigned under the Funding Loan Agreement,

and that the liabilities and obligations of the Governmental Lender with respect to the Governmental Lender Note is expressly limited as set forth in the Funding Loan Agreement and related documents. The Funding Lender acknowledges that the Governmental Lender Note is not an indebtedness of the Governmental Lender or a charge against its general credit or the general credit taxing powers of the State, the Governmental Lender, or any other political subdivision thereof, and shall never give rise to any pecuniary liability of the Governmental Lender, and neither the Governmental Lender, the State nor any other political subdivision thereof shall be liable for the payments of principal of and, premium, if any, and interest on the Governmental Lender Note, and the Governmental Lender Note is payable from no other source, but are special, limited obligations of the Governmental Lender, payable solely out of the Security and receipts of the Governmental Lender derived pursuant to the Funding Loan Agreement and the Borrower Loan Agreement. The Funding Lender acknowledges that no holder of the Governmental Lender Note, or any interest therein, has the right to compel any exercise of the taxing power of the State, the Governmental Lender or any other political subdivision thereof to pay the Governmental Lender Note or the interest or premium, if any, thereon.

9. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Funding Loan Agreement.

[Remainder of page intentionally left blank.]

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[Signature Page to Required Transferee Representations]

**BMO HARRIS BANK, N.A.,**  
as Holder

By: \_ Name: Its:

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**Ordinance Exhibit C Form of Borrower Loan Agreement**

See Attached.

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**Ordinance Exhibit C Form of Borrower Loan Agreement**

See Attached.

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**BORROWER LOAN AGREEMENT**

**Between**

**CITY OF CHICAGO, as Governmental  
Lender,**

**and**

**WHP-IID, I LLC, an Illinois limited liability  
company, as Borrower**



Dated as of 1, 2022

Relating to: Not to exceed \$30,000,000 Funding Loan originated by BMO HARRIS BANK,  
N.A., as Funding Lender

The interest of the City of Chicago (the "Governmental Lender") in this Borrower Loan Agreement (except for certain rights described herein) has been pledged and assigned to BMO Harris Bank, N.A., a national banking association (the "Funding Lender"), under that certain Funding Loan Agreement, of even date herewith, by and among the Governmental Lender and the Funding Lender, under which the Funding Lender is originating a loan to the Governmental Lender the proceeds of which are to be used to fund the Borrower Loan made under this Borrower Loan Agreement.

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EXHIBIT A - Section  
10.32 Modifications

EXHIBIT B- Site

**BORROWER LOAN AGREEMENT**

THIS BORROWER LOAN AGREEMENT (this "Borrower Loan Agreement") is entered into as of the first day of \_\_\_\_\_, 2022, between the CITY OF CHICAGO, a municipality and home **rule unit of local government duly organized and validly existing under the constitution and laws of the State of Illinois (together with its successors and assigns, the "Governmental Lender")**, and WHP-IID, LLC, an Illinois **limited liability company (together with its successors and assigns, the "Borrower")**.

**WITNESSETH:**

**RECITALS**

WHEREAS, the Governmental Lender has been duly created and organized pursuant to and in accordance with the provisions of Article VII, Section 6 of the 1970 Constitution of the State of Illinois, for the purpose of providing a means of financing the costs of residential ownership and development that will provide decent, safe and sanitary housing for persons of low and moderate income at prices or rentals they can afford; and

WHEREAS, the Governmental Lender is authorized: (a) to make loans to any person to provide financing for rental residential developments located within the jurisdiction of the Governmental Lender and intended to be occupied in part by persons of low and moderate income, as determined by the Governmental Lender; (b) to incur indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues, receipts or resources of the Governmental Lender, including the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender in order to secure the payment of the principal or redemption price of and interest on such indebtedness of the Governmental Lender; and

WHEREAS, the Borrower has applied to the Governmental Lender for a loan (the "Borrower Loan") for the acquisition, lease, construction, rehabilitation, development, and equipping of low- and moderate- income residential facilities and related common facilities consisting of one 12-story tower attached to a 4-story component and containing approximately 96 residential rental apartments, of which 38 units will be set aside for tenants of the CHA (as hereinafter defined) (together with related common areas along with parking lot facilities and as further described on Exhibit B hereto, the "Project" or the "Bond Project"), on property located at the southeast corner of North Damen Avenue and West Lake Street, commonly known as 145 North Damen Avenue (also known as 1951-1959 West Lake Street) in Chicago, Cook County, Illinois (the "Property"), and to pay a portion of the costs of issuance and other costs incurred in connection therewith; and

WHEREAS, the Borrower's repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Note, as defined herein; and

WHEREAS, the Borrower has requested the Governmental Lender to enter into that certain Funding Loan Agreement, of even date herewith (the "Funding Loan Agreement"), among the Governmental Lender, and BMO Harris Bank, N.A., a national banking association (the "Funding Lender"), under which the Funding Lender will make a loan (the "Funding Loan") to the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower to finance the acquisition, construction, rehabilitation, development, equipping and/or operation of the Project; and;

WHEREAS, the Borrower Loan is secured by, among other things, that certain Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing (as amended, restated and/or supplemented from time to time, the "Security Instrument"), of even date herewith, to the benefit of the Governmental Lender and assigned by the Governmental Lender to the Funding Lender, encumbering the Project, and will be advanced to Borrower pursuant to this Borrower Loan Agreement and the Construction Funding Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

**ARTICLE I  
DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

Section 1.1. Specific Definitions. For all purposes of this Borrower Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Security Instrument or, if not defined in the Security Instrument, in the Funding Loan Agreement.

All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with GAAP.

All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

Unless otherwise specified, (i) all references to sections and schedules are to those in this Borrower Loan Agreement, (ii) the words "hereof," "herein" and "hereunder" and words of similar import refer to this Borrower Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined and (iv) the word "including" means "including but not limited to."

Section 1.2. Definitions. The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

"Act of Bankruptcy" shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within ninety (90) days after the commencement thereof.

"ADA" shall have the meaning set forth in Section 4.1.38 hereof.

"Additional Borrower Payments" shall mean the payments payable pursuant to Section 2.5 (Additional Borrower Payments), Section 2.6 (Overdue Payments; Payments in Default), Section 3.3.3 of the Construction Funding Agreement (Borrower Loan in Balance), Section 7.1 of the Construction Funding Agreement (Mandatory Payments of Borrower Loan), Section 5.14 (Expenses) and Section 10 of the Borrower Note (Voluntary and Involuntary Prepayments).

"Affiliate" or "Affiliate of Borrower" means, as to the Borrower or its Managing Member, (i) any entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of Borrower or its Managing Member, (ii) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Borrower or its Managing Member, (iii) any partner, shareholder or, if a limited liability company, member of the Borrower or its Managing Member, or (iv) any other person that is related by blood or marriage to the Borrower or its Managing Member (to the extent any of the Borrower or its Managing Member is a natural person).

"Agreement of Environmental Indemnification" shall mean the Environmental Indemnity Agreement, of even date herewith, executed by the Borrower and Guarantor for the benefit of the Servicer and any lawful holder, owner or pledgee of the Borrower Note from time to time.

"Appraisal" shall mean an appraisal of the Project and Improvements, which appraisal shall be (i) performed by a qualified appraiser licensed in the State selected by Servicer, and (ii) satisfactory to Servicer (including, without limitation, as adjusted pursuant to any internal review thereof by Servicer) in all respects.

"Approved Developer Fee Payment Schedule" has the meaning assigned to such term in the Construction Funding Agreement.

"Architect" shall mean any licensed architect, space planner or design professional that Borrower may engage from time to time, with the approval of the Servicer, to design any portion of the Improvements, including the preparation of the Plans and Specifications.

"Architect's Agreement" means any agreement that Borrower and any Architect from time to time may execute pursuant to which Borrower engages such Architect to design any portion of the Improvements, including the preparation of the Plans and Specifications, as approved by Servicer.

"Authorized Borrower Representative" shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender and the Servicer and containing the specimen signature of such person and signed on behalf of the Borrower by its Borrower Controlling Entity which certificate may designate one or more alternates.

"Bankruptcy Code" shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

"Bankruptcy Event" shall mean any one or more of the following:

- (1) (A) the commencement of a voluntary case under the Bankruptcy Code or any other insolvency laws by the Borrower, Managing Member or any Guarantor; (B) the acknowledgment in writing by the Borrower, Managing Member or any Guarantor that it is unable to pay its debts generally as they mature; (C) the making of a general assignment for the benefit of creditors by the Borrower, Managing Member or any Guarantor; (D) the commencement of an involuntary case under the Bankruptcy Code or any other insolvency laws against the Borrower, Managing Member or any Guarantor; or (E) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over the Borrower, Managing Member or any Guarantor or any substantial part of the assets of the Borrower, Managing Member or any Guarantor, provided



that any proceeding or case under (D) or (E) above is not dismissed within 90 days after filing;

- 2) Any Guarantor or any Affiliate of a Guarantor files an involuntary petition against Borrower under the Bankruptcy Code or any other insolvency laws; or
- 3) Both (A) an involuntary petition under any the Bankruptcy Code or any other insolvency laws is filed against Borrower or Managing Member or Borrower or Managing Member directly or indirectly becomes the subject of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or in equity, and (B) Borrower or any Affiliate of Borrower has acted in concert or conspired with such creditors of Borrower (other than Lender) to cause the filing thereof with the intent to interfere with enforcement rights of Lender after the occurrence of an Event of Default.

"Bankruptcy Proceeding" shall have the meaning set forth in Section 4.1.8 hereof.

"Beneficiary Parties" shall mean, collectively, the Funding Lender and the Governmental Lender.

"Borrower" shall have the meaning set forth in the preambles to this Borrower Loan Agreement.

"Borrower Controlling Entity" shall mean, if the Borrower is a partnership, any general partner or managing partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower, or if the Borrower is a not for profit corporation, the shareholders thereof.

"Borrower Deferred Equity" shall mean the Equity Contributions to be made by the Equity Investor to Borrower pursuant to the Operating Agreement other than Borrower Initial Equity, in accordance with the following schedule:

<b>Installment of Equity Contributions:</b>	<b>Operating Agreement Section Reference:</b>	<b>Amount:</b>	<b>Timing of Payment</b>
Second Installment			
Third Installment			
Fourth Installment			

"Borrower Initial Equity" shall mean, singly or collectively, as the context requires, an initial installment of the Equity Contributions made to Borrower by the Equity Investor in an amount of at least \$ to be made on or prior to the Closing Date.

"Borrower Loan(s)" shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to this Borrower Loan Agreement, in the maximum principal amount of the Borrower Loan Amount, as evidenced by the Borrower Note.

"Borrower Loan Agreement" shall mean this Borrower Loan Agreement.

"Borrower Loan Amount" shall mean not to exceed \$30,000,000, the original maximum aggregate principal amount of the Borrower Note.

"Borrower Loan Documents" shall mean this Borrower Loan Agreement, the Construction Funding Agreement, the Borrower Note, the Guaranty, the Security Instrument, the Collateral Assignments, the Agreement of Environmental

Indemnification, the Contingency Draw-Down Agreement and all other documents or agreements evidencing or relating to the Borrower Loan.

"Borrower Loan Payment Date" shall mean (i) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Note, or (ii) any other date on which the Borrower Note is prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

"Borrower Loan Payments" shall mean the monthly loan payments payable pursuant to the Borrower Note.

"Borrower Loan Proceeds" shall mean proceeds of the Borrower Loan, to be disbursed in accordance with Section 2.10 of this Borrower Loan Agreement and the Construction Funding Agreement.

"Borrower Note" shall mean that certain Promissory Note, Series 2022, dated as of the Closing Date in the original maximum principal amount of not to exceed \$30,000,000 made by Borrower and payable to Governmental Lender, as endorsed and assigned to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

"Borrower Payment Obligations" shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

"Business Day" shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which federally insured depository institutions in New York, New York, Chicago, Illinois or the cities in which the offices of the Funding Lender are located are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

"Calendar Month" shall mean each of the twelve (12) calendar months of the year.

"CC&R's" shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Project or the Mortgaged Property, including, without limitation, the Redevelopment Agreement, the Regulatory Agreement (as defined in the Funding Loan Agreement) and the RAD Use Agreement (as defined in the Construction Funding Agreement).

"Chicago Housing Authority" shall mean the Chicago Housing Authority, an Illinois municipal corporation.

"City" shall mean the City of Chicago, Illinois.

"Closing Date" shall mean \_\_\_\_\_, 2022, the date that the initial Borrower Loan Proceeds are disbursed hereunder.

"Code" shall mean the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date,

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together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

"Collateral" shall mean all collateral described in (i) this Borrower Loan Agreement (including, without limitation, all property in which the Funding Lender is granted a security interest pursuant to any provision of this Borrower Loan Agreement), (ii) the Security Instrument, or (iii) any other Security Document, which Collateral shall include the Project, all of which collateral is pledged and assigned to Funding Lender under the Funding Loan Agreement

to secure the Funding Loan.

"Collateral Assignments" means all pledges and assignments made by the Borrower and/or Managing Member of ownership interests therein or in the Property or any contracts, agreements, leases, subleases, licenses, permits, plans and specifications, accounts and other property, real or personal, related to the Property and/or the construction and operation of the Improvements.

"Completion" shall have the meaning set forth in Section 5.25.

"Completion Date" shall mean the date that is 24 months subsequent to the Closing Date.

"Computation Date" shall have the meaning ascribed thereto in Section 1.148-3(e) of the Regulations.

"Condemnation" shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Project, whether direct or indirect.

"Conditions to Conversion" shall have the meaning assigned to such term in the Construction Funding Agreement.

"Construction Consultant" shall mean a third-party architect or engineer selected and retained by the Funding Lender, at the cost and expense of Borrower, to monitor the progress of construction and/or rehabilitation of the Project and to inspect the Improvements to confirm compliance with this Borrower Loan Agreement.

"Construction Contract" shall mean any agreement that Borrower and any Contractor from time to time may execute pursuant to which Borrower engages the Contractor to construct any portion of the Improvements, as approved by the Funding Lender.

"Construction Escrow Agreement" shall mean that certain Construction Escrow and Disbursement Agreement, dated as of \_\_\_\_\_, 2022, among the Title Company named therein, in its capacity as escrow agent, Governmental Lender, Funding Lender, certain subordinate lenders named therein, and Borrower, as such agreement may be amended, modified, supplemented and replaced from time to time.

"Construction Funding Agreement" means that certain Construction Funding Agreement of even date herewith, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

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"Construction Period Maturity Date" shall mean \_\_\_\_\_, 202\_\_, subject to extension to \_\_\_\_\_, 202\_\_, upon the satisfaction of the conditions to extension set forth in the Construction Funding Agreement.

"Construction Schedule" shall mean a schedule of construction or rehabilitation progress with the anticipated commencement and completion dates of each phase of construction or rehabilitation, as the case may be, and the anticipated date and amounts of each Disbursement for the same, as approved by the Funding Lender, as assignee of the Governmental Lender.

"Contingency Draw-Down Agreement" means the Contingency Draw-Down Agreement of even date herewith, between the Funding Lender and the Borrower relating to possible conversion of the Funding Loan from a draw down loan to a fully funded loan.

"Continuing Disclosure Agreement" shall mean that certain Continuing Disclosure Agreement of even date herewith, between the Borrower and the Funding Lender, pursuant to which the Borrower agrees to provide certain information with respect to the Project, the Borrower and the Funding Loan subsequent to the Closing Date, as amended, supplemented or restated from time to time.

"Contractor" shall mean any licensed general contractor or subcontractor that Borrower may directly engage from time to time, with the approval of Funding Lender, to construct and/or rehabilitate any portion of the Improvements.

"Contractual Obligation" shall mean, for any Person, any debt or equity security issued by that Person, and any indenture, mortgage, deed of trust, contract, undertaking, instrument or agreement (written or oral) to which such Person is a party or by which it is bound, or to which it or any of its assets is subject.

"Conversion" means the conversion of the Borrower Loan evidenced by the Borrower Note, to an amortizing term loan upon Borrower's satisfaction of the Conditions to Conversion set forth in the Construction Funding Agreement.

"Conversion Date" has the meaning assigned to such term in the Construction Funding Agreement.

"Cost Breakdown" shall mean the schedule of costs for the Improvements, as set forth in the Construction Funding Agreement and as the same may be amended from time to time with Funding Lender's consent.

"Costs of Funding" shall mean the Governmental Lender's Administrative Fee and the fees, costs, expenses and other charges incurred in connection with the funding of the Borrower Loan and the Funding Loan, the negotiation and preparation of this Borrower Loan Agreement and each of the other Borrower Loan Documents and Funding Loan Documents and shall include, but shall not be limited to, the following: (i) counsel fees (including but not limited to Tax Counsel, counsel to the Governmental Lender, Borrower's counsel, and Funding Lender's counsel); (ii) financial advisor fees incurred in connection with the closing of the Borrower Loan and the Funding Loan; (iii) certifying and authenticating agent fees and expenses related to funding of the Funding Loan; (iv) printing costs (for any preliminary and final offering materials relating to the Funding Loan); (v) any recording fees; (vi) any additional fees charged by the Governmental Lender; and (vii) costs incurred in connection with the required public notices generally and costs of the public hearing.

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"Costs of Funding Deposit" shall mean the amount required to be deposited by the Borrower with [the Title Company (or a separate escrow company, if applicable)] to pay Costs of Funding in connection with the closing of the Borrower Loan and the Funding Loan on the Closing Date.

"Cost of Improvements" shall mean the costs for the Improvements, as set forth on the Cost Breakdown.

"County" shall mean Cook County, Illinois.

"Date of Disbursement" shall mean the date of a Disbursement.

"Day" or "Days" shall mean calendar days unless expressly stated to be Business Days.

"Debt" shall mean, as to any Person, any of such Person's liabilities, including all indebtedness (whether recourse

and nonrecourse, short term and long term, direct and contingent), all committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

"Default Rate" shall have the meaning given to that term in the Construction Funding Agreement.

"Determination of Taxability" shall mean (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum concerning the Governmental Lender. Note issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by the Servicer, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the Governmental Lender Note is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the Governmental Lender Note, other than a holder who is a "substantial user" of the Project or a "related person" (as such terms are defined in Section 147(a) of the Code) to a "substantial user"; provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower), the Servicer (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (c) one year from the date of initial determination.

"Developer Fee" shall mean the fees and/or compensation payable to BMH-I, LLC, an Illinois limited liability company pursuant to the Development Services Agreement dated as of \_\_\_\_\_, 2022, between Borrower and such developer, which fees and/or compensation shall not be paid except as otherwise permitted pursuant to Section 6.13(b).

"Disbursement" means a disbursement of Borrower Loan Proceeds and Other Borrower Moneys pursuant to this Borrower Loan Agreement and the Construction Funding Agreement.

"Engineer" shall mean any licensed civil, structural, mechanical, electrical, soils, environmental or other engineer that Borrower or the Architect may engage from time to time, with the approval of Funding Lender, to perform any engineering services with respect to any portion of the Improvements.

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"Engineer's Contract" shall mean any agreement that Borrower and any Engineer from time to time may execute pursuant to which Borrower engages such Engineer to perform any engineering services with respect to any portion of the Improvements, as approved by the Servicer.

"Equity Contributions" shall mean the equity to be contributed by, or on behalf of, the Equity Investor to Borrower, in accordance with and subject to the terms of the Operating Agreement.

"Equity Investor" shall mean [an affiliate of The Richman Group Affordable Housing Corporation], and its successors and assigns. ;

"ERISA" shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" shall mean all members of a controlled group of corporations and all trades and business

(whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

"Event of Default" shall mean any Event of Default set forth in Section 8.1 of this Borrower Loan Agreement. An Event of Default shall "exist" if a Potential Default shall have occurred and be continuing beyond any applicable cure period.

"Excess Revenues" means, for any period, the net cash flow of the Borrower available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of principal and interest on all indebtedness coming due during such period (whether in installments or at maturity, by acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to the Operating Agreement, the Subordinate Loan Documents or any other agreement relating to the Property, but excluding depreciation and amortization of intangibles.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Expenses of the Project" shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower Loan Documents), a management fee (however characterized) not to exceed \_\_\_\_\_ % of Gross Income, costs of billings and collections, costs of insurance, and costs of audits and any mandatory i.e. hard pay debt service payments. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate soft pay financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

"Fair Market Value" shall mean the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to

purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is an interest in any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

"Fitch" shall mean Fitch, Inc.

"Funding Loan Agreement" means the Funding Loan Agreement, of even date herewith, between the Governmental Lender and the Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

"Funding Loan Documents" shall have the meaning given to that term in the Funding Loan Agreement.

"GAAP" shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

"Governmental Authority" shall mean (i) any governmental municipality or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), now or hereafter in existence.

"Governmental Lender" shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

"Governmental Lender Note" shall mean the Governmental Lender Note, Series 2022.

"Governmental Lender Note, Series 2022" shall mean that certain City of Chicago Multi-Family Housing Revenue Note, Series 2022 (WHP-IID, LLC), dated the Closing Date in the original maximum principal amount of \$30,000,000, made by the Governmental Lender and payable to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

"Governmental Lender's Administrative Fee" shall mean an amount equal to 1.5% of the original principal amount of the Governmental Lender Note. The Governmental Lender's Administrative Fee is payable to the Governmental Lender on the Closing Date, pursuant to Section 2.3(c)(iii) hereof.

"Gross Income" shall mean all receipts, revenues, income and other moneys received or collected by or on behalf of Borrower and derived from the ownership or operation of the Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence

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and proceeds received upon the foreclosure sale of the Project. Gross Income shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by Borrower in accordance with applicable law.

"Gross Proceeds" shall mean, without duplication, the aggregate of:

a) the net amount (after payment of all expenses of originating the Funding Loan) of Funding Loan proceeds received by the Governmental Lender as a result of the origination of the Funding Loan;

b) all amounts received by the Governmental Lender as a result of the investment of the Funding Loan proceeds;

c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan; and

d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan.

"Ground Lease" shall mean that certain Ground Lease dated as of \_\_\_\_\_, 2022, between the Chicago Housing Authority, as landlord, and [Michaels Community Services Corporation (a/k/a Better Tomorrows), a New Jersey not-for-profit corporation] ("Sponsor") or its affiliate, as tenant, and assigned to the Borrower as tenant, with respect to the Project.

"Guarantors" shall mean \_\_\_\_\_, a \_\_\_\_\_ or any other person or entity which may hereafter become a Guarantor of any of the Borrower's obligations under the Borrower Loan.

"Guaranty" shall mean, collectively the Completion and Repayment Guaranty, of even date herewith, by the Guarantors for the benefit of the Funding Lender.

"HAP Contract" shall mean that certain Rental Assistance Demonstration (RAD) Section 8 Project-Based Voucher Housing Assistance Payments Contract to be entered into by and between the Chicago Housing Authority, in its capacity as contract administrator, and the Borrower, on or about the Conversion Date.

"Improvements" shall mean the multifamily residential project consisting of one 12-story tower attached to a 4-story component and containing approximately 96 residential rental apartments, of which 38 units will be set aside for tenants of the CHA (as hereinafter defined) and approximately 3200 square feet of ground floor retail space (together with related common areas along with parking lot facilities), on property located at the southeast corner of North Damen Avenue and West Lake Street, commonly known as 145 North Damen Avenue (also known as 1951-1959 West Lake Street) in Chicago, Cook County, Illinois

"Indemnified Party" shall have the meaning set forth in Section 5.15 hereof.

"Installment Computation Date" shall mean any Computation Date other than the first Computation Date or the final Computation Date.

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"Interest Rate" shall mean with respect to the Borrower Note the rate of interest accruing on the Borrower Note.

"Land" means the real property described on Exhibit A to the Security Instrument.

"Late Charge" shall mean the amount due and payable as a late charge on overdue payments under the Borrower Note, as provided in [Section 7] of the Borrower Note and Section 2.6 hereof.

"Legal Action" shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator or other Governmental Authority.

"Legal Requirements" shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the Project or any property (including the Project) or the construction, rehabilitation, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, the CC&R's and all other covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrower, at any time in



force affecting all or part of the Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the Project, or (ii) in any way limit the use and enjoyment thereof.

"Liabilities" shall have the meaning set forth in Section 5.15 hereof.

"Licenses" shall have the meaning set forth in Section 4.1.22 hereof.

"Lien" shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

"Management Agreement" shall mean the Management Agreement between the Borrower and the Manager, pursuant to which the Manager is to manage the Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Manager" shall mean the management company to be employed by the Borrower and approved by the Funding Lender in accordance with the terms of the Security Instrument, this Borrower Loan Agreement or any of the other Borrower Loan Documents.

"Managing Member" shall mean WHP-IID Manager, LLC, an Illinois limited liability company, and/or any other Person that the members of the Borrower, with the prior written approval of the Funding Lender (or as otherwise permitted with the Funding Lender's approval pursuant to the Borrower Loan Documents), selected to be a managing member of the Borrower, provided however the Funding Lender's approval is not applicable if a Material Funding Lender Event has occurred and is continuing.

"Material Adverse Change" means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Borrower Loan Agreement or any other Borrower Loan Document; (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations or prospects of the Borrower, Managing Member or the Mortgaged Property; (c) could

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reasonably be expected to impair materially the ability of the Borrower, Managing Member or any Guarantor to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of Governmental Lender or, upon the assignment of the Borrower Loan to it, of the Funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

"Moody's" shall mean Moody's Investors Service, Inc., or its successor.

"Mortgaged Property" shall have the meaning given to that term in the Security Instrument.

"Net Operating Income" shall mean: (i) the Gross Income, less (ii) the Expenses of the Project.

"Nonpurpose Investment" shall mean any investment property (as defined in Section 148(b) of the Code) that is

acquired with the Gross Proceeds of the Funding Loan and which is not acquired to carry out the governmental purpose of the Funding Loan.

"Ongoing Governmental Lender Fee" shall mean an on-going compliance fee in the amount of \$25 per unit payable annually in advance by the Borrower to the Governmental Lender, commencing on the Closing Date and on each January 1 thereafter, so long as any portion of the Funding Loan are outstanding.

"Operating Agreement" shall mean that certain Amended and Restated Operating Agreement of WHP-IID, LLC dated as of \_\_\_\_\_, 2022, as the same may be amended, restated or modified in accordance with its terms.

"Other Borrower Moneys" shall mean monies of Borrower other than Borrower Loan Proceeds and includes, but is not limited to, the Subordinate Debt, Net Operating Income, the Borrower's Equity Contributions and any other funds contributed by or loaned to the Borrower for application to the Costs of the Improvements or other costs associated with the Project.

"Other Charges" shall mean all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Project, now or hereafter levied or assessed or imposed against the Project or any part thereof.

"Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

"Patriot Act Offense" shall have the meaning set forth in Section 4.1.48 hereof.

"Payment Obligations" shall mean all obligations of Borrower for the payment of money to the Governmental Lender or to any other person under the Borrower Note, this Borrower Loan Agreement or under any other Borrower Loan Document.

"Permitted Encumbrances" shall have the meaning given to that term in the Security Instrument.

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"Permitted Lease" shall mean a lease and occupancy agreement pursuant to the form approved by the Servicer, to a residential tenant in compliance with the applicable Legal Requirements, providing for an initial term of not less than six (6) months nor more than two (2) years.

"Person" shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

"Plan" shall mean (i) an employee benefit or other plan established or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code. -

"Plans and Specifications" shall mean the plans and specifications for the construction and/or rehabilitation, as the case may be, of the Project approved by the Servicer.

"Potential Default" shall mean the occurrence of an event which, under this Borrower Loan Agreement or any other Borrower Loan Document, would, but for the giving of notice and/or passage of time, be an Event of Default.

"Prepayment Premium" shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any prepayment premium as set forth in the Borrower Note).

"Project" shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

"Project Agreements and Licenses" shall mean any and all Construction Contracts, Engineer's Contracts and Management Agreements, and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Mortgaged Property.

"Provided Information" shall have the meaning set forth in Section 9.1.1 (a) hereof.

"Qualified Project Costs" shall mean costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Regulations, provided, however, that only such portion of the interest accrued during rehabilitation or construction of the Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all costs of the acquisition and construction or rehabilitation of the Project; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by an Affiliate (whether as general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual Borrower out of pocket costs incurred by such Affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by such Affiliate, and (C) any overhead expenses incurred by such Affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an "affiliated group" (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior

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to July 21, 2021, being the date on which the Governmental Lender first declared its "official intent" to reimburse costs paid with respect to the Project (within the meaning of Section 1.150-2 of the Regulations) or the date of issue of the Funding Loan, and (iv) if the costs of the acquisition and construction or rehabilitation of the Project were previously paid and are to be reimbursed with proceeds of the Funding Loan such costs were (A) "preliminary expenditures" (within the meaning of Section 1.150-2(f)(2) of the Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Lender Note (as defined in Section 1.148-1 of the Regulations), or (B) were capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three years after the expenditures are paid); provided, however, that (w) Costs of Funding shall not be deemed to be Qualified Project Costs; (x) fees, charges or profits payable to the Borrower or a "related person" (within the meaning of Section 144(a)(3) of the Code) shall not be deemed to be Qualified Project Costs; (y) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Project Costs and other costs and expenses to be paid from the proceeds of the Funding Loan; and (z) letter of credit fees and municipal bond insurance

premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a "related person" to the Borrower) shall not constitute Qualified Project Costs.

"RAD Use Agreement" has the meaning assigned to such term in the Construction Funding Agreement.

"Rebate Amount" shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Funding Loan. ,

"Rebate Analyst" shall mean the rebate analyst selected by the Borrower prior to the Closing Date and acceptable to the Governmental Lender and the Servicer.

"Rebate Analyst's Fee" shall mean the annual fee of the Rebate Analyst in the amount of \$ \_\_\_\_\_, or such other amount as agreed to by the Borrower. The Rebate Analyst's Fee is payable by the Borrower to the Rebate Analyst, commencing \_\_\_\_\_ 1, 2022, every fifth anniversary thereof, and the Maturity Date.

"Rebate Fund" shall mean the Rebate Fund created pursuant to Section 5.35 hereof.

"Redevelopment Agreement" shall mean that certain Westhaven Park IID Project Redevelopment Agreement, by and among the Governmental Lender, through its Department of Planning and Development, WHP-IID, LLC, an Illinois limited liability company and Michaels Community Services Corporation (a/k/a Better Tomorrows), a New Jersey not-for-profit corporation (or its affiliate).

"Regulations" shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

"Related Documents" shall mean, collectively, any agreement or other document (other than the Borrower Loan Documents) granting a security interest (including each agreement that is the subject of any Borrower Loan Document), the Operating Agreement, and any other agreement, instrument or other document (not constituting a Borrower Loan Document) relating to or executed in connection with the transactions contemplated by this Borrower Loan Agreement.

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"Retainage" shall mean, for each Construction Contract, the lesser of (a) ten percent (10%) of all amounts required to be paid to a Contractor under the Construction Contract and (b) the actual retainage required under such Construction Contract, which shall be released upon satisfaction of the conditions set forth in the Construction Funding Agreement.

"Secondary Market Disclosure Document" shall have the meaning set forth in Section 9.1.2 hereof.

"Secondary Market Transaction" shall have the meaning set forth in Section 9.1.1 hereof.

"Securities" shall have the meaning set forth in Section 9.1.1 hereof.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security" shall have the meaning set forth in Article IV of the Funding Loan Agreement.

"Security Documents" shall mean the Security Instrument, the Guaranty, the Collateral Assignments, this

Borrower Loan Agreement, the Environmental Agreement, and such other security instruments that Servicer may reasonably request.

"Security Instrument" shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

"Servicer" shall mean the Servicer contracting with or appointed by the Funding Lender to service the Borrower Loan. The initial Servicer shall be BMO Harris Bank, N.A. in accordance with the Construction Funding Agreement.

"Servicing Agreement" shall mean any servicing agreement or master servicing agreement, among the Servicer, the Funding Lender relating to the servicing of the Borrower Loan and any amendments thereto or any replacement thereof. The initial Servicing Agreement shall be the Construction Funding Agreement.

"Special Investor Member" shall mean \_\_\_\_\_, a Delaware limited liability company, and its successors and assigns.

"Standard & Poor's" or "S&P" shall mean Standard & Poor's Global Ratings Services, or its successors.

"State" shall mean the State in which the Project is located.

"Subordinate Debt" shall mean the subordinate loans to Borrower being made by the Subordinate Lenders as contemplated by the Construction Funding Agreement.

"Subordinate Lender(s)" shall mean the Chicago Housing Authority, the City of Chicago, and the Sponsor, each as applicable.

"Subordinate Loan Documents" shall mean, collectively, all instruments, agreements and other documents evidencing, securing or otherwise relating to the Subordinate Debt or executed and delivered by Borrower and/or Subordinate Lender in connection with the Subordinate Debt.

"Substantial Completion Date" means the date that is three (3) months prior to the Completion Date.

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"Substantially Complete" or "Substantially Completed" means the Funding Lender has determined that construction or rehabilitation, as the case may be, of the Improvements is sufficiently complete in accordance with the Construction Contract and the Legal Requirements such that the Improvements can be occupied by tenants as a multifamily residential rental project and the appropriate Governmental Authority has issued a temporary certificate of occupancy or equivalent.

"Tax Counsel" shall have the meaning set forth in the Funding Loan Agreement.

"Taxes" shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

"Term" shall mean the term of this Borrower Loan Agreement pursuant to Section 10.14.

"Term Period Maturity Date" shall mean the seventeenth (17<sup>th</sup>) anniversary of the Conversion Date.

"Title Company" means Greater Illinois Title Company.

"Title Insurance Policy" shall mean the mortgagee title insurance policy, in form acceptable to the Funding Lender, issued with respect to the Mortgaged Property and insuring the lien of the Security Instrument.

["Transfer" shall have the meaning given to that term in the Security Instrument.] "UCC" shall mean the Uniform Commercial Code as in effect in the State. "Unit" shall mean a residential apartment unit within the Improvements.

"Written Consent" and "Written Notice" shall mean a written consent or notice signed by an Authorized Borrower Representative or an authorized representative of the Governmental Lender or the Funding Lender, as appropriate.

## ARTICLE II GENERAL

Section 2.1. Origination of Borrower Loan. In order to provide funds for the purposes provided herein, the Governmental Lender agrees that it will, in accordance with the Ordinance, enter into the Funding Loan Agreement and accept the Funding Loan from the Funding Lender. The proceeds of the Funding Loan shall be advanced by the Funding Lender to the Borrower in accordance with the terms of the Construction Funding Agreement and this Borrower Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf to disburse the Borrower Loan for the account of the Governmental Lender, to take certain actions and exercise certain remedies with respect to the Borrower Loan, and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to the Funding Lender in its role as agent of the Governmental Lender. The Funding Lender may designate the Servicer to fulfill the rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to this Section 2.1; provided,

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however, that such designation shall not release or absolve Funding Lender from ultimate responsibility for fulfillment of such rights or responsibilities.

### Section 2.2. Security for the Funding Loan.

a) As security for the Funding Loan, the Governmental Lender has pledged and assigned the Security to the Servicer, as agent for the Funding Lender under and pursuant to the Funding Loan Agreement. All revenues and assets pledged and assigned thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Borrower Note, which shall be endorsed by the Governmental Lender and delivered to the Funding Lender. The Borrower hereby acknowledges and consents to such assignment of the Security to the Servicer, as agent for the Funding Lender.

b) With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

i) Tax Covenants. Seek specific performance of, and enforce, the tax covenants of the Funding Loan Agreement, and the Funding Loan Documents, injunctive relief against acts which may be

in violation of any of the tax covenants, and enforce the Borrower's obligation to pay amounts for credit to the Rebate Fund;

ii) Reserved Rights. Take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only enforce any right it may have for monetary damages against Excess Revenues, if any, of the Borrower, unless Servicer otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

c) In no event shall the Governmental Lender, except at the express written direction of the Funding Lender or the Servicer, as agent for the Funding Lender:

i) prosecute its action to a lien on the Project; or

ii) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

iii) interfere with the exercise by Funding Lender or Servicer of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by the Borrower under the Borrower Loan Documents or the Funding Loan Documents; or

iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the Funding Loan.

d) The Governmental Lender shall provide written notice to the Funding Lender and the Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the Funding Loan Documents.

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### **Section 2.3. Loan; Borrower Note; Conditions to Closing.**

a) The Funding Loan shall be funded by the Funding Lender directly to the Borrower or through the escrow established by the Construction Escrow Agreement, subject to the conditions set forth in the Construction Funding Agreement, in one or more installments not to exceed the Borrower Loan Amount in accordance with the disbursement procedures set forth in the Construction Funding Agreement. Upon funding of each installment of the Funding Loan, the Governmental Lender shall be deemed to have made the Borrower Loan to the Borrower in a like principal amount. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Construction Funding Agreement and Borrower Note. The proceeds of the Borrower Loan shall be used by the Borrower to pay costs of the acquisition, leasing, construction, rehabilitation, development, equipping and/or operation of the Project. The Borrower hereby accepts the Borrower Loan and acknowledges that the Governmental Lender shall cause the Funding Lender to fund the Borrower Loan in the manner set forth herein and in the Construction Funding Agreement and the Funding Loan Agreement. The Governmental Lender acknowledges that the Borrower Loan shall be funded by the Funding Lender for the account of the Governmental Lender.

b) The Borrower hereby accepts the Borrower Loan. As evidence of its obligation to repay the Borrower

Loan, simultaneously with the delivery of this Borrower Loan Agreement to the Governmental Lender, the Borrower hereby agrees to execute and deliver the Borrower Note. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note.

c) Closing of the Borrower Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Governmental Lender and the Funding Lender, in their sole discretion of each of the conditions precedent to closing set forth in the Funding Loan Agreement, the Construction Funding Agreement and this Borrower Loan Agreement, including but not limited to the following:

i) evidence of proper recordation of the Security Instrument, an assignment of the Security Instrument from the Governmental Lender to the Servicer, as agent for the Funding Lender, the Regulatory Agreement, and each of the other documents specified for recording in instructions delivered to the Title Company by counsel to the Funding Lender (or that such documents have been delivered to an authorized agent of the Title Company for recordation under binding recording instructions from Funding Lender's counsel or such other counsel as may be acceptable to the Funding Lender); and

ii) delivery into escrow with the Title Company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit and the Borrower Initial Equity, all as specified in written instructions delivered to the Title Company by counsel to the Funding Lender (or such other counsel as may be acceptable to the Funding Lender); and

iii) payment of all fees payable in connection with the closing of the Borrower Loan, including the Governmental Lender's Administrative Fee and the initial fees and expenses of the Funding Lender.

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#### **Section 2.4. Borrower Loan Payments.**

a) The Borrower shall make Borrower Loan Payments in accordance with the Borrower Note. Each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the applicable Funding Lender or the Servicer by 2:00 p.m., Chicago time, on the Borrower Loan Payment Date. Each such payment shall be made to the Funding Lender or the Servicer by deposit to such account as the applicable Funding Lender or Servicer, as applicable, may designate by Written Notice to the Borrower. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Note in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

b) If there is a Servicer, payments of principal and interest on the Borrower Note shall be paid to the Servicer. If there is no Servicer, payments of principal and interest on the Borrower Note shall be paid directly to the Funding Lender.

#### **Section 2.5. Additional Borrower Payments.**

(a) The Borrower shall pay on demand the following amounts:



i) to the Servicer or the Funding Lender, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 5.35 hereof and the Rebate Analyst's Fee and any other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

ii) to the Governmental Lender, the Ongoing Governmental Lender Fee and all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred under the Borrower Loan Documents or the Funding Loan Documents, and any- taxes and assessments with respect to the Project, as and when the same become due;

iii) [Reserved];

iv) all Costs of Funding and fees, charges and expenses, including agent and counsel fees incurred in connection with the origination of the Borrower Loan and the related Funding Loan, as and when the same become due;

v) to the Servicer or the Funding Lender, all charges, costs, advances, indemnities and expenses, including agent and counsel fees incurred by the Servicer or the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit; and

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(vi) any Late Charge due and payable under the terms of the Borrower Note and Section 2.6 hereof; provided, however, that all payments made pursuant to this subsection (vi) shall be made to the Servicer, and if there is no Servicer, such payments shall be made to the Funding Lender.

(b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:

i) all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory Agreement, or any Funding Loan Document by the Governmental Lender, Funding Lender or the Servicer;

ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document; and

iii) all expenses, costs and fees relating to inspections of the Project required by the Governmental Lender, the Funding Lender, the Servicer or the Construction Consultant, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

Section 2.6. Overdue Payments; Payments if Default. If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Funding Lender or the Servicer, a Late Charge in the amount and to the extent set forth in the related Borrower Note, if any.

Section 2.7. Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds. The Borrower acknowledges as follows: (a) calculation of all interest payments shall be made by the Servicer or if there is no Servicer, the Funding Lender; and (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Servicer or if there is no Servicer, the Funding Lender in accordance with the Security Instrument or the Construction Funding Agreement, as applicable.

Section 2.8. Grant of Security Interest; Application of Funds. To the extent not inconsistent with the Security Instrument and as security for payment of the Borrower Payment Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Funding Lender, and grants to the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all payments to or moneys held in the funds and accounts created and held by the Funding Lender or the Servicer for the Project. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default hereunder, the Funding Lender and the Servicer shall apply or cause to be applied any sums held by the Funding Lender and the Servicer with respect to the Project in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion.

Section 2.9. Marshalling; Payments Set Aside. The Governmental Lender and Funding Lender shall be under no obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that Borrower makes a payment or payments or transfers any assets to the Governmental Lender or Servicer or if there is no Servicer, the Funding Lender, or the Governmental Lender or Servicer or if there is no Servicer, the Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to

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be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to the Governmental Lender or Funding Lender and any and all remedies available to the Governmental Lender or Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against Borrower, Managing Member or any Guarantor and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) the Governmental Lender and Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Governmental Lender or Funding Lender in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Governmental Lender or Funding Lender in connection with the exercise by the Governmental Lender or the Funding Lender of its rights under this Section 2.9.

Section 2.10. Borrower Loan Disbursements. The Borrower Loan shall be disbursed by the Servicer, as agent for the Governmental Lender, pursuant to the Construction Funding Agreement.

## ARTICLE HI

[RESERVED]

## ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 4.1. Borrower Representations. To induce the Governmental Lender to execute this Borrower Loan Agreement and to induce Funding Lender to make Disbursements, Borrower represents and warrants for the benefit of the Governmental Lender, Funding Lender and the Servicer, that the representations and warranties set forth in this Section 4.1 are complete and accurate as of the Closing Date and will be complete and accurate, and deemed remade (but subject to any changed circumstances disclosed in writing to the Governmental Lender and the Funding Lender at such time), as of the date of each Disbursement, and as of the Maturity Date in accordance with the terms and conditions of the Borrower Note. Subject to Section 4.2 hereof, the representations, warranties and agreements set forth in this Section 4.1 shall survive the making of the Borrower Loan, and shall remain in effect and true and correct in all material respects until the Borrower Loan and all other Borrower Payment Obligations have been repaid in full.

Section 4.1.1 Organization; Special Purpose. The Borrower is in good standing under the laws of the State (and under the laws of the state in which the Borrower was formed if the Borrower was not formed under the laws of the State), has full legal right, power and authority to enter into the Borrower Loan Documents to which it is a party, and to carry out and consummate all transactions contemplated by the Borrower Loan Documents to which it is a party, and by proper corporate, limited partnership or limited liability company action, as appropriate has duly authorized the execution, delivery and performance of the Borrower Loan Documents to which it is a party. The Person(s) of the Borrower executing the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are fully authorized to execute the same. The Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower. The sole business of the Borrower is the ownership, management and operation of the Project.

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Section 4.1.2 Proceedings; Enforceability. Assuming due execution and delivery by the other parties thereto, the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

Section 4.1.3 No Conflicts. The execution and delivery of the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Operating Agreement of the Borrower, or to the actual knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

Section 4.1.4 Litigation; Adverse Facts. There is no Legal Action, nor is there a basis known to Borrower for any Legal Action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the actual knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower, the Managing Member or any Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower, Managing Member or such Guarantor or their respective interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Loan Documents or the

Funding Loan Documents, upon the ability of each of Borrower, Managing Member and Guarantors to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or upon the financial condition, assets (including the Project), properties or operations of the Borrower and the Managing Member, none of the Borrower, Managing Member or any Guarantor is in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the ability of each of Borrower, Managing Member and each Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or the financial condition, assets, properties or operations of the Borrower or Managing Member. None of Borrower, or Managing Member to its actual knowledge are (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, Managing Member or such Guarantor, as applicable; (b) subject to, or in default with respect to, any other Legal Requirement that would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, or Managing Member as applicable; or (c) in default with respect to any agreement to which Borrower or Managing Member as applicable, is a party or by which it is bound, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower or

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Managing Member as applicable; and (d) there is no Legal Action pending or, to the actual knowledge of Borrower, threatened in writing against or affecting Borrower or Managing Member or any Guarantor questioning the validity or the enforceability of this Borrower Loan Agreement or any of the other Borrower Loan Documents or the Funding Loan Documents or of any of the Related Documents. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities, subject to the Ground lease and the leases of residential tenants in occupancy at closing.

Section 4.1.5 Agreements; Consents; Approvals. Except as contemplated by the Borrower Loan Documents and the Funding Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower, the Project, or the Borrower's business, properties, operations or financial condition or business prospects, except the Permitted Encumbrances. The Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Project is bound.

No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the actual knowledge of the Borrower and only with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of the Borrower Loan Documents or the Funding Loan Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

Section 4.1.6 Title. The Borrower shall have marketable title to the Project, free and clear of all Liens except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected

first priority lien on the fee (or leasehold, if applicable) interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower's actual knowledge, there are no delinquent real property taxes or assessments, including water and sewer charges, with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Borrower Loan Documents and the Funding Loan Documents.

Section 4.1.7 Survey. To the best knowledge of the Borrower, the survey for the Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the Project or the title thereto.

Section 4.1.8 No Bankruptcy Filing. The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "Bankruptcy Proceeding"), and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it. As of the Closing Date, the Borrower has the ability to pay its debts as they become due.

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Section 4.1.9 Full and Accurate Disclosure. No statement of fact made by the Borrower in any Borrower Loan Document or any Funding Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Governmental Lender and the Funding Lender which materially and adversely affects the Project or the business, operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and Funding Loan Documents to which it is a party in a timely manner.

Section 4.1.10 No Plan Assets. The Borrower is not an "employee benefit plan," as defined in Section 3 (3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3 101.

Section 4.1.11 Compliance. The Borrower, the Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements. The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would materially adversely affect the financial condition or business prospects or the business of the Borrower. There has not been committed by the Borrower or any Affiliate of Borrower involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof or any moneys paid in performance of the Borrower's obligations under any Borrower Loan Document or any Funding Loan Documents.

Section 4.1.12 Contracts. All service, maintenance or repair contracts affecting the Project have been entered into at arm's length (except for such contracts between the Borrower and its Affiliates or the affiliates of the Borrower Controlling Entity of the Borrower) in the ordinary course of the Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

Section 4.1.13 Financial Information. All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects, (ii) accurately represent the financial condition of the Project as of the date of such reports, and (iii) to

the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Borrower Loan Documents or the Funding Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no Materially Adverse Change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

Section 4.1.14 Condemnation. No Condemnation or other proceeding has been commenced or, to the Borrower's actual knowledge, is contemplated, threatened or pending with respect to all or part of the Project or for the relocation of roadways providing access to the Project.

Section 4.1.15 Federal Reserve Regulations. No part of the proceeds of the Borrower Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would

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be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Borrower Loan Document or Funding Loan Document.

Section 4.1.16 Utilities and Public Access. To the best of the Borrower's knowledge, the Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project is or will be located in the public right-of-way abutting the Project, and all such utilities are or will be connected so as to serve the Project without passing over other property absent a valid easement. All roads necessary for the use of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the Project and under the exclusive control of the Borrower, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (i) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (ii) the number of parties sharing such easement and/or recreational facilities and amenities must be specified, (iii) the Borrower's responsibilities and share of expenses are specified, and (iv) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

Section 4.1.17 Not a Foreign Person. The Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Code.

Section 4.1.18 Separate Lots. Each parcel comprising the Land is (or will be) a separate tax lot and is not (or will not be) a portion of any other tax lot that is not a part of the Land.

Section 4.1.19 Assessments. There are no pending or, to the Borrower's actual knowledge, proposed special or other assessments for public improvements or otherwise affecting the Project, or any contemplated improvements to the Project that may result in such special or other assessments.

Section 4.1.20 Enforceability. The Borrower Loan Documents and the Funding Loan Documents are not subject to, and the Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

Section 4.1.21 Insurance. The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, the Construction Funding Agreement and the Security Instrument and has delivered to the

Servicer copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Borrower Loan Agreement, if applicable, and the Security Instrument.

Section 4.1.22 Use of Property; Licenses. The Project will be used as a multifamily residential rental project and other appurtenant and related uses, which use is consistent with the zoning classification for the Project. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use or legal, nonconforming use, as applicable, occupancy and operation of the Project (collectively, the "Licenses") required at this time for the construction or rehabilitation, as appropriate, and equipping of the Project have been obtained. To the Borrower's knowledge, all Licenses obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Licenses required for the future use and occupancy of the Project and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course following the Completion Date. No Licenses will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer

pursuant to foreclosure sale under the Security Instrument or deed in lieu of foreclosure thereunder. The Project does not violate any density or building setback requirements of the applicable zoning law except to the extent, if any, shown on the survey. No proceedings are, to the best of the Borrower's knowledge, pending or threatened that would result in a change of the zoning of the Project.

Section 4.1.23 Flood Zone. Either all Improvements will be constructed above the flood grade or the Borrower will obtain appropriate flood insurance as directed by the Funding Lender or the Servicer.

Section 4.1.24 Physical Condition. The Project, including all Improvements, parking facilities, systems, fixtures, equipment and landscaping, are or, after completion of the construction, rehabilitation and/or repairs, as appropriate, will be in good and habitable condition in all material respects and in good order and repair in all material respects (reasonable wear and tear excepted). The Borrower has not received notice from any insurance company or bonding company of any defect or inadequacy in the Project, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. The physical configuration of the Project is not in material violation of the ADA, if required under applicable law.

Section 4.1.25 Encroachments. All of the Improvements included in determining the appraised value of the Project will lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Funding Lender or the Servicer.

Section 4.1.26 State Law Requirements. The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable State laws relating to the Borrower Loan, the Funding Loan and the Project.

Section 4.1.27 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Project to the Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Borrower Loan Documents and the Funding Loan Documents have been or will be paid.

Section 4.1.28 Investment Company Act. The Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935,

as amended.

Section 4.1.29 Fraudulent Transfer. The Borrower has not accepted the Borrower Loan or entered into any Borrower Loan Document or Funding Loan Document with the actual intent to hinder, delay or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Borrower Loan Documents and the Funding Loan Documents. Giving effect to the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the fair saleable value of the Borrower's assets exceeds and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, exceed the Borrower's total liabilities,

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including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower's assets is and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, be greater than the Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower's assets do not and, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

Section 4.1.30 Ownership of the Borrower. Except as set forth in the Operating Agreement of the Borrower, the Borrower has no obligation to any Person to purchase, repurchase or issue any ownership interest in it.

Section 4.1.31 Environmental Matters. To the best of Borrower's knowledge and except as disclosed in environmental reports previously delivered to the Funding Lender and the Governmental Lender (the "Prior Environmental Disclosures"), the Project is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, and will comply with covenants and requirements relating to environmental hazards as set forth in the Security Instrument. The Borrower will execute and deliver the Agreement of Environmental Indemnification.

Section 4.1.32 Name; Principal Place of Business. Unless prior Written Notice is given to the Funding Lender, the Borrower does not use and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of the Borrower is its primary address for notices as set forth in Section 10.1 hereof, and the Borrower has no other place of business, other than the Project and such principal place of business.

Section 4.1.33 Subordinated Debt. There is no secured or unsecured indebtedness with respect to the Project or any residual interest therein, other than Permitted Encumbrances and the permitted secured indebtedness described in Section 6.7 hereof, except an unsecured deferred developer fee not to exceed the amount permitted by the Funding Lender as determined on the Closing Date as well as any unsecured operating deficit loans under the Operating Agreement that are payable solely from [Net Cash Flows] (as defined in the Operating Agreement).

Section 4.1.34 Filing of Taxes. The Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, if any, payable by the Borrower.

Section 4.1.35 General Tax. All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Compliance Agreement are incorporated by reference herein and the Borrower will comply with such as if set forth herein.



Section 4.1.36 Approval of the Borrower Loan Documents and Funding Loan Documents. By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the

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provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Governmental Lender, the Funding Lender or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender, the Funding Lender or the Servicer in any manner.

Section 4.1.37 Funding Loan Agreement. The Borrower has read and accepts and agrees that it is bound by the Funding Loan Agreement and the Funding Loan Documents.

Section 4.1.38 Americans with Disabilities Act. The Project, as designed, will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990 ("ADA"), to the extent required (as evidenced by an architect's certificate to such effect).

Section 4.1.39 Requirements of Code and Regulations. The Project satisfies all requirements of the Code and the Regulations applicable to the Project.

Section 4.1.40 Regulatory Agreement. The Project, as of the date of origination of the Funding Loan, is in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable; and the Borrower intends to cause the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Code and the Regulations, and pursuant to leases which comply with all applicable laws.

Section 4.1.41 Intention to Hold Project. The Borrower intends to hold the Project for its own account and has no current plans, and has not entered into any agreements, to sell the Project or any part of the Project (except for rights granted in the Operating Agreement); and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

**Section 4.1.42 Concerning Managing Member.**

a) The Managing Member of Borrower is a limited liability company, duly organized and validly existing under the laws of the State. The Managing Member has all requisite power and authority, rights and franchises to enter into and perform its obligations under the Borrower Loan Documents and the Funding Loan Documents to be executed by such Managing Member for its own account and on behalf of Borrower, as Managing Member of Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.

b) Managing Member has made all filings (including, without limitation, all required filings related to the use of fictitious business names) and is in good standing in the State and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of Managing Member.

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c) Managing Member is duly authorized to do business in the State.

d) The execution, delivery and performance by Borrower of the Borrower Loan Documents and the Funding Loan Documents have been duly authorized by all necessary action of Managing Member on behalf of Borrower, and by all necessary action on behalf of Managing Member.

e) The execution, delivery and performance by Managing Member, for itself and on behalf of Borrower, of the Borrower Loan Documents and the Funding Loan Documents will not violate (i) Managing Member's organizational documents; (ii) any other Legal Requirement affecting Managing Member or any of its properties; or (iii) any agreement to which Managing Member is bound or to which it is a party; and will not result in or require the creation (except as provided in or contemplated by this Borrower Loan Agreement) of any Lien upon any of such properties, any of the Collateral or any of the property or funds pledged or delivered to the Funding Lender pursuant to the Security Documents.

Section 4.1.43 Government and Private Approvals. All governmental or regulatory orders, consents, permits, authorizations and approvals required for the construction, rehabilitation, use, occupancy and operation of the Improvements, that may be granted or denied in the discretion of any Governmental Authority, have been obtained and are in full force and effect (or, in the case of any of the foregoing that Borrower is not required to have as of the Closing Date, will be obtained), and will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. All such orders, consents, permits, authorizations and approvals that may not be denied in the discretion of any Governmental Authority shall be obtained prior to the commencement of any work for which such orders, consents, permits, authorizations or approvals are required, and, once obtained, such orders, consents, permits, authorizations and approvals will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. Except as set forth in the preceding two sentences, no additional governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of Borrower, are required for the due execution, delivery and performance by Borrower or Managing Member of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by Borrower or Managing Member, as applicable. All required zoning approvals have been obtained, and the zoning of the Land for the Project is not conditional upon the happening of any further event.

Section 4.1.44 Concerning Guarantors. The Borrower Loan Documents and the Funding Loan Documents to which the Guarantors are a party or a signatory executed simultaneously with this Borrower Loan Agreement have been duly executed and delivered by the Guarantors and are legally valid and binding obligations of the Guarantors, enforceable against the Guarantors in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

Section 4.1.45 No Material Defaults. Except as previously disclosed to Funding Lender in writing, there exists no material violation of or material default by Borrower under, and, to the actual knowledge of Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default with

respect to: (i) the terms of any instrument evidencing, securing or guaranteeing any indebtedness secured by the Project or any portion or interest thereof or therein; (ii) any lease (including the Ground Lease) or other agreement affecting the Project or to which Borrower is a party; (iii) any license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which Borrower or the Project may be bound; or (iv) any mortgage, instrument, agreement or document

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by which Borrower or any of its respective properties is bound; in the case of any of the foregoing: (1) which involves any Borrower Loan Document or Funding Loan Document; (2) which involves the Project and is not adequately covered by insurance; (3) that might materially and adversely affect the ability of Borrower, Managing Member or any Guarantor to perform any of its respective obligations under any of the Borrower Loan Documents or the Funding Loan Documents or any other material instrument, agreement or document to which it is a party; or (4) which might adversely affect the priority, of the Liens created by this Borrower Loan Agreement or any of the Borrower Loan Documents or the Funding Loan Documents.

Section 4.1.46 Payment of Taxes. Except as previously disclosed to Funding Lender in writing: (i) all tax returns and reports of Borrower, Managing Member and Guarantors required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges upon Borrower, Managing Member or Guarantors, and upon their respective properties, assets, income and franchises, which are due and payable have been paid when due and payable; and (ii) Borrower knows of no proposed tax assessment against it or against the Managing Member that would be material to the condition (financial or otherwise) of Borrower or Managing Member and neither Borrower nor Managing Member have contracted with any Governmental Authority in connection with such taxes.

Section 4.1.47 Rights to Project Agreements and Licenses. Borrower is the legal and beneficial owner of all rights in and to the Plans and Specifications and all existing Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future Project Agreements and Licenses. Borrower's interest in the Plans and Specifications and all Project Agreements and Licenses is not subject to any present claim (other than under the Borrower Loan Documents and the Funding Loan Documents, the Subordinate Loan Documents or as otherwise approved by the Funding Lender in its sole discretion), set-off or deduction other than in the ordinary course of business.

Section 4.1.48 Patriot Act Compliance. Borrower is not now, nor has ever been (i) listed on any Government Lists (as defined below), (ii) a person who has been determined by a Governmental Authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) Bank Representative Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" shall mean (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control ("OFAC"), (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Funding Lender notified Borrower in writing is now included in "Government Lists", or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Funding Lender notified Borrower in writing is now included in "Government Lists".

Section 4.1.49 Rent Schedule. Borrower has prepared, or has had prepared on its behalf, a prospective Unit absorption and rent collection schedule with respect to the Project in the form required by the Servicer, which schedule takes into account, among other relevant factors (i) a schedule of minimum

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monthly rentals for the Units, and (ii) any and all concessions including free rent periods, and on the basis of such schedule, Borrower believes it will collect rents with respect to the Project in amounts greater than or equal to debt service on the Borrower Loan.

Section 4.1.50 Other Documents. Each of the representations and warranties of Borrower or Managing Member contained in any of the other Borrower Loan Documents or the Funding Loan Documents or Related Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Borrower Loan Documents or Funding Loan Documents or Related Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of Funding Lender.

Section 4.1.51 Subordinate Loan Documents. The Subordinate Loan Documents are in full force and effect and the Borrower has paid all commitment fees (if any) and other amounts due and payable to the Subordinate Lender(s) thereunder. There exists no material violation of or material default by the Borrower under, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the Subordinate Loan Documents.

Section 4.1.52 C,C&Rs. The C,C&Rs are in full force and effect and the Borrower has complied with the terms and conditions under the C,C&Rs. There exists no material violation of or material default by the Borrower under, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the C,C&Rs.

Section 4.1.53 HAP Contract. The HAP Contract will be in full force and effect and the Borrower has complied with the terms and conditions under the HAP Contract. There exists no material violation of or material default by the Borrower under, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the HAP Contract.

Section 4.1.54 Ground Lease. The Ground Lease is in full force and effect and the Borrower has paid all rent and other amounts due and payable to the ground lessor thereunder. There exists no material violation of or material default by the Borrower under the Ground Lease, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default by any other party under the Ground Lease.

Section 4.2. Survival of Representations and Covenants. All of the representations and warranties in Section 4.1 hereof and elsewhere in the Borrower Loan Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (ii) shall be deemed to have been relied upon by the Governmental Lender and the Servicer notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or the Servicer or on its or their behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.1.31 hereof shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 11.1 hereof.

## ARTICLE V AFFIRMATIVE COVENANTS

During the term of this Borrower Loan Agreement, the Borrower hereby covenants and agrees with the Governmental Lender, the Funding Lender and the Servicer that:

Section 5.1. Existence. The Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, and franchises,

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(ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all material Licenses, and (iv) qualify to do business and remain in good standing under the laws of the State.

Section 5.2. Taxes and Other Charges. The Borrower shall pay all Taxes and Other Charges as the same become due and payable and prior to their becoming delinquent in accordance with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

The Borrower covenants to pay all taxes and Other Charges of any type or character charged to the Funding Lender affecting the amount available to the Funding Lender from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and Other Charges assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Funding Lender and taxes based upon or measured by the net income of the Funding Lender; provided, however, that the Borrower shall have the right to protest any such taxes or Other Charges and to require the Funding Lender, at the Borrower's expense, to protest and contest any such taxes or Other Charges levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or Other Charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Funding Lender. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

Section 5.3. Repairs; Maintenance and Compliance; Physical Condition. The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the Improvements or equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Construction Funding Agreement and the Security Instrument.

Section 5.4. Litigation. The Borrower shall give prompt Written Notice to the Governmental Lender, the Funding Lender and the Servicer of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement pending of which it is aware or, to the Borrower's actual knowledge, threatened in writing against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

Section 5.5. Performance of Other Agreements. The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of the Ground Lease, the Project Agreements and Licenses, the CC&R's, the Subordinate Loan Documents and any other agreement or instrument materially affecting or pertaining to the Project.

Section 5.6. Notices. The Borrower shall promptly advise the Governmental Lender, the Funding Lender and the Servicer of (i) any Material Adverse Change in the Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (ii) any fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Document to which it is a party in a timely manner, or (iii) the occurrence of any Potential Default or Event of Default of which the Borrower has knowledge. If the Borrower becomes subject to federal or state securities law filing requirements, the Borrower shall cause to be delivered to the Governmental Lender, the Funding Lender and the

Servicer any Securities and Exchange Commission or other public filings, if any, of the Borrower within two (2) Business Days of such filing.

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Section 5.7. Cooperate in Legal Proceedings. The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender and the Servicer with respect to, and permit the Governmental Lender, the Funding Lender and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender and/or the Servicer under any Borrower Loan Document or Funding Loan Document.

Section 5.8. Further Assurances. The Borrower shall, at the Borrower's sole cost and expense (except as provided in Section 9.1 hereof), (i) furnish to the Servicer and the Funding Lender all instruments, documents, boundary surveys, footing or foundation surveys (to the extent that Borrower's construction or renovation of the Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements, reasonably requested by the Servicer or the Funding Lender for the better and more efficient carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents; (ii) execute and deliver to the Servicer and the Funding Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the related Borrower Loan, as the Servicer and the Funding Lender may reasonably require from time to time; (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents, as the Servicer or the Funding Lender shall reasonably require from time to time; provided, however, with respect to clauses (i)-(iii) above, the Borrower shall not be required to do anything that has the effect of (A) changing the essential economic terms of the Borrower Loan or (B) imposing upon the Borrower greater personal liability under the Borrower Loan Documents and the Funding Loan Documents; and (iv) upon the Servicer's or the Funding Lender's requests therefor given from time to time after the occurrence of any Potential Default or Event of Default for so long as such Potential Default or Event of Default, as applicable, is continuing pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrower and (b) searches of title to the Project, each such search to be conducted by search firms reasonably designated by the Servicer or the Funding Lender in each of the locations reasonably designated by the Servicer or the Funding Lender.

Section 5.9. Delivery of Financial Information. After notice to the Borrower of the need for a Secondary Market Disclosure Document in connection with a Secondary Market Transaction, the Borrower shall deliver to the Funding Lender or the Servicer copies of the Provided Information and all other financial information required under Article IX.

Section 5.10. Environmental Matters. So long as the Borrower owns or is in possession of the Project (which may be through the Ground Lease), the Borrower shall (a) keep the Project in compliance with all Environmental Laws (as defined in the Agreement of Environmental Indemnification), (b) promptly notify the Funding Lender and the Servicer if the Borrower shall become aware that any Hazardous Materials (as defined in the Agreement of Environmental Indemnification) are on or near the Project in violation of Environmental Laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any Environmental Laws, in each case as set forth in the Agreement of Environmental Indemnification.

Section 5.11. Governmental Lender's and Funding Lender's Fees. The Borrower covenants to pay the reasonable fees and expenses of the Governmental Lender (including the Ongoing Governmental Lender Fee) and the Funding Lender or any agents, attorneys, accountants, consultants selected by the Governmental Lender or the Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, including, without limitation, any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any litigation which may at any time be instituted

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involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

Section 5.12. Estoppel Statement. The Borrower shall furnish to the Funding Lender or the Servicer for the benefit of the Funding Lender or the Servicer within ten (10) days after request by the Funding Lender and the Servicer, with a statement, duly acknowledged and certified, setting forth with respect to the Borrower Note, (i) the unpaid principal of the Borrower Note, (ii) the Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Borrower Payment Obligations, and (v) that the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are valid, legal and binding obligations of the Borrower and have not been modified or, if modified, giving particulars of such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrower shall use commercially reasonable efforts to furnish to the Funding Lender or the Servicer, within 30 days of a request by the Funding Lender or Servicer, tenant estoppel certificates from each commercial tenant at the Project, if any, in form and substance reasonably satisfactory to the Funding Lender and the Servicer; provided that the Funding Lender and the Servicer shall not make such requests more frequently than twice in any year.

Section 5.13. Defense of Actions. The Borrower shall appear in and defend any action or proceeding purporting to affect the security for this Borrower Loan Agreement hereunder or under the Borrower Loan Documents and the Funding Loan Documents, and shall pay, in the manner required by Section 2.4 hereof, all actual costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which the Servicer or any Funding Lender may appear. If the Borrower fails to perform any of the covenants or agreements contained in this Borrower Loan Agreement or any other Borrower Loan Document, or if any action or proceeding is commenced that is not diligently defended by the Borrower which affects a Funding Lender's interest in the Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Servicer or the Funding Lender may make such appearances, disburse such sums and take such action as the Funding Lender deems necessary or appropriate to protect its interests. Such actions include disbursement of attorneys' fees, entry upon the Project to make repairs or take other action to protect the security of the Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of the Servicer or the Funding Lender appears to be prior or superior to the Borrower Loan Documents or the Funding Loan Documents. Neither the Servicer nor Funding Lender shall have any obligation to do any of the above. The Servicer or Funding Lender may take any such action without notice to or demand upon the Borrower. No such action shall release the Borrower from any obligation under this Borrower Loan Agreement or any of the other Borrower Loan Documents or Funding Loan Documents. In the event (i) that the Security Instrument is foreclosed in whole or in part or that any Borrower Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (ii) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Security Instrument or any Borrower Loan Document in which proceeding a Funding Lender is made a party or (iii) of the bankruptcy of the Borrower or an assignment by the Borrower for the benefit of its creditors, the Borrower shall be chargeable with and agrees to pay all actual costs of collection and defense, including actual attorneys' fees in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

Section 5.14. Expenses. The Borrower shall pay all reasonable expenses incurred by the Governmental Lender, the Funding Lender and the Servicer (except as provided in Section 9.1 hereof) in

connection with the Borrower Loan and the Funding Loan, including reasonable fees and expenses of the Governmental Lender's, the Funding Lender's and the Servicer's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of Borrower Loan Documents and the Funding Loan Documents. The Borrower shall pay or cause to be paid all reasonable expenses of the Governmental Lender, the Funding Lender and the Servicer (except as provided in Section 9.1 hereof) in connection with the issuance or administration of the Borrower Loan and the related Funding Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender, the Funding Lender and the Servicer for all reasonable amounts expended, advanced or incurred by the Governmental Lender, the Funding Lender and the Servicer to collect the Borrower Note, or to enforce the rights of the Governmental Lender, the Funding Lender and the Servicer under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender, the Funding Lender and the Servicer under the Borrower Loan Documents and the Funding Loan Documents arising out of an Event of Default or with respect to the Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the Governmental Lender, the Funding Lender and the Servicer in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the Date of Disbursement until the date of reimbursement to the Governmental Lender, the Funding Lender and the Servicer, all of which shall constitute part of the Borrower Loan and the related Funding Loan and shall be secured by the Borrower Loan Documents and the Funding Loan Documents. The obligations and liabilities of the Borrower under this Section 5.14 shall survive the Term of this Borrower Loan Agreement and the exercise by the Governmental Lender, the Funding Lender or the Servicer, as the case may be, of any of its rights or remedies under the Borrower Loan Documents and the Funding Loan Documents, including the acquisition of the Project by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result of the gross negligence or willful misconduct of any other party, and any obligations of the Borrower to pay for environmental inspections or audits will be governed by the Agreement of Environmental Indemnification.

Section 5.15. Indemnity. In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of Governmental Lender or Funding Lender pursuant hereto and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Funding Lender, the Servicer, the Beneficiary Parties, and each of their respective officers, directors, employees, attorneys and agents (each an "Indemnified Party"), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) and [excluding (i) consequential damages and (ii) special or punitive damages unless actually awarded against an Indemnified Party in a legal action which is not subject to appeal] (hereinafter, the "Liabilities") to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

- a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan, except with respect to any Secondary Market Disclosure Document (other than any Borrower's obligations under Article IX);
- b) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan, the Funding Loan or the Project, the



operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, construction, installation or rehabilitation of, the Project or any part thereof;

c) Any lien (other than a Permitted Lien) or charge upon payments by the Borrower to the Governmental Lender or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and Other Charges imposed on the Governmental Lender or the Funding Lender in respect of any portion of the Project;

d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof, provided, however, the Borrower's liability under this provision shall not extend to cover the period of any violation that first arose, commenced or occurred as a result of actions of the Indemnified Party, after the satisfaction, discharge, release, assignment, termination or cancellation of the Security Instrument following the payment in full of the Borrower Note and all other sums payable under the Borrower Loan Documents or after the actual dispossession from the entire Mortgaged Property of Borrower and all entities which control, are controlled by, or are under the common control with Borrower following foreclosure of the Security Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure or following the appointment of a receiver for the Mortgaged Property;

e) The enforcement of, or any action taken by the Governmental Lender, the Servicer or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

f) [Reserved];

g) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of Borrower applying for the Borrower Loan or the Funding Loan or contained in any of the Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party;

h) Any Determination of Taxability;

(i) Any breach (or alleged breach) by Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by Borrower, the Managing Member, any Guarantor or their affiliates to Governmental Lender, the Funding Lender, Servicer or any other Person in connection with Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by Borrower of any agreement with respect to the provision of any substitute credit enhancement);

(j) any failure (or alleged failure) by Borrower or Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(k) the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction or rehabilitation of, the Project or any part thereof; or

- (1) the use of the proceeds of the Borrower Loan and the Funding Loan,

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except in the case of the foregoing indemnification of the Governmental Lender, the Funding Lender or the Servicer or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party.

Without limiting the foregoing, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, and each of its officers, officials, directors, employees, attorneys and agents ("City Indemnified Parties") against any Liability to which the City Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to any declaration of taxability of interest on the Funding Loan or allegations (or regulatory inquiry) that interest on the Funding Loan is taxable for federal income tax purposes, except to the extent such damages are caused by the gross negligence or willful misconduct of a City Indemnified Party.

Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 9.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.4 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right upon prior written notice to the Borrower to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof; provided, however, the Governmental Lender shall have the absolute right upon prior written notice to the Borrower to employ separate counsel at the expense of the Borrower. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation, except that the Borrower shall always pay the reasonable fees and expenses of the Governmental Lender's separate counsel.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 5.15 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

The rights of any persons to indemnity and the right to payment of fees and reimbursement of expenses hereunder shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan and in the case of the Servicer, any resignation or removal. The provisions of this Section 5.15 shall survive the termination of this Borrower Loan Agreement.

Nothing in this Section 5.15 shall in any way limit the Borrower's indemnification and other payment obligations set forth in the Regulatory Agreement.

Section 5.16. No Warranty of Condition or Suitability by the Governmental Funding Lender. Neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the

Project or that it will be suitable for the Borrower's purposes or needs.

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Section 5.17. Right of Access to the Project. The Borrower agrees that the Governmental Lender, the Funding Lender, the Servicer and the Construction Consultant, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon reasonable notice, to enter onto the Land (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations or the rights of any tenants in occupancy and (b) to perform such work in and about the Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender, the Funding Lender, the Servicer, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the Project.

Section 5.18. Notice of Default. The Borrower will advise the Governmental Lender, the Funding Lender, and the Servicer promptly in writing of the occurrence of any Potential Default or Event of Default hereunder of which it is actually aware, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 5.19. Covenant with Governmental Lender and Funding Lender. The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the purchase by others of the Governmental Lender Note and, accordingly, all covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender, the Funding Lender and any lawful owner, holder or pledgee of the Borrower Note or the Governmental Lender Note from time to time.

Section 5.20. Obligation of the Borrower to Construct or Rehabilitate the Project. The Borrower shall proceed with reasonable dispatch to construct or rehabilitate, as appropriate, and equip the Project. If the proceeds of the Borrower Loan, together with the Other Borrower Moneys, available to be disbursed to the Borrower are not sufficient to pay the costs of such construction or rehabilitation, as appropriate, and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Funding Lender or the Servicer in respect of any such costs or to any diminution or abatement in the repayment of the Borrower Loan. The Governmental Lender and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed or if the proceeds of the Borrower Loan are insufficient to pay all costs of the Project. The Governmental Lender and the Funding Lender do not make any representation or warranty, either express or implied, that moneys, if any, which will be made available to the Borrower will be sufficient to complete the Project, and the Governmental Lender and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed.

Section 5.21. Maintenance of Insurance. Borrower will maintain the insurance required by the Construction Funding Agreement.

Section 5.22. Information; Statements and Reports. Borrower shall furnish or cause to be furnished to Governmental Lender and the Funding Lender:

a) Notice of Default. As soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Event of Default or Potential Default of which it is actually aware, a statement of an Authorized Representative of Borrower describing the details of such Event of Default or Potential Default and any curative action Borrower proposes to take;

b) Financial Statements; Rent Rolls. In the manner and to the extent required under the Construction Funding Agreement, such financial statements, expenses statements, rent rolls,

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reports and other financial documents and information as required by the Security Instrument and the other Borrower Loan Documents and Funding Loan Documents, in the form and within the time periods required therein;

c) Managing Member. As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of Managing Member, copies of the financial statements of Managing Member as of such date, prepared in substantially the form previously delivered to the Governmental Lender and Funding Lender and in a manner consistent therewith, or in such form (which may include a form prepared in accordance with GAAP) as the Funding Lender may reasonably request;

d) Leasing Reports. On a monthly basis (and in any event within fifteen (15) days after the end of each Calendar Month), a report of all efforts made by Borrower, if any, to lease all or any portion of the Project during such Calendar Month and on a cumulative basis since Project inception, which report shall be prepared and delivered by Borrower, shall be in form and substance reasonably satisfactory to Servicer or the Funding Lender, and shall, if requested by the Servicer or the Funding Lender, be supported by copies of letters of intent, leases or occupancy agreements, as applicable;

e) Audit Reports. Promptly upon receipt thereof, copies of all reports, if any, submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

f) Notices; Certificates or Communications. Promptly upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to Borrower or Managing Member naming Governmental Lender, the Servicer or Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

g) Certification of Non-Foreign Status. Promptly upon request of the Servicer or the Funding Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by the Funding Lender;

h) Compliance Certificates. Together with each of the documents required pursuant to Section 5.22(b) hereof submitted by or on behalf of Borrower, a statement, in form and substance satisfactory to the Servicer or the Funding Lender and certified by an Authorized Borrower Representative, to the effect that Borrower is in compliance with all covenants, terms and conditions applicable to Borrower, under or pursuant to the Borrower Loan Documents and the Funding Loan Documents and under or pursuant to any other Debt owing by Borrower to any Person, and disclosing any noncompliance therewith, and any Event of Default or Potential Default, and describing the status of Borrower's actions to correct such noncompliance, Event of Default or Potential Default, as applicable; and

(i) Other Items and Information. Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of Borrower, Managing Member, Guarantors or the Project, as the Servicer or the Funding Lender or Governmental Lender reasonably requests from time to time.

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Section 5.23. Additional Notices. Borrower will, promptly after becoming aware thereof, give notice to the Funding Lender and the Governmental Lender of:

a) any Lien affecting the Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

b) any Legal Action which is instituted by or against Borrower or Managing Member, or any Legal Action which is threatened against Borrower, or Managing Member which, in any case, if adversely determined, could have a material adverse effect upon the business, operations, properties, prospects, assets, management, ownership or condition (financial or otherwise) of Borrower, Managing Member or the Project;

c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which Borrower or Managing Member is a party or by or to which Borrower or Managing Member or any of their respective properties or assets, may be bound or subject, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower or Managing Member as applicable;

d) any default, alleged default or potential default on the part of Borrower under the Ground Lease or any of the CC&R's (together with a copy of each notice of default, alleged default or potential default received from any other party thereto);

e) any notice of default, alleged default or potential default on the part of Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the Project have been received by Borrower with respect to, or alleging, the same default, alleged default or potential default;

f) any change or contemplated change in (i) the location of Borrower's or Managing Member's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by Borrower or Managing Member; or (iii) the nature of the trade or business of Borrower; and

g) any default, alleged default or potential default on the part of any member (including, without limitation, the Managing Member and the Equity Investor) under the Operating Agreement.

**Section 5.24. Compliance with Other Agreements; Legal Requirements.**

a) Borrower shall timely perform and comply with, and shall cause Managing Member to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Operating Agreement, and Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing.

b) Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the Project or construction and/or rehabilitation of the Improvements, and will furnish the Funding Lender with reports of any official searches for or notices of violation of any requirements established by such Governmental Authorities. Borrower will comply and, to the extent it is able, will require others to comply, with applicable CC&R's and all restrictive covenants and all obligations created

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by private contracts and leases which affect ownership, construction, rehabilitation, equipping, fixturing, use or operation of the Project, and all other agreements requiring a certain percentage of the Units to be rented to persons of low or moderate income. The Improvements, when completed, shall comply with all applicable building, zoning and other Legal Requirements, and will not violate any restrictions of record against the Project or the terms of any other lease of all or any portion of the Project. The Servicer and the Funding Lender shall at all times have the right to audit, at Borrower's expense, Borrower's compliance with any agreement requiring a certain percentage of the Units to be rented to persons of low or moderate income, and Borrower shall supply all such information with respect thereto as such Servicer or Funding Lender may request and otherwise cooperate with such Servicer or Funding Lender in any such audit. Without limiting the generality of the foregoing, Borrower shall properly obtain, comply with and keep in effect (and promptly deliver copies to Servicer or Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to construct, occupy, operate, market and lease the Project.

Section 5.25. Completion and Maintenance of Project. Borrower shall cause the construction or rehabilitation, as the case may be, of the Improvements, to be prosecuted with diligence and continuity and completed substantially in accordance with the Plans and Specifications, and in accordance with the Construction Funding Agreement, free and clear of any liens or claims for liens (but without prejudice to Borrower's rights of contest under Section 10.16 hereof) ("Completion") on or before the Completion Date. Borrower shall thereafter maintain the Project and the related and appurtenant uses as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continuation of first class maintenance, which shall mean and be no less than the highest quality of maintenance provided by the Manager for similarly situated properties managed by the Manager.

Section 5.26. Fixtures. Borrower shall deliver to the Servicer, or if there is no Servicer, the Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower or any other Person claims title to any materials, fixtures or articles incorporated into the Improvements.

Section 5.27. Income from Project. Borrower shall first apply all Gross Income to Expenses of the Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet any required reserves, including any required reserves for Taxes and insurance before using or applying such Gross Income for any other purpose. With the exception of asset management fees, tax credit adjustment amounts and payments of deferred developer fees or operating deficit loans payable pursuant to the Operating Agreement, Borrower shall not make or permit any distributions or other payments of Net Operating Income to its partners, shareholders or members, as applicable, in each case, without the prior Written Consent of the Servicer, or if there is no Servicer, Funding Lender.

**Section 5.28. Leases and Occupancy Agreements.**

(a) Lease Approval.

(i) Borrower has submitted to Funding Lender, and Funding Lender has approved, Borrower's standard form of tenant lease (the "Tenant Lease Form") for use in the Project. Borrower shall not materially modify the Tenant Lease Form without the prior Written Consent of the Servicer, or if there is no Servicer, the Funding Lender in each instance, which consent shall not be unreasonably withheld or delayed. Borrower may enter into residential leases of space within the Improvements (and amendments to such

leases) in the ordinary course of business with bona fide third party tenants without prior Written Consent of the Servicer, or if there is no Servicer, the Funding Lender, if:

A) The Tenant Lease Form is a Permitted Lease, and is executed in the form approved by the Servicer, or if there is no Servicer, the Funding Lender, without material modification;

B) Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any applicable CC&R and is financially capable of performing all of its obligations under the Tenant Lease Form; and

C) The Tenant Lease Form conforms to the Rent Schedule approved by the Servicer, or if there is no Servicer, the Funding Lender, and reflects an arm's-length transaction, subject to the requirement that the Borrower comply with any applicable CC&R's.

ii) If any Event of Default has occurred and is continuing, the Funding Lender may make written demand on Borrower to submit all future leases for Funding Lender's approval prior to execution. Borrower shall comply with any such demand by Funding Lender.

iii) No approval of any lease by the Servicer, or if there is no Servicer, the Funding Lender shall be for any purpose other than to protect the Funding Lender's security for the Borrower Loan and to preserve the Funding Lender's rights under the Borrower Loan Documents and the Funding Loan Documents. No approval by the Servicer, or if there is no Servicer, the Funding Lender shall result in a waiver of any default of Borrower. In no event shall any approval by the Servicer, or if there is no Servicer, the Funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant.

b) Obligations. Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

c) Leasing and Marketing Agreements. Except as may be contemplated in the Management Agreement with Borrower's Manager, Borrower shall not without the approval of the Funding Lender or the Servicer enter into any leasing or marketing agreement and the Servicer, or if there is no Servicer, the Funding Lender reserve the right to approve the qualifications of any marketing or leasing agent.

Section 5.29. Project Agreements and Licenses. To the extent not heretofore delivered to Funding Lender, Borrower will furnish to the Servicer, or if there is no Servicer, the Funding Lender, as soon as available, true and correct copies of all Project Agreements and Licenses and the Plans and Specifications, together with assignments thereof to the Servicer, or if there is no Servicer, the Funding Lender and consents to such assignments where required by the Servicer, or if there is no Servicer, the Funding Lender, all in form and substance acceptable to the Servicer, or if there is no Servicer, the Funding Lender. Neither Borrower nor Managing Member has assigned or granted, or will assign or grant, a security interest in any of the Project Agreements and Licenses, other than to the Servicer, or if there is no Servicer, the Funding Lender and the Subordinate Lenders.

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Section 5.30. Payment of Debt Payments. In addition to its obligations under the Borrower Note, Borrower will (i) duly and punctually pay or cause to be paid all principal of and interest on any Debt of Borrower as and when the same become due on or before the due date; (ii) comply with and perform all conditions, terms and obligations of other instruments or agreements evidencing or securing such Debt; (iii) promptly inform the Servicer, or if there is no Servicer, the Funding Lender of any default, or anticipated default, under any such note, agreement, instrument; and (iv) forward to the Servicer, or if there is no Servicer, the Funding Lender a copy of any notice of default or notice of any event that

might result in default under any such note, agreement, instrument, including Liens encumbering the Project, or any portion thereof, which have been subordinated to the Security Instrument (regardless of whether or not permitted under this Borrower Loan Agreement).

Section 5.31. ERISA. Borrower will comply, and will cause each of its ERISA Affiliates to comply, in all respects with the provisions of ERISA.

Section 5.32. Patriot Act Compliance. Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Project, including those relating to money laundering and terrorism. The Servicer, or if there is no Servicer, the Funding Lender shall have the right to audit Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Project, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then the Servicer, or if there is no Servicer, the Funding Lender may, at their option, cause Borrower to comply therewith and any and all costs and expenses incurred by in connection therewith shall be secured by the Security Instrument and shall be immediately due and payable.

Borrower covenants that it shall comply with all Legal Requirements and internal requirements of the Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, Borrower shall not take any action, or permit any action to be taken, that would cause Borrower's representations and warranties in Article IV become untrue or inaccurate at any time during the term of the Funding Loan. Upon any Beneficiary Party's request from time to time during the term of the Funding Loan, Borrower shall certify in writing to such Beneficiary Party that Borrower's representations, warranties and obligations under Article IV remain true and correct and have not been breached, and in addition, upon request of any Beneficiary Party, Borrower covenants to provide all information required to satisfy obligations under all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Funding Loan. Borrower shall immediately notify the Servicer, or if there is no Servicer, the Funding Lender in writing of (a) Borrower's actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached, (b) Borrower has a reasonable basis to believe that they may no longer be true and have been breached or (c) Borrower becomes the subject of an investigation by Governmental Authorities related to money laundering, anti-terrorism, trade embargos and economic sanctions. Borrower shall also reimburse Servicer or Funding Lender for any expense incurred by Funding Lender in evaluating the effect of an investigation by Governmental Authorities on the Funding Loan and the Funding Lender's interest in the collateral for its Funding Loan, in obtaining necessary license from Governmental Authorities as may be necessary for Servicer, or if there is no Servicer, the Funding Lender to enforce its rights under the Funding Loan Documents, and in complying with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to Funding Lender as a result of the existence of such an event and for any penalties or fines imposed upon Funding Lender as a result thereof.

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Section 5.33. Funds from Equity Investor. Borrower shall cause the Equity Investor to fund all installments of the Equity Contributions in the amounts and at the times subject and according to the terms, conditions and adjustments of the Operating Agreement and the Construction Funding Agreement.

Section 5.34. Tax Covenants. The Borrower further represents, warrants and covenants as follows, solely with respect to or as it relates to, the Project:

- a) General. The Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Governmental Lender Note from



gross income (as defined in Section 61 of the Code), for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Borrower Loan Agreement, the Security Instrument and the Regulatory Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Governmental Lender Note, the Funding Loan or affecting the Project. Capitalized terms used in this Section 5.34 shall have the respective meanings assigned to them in the Regulatory Agreement or, if not defined therein, in the Funding Loan Agreement. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that, prior to the final maturity of the Governmental Lender Note, unless it has received and filed with the Governmental Lender and the Funding Lender a Tax Counsel No Adverse Effect Opinion (other than with respect to interest on any portion of the Governmental Lender Note for a period during which such portion of the Governmental Lender Note is held by a "substantial user" of any facility financed with the proceeds of the Governmental Lender Note or a "related person," as such terms are used in Section 147(a) of the Code), the Borrower will comply with this Section 5.34.

b) Use of Proceeds. The use of the net proceeds of the Funding Loan at all times will satisfy the following requirements:

i) Limitation on Net Proceeds. At least 95% of the net proceeds of the Funding Loan (within the meaning of the Code) actually expended shall be used to pay Qualified Project Costs that are costs of a "qualified residential rental project" (within the meaning of Sections 142(a)(7) and 142(d) of the Code) and property that is "functionally related and subordinate" thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations).

ii) Limit on Costs of Funding. The proceeds of the Funding Loan will be expended for the purposes set forth in this Borrower Loan Agreement and in the Funding Loan Agreement and no portion thereof in excess of two percent of the proceeds of the Funding Loan, within the meaning of Section 147 (g) of the Code, will be expended to pay Costs of Funding of the Funding Loan.

iii) Prohibited Facilities. The Borrower shall not use or permit the use of any proceeds of the Funding Loan or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

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iv) Limitation on Land. Less than 25 percent of the net proceeds of the Funding Loan actually expended will be used, directly or indirectly, for the acquisition of land or an interest therein, nor will any portion of the net proceeds of the Funding Loan be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

v) Limitation on Existing Facilities. No portion of the net proceeds of the Funding Loan will be used for the acquisition of any existing property or an interest therein unless (A) the first use of such property is pursuant to such acquisition or (B) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed 15 percent of the cost of acquiring such building financed with the proceeds of the Funding Loan (with respect to structures other than buildings, this clause shall be applied by substituting 100 percent for 15 percent). For purposes of the preceding sentence, the term "rehabilitation expenditures" shall have the meaning set forth in Section 147(d)(3) of the Code.

vi) Accuracy of Information. The information furnished by the Borrower and used by the Governmental Lender in preparing its certifications with respect to Section 148 of the Code and the Borrower's information statement pursuant to Section 149(e) of the Code is accurate and complete as of the date of origination of the Funding Loan.

vii) Limitation of Project Expenditures. The acquisition, construction and equipping of the Project was not commenced (within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the adoption of the ordinance of the Governmental Lender with respect to the Project on July 21, 2021, and no obligation for which reimbursement will be sought from proceeds of the Funding Loan relating to the acquisition, construction, rehabilitation or equipping of the Project was paid or incurred prior to 60 days prior to such date, except for permissible "preliminary expenditures", which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs incurred prior to the commencement of construction, rehabilitation or acquisition of the Project, and which do not exceed 20% of the aggregate issue price of the Governmental Lender Note.

viii) Qualified Costs. The Borrower hereby represents, covenants and warrants that the proceeds of the Funding Loan shall be used or deemed used exclusively to pay costs which are (A) capital expenditures (as defined in Section 1.150-1 (b) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code and that for the greatest number of buildings the proceeds of the Governmental Lender Note shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located, so that each building in the Project and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Governmental Lender Note for the purpose of complying with Section 42(h)(4)(B) of the Code; provided however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its members and neither the Funding Lender nor the Governmental Lender shall have any obligation to enforce this statement nor shall they incur any liability to any person, including without limitation, the Borrower, the members of the Borrower, any other Affiliate of the Borrower or the holders or payees of the Governmental Lender Note and the Borrower Note for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not

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constitute a default or event of default under this Borrower Loan Agreement or the Funding Loan Agreement.

c) Limitation on Maturity. The average maturity of the Governmental Lender Note does not exceed 120 percent of the average reasonably expected economic life of the Project to be financed by the Funding Loan, weighted in proportion to the respective cost of each item comprising the property the cost of which has been or will be financed, directly or indirectly, with the Net Proceeds of the Funding Loan. For purposes of the preceding sentence, the reasonably expected economic life of property shall be determined as of the later of (A) the Closing Date for the Funding Loan or (B) the date on which such property is placed in service (or expected to be placed in service). In addition, land shall not be taken into account in determining the reasonably expected economic life of property.

d) No Arbitrage. The Borrower shall not take any action or omit to take any action with respect to the Gross Proceeds of the Governmental Lender Note or of any amounts expected to be used to pay the principal thereof or the interest thereon which, if taken or omitted, respectively, would cause the Governmental Lender Note to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Except as provided in the Funding Loan Agreement and this Borrower Loan Agreement, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Agreement or the Borrower Note relating to the Governmental Lender Note, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of the Governmental Lender Note, unless the Borrower has obtained in each case a Tax Counsel No Adverse Effect Opinion with respect to such action, a copy of which shall be provided to the Governmental Lender and

the Funding Lender. The Borrower shall not, at any time prior to the final maturity of the Governmental Lender Note, invest or cause any Gross Proceeds to be invested in any investment (or to use Gross Proceeds to replace money so invested), if, as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Governmental Lender Note to the Maturity Date, except as permitted by Section 148 of the Code and Regulations thereunder or as provided in the Regulatory Agreement. The Borrower further covenants and agrees that it will comply with all applicable requirements of said Section 148 and the rules and Regulations thereunder relating to the Governmental Lender Note and the interest thereon, including the employment of a Rebate Analyst acceptable to the Governmental Lender and Funding Lender at all times from and after the Closing Date for the calculation of rebatable amounts to the United States Treasury Department. The Borrower agrees that it will cause the Rebate Analyst to calculate the rebatable amounts not later than forty-five days after the fifth anniversary of the Closing Date and each five years thereafter and agrees that the Borrower will pay all costs associated therewith. The Borrower agrees to provide evidence of the employment of the Rebate Analyst satisfactory to the Governmental Lender and Funding Lender.

e) No Federal Guarantee. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Borrower shall not take or omit to take any action which would cause the Governmental Lender Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

f) Representations. The Borrower has supplied or caused to be supplied to Tax Counsel all documents, instruments and written information requested by Tax Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Tax Counsel, which have been reasonably relied upon by Tax Counsel in rendering its

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opinion with respect to the exclusion from gross income of the interest on the Governmental Lender Note for federal income tax purposes, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein in order to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information which Tax Counsel has not requested.

(g) Qualified Residential Rental Project. The Borrower hereby covenants and agrees that the Project will be operated as a "qualified residential rental project" within the meaning of Section 142(d) of the Code, on a continuous basis during the Qualified Project Period (as defined in the Regulatory Agreement) to the end that the interest on the Governmental Lender Note shall be excluded from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

" (h) Information Reporting Requirements. The Borrower will comply with the information reporting requirements of Section 149(e)(2) of the Code requiring certain information regarding the Governmental Lender Note to be filed with the Internal Revenue Service within prescribed time limits.

(i) Governmental Lender Note Not Hedge Bonds. The Borrower covenants and agrees that not more than 50% of the proceeds of the Governmental Lender Note will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of Section 149(f)(3)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the Governmental Lender Note will be used to carry out the governmental purposes of the Governmental Lender Note within the three-year period beginning on the Closing Date.

(J) Termination of Restrictions. Although the parties hereto recognize that, subject to the provisions of the

Regulatory Agreement, the provisions of this Borrower Loan Agreement shall terminate in accordance with Section 10.14 hereof, the parties hereto recognize that pursuant to the Regulatory Agreement, certain requirements, including the requirements incorporated by reference in this Section, may continue in effect beyond the term hereof.

(k) Public Approval. The Borrower covenants and agrees that the proceeds of the Governmental Lender Note will not be used in a manner that deviates in any substantial degree from the Project described in the written notice of a public hearing regarding the Governmental Lender Note.

(l) 40/60 Test Election. The Borrower and the Governmental Lender hereby elect to apply the requirements of Section 142(d)(1)(B) to the Project. The Borrower hereby represents, covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(m) Modification of Tax Covenants. Subsequent to the origination of the Funding Loan and prior to its payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Section 5.34 hereof may not be amended, changed, modified, altered or terminated except as permitted herein and by the Funding Loan Agreement and with the Written Consent of the Governmental Lender and the Funding Lender. Anything contained in this Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Governmental Lender, the Funding Lender and the Borrower hereby

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agree to amend this Borrower Loan Agreement and, if appropriate, the Funding Loan Agreement and the Regulatory Agreement, to the extent required, in the opinion of Tax Counsel, in order for interest on the Governmental Lender Note to remain excludable from gross income for federal income tax purposes. The party requesting such amendment, which may include the Funding Lender, shall notify the other parties to this Borrower Loan Agreement of the proposed amendment and send a copy of such requested amendment to Tax Counsel. After review of such proposed amendment, Tax Counsel shall render to the Funding Lender and the Governmental Lender an opinion as to the effect of such proposed amendment upon the includability of interest on the Governmental Lender Note in the gross income of the recipient thereof for federal income tax purposes. The Borrower shall pay all necessary fees and expenses incurred with respect to such amendment. The Borrower, the Governmental Lender and, where applicable, the Funding Lender per written instructions from the Governmental Lender shall execute, deliver and, if applicable, the Borrower shall file of record, any and all documents and instruments, including without limitation, an amendment to the Regulatory Agreement, with a file-stamped copy to the Funding Lender, necessary to effectuate the intent of this Section 5.34, and the Borrower and the Governmental Lender hereby appoint the Funding Lender as its true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Governmental Lender, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Tax Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligation under this Section 5.34; provided, however, that the Funding Lender shall take no action under this Section 5.34 without first notifying the Borrower or the Governmental Lender, as is applicable, of its intention to take such action and providing the Borrower or the Governmental Lender, as is applicable, a reasonable opportunity to comply with the requirements of this Section 5.34.

The Borrower irrevocably authorizes and directs the Servicer, or if there is no Servicer, the Funding Lender and any other agent designated by the Governmental Lender to make payment of such amounts from funds of the Borrower, if any, held by the Servicer or the Funding Lender, or any agent of the Governmental Lender or the Funding Lender, as contemplated under this Section 5.34. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1 (b), it (or any related person contemplated by such regulations) will not purchase interests in the Governmental Lender Note in an amount related to the amount of the corresponding Borrower Loan.

### Section 5.35. Payment of Rebate.

Section 5.36. Arbitrage Rebate. The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage relating to the Funding Loan or the Governmental Lender Note in accordance with Section 148(f) of the Code including:

(a) Delivery of Documents and Money on Computation Dates. The Borrower will deliver to the Servicer, within 55 days after each Computation Date:

A) a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

B) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less any "previous rebate payments" made to the United States (as that term is used in Section 1.148-3(f)(l) of the Regulations), or (2) if such Computation

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Date is the final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such final Computation Date, less any "previous rebate payments" made to the United States (as that term is used in Section 1.148-3(f)(l) of the Regulations); and

(C) an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

ii) Correction of Underpayments. If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 5.35 of an amount described in Section 5.35(a)(i) (A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (1) pay to the Servicer (for deposit to the Rebate Fund) and cause the Servicer to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the Regulations, within 175 days after any discovery or notice and (2) deliver to the Servicer an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Regulations, the Borrower shall take such steps as are necessary to prevent the Governmental Lender Note from becoming an arbitrage bond within the meaning of Section 148 of the Code.

iii) Records. The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 5.35 for at least six years after the later of the final maturity of the Governmental Lender Note or the date each Funding Loan is retired in full.

iv) Costs. The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst, a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount.

v) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise

payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Funding Loan which are not purchased at Fair Market Value or includes terms that the Borrower would not have included if the Funding Loan were not subject to Section 148(f) of the Code.

vi) Modification of Requirements. If at any time during the term of this Agreement, the Governmental Lender, the Funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 5.35, such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Effect Opinion with respect to such action.

(b) Rebate Fund. The Servicer shall establish and hold a separate fund designated as "Rebate Fund." The Servicer shall deposit or transfer to the credit of the Rebate Fund each

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amount delivered to the Servicer by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

c) Within 15 days after each receipt or transfer of funds to the Rebate Fund, the Servicer shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

d) All payments to the United States of America pursuant to this Section 5.35 shall be made by the Servicer for the account and in the name of the Governmental Lender and shall be paid through the United States Mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Servicer by the Borrower or the Rebate Analyst as set forth in this Section 5.35).

e) The Borrower shall preserve all statements, forms and explanations received delivered pursuant this Section 5.35 and all records of transactions in the Rebate Fund until six years after the retirement of the Funding Loan.

f) Moneys and securities held in the Rebate Fund shall not be deemed funds of the Funding Lender or of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the Funding Lender to secure the Funding Loan or any other obligations.

g) Notwithstanding anything to the contrary in this Borrower Loan Agreement, no payment shall be made to the United States if the Borrower shall furnish to the Governmental Lender and the Funding Lender an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (0 of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Note. In such event, the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender with respect to such withdrawal.

h) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.35 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Funding Lender.

Section 5.37. Covenants under Funding Loan Agreement. The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Funding Loan

Agreement to perform. The foregoing will not apply to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned.

Section 5.38. Notice of Default. The Borrower will advise the Governmental Lender, the Funding Lender, and the Servicer promptly in writing of the occurrence of any Potential Default or Event of Default hereunder of which it is actually aware, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 5.39. Continuing Disclosure Agreement. The Borrower and the Funding Lender shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information

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about the Governmental Lender Note, the Borrower and other matters as specifically provided for in such agreement.

Section 5.40. Compliance with Ground Lease. Borrower will do, or cause to be done, all things necessary to preserve and keep unimpaired the rights of Borrower, as lessee under the Ground Lease, and to prevent any default under the Ground Lease or any termination, surrender, cancellation, forfeiture or impairment thereof. Borrower will keep, observe and perform, or cause to be kept, observed and performed, all of the terms, covenants, provisions and agreements contained in the Ground Lease on the part of Borrower thereunder to be kept, observed and performed. Without prior Written Consent of the Servicer or if there is no Servicer, the Funding Lender, the Borrower will not terminate, cancel (or permit any cancellation or termination), modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Ground Lease and any attempt on the part of Borrower to do so without such prior Written Consent of the Servicer or if there is no Servicer, the Funding Lender, shall be null and void and of no effect.

Section 5.41. Compliance with HAP Contract. Borrower will do, or cause to be done, all things necessary to preserve and keep unimpaired the rights of Borrower, as lessee under the HAP Contract, and to prevent any default under the HAP Contract or any termination, surrender, cancellation, forfeiture or impairment thereof. Borrower will keep, observe and perform, or cause to be kept, observed and performed, all of the terms, covenants, provisions and agreements contained in the HAP Contract on the part of Borrower thereunder to be kept, observed and performed. Without prior Written Consent of the Servicer or if there is no Servicer, the Funding Lender, the Borrower will not terminate, cancel (or permit any cancellation or termination), modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the HAP Contract and any attempt on the part of Borrower to do so without such prior Written Consent of the Servicer or if there is no Servicer, the Funding Lender, shall be null and void and of no effect.

**Section 5.42. Compliance with Redevelopment Agreement and the other C, C, & Rs.**

Borrower will do, or cause to be done, all things necessary to preserve and keep unimpaired the rights of Borrower under the Redevelopment Agreement and the other C,C&Rs, and to prevent any default or failure of condition under the Redevelopment Agreement and the other C,C&Rs or any termination or cancellation thereof. Borrower will keep, observe and perform, or cause to be kept, observed and performed, all of the terms, covenants, provisions and agreements contained in the Redevelopment Agreement and the other C,C&Rs on the part of Borrower thereunder to be kept, observed and performed. Without the prior Written Consent of the Servicer or if there is no Servicer, the Funding Lender, the Borrower will not terminate, cancel (or permit any cancellation or termination), modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Redevelopment Agreement or any of the other C,C&Rs and any attempt on the part of Borrower to do so without such prior written consent of Funding Lender shall be null and void and of no effect.

**ARTICLE VI NEGATIVE COVENANTS**

Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Payment Obligation or other obligation of Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. Borrower covenants and agrees that it will not, directly or indirectly:

Section 6.1. Management Agreement. Without first obtaining the prior Written Consent of the Servicer, or if there is no Servicer, the Funding Lender, enter into the Management Agreement, and thereafter the Borrower shall not, without the prior Written Consent (which consent shall not be

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unreasonably withheld) of the Servicer, or if there is no Servicer, the Funding Lender and subject to the Regulatory Agreement: (i) surrender, terminate or cancel the Management Agreement or otherwise replace the Manager or enter into any other management agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of its rights and remedies under, the Management Agreement; or (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Manager to terminate the Management Agreement (or such successor management agreement).

Section 6.2. Dissolution. Dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

Section 6.3. Change in Business or Operation of Property. Enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with construction or rehabilitation, as appropriate, of the Project).

Section 6.4. Debt Cancellation. Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.

Section 6.5. Assets. Purchase or own any real property or personal property incidental thereto other than the Project.

Section 6.6. Transfers. Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Construction Funding Agreement or under the Security Instrument, nor transfer any material License required for the operation of the Project.

Section 6.7. Debt. Other than as expressly approved in writing by the Servicer, or if there is no Servicer, the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or interest therein or in the Borrower or any member thereof (including subordinate debt) other than (i) the Borrower Payment Obligations, (ii) the Subordinate Debt, (iii) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, (iv) unsecured deferred developer fees as permitted pursuant to the terms of the Development Services Agreement and Operating Deficit Loans (each as defined in the Operating Agreement), and (v) trade payables incurred in the ordinary course of business.



Section 6.8. Assignment of Rights. Without the Funding Lender's prior Written Consent of the Servicer, or if there is no Servicer, the Funding Lender, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

Section 6.9. Principal Place of Business. Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender and the Servicer.

Section 6.10. Operating Agreement. Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld, conditioned or delayed) of the Servicer, or if there is

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no Servicer, the Funding Lender, surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect, any of its rights or remedies under the Operating Agreement, except as permitted by and in accordance with the Security Instrument or Construction Funding Agreement; provided, however, the consent of Funding Lender is not required for an amendment of the Operating Agreement (i) permitted by the Construction Funding Agreement, (ii) resulting solely from the "Permitted Transfer" of membership interests of Borrower as defined in and permitted by the Construction Funding Agreement, or (iii) correcting scrivener's errors.

Section 6.11. ERISA. Maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of the Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan, or permit the assets of the Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

Section 6.12. No Hedging Arrangements. Without the prior Written Consent of the Servicer, or if there is no Servicer, the Funding Lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

**Section 6.13. Loans and Investments; Distributions; Related Party Payments.**

a) Without the prior Written Consent of the Servicer, or if there is no Servicer, the Funding Lender, Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or otherwise acquire any interest in Borrower, any Affiliate or any other Person owning an interest, directly or indirectly, in Borrower, or make any distribution, in cash or in kind, in respect of interests in Borrower, any Affiliate or any other Person owning an interest, directly or indirectly, in Borrower (except to the extent permitted by the Security Instrument and subject to the limitations set forth in Section 5.27 hereof).

b) Disbursements for fees and expenses of any Affiliate of Borrower and developer fees (however characterized) will only be paid to the extent that such fee or expense bears a proportionate relationship to the percentage of completion of the construction or rehabilitation, as the case may be, of the Improvements, as determined by the Construction Consultant, and only after deducting the applicable Retainage. Except as otherwise permitted hereunder or by the Funding Lender, no Disbursements for the Developer Fee or any "deferred developer fees" shall be made prior to the payment in full of the Borrower Payment Obligations other than in accordance with the Approved Developer Fee Payment Schedule.

Section 6.14. Amendment of Related Documents or CC&R's. Without the prior Written Consent of the Servicer, or if there is no Servicer, the Funding Lender, except as provided herein, Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the Related Documents or any of the CC&R's (including, without limitation, those contained in the Borrower Loan Agreement, any Architect's Agreement or Engineer's Contract, any Construction Contract, and any Management Agreement, but excluding the Operating Agreement, which is covered by Section 6.10), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

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Section 6.15. Personal Property. Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than Borrower to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in Borrower at the time of installation, without Funding Lender's prior Written Consent; provided, however, that this Section 6.15 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

Section 6.16. Fiscal Year. Without the Written Consent of the Servicer, or if there is no Servicer, the Funding Lender, which shall not be unreasonably withheld, neither Borrower nor Managing Member shall change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

Section 6.17. Publicity. Neither Borrower nor Managing Member shall issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify Funding Lender or any of its affiliates as the source of the financing provided for herein, without the prior written approval of Funding Lender (provided that nothing herein shall prevent Borrower or Managing Member from identifying Funding Lender or its affiliates as the source of such financing to the extent that Borrower or Managing Member are required to do so by disclosure requirements applicable to publicly held companies). Borrower and Managing Member agree that no sign shall be posted on the Project in connection with the construction or rehabilitation of the Improvements unless such sign identifies the Funding Lender and its affiliates as the source of the financing provided for herein or Funding Lender consents to not being identified on any such sign.

Section 6.18. Subordinate Loan Documents. Without the prior Written Consent of the Servicer, or if there is no Servicer, the Funding Lender of the Servicer, or if there is no Servicer, the Funding Lender, Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Subordinate Loan Documents.

Section 6.19. Ground Lease. Without the Funding Lender's prior Written Consent, the Borrower will not surrender, terminate, cancel (or permit any cancellation, termination or surrender), modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Ground Lease and any attempt on the part of Borrower to do so without such prior written consent of Funding Lender shall be null and void and of no effect.

**ARTICLE VII RESERVED**

**ARTICLE VIII DEFAULTS**

Section 8.1. Events of Default. Each of the following events shall constitute an "Event of Default" under the Borrower Loan Agreement:

(a) failure by the Borrower to pay any Borrower Loan Payment in the manner and on the date such payment is due in accordance with the terms and provisions of the Borrower Note, or the failure by the Borrower to pay any Additional Borrower Payment on the date such payment is due in accordance with the terms and provisions of the Borrower Note, the Security Instrument, this Borrower Loan Agreement or any other Borrower Loan Document;

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b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsection (a) above or elsewhere in this Section 8.1) required to be paid by the Borrower under this Borrower Loan Agreement, the Borrower Note, the Security Instrument or any of the other Borrower Loan Documents or Funding Loan Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) Business Days after Written Notice thereof shall have been given to the Borrower;

c) an Event of Default, as defined by the Borrower Note, the Security Instrument, the Construction Funding Agreement or any other Borrower Loan Document, occurs (or to the extent an "Event of Default" is not defined in any other Borrower Loan Document, any default or breach by the Borrower, Managing Member or any Guarantor of any of its obligations, covenants, representations or warranties under such Borrower Loan Document occurs and any applicable notice and/or cure period has expired);

d) any representation or warranty made by any of the Borrower, the Managing Member or any Guarantor in any Borrower Loan Document or Funding Loan Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower, the Managing Member or any Guarantor in connection with any Borrower Loan Document or Funding Loan Document, shall be false or misleading in any material respect as of the Closing Date;

e) the Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

f) the Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the Borrower Controlling Entity shall occur, unless in all cases the Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of the Construction Funding Agreement;

g) any portion of Borrower Deferred Equity to be made by the Equity Investor and required for (i) completion of the construction or rehabilitation, as the case may be, of the Improvements, or (ii) the operation of the Improvements, is not received in accordance with the terms of the Operating Agreement (including and adjutor provisions) after the expiration of all applicable notice and cure periods;

h) the failure by Borrower or any ERISA Affiliate of Borrower to comply in all respects with ERISA, or the occurrence of any other event (with respect to the failure of Borrower or any ERISA Affiliate to pay any amount required to be paid under ERISA or with respect to the termination of, or withdrawal of Borrower or any ERISA Affiliate from, any employee benefit or welfare plan subject to ERISA) the effect of which is to impose upon Borrower (after giving effect to the tax consequences thereof) for the payment of any amount in excess of Fifty Thousand Dollars (\$50,000);

(i) a Bankruptcy Event shall occur with respect to Borrower, Managing Member or

any Guarantor, or there shall be a change in the assets, liabilities or financial position of the Borrower or the Managing Member which has a material adverse effect upon the ability of such Borrower or the Managing Member to perform their obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document; provided that any such Bankruptcy Event with respect to a Guarantor shall not constitute an Event of Default if the

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Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender and such replacement guarantor executes and delivers to Funding Lender a guaranty in the form of the Guaranty or in such other form as is acceptable to Funding Lender;

(j) all or any part of the property of Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released: (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) Business Days of the date thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days of the date thereof;

(k) subject to Section 10.16 hereof. Borrower fails to pay when due any monetary obligation (other than pursuant to this Borrower Loan Agreement) to any Person in excess of \$ 100,000, and such failure continues beyond the expiration of any applicable cure or grace periods;

(l) any material litigation or proceeding is commenced before any Governmental Authority against or affecting Borrower, Managing Member, any Guarantor or property of Borrower, Managing Member or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, Managing Member or such Guarantor, as applicable;

(m) an uninsured final judgment or decree for monetary damages in excess of \$200,000 against the Borrower or Managing Member or \$10,000,000 against the Guarantor prior to the Conversion Date or an uninsured monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower or Managing Member by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) Business Days after entry thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment, fine or penalty);

(n) a final, un-appealable and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of \$200,000 or more against the Borrower or Managing Member or \$10,000,000 or more against the Guarantor prior to the Conversion Date shall be rendered against the applicable Person or against any of their respective assets, that is not paid, superseded or stayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) Business Days after entry thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment); or any levy of execution, writ or warrant of attachment, or similar process, is entered or filed against Borrower, Managing Member or any Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of

Borrower, Managing Member or such Guarantor to perform their respective obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document), and such judgment, writ, warrant or process shall remain unsatisfied, unsettled, unvacated, unhandled and unstayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, for a period of ten (10) days or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, for a period of thirty (30) days, or in

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any event later than five (5) Business Days prior to the date of any proposed sale thereunder; provided that any such judgment, decree, fine or penalty against a Guarantor shall not constitute an Event of Default if the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender and such replacement guarantor executes and delivers to Funding Lender a guaranty in the form of the Guaranty or in such other form as is acceptable to Funding Lender;

(o) the inability of Borrower to satisfy any condition for the receipt of a Disbursement hereunder (other than an Event of Default specifically addressed in this Section 8.1) and failure to resolve the situation to the satisfaction of a Funding Lender for a period in excess of thirty (30) days after Written Notice from a Funding Lender unless (i) such inability shall have been caused by conditions beyond the control of Borrower, including, without limitation, acts of God or the elements, pandemic, fire, work stoppage for 30 days or more, strikes and disruption of shipping;

ii) Borrower shall have made adequate provision, acceptable to the Funding Lender, for the protection of materials stored on-site or off-site and for the protection of the Improvements to the extent then constructed against deterioration and against other loss or damage or theft;

iii) Borrower shall furnish to Funding Lender satisfactory evidence that such cessation of construction or rehabilitation will not adversely affect or interfere with the rights of Borrower under labor and materials contracts or subcontracts relating to the construction or operation of the Improvements; and (iv) Borrower shall furnish to Funding Lender satisfactory evidence that the completion of the construction or rehabilitation of the Improvements can be accomplished by the Completion Date;

(p) the construction or rehabilitation of the Improvements is voluntarily abandoned or halted by Borrower prior to completion for any period of thirty (30) consecutive days;

(q) Borrower shall fail to keep in force and effect any material permit, license, consent or approval required under this Borrower Loan Agreement, or any Governmental Authority with jurisdiction over the Mortgaged Property or the Project orders or requires that construction or rehabilitation of the Improvements be stopped, in whole or in part, or that any required approval, license or permit be withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days;

(r) failure by the Borrower to Substantially Complete the construction or rehabilitation, as the case may be, of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Substantial Completion Date;

(s) failure by Borrower to complete the construction or rehabilitation, as the case may be, of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Completion Date;

(t) the failure to satisfy the Conditions to Conversion on or before the Construction Period Maturity Date;

(u) failure by any Subordinate Lender to disburse the proceeds of its Subordinate Loan in approximately such amounts and at approximately such times as set forth in the Cost Breakdown and in the Subordinate Loan Documents;

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(v) an "Event of Default" or "Default" (as defined in the applicable agreement) shall occur under any of the Subordinate Loan Documents, CC&Rs or the Redevelopment Agreement, after the expiration of all applicable notice and cure periods; or

(w) any failure by the Borrower to perform or comply with any of its obligations under this Borrower Loan Agreement (other than those specified in this Section 8.1), as and when required, which continues for a period of thirty (30) days after written notice of such failure by the Funding Lender or the Servicer on its behalf to the Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in the judgment of the Servicer, or if there is no Servicer, the Funding Lender, absent immediate exercise by the Servicer, or if there is no Servicer, the Funding Lender of a right or remedy under this Borrower Loan Agreement, result in harm to the Funding Lender, impairment of the Borrower Note or this Borrower Loan Agreement or any security given under any other Borrower Loan Document.

## **Section 8.2. Remedies.**

Section 8.2.1 Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (e), (f) or (i) of Section 8.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Governmental Lender pursuant to the Borrower Loan Documents or at law or in equity, the Servicer, or if there is no Servicer, the Funding Lender may, take such action, without notice or demand, as the Servicer, or if there is no Servicer, the Funding Lender deem advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Note to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations in any manner and in any order determined by Servicer, or if there is no Servicer, the Funding Lender, in such Person's sole and absolute discretion; and upon any Event of Default described in paragraph (e), (f) or (i) of Section 8.1, the Borrower Payment Obligations shall become immediately due and payable, without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any Borrower Loan Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Funding Loan Agreement shall be controlled by the Servicer, or if there is no Servicer, the Funding Lender.

Section 8.2.2 Remedies Cumulative. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Servicer, or if there is no Servicer, the Funding Lender against the Borrower under the Borrower Loan Documents or at law or in equity may be exercised by the Servicer, or if there is no Servicer, the Funding Lender, at any time and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Borrower Loan Documents. Any such actions taken by the Servicer, or if there is no Servicer, the Funding Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Funding Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Servicer, or if there is no Servicer, the Funding Lender permitted by law, equity or contract or as set forth in the Borrower Loan

Documents. Without limiting the generality of the foregoing, the Borrower agrees that if an Event of Default is continuing, all Liens and other rights, remedies or privileges provided to the Servicer, or if there is no Servicer, the Funding Lender shall remain in full force and effect until they have exhausted all of its remedies, the Security Instrument has been foreclosed, the Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations has been paid in full. To the extent permitted by applicable law, nothing contained in any Borrower Loan Document shall be construed as requiring the Servicer, or if there is no Servicer, the Funding Lender to resort to any portion of the Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion, and the Servicer, or if there is no Servicer, the Funding Lender may seek satisfaction out of the Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the Governmental Lender and the Funding Lender agree that any cure of any default made or tendered by the Equity Investor and/or the Special Limited Partner shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 8.2.3 Delay. No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Servicer, or if there is no Servicer, the Funding Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Borrower Loan Agreement, the Servicer, or if there is no Servicer, the Funding Lender reserve the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the Security Instrument to the extent necessary to foreclose on the Project, the Rents, the funds or any other collateral.

Section 8.2.4 Set Off; Waiver of Set Off. Upon the occurrence of an Event of Default, Funding Lender may, at any time and from time to time, without notice to Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against and on account of any obligations and liabilities of Borrower to Funding Lender arising under or connected with this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents, irrespective of whether or not Funding Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured), and Borrower hereby grants to Funding Lender, as security for the Borrower Payment Obligations, a security interest in, any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Debt at any time held or owing by Funding Lender to or for the credit or the account of Borrower.

Section 8.2.5 Assumption of Obligations. In the event that the Servicer or the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement, and any other Borrower Loan Documents and Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts (or inaction) of the Borrower.

Section 8.2.6 Accounts Receivable. Upon the occurrence of an Event of Default,, the Servicer, or if there is no Servicer, the Funding Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, notes and other documents evidencing Borrower's

accounts, accounts receivable and other claims for payment of money, arising in connection with the Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of Funding Lender.

Section 8.2.7 Defaults under Other Documents. The Servicer and the Funding Lender shall have the right to cure any default under any of the Related Documents and the Subordinate Loan Documents, but shall have no obligation to do so.

Section 8.2.8 Abatement of Disbursements. Notwithstanding any provision to the contrary herein or any of the other Borrower Loan Documents or the Funding Loan Documents, Funding Lender's obligation to make further Disbursements shall abate (i) during the continuance of any Potential Default, (ii) after any disclosure to Funding Lender of any fact or circumstance that, absent such disclosure, would cause any representation or warranty of Borrower to fail to be true and correct in all material respects, unless and until Funding Lender elects to permit further Disbursements notwithstanding such event or circumstance; and (iii) upon the occurrence of any Event of Default.

Section 8.2.9 Completion of Improvements. Upon the occurrence of any Event of Default, the Servicer, or if there is no Servicer, the Funding Lender shall have the right to cause an independent contractor selected by the Servicer, or if there is no Servicer, the Funding Lender to enter into possession of the Project and to perform any and all work and labor necessary for the completion of the Project substantially in accordance with the Plans and Specifications, if any, and to perform Borrower's obligations under this Borrower Loan Agreement. All sums expended by the Servicer, or if there is no Servicer, the Funding Lender for such purposes shall be deemed to have been disbursed to and borrowed by Borrower and shall be secured by the Security Documents.

Section 8.2.10 Right to Directly Enforce. Notwithstanding any other provision hereof to the contrary, the Servicer, or if there is no Servicer, the Funding Lender shall have the right to directly enforce all rights and remedies hereunder with or without involvement of the Governmental Lender, provided that only the Governmental Lender may enforce the Unassigned Rights that exclusively benefit Governmental Lender and neither the Servicer, nor the Funding Lender shall impair Governmental Lender's enforcement of such Unassigned Rights. Notwithstanding the foregoing, the Governmental Lender and the Servicer, or if there is no Servicer, the Funding Lender shall have the right to enforce all rights and remedies under Sections 5.14, 5.15 and 5.17, with or without involvement of the other party. In the event that any of the provisions set forth in this Section 8.2.10 are inconsistent with the covenants, terms and conditions of the Security Instrument, the covenants, terms and conditions of the Security Instrument shall prevail.

Section 8.2.11 Power of Attorney. Effective upon the occurrence of an Event of Default, and continuing until and unless such Event of Default is cured or waived, Borrower hereby constitutes and appoints the Servicer, or if there is no Servicer, the Funding Lender, or an independent contractor selected by the Servicer, or if there is no Servicer, the Funding Lender, as its true and lawful attorney-in-fact with full power of substitution, for the purposes of completion of the Project and performance of Borrower's obligations under this Borrower Loan Agreement in the name of Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence and continuation of an Event of Default (it being understood and agreed that said power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until full payment and performance of all obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents):

(a) to use any of the funds of Borrower or Managing Member, including any balance of the Borrower Loan, and any funds which may be held by Funding Lender for Borrower (including all funds in all deposit accounts in which Borrower has granted to Funding Lender a



of the Improvements, in the manner called for by the Plans and Specifications;

b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Plans and Specifications;

c) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

d) to employ attorneys to defend against attempts to interfere with the exercise of power granted hereby;

e) to pay, settle or compromise all existing bills and claims which are or may be liens against the Project, the Improvements or the Project, or may be necessary or desirable for the completion of the construction or rehabilitation, as the case may be, of the Improvements, or clearance of objections to or encumbrances on title;

f) to execute all applications and certificates in the name of Borrower, which may be required by any other construction contract;

g) to prosecute and defend all actions or proceedings in connection with the Project and to take such action, require such performance and do any and every other act as is deemed necessary with respect to the completion of the construction or rehabilitation, as the case may be, of the Improvements, which Borrower might do on its own behalf;

h) to let new or additional contracts to the extent not prohibited by their existing contracts;

i) to employ watchmen and erect security fences to protect the Project from injury;

and

(j) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default, rights and remedies may be pursued pursuant to the terms of the Borrower Loan Documents and the Funding Loan Documents. The parties hereto acknowledge that, among the possible outcomes to the pursuit of such remedies, is the situation where the Servicer or Funding Lender's assignees or designees become the owner of the Project and assume the obligations identified above, and the Borrower Note, the Borrower Loan and the other Borrower Loan Documents and Funding Loan Documents remain outstanding.

### Section 9.1. Sale of Notes and Secondary Market Transaction.

Section 9.1.1 Cooperation. Subject to the restrictions of Section 2.4(b) of the Funding Loan Agreement, at the Funding Lender's or the Servicer's request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Funding Lender or the Servicer customarily adheres or which may be reasonably required in the marketplace or by the Funding Lender or the Servicer in connection with one or more sales or assignments of all or a portion of the Governmental Lender Note and the Funding Loan or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Governmental Lender Note and the Funding Loan (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Governmental Lender shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the Funding Lender or the Servicer, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

a) (i) pursuant to a confidentiality agreement reasonably acceptable to Borrower, Managing Member and Guarantor, provide such financial and other information with respect to the Borrower Loan, and with respect to the Project, the Borrower, the Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward looking statements or lack of audit, and (iii), at the expense of the Funding Lender or the Servicer, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Funding Lender or the Servicer or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender or the Servicer pursuant to this paragraph (a) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Funding Lender or the Servicer and the Rating Agencies;

b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, the Borrower Loan Documents and the Funding Loan Documents reasonably acceptable to the Funding Lender or the Servicer, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

c) execute such amendments to the Borrower Loan Documents and the Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Borrower Loan Documents and the Funding Loan Documents and is not otherwise adverse to the Borrower in its reasonable discretion.

Section 9.1.2 Use of Information. The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a

"Secondary Market Disclosure Document"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.1.1 (c) hereof, with the Funding Lender and the Servicer in updating the Provided Information or required

records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all reasonably requested current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

Section 9.1.3 Borrower Obligations Regarding Secondary Market Disclosure Documents. In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, the Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the Project or the third party). The Borrower shall, if requested by the Funding Lender and the Servicer, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project or the Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project or the Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrower hereby indemnifies the Funding Lender, the Governmental Lender and the Servicer for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

Section 9.1.4 Borrower Indemnity Regarding Filings. In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) indemnify Funding Lender, the Governmental Lender and the underwriter group for any securities (the "Underwriter Group") and all officials, employees and agents of any of them for any Liabilities to which Funding Lender, the Servicer or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (ii) reimburse the Funding Lender, the Servicer, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Funding Lender, the Servicer or the Underwriter Group in connection with defending or investigating such Liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

Section 9.1.5 Indemnification Procedure. Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified

party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 9.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may

be liable hereunder without the prior Written Consent of the Borrower.

Section 9.1.6 Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

## ARTICLE X MISCELLANEOUS

Section 10.1. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Funding Loan Document (a "notice") shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to the Borrower:                                 WHP-IID, LLC  
  c/o Brinshore Development, L.L.C. 1603 Orrington,  
  Suite 450 Evanston, Illinois 60201 Attention:  
  Richard J. Sciortino

And

WHIP-IID, LLC c/o The Michaels Organizations 2  
Cooper Street, 14<sup>th</sup> Floor Camden, New Jersey  
08102 Attention: John J. O'Donnell

And

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WHP-IID, LLC  
c/o The Michaels Organizations 542 S. Dearborn Street, Suite  
560 Chicago, Illinois 60605 Attention: Greg Olson

and with a copy to:

Applegate & Thorne-Thomsen, P.C. 425 S. Financial Place, Suite  
1900 Chicago, Illinois 60606 Attention: Nicole A. Jackson

If to the Governmental Lender: City of Chicago  
Department of Housing and Economic Development 121 North LaSalle Street, Suite

1006 Chicago, Illinois 60602  
Attention: Commissioner, Department of Housing and Economic Development  
Telephone: (312)744-9476 Facsimile: (312)742-2271

and with a copy to: City of Chicago  
Office of Corporation Counsel  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic Development Division Telephone: (312)744-0200  
Facsimile: (312) 744-8538

and with a copy to: City of Chicago  
Office of the City Comptroller's Office 121 North LaSalle Street, Suite  
700 Chicago, Illinois 60602 Attention: City Comptroller Telephone: (312)  
744-7106 Facsimile: (312)742-6544

and with a copy to: Charity & Associates, P.C.  
20 North Clark Street, Suite 3300 Chicago, Illinois 60602  
Attention: Elvin E. Charity

If to Funding Lender: BMO Harris Bank N.A.  
115 S. LaSalle Street, 20W Chicago, Illinois 60603  
Attention: James West

and with a copy to: Charity & Associates, P.C.  
20 North Clark Street, Suite 3300 Chicago, Illinois 60602

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Attention: Elvin E. Charity

to be provided by Richman and its counsel

Any party may change such party's address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties by written notice as provided herein.

Section 10.2. Brokers and Financial Advisors. The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Borrower Loan, other than those disclosed to the Funding Lender and whose fees shall be paid by the Borrower pursuant to separate agreements. The Borrower and the Funding Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses, of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Borrower Loan Agreement and the repayment of the Borrower Payment Obligations.

Section 10.3. Survival. This Borrower Loan Agreement and all covenants, agreements, representations and

warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Governmental Lender of the Borrower Loan and the execution and delivery to the Governmental Lender of the Borrower Note and the assignment of the Borrower Note to the Funding Lender, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrower's covenants and agreements in this Borrower Loan Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of the Governmental Lender, the Funding Lender and the Servicer.

Section 10.4. Preferences. The Governmental Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Payment Obligations. To the extent the Borrower makes a payment to the Governmental Lender or the Servicer, or the Governmental Lender or the Servicer receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Governmental Lender or the Servicer.

Section 10.5. Waiver of Notice. The Borrower shall not be entitled to any notices of any nature whatsoever from the Funding Lender or the Servicer except with respect to matters for which this Borrower Loan Agreement or any other Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender or the Servicer, as the case may be, to the Borrower and except with respect to matters for which the Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrower hereby expressly waives the right to receive any notice from the Funding Lender or the Servicer, as the case may be, with respect to any matter for which no Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender or the Servicer to the Borrower.

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Section 10.6. Offsets, Counterclaims and Defenses. The Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Funding Lender or the Servicer with respect to a Borrower Loan Payment. Such waiver shall not invalidate such claim which may be brought as a separate action. Any assignee of Funding Lender's interest in and to the Borrower Loan Documents or the Funding Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Borrower Loan Documents or the Funding Loan Documents which the Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

Section 10.7. Publicity. The Funding Lender and the Servicer (and any affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the Funding Lender's or the Servicer's participation in the making of the Borrower Loan or the Borrower Loan's inclusion in any Secondary Market Transaction effectuated by the Funding Lender or the Servicer or one of its or their affiliates. All news releases, publicity or advertising by the Borrower or its Affiliates through any media intended to reach the general public, which refers to the Borrower Loan Documents or the Funding Loan Documents, the Borrower Loan, the Funding Lender or the Servicer in a Secondary Market Transaction, shall be subject to the prior Written Consent of the Funding Lender or the Servicer, as applicable.

Section 10.8. Construction of Documents. The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Borrower Loan Documents and the Funding Loan Documents and that the Borrower Loan Documents and the Funding Loan Documents shall not be subject to the principle of construing

their meaning against the party that drafted them.

Section 10.9. No Third Party Beneficiaries. The Borrower Loan Documents and the Funding Loan Documents are solely for the benefit of the Governmental Lender, the Funding Lender, the Servicer and the Borrower and, with respect to Sections 9.1.3 and 9.1.4 hereof, the Underwriter Group, and nothing contained in any Borrower Loan Document shall be deemed to confer upon anyone other than the Governmental Lender, the Funding Lender, the Servicer, and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

Section 10.10. Assignment. The Borrower Loan, the Security Instrument, the Borrower Loan Documents and the Funding Loan Documents and all Funding Lender's rights, title, obligations and interests therein may be assigned by the Funding Lender, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise, provided, however, such assignee must be an entity reasonably capable of fulfilling the Funding Lender's obligations under the Funding Loan Documents and the Borrower Loan Documents. Upon such assignment, all references to Funding Lender in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender. Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender may disclose to the proposed assignee any information that Borrower has delivered, or caused to be delivered, to Funding Lender with reference to Borrower, Managing Member, any Guarantor or any Affiliate of Borrower, or the Project, including information that Borrower is required to deliver to Funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. The Borrower may not assign

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its rights, interests or obligations under this Borrower Loan Agreement or under any of the Borrower Loan Documents or Funding Loan Documents, or Borrower's interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

**Section 10.11. [Intentionally Omitted].**

Section 10.12. Governmental Lender, Funding Lender and Servicer Not in Control; No Partnership. None of the covenants or other provisions contained in this Borrower Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Funding Lender or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Funding Lender and the Servicer being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Funding Loan Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Funding Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender or the Servicer or to create an equity in the Project in the Governmental Lender, the Funding Lender or the Servicer. Neither the Governmental Lender, the Funding Lender nor the Servicer undertakes or assumes any responsibility or duty to the Borrower or to any other person with respect to the Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Funding Loan Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Funding Loan Documents: (1) the Governmental Lender, the Funding Lender and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Funding Lender and the Servicer do not intend to ever assume such status; (2) the Governmental Lender, the Funding Lender and the Servicer shall in no event be liable for any the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Funding Lender and the Servicer shall not

be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Governmental Lender, the Funding Lender and the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Servicer and the Borrower, or to create an equity in the Project in the Funding Lender or the Servicer, or any sharing of liabilities, losses, costs or expenses.

Section 10.13. Release. The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Funding Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

Section 10.14. Term of Borrower Loan Agreement. This Borrower Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been indefeasibly paid in full and the Borrower Loan and the Funding Loan have been retired or the payment thereof has been provided for; except that on and after payment in full of the Borrower Note, this Borrower Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrower under Sections 5.11 (Governmental Lender's Fees), 5.14 (Expenses), 5.15 (Indemnity), 9.1.3, 9.1.4, 9.1.5, 9.1.6 and 10.15 (Reimbursement of Expenses) hereof, as well as under Section 5.7 of the Construction Funding Agreement, shall survive the termination of this Borrower Loan Agreement.

Section 10.15. Reimbursement of Expenses. If, upon or after the occurrence of any Event of Default or Potential Default, the Governmental Lender, the Funding Lender or the Servicer shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein, the Borrower will on demand therefor reimburse

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the Governmental Lender, the Funding Lender and the Servicer for reasonable fees of such attorneys and such other expenses so incurred.

The Borrower's obligation to pay the amounts required to be paid under this Section 10.15 shall be subordinate to its obligations to make payments under the Borrower Note.

Section 10.16. Permitted Contests. Notwithstanding anything to the contrary contained in this Borrower Loan Agreement, Borrower shall have the right to contest or object in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of Borrower under any Borrower Loan Document or Related Document) by appropriate legal proceedings that are not prejudicial to Funding Lender's rights, but this shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to Borrower's covenant to pay and comply with any such claim, demand, levy or assessment, unless Borrower shall have given prior Written Notice to the Governmental Lender, the Servicer and the Funding Lender of Borrower's intent to so contest or object thereto, and unless (i) Borrower has, in the Governmental Lender's and the Servicer's, or if there is no Servicer, Funding Lender's judgment, a reasonable basis for such contest, (ii) Borrower pays when due any portion of the claim, demand, levy or assessment to which Borrower does not object, (iii) Borrower demonstrates to the satisfaction of the Servicer, or if there is no Servicer, Funding Lender, that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (iv) Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to the Servicer's, or if there is no Servicer, Funding Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to Funding Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the Project, (v) Borrower at all times prosecutes the contest with due diligence, and (vi) Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, the amount so determined to be due and owing by Borrower. In the event that Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, any payment



required to be made pursuant to clause (vi) of the preceding sentence, an Event of Default shall have occurred, and the Servicer, or if there is no Servicer, Funding Lender may draw or realize upon any bond or other security delivered to Funding Lender in connection with the contest by Borrower, in order to make such payment.

Section 10.17. Funding Lender Approval of Instruments and Parties. All proceedings taken in accordance with transactions provided for herein, and all surveys, appraisals and documents required or contemplated by this Borrower Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by the Servicer, or if there is no Servicer, Funding Lender. The Servicer's or Funding Lender's approval of any matter in connection with the Project shall be for the sole purpose of protecting the security and rights of Funding Lender. No such approval shall result in a waiver of any default of Borrower. In no event shall Servicer's or Funding Lender's approval be a representation of any kind with regard to the matter being approved.

Section 10.18. Funding Lender Determination of Facts. Funding Lender and Servicer shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Borrower Loan Agreement.

Section 10.19. Calendar Months. With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of such specified number of Calendar Months that corresponds numerically to the date so specified; provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any Calendar Month: if the Calendar Month

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in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.

Section 10.20. Determinations by Lender. Except to the extent expressly set forth in this Borrower Loan Agreement to the contrary, in any instance where the consent or approval of the Governmental Lender and the Funding Lender or the Servicer may be given or is required, or where any determination, judgment or decision is to be rendered by the Governmental Lender and the Funding Lender or the Servicer under this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Governmental Lender and the Funding Lender or the Servicer, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

Section 10.21. Governing Law. This Borrower Loan Agreement shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

Section 10.22. Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Borrower Loan Agreement shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Borrower Loan Agreement. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to bring any suit, action or proceeding relating to matters arising under this Borrower Loan Agreement against Borrower or any of Borrower's assets in any court of any other jurisdiction.

Section 10.23. Successors and Assigns. This Borrower Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal

representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities.'

Section 10.24. Severability. The invalidity, illegality or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

Section 10.25. Entire Agreement; Amendment and Waiver. This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered. This Borrower Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Borrower Loan Agreement shall be considered as a general waiver. Without limiting the generality of the foregoing, no Disbursement shall constitute a waiver of any conditions to the Governmental Lender's or the Funding Lender's obligation to make further Disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding the Governmental Lender or the Funding Lender (or the Servicer) from thereafter declaring such inability to constitute a Potential Default or Event of Default under this Borrower Loan Agreement.

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Section 10.26. Counterparts. This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

Section 10.27. Captions. The captions of the sections of this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

Section 10.28. Servicer. Borrower hereby acknowledges and agrees that, pursuant to the terms of the Construction Funding Agreement: (a) from time to time, the Funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Borrower Note, this Borrower Loan Agreement or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives Written Notice from the Governmental Lender or the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Governmental Lender or the Funding Lender may be taken or exercised by such servicer with the same force and effect. The parties acknowledge that pursuant to the Construction Funding Agreement, the Funding Lender has been appointed as the Servicer for the Funding Lender.

Section 10.29. Beneficiary Parties as Third Party Beneficiary. Each of the Beneficiary Parties shall be a third party beneficiary of this Borrower Loan Agreement for all purposes.

Section 10.30. Waiver of Trial by Jury. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE BENEFICIARY PARTIES (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Section 10.31. Time of the Essence. Time is of the essence with respect to this Borrower Loan Agreement.

Section 10.32. Modifications. Modifications (if any) to this Borrower Loan Agreement ("Modifications") are set

forth on Exhibit A attached to this Borrower Loan Agreement. In the event of a Transfer under the terms of the Construction Funding Agreement, some or all of the Modifications to this Borrower Loan Agreement may be modified or rendered void by the Governmental Lender or the Servicer or if there is no Servicer, the Funding Lender at its option by notice to Borrower or such transferee. There are no Modifications to this Borrower Loan Agreement.

Section 10.33. Reference Date. This Borrower Loan Agreement is dated for reference purposes only as of the first day of \_\_\_\_\_, 2022, and will not be effective and binding on the parties hereto unless and until the Closing Date (as defined herein) occurs.

## ARTICLE XI LIMITATIONS ON LIABILITY

Section 11.1. Limitation on Liability. Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents shall be limited to the extent set forth in the Construction Funding Agreement and the Borrower Note.

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Section 11.2. Limitation on Liability of Governmental Lender. The Funding Loan, and interest thereon, are special, limited obligations of the Governmental Lender, payable solely from the Security pledged under the Funding Loan Agreement. The Funding Loan is not a general indebtedness of the Governmental Lender or a charge against its general credit or the general credit taxing powers of the State, the Governmental Lender, or any other political subdivision thereof, and shall never give rise to any personal pecuniary liability of the Governmental Lender, and neither the Governmental Lender, the State nor any other political subdivision thereof shall be liable for the payments of principal and interest on the Funding Loan, and the Funding Loan is payable from no source other than the Security, and are special, limited obligations of the Governmental Lender, payable solely out of the Security pledged hereunder and receipts of the Governmental Lender derived pursuant to this Funding Loan Agreement (and not against any money due or to become due to the Governmental Lender pursuant to the exercise or enforcement of Unassigned Rights). No holder of the Funding Loan or any interest therein has the right to compel any exercise of the taxing power of the State, the Governmental Lender or any other political subdivision thereof to pay the Funding Loan or the interest thereon.

No recourse shall be had for the payment of the principal of, premium, if any, or the interest on the Funding Loan or for any claim based thereon or any obligation, covenant or agreement in this Funding Loan Agreement against any official of the Governmental Lender, or any official, officer, agent, employee or independent contractor of the Governmental Lender or any person executing this Borrower Loan Agreement. No covenant, stipulation, promise, agreement or obligation contained in this Borrower Loan Agreement or any other document executed in connection herewith shall be deemed to be the covenant, stipulation, promise, agreement or obligation of any present or future official, officer, agent or employee of the Governmental Lender in his or her individual capacity and neither any official of the Governmental Lender nor any officers executing this Borrower Loan Agreement shall be liable personally or be subject to any personal liability or accountability by reason of this Borrower Loan Agreement.

Section 11.3. Waiver of Personal Liability. No member, officer, agent or employee of the Governmental Lender or any director, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal (or prepayment price) of or interest on the Governmental Lender Note or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

### Section 11.4. Limitation on Liability of Funding Lender's Officers, Employees, Etc.

(a) Borrower assumes all risks of the acts or omissions of the Governmental Lender and the Funding Lender (except to the extent that such acts or omissions constitute gross negligence or willful misconduct),

provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the Governmental Lender and the Funding Lender at law or under any other agreement. None of Governmental Lender and the Funding Lender, nor the other Beneficiary Parties or their respective officers, directors, employees or agents shall be liable or responsible for (i) for any acts or omissions of the Governmental Lender and the Funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Governmental Lender and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Governmental Lender and the Funding Lender.

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b) None of the Governmental Lender the Funding Lender, the other Beneficiary Parties or any of their respective officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Project. Borrower is not and shall not be an agent of the Governmental Lender and the Funding Lender for any purpose. Neither the Governmental Lender nor the Funding Lender is a joint venture partner with Borrower in any manner whatsoever. Prior to default by Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender and the Funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Governmental Lender and the Funding Lender. Approvals granted by the Governmental Lender and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

c) Any obligation or liability whatsoever of the Governmental Lender and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 11.5. Delivery of Reports, Etc. The delivery of reports, information and documents to the Governmental Lender and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's and the Funding receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender and the Funding Lender.

[Remainder of Page Intentionally Left Blank]

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IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Borrower Loan Agreement or caused this Borrower Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**OWNER SIGNATURE BLOCK:**

WHP-IID, LLC,  
an Illinois limited liability company

By: WHP-IID Manager, LLC,  
an Illinois limited liability company, its manager

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

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

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

**By:**  
Name: Richard J. Sciortino Title: President

By: Michaels Chicago Holding Company 2, LLC, an Illinois  
limited liability company, a member

By:.  
Name: John J. O'Donnell Title: President

(additional signatures follow on subsequent pages)

Signature Page to Borrower Loan Agreement

[SEAL] Attest:

By:  
Name: Andrea M. Valencia Title: City Clerk

**GOVERNMENTAL LENDER: CITY OF CHICAGO**

By:  
Name: Jennie Huang Bennett Title: Chief Financial Officer

Signature Page to Borrower Loan Agreement

**Agreed to and Acknowledged by: FUNDING LENDER: BMO HARRIS  
BANK, N.A.**

By:  
Name:  
Title:

Signature Page to Borrower Loan Agreement

**EXHIBIT A - SECTION 10.32 MODIFICATIONS**

**NONE**

EXHIBIT B-SITE



B-1

**Exhibit D**

**Form of Land Use Restriction Agreement**

See Attached.

D-1

**Exhibit D**

**Form of Land Use Restriction Agreement**

See Attached.

D-1

Recording Requested By and When Recorded Send to: ArentFox Schiff LLP 233 South Wacker Drive  
Suite 7100  
Chicago, Illinois 60606 Attention: Bruce P. Weisenthal

**LAND USE RESTRICTION AGREEMENT between CITY OF CHICAGO**

and

**WHP-IID, LLC**  
an Illinois limited liability company

Dated as of

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**LAND USE RESTRICTION AGREEMENT**

THIS LAND USE RESTRICTION AGREEMENT (this "Agreement"), entered into as of \_\_\_\_\_, 2022, between the CITY OF CHICAGO, a municipal corporation and home rule unit of local government duly organized and validly existing under the Constitution and laws of the State of Illinois (the "Issuer"), and WHP-IID, LLC, an Illinois limited liability company (the "Owner"),

**WITNESSETH:**

WHEREAS, pursuant to an ordinance adopted by the Issuer on \_\_\_\_\_, 2022 (the "Ordinance") and a funding loan agreement (the "Funding Loan Agreement") with BMO Harris, N.A., a national banking association (the "Funding Lender"), pursuant to which the Issuer will borrow an aggregate principal amount not to exceed Thirty Million Dollars (\$30,000,000) (the "Funding Loan") for a portion of the purposes set forth above and in evidence of its limited, special obligation to repay that borrowing, issue a tax-exempt revenue note, to be designated as the Multi-Family Housing Revenue Note, Series 2022 (Westhaven Park IID) (the "Note") under the terms and conditions of the Ordinance and the Funding Loan Agreement,

WHEREAS, the proceeds derived from the issuance and sale of the Note have been lent by the Issuer to the Owner pursuant to the a borrower loan agreement of even date herewith (the "Borrower Loan Agreement"), between the Issuer and the Owner for the purpose of financing a portion of the costs of acquiring, leasing, constructing, rehabilitating and equipping of low- and moderate- income residential facilities and related common facilities consisting of one 12-story tower attached to a 4-story component and containing approximately 96 residential rental apartments, of which 38 units will be set aside for tenants of the CHA (as hereinafter defined) (together with related common areas along with parking lot facilities and as further described on Exhibit A hereto, the "Project" or the "Bond Project"), on property located at the southeast corner of North Damen Avenue and West Lake Street, commonly known as 145 North Damen Avenue (also known as 1951-1959 West Lake Street) in Chicago, Cook County, Illinois, as more particularly described on Exhibit F hereto (collectively, the "Property"), and to pay a portion of the costs of issuance and other costs incurred in connection therewith; and

WHEREAS, the Chicago Housing Authority, an Illinois municipal corporation under the Housing Authorities Act, as amended (310 ILCS 10/1 et seq.) (the "CHA") owns the Property, as identified on Exhibit A hereto; and

WHEREAS, CHA intends to make a donation to Michaels Community Services Corporation a/k/a Better Tomorrows, a New Jersey not-for-profit corporation, or its affiliate (the "Sponsor") of a long-term year ground lease of the Property, whereupon the Sponsor will immediately assign its leasehold interest in the Property to the Borrower, who will develop the Project on the Property; and

WHF, REAS, the Sponsor and the CHA are entering into a long-term ground lease for the Property, which leasehold interest will be assigned to the Owner, on which the Project will be constructed; and

WHEREAS, in order to assure the Issuer and the Funding Lender that interest on the Note will be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and to further the public purposes of the Issuer, certain restrictions on the use and occupancy of the Project under the Code must be established;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Owner and the Issuer agree as follows:

### **Term of Restrictions.**

a) **Occupancy Restrictions.** The term of the Occupancy Restrictions set forth in Section 3 hereof shall commence on the first day on which at least 10% of the units are first occupied following completion of such units and shall end on the latest of (i) the date which is 15 years after the date on which at least 50% of the units in the Project are first occupied; (ii) the first date on which no tax-exempt note or bond (including any refunding note or bond) issued with respect to the Project is outstanding (treating, for such purpose, the Project as being financed in part by all Note); or (iii) the date on which any housing assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates (which period is hereinafter referred with respect to the Project as the "Qualified Project Period").

b) **Rental Restrictions.** The Rental Restrictions with respect to the Project set forth in Section 4 hereof shall remain in effect during the Qualified Project Period.

c) **Involuntary Loss or Substantial Destruction.** The Occupancy Restrictions set forth in Section 3 hereof, and the Rental Restrictions set forth in Section 4 hereof, shall cease to apply to the Project in the event of involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in federal law or an action of a federal agency (with respect to the Project) after the date of delivery of the Note, which prevents the Issuer from enforcing the Occupancy Restrictions and the Rental Restrictions (with respect to the Project), or condemnation or similar event (with respect to the Project), but only if, within a reasonable time, (i) all of the Note is promptly retired, or amounts received as a consequence of such event are used to provide a new project which meets all of the requirements of this Agreement, which new project is subject to new restrictions substantially equivalent to those contained in this Agreement, and which is substituted in place of the Project by amendment of this Agreement; and (ii) an opinion from nationally recognized bond counsel (selected by the Issuer) is received to the effect that noncompliance with the Occupancy Restrictions and the Rental Restrictions applicable to the Project as a result of such involuntary loss or substantial destruction resulting from an unforeseen event with respect to the Project will not adversely affect the exclusion of the interest on the Note from the gross incomes of the owners thereof for purposes of federal income taxation; provided, however, that the preceding provisions of this paragraph shall cease to apply in the case of such involuntary noncompliance caused by foreclosure, transfer of title by deed in lieu of foreclosure or similar event if at any time during the Qualified Project Period with respect to the Project subsequent to such event the Owner or any Affiliated Party (as hereinafter defined) obtains an ownership interest in the Project for federal income tax purposes. "Affiliated Party" means a person whose relationship to another person is such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code; or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that "more than 50%" shall be substituted for "at least 80%" each place it appears therein).

d) **Termination.** This Agreement shall terminate with respect to the Project upon the earliest of (i) termination of the Occupancy Restrictions and the Rental Restrictions with respect to the Project, as provided in

paragraphs (a) and (b) of this Section 1; or (ii) delivery to the Issuer and the Owner of an opinion of nationally recognized bond counsel (selected by the Issuer) to the effect that continued compliance of the Project with the Rental Restrictions and the Occupancy Restrictions applicable to the Project is not required in order for interest on the Note to remain excludible from gross income for federal income tax purposes.

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e) Certification. Upon termination of this Agreement, the Owner and the Issuer shall execute and cause to be recorded (at the Owner's expense), in all offices in which this Agreement was recorded, a certificate of termination, specifying which of the restrictions contained herein has terminated.

f) Encumbrance of Fee. In furtherance of enforcing compliance with the provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations applicable to this Agreement, unless the provisions of paragraph (c) or (d) above apply to the Project resulting in a termination of the restrictions set forth herein, such restrictions shall continue to apply to the Project following the termination of the Owner's or any other party's leasehold estate therein, whether or not the Project is thereafter released by the Issuer.

Section 2. Project Restrictions. The Owner represents, warrants and covenants that:

a) The Owner has reviewed the provisions of the Code and the Treasury Regulations thereunder (the "Regulations") applicable to this Agreement (including, without limitation, Section 142(d) of the Code and Section 1.103-8(b) of the Regulations) with its counsel and understands said provisions.

b) The Project is being acquired, leased, constructed and equipped for the purpose of providing a "qualified residential rental project" (as such phrase is used in Section 142(d) of the Code) and will, during the term of the Rental Restrictions and Occupancy Restrictions hereunder applicable to the Project continue to constitute a "qualified residential rental project" under Section 142(d) of the Code and any Regulations heretofore or hereafter promulgated thereunder and applicable thereto.

c) Substantially all (not less than 95%) of the Project will consist of a "building or structure" (as defined in Section 1.103-8(b)(8)(iv) of the Regulations), or several proximate buildings or structures, of similar construction, each containing one or more similarly constructed residential units (as defined in Section 1.103-8(b)(8)(i) of the Regulations) located on a single tract of land or contiguous tracts of land (as defined in Section 1.103-8(b)(4)(ii)-(B) of the Regulations), which will be owned, for federal tax purposes, at all times by the same person, and financed pursuant to a common plan (within the meaning of Section 1.103-8(b)(4)(ii) of the Regulations), together with functionally related and subordinate facilities (within the meaning of Section 1.103-8(b)(4)(iii) of the Regulations). If any such building or structure contains fewer than five (5) units, no unit in such building or structure shall be Owner-occupied.

d) None of the units in the Project will at any time be used on a transient basis, nor will any Project itself be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court for use on a transient basis; nor shall any portion of the Project be operated as an assisted living facility which provides continual or frequent nursing, medical or psychiatric services; provided, however that nothing herein shall be understood to prohibit single room occupancy units occupied under month to month leases.

e) All of the units in the Project will be leased or rented, or available for lease or rental, on a continuous basis to members of the general public (other than (i) units for resident managers or maintenance personnel, (ii) units for Qualifying Tenants as provided for in Section 3 hereof, and (iii) units which may be rented under the Section 8 assistance program, which units (subject to the Section 8 assistance program) shall be leased to eligible tenants in accordance with Section 8 requirements), subject, however, to the requirements of Section 3(a) hereof. Each Qualifying Tenant (as

hereinafter defined) occupying a Unit in the Project shall be required to execute a written lease with a stated term of not less than 30 days nor more than one year.

f) Any functionally related and subordinate facilities (e.g., parking areas, swimming pools, tennis courts, etc.) which are included as part of any Project, will be of a character and size commensurate

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with the character and size of such Project and will be made available to all tenants in the Project on an equal basis; fees will only be charged with respect to the use thereof if the charging of fees is customary for the use of such facilities at similar residential rental properties in the surrounding area (i.e., within a one-mile radius), or, if none, then within comparable urban settings in the City of Chicago, and then only in amounts commensurate with the fees being charged at similar residential rental properties within such area. In any event, any fees charged will not be discriminatory or exclusionary as to the Qualifying Tenants (as defined in Section 3 hereof). No functionally related and subordinate facilities will be made available to persons other than tenants or their guests.

g) Each residential unit in the Project will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or family.

h) No portion of the Project will be used to provide any health club facility (except as provided in (f) above), any facility primarily used for gambling, or any store, the principal business of which is the sale of alcoholic beverages for consumption off premises, in violation of Section 147(e) of the Code.

Section 3. Occupancy Restrictions. The Owner represents, warrants and covenants with respect to the Project that:

a) Pursuant to the election of the Issuer in accordance with the provisions of Section 142(d)(1)(A) of the Code, at all times during the Qualified Project Period with respect to the Project at least 40% of the completed units in the Project shall be continuously occupied (or treated as occupied as provided herein) or held available for occupancy by Qualifying Tenants as herein defined. For purposes of this Agreement, "Qualifying Tenants" means individuals or families whose aggregate adjusted incomes do not exceed 60% of the applicable median gross income (adjusted for family size) for the area in which the Project is located, as such income and area median gross income are determined by the Secretary of the United States Treasury in a manner consistent with determinations of income and area median gross income under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as in effect immediately before such determination).

b) Prior to the commencement of occupancy of any unit to be occupied by a Qualifying Tenant, the prospective tenant's eligibility shall be established by execution and delivery by such prospective tenant of an Income Computation and Certification in the form attached hereto as Exhibit B (the "Income Certification") evidencing that the aggregate adjusted income of such prospective tenant does not exceed the applicable income limit. In addition, such prospective tenant shall be required to provide whatever other information, documents or certifications are reasonably deemed necessary by the Owner or the Issuer to substantiate the Income Certification.

c) Not less frequently than annually, the Owner shall determine whether the current aggregate adjusted income of each tenant occupying any unit being treated by the Owner as occupied by a Qualifying Tenant exceeds the applicable income limit. For such purpose the Owner shall require each such tenant to execute and deliver the Income Certification; provided, however, that for any calendar year during which no unit in the Project is occupied by a new resident who is not a qualifying tenant, no Income Computation and Certification for existing tenants shall be required.

d) Any unit vacated by a Qualifying Tenant shall be treated as continuing to be occupied by such tenant until reoccupied, other than for a temporary period not to exceed 31 days, at which time the character of such unit as a unit occupied by a Qualifying Tenant shall be redetermined.



e) If an individual's or family's income exceeds the applicable income limit as of any date of determination, the income of such individual or family shall be treated as continuing not to exceed the

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applicable limit, provided that the income of an individual or family did not exceed the applicable income limit upon commencement of such tenant's occupancy or as of any prior income determination, and provided, further, that if any individual's or family's income as of the most recent income determination exceeds 140% of the applicable income limit, such individual or family shall cease to qualify as a Qualifying Tenant if, prior to the next income determination of such individual or family, any unit in the Project of comparable or smaller size to such individual's or family's unit is occupied by any tenant other than a Qualifying Tenant.

f) The lease to be utilized by the Owner in renting any Unit in the Project to a prospective Qualifying Tenant shall provide for termination of the lease and consent by such person to eviction following 30 days' written notice, subject to applicable provisions of Illinois law (including for such purpose all applicable home rule ordinances), for any material misrepresentation made by such person with respect to the Income Certification with the effect that such tenant is not a Qualified Tenant.

g) All Income Certifications will be maintained on file at the Project as long as the Note is outstanding and for five years thereafter with respect to each Qualifying Tenant who occupied a Unit in the Project during the period the restrictions hereunder are applicable, and the Owner will, promptly upon receipt, file a copy thereof with the Issuer.

h) On the first day of the Qualified Project Period with respect to a Project on the fifteenth days of January, April, July and October of each year during the Qualified Project Period with respect to such Project, and within 30 days after the final day of each month in which there occurs any change in the occupancy of a Unit in such Project, the Owner will submit to the Issuer a "Certificate of Continuing Program Compliance," in the form attached hereto as Exhibit C executed by the Owner with respect to the Project.

(i) The Owner shall submit to the Secretary of the United States Treasury (at such time and in such manner as the Secretary shall prescribe) with respect to the Project, an annual certification on Form 8703 as to whether such Project continues to meet the requirements of Section 142(d) of the Code. Failure to comply with such requirement may subject the Owner to the penalty provided in Section 6652(j) of the Code.

Section 4. Rental Restrictions. The Owner represents, warrants and covenants with respect to the Project, that once available for occupancy, each Unit in the Project will be rented or available for rental on a continuous basis to members of the general public (other than (a) units for resident managers or maintenance personnel, (b) units for Qualifying Tenants as provided for in Section 3 hereof, and (c) units which may be rented under the Section 8 assistance program, which units (subject to the Section 8 assistance program) shall be leased to eligible tenants in accordance with Section 8 requirements). If a Housing Assistance Payments Contract is subsequently entered into with respect to the Project under the Section 8 assistance program, in administering the restrictions hereunder with respect to the Project, the Owner will comply with all Section 8 requirements.

Section 5. Transfer Restrictions. The Owner covenants and agrees that no conveyance, transfer, assignment or any other disposition of title to any portion of the Project (a "Transfer") shall be made prior to the termination of the Rental Restrictions and Occupancy Restrictions hereunder with respect to the Project, unless the transferee pursuant to the Transfer assumes in writing (the "Assumption Agreement"), in a form reasonably acceptable to the Issuer, all of the executory duties and obligations hereunder of the Owner with respect to such portion of the Project, including those

contained in this Section 5, and agrees to cause any subsequent transferee to assume such duties and obligations in the event of a subsequent Transfer by the transferee prior to the termination of the Rental Restrictions and Occupancy Restrictions hereunder with respect to the Project. The Owner shall deliver the Assumption Agreement to

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the Issuer at least 30 days prior to a proposed Transfer. This Section 5 shall not apply to any involuntary transfer pursuant to Section 1(c) hereof. This Section shall not be deemed to restrict the transfer of any membership interest in the Owner or a transfer by foreclosure or deed in lieu of foreclosure.

### **Section 6. Enforcement.**

a) The Owner shall permit all duly authorized representatives of the Issuer to inspect any books and records of the Owner regarding the Project and the incomes of Qualifying Tenants which pertain to compliance with the provisions of this Agreement and Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder.

b) In addition to the information provided for in Section 3(i) hereof, the Owner shall submit any other information, documents or certifications reasonably requested by the Issuer, which the Issuer deems reasonably necessary to substantiate continuing compliance with the provisions of this Agreement and Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder.

c) The Issuer and the Owner each covenant that it will not take or permit to be taken any action within its control that it knows would adversely affect the exclusion of interest on the Note from the gross income of the owners thereof for purposes of federal income taxation pursuant to Section 103 of the Code. Moreover, each covenants to take any lawful action within its control (including amendment of this Agreement as may be necessary in the opinion of nationally recognized bond counsel selected by the Issuer) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations issued under Section 142(d) of the Code and affecting the Project.

d) The Owner covenants and agrees to inform the Issuer by written notice of any violation of its obligations hereunder within five days of first discovering any such violation. If any such violation is not corrected to the satisfaction of the Issuer within the period of time specified by either the Issuer, which shall be (i) the lesser of (A) 60 days after the effective date of any notice to or from the Owner, or (B) 75 days from the date such violation would have been discovered by the Owner by the exercise of reasonable diligence, or (ii) such longer period as may be necessary to cure such violation, provided bond counsel (selected by the Issuer) of nationally recognized standing in matters pertaining to the exclusion of interest on municipal bonds from gross income for purposes of federal income taxation issues an opinion that such extension will not result in the loss of such exclusion of interest on the Note, without further notice, the Issuer shall declare a default under this Agreement effective on the date of such declaration of default, and the Issuer shall apply to any, court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement, or any other remedies at law or in equity or any such other actions as shall be necessary or desirable so as to correct noncompliance with this Agreement.

e) The Owner and the Issuer each acknowledge that the primary purposes for requiring compliance with the restrictions provided in this Agreement are to preserve the exclusion of interest on the Note from gross income for purposes of federal income taxation, and that the Issuer, on behalf of the owners of the Note, who are declared to be third-party beneficiaries of this Agreement, shall be entitled for any breach of the provisions hereof, to all remedies both at law and in equity in the event of any default hereunder.

f) In the enforcement of this Agreement, the Issuer may rely on any certificate delivered by or on behalf of the Owner or any tenant with respect to the Project.

(g) Nothing in this Section shall preclude the Issuer from exercising any remedies it might otherwise have, by contract, statute or otherwise, upon the occurrence of any violation hereunder.

(h) Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any cure of any default made or tendered by one or more of the Owner's members shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

Section 7. Covenants to Run with the Land. The Owner hereby subjects the Project, and the units to the covenants, reservations and restrictions set forth in this Agreement. The Issuer and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants, reservations and restrictions running with the land to the extent permitted by law, and shall pass to and be binding upon the Owner's successors in title to the Project, the units, and the Property, throughout the term of this Agreement. Each and every contract, deed, mortgage, lease or other instrument hereafter executed covering or conveying the Project, the units, or any portion thereof or interest therein (excluding any transferee of a membership interest in the Owner), shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed, mortgage, lease or other instrument.

Section 8. Recording. The Owner shall cause this Agreement and all amendments and supplements hereto to be recorded in the conveyance and real property records of Cook County, Illinois, and in such other places as the Issuer may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

Section 9. Agents of the Issuer. The Issuer shall have the right to appoint agents to carry out any of its duties and obligations hereunder, and shall, upon written request, certify in writing to the other party hereto any such agency appointment.

Section 10. No Conflict with Other Documents. The Owner warrants and covenants that it has not and will not execute any other agreement with provisions inconsistent or in conflict with the provisions hereof (except documents that are subordinate to the provisions hereof), and the Owner agrees that the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth, which supersede any other requirements in conflict herewith.

Section 11. Interpretation. Any capitalized terms not defined in this Agreement shall have the same meaning as terms defined in the Funding Loan Agreement, the Borrower Loan Agreement or Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder.

Section 12. Amendment. Subject to any restrictions set forth in the Funding Loan Agreement, this Agreement may be amended by the parties hereto to reflect changes in Section 142(d) of the Code, the regulations hereafter promulgated thereunder and revenue rulings promulgated thereunder, or in the interpretation thereof.

Section 13. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 14. Notices. Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered and receipted for, or, if sent by private courier service or sent by overnight mail service, shall be deemed to have been given if and when received (unless the addressee refuses to accept delivery, in which case it shall be deemed to have been given when first presented to the

addressee for acceptance), or on the first day after

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being sent by telegram, or on the third day after being deposited in United States registered or certified mail, postage prepaid. Any such notice, demand or other communication shall be given as provided for in Section 11.1 of the Funding Loan Agreement.

Section 15. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, and where applicable, the laws of the United States of America.

Section 16. Limited Liability of Owner. Notwithstanding any other provision or obligation stated in or implied by this Agreement to the contrary, any and all undertakings and agreements of the Owner contained herein shall not (other than as expressly provided hereinafter in this paragraph) be deemed, interpreted or construed as the personal undertaking or agreement of, or as creating any personal liability upon, any past, present or future member of the Owner, and no recourse (other than as expressly provided hereinafter in this paragraph) shall be had against the property of the Owner or any past, present or future member of the Owner, personally or individually for the performance of any undertaking, agreement or obligation, or the payment of any money, under this Agreement or any document executed or delivered by or on behalf of the Owner pursuant hereto or in connection herewith, or for any claim based thereon. It is expressly understood and agreed that the Issuer and the registered owners of the Note, and their respective successors and assigns, shall have the right to sue for specific performance of this Agreement and to otherwise seek equitable relief for the enforcement of the obligations and undertakings of the Owner hereunder, including, without limitation, obtaining an injunction against any violation of this Agreement or the appointment of a receiver to take over and operate all or any portion of the Project in accordance with the terms of this Agreement. This Section shall survive termination of this Agreement.

[Signatures Appear on Following Page]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of the day and year first above written.

**CITY OF CHICAGO**

By: . L  
Jennie Huang Bennett, Chief Financial Officer

(SEAL) ATTEST:

Andrea M. Valencia, City Clerk

Signature Page to Land Use Restriction Agreement

Acknowledged and agreed to:

WHP-IID, LLC,  
an Illinois limited liability company

By: WHP-IID Manager, LLC,  
an Illinois limited liability company, its manager

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

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

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

**By.**  
Name: Richard J. Sciortino Title: President

By: Michaels Chicago Holding Company 2, LLC, an Illinois limited liability  
company, a member

By: \_  
Name: John J. O'Donnell Title: President

Signature Page to Land Use Restriction Agreement

STATE OF ILLINOIS )



COUNTY OF BURLINGTON )

L the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that John J. O'Donnell, personally known to me to be the president of Michaels Chicago Holding Company2, LLC, an Illinois limited liability company, a member of WHP-IID Manager, LLC, an Illinois limited liability company (the "Managing Member"), the managing member of WHP-IID, 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 Managing Member as the free and voluntary act of such person, and as the free and voluntary act and deed of the Managing Member and WHP-IID, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this          day of    , 2022.

(SEAL)

Notary Public

Signature Page to Land Use Restriction Agreement

STATE OF ILLINOIS COUNTY OF COOK

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)  
) ss: )

BEFORE ME, the undersigned authority, on this day personally appeared JENNIE HUANG BENNETT and ANDREA M. VALENCIA, the CHIEF FINANCIAL OFFICER and CITY CLERK, respectively, of the CITY OF CHICAGO, a municipal corporation and home rule unit of local government duly organized and validly existing under the Constitution and laws of the State of Illinois (the "Issuer"), known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that each executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of said Issuer.

GIVEN UNDER MY HAND and seal of office, this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

[SEAL]

Notary Public in and for the State of Illinois

My commission expires on:  
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 \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of WHP-IID Manager, LLC, an Illinois limited liability company ("Manager LLC"), the managing member of WHP-IID, LLC, an Illinois limited liability company (the "Owner"), 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 WHP-IID, LLC, on behalf of the Owner, as the free and voluntary act of such person, and as the free and voluntary act and deed of the WHP-IID Manager, LLC and the Owner, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Notary Public

(SEAL)

My commission expires on:

**EXHIBIT A**

**PROJECT LEGAL DESCRIPTION**

**[TO COME]**

**A-1**

**EXHIBIT B**

**INCOME COMPUTATION AND CERTIFICATION\***

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Development ("HUD") Regulations (24 CFR Part 5). You should make certain that this form is at all times up to date with HUD Regulations. All capitalized terms used herein shall have the meanings set forth in the Land Use Restriction Agreement, dated as of \_\_\_\_\_, 2022, among the City of Chicago and WHP-IID, LLC, an Illinois limited liability company (together with its successors and assigns, the "Owner").

Re: Westhaven Park IID Chicago, IL

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment project for which application is made. Listed below are the names of all persons who intend to reside in the unit:

Name of Members of the Household	Relationship to Head of Household	Age	Social Security Number	Employment	Place of
	HEAD				
	<u>SPOUSE</u>				

6. Total Anticipated Income. The total anticipated income, calculated in accordance with this paragraph 6, of all persons listed above for the 12-month period beginning the date that I/we plan to move into a unit (i.e., \_\_\_\_\_) is \$ \_\_\_\_\_. Included in the total anticipated income listed above are:

- a) the full amount, before payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- b) the net income from operation of a business or profession or net income from real or personal property (without deducting expenditures for business expansion or amortization or capital indebtedness); an allowance for depreciation of capital assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulation; include any withdrawal of cash or assets from the operation of a business or profession, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the above persons;
- c) interest and dividends (see 7(C) below);
- d) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar

\* The form of Income Computation and Certification shall be conformed to any amendments made to 24 CFR Part 5, or any regulatory provisions promulgated in substitution therefor.

types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment;

e) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

f) the amount of any public welfare assistance payment; if the welfare assistance payment includes any amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

i) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus

ii) the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities (if the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph 6(f) shall be the amount resulting from one application of the percentage);

g) periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from persons not residing in the dwelling; and

h) all regular pay, special pay and allowances of a member of the Armed Forces. Excluded from such anticipated total income are:

a) income from employment of children (including foster children) under the age of 18 years;

b) payment received for the care of foster children or foster adults;

c) lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;

d) amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

e) income of a live-in aide;

f) the full amount of student financial assistance paid directly to the student or to the educational institution;

g) special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

h) amounts received under training programs funded by the Department of Housing and Urban Development ("HUD");

## B-2

(i) amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(j) amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

- (k) a resident service stipend in a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the Owner, on a part-time basis, that enhances the quality of life in the Project, including, but not limited to, fire patrol, hall monitoring, lawn maintenance and resident initiatives coordination (no resident may receive more than one stipend during the same period of time);
- (l) compensation from state or local employment training programs in training of a family member as resident management staff, which compensation is received under employment training programs (including training programs not affiliated with a local government) with clearly defined goals and objectives, and which compensation is excluded only for the period during which the family member participates in the employment training program;
- (m) reparations payment paid by a foreign government pursuant to claims filed under the laws of that government for persons who were persecuted during the Nazi era;
- (n) earnings in excess of \$480 for each full-time student, 18 years or older, but excluding the head of household and spouse;
- (o) adoption assistance payments in excess of \$480 per adopted child;
- (p) deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;
- (q) amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- (r) amounts paid by a state agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;
- (s) temporary, nonrecurring or sporadic income (including gifts); and
- (t) amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply.

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7. Assets.

- (a) Do the persons whose income or contributions are included in Item 6 above:
  - i) have savings, stocks, bonds, equity in real property or other form of capital
  - i) investment (excluding the values of necessary items of personal property such as
  - i) furniture and automobiles, equity in a housing cooperative unit or in a
  - i) manufactured home in which such family resides, and interests in Indian trust
  - i) land)?

- ii) have they disposed of any assets (other than at a foreclosure or
- ii) bankruptcy sale) during the last two years at less than fair market value?
- ii) Yes No.

(b) If the answer to (i) or (ii) above is yes, does the combined total value of all such assets owned or disposed of by -all such persons total more than \$5,000?

Yes No.

(c) If the answer to (b) above is yes, state:

- i) the total value of all such assets: \$
- ii) the amount of income expected to be derived from such assets in the
- ii) 12-month period beginning on the date of initial occupancy of the unit that you
- ii) propose to rent: \$ ; and
- iii) the amount of such income, if any, that was included in Item 6 above:
- iii) \$\_ .

**8. Full-time Students.**

(a) Are all of the individuals who propose to reside in the unit full-time students? Yes No.

A full-time student is an individual enrolled as a full-time student (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended) during each of five calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 8(a) is yes, are at least two of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return? Yes No.

9. Relationship to Project Owner. Neither myself nor any other occupant of the unit I/we propose to rent is the Owner, has any family relationship to the Owner, or owns directly or indirectly any interest in the Owner. For purposes of this paragraph, indirect ownership by an

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individual shall mean ownership by a family member; ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. Reliance. This certificate is made with the knowledge that it will be relied upon by the Owner to determine maximum income for eligibility to occupy the unit and is relevant to the status under federal income tax law of the interest on obligations issued to provide financing for the apartment development for which application is being made. I/We consent to the disclosure of such information to the issuer of such obligations, the holders of such obligations, any fiduciary acting on their behalf and any authorized agent of the Treasury Department or the Internal Revenue Service. I/We declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable, and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

11. Further Assistance. I/We will assist the Owner in obtaining any information or documents required to verify the statements made herein, including, but not limited to, either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding two calendar years.

12. Misrepresentation. I/We acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Owner to lease the unit, and may entitle the Owner to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

[Signatures Appear on Following Page]

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I/We declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_\_\_ day  
of \_\_\_\_\_ in \_\_\_\_\_, Illinois.

Applicant Applicant

Applicant Applicant

[Signature of all persons over the age of 18 years listed in 2 above required.]

SUBSCRIBED AND SWORN to before me this        day of

(NOTARY SEAL)

Notary Public in and for the State of

My Commission Expires:

FOR COMPLETION BY APARTMENT OWNER ONLY: 1.

Calculation of eligible income:

- a. Enter amount entered for entire household in 6 above:
- b. (1) if the amount entered in 7(c)(i) above is greater than \$5,000. enter the total amount entered in 7(c)(ii), subtract from that figure the amount entered in 7(c)(iii) and enter the remaining balance (\$        );
- 2) multiply the amount entered in 7(c)(i) times the current passbook savings rate as determined by HUD to determine what the total annual earnings on the amount in 7(c)(ii) would be if invested in passbook savings (\$        ), subtract from that figure the amount entered in 7(c)(iii) and enter the remaining balance (\$        ); and
- 3) enter at right the greater of the amount calculated under (1) or (2) above:
- 3) \$        ,
- c. TOTAL ELIGIBLE INCOME (Line 1 .a plus line 1 .b(3)): \$

The amount entered in 1 .c is:

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Less than 80% of Median Gross Income for Area.\*\* More than 80% of Median Gross Income for the Area.!\\*\*

Number of apartment unit assigned:  
Bedroom Size: Rent: \$



The last tenants of this apartment unit for a period of 31 consecutive days [had/did not have] aggregate anticipated annual income, as certified in the above manner upon their initial occupancy of the apartment unit, of less than 80% of Median Gross Income for the Area.

Method used to verify applicant(s) income:

Employer income verification.

Copies of tax returns.

Other ( )

Owner or Manager

\*\* "Median Gross Income for the Area" means the median income for the area where the Project is located as determined by the Secretary of Housing and Urban Development under Section 8(0(3) of the United States Housing Act of 1937, as amended, or if programs under Section 8(0 are terminated, median income determined under the method used by the Secretary prior to the termination. "Median Gross Income for the Area" shall be adjusted for family size.

\*\*\* See footnote 2.

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**INCOME VERIFICATION**

**(for employed persons)**

The undersigned employee has applied for a rental unit located in a project financed by the City of Chicago. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages

Overtime

Bonuses

Commissions

Total current income

I hereby certify that the statements above are true and complete to the best of my knowledge.

Signature

Date Title

I hereby grant you permission to disclose my income to WHP-IID, LLC, an Illinois limited liability company, in order that it may determine my income eligibility for rental of an apartment located in one of its Project which has been financed by the City of Chicago.

Signature Date Please send to:

**B-8**  
**INCOME VERIFICATION**  
**(for self-employed persons)**

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding two calendar years and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

Signature Date

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**EXHIBIT C**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

The undersigned, on behalf of WHP-IID, LLC, an Illinois limited liability company (together with its successors and assigns, the "Owner\*"), hereby certifies as follows:

1. The undersigned has read and is thoroughly familiar with the provisions of the Land Use Restriction Agreement, dated as of \_\_\_\_\_, 2022 (the "Land Use Restriction Agreement"), between the City of Chicago and the Owner. All capitalized terms used herein shall have the meanings given in the Land Use Restriction Agreement.

2. Based on Certificates of Tenant Eligibility on file with the Owner, as of the date of this Certificate the following number of completed units in the Project (i) are occupied by Qualifying Tenants (as such term is defined in the Land Use Restriction Agreement), or (ii) were previously occupied by Lower-Income Tenants and have been vacant and not reoccupied except for a temporary period of no more than 31 days:

Occupied by Qualifying Tenants <sup>'''</sup>	No. of Units
Previously occupied by Qualifying Tenants (vacant and not reoccupied except for a temporary period of no more than 31 days):	No of Units

- 3. The total number of completed units in the Project is \_\_\_\_\_.
- 4. The total number in 2 is at least 40% of the total number in 3 above.

<sup>'''</sup> A unit all of the occupants of which are full-time students does not qualify as a unit occupied by Qualifying Tenants, unless one or more of the occupants was entitled to file a joint tax return.

5. No Event of Default (as defined in the Land Use Restriction Agreement) has occurred and is subsisting under the Land Use Restriction Agreement, except as set forth in Schedule A attached hereto.

WHP-IID, LLC,  
an Illinois limited liability company

By: WHP-IID Manager, LLC,  
an Illinois limited liability company, its manager

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

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

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

By:  
Name: Richard J. Sciortino Title: President

By: Michaels Chicago Holding Company 2, LLC, an Illinois  
limited liability company, a member

By:  
Name: John J. O'Donnell Title: President

CH2 25683880 4

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**Exhibit E**

**Form of Redevelopment Agreement**

See Attached.

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**Exhibit E**

**Form of Redevelopment Agreement**

See Attached.

E-1

return to:

Ranti B. Oseni  
Assistant Corporation Counsel City of Chicago Law  
Department 121 North LaSalle Street, Room 600 Chicago,  
IL 60602

## **WHP-IID. LLC REDEVELOPMENT AGREEMENT**

This WHP-IID, LLC Redevelopment Agreement (this "Agreement") is made as of this \_\_\_\_\_ of \_\_\_\_\_, 2022, by and among the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Planning and Development ("DPD"), WHP-IID, LLC, an Illinois limited liability company (the "WHP-IID" or "Owner"), and Michaels Community Services Corporation, a New Jersey not for profit corporation, doing business as Better Tomorrows ("Better Tomorrows" or "Sponsor"). WHP-IID and Better Tomorrows may collectively be referred to hereinafter as the "Developer Parties or Developer."

### **RECITALS**

A. Constitutional Authority: As a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "State"), the City has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

B. Statutory Authority: The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended from time to time (the "Act"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects.

C. City Council Authority: To induce redevelopment pursuant to the Act, the City Council of the City (the "City Council") adopted ordinances on February 16, 2000: (1) approving a redevelopment plan for the Central West Redevelopment Project Area (the "Redevelopment Plan"); (2) designating the Area as a Redevelopment Project Area pursuant to the Act; and (3) adopting tax increment allocation financing for the Area (the "TIF Adoption Ordinance") (items(1)-(3) collectively referred to herein as the "TIF Ordinances"). The redevelopment project area referred to above (the "Redevelopment Area") is legally described in Exhibit A hereto.

D. The Project: At closing, Sponsor will receive a leasehold interest pursuant to a Ground Lease (as hereinafter defined) donated by the Chicago Housing Authority (the "CHA") and subsequently assign such leasehold interest to Owner, and Owner shall assume such leasehold interest (the "Acquisition"), pursuant to an assignment and assumption of such Ground Lease (as hereinafter defined) for certain land located at approximately 145 North

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Damen Avenue aka 1951-59 West Lake Street in the Redevelopment Area and legally described on Exhibit B hereto (the "Property"), and within the time frames set forth in Section 3.01 hereof, the Developer Parties shall commence and complete the following activities (the "Project"): construction of a mixed-income, mixed-use multi-family development comprising 96 residential rental units, approximately 4,250 square feet of ground-floor commercial retail space, 16 parking spaces and community spaces for the residents in one elevator-serviced 12-story building with a 4-story component. The 96 residential units will be comprised of one- and two-bedroom units, of which 33 will be market-rate rental units with no income or rent restrictions and 63 shall be



for low- and moderate-income households earning between 50%-80% AMI (as defined below). Of the above-described 63 units, 38 units shall be reserved and made available to existing public housing individuals and families (with a right of return under the CHA's "Relocation Rights Contract") and eligible applicants from the CHA waitlist ("eligible CHA residents"). The Property is currently undeveloped and subject to the zoning requirements stated in Planned Development No. 1097 (including any approved amendment thereof, the "PD"). A site plan for the Project (the "Site Plan") is attached as Exhibit B-2. The completion of the Project would not reasonably be anticipated to occur without the financing contemplated in this Agreement.

E. Redevelopment Plan: The Project will be carried out in accordance with this Agreement, the PD, and the Redevelopment Plan as amended from time to time.

F. City Financing: The City agrees to use, in the amounts set forth in Section 4.03 hereof, Available Incremental Taxes (as defined below), to pay for or reimburse any of the Developer Parties for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement.

In addition, as described in Section 8.05 hereof, the City may, in its discretion, issue tax increment allocation bonds ("TIF Bonds") secured by Incremental Taxes (as defined herein) pursuant to a TIF bond ordinance (the "TIF Bond Ordinance"), the proceeds of which (the "TIF Bond Proceeds") may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Available Incremental Taxes, or in order to reimburse the City for the costs of TIF-Funded Improvements; provided, however, that any such amendments shall not have a material adverse effect on the Developer Parties or the Project; provided, further, that the proceeds of TIF Bonds issued on a tax-exempt basis cannot be used as a source of City Funds or to repay the City Funds.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1. RECITALS

The foregoing recitals are hereby incorporated into this Agreement by reference. The paragraph and section headings contained in this Agreement, including without limitation those set forth in the following table of contents, are for convenience only and are not intended to limit, vary, define or expand the content thereof. Developer Parties agree to comply with the requirements set forth in the following exhibits which are attached to and made a part of this Agreement. All provisions listed in the Exhibits have the same force and effect as if they had been listed in the body of this Agreement.

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Covenants/Representative  
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## SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

"Act" shall have the meaning set forth in the Recitals hereof.

"Acquisition" shall have the meaning set forth in the Recitals hereof.

"Actual Residents of the City" has the meaning defined for such phrase in Section 10.02(c).

"Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Developer Parties.

"Agreement" has the meaning defined in the Agreement preamble.

"AMI" shall mean Chicago-area median income, adjusted for family (as defined in 24 C.F.R. Part 5.403) size, as determined from time to time by HUD.

"Annual Compliance Report" shall mean a signed report from the Developer to the City (a) itemizing each of the Developer's obligations under the Agreement during the preceding calendar year, (b) certifying the Developer's compliance or noncompliance with such obligations, (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance and (d) certifying that the Developer is not in default with respect to any provision of the Agreement, the agreements evidencing the Lender Financing, if any, or

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any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) delivery of Financial Statements and unaudited financial statements (Section 8.12); (2) delivery of updated insurance certificates, if applicable (Section 13) ; (3) delivery of evidence of payment of Non-Governmental Charges, if applicable (Section 14) ; (4) compliance with all other executory provisions of the Agreement.

"Available Incremental Taxes" shall mean an amount equal to the Incremental Taxes deposited in the TIF Fund attributable to the taxes levied on the Redevelopment Area as of the date any payment is made under this Agreement to any of the Developer Parties and not pledged to the following prior obligations in the Redevelopment Area:

OBLIGATION	NOT TO EXCEED AMOUNT
IGA - CPD - Skinner Park - Fieldhouse - design	\$2,000,000
IGA - CPD - Touhy-Herbert Park -fieldhouse	\$3,500,000

"Available Project Funds" has the meaning defined for such phrase in Section 4.07(g). "Bonds" has the meaning defined in Section 8.05.

"Business Day" means any day other than Saturday, Sunday or a legal holiday in the State.

"Certificate" shall mean the Certificate of Completion of Construction described in Section 7.01 hereof.

"CHA" shall mean Chicago Housing Authority, an Illinois municipal corporation.

"CHA MTW/Capital Funds Loan" shall mean the construction/permanent loan from the CHA to the Owner, which is not provided from proceeds obtained pursuant to the syndication of Illinois Affordable Housing Tax Credits, in the original amount referenced on Exhibit B hereto.

"CHA LIHTC Units" shall mean the 35 units in the Project which shall be leased to eligible CHA residents by the Owner, and subject to the requirements of Section 42 of the Internal Revenue Code of 1986, as amended.

"CHA Units" shall mean the 3 units in the Project which shall be leased to eligible CHA residents by the Owner that are not governed by or subject to the requirements of Section 42 of the Internal Revenue Code of 1986, as amended.

"Change Order" shall mean any amendment or modification to the Scope Drawings, Plans and Specifications or the Project Budget as described in Section 3.03, Section 3.04 and Section 3.05, respectively.

"City Council" shall have the meaning set forth in the Recitals hereof.

"City Funds" shall mean the funds described in Section 4.03(b) hereof.

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"City Regulatory Agreements" means (1) that certain HOME Regulatory Agreement entered into on the date hereof by Owner and the City; (2) that certain Low Income Housing Tax Credit Regulatory Agreement entered into on the date hereof by Owner and the City; (3) that certain agreement entered into on the date hereof by one or more of the Developer Parties and the City.

"Closing Date" shall mean the date of execution and delivery of this Agreement by all parties hereto, which shall be deemed to be the date appearing in the first paragraph of this Agreement.

"Construction Contract" shall mean that certain contract entered into between certain of the Developer Parties and the General Contractor providing for construction of the Project.

"Corporation Counsel" shall mean the City's Office of Corporation Counsel.

"Davis-Bacon Act" shall mean 40 U.S.C. Section 276a et seq.

"Developer Parties" means, collectively, the Owner and Sponsor; "Developer Party" means any one of the Developer Parties.

"DOH" shall mean the City's Department of Housing and any successor agencies

"DPD" shall have the meaning defined in the Agreement preamble and any successor agencies.

"EDS" shall mean the City's Economic Disclosure Statement and Affidavit, on the City's then-current form, whether submitted in paper or via the City's online submission process.

"Employer(s)" shall have the meaning set forth in Section 10 hereof.

"Environmental Laws" shall mean any Federal, state, or local law, statute, ordinance, code, rule, permit, plan, regulation, license, authorization, order, or injunction which pertains to health, safety, any Hazardous Substance or Other Regulated Material, or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.; the Gasoline Storage Act, 430 ILCS 15/0.01 et seq.; the Sewage and Waste Control Ordinance of the Metropolitan Water Reclamation District of Greater Chicago ("MWRD"); the Municipal Code of the City of Chicago; and any other local, state, or federal environmental statutes, and all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

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"Equity" shall mean funds of the any of the Developer Parties (other than funds derived from Lender Financing) irrevocably available for the Project, in the amount set forth in Section 4.01 hereof, which amount may be increased pursuant to Section 4.06 (Cost Overruns) or Section 4.03(b).

"Escrow" shall mean the construction escrow established pursuant to the Escrow Agreement.

"Escrow Agreement" shall mean the Escrow Agreement establishing a construction escrow, entered into by the Title Company (or an affiliate of the Title Company), one or more of the Developer Parties, and the Developer's lenders.

"Event of Default" shall have the meaning set forth in Section 15 hereof.

"Existing Mortgages" has the meaning defined in Section 16.01.

"Financial Statements" shall mean complete audited financial statements of the Developer Parties prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods.

"General Contractor" shall mean the general contractor(s) hired by the one or more of the Developer Parties pursuant to Section 6.01.

"Governmental Charge" shall have the meaning defined in Section 8.18(a).

"Ground Lease" shall mean a ground lease for the Property for a period not more than 99 years between the CHA and Better Tomorrows, as assigned, assumed and amended by and among CHA, Owner, and Sponsor.

"Hazardous Materials" shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Law, or any pollutant or contaminant, and shall include, but not be limited to, petroleum (including crude oil), any radioactive material or by-product material, polychlorinated biphenyls and asbestos in any form or condition.

"HUD" shall mean the United States Department of Housing and Urban Development. "Human Rights Ordinance" has the meaning defined in Section 10.01(a). "IEPA" shall mean the Illinois Environmental Protection Agency. "In Balance" shall have the meaning defined in Section 5.16(g).

"Incremental Taxes" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the TIF Fund

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established pursuant to the TIF Adoption Ordinance to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

"Indemnitee" and "Indemnites" have the respective meanings defined in Section 13.01.

"Lender Financing" shall mean funds borrowed by the Owner from lenders and irrevocably available to pay for Costs of the Project, in the amount set forth in Section 4.01 hereof and on Exhibit H The loans will be secured by, among other things, mortgages on the Property.

**"MBE(s)" has the meaning defined in Section 10.03**

**"MBE/WBE Program" has the meaning defined in Section 10.03.**

"Municipal Code" shall mean the Municipal Code of the City of Chicago.

"NFR Letter" shall mean a No Further Remediation Letter issued by the IEPA.

"Non-Governmental Charges" shall mean all non-governmental charges, liens, claims, or encumbrances relating to the Developer Parties, the Property or the Project.

"Owner" shall have the meaning defined in the Agreement preamble.

"Permitted Liens" shall mean those liens and encumbrances against the Property and/or the Project set forth on Exhibit G hereto.

"PD" shall have the meaning defined in the Recitals hereof.

"Plans and Specifications" shall mean final construction documents containing a site plan and working drawings and specifications for the Project, as submitted to the City as the basis for obtaining building permits for the Project.

"Prior Expenditure(s)" shall have the meaning set forth in Section 4.05(a) hereof.

"Procurement Program" shall have the meaning defined in Section 10.03.

"Project" shall have the meaning set forth in the Recitals hereof.

"Project Budget" shall mean the budget attached hereto as Exhibit H, showing the total cost of the Project by line item, furnished by the Developer Parties to DPD, in accordance with Section 3.03 hereof.

"Property" shall have the meaning set forth in the Recitals hereof.

"Redevelopment Plan" shall have the meaning set forth in the Recitals hereof.

"Redevelopment Project Costs" shall mean redevelopment project costs as defined in Section 5/11-74.4-3(q) of the Act that are included in the budget set forth in the Redevelopment Plan or otherwise referenced in the Redevelopment Plan.

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"Requisition Form" shall mean the document, in the form attached hereto as Exhibit K, to be delivered by the Developer to DPD pursuant to Section 4.04 of this Agreement.

"Senior Lender" shall mean BMO Harris Bank N.A., a national banking association, or such entity as may be acceptable to the Commissioner of DOH.

"Scope Drawings" shall mean preliminary construction documents containing a site plan and preliminary drawings and specifications for the Project.

"Sponsor" shall have the meaning defined in the Agreement preamble.

"State" shall mean the State of Illinois as defined in the recitals.

"Survey" shall mean a plat of survey in the most recently revised form of ALTA/NSPS land title survey of the Property, meeting the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, effective February 23, 2021, dated within 75 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the construction of the Project and related improvements as required by the City or lender(s) providing Lender Financing).

"Term of the Agreement" shall mean the period commencing on the Closing Date and ending on the date that is the thirty (30) year anniversary of the issuance of the Certificate.

"TIF Adoption Ordinance" shall have the meaning set forth in the Recitals hereof.

"TIF Bonds" shall have the meaning set forth in the Recitals hereof.

"TIF Bond Ordinance" shall have the meaning set forth in the Recitals hereof.

"TIF Bond Proceeds" shall have the meaning set forth in the Recitals hereof.

"TIF Fund" shall mean the special tax allocation fund created by the City pursuant to the TIF Adoption Ordinance in connection with the Area into which the Incremental Taxes will be deposited.

"TIF-Funded Improvements" shall mean those improvements of the Project which (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Redevelopment Plan and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement. Exhibit C lists the TIF-Funded Improvements for the Project.

"TIF Ordinances" shall have the meaning set forth in the Recitals hereof.

"Title Company" shall mean Greater Illinois Title Company.

"Title Policy" means a leasehold title insurance policy in the most recently revised ALTA or equivalent form, showing Owner as the insured, noting the recording of this Agreement as an

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encumbrance against the Property, and a subordination agreement in favor of the City with respect to previously recorded liens against the Project related to Lender Financing, if any, issued by the Title Company.

"WARN Act" shall mean the Worker Adjustment and Retraining Notification Act (29 U.S.C. Section 2101 et seq.).

"WBEfsV has the meaning defined in Section 10.03.

### **SECTION 3. THE PROJECT**

1 The Project. With respect to the Project, the Owner will: (i) begin redevelopment construction no later than six (6) months after the Closing Date, and (ii) complete redevelopment construction no later than twenty-four (24) months after the commencement of construction.

2 Scope Drawings and Plans and Specifications. The Developer Parties have delivered the Scope Drawings and Plans and Specifications to DPD and DOH and each has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DPD and DOH as a Change Order pursuant to Section 3.04 hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations. The Developer Parties shall submit all necessary documents to the City's Department of Buildings, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3 Project Budget. The Developer Parties have furnished to DPD and DOH, and each has approved, a Project Budget showing total costs for the Project in the approximate amount of not less than \$49,555,388. The Developer Parties hereby certify to the City that together with the City Funds (a) it has Lender Financing and Equity in an amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to DPD and DOH

certified copies of any Change Orders with respect to the Project Budget for approval pursuant to Section 3.04 hereof.

3.04 Change Orders. All Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project must be submitted by Developer Parties to DOH for DOH's prior written approval. The Developer Parties shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer Parties of DOH's written approval (to the extent said City prior approval is required pursuant to the terms of this Agreement). The Construction Contract, and each contract between one or more of the Developer Parties and any contractor, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer Parties.

3.05 DPD/DOH Approval. Any approval granted by DPD and/or DOH of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this

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Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by DPD or DOH pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

6 Other Approvals. Any DPD and/or DOH approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, the Owner's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals) hereof. The Owner shall not commence construction of the Project until the Owner has obtained all necessary permits and approvals (including but not limited to DPD and/or DOH approval of the Scope Drawings and Plans and Specifications) and proof of the General Contractor's and each subcontractor's bonding as required hereunder.

7 Progress Reports and Survey Updates. After the Closing Date, the Developer Parties shall provide DPD and/or DOH with written quarterly construction progress reports detailing the status of the Project, including a revised completion date, if necessary (with any delay in completion date being considered a Change Order, requiring DPD and/or DOH's written approval under Section 3.04). Developer Parties must also deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of Section 8.08 (Prevailing Wage), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer Parties' MBE/WBE Commitment). If the reports reflect a shortfall in compliance with the requirements of Sections 8.08, 10.02 and 10.03, then there must also be included a written plan from Developer Parties acceptable to DPD and/or DOH to address and cure such shortfall. At Project completion, Developer Parties shall provide three (3) copies of an updated Survey to DPD and/or DOH upon the request of DPD and/or DOH or any lender providing Lender Financing, reflecting improvements made to the Property.

8 Inspecting Agent or Architect. The independent agent or architect (other than Developer Parties' architect) selected by the lender providing Lender Financing will also act as the inspecting agent or architect for DPD for the Project, and any fees and expenses connected with its work or incurred by such independent agent or architect must be promptly paid by Developer Parties. The inspecting agent or architect will perform periodic inspections with respect to the Project, providing written certifications with respect thereto to DPD, prior to requests for disbursements for costs related to the Project.



9 Barricades. Prior to commencing any construction requiring barricades, the Owner shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. The City retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

10 Signs and Public Relations. The Owner shall erect a sign of size and style approved by the City in a conspicuous location on the Property during the Project, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding the Developer Parties, the Property and the Project in the City's promotional literature and communications.

11 Utility Connections. The Owner may connect all on-site water, sanitary, storm and sewer lines constructed on the Property to City utility lines existing on or near the perimeter

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of the Property, provided the Owner first complies with all City requirements governing such connections, including the payment of customary fees and costs related thereto.

3.12 Permit Fees. In connection with the Project, the Owner shall be obligated to pay only those building, permit, engineering, tap on and inspection fees that are assessed on a uniform basis throughout the City and are of general applicability to other property within the City.

#### SECTION 4. FINANCING

1 **Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$49,555,388, to be applied in the manner stated in the Project Budget and funded from sources identified in Exhibit H-1**

2 Developer Funds. Equity, the City Funds and Lender Financing will be used to pay all Project costs, including but not limited to costs of TIF-Funded Improvements.

3 **City Funds.**

a) Uses of City Funds. City Funds may only be used to pay directly or reimburse the Developer Parties for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit C sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to Sections 4.03(b) and 4.05(b)), contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost: Better Tomorrows shall be required to loan or contribute any City Funds paid to Better Tomorrows to the Owner to reimburse the Owner for the costs of TIF-Funded Improvements or directly pay for the costs of the TIF-Funded Improvements.

b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City hereby agrees to provide up to \$10,000,000 of City funds (the "City Funds") from Available Incremental Taxes to pay for or reimburse the Developer Parties for the costs of the TIF-Funded Improvements; provided, however, that the total amount of City Funds expended for TIF-Funded Improvements shall be an amount not to exceed Ten Million Dollars (\$10,000,000); and provided further, that the \$10,000,000 to be derived from Available Incremental Taxes, if any, shall be available to pay costs related to TIF-Funded Improvements and allocated by the City for that purpose only so long as the amount of the Available Incremental Taxes deposited into the TIF Fund shall be sufficient to pay for such costs and the City has been reimbursed from Available Incremental Taxes for the amount previously

disbursed by the City for TIF-Funded Improvements.

The Developer Parties acknowledge and agree that the City's obligation to pay for TIF-Funded Improvements up to a maximum of \$10,000,000 is contingent upon the fulfillment of the conditions set forth above. In the event that such conditions are not fulfilled, the amount of Equity to be contributed by the Developer Parties pursuant to Section 4.01 hereof shall increase proportionately.

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(c) Disbursement of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03, Section 4.04, Section 4.07, and Section 5 hereof, the City shall disburse the City Funds in four (4) payments as follows:

- (i) The first installment of City Funds in the amount of \$3,333,333 shall be paid upon the completion of 33% of the construction of the Project based upon the amount of actual Project costs incurred in relation to the Project Budget as certified to the City in a Requisition Form with required supporting documentation;
- (ii) The second installment of City Funds in the amount of \$3,333,333 shall be paid upon the completion of 66% of the construction of the Project based upon the amount of actual Project costs incurred in relation to the Project Budget as certified to the City in a Requisition Form with supporting documentation with required supporting documentation;
- iii) The third installment of City Funds in the amount of \$1,666,667 shall be paid upon the completion of 100% of the construction of the Project based upon the amount of actual Project costs incurred in relation to the Project Budget as certified to the City in a Requisition Form with required supporting documentation; and
- iv) The fourth installment of City Funds in the amount of \$1,666,667 shall be paid upon issuance of the Certificate.

4.04 Construction Escrow; Requisition Form. The City and the Developer Parties hereby agree to enter into the Escrow Agreement. All disbursements of Project funds shall be made through the funding of draw requests with respect thereto, or as otherwise set forth pursuant to the Escrow Agreement and this Agreement. The City must receive copies of all draw requests and related documents submitted to the Title Company. The Developer shall submit a Requisition Form to DOH prior to each disbursement of City Funds per Section 4.03 above and DOH shall respond to Developer's Requisition Form within forty-five (45) days. Requisition for reimbursement of TIF-Funded Improvements shall be made not more than one time per month (or as otherwise permitted by DOH). DOH shall approve disbursements of the City Funds from the Escrow. If required, the Developer shall meet with DOH upon request to discuss the Requisition Forms previously delivered. In case of any conflict between the terms of this Agreement and the Escrow Agreement, the terms of this Agreement shall control.

Developer, DOH and DPD agree that Senior Lender has provided or is providing loans to the Owner to bridge the City Funds and that accordingly Owner hereby directs that City Funds payable pursuant to Section 4.03(c)(iii) and (iv) shall be wired to the account established by Owner at Senior Lender. The wire instructions for such account shall be provided to the City by the Owner

#### **4.05 Treatment of Prior Expenditures and Subsequent Disbursements.**

(a) Prior Expenditures. Only those expenditures made by any of the Developer Parties with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budget, shall be considered previously contributed Equity or Lender

Financing hereunder (the "Prior Expenditures"). DPD has the right, in its sole discretion, to disallow any such expenditure (not listed on Exhibit F) as a Prior Expenditure as of the date hereof. Exhibit F hereto sets forth the prior expenditures approved by DPD as Prior Expenditures. Prior Expenditures made for items

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other than TIF-Funded Improvements shall not be reimbursed to any of the Developer Parties by the City with City Funds but may be eligible for reimbursement through the Lender Financing and/or Equity identified in Section 4.01.

(b) Allocation Among Line Items. Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line only, with transfers of costs and expenses from one line item to another, without the prior written consent of DPD or DOH, being prohibited.

6 Cost Overruns. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to Section 4.03, or if the cost of completing the Project exceeds the Project Budget, the Developer shall be solely responsible for such excess cost, and shall hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and of completing the Project.

7 Preconditions of Disbursement. Prior to each disbursement of City Funds hereunder, one or more of the Developer Parties shall submit documentation regarding the applicable expenditures to DPD which shall be satisfactory to DPD in its sole discretion. The construction monitoring and compliance unit of DOH shall verify the percentage of construction completion. Delivery by one or more of the Developer Parties to DPD of any request for disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

a) the total amount of the Requisition Form represents the actual cost of the actual amount payable to (or paid to) the contractors who have performed work on the Project, and/or their payees, and/or (ii) the architect for the inspections performed in monitoring the construction of the Project;

b) all amounts shown as previous payments on the current Requisition Form have been paid to the parties entitled to such payment;

c) the Developer has approved all work and materials for the current Requisition Form, and such work and materials conform to the Plans and Specifications;

d) the representations and warranties contained in this Redevelopment Agreement are true and correct and the Developer Parties are in compliance with all covenants contained herein;

e) none of the Developer Parties have received notice and have no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens;

f) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred; and

g) the Project is In Balance. The Project shall be deemed to be in balance ("In Balance") only if the total of the Available Project Funds (as defined hereinafter) equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. "Available Project Funds" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the

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undisbursed Equity and (iv) any other amounts deposited by any of the Developer Parties pursuant to this Agreement. The Developer Parties hereby agrees that, if the Project is not In Balance, the Developer Parties shall, within 10 days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the Developer Parties to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Developer Parties. In addition, the Developer Parties shall have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements set forth in the TIF Bond Ordinance, if any, the TIF Bonds, if any, the TIF Ordinances, this Agreement and/or the Escrow Agreement.

#### **4.08 Sale or Transfer of the Property or Project by Owner.**

a) Prior to the Date of Issuance of the Certificate. Subject to Sections 4.08(b) and 16 below, Owner must obtain the prior approval of the City for any sale or transfer of any part of the Property or the Project prior to the issuance of the Certificate. Such approval by the City will be subject to the reasonable discretion requirement stated in Section 18.14.

b) After the Date of Issuance of the Certificate. After the date of the Certificate, Owner need not obtain prior approval for any sale or transfer of any part of the Property or the Project. Owner must, however, notify the City not less than 60 days before any closing of such sale of Owner's intention to sell any part of the Property or the Project. Owner must provide the City with true and correct copies of any contract for sale and related documents as part of such notice.

c) Sales of Assets or Equity. For purposes of this Section 4.08, the phrase: "sale or transfer of any part of the Property or Project" includes any sales or transfers which are a part of the sale or transfer of all or substantially all of the Owner's assets or equity. The foregoing restrictions of this Section 4.08 do not apply to: (i) transfers of the Ground Lease; (ii) any dedications or easements required by the subdivision, PD or applicable law; and (iii) transfers or pledges made to secure Lender Financing.

9 Conditional Grant. The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer Parties' compliance with the provisions of this Agreement. The City Funds disbursed are subject to being reimbursed upon the Developer Parties' noncompliance with the provisions of this Agreement.

10 TIF Bonds. The Commissioner of DPD may, in his or her sole discretion, recommend that the City Council approve an ordinance or ordinances authorizing the issuance of TIF Bonds in an amount which, in the opinion of the City Comptroller, is marketable under the then current market conditions. The costs of issuance of the TIF Bonds would be borne solely by the City. Developer Parties will cooperate with the City in the issuance of the TIF Bonds, as provided in Section 8.05.

4.11 Permitted Transfers. Notwithstanding anything herein to the contrary, City will permit (i) the investor member to remove the managing member as the managing member of the Owner, in accordance with the Owner's operating agreement (the "Operating Agreement"), provided the substitute managing member is

acceptable to City in its reasonable discretion and the City provides its written consent (except no consent of the City shall be required under this Agreement if the substitute general partner is an affiliate of the investor member); (ii) the managing member to pledge to a Lender that is providing Lender Financing all of the managing member's rights, title and interest in and to the Developer Parties and under the Operating Agreement as collateral for the Developer Parties' obligations under the loans made or to be made by the Lender to Developer Parties; (iii) a transfer by the investor member of its member interest after the Closing Date to an unaffiliated entity with the prior written consent of the City; provided, however, that the prior written consent of DPD shall not be required for a transfer by the investor member of its member interest after the Closing Date to an affiliated entity or an affiliate of investor member, but prior written notice to DPD is required; (iv) a transfer pursuant to a foreclosure, deed in lieu of foreclosure or similar action, of the senior mortgage; (v) a transfer pursuant to a CHA Right of First Refusal Agreement; and (vi) the transfer of the Project to the managing member pursuant to the relevant section(s) of the Operating Agreement, but prior written notice to DOH is required.

### SECTION 5. CONDITIONS PRECEDENT

The following conditions precedent to closing must be complied with to the City's satisfaction within the time periods set forth below or, if no time period is specified, prior to the Closing Date:

1 Project Budget. The Owner has submitted to DPD and DOH, and DPD and DOH have approved, a Project Budget in accordance with the provisions of Section 3.03 hereof.

2 Scope Drawings and Plans and Specifications. The Owner has submitted to DPD and DOH, and DPD and DOH have approved, the Scope Drawings and Plans and Specifications in accordance with the provisions of Section 3.02 hereof.

3 Other Governmental Approvals. The Owner has secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to DPD and DOH.

4 Financing. The Developer Parties have furnished proof reasonably acceptable to the City that the Developer Parties have Equity and Lender Financing in the amounts set forth in Section 4.01 hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing, the Developer Parties have furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Developer Parties as needed and are sufficient (along with the Equity and other sources set forth in Exhibit H-1) to complete the Project. Any liens against the Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a subordination agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of the Developer, with the Recordings Division of the Cook County Clerk.

5 Acquisition and Title. On the Closing Date, the Owner has furnished the City with a copy of the Title Policy for the Property, certified by the Title Company, showing the Owner as

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the named insured. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on Exhibit G hereto and evidences the recording of this Agreement pursuant to the provisions of Section 8.18 hereof. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including, but not limited to: an owner's comprehensive endorsement and satisfactory endorsements regarding zoning, contiguity, location, access and survey. The Owner has provided to DPD and DOH on or prior to the Closing Date certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPD and DOH's satisfaction, by the Title Policy and any endorsements thereto.

5.06 Evidence of Clean Title. Not less than five (5) Business Days prior to the Closing Date, Developer Parties, at their own expense, will have provided the City with current searches under the names of each of the entities comprising Developer Parties showing no liens against Developer Parties, the Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens:

Secretary of State  
Secretary of State  
Cook County Clerk  
Cook County Clerk  
Cook County Clerk  
U.S. District Court  
Clerk of Circuit Court, Cook County  
UCC search  
Federal tax lien search  
UCC search  
Fixtures search  
Federal tax lien search  
State tax lien search  
Memoranda of judgments search  
Pending suits and judgments  
Pending suits and judgments

7 Surveys. The Owner has furnished the City with three (3) copies of the Survey.

8 Insurance. The Owner, at its own expense, has insured the Property in accordance with Section 12 hereof, and has delivered certificates required pursuant to Section 12 hereof evidencing the required coverages to DPD and DOH.

9 Opinion of the Developer Parties' Counsel. On the Closing Date, the Developer Parties have furnished the City with an opinion of counsel, substantially in the form attached hereto as Exhibit J, with such changes as required by or acceptable to Corporation Counsel. If any of the Developer Parties have engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions set forth in Exhibit J hereto, such opinions were obtained by the Developer Parties from their general corporate counsel.

10 Evidence of Prior Expenditures. One or more of the Developer Parties have provided evidence satisfactory to DPD and DOH in its sole discretion of the Prior Expenditures in accordance with the provisions of Section 4.05(a) hereof.

11 Financial Statements. The Developer Parties shall provide Financial Statements to DPD and DOH for their most recent fiscal year, and audited or unaudited interim financial statements.

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**12 Additional Documentation. The Developer Parties have provided documentation to DPD and DOH, satisfactory in form and substance to DPD and DOH, with respect to current employment matters including the reports described in Section 8.06.**

13 Environmental. The Developer has provided DPD and DOH with copies of that all phase I environmental audits completed with respect to the Property and any phase II environmental audit with respect to the Property required by the City. The Developer has provided the City with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits. If environmental issues exist on the Property, the City will require a Final NFR Letter from the Illinois Environmental Protection Agency

("IEPA") that all identified environmental issues have been or will be resolved to its satisfaction. [Owner acknowledges that the City will not issue a Certificate until the IEPA has issued, the City has approved, and the Owner has recorded with the Office of the Recordings Division of the Cook County Clerk a Final NFR Letter for the Property, which approval shall not be unreasonably withheld.]

14 Entity Documents; Economic Disclosure Statement. Each Developer Party shall provide a copy of its articles or certificate of incorporation or organization containing the original certification of the Secretary of State of its state of incorporation; certificates of good standing from the Secretary of State of its state of incorporation or organization and all other states in which it is qualified to do business; a secretary's or member's certificate in such form and substance as the Corporation Counsel may require; bylaws or operating agreement; and such other organizational documentation as the City has requested.

Each of the Developer Parties has provided to the City an EDS, dated as of the Closing Date, which is incorporated by reference, and Developer Parties further will provide any other affidavits or certifications as may be required by federal, state or local law in the award of public contracts, all of which affidavits or certifications are incorporated by reference. Notwithstanding acceptance by the City of the EDS, failure of the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Developer Parties and any other parties required by this Section 5.14 to complete an EDS must promptly update their EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate, including changes in ownership and changes in disclosures and information pertaining to ineligibility to do business with the City under Chapter 1-23 of the Municipal Code, as such is required under Sec. 2-154-020, and failure to promptly provide the updated EDS(s) to the City will constitute an event of default under this Agreement.

15 Litigation. The Developer Parties have provided to Corporation Counsel, DPD and DOH, a description of all pending or threatened litigation or administrative proceedings involving the Developer Parties, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

## SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for Contractors. Prior to entering into an agreement with any contractor for construction of the Project, the Developer Parties shall solicit bids from one or more qualified contractors eligible to do business with the City of Chicago, and shall submit all bids received to DOH for its inspection and written approval. For the TIF-Funded Improvements, the Developer Parties shall select the contractor submitting the lowest

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responsible and responsive bid who can complete the Project in a timely manner. If the Developer Parties select any contractor submitting other than the lowest responsible and responsive bid for the TIF-Funded Improvements, the difference between the lowest responsible and responsive bid and the bid selected may not be paid out of City Funds. The Developer Parties shall submit copies of the Construction Contract to DOH in accordance with Section 6.02 below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DOH within five (5) Business Days of the execution thereof. The Developer Parties shall ensure that no contractors shall begin work on the Project until the Plans and Specifications have been approved by DOH and all requisite permits have been obtained.

2 Construction Contract. Prior to the execution thereof, the Owner shall deliver to DOH a copy of the proposed Construction Contract with the General Contractor selected to handle the Project in accordance with Section 6.01 above, for DOH's prior written approval. Within ten (10) Business Days after execution of

such contract by Developer Parties, the General Contractor and any other parties thereto, Developer Parties must deliver to DOH and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

3 Performance and Payment Bonds. Prior to commencement of construction of any portion of the Project, Developer Parties shall require that the General Contractor be bonded for its performance and payment by sureties having an AA rating or better using the American Institute of Architects' Form No. A311 or its equivalent. Prior to commencement of construction of any work in the public way, Developer Parties will require that the General Contractor and any applicable subcontractor(s) be bonded (as to such work in the public way) for their respective payment and performance by sureties having an AA rating or better. The City will be named as obligee or co-obligee on such bond.

4 Employment Opportunity. Developer Parties will contractually obligate and cause the General Contractor to agree and contractually obligate each subcontractor,<sup>^</sup> agree to the provisions of Section 10; provided, however, that the contracting, hiring and testing requirements associated with the MBEAA/BE and the City resident obligations in Section 10 shall be applied on an aggregate basis and the failure of the General Contractor to require each subcontractor to satisfy or the failure of any one subcontractor to satisfy, such obligation shall not result in a default or a termination of this Agreement or require payment of the City resident hiring shortfall amounts so long as such Section 10 obligations are satisfied on an aggregate basis.

5 Other Provisions. In [addition to the requirements of this Section 6, the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to Section 3.04 (Change Orders), Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Employment Requirement), Section 10.03 (MBEAA/BE Requirements, as applicable), Section 12 (Insurance) and Section 14.01 (Books and Records) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DOH within five (5) Business Days of the execution thereof.

## SECTION 7. COMPLETION OF CONSTRUCTION

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7.01 Certificate of Completion of Construction. Upon completion of the construction of the Project in accordance with the terms of this Agreement, and upon the Developer Parties' written request, DPD shall issue to the Developer Parties a Certificate, in recordable form certifying that the Developer Parties have fulfilled their obligation to complete the Project in accordance with the terms of this Agreement. DPD shall respond to the Developer Parties' written request for a Certificate within forty-five (45) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer Parties in order to obtain the Certificate. The Developer Parties may resubmit a written request for a Certificate upon completion of such measures. DPD shall not issue a Certificate until all of the following conditions are met by the Developer Parties:

- i. Receipt of a Certificate of Occupancy or other evidence acceptable to DPD that the Developer Parties have complied with building permit requirements for the Project;
- ii. The Project, including all residential units, commercial space, environmental features, and all related improvements, has been completed and constructed substantially according to the Plans and Specifications as evidenced by an affidavit provided by the Owner as evidenced by



- AIA Form G702, and the architect of record has issued a certificate of substantial completion;
- iii. Evidence that the Developer Parties have incurred TIF-eligible costs, in an equal amount to, or greater than, \$10,000,000;
  - iv. The City's monitoring and compliance unit has verified that, at the time the Certificate is issued, the Developer Parties are in full compliance with City requirements set forth in Section 10 and Section 8.06 (M/WBE, City Residency and Prevailing Wage) with respect to construction of the Project, and that 100% of the Developer Parties' MBEEA/BE Commitment in Section 10.03 have been fulfilled;
  - v. There exists neither an Event of Default (after any applicable cure period) which is continuing nor a condition nor event which, with the giving of notice or passage of time or both, would constitute an Event of Default as evidenced by an affidavit provided by the Developer and accepted by the City;
  - vi. Evidence in the form of an affidavit provided by the architect of record certifying that the Project will achieve at least one hundred (100) points in connection with the provisions and requirements of the Chicago Sustainable Development Policy.

7.02 Effect of Issuance of Certificate; Continuing Obligations. The Certificate relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to the Developer Parties' obligation to complete such activities have been satisfied. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at Sections 8.02, 8.06, 8.18 and 8.19 as covenants that run with the leasehold estate are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a

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Certificate; provided, that upon the issuance of a Certificate, the covenants set forth in Section 8.02 shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Developer Parties or a permitted assignee of the Developer Parties who, pursuant to Section 18.15 of this Agreement, has contracted to take an assignment of the Developer Parties' rights under this Agreement and assume the Developer Parties' liabilities hereunder.

3 Failure to Complete. If the Developer Parties fail to complete the Project in accordance with the terms of this Agreement, then the City has, but shall not be limited to, any of the following rights and remedies, subject in each case to Section 15 hereof:

a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed pursuant hereto;

b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. In the event that the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available pursuant to Section 4.01, the Developer Parties shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

c) the right to seek reimbursement of the City Funds from the Developer Parties.

4 Notice of Expiration of Term of Agreement. Upon the expiration of the Term of the Agreement, DPD will provide Developer Parties, at their written request, with a written notice in recordable form stating that the Term of the Agreement has expired.

## **SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE DEVELOPER PARTIES.**

8.01 General. The Developer Parties represent, warrant and covenant, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that:

a) each of the Developer Parties is an Illinois limited liability company duly organized, validly existing, and/or qualified to do business in Illinois, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required;

b) each of the Developer Parties have the right, power and authority to enter into, execute, deliver and perform this Agreement;

c) the execution, delivery and performance by each of the Developer Parties of this Agreement has been duly authorized by all necessary corporate action, as applicable, and does not and will not violate its organizational documents, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the any one of the Developer Parties is now a party or by which any one of the Developer Parties is now or may become bound;

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d) Owner shall acquire and shall maintain a good, indefeasible and merchantable leasehold interest in the Property (and a fee interest in all improvements thereon) free and clear of all liens (except for the Permitted Liens, Lender Financing as disclosed in the Project Budget and non-governmental charges that the Developer is contesting in good faith pursuant to Section 8.18 hereof);

e) the Developer Parties are now and for the Term of the Agreement shall remain solvent and able to pay their debts as they mature;

f) there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Developer Parties which would impair their ability to perform under this Agreement;

g) the Developer Parties have and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary for Owner to conduct its business and to construct, complete and operate the Project;

h) the Developer Parties are not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which any one of the Developer Parties is a party or by which any one of the Developer Parties is bound;

(i) the Financial Statements, when hereafter required to be submitted, will be, complete,

correct in all material respects and accurately present the assets, liabilities, results of operations

and financial condition of the Developer Parties, and there has been no material adverse change in the assets, liabilities, results of operations or financial condition of any one of the Developer Parties since the date of such Developer Parties most recent Financial Statements;

(j) prior to the issuance of a Certificate, the Developer Parties shall not do any of the following without the prior written consent of DPD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business or pursuant to the terms of the Ground Lease or in accordance with Section 4.09; (3) enter into any transaction outside the ordinary course of the Developer Parties' business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity (except as required in connection with Lender Financing for the Project); or (5) enter into any transaction that would cause a material and detrimental change to the Developer Parties' financial condition;

(k) the Developer Parties have not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget; and

(l) Developer Parties have not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("City

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Contract") as an inducement for the City to enter into the Agreement or any City Contract with any one of the Developer Parties in violation of Chapter 2-156-120 of the Municipal Code of the City; and

(m) none of the Developer Parties nor any Affiliate of the Developer Parties is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

2 Covenant to Redevelop. Upon DPD and DOH's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in Sections 3.02 and 3.03 hereof, and the Owner's receipt of all required building permits and governmental approvals, the Developer Parties shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Developer Parties. The covenants set forth in this Section 8.02 will run with the leasehold estate and will be binding upon any transferee of the Property, or a portion thereof, unless terminated in whole or in

part by the City, acting through DPD, pursuant to a written instrument executed pursuant to Section 7.02 and recorded against the Property, or any portion thereof.

3 Redevelopment Plan. The Developer Parties represent that the Project is and shall be in compliance with all of the terms of the Redevelopment Plan, which is hereby incorporated by reference into this Agreement.

4 Use of City Funds. City Funds disbursed to any of the Developer Parties shall be used by the Developer Parties solely to pay for (or to reimburse the Developer Parties for their payment for) the TIF-Funded Improvements as provided in this Agreement. If the City pays any of the City Funds to Better Tomorrows, Better Tomorrows shall be required to loan or contribute the City Funds to the Developer, to reimburse the Developer for the costs of TIF-Funded Improvements or directly pay for the costs of the TIF-Funded Improvements.

5 TIF Bonds. The Developer Parties shall, at the request of the City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) TIF Bonds in connection with the Redevelopment Area, the proceeds of which may be used to reimburse the City for expenditures made in connection with, or provide a source of funds for the payment for, the TIF-Funded Improvements; provided, however, that any such amendments shall not have a material adverse effect on the Developer Parties or the Project; provided, further, that the proceeds of TIF Bonds issued on a tax-exempt basis cannot be used as a source of City Funds or to repay the City Funds. The Developer

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Parties shall, at the Developer Parties' expense, cooperate and provide reasonable assistance in connection with the marketing of any such TIF Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting the City in preparing an offering statement with respect thereto.

8.06 Employment Opportunity; Progress Reports. The Developer Parties covenant and agree to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor (and the General Contractor shall, in turn, use reasonable efforts to cause its subcontractors) to abide by the terms set forth in Section 10 hereof. The Developer shall deliver to the City written progress reports detailing compliance with the requirements of Sections 8.08, 10.02 and 10.03 of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 70% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). If any such reports indicate a shortfall in compliance, the Developer shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which the Developer shall correct any shortfall.

8.07 Employment Profile. The Developer Parties shall submit, and contractually obligate and cause the General Contractor (and the General Contractor shall, in turn, use reasonable efforts to cause its subcontractors) to submit, to DPD, from time to time, statements of its employment profile upon DPD's request.

8 Prevailing Wage. Due to the CHA MTW/Capital Funds Loan which is part of the Lender Financing, the Developer Parties covenant and agree to pay, and to contractually obligate and cause the General Contractor to pay and to contractually cause each subcontractor to pay, the prevailing wage rate as ascertained by the federal government pursuant to the Davis-Bacon Act, to all their respective employees working on constructing the Project or otherwise completing the TIF-Funded Improvements. All such contracts will list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or

mechanic employed pursuant to such contract. If federal prevailing wage rates are revised, the revised rates will apply to all such contracts. Upon the City's request, Owner will provide the City with copies of all such contracts entered into by any Developer Party or the General Contractor to evidence compliance with this Section 8.08.

9 Arms-Length Transactions. Unless DPD has given its prior written consent with respect thereto, no Affiliate of the Developer Parties may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement. The Developer Parties shall provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to the Affiliate by the Developer Parties and reimbursement to the Developer Parties for such costs using City Funds, or otherwise), upon DPD's request, prior to any such disbursement.

10 Conflict of Interest. Pursuant to Section 5/11-74.4-4(n) of the Act, the Developer Parties represent, warrant and covenant that, to the best of their knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or the Developer Parties with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Developer Parties' business, the Property or any other property in the Redevelopment Area.

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11 Disclosure of Interest. The Developer Parties' counsel has no direct or indirect financial ownership interest in the Developer Parties, the Property or any other aspect of the Project.

12 Financial Statements. The Developer Parties shall obtain and provide to DPD Financial Statements for the most current fiscal year ended December 31<sup>st</sup> and each December 31<sup>st</sup> thereafter for the Term of the Agreement. In addition, the Developer Parties shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

13 Insurance. The Owner, at its own expense, shall comply with all provisions of Section 12 hereof.

14 **Non-Governmental Charges.**

a) Payment of Non-Governmental Charges. Except for the Permitted Liens, the Owner agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien upon all or any portion of the Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, the Owner may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. The Owner shall furnish to DPD, within thirty (30) days of DPD's request, official receipts from the appropriate entity, or other proof satisfactory to DPD, evidencing payment of the Non-Governmental Charge in question.

b) Right to Contest. The Owner has the right, before any delinquency occurs:

i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend the Owner's covenants to pay any

such Non-Governmental Charge at the time and in the manner provided in this Section 8.14); or

ii) at DPD's sole option, to furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charge and all interest and penalties upon the adverse determination of such contest.

15 Developer Parties' Liabilities. The Developer Parties shall not enter into any transaction that would materially and adversely affect their ability to perform their obligations hereunder or to repay any material liabilities or perform any material obligations of the Developer Parties to any other person or entity. The Developer Parties shall immediately notify

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DPD and DOH of any and all events or actions which may materially affect the Developer Parties' ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

16 Compliance with Laws. To the best of each Developer Party's knowledge, after diligent inquiry, the Property and the Project are and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project and the Property. Upon the City's request, the Developer Parties shall provide evidence satisfactory to the City of such compliance.

17 Recording and Filing. The Owner shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed against the Property on the date hereof in the conveyance and real property records of Cook County, Illinois. The Owner shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Owner shall immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

## 18 Real Estate Provisions.

### (a) Governmental Charges.

i) Payment of Governmental Charges. The Owner agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon the Owner, the Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon the Owner or all or any portion of the Property or the Project. "Governmental Charge" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook County, and municipalities other than the City) relating to the Owner, the Property or the Project including but not limited to real estate taxes.

ii) Right to Contest. The Owner has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. The Owner's right to challenge real estate taxes applicable to the Property is limited as provided for in Section 8.18(c) below; provided, that such real estate taxes must be paid in

full when due and may be disputed only after such payment is made. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Owner's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless the Owner has given prior written notice to DPD of the Owner's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option,

iii) the Owner shall demonstrate to DPD's satisfaction that legal proceedings instituted by the Owner contesting or objecting to a Governmental Charge shall conclusively operate to prevent or remove a lien against, or the sale or forfeiture of, all or

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any part of the Property to satisfy such Governmental Charge prior to final determination of such proceedings; and/or

(iv) the Owner shall furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

(b) Owner's Failure To Pay Or Discharge Lien. If the Owner fails to pay any Governmental Charge or to obtain discharge of the same, the Owner shall advise DPD thereof in writing, at which time DPD may, but shall not be obligated to, and without waiving or releasing any obligation or liability of the Developer under this Agreement, in DPD's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DPD deems advisable. All sums so paid by DPD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to DPD by the Owner. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental Charge. Additionally, if the Owner fails to pay any Governmental Charge, the City, in its sole discretion, may require the Owner to submit to the City audited Financial Statements at the Owner's own expense.

(c) Real Estate Taxes.

i) Real Estate Tax Exemption. With respect to the Property or the Project, neither the Owner nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, seek, or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) for any year that the Redevelopment Plan is in effect, except for (i) obtaining Class 9 designation or participating in the Cook County Affordable Housing Special Assessment Program, (ii) obtaining any reduction in assessed value available for the Property under 35 ILCS 200/15-178, (iii) obtaining the exemption available for the CHA LIHTC Units and CHA Units, and (iv) obtaining any exemption for which DPD has provided its prior written consent.

ii) Covenants Running with the Land. The parties agree that the restrictions contained in this Section 8.18(c) are covenants running with the land and this Agreement shall be recorded by the Owner as a memorandum thereof, at the Owner's expense, with the Recordings Division of the Cook County Clerk on the Closing Date. These restrictions shall be binding upon the Developer Parties and their agents, representatives, lessees, successors, assigns and transferees from and after the date hereof, provided however, that the covenants shall be released when the Redevelopment Area is no longer in effect. The Owner agrees that any

sale, lease, conveyance, or transfer of title to all or any portion of the Property or Redevelopment Area from and after the date hereof shall be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this Section 8.18(c) to the contrary, the City, in its sole discretion and by its sole action, without the joinder or concurrence of the Developer Parties, their successors or assigns, may waive and

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**terminate the Developer Parties' covenants and agreements set forth in this Section 8.18(c).**

8.19 Affordable Housing Covenant. Of the 96 units comprising the Project, 35 units shall be CHA LIHTC Units affordable to households with incomes not greater than 60% AMI; 3 units shall be CHA Units affordable to households with AMI not greater than 80% AMI, 25 units shall have monthly rents not in excess of thirty (30%) of the maximum allowable income for a Low Income Family (with the applicable Family size for such units determined in accordance with the rules specified in Section 42(g)(2) of the Internal Revenue Code, as amended); and 33 units shall not have any affordability restrictions.

The Developer Parties agree and covenant to the City that, prior to any foreclosure of the Property by a lender providing Lender Financing, the provisions of the City Regulatory Agreements executed by the Project Owner and the City as of the date hereof shall govern the terms of the Developer Parties' obligation to provide affordable housing. Following foreclosure, if any, and from the date of such foreclosure through the Term of the Agreement, the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

a) The Project shall be operated and maintained solely as residential rental housing with the exception of approximately 4,000 square feet of commercial space;

b) Thirty-three (33) of the units in the Project shall be leased at market-rate rents; and

c) During the term of the Declaration of Restrictive Covenants, the CHA LIHTC Units and the CHA Units shall be operated and maintained solely as residential rental housing;

d) Each of the CHA Units shall be available for occupancy to and be occupied solely by a Family whose income is less than 80% of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937;

e) Each of the CHA LIHTC Units shall be available for occupancy to and be occupied solely by a Low Income Family upon initial occupancy; and

f) Sixty (60) of the units shall have monthly rents not in excess of 30% of the maximum allowable income for a Low Income Family (with the applicable Family size for such units determined in accordance with the rules specified in Section 42(g)(2) of the Internal Revenue Code, as amended), provided, however, that for any unit occupied by a Family that no longer qualifies as a Low Income Family due to an increase in such Family's income since the date of its initial occupancy of such unit, the maximum monthly rent for such unit shall not exceed thirty (30%) of such Family's monthly income.

g) As used in this Section 8.19, the following terms have the following meanings:

(i) "Family" shall mean one or more individuals, whether or not related by blood or marriage;  
and



(ii) "Low Income Family" shall mean Families whose annual income does not exceed sixty percent (60%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition.

(h) The City and the Owner may enter into a separate agreement to implement the provisions of this section.

(i) The covenants set forth in this Section 8.19 shall run with the leasehold estate and be binding upon any transferee.

20 Job Readiness Program. If requested by the City, Developer Parties will use their best efforts to encourage its tenants at the Project to participate in job readiness programs established by the City to help prepare individuals to work for businesses located within the Redevelopment Area.

21 Broker's Fees. Developer Parties have no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to any of the transactions contemplated by this Agreement for which the City could become liable or obligated.

8.22 No Business Relationship with City Elected Officials. Developer Parties acknowledge receipt of a copy of Section 2-156-030(b) of the Municipal Code and that Developer Parties have read and understands such provision. Under Section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a "Business Relationship" (as defined in Section 2-156-080(b)(2) of the Municipal Code), or to participate in any discussion of any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship. Violation of Section 2-156-030(b) by any elected official, or any person acting at the direction of such official, with respect to this Agreement, or in connection with the transactions contemplated thereby, will be grounds for termination of this Agreement and the transactions contemplated thereby. Developer Parties hereby represent and warrant that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Agreement or the transactions contemplated thereby.

8.23 Survival of Covenants. All warranties, representations, covenants and agreements of the Developer Parties contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer Parties' execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as provided in Section 7 hereof upon the issuance of a Certificate) shall be in effect throughout the Term of the Agreement.

8.24 Annual Compliance Report. Beginning with the issuance of the Certificate and continuing throughout the Term of the Agreement, the Developer Parties shall submit to DPD the Annual Compliance Report within 30 days after the end of the calendar year to which the

Annual Compliance Report relates.

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## **SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY**

1 General Covenants. The City represents that it has the authority as a home rule unit of local government to execute and deliver this Agreement and to perform its obligations hereunder.

2 Survival of Covenants. All warranties, representations, and covenants of the City contained in this Section 9 or elsewhere in this Agreement shall be true, accurate, and complete at the time of the City's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and be in effect throughout the Term of the Agreement.

## **SECTION 10. DEVELOPER PARTIES' EMPLOYMENT OBLIGATIONS**

10.01 Employment Opportunity. The Developer Parties on behalf of themselves and their successors and assigns, hereby agree, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Developer Parties operating on the Property (collectively, with the Developer Parties, the "Employers" and individually an "Employer") to agree, that for the Term of this Agreement with respect to Developer Parties during the period of any other party's provision of services in connection with the construction of the Project or occupation of the Property:

a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "Human Rights Ordinance"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a nondiscriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

b) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City and preferably of the Redevelopment Area; and to provide that contracts for work in connection with the construction of the Project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the Redevelopment Area.

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c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

d) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

**f) Failure to comply with the employment obligations described in this Section 10.01 shall be a basis for the City to pursue remedies under the provisions of Section 15.02 hereof, subject to the cure rights under Section 15.03.**

10.02 City Resident Construction Worker Employment Requirement. The Developer Parties agree for themselves and their successors and assigns, and shall contractually obligate their contractors and subcontractors, as applicable, to agree, that during the construction of the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, the Developer Parties, their contractors and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

The Developer Parties may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

"Actual residents of the City" shall mean persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The Developer Parties, the contractors and each subcontractor shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed on the Project. Each Employer shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commissioner of DPD in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

The Developer Parties, the contractors and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DPD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. The

Developer Parties, the General Contractor and each subcontractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the work constituting the Project.

At the direction of DPD, affidavits and other supporting documentation will be required of the Developer Parties, the contractors and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the Developer Parties, the contractors and each subcontractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

When work at the Project is completed, in the event that the City has determined that the Developer Parties have failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the Developer Parties to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Developer Parties, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to the Developer Parties pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether the Developer Parties must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the ANotice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246 " and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents.

The Developer Parties shall cause or require the provisions of this Section 10.02 to be included in all construction contracts and subcontracts related to the Project.

10.03. MBE/WBE Commitment. Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "MBE/WBE Program"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance

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upon the provisions of the MBEAA/BE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of construction of the Project, at least the following percentages of hard construction costs as set forth in the Project Budget (as set forth in Exhibit H hereto) shall be expended for contract participation by minority-owned businesses ("MBEs") and by women-owned businesses ("WBEs") as follows:

- a. at least 26 percent by MBEs;
- b. at least 6 percent by WBEs.

Consistent with Section 2-92-440, Municipal Code of Chicago, the Developer Parties' MBEAA/BE

commitment may be achieved in part by the Developer Parties' status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer Parties) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer Parties utilizing a MBE or a WBE as a contractor (but only to the extent of any actual work performed on the Project by such contractor), by subcontracting a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer Parties' MBEAA/BE commitment as described in this Section 10.03. In accordance with Section 2-92-730, Municipal Code of Chicago, Developer shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DOH.

The Developer Parties shall deliver quarterly reports to the City's monitoring staff during the Project describing its efforts to achieve compliance with this MBEAA/BE commitment. Such reports shall include, inter alia, the name and business address of each MBE and WBE solicited by the Developer Parties or a contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist DPD in determining the Developer Parties' compliance with this MBEAA/BE commitment. The Developer Parties shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and DPD shall have access to all such records maintained by the Developer Parties, on five Business Days' notice, to allow the City to review the Developer Parties' compliance with its commitment to MBEAA/BE participation and the status of any MBE or WBE performing any portion of the Project.

Upon the disqualification of any MBE or WBE contractor or subcontractor, if such status was misrepresented by the disqualified party, the Developer Parties shall be obligated to discharge or cause to be discharged the disqualified contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this Section 10.03, the disqualification procedures are further described in Section 2-92-540, Municipal Code of Chicago.

Any reduction or waiver of the Developer Parties' MBEAA/BE commitment as described in this Section 10.03 shall be undertaken in accordance with Section 2-92-450, Municipal Code of Chicago.

Prior to the commencement of the Project, the Developer Parties shall be required to meet with the City's monitoring staff with regard to the Developer Parties' compliance with its obligations under this Section 10.03. All contractors and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Developer Parties shall demonstrate to the City's monitoring staff their plan to achieve their obligations under this Section 10.03, the sufficiency of which shall be approved by the City's monitoring staff. During the Project, the Developer Parties shall submit the documentation required by this Section 10.03 to the City's monitoring staff. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that the Developer Parties are not complying with their obligations under this Section 10.03, shall, upon the delivery of written notice to the Developer Parties, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided hereunder, the City may: (1) issue a written demand to the Developer Parties to halt the Project, (2) withhold any further payments to, or on behalf of, the Developer Parties, or (3) seek any other remedies against the Developer Parties available at law or in equity.

the Developer Parties will include the foregoing provisions in every contract entered into in connection with the Project and every agreement with any Affiliate operating on the Property so that such provision will be

binding upon each contractor or Affiliate, as the case may be.

## SECTION 11. ENVIRONMENTAL MATTERS

The Developer Parties hereby represent and warrant to the City that the Developer Parties have conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments thereto, the TIF Bond Ordinance, if any, and the Redevelopment Plan.

Without limiting any other provisions hereof, the Developer Parties agree to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Developer Parties: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the Property or (B) any other real property in which the Developer Parties or any person directly or indirectly controlling, controlled by or under common control with the Developer Parties, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by the Developer Parties), or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Developer Parties or any of its Affiliates under any Environmental Laws relating to the Property.

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## SECTION 12. INSURANCE

The Owner must provide and maintain, at Owner's own expense, or cause to be provided and maintained during the term of this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

- a) Prior to execution and delivery of this Agreement.
  - i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident, illness or disease.

- ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of

Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

iii) All Risk Property

All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/Project. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

b) Construction. Prior to the construction of any portion of the Project, Owner will cause its architects, contractors, subcontractors, project managers and other parties constructing the Project to procure and maintain the following kinds and amounts of insurance:

i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$ 500,000 each accident, illness or disease.

ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named

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as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

iii) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

iv) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Owner must provide cause to be provided with respect to the operations that Contractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

v) All Risk/Builders Risk

When Owner undertakes any construction, including improvements, betterments, and/or repairs, the Developer must provide or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the project. The City of

Chicago is to be named as an additional insured and loss payee/mortgagee if applicable.

vi) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

vii) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the recreation and reconstruction of such records.

viii) Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, the Owner must cause remediation contractor to provide Contractor Pollution Liability covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of work with limits of not less than \$1,000,000 per

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occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

c) Post Construction:

(i) All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/Project. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

d) Other Requirements:

The Owner must furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Owner must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Owner is not a waiver by the City of any requirements for the Owner to obtain and maintain the specified coverages. The Owner shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Owner of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work and/or terminate agreement until proper evidence of insurance is



provided.

The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Developer and Contractors.

The Owner hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Owner in no way limit the Owner's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Owner under the Agreement.

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The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Owner is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Owner must require all contractors and subcontractors to provide the insurance required herein, or Owner may provide the coverages for contractors and subcontractors. All contractors and subcontractors are subject to the same insurance requirements of Owner unless otherwise specified in this Agreement.

If Owner, any contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Department of Finance's Risk Management Unit maintains the right to modify, delete, alter or change these requirements.

### **SECTION 13. INDEMNIFICATION**

13.01 General Indemnity. Each of Developer Parties agrees to severally, but not jointly, indemnify, pay and hold the City, and its elected and appointed officials, employees, agents and affiliates (individually an "Indemnitee," and collectively the "Indemnitees") harmless from and against, any and all liabilities, obligations, losses, damages (arising out of a third party action against the City), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever, (and including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitees shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnitees by a third party in any manner relating to or arising out of:

- i) Such Developer Party's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or

- ii) Such Developer Party's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project feature or improvement; or
- iii) the existence of any material misrepresentation or omission in this Agreement, any offering memorandum or the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by such Developer Party or any of its Affiliates or any of their respective agents, employees, contractors or persons acting under the control or at the request of such Developer Party or any of its Affiliates; or
- iv) a Developer Party's failure to cure any misrepresentation in this Agreement or any other document or agreement relating hereto; or
- (v) any act or omission by such Developer Party or any of its Affiliates.

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provided, however, that no Developer Party shall have any obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, such Developer Party will contribute the maximum portion that it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this Section 13.01 will survive the termination of this Agreement.

#### **SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT**

14.01 Books and Records. The Developer Parties shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to the Developer Parties' loan statements, if any, General Contractor's and subcontractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at the Developer Parties' offices for inspection, copying, audit and examination by an authorized representative of the City, at the Developer Parties' expense. The Developer Parties shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by the Developer Parties with respect to the Project.

14.02 Inspection Rights. Upon three (3) Business Days' notice, any authorized representative of the City has access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

#### **SECTION 15. DEFAULT AND REMEDIES**

15.01 Events of Default. The occurrence of any one or more of the following events, subject to the provisions of Section 15.03, shall constitute an "Event of Default" by the Developer Parties hereunder:

- a) the failure of a Developer Party to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer Parties under this Agreement or any related agreement;

b) the failure of a Developer Party to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer Parties under any other agreement with any person or entity if such failure may have a material adverse effect on the Developer Parties' business, property, assets, operations or condition, financial or otherwise, and the Project;

c) the making or furnishing by a Developer Party to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

(d) except as otherwise permitted hereunder, the creation (whether voluntary or

involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property or the

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Project, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

e) the commencement of any proceedings in bankruptcy by or against a Developer Party or for the liquidation or reorganization of a Developer Party, or alleging that a Developer Party is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Developer Party's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving the Developer Party; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within ninety (90) days after the commencement of such proceedings;

f) the appointment of a receiver or trustee for a Developer Party, for any substantial part of the Developer Party's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of a Developer Party; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within ninety (90) days after the commencement thereof;

(g) the entry of any judgment or order against a Developer Party which remains unsatisfied or undischarged and in effect for ninety (90) days after such entry without a stay of enforcement or execution;

(h) the occurrence of an event of default under the Lender Financing, which default is not cured within any applicable cure period;

(i) the dissolution of a Developer Party or the death of any natural person who owns a material interest in the Developer Parties;

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against a Developer Party, or any natural person who owns a material interest in a Developer Party, which is not dismissed within thirty (30) days, or the indictment of a Developer Party or any natural person who owns a material interest in the Developer Party, for any crime (other than a misdemeanor); or

**(k) prior to the expiration of the Term of the Agreement, the sale or transfer of a majority of the ownership interests of the Developer Parties without the prior written consent of the City, except as permitted pursuant to Section 4.11.**

For purposes of Sections 15.01 (i) and 15.01(i) hereof, a person with a material interest in the Developer shall be one owning in excess of thirty-three percent (33%) of the Developer's member interests.

15.02 Remedies. Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, and may suspend disbursement of City Funds. Additionally, upon the occurrence of an Event of Default in relation to Section 8.19, the Developer Parties or Affiliates shall reimburse the City all of the City Funds disbursed to any one of the Developer Parties to date. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including

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but not limited to reimbursement of all or part of the City Funds, injunctive relief or the specific performance of the agreements contained herein. Without limiting the generality of the foregoing, with respect to Events of Defaults by a Developer Party prior to the issuance of a Certificate, the City shall be entitled to seek reimbursement of City Funds from Developer Parties.

### **15.03 Curative Period.**

a) In the event the Developer Parties shall fail to perform a monetary covenant which Developer Parties are required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer Parties have failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer Parties shall fail to perform a nonmonetary covenant which the Developer Parties are required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer Parties have failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, the Developer Party shall not be deemed to have committed an Event of Default under this Agreement if they have commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

b) Right to Cure by Lenders and Investors. In the event that an Event of Default occurs under this Agreement, and if, as a result thereof, the City intends to exercise any right or remedy available to it that could result in the termination of this Agreement or the cancellation, suspension, or reduction of any payment due from the City under this Agreement, the City shall send notice of such intended exercise to the parties identified in Section 17 and to any Lender providing Lender Financing or the members of the Developer shall have the right (but not the obligation) to cure such an Event of Default under the following conditions:

i) if the Event of Default is a monetary default, any party entitled to cure such default may cure it within 30 days after the later of: (a) the expiration of the cure period, if any, granted to the Developer with respect to such monetary default; or (b) receipt by the Lenders of such notice from the City; and

ii) if the Event of Default is of a non-monetary nature, any party entitled to cure such default shall have the right to cure it within 30 days after the later of: (a) the expiration of the cure period, if any, granted to the Developer with respect to such non-monetary default; or (b) receipt of such notice from the City; provided, however, that if such non-monetary default is not reasonably capable of being cured by the Lenders within

such 30-day period, such period shall be extended for such reasonable period of time as may be necessary to cure such default, provided that the party seeking such cure must continue diligently to pursue such cure and, if possession of the Project is necessary to effect such cure, the party seeking such cure must have instituted appropriate legal proceedings to obtain possession.

## SECTION 16. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date hereof with respect to the Property or any portion thereof are listed on Exhibit G hereto (including but not limited to mortgages made prior to or on the date hereof in connection with Lender Financing) and are referred to herein as the "Existing Mortgages." Any mortgage or deed of trust that the Developer Parties may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to herein as a "New Mortgage." Any New Mortgage that the Developer Parties may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof with the prior written consent of the City is referred to herein as a "Permitted Mortgage." It is hereby agreed by and between the City and the Developer Parties as follows:

(a) In the event that a mortgagee or any other party shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 18.15 hereof, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

(b) In the event that any mortgagee shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 18.15 hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer Parties for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "The Developer Parties" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of the Developer Parties' interest under this Agreement, such party has no liability under this Agreement for any Event of Default of the Developer Parties which accrued prior to the time such party succeeded to the interest of the Developer Parties under this Agreement, in which case the Developer Parties shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of the Developer Parties' interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(c) Prior to the issuance by the City to the Developer Parties of a Certificate pursuant to Section 7 hereof, no New Mortgage shall be executed with respect to the Property

or any portion thereof without the prior written consent of the Commissioner of DPD.

**SECTION 17. NOTICE**

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified mail, return receipt requested.

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If to the City:

City of Chicago  
Department of Planning and Development 121 North LaSalle Street,  
Room 1000 Chicago, Illinois 60602 Attention: Commissioner

City of Chicago  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic Development Division

If to Developer Parties: WHP-IID, LLC  
c/o Brinshore Development, L.L.C. 1603 North Orrington,  
Suite 450 Evanston, Illinois 60062 Attention: Richard J.  
Sciortino

WHP-IID, LLC  
c/o The Michaels Development Company P.O. Box 90708 Camden, New Jersey 08101 Attention: John J.  
O'Donnell

And:

WHP-IID, LLC  
c/o The Michaels Development Company 542 S. Dearborn Street,  
Suite 560 Chicago, Illinois 60605 Attention: Greg Olson

With copies to:

Applegate & Thorne-Thomsen, P.C. 425 S. Financial Place,  
Suite 1900 Chicago, Illinois 60605 Attention: Nicole Jackson,  
Esq.

And:

Levine, Staller, Sklar, Chan, Brown & Donnelly, P.A.  
3030 Atlantic Avenue  
Atlantic City, New Jersey 08401  
Attention: Arthur Brown

And:

The Richman Group Affordable Housing Corporation 777 West Putnam Avenue  
St. Greenwich, Connecticut 06830 Attention: Jason Wilber 42

And:

JDF, LLC

777 West Putnam Avenue Greenwich,  
Connecticut 06830 Attention: John W. Behre Jr.

And: Michaels Community Services Corporation  
d/b/a Better Tomorrows 2 Aquarium Loop Drive,  
Suite 110 Camden, New Jersey 08103

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to clause (a) hereof shall be deemed received upon such personal service. Any notice, demand or request sent pursuant to clause (b) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to subsection (c) shall be deemed received two (2) business days following deposit in the mail.

### SECTION 18. MISCELLANEOUS

1 Amendment. This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement Exhibit D hereto without the consent of any party hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "Amaterial" for the purpose of this Section 18.01 shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Developer Parties (including those set forth in Sections 10.02 and 10.03 hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer Parties affecting the Project site, the Project, or both, or increases any time agreed for performance by the Developer Parties by more than ninety (90) days.

2 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

3 Limitation of Liability. No member, official or employee of the City shall be personally liable to the Developer Parties or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer Parties from the City or any successor in interest or on any obligation under the terms of this Agreement.

4 Further Assurances. The Developer Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

5 Waiver. Waiver by the City or the Developer Parties with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer Parties in writing. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement shall not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties hereto, shall constitute a waiver of any such parties' rights

or of any obligations of any other party hereto as to any future transactions.

6 Remedies Cumulative. The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

7 Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

8 Headings. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

10 Severability. If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

11 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, such ordinance(s) shall prevail and control.

12 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

13 Form of Documents. All documents required by this Agreement to be submitted, delivered or furnished to the City shall be in form and content satisfactory to the City.

14 Approval. Wherever this Agreement provides for the approval or consent of the City, DPD, the Commissioner of DPD, the Commissioner of DOH, or any matter is to be to the City's, DPD's, DOH's, or the Commissioner of DPD's or the Commissioner of DOH's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, DPD, DOH or the Commissioner of DPD or the Commissioner of DOH in writing and in the reasonable discretion thereof. The Commissioner of DPD or the Commissioner of DOH, or such other persons designated by the Mayor of the City,

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shall act for the City, DOH or DPD, as applicable in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

15 Assignment. The Developer Parties may not sell, assign or otherwise transfer their interest in this Agreement in whole or in part without the written consent of the City, other than as promised in Section 4.11 or otherwise permitted herein; provided, however, that the Developer Parties may collaterally assign their respective interests in this Agreement to any of its lenders identified to the City as of the Closing Date, or to any lenders identified after the Closing Date and approved by the City, if any such lenders require such collateral assignment. Any successor in interest to the Developer Parties under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Sections 8.18, 8.19 and 8.20 hereof, for the Term of the Agreement. The Developer Parties consent



to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

16 Binding Effect. This Agreement shall be binding upon the Developer Parties, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Developer Parties, the City and their respective successors and permitted assigns (as provided herein). Except as otherwise provided herein, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

17 Force Majeure. Neither the City, the Developer Parties nor any successor in interest to any of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

18 Exhibits. All of the exhibits attached hereto are incorporated herein by reference.

19 Business Economic Support Act. Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if the Developer Parties are required to provide notice under the WARN Act, the Developer Parties shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and minority Leader of the Senate of State, and the Mayor of each municipality where the Developer Parties has locations in the State. Failure by the Developer Parties to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

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20 Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

21 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, Developer Parties agree to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services. Developer Parties also will pay any court costs, in addition to all other sums provided by law.

22 Business Relationships. The Developer Parties acknowledge (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer Parties have read such provision and understand that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has

a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer Parties hereby represent and warrant that, to the best of their knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

23 Debarment Certification. Failure by the Developer Parties or any controlling person of either, as defined in Section 1-23-010 of the Municipal Code, thereof to maintain eligibility to do business with the City as required by Section 1-23-030 of the Municipal Code shall be grounds for termination of this Agreement and the transactions contemplated thereby.

24 Parties in Interest/No Third Party Beneficiaries. The terms and provisions of this Agreement are binding upon and inure to the benefit of, and are enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement will not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the City or the Developer Parties, will be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or Developer Parties.

25 Inspector General and Legislative Inspector General. It is the duty of the Developer Parties, any subgrantee, bidder, proposer, contractor, subcontractor, and every

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applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. The Developer Parties represent that they understand and will abide by all provisions of Chapter 2-56 of the Municipal Code and that the Developer Parties will inform subcontractors of this provision and require their compliance.

It is the duty of the Developer Parties, any subgrantee, bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of the Developer Parties, any such subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. The Developer Parties represent that they understand and will abide by all provisions of Chapter 2-55 of the Municipal Code and that the Developer Parties will inform subcontractors of this provision and require their compliance.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

**CITY:**

CITY OF CHICAGO, acting by and through its Department of  
Planning and Development

By:

Maurice  
Commissioner

D.

Cox

STATE OF ILLINOIS COUNTY OF COOK

)  
) SS )

**NOTARY CERTIFICATION**

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid,  
DO HEREBY CERTIFY that Maurice D. Cox, Commissioner of the Department of Planning and Development  
of the City of Chicago, Illinois, an Illinois municipal corporation, on behalf of the corporation (the "City"), 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 acknowledged that he signed, sealed, and delivered said  
instrument pursuant to the authority given to him by the City, as his free and voluntary act and as the free and  
voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public

My Commission Expires,

(SEAL)

**[OWNER'S SIGNATURE PAGE TO FOLLOW]**

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the day  
and year first above written.

**OWNER:**

WHP-IID, LLC,  
an Illinois limited liability company

By: WHP-IID Manager, LLC,  
an Illinois limited liability company, its manager

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

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

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

By:  
Name: Richard J. Sciortino Title:  
President

By: Michaels Chicago Holding Company 2, LLC, an Illinois limited liability company, a member

By:  
Name: John J. OOonnell Title: President

**[OWNER'S NOTARY PAGE TO FOLLOW]**

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STATE OF ILLINOIS COUNTY OF COOK

)  
) ss )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Richard J. 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, a member of Brinshore PL, LLC, an Illinois limited liability company, a member of WHP-IID Manager, LLC, an Illinois limited liability company (the "Managing Member"), the managing member of WHP-IID, 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 Managing Member as the free and voluntary act of such person, and as the free and voluntary act and deed of the Managing Member and WHP-IID, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this        day of        , 2022.

(SEAL)

Notary Public

STATE OF NEW JERSEY )

) ss  
COUNTY OF BURLINGTON )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that John J. O'Donnell, personally known to me to be the president of Michaels Chicago Holding Company2, LLC, an Illinois limited liability company, a member of WHP-IID Manager, LLC, an Illinois limited liability company (the "Managing Member"), the managing member of WHP-IID, 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 Managing Member as the free and voluntary act of such person, and as the free and voluntary act and deed of the Managing Member and WHP-IID, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this      day of      , 2022.

(SEAL)

Notary Public

**[SPONSOR'S SIGNATURE AND NOTARY PAGE TO FOLLOW]**

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J

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

**SPONSOR:**

Michaels Community Services Corporation  
d/b/a Better Tomorrows,  
a New Jersey not-for-profit corporation

By:            i            :  
Name:  
Title:

STATE OF            )  
                                      ) SS  
COUNTY OF         )

**NOTARY CERTIFICATION**

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid,  
DO HEREBY CERTIFY that \_\_\_\_\_ of \_\_\_\_\_, a New  
Jersey \_\_\_\_\_, on behalf of the corporation (the " \_\_\_\_\_"), 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 acknowledged that he signed, sealed, and delivered said  
instrument pursuant to the authority given to him or her by the \_\_\_\_\_, as his or her free  
and voluntary act and as the free and voluntary act of the \_\_\_\_\_, for the uses and  
purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Notary Public

My Commission Expires,

(SEAL)

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LIST OF EXHIBITS

Exhibit A Exhibit B Exhibit B-2 Exhibit C Exhibit D Exhibit E Exhibit F Exhibit G Exhibit H-1 Exhibit H-2 Exhibit I  
Exhibit J Exhibit K  
Redevelopment Area "Property Legal Description Site Plan  
TIF-Funded Improvements Redevelopment Plan Construction Contract Intentionally Deleted "Permitted Liens  
"Project Budget "MBEA/VBE Budget Approved Prior Expenditures Opinion of Developer Parties' Counsel  
Requisition Form

(An asterisk(") indicates which exhibits are to be recorded.)

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**EXHIBIT A LEGAL DESCRIPTION OF AREA**

[NOT ATTACHED FOR ORDINANCE]



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**EXHIBIT B**

**PROPERTY LEGAL DESCRIPTION**

[Subject to Final Title and Survey]

LOT 1 IN WESTHAVEN PARK IIC, BEING A RESUBDIVISION AND CONSOLIDATION IN BROWN AND HURD'S SUBDIVISION OF THE NORTHWEST QUARTER OF BLOCK 52 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN HAMLIN'S SUBDIVISION OF PARTS OF BLOCK 52 AFORESAID, COMPRISING THE NORTHEAST QUARTER AND THE SOUTHWEST QUARTER OF SAID BLOCK, AND IN THE SUBDIVISION OF LOTS 23 AND 24 IN HAMLIN'S SUBDIVISION AFORESAID, AND IN T.B. BRYAN'S SUBDIVISION OF THE SOUTHEAST QUARTER OF BLOCK 52 AFORESAID, INCLUDING ALL OF THE VACATED EAST-WEST AND NORTH-SOUTH ALLEYS AND VACATED WEST MAYPOLE AVENUE IN SAID BLOCK 52, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 29, 2008 AS DOCUMENT NO. 0827339106, ALL IN COOK COUNTY, ILLINOIS.

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**EXHIBIT B-2 SITE PLAN**

[NOT ATTACHED FOR ORDINANCE INTRODUCTION]

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**EXHIBIT C**  
**TIF-FUNDED IMPROVEMENTS**

Category

Land Acquisition

Affordable Housing Unit Hard Costs

Affordable Housing Unit Contractor Fee (GC/OH/Profit)

Environmental Remediation

Building Permits

*Eligible soft costs related to construction: Architect-Design Architect-Supervision*

			<u>Project Budget</u>	<u>% TIF</u>	<u>TIF Eligible</u>
			<u>Amount*</u>		<u>Eligible Cost</u>
\$	2,800,000	100%	\$ 2,800,000		
\$	22,421,663	50%	\$11,210,832		
\$	3,139,033	50%	\$ 1,569,516		
\$	100,000	100%	\$ 100,000		
\$	80,000	100%	\$ 80,000		
\$	693,984	50%	\$ 346,992		
\$	181,781	50%	\$ 90,891		

**\$ 16.198.231**

\* With the exception of Land Acquisition, Environmental Remediation, and Building Permits, Project Budget Amounts are based upon 63 units that are affordable to "low-income households" or "very low-income households" as such is defined by the Illinois Affordable Housing Act.  
"Notwithstanding the total amount referenced above, the City Funds for the TIF-Funded Improvements shall not exceed \$10,000,000.

**EXHIBIT D REDEVELOPMENT PLAN**

[NOT ATTACHED FOR ORDINANCE]

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**EXHIBIT E CONSTRUCTION CONTRACT**

[NOT ATTACHED FOR ORDINANCE]

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EXHIBIT F

Intentionally Deleted

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EXHIBIT G

PERMITTED LIENS

Those matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of the date hereof, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

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**EXHIBIT H-1 PROJECT BUDGET**

<u>COST</u>		<u>Amount</u>
Land Acquisition	\$	2,800,000
Unit Construction Costs	\$	30,407,766
Other Hard Construction Costs	\$	7,407,396
Soft Costs:		
<i>So/7 Testing</i>	\$	125,000
<i>Professional</i>		
Fees	\$	2,105,500
Lender Fees	\$	2,786,297
Insurance and Taxes	\$	378,000
Marketing and Leasing	\$	185,199
Developer Fee	\$	2,500,000



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Reserves	\$ 860,230
<b>Total Project Costs</b>	<b>\$ 49,555,388</b>

SOURCES - approximate amount of Lender Financing

BMO Harris Bank (senior loan)	\$ 28,124,038*
Seller's Note - Better Tomorrows	\$ 2,800,000
City of Chicago	\$ 6,220,058
TIF Proceeds Loan	\$ 10,000,000
CHA MTW/Capital Funds Loan	\$ 12,160,000
Donation Tax Credits Proceeds Loan	\$ 1,132,594

\* To be repaid with low-income housing tax credit equity installments, and/or a portion of the TIF proceeds, and/or a permanent loan from BMO Harris Bank National Association or a lender acceptable to the City.

SOURCES - approximate amount of Equity Low Income Housing Tax Credit

Equity	\$ 12,392,636
Other Equity	\$ 100

**EXHIBIT H-2 MBE/WBE BUDGET**

Project Hard Costs (excluding Construction Contingency) Project Soft Costs: Architect, Engineering, Soil Testing  
Project MBE/WBE Total Budget

**Project MBE Total at 26% Project WBE Total at 6%**

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**EXHIBIT I APPROVED PRIOR EXPENDITURES**

**None.**

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**EXHIBIT J**

**OPINION OF DEVELOPER PARTIES' COUNSEL**

[To be retyped on the Developer Parties' Counsel's letterhead]

City of Chicago  
121 North LaSalle Street  
Chicago, IL 60602

ATTENTION: Corporation Counsel

Ladies and Gentlemen:

I have acted as counsel to WHP-IID, LLC, an Illinois limited liability company (the "Owner") and Michaels Community Services Corporation, a New Jersey not for profit corporation, doing business as Better Tomorrows ("Better Tomorrows") in connection with the acquisition of certain land and the construction of certain facilities thereon located in the Central West Redevelopment Project Area (the "Project"). In that capacity, I have examined, among other things, the following agreements, instruments, and documents of even date herewith. hereinafter referred to as the "Documents":

- a) WHP-IID, LLC Redevelopment Agreement (the "Agreement") of even date herewith, executed by the Owner, Better Tomorrows and the City of Chicago (the "City"); and
- b) all other agreements, instruments and documents executed in connection with the foregoing.

In addition to the foregoing, I have examined:

- a) the original or certified, conformed or photostatic copies of (1) the Owner's (i) Articles of Organization, (ii) operating agreement, (iii) By-Laws, if any, (iv) the certificate of good standing, and (v) records of all members' proceedings relating to the Project; and (2) Better Tomorrows' (i) Articles of Organization, (ii) operating agreement, (iii) By-Laws, if any, (iv) the certificate of good standing, and (v) records of all members' proceedings relating to the Project; and
- b) such other documents, records and legal matters as I have deemed necessary or relevant for purposes of issuing the opinions hereinafter expressed.

In all such examinations, I have assumed the genuineness of all signatures (other than those of the Owner and Better Tomorrows), the authenticity of documents submitted to us as originals and conformity to the originals of all documents submitted to us as certified, conformed or photo static copies.

Based on the foregoing, it is my opinion that:

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1. The Owner is a limited liability company, duly organized and validly existing under the laws of its state of formation, has full power and authority to own and lease its properties and to carry on its business as presently conducted, and is in good standing and duly qualified to do business as a limited liability company under the laws of every state in which the conduct of its affairs or the ownership of its assets requires such qualification, except for those states in which its failure to qualify to do business would not have a material adverse effect on it or its business. Better Tomorrows is a limited liability company, duly organized, validly existing and in good standing under the laws of its state of incorporation, has full power and authority to own and lease its properties and to carry on its business as presently conducted, and is in good standing and duly qualified to do business as a foreign corporation under the laws of every state in which the conduct of its affairs or the ownership of its assets requires such qualification, except for those states in which its failure to qualify to do business would not have a material adverse effect on it or its business.

2. The Owner and Better Tomorrows have full right, power and authority to execute and deliver the Documents to which they are a party and to perform their obligations thereunder. Such execution, delivery and performance will not conflict with, or result in a breach of, the Owner's operating agreement or Better Tomorrows' articles of organization, or result in a breach or other violation of any of the terms, conditions or provisions of any law or regulation, order, writ, injunction or decree of any court, government or regulatory authority, or, to the best of my knowledge after diligent inquiry, any of the terms, conditions or provisions of any agreement, instrument or document to which the Owner or Better Tomorrows is a party or by which the Owner or Better Tomorrows or its properties is bound. To the best of my knowledge after diligent inquiry, such execution, delivery and performance will not constitute grounds for acceleration of the maturity of any agreement, indenture, undertaking or other instrument to which the Owner or Better Tomorrows is a party or by which it or any of its property may be bound, or result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, any of its property pursuant to the provisions of any of the foregoing, other than liens or security interests in favor of the lender providing Lender Financia (as defined in the Agreement).

3. The execution and delivery of each Document and the performance of the transactions contemplated thereby have been duly authorized and approved by all requisite action on the part of the Owner and Better Tomorrows.

4. Each of the Documents to which the Owner or Better Tomorrows is a party has been duly executed and delivered by a duly authorized officer of the Owner or Better Tomorrows, as applicable, and each such Document constitutes the legal, valid and binding obligation of the Owner or Better Tomorrows enforceable in accordance with its terms, except as limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally.

5. To the best of my knowledge after diligent inquiry, no judgments are outstanding against the Owner or Better Tomorrows nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against the Owner or Better Tomorrows or affecting the Owner or Better Tomorrows or its property, or seeking to restrain or enjoin the performance by the Owner or Better Tomorrows of the Agreement or the transactions contemplated by the Agreement, or contesting the validity thereof. To the best of my knowledge after diligent inquiry, the Owner or Better Tomorrows is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in any

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respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on the Owner or, Better Tomorrows or its business.

6. To the best of my knowledge after diligent inquiry, there is no default by the Owner or Better Tomorrows or any other party under any material contract, lease, agreement, instrument or commitment to which the Owner or Better Tomorrows is a party or by which the company or its properties is bound.

7. To the best of my knowledge after diligent inquiry, all of the assets of the Owner or Better Tomorrows are free and clear of mortgages, liens, pledges, security interests and encumbrances except for those specifically set forth in the Documents.

8. The execution, delivery and performance of the Documents by the Owner or Better Tomorrows have not and will not require the consent of any person or the giving of notice to, any exemption by, any registration, declaration or filing with or any taking of any other actions in respect of, any person, including without limitation any court, government or regulatory authority.

9. To the best of my knowledge after diligent inquiry, the Owner or Better Tomorrows own or possess or is licensed or otherwise have the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public convenience, goods carriers permits, authorizations and other rights that are necessary for the operation of its business.

10. A federal or state court sitting in the State of Illinois and applying the choice of law provisions of the State of Illinois would enforce the choice of law contained in the Documents and apply the law of the State of Illinois to the transactions evidenced thereby.

I am admitted to practice in the State of Illinois and I express no opinion as to any laws other than federal laws of the United States of America and the laws of the State of Illinois.

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This opinion is issued at the Owner's and Better Tomorrows' request for the benefit of the City and its counsel, and may not be disclosed to or relied upon by any other person.

Very truly yours,

By: \_ Name:

**EXHIBIT K**  
**REQUISITION FORM**

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The affiant, \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, an Illinois  
\_\_\_\_\_, the \_\_\_\_\_ of Michaels Community Services Corporation, a New Jersey  
not for profit corporation, doing business as Better Tomorrows ("Better Tomorrows") and WHP-  
IID, LLC, an Illinois limited liability company (the "Owner"), hereby certifies that with respect to  
that certain 45<sup>th</sup>/Cottage LLC Redevelopment Agreement among the Developer, Better  
Tomorrows and the City of Chicago dated as of \_\_\_\_\_ (the "Agreement"):

A. Expenditures for the Project, in the total amount of \$ \_\_\_\_\_, have  
been made:

B. This paragraph B sets forth and is a true and complete statement of all costs of TIF-Funded  
Improvements for the Project reimbursed by the City to date:

\$ \_\_\_\_\_

C. The Owner requests reimbursement for the following cost of TIF-Funded Improvements:

\$ \_\_\_\_\_

D. None of the costs referenced in paragraph C above have been previously reimbursed by the  
City.

E. The Owner hereby certifies to the City that, as of the date hereof:

1. Except as described in the attached certificate, the representations and warranties contained in the Redevelopment Agreement are true and correct and the Owner is in compliance with all applicable covenants contained herein.

2. No event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default, exists or has occurred.

All capitalized terms which are not defined herein has the meanings given such terms in the Agreement.

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By:

Subscribed and sworn before me this      day of

My commission expires:



**Exhibit F Legal Description of Property**

[Subject to Final Title and Survey]

LOT 1 IN WESTHAVEN PARK IIC, BEING A RESUBDIVISION AND CONSOLIDATION IN BROWN AND HURD'S SUBDIVISION OF THE NORTHWEST QUARTER OF BLOCK 52 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN HAMLIN'S SUBDIVISION OF PARTS OF BLOCK 52 AFORESAID, COMPRISING THE NORTHEAST QUARTER AND THE SOUTHWEST QUARTER OF SAID BLOCK, AND IN THE SUBDIVISION OF LOTS 23 AND 24 IN HAMLIN'S SUBDIVISION AFORESAID, AND IN T.B. BRYAN'S SUBDIVISION OF THE SOUTHEAST QUARTER OF BLOCK 52 AFORESAID, INCLUDING ALL OF THE VACATED EAST-WEST AND NORTH-SOUTH ALLEYS AND VACATED WEST MAYPOLE AVENUE IN SAID BLOCK 52, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 29, 2008 AS DOCUMENT NO. 0827339106, ALL IN COOK COUNTY, ILLINOIS.

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**Exhibit F Legal Description of Property**

[Subject to Final Title and Survey]

LOT 1 IN WESTHAVEN PARK IIC, BEING A RESUBDIVISION AND CONSOLIDATION IN BROWN AND HURD'S SUBDIVISION OF THE NORTHWEST QUARTER OF BLOCK 52 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN HAMLIN'S SUBDIVISION OF PARTS OF BLOCK 52 AFORESAID, COMPRISING THE NORTHEAST QUARTER AND THE SOUTHWEST QUARTER OF SAID BLOCK, AND IN THE SUBDIVISION OF LOTS 23 AND 24 IN HAMLIN'S SUBDIVISION AFORESAID, AND IN T.B. BRYAN'S SUBDIVISION OF THE SOUTHEAST QUARTER OF BLOCK 52 AFORESAID, INCLUDING ALL OF THE VACATED EAST-WEST AND NORTH-SOUTH ALLEYS AND VACATED WEST MAYPOLE AVENUE IN SAID BLOCK 52, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 29, 2008 AS DOCUMENT NO. 0827339106, ALL IN COOK COUNTY, ILLINOIS.

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CHICAGO June 22, 2022

**To the President and Members of the City Council:**

Your Committee on Finance having had under consideration a communication recommending a proposed ordinance concerning the authority to enter into and execute a Redevelopment Agreement with WHP-IID LLC, WHP-IID Manager LLC, Brinshore PI LLC, and Michaels Chicago Holding Company 2 to provide lending, tax, use covenants and tax increment financing (TIF) funds for development of Westhaven Park IID residential housing located at 145 North Damen Ave and 1951-1959 West Lake Street, in the 27<sup>th</sup> Ward.

SO2022-1771

Bonds: up to \$30,000,000

TIF Amount: up to \$10,000,000

**Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed**

**This recommendation was concurred in by viva voce vote of members of the committee with 0 dissenting vote(s).**

**Respectfully submitted,**

**(signed)**

**Chairman**

APPROVED APPROVED